

1 **INSURANCE PRODUCERS AMENDMENTS**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: James A. Dunnigan**

5 **This act modifies the Insurance Code. The act provides definitions and substitutes the**
6 **term producer for the terms agent and broker with respect to certain insurance licenses.**

7 **The act renumbers and modifies the chapter of the Insurance Code dealing with**
8 **insurance marketing and licensing. The act further modifies insurance licensing and**
9 **application procedures, licensing requirements, and license types. The act modifies**
10 **guidelines for termination, lapsing, probation, or surrender with respect to a license.**

11 **The act enacts guidelines for the appointment and listing of an individual or agency**
12 **producer or managing general agent. The act modifies certain continuing education and**
13 **training period requirements. The act modifies provisions relating to an agency license**
14 **and designation. The act designates certain failures to forward a premium to an insured**
15 **as insurance fraud. The act modifies guidelines for licensee compensation. The act**
16 **makes technical changes. This act provides an effective date. This act contains a**
17 **coordination clause.**

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

19 AMENDS:

20 **7-1-901**, as enacted by Chapter 393, Laws of Utah 1998

21 **31A-1-104**, as last amended by Chapter 131, Laws of Utah 1999

22 **31A-1-301**, as last amended by Chapters 71 and 308, Laws of Utah 2002

23 **31A-2-205**, as last amended by Chapter 2, Laws of Utah 1987

24 **31A-2-214**, as last amended by Chapter 71, Laws of Utah 2002

25 **31A-2-308**, as last amended by Chapters 130 and 131, Laws of Utah 1999

26 **31A-2-309**, as last amended by Chapter 91, Laws of Utah 1987

27 **31A-3-303**, as last amended by Chapter 230, Laws of Utah 1992



- 28 **31A-4-106**, as last amended by Chapter 131, Laws of Utah 1999
29 **31A-5-207**, as last amended by Chapter 277, Laws of Utah 1992
30 **31A-5-218**, as last amended by Chapter 131, Laws of Utah 1999
31 **31A-6a-103**, as last amended by Chapter 130, Laws of Utah 1999
32 **31A-6a-108**, as enacted by Chapter 203, Laws of Utah 1992
33 **31A-8-103**, as last amended by Chapter 308, Laws of Utah 2002
34 **31A-11-101**, as last amended by Chapter 204, Laws of Utah 1986
35 **31A-11-102**, as last amended by Chapter 116, Laws of Utah 2001
36 **31A-11-104**, as last amended by Chapter 10, Laws of Utah 1997
37 **31A-11-107**, as last amended by Chapter 204, Laws of Utah 1986
38 **31A-14-211**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
39 **31A-15-102**, as enacted by Chapter 242, Laws of Utah 1985
40 **31A-15-103**, as last amended by Chapter 185, Laws of Utah 2002
41 **31A-15-104**, as enacted by Chapter 242, Laws of Utah 1985
42 **31A-15-111**, as last amended by Chapter 185, Laws of Utah 1997
43 **31A-15-204**, as last amended by Chapter 305, Laws of Utah 1993
44 **31A-15-207**, as enacted by Chapter 258, Laws of Utah 1992
45 **31A-15-210**, as enacted by Chapter 258, Laws of Utah 1992
46 **31A-15-212**, as last amended by Chapter 305, Laws of Utah 1993
47 **31A-17-608**, as last amended by Chapter 116, Laws of Utah 2001
48 **31A-19a-209**, as last amended by Chapter 308, Laws of Utah 2002
49 **31A-19a-216**, as enacted by Chapter 130, Laws of Utah 1999
50 **31A-20-110**, as enacted by Chapter 242, Laws of Utah 1985
51 **31A-21-302**, as last amended by Chapter 204, Laws of Utah 1986
52 **31A-21-305**, as enacted by Chapter 242, Laws of Utah 1985
53 **31A-21-404**, as last amended by Chapter 116, Laws of Utah 2001
54 **31A-26-201**, as last amended by Chapter 20, Laws of Utah 1995
55 **31A-27-103**, as last amended by Chapter 308, Laws of Utah 2002
56 **31A-27-316**, as enacted by Chapter 242, Laws of Utah 1985
57 **31A-27-324**, as enacted by Chapter 242, Laws of Utah 1985
58 **31A-30-104**, as last amended by Chapter 308, Laws of Utah 2002

59 **31A-35-102**, as last amended by Chapter 259, Laws of Utah 2000
60 **31A-35-301**, as last amended by Chapter 259, Laws of Utah 2000
61 **31A-35-401**, as last amended by Chapter 259, Laws of Utah 2000
62 **31A-35-402**, as last amended by Chapter 259, Laws of Utah 2000
63 **31A-35-403**, as enacted by Chapter 293, Laws of Utah 1998
64 **31A-35-502**, as last amended by Chapter 259, Laws of Utah 2000
65 **31A-35-503**, as last amended by Chapter 259, Laws of Utah 2000
66 **31A-35-601**, as enacted by Chapter 293, Laws of Utah 1998
67 **31A-35-603**, as last amended by Chapter 259, Laws of Utah 2000
68 **31A-35-604**, as last amended by Chapter 259, Laws of Utah 2000
69 **31A-35-605**, as enacted by Chapter 293, Laws of Utah 1998
70 **31A-35-606**, as enacted by Chapter 293, Laws of Utah 1998
71 **31A-35-608**, as last amended by Chapter 9, Laws of Utah 2001
72 **31A-35-701**, as last amended by Chapter 259, Laws of Utah 2000
73 **31A-35-702**, as last amended by Chapter 259, Laws of Utah 2000
74 **31A-35-703**, as last amended by Chapter 259, Laws of Utah 2000
75 **31A-35-704**, as last amended by Chapter 259, Laws of Utah 2000
76 **34A-2-104**, as last amended by Chapter 171, Laws of Utah 2001
77 **35A-4-205**, as last amended by Chapter 21, Laws of Utah 1999
78 **41-12a-303.2**, as last amended by Chapter 345, Laws of Utah 2000
79 **57-1-39**, as last amended by Chapter 40, Laws of Utah 2002
80 **59-9-101**, as last amended by Chapter 71, Laws of Utah 2002
81 **63-2-202**, as last amended by Chapter 256, Laws of Utah 2001
82 **63-2-302 (Effective 07/01/03)**, as last amended by Chapters 63 and 191, Laws of Utah
83 2002
84 **63-2-302 (Superseded 07/01/03)**, as last amended by Chapter 63, Laws of Utah 2002
85 **63-55b-131**, as last amended by Chapter 3, Laws of Utah 2001
86 **73-1-10**, as last amended by Chapter 241, Laws of Utah 2001
87 **73-18c-304**, as enacted by Chapter 348, Laws of Utah 1997
88 **76-10-915**, as last amended by Chapter 141, Laws of Utah 1999
89 ENACTS:

90 **31A-1-110**, Utah Code Annotated 1953

91 **31A-23a-113**, Utah Code Annotated 1953

92 **31A-23a-115**, Utah Code Annotated 1953

93 **31A-23a-301**, Utah Code Annotated 1953

94 **31A-23a-411**, Utah Code Annotated 1953

95 RENUMBERS AND AMENDS:

96 **31A-23a-101**, (Renumbered from 31A-23-101, as last amended by Chapter 116, Laws
97 of Utah 2001)

98 **31A-23a-102**, (Renumbered from 31A-23-102, as last amended by Chapter 308, Laws
99 of Utah 2002)

100 **31A-23a-103**, (Renumbered from 31A-23-201, as last amended by Chapter 116, Laws
101 of Utah 2001)

102 **31A-23a-104**, (Renumbered from 31A-23-202, as last amended by Chapter 185, Laws
103 of Utah 2002)

104 **31A-23a-105**, (Renumbered from 31A-23-203, as last amended by Chapter 116, Laws
105 of Utah 2001)

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

108 **31A-23a-107**, (Renumbered from 31A-23-205, as last amended by Chapter 10, Laws of
109 Utah 1997)

110 **31A-23a-108**, (Renumbered from 31A-23-207, as last amended by Chapter 116, Laws
111 of Utah 2001)

112 **31A-23a-109**, (Renumbered from 31A-23-209, as last amended by Chapter 116, Laws
113 of Utah 2001)

114 **31A-23a-110**, (Renumbered from 31A-23-212, as last amended by Chapter 116, Laws
115 of Utah 2001)

116 **31A-23a-111**, (Renumbered from 31A-23-216, as last amended by Chapter 308, Laws
117 of Utah 2002)

118 **31A-23a-112**, (Renumbered from 31A-23-217, as last amended by Chapter 185, Laws
119 of Utah 1997)

120 **31A-23a-114**, (Renumbered from 31A-23-218, as last amended by Chapter 116, Laws

121 of Utah 2001)
122 **31A-23a-116**, (Renumbered from 31A-23-405, as last amended by Chapter 131, Laws
123 of Utah 1999)
124 **31A-23a-201**, (Renumbered from 31A-23-201.5, as enacted by Chapter 116, Laws of
125 Utah 2001)
126 **31A-23a-202**, (Renumbered from 31A-23-206, as last amended by Chapter 308, Laws
127 of Utah 2002)
128 **31A-23a-203**, (Renumbered from 31A-23-208, as last amended by Chapter 261, Laws
129 of Utah 1989)
130 **31A-23a-204**, (Renumbered from 31A-23-211, as last amended by Chapter 308, Laws
131 of Utah 2002)
132 **31A-23a-205**, (Renumbered from 31A-23-211.5, as enacted by Chapter 293, Laws of
133 Utah 1998)
134 **31A-23a-206**, (Renumbered from 31A-23-211.7, as last amended by Chapter 116, Laws
135 of Utah 2001)
136 **31A-23a-207**, (Renumbered from 31A-23-214, as enacted by Chapter 242, Laws of
137 Utah 1985)
138 **31A-23a-302**, (Renumbered from 31A-23-219, as last amended by Chapter 114, Laws
139 of Utah 2000)
140 **31A-23a-401**, (Renumbered from 31A-23-301, as last amended by Chapter 261, Laws
141 of Utah 1989)
142 **31A-23a-402**, (Renumbered from 31A-23-302, as last amended by Chapter 308, Laws
143 of Utah 2002)
144 **31A-23a-403**, (Renumbered from 31A-23-303, as last amended by Chapter 116, Laws
145 of Utah 2001)
146 **31A-23a-404**, (Renumbered from 31A-23-304, as enacted by Chapter 242, Laws of
147 Utah 1985)
148 **31A-23a-405**, (Renumbered from 31A-23-305, as last amended by Chapter 293, Laws
149 of Utah 1998)
150 **31A-23a-406**, (Renumbered from 31A-23-307, as last amended by Chapter 308, Laws
151 of Utah 2002)

152 **31A-23a-407**, (Renumbered from 31A-23-308, as last amended by Chapter 308, Laws
153 of Utah 2002)

154 **31A-23a-408**, (Renumbered from 31A-23-309, as last amended by Chapter 230, Laws
155 of Utah 1992)

156 **31A-23a-409**, (Renumbered from 31A-23-310, as last amended by Chapter 116, Laws
157 of Utah 2001)

158 **31A-23a-410**, (Renumbered from 31A-23-311, as last amended by Chapter 344, Laws
159 of Utah 1995)

160 **31A-23a-412**, (Renumbered from 31A-23-312, as last amended by Chapter 116, Laws
161 of Utah 2001)

162 **31A-23a-413**, (Renumbered from 31A-23-313, as enacted by Chapter 242, Laws of
163 Utah 1985)

164 **31A-23a-414**, (Renumbered from 31A-23-314, as enacted by Chapter 242, Laws of
165 Utah 1985)

166 **31A-23a-415**, (Renumbered from 31A-23-315, as last amended by Chapter 260, Laws
167 of Utah 2002)

168 **31A-23a-416**, (Renumbered from 31A-23-316, as enacted by Chapter 329, Laws of
169 Utah 1998)

170 **31A-23a-417**, (Renumbered from 31A-23-317, as enacted by Chapter 116, Laws of
171 Utah 2001)

172 **31A-23a-501**, (Renumbered from 31A-23-401, as last amended by Chapter 293, Laws
173 of Utah 1998)

174 **31A-23a-502**, (Renumbered from 31A-23-402, as last amended by Chapter 204, Laws
175 of Utah 1986)

176 **31A-23a-503**, (Renumbered from 31A-23-403, as last amended by Chapter 76, Laws of
177 Utah 1995)

178 **31A-23a-504**, (Renumbered from 31A-23-404, as last amended by Chapter 116, Laws
179 of Utah 2001)

180 **31A-23a-505**, (Renumbered from 31A-23-406, as enacted by Chapter 242, Laws of
181 Utah 1985)

182 **31A-23a-601**, (Renumbered from 31A-23-501, as last amended by Chapter 305, Laws

183 of Utah 1993)
184 **31A-23a-602**, (Renumbered from 31A-23-502, as enacted by Chapter 258, Laws of
185 Utah 1992)
186 **31A-23a-603**, (Renumbered from 31A-23-503, as last amended by Chapter 308, Laws
187 of Utah 2002)
188 **31A-23a-604**, (Renumbered from 31A-23-504, as enacted by Chapter 258, Laws of
189 Utah 1992)
190 **31A-23a-605**, (Renumbered from 31A-23-505, as enacted by Chapter 258, Laws of
191 Utah 1992)
192 **31A-23a-701**, (Renumbered from 31A-23-601, as last amended by Chapter 308, Laws
193 of Utah 2002)
194 **31A-23a-702**, (Renumbered from 31A-23-602, as last amended by Chapter 305, Laws
195 of Utah 1993)
196 **31A-23a-703**, (Renumbered from 31A-23-603, as enacted by Chapter 258, Laws of
197 Utah 1992)
198 **31A-23a-704**, (Renumbered from 31A-23-604, as enacted by Chapter 258, Laws of
199 Utah 1992)
200 **31A-23a-801**, (Renumbered from 31A-23-701, as enacted by Chapter 258, Laws of
201 Utah 1992)
202 **31A-23a-802**, (Renumbered from 31A-23-702, as last amended by Chapter 116, Laws
203 of Utah 2001)
204 **31A-23a-803**, (Renumbered from 31A-23-703, as enacted by Chapter 258, Laws of
205 Utah 1992)
206 **31A-23a-804**, (Renumbered from 31A-23-704, as enacted by Chapter 258, Laws of
207 Utah 1992)
208 **31A-23a-805**, (Renumbered from 31A-23-705, as last amended by Chapter 116, Laws
209 of Utah 2001)
210 **31A-23a-806**, (Renumbered from 31A-23-706, as enacted by Chapter 258, Laws of
211 Utah 1992)
212 **31A-23a-807**, (Renumbered from 31A-23-707, as enacted by Chapter 258, Laws of
213 Utah 1992)

214 **31A-23a-808**, (Renumbered from 31A-23-708, as enacted by Chapter 258, Laws of
215 Utah 1992)

216 **31A-23a-809**, (Renumbered from 31A-23-709, as enacted by Chapter 258, Laws of
217 Utah 1992)

218 REPEALS:

219 **31A-23-103**, as last amended by Chapter 261, Laws of Utah 1989

220 **31A-23-215**, as last amended by Chapter 131, Laws of Utah 1999

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

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

223 **7-1-901. Authorized insurance activities of depository institutions.**

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

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

229 (b) act as an insurance [~~agent, broker,~~] producer or consultant as defined under Section
230 31A-1-301; or

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

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

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

235 **31A-1-104. Authorization to do insurance business.**

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

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

238 (2) act as an insurance [~~agent, broker,~~] producer or consultant as defined under Section
239 31A-1-301; or

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

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

242 **31A-1-110. Scope of a license.**

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

245 Section 4. Section **31A-1-301** is amended to read:

246 **31A-1-301. Definitions.**

247 As used in this title, unless otherwise specified:

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

250 (i) a medical condition including:

251 (A) medical care expenses; or

252 (B) the risk of disability;

253 (ii) accident; or

254 (iii) sickness.

255 (b) "Accident and health insurance":

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

257 (A) an income replacement contract;

258 (B) a health care contract;

259 (C) an expense reimbursement contract;

260 (D) a credit accident and health contract;

261 (E) a continuing care contract; and

262 (F) long-term care contracts; and

263 (ii) may provide:

264 (A) hospital coverage;

265 (B) surgical coverage;

266 (C) medical coverage; or

267 (D) loss of income coverage.

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

269 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
270 63, Chapter 46a, Utah Administrative Rulemaking Act.

271 [~~2~~] (3) "Administrator" is defined in Subsection [~~(121)~~] (149).

272 [~~3~~] (4) "Adult" means a natural person who has attained the age of at least 18 years.

273 [~~4~~] (5) "Affiliate" means any person who controls, is controlled by, or is under

274 common control with, another person. A corporation is an affiliate of another corporation,

275 regardless of ownership, if substantially the same group of natural persons manages the

276 corporations.

277 (6) "Agency" means:

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

280 (b) an insurance organization licensed or required to be licensed under Section
281 31A-23a-301.

282 [~~5~~] (7) "Alien insurer" means an insurer domiciled outside the United States.

283 [~~6~~] (8) "Amendment" means an endorsement to an insurance policy or certificate.

284 [~~7~~] (9) "Annuity" means an agreement to make periodical payments for a period
285 certain or over the lifetime of one or more natural persons if the making or continuance of all
286 or some of the series of the payments, or the amount of the payment, is dependent upon the
287 continuance of human life.

288 [~~8~~] (10) "Application" means a document:

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

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

291 (i) evaluate risk; and

292 (ii) decide whether to:

293 (A) insure the risk under:

294 (I) the coverages as originally offered; or

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

296 (B) decline to insure the risk.

297 [~~9~~] (11) "Articles" or "articles of incorporation" means the original articles, special
298 laws, charters, amendments, restated articles, articles of merger or consolidation, trust
299 instruments, and other constitutive documents for trusts and other entities that are not
300 corporations, and amendments to any of these.

301 [~~10~~] (12) "Bail bond insurance" means a guarantee that a person will attend court
302 when required, or will obey the orders or judgment of the court, as a condition to the release of
303 that person from confinement.

304 [~~11~~] (13) "Binder" is defined in Section 31A-21-102.

305 [~~12~~] (14) "Board," "board of trustees," or "board of directors" means the group of
306 persons with responsibility over, or management of, a corporation, however designated.

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

309 [~~13~~] (16) "Business of insurance" is defined in Subsection [~~68~~] (80).

310 [~~14~~] (17) "Business plan" means the information required to be supplied to the
311 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
312 when these subsections are applicable by reference under:

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

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

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

316 [~~15~~] (18) "Bylaws" means the rules adopted for the regulation or management of a
317 corporation's affairs, however designated and includes comparable rules for trusts and other
318 entities that are not corporations.

319 (19) "Captive insurance company" means:

320 (a) an insurance company:

321 (i) owned by another organization; and

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

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

325 (i) owned by the insureds; and

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

327 (A) member organizations;

328 (B) group members; and

329 (C) affiliates of:

330 (I) member organizations; or

331 (II) group members.

332 [~~16~~] (20) "Casualty insurance" means liability insurance as defined in Subsection
333 [~~75~~] (90).

334 [~~17~~] (21) "Certificate" means evidence of insurance given to:

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

336 (b) a third party.

337 [~~18~~] (22) "Certificate of authority" is included within the term "license."

338 [~~(19)~~] (23) "Claim," unless the context otherwise requires, means a request or demand
339 on an insurer for payment of benefits according to the terms of an insurance policy.

340 [~~(20)~~] (24) "Claims-made coverage" means an insurance contract or provision limiting
341 coverage under a policy insuring against legal liability to claims that are first made against the
342 insured while the policy is in force.

343 [~~(21)~~] (25) (a) "Commissioner" or "commissioner of insurance" means Utah's
344 insurance commissioner.

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

347 [~~(22)~~] (26) (a) "Continuing care insurance" means insurance that:

348 (i) provides board and lodging;

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

350 (A) personal services;

351 (B) nursing services;

352 (C) medical services; or

353 (D) other health-related services; and

354 (iii) provides the coverage described in Subsection [~~(22)~~] (26)(a)(i) under an agreement
355 effective:

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

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

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

361 [~~(23)~~] (27) (a) "Control," "controlling," "controlled," or "under common control"
362 means the direct or indirect possession of the power to direct or cause the direction of the
363 management and policies of a person. This control may be:

364 (i) by contract;

365 (ii) by common management;

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

367 (iv) by a means other than those described in Subsections [~~(23)~~] (27)(a)(i) through (iii).

368 (b) There is no presumption that an individual holding an official position with another

369 person controls that person solely by reason of the position.

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

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

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

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

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

382 ~~[(24)]~~ (31) (a) "Corporation" means insurance corporation, except when referring to:

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

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

388 (B) Chapter 25, Third Party Administrators; and

389 ~~[(B)]~~ (C) Chapter 26, Insurance Adjusters; or

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

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

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

394 ~~[(25)]~~ (32) "Credit accident and health insurance" means insurance on a debtor to
395 provide indemnity for payments coming due on a specific loan or other credit transaction while
396 the debtor is disabled.

397 ~~[(26)]~~ (33) (a) "Credit insurance" means [surety insurance under which mortgagees and
398 other creditors are indemnified against losses caused by the default of debtors:] insurance
399 offered in connection with an extension of credit that is limited to partially or wholly

400 extinguishing that credit obligation.

401 (b) "Credit insurance" includes:

402 (i) credit accident and health insurance;

403 (ii) credit life insurance;

404 (iii) credit property insurance;

405 (iv) credit unemployment insurance;

406 (v) guaranteed automobile protection insurance;

407 (vi) involuntary unemployment insurance;

408 (vii) mortgage accident and health insurance;

409 (viii) mortgage guaranty insurance; and

410 (ix) mortgage life insurance.

411 ~~[(27)]~~ (34) "Credit life insurance" means insurance on the life of a debtor in connection
412 with [a loan or other credit transaction.] an extension of credit that pays a person if the debtor
413 dies.

414 (35) "Credit property insurance" means insurance:

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

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

417 (36) "Credit unemployment insurance" means insurance:

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

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

420 (i) specific loan; or

421 (ii) credit transaction.

422 (37) "Creditable coverage" is as defined in 45 CFR 146.113(a).

423 ~~[(28)]~~ (38) "Creditor" means a person, including an insured, having any claim,
424 whether:

425 (a) matured;

426 (b) unmatured;

427 (c) liquidated;

428 (d) unliquidated;

429 (e) secured;

430 (f) unsecured;

431 (g) absolute;

432 (h) fixed; or

433 (i) contingent.

434 [~~(29)~~] (39) (a) "Customer service representative" means a person that provides

435 insurance services and insurance product information:

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

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

440 (b) A customer service representative may only operate within the scope of authority of

441 [~~its agent, broker,~~] the customer service representative's producer or consultant employer.

442 [~~(30)~~] (40) "Deadline" means the final date or time:

443 (a) imposed by:

444 (i) statute;

445 (ii) rule; or

446 (iii) order; and

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

448 [~~(31)~~] (41) "Deemer clause" means a provision under this title under which upon the
449 occurrence of a condition precedent, the commissioner is deemed to have taken a specific
450 action. If the statute so provides, the condition precedent may be the commissioner's failure to
451 take a specific action.

452 [~~(32)~~] (42) "Degree of relationship" means the number of steps between two persons
453 determined by counting the generations separating one person from a common ancestor and
454 then counting the generations to the other person.

455 [~~(33)~~] (43) "Department" means the Insurance Department.

456 [~~(34)~~] (44) "Director" means a member of the board of directors of a corporation.

457 [~~(35)~~] (45) "Disability" means a physiological or psychological condition that partially
458 or totally limits an individual's ability to:

459 (a) perform the duties of:

460 (i) that individual's occupation; or

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

462 or experience; or

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

464 (i) eating;

465 (ii) toileting;

466 (iii) transferring;

467 (iv) bathing; or

468 (v) dressing.

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

470 [~~(36)~~] (47) "Domestic insurer" means an insurer organized under the laws of this state.

471 [~~(37)~~] (48) "Domiciliary state" means the state in which an insurer:

472 (a) is incorporated;

473 (b) is organized; or

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

475 [~~(38)~~] (49) (a) "Eligible employee" means:

476 (i) an employee who:

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

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

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

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

482 (i) a sole proprietor;

483 (ii) a partner in a partnership; or

484 (iii) an independent contractor.

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

486 (49)(b):

487 (i) an individual who works on a temporary or substitute basis for a small employer;

488 (ii) an employer's spouse; or

489 (iii) a dependent of an employer.

490 [~~(39)~~] (50) "Employee" means any individual employed by an employer.

491 [~~(40)~~] (51) "Employee benefits" means one or more benefits or services provided to:

492 (a) employees; or

493 (b) dependents of employees.

494 [~~(41)~~] (52) (a) "Employee welfare fund" means a fund:

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

496 (A) one or more employers;

497 (B) one or more labor organizations; or

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

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

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

504 [~~(42)~~] (53) "Endorsement" means a written agreement attached to a policy or certificate
505 to modify one or more of the provisions of the policy or certificate.

506 (54) (a) "Escrow" means:

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

509 (ii) a settlement or closing involving:

510 (A) a mobile home;

511 (B) a grazing right;

512 (C) a water right; or

513 (D) other personal property authorized by the commissioner.

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

515 (i) real estate settlement; or

516 (ii) real estate closing.

517 [~~(43)~~] (55) "Excludes" is not exhaustive and does not mean that other things are not
518 also excluded. The items listed are representative examples for use in interpretation of this
519 title.

520 [~~(44)~~] (56) "Expense reimbursement insurance" means insurance:

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

523 (b) written:

- 524 (i) as a daily limit for a specific number of days in a hospital; and
- 525 (ii) to have a one or two day waiting period following a hospitalization.
- 526 ~~[(45)]~~ (57) "Fidelity insurance" means insurance guaranteeing the fidelity of persons
- 527 holding positions of public or private trust.
- 528 ~~[(46)]~~ (58) (a) "Filed" means that a filing is:
- 529 (i) submitted to the department as required by and in accordance with any applicable
- 530 statute, rule, or filing order;
- 531 (ii) received by the department within the time period provided in the applicable
- 532 statute, rule, or filing order; and
- 533 (iii) accompanied [~~with the applicable one or more filing fees required~~] by the
- 534 appropriate fee in accordance with:
- 535 (A) Section 31A-3-103; or
- 536 (B) rule.
- 537 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 538 submitted in accordance with Subsection ~~[(46)]~~ (58)(a).
- 539 ~~[(47)]~~ (59) "Filing," when used as a noun, means an item required to be filed with the
- 540 department including:
- 541 (a) a policy;
- 542 (b) a rate;
- 543 (c) a form;
- 544 (d) a document;
- 545 (e) a plan;
- 546 (f) a manual;
- 547 (g) an application;
- 548 (h) a report;
- 549 (i) a certificate;
- 550 (j) an endorsement;
- 551 (k) an actuarial certification;
- 552 (l) a licensee annual statement;
- 553 (m) a licensee renewal application; or
- 554 (n) an advertisement.

555 [~~(48)~~] (60) "First party insurance" means an insurance policy or contract in which the
556 insurer agrees to pay claims submitted to it by the insured for the insured's losses.

557 [~~(49)~~] (61) "Foreign insurer" means an insurer domiciled outside of this state, including
558 an alien insurer.

559 [~~(50)~~] (62) (a) "Form" means one of the following prepared for general use:

560 (i) a policy;

561 (ii) a certificate;

562 (iii) an application; or

563 (iv) an outline of coverage.

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

566 [~~(51)~~] (63) "Franchise insurance" means individual insurance policies provided through
567 a mass marketing arrangement involving a defined class of persons related in some way other
568 than through the purchase of insurance.

569 (64) "General lines of authority" include:

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

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

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

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

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

575 and

576 (iv) title marketing representative only;

577 (c) surplus lines;

578 (d) workers' compensation; and

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

581 (65) "General lines of insurance" include:

582 (a) accident and health;

583 (b) casualty;

584 (c) life;

585 (d) personal lines;

- 586 (e) property; and
- 587 (f) variable contracts, including variable life and annuity.
- 588 ~~[(52)]~~ (66) "Group health plan" means an employee welfare benefit plan to the extent
589 that the plan provides medical care:
- 590 (a) (i) to employees; or
- 591 (ii) to a dependent of an employee; and
- 592 (b) (i) directly;
- 593 (ii) through insurance reimbursement; or
- 594 (iii) through any other method.
- 595 (67) "Guaranteed automobile protection insurance" means insurance offered in
596 connection with an extension of credit that pays the difference in amount between the
597 insurance settlement and the balance of the loan if the insured automobile is a total loss.
- 598 ~~[(53)]~~ (68) "Health benefit plan" means a policy or certificate for health care insurance,
599 except that health benefit plan does not include coverage:
- 600 (a) solely for:
- 601 (i) accident;
- 602 (ii) dental;
- 603 (iii) vision;
- 604 (iv) Medicare supplement;
- 605 (v) long-term care; or
- 606 (vi) income replacement; or
- 607 (b) that is:
- 608 (i) offered and marketed as supplemental health insurance;
- 609 (ii) not offered or marketed as a substitute for:
- 610 (A) hospital or medical expense insurance; or
- 611 (B) major medical expense insurance; and
- 612 (iii) solely for:
- 613 (A) a specified disease;
- 614 (B) hospital confinement indemnity; or
- 615 (C) limited benefit plan.
- 616 ~~[(54)]~~ (69) "Health care" means any of the following intended for use in the diagnosis,

617 treatment, mitigation, or prevention of a human ailment or impairment:

618 (a) professional services;

619 (b) personal services;

620 (c) facilities;

621 (d) equipment;

622 (e) devices;

623 (f) supplies; or

624 (g) medicine.

625 [~~55~~] (70) (a) "Health care insurance" or "health insurance" means insurance
626 providing:

627 (i) health care benefits; or

628 (ii) payment of incurred health care expenses.

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

631 (i) replacement of income;

632 (ii) short-term accident;

633 (iii) fixed indemnity;

634 (iv) credit accident and health;

635 (v) supplements to liability;

636 (vi) workers' compensation;

637 (vii) automobile medical payment;

638 (viii) no-fault automobile;

639 (ix) equivalent self-insurance; or

640 (x) any type of accident and health insurance coverage that is a part of or attached to
641 another type of policy.

642 [~~56~~] (71) "Income replacement insurance" or "disability income insurance" means
643 insurance written to provide payments to replace income lost from accident or sickness.

644 [~~57~~] (72) "Indemnity" means the payment of an amount to offset all or part of an
645 insured loss.

646 [~~58~~] (73) "Independent adjuster" means an insurance adjuster required to be licensed
647 under Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.

648 ~~[(59)]~~ (74) "Independently procured insurance" means insurance procured under
649 Section 31A-15-104.

650 ~~[(60)]~~ (75) "Individual" means a natural person.

651 ~~[(61)]~~ (76) "Inland marine insurance" includes insurance covering:

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

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

654 (c) bailee liability;

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

657 (e) personal and commercial property floaters.

658 ~~[(62)]~~ (77) "Insolvency" means that:

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

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

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

663 ~~[(63)]~~ (78) (a) "Insurance" means:

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

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

668 (b) "Insurance" includes:

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

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

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

675 ~~[(64)]~~ (79) "Insurance adjuster" means a person who directs the investigation,
676 negotiation, or settlement of a claim under an insurance policy other than life insurance or an
677 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

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

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

681 ~~[(67) Except as provided in Subsection 31A-23-201.5(1), "insurance broker" or~~
682 ~~"broker" means a person who:]~~

683 ~~[(a) acts in procuring insurance on behalf of an applicant for insurance or an insured;~~
684 ~~and]~~

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

687 ~~[(68)]~~ (80) "Insurance business" or "business of insurance" includes:

688 (a) providing health care insurance, as defined in Subsection ~~[(55)]~~ (70), by
689 organizations that are or should be licensed under this title;

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

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

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

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

697 (d) providing the characteristic services of motor clubs as outlined in Subsection ~~[(82)]~~
698 (106);

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

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

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

706 (h) doing, or proposing to do, any business in substance equivalent to Subsections

707 ~~[(68)]~~ (80)(a) through (g) in a manner designed to evade the provisions of this title.

708 ~~[(69)]~~ (81) ~~[Except as provided in Subsection 31A-23-201.5(1), "insurance]~~ "Insurance
709 consultant" or "consultant" means a person who:

710 (a) advises other persons about insurance needs and coverages;
711 (b) is compensated by the person advised on a basis not directly related to the insurance
712 placed; and

713 (c) except as provided in Section 31A-23a-501, is not compensated directly or
714 indirectly by an insurer~~[, agent, or broker]~~ or producer for advice given.

715 ~~[(70)]~~ (82) "Insurance holding company system" means a group of two or more
716 affiliated persons, at least one of whom is an insurer.

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

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

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

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

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

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

727 ~~[(71)]~~ (84) (a) "Insured" means a person to whom or for whose benefit an insurer
728 makes a promise in an insurance policy and includes:

729 (i) policyholders;

730 (ii) subscribers;

731 (iii) members; and

732 (iv) beneficiaries.

733 (b) The definition in Subsection ~~[(71)]~~ (84)(a):

734 (i) applies only to this title; and

735 (ii) does not define the meaning of this word as used in insurance policies or
736 certificates.

737 ~~[(72)]~~ (85) (a) (i) "Insurer" means any person doing an insurance business as a
738 principal including:

739 (A) fraternal benefit societies;

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

- 741 and (3);
- 742 (C) motor clubs;
- 743 (D) employee welfare plans; and
- 744 (E) any person purporting or intending to do an insurance business as a principal on
- 745 that person's own account.
- 746 (ii) "Insurer" does not include a governmental entity, as defined in Section 63-30-2, to
- 747 the extent it is engaged in the activities described in Section 31A-12-107.
- 748 (b) "Admitted insurer" is defined in Subsection [~~(125)~~] (153)(b).
- 749 (c) "Alien insurer" is defined in Subsection [~~(5)~~] (7).
- 750 (d) "Authorized insurer" is defined in Subsection [~~(125)~~] (153)(b).
- 751 (e) "Domestic insurer" is defined in Subsection [~~(36)~~] (47).
- 752 (f) "Foreign insurer" is defined in Subsection [~~(49)~~] (61).
- 753 (g) "Nonadmitted insurer" is defined in Subsection [~~(125)~~] (153)(a).
- 754 (h) "Unauthorized insurer" is defined in Subsection [~~(125)~~] (153)(a).
- 755 (86) "Interinsurance exchange" is defined in Subsection (135).
- 756 (87) "Involuntary unemployment insurance" means insurance:
- 757 (a) offered in connection with an extension of credit;
- 758 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
- 759 coming due on a:
- 760 (i) specific loan; or
- 761 (ii) credit transaction.
- 762 [~~(73)~~] (88) "Large employer," in connection with a health benefit plan, means an
- 763 employer who, with respect to a calendar year and to a plan year:
- 764 (a) employed an average of at least 51 eligible employees on each business day during
- 765 the preceding calendar year; and
- 766 (b) employs at least two employees on the first day of the plan year.
- 767 [~~(74)~~] (89) (a) Except for a retainer contract or legal assistance described in Section
- 768 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for
- 769 specified legal expenses.
- 770 (b) "Legal expense insurance" includes arrangements that create reasonable
- 771 expectations of enforceable rights.

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

774 [~~75~~] (90) (a) "Liability insurance" means insurance against liability:

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

777 (A) Subsection [~~79~~] (100) for medical malpractice insurance;

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

779 (C) Subsection [~~128~~] (157) for workers' compensation insurance;

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

784 (A) Subsection [~~79~~] (100) for medical malpractice insurance;

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

786 (C) Subsection [~~128~~] (157) for workers' compensation insurance;

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

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

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

794 (b) "Liability insurance" includes:

795 (i) vehicle liability insurance as defined in Subsection [~~126~~] (155);

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

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

800 [~~76~~] (91) (a) "License" means the authorization issued by the [insurance]

801 commissioner [~~under this title~~] to engage in some activity that is part of or related to the
802 insurance business.

- 803 (b) "License" includes certificates of authority issued to insurers.
- 804 ~~[(77)]~~ (92) (a) "Life insurance" means insurance on human lives and insurances
805 pertaining to or connected with human life.
- 806 (b) The business of life insurance includes:
- 807 (i) granting death benefits;
- 808 (ii) granting annuity benefits;
- 809 (iii) granting endowment benefits;
- 810 (iv) granting additional benefits in the event of death by accident;
- 811 (v) granting additional benefits to safeguard the policy against lapse in the event of
812 disability; and
- 813 (vi) providing optional methods of settlement of proceeds.
- 814 (93) "Limited license" means a license that:
- 815 (a) is issued for a specific product of insurance; and
- 816 (b) limits an individual or agency to transact only for that product or insurance.
- 817 (94) "Limited line credit insurance" includes the following forms of insurance:
- 818 (a) credit life;
- 819 (b) credit accident and health;
- 820 (c) credit property;
- 821 (d) credit unemployment;
- 822 (e) involuntary unemployment;
- 823 (f) mortgage life;
- 824 (g) mortgage guaranty;
- 825 (h) mortgage accident and health;
- 826 (i) guaranteed automobile protection; and
- 827 (j) any other form of insurance offered in connection with an extension of credit that:
- 828 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 829 (ii) the commissioner determines by rule should be designated as a form of limited line
830 credit insurance.
- 831 (95) "Limited line credit insurance producer" means a person who sells, solicits, or
832 negotiates one or more forms of limited line credit insurance coverage to individuals through a
833 master, corporate, group, or individual policy.

834 (96) "Limited line insurance" includes:
835 (a) bail bond;
836 (b) limited line credit insurance;
837 (c) legal expense insurance;
838 (d) motor club insurance;
839 (e) rental car-related insurance;
840 (f) travel insurance; and
841 (g) any other form of limited insurance that the commissioner determines by rule
842 should be designated a form of limited line insurance.

843 (97) "Limited lines authority" includes:
844 (a) the lines of insurance listed in Subsection (96); and
845 (b) a customer service representative.

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

848 [~~78~~] (99) (a) "Long-term care insurance" means an insurance policy or rider
849 advertised, marketed, offered, or designated to provide coverage:
850 (i) in a setting other than an acute care unit of a hospital;
851 (ii) for not less than 12 consecutive months for each covered person on the basis of:
852 (A) expenses incurred;
853 (B) indemnity;
854 (C) prepayment; or
855 (D) another method;
856 (iii) for one or more necessary or medically necessary services that are:
857 (A) diagnostic;
858 (B) preventative;
859 (C) therapeutic;
860 (D) rehabilitative;
861 (E) maintenance; or
862 (F) personal care; and
863 (iv) that may be issued by:
864 (A) an insurer;

- 865 (B) a fraternal benefit society;
- 866 (C) (I) a nonprofit health hospital; and
- 867 (II) a medical service corporation;
- 868 (D) a prepaid health plan;
- 869 (E) a health maintenance organization; or
- 870 (F) an entity similar to the entities described in Subsections [~~(78)~~] (99)(a)(iv)(A)
- 871 through (E) to the extent that the entity is otherwise authorized to issue life or health care
- 872 insurance.
- 873 (b) "Long-term care insurance" includes:
- 874 (i) any of the following that provide directly or supplement long-term care insurance:
- 875 (A) a group or individual annuity or rider; or
- 876 (B) a life insurance policy or rider;
- 877 (ii) a policy or rider that provides for payment of benefits based on:
- 878 (A) cognitive impairment; or
- 879 (B) functional capacity; or
- 880 (iii) a qualified long-term care insurance contract.
- 881 (c) "Long-term care insurance" does not include:
- 882 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 883 (ii) basic hospital expense coverage;
- 884 (iii) basic medical/surgical expense coverage;
- 885 (iv) hospital confinement indemnity coverage;
- 886 (v) major medical expense coverage;
- 887 (vi) income replacement or related asset-protection coverage;
- 888 (vii) accident only coverage;
- 889 (viii) coverage for a specified:
- 890 (A) disease; or
- 891 (B) accident;
- 892 (ix) limited benefit health coverage; or
- 893 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 894 lump sum payment:
- 895 (A) if the following are not conditioned on the receipt of long-term care:

- 896 (I) benefits; or
897 (II) eligibility; and
898 (B) the coverage is for one or more the following qualifying events:
899 (I) terminal illness;
900 (II) medical conditions requiring extraordinary medical intervention; or
901 (III) permanent institutional confinement.
- 902 [~~79~~] (100) "Medical malpractice insurance" means insurance against legal liability
903 incident to the practice and provision of medical services other than the practice and provision
904 of dental services.
- 905 [~~80~~] (101) "Member" means a person having membership rights in an insurance
906 corporation.
- 907 [~~81~~] (102) "Minimum capital" or "minimum required capital" means the capital that
908 must be constantly maintained by a stock insurance corporation as required by statute.
- 909 (103) "Mortgage accident and health insurance" means insurance offered in connection
910 with an extension of credit that provides indemnity for payments coming due on a mortgage
911 while the debtor is disabled.
- 912 (104) "Mortgage guaranty insurance" means surety insurance under which mortgagees
913 and other creditors are indemnified against losses caused by the default of debtors.
- 914 (105) "Mortgage life insurance" means insurance on the life of a debtor in connection
915 with an extension of credit that pays if the debtor dies.
- 916 [~~82~~] (106) "Motor club" means a person:
917 (a) licensed under:
918 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
919 (ii) Chapter 11, Motor Clubs; or
920 (iii) Chapter 14, Foreign Insurers; and
921 (b) that promises for an advance consideration to provide for a stated period of time:
922 (i) legal services under Subsection 31A-11-102(1)(b);
923 (ii) bail services under Subsection 31A-11-102(1)(c); or
924 (iii) trip reimbursement, towing services, emergency road services, stolen automobile
925 services, a combination of these services, or any other services given in Subsections
926 31A-11-102(1)(b) through (f).

927 [~~(83)~~] (107) "Mutual" means mutual insurance corporation.

928 [~~(84)~~] (108) "Network plan" means health care insurance:

929 (a) that is issued by an insurer; and

930 (b) under which the financing and delivery of medical care is provided, in whole or in
931 part, through a defined set of providers under contract with the insurer, including the financing
932 and delivery of items paid for as medical care.

933 [~~(85)~~] (109) "Nonparticipating" means a plan of insurance under which the insured is
934 not entitled to receive dividends representing shares of the surplus of the insurer.

935 [~~(86)~~] (110) "Ocean marine insurance" means insurance against loss of or damage to:

936 (a) ships or hulls of ships;

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

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

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

945 [~~(87)~~] (111) "Order" means an order of the commissioner.

946 [~~(88)~~] (112) "Outline of coverage" means a summary that explains an accident and
947 health insurance policy.

948 [~~(89)~~] (113) "Participating" means a plan of insurance under which the insured is
949 entitled to receive dividends representing shares of the surplus of the insurer.

950 [~~(90)~~] (114) "Participation," as used in a health benefit plan, means a requirement
951 relating to the minimum percentage of eligible employees that must be enrolled in relation to
952 the total number of eligible employees of an employer reduced by each eligible employee who
953 voluntarily declines coverage under the plan because the employee has other health care
954 insurance coverage.

955 [~~(91)~~] (115) "Person" includes an individual, partnership, corporation, incorporated or
956 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar
957 entity or combination of entities acting in concert.

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

960 (a) individuals; and

961 (b) families.

962 [~~92~~] (117) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

963 [~~93~~] (118) "Plan year" means:

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

965 (i) the plan document of a group health plan; or

966 (ii) a summary plan description of a group health plan;

967 (b) if the plan document or summary plan description does not designate a plan year or

968 there is no plan document or summary plan description:

969 (i) the year used to determine deductibles or limits;

970 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

971 or

972 (iii) the employer's taxable year if:

973 (A) the plan does not impose deductibles or limits on a yearly basis; and

974 (B) (I) the plan is not insured; or

975 (II) the insurance policy is not renewed on an annual basis; or

976 (c) in a case not described in Subsection [~~93~~] (118)(a) or (b), the calendar year.

977 [~~94~~] (119) (a) (i) "Policy" means any document, including attached endorsements and

978 riders, purporting to be an enforceable contract, which memorializes in writing some or all of

979 the terms of an insurance contract.

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

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

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

983 (C) a corporation licensed under:

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

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

986 (iii) "Policy" does not include:

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

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

989 (b) (i) "Group insurance policy" means a policy covering a group of persons that is
990 issued to a policyholder on behalf of the group, for the benefit of group members who are
991 selected under procedures defined in the policy or in agreements which are collateral to the
992 policy.

993 (ii) A group insurance policy may include members of the policyholder's family or
994 dependents.

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

998 [~~95~~] (120) "Policyholder" means the person who controls a policy, binder, or oral
999 contract by ownership, premium payment, or otherwise.

1000 [~~96~~] (121) "Policy illustration" means a presentation or depiction that includes
1001 nonguaranteed elements of a policy of life insurance over a period of years.

1002 [~~97~~] (122) "Policy summary" means a synopsis describing the elements of a life
1003 insurance policy.

1004 [~~98~~] (123) "Preexisting condition," in connection with a health benefit plan, means:

1005 (a) a condition for which medical advice, diagnosis, care, or treatment was
1006 recommended or received during the six months immediately preceding the earlier of:

1007 (i) the enrollment date; or

1008 (ii) the effective date of coverage; or

1009 (b) for an individual insurance policy, a pregnancy existing on the effective date of
1010 coverage.

1011 [~~99~~] (124) (a) "Premium" means the monetary consideration for an insurance policy,
1012 and includes assessments, membership fees, required contributions, or monetary consideration,
1013 however designated.

1014 (b) Consideration paid to third party administrators for their services is not "premium,"
1015 though amounts paid by third party administrators to insurers for insurance on the risks
1016 administered by the third party administrators are "premium."

1017 [~~100~~] (125) "Principal officers" of a corporation means the officers designated under
1018 Subsection 31A-5-203(3).

1019 [~~101~~] (126) "Proceedings" includes actions and special statutory proceedings.

1020 [~~(102)~~] (127) "Professional liability insurance" means insurance against legal liability
1021 incident to the practice of a profession and provision of any professional services.

1022 [~~(103)~~] (128) "Property insurance" means insurance against loss or damage to real or
1023 personal property of every kind and any interest in that property, from all hazards or causes,
1024 and against loss consequential upon the loss or damage including vehicle comprehensive and
1025 vehicle physical damage coverages, but excluding inland marine insurance and ocean marine
1026 insurance as defined under Subsections [~~(61)~~] (76) and [~~(86)~~] (110).

1027 [~~(104)~~] (129) "Qualified long-term care insurance contract" or "federally tax qualified
1028 long-term care insurance contract" means:

1029 (a) an individual or group insurance contract that meets the requirements of Section
1030 7702B(b), Internal Revenue Code; or

1031 (b) the portion of a life insurance contract that provides long-term care insurance:

1032 (i) (A) by rider; or

1033 (B) as a part of the contract; and

1034 (ii) that satisfies the requirements of Section 7702B(b) and (e), Internal Revenue Code.

1035 (130) "Qualified United States financial institution" means an institution that:

1036 (a) is:

1037 (i) organized under the laws of the United States or any state; or

1038 (ii) in the case of a United States office of a foreign banking organization, licensed
1039 under the laws of the United States or any state;

1040 (b) is regulated, supervised, and examined by United States federal or state authorities
1041 having regulatory authority over banks and trust companies; and

1042 (c) meets the standards of financial condition and standing that are considered
1043 necessary and appropriate to regulate the quality of financial institutions whose letters of credit
1044 will be acceptable to the commissioner as determined by:

1045 (i) the commissioner by rule; or

1046 (ii) the Securities Valuation Office of the National Association of Insurance
1047 Commissioners.

1048 [~~(105)~~] (131) (a) "Rate" means:

1049 (i) the cost of a given unit of insurance; or

1050 (ii) for property-casualty insurance, that cost of insurance per exposure unit either

1051 expressed as:

1052 (A) a single number; or

1053 (B) a pure premium rate, adjusted before any application of individual risk variations

1054 based on loss or expense considerations to account for the treatment of:

1055 (I) expenses;

1056 (II) profit; and

1057 (III) individual insurer variation in loss experience.

1058 (b) "Rate" does not include a minimum premium.

1059 ~~[(106)]~~ (132) (a) Except as provided in Subsection ~~[(106)]~~ (132)(b), "rate service
1060 organization" means any person who assists insurers in rate making or filing by:

1061 (i) collecting, compiling, and furnishing loss or expense statistics;

1062 (ii) recommending, making, or filing rates or supplementary rate information; or

1063 (iii) advising about rate questions, except as an attorney giving legal advice.

1064 (b) "Rate service organization" does not mean:

1065 (i) an employee of an insurer;

1066 (ii) a single insurer or group of insurers under common control;

1067 (iii) a joint underwriting group; or

1068 (iv) a natural person serving as an actuarial or legal consultant.

1069 ~~[(107)]~~ (133) "Rating manual" means any of the following used to determine initial and
1070 renewal policy premiums:

1071 (a) a manual of rates;

1072 (b) classifications;

1073 (c) rate-related underwriting rules; and

1074 (d) rating formulas that describe steps, policies, and procedures for determining initial
1075 and renewal policy premiums.

1076 ~~[(108)]~~ (134) "Received by the department" means:

1077 (a) except as provided in Subsection ~~[(108)]~~ (134)(b), the date delivered to and
1078 stamped received by the department, whether delivered:

1079 (i) in person; or

1080 ~~[(ii) by a delivery service; or]~~

1081 ~~[(iii)]~~ (ii) electronically; and

1082 (b) if ~~[an item with a department imposed deadline is]~~ delivered to the department by a
1083 delivery service, the delivery service's postmark date or pick-up date unless otherwise stated in:

1084 (i) statute;

1085 (ii) rule; or

1086 (iii) a specific filing order.

1087 ~~[(109)]~~ (135) "Reciprocal" or "interinsurance exchange" means any unincorporated
1088 association of persons:

1089 (a) operating through an attorney-in-fact common to all of them; and

1090 (b) exchanging insurance contracts with one another that provide insurance coverage
1091 on each other.

1092 ~~[(110)]~~ (136) "Reinsurance" means an insurance transaction where an insurer, for
1093 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1094 reinsurance transactions, this title sometimes refers to:

1095 (a) the insurer transferring the risk as the "ceding insurer"; and

1096 (b) the insurer assuming the risk as the:

1097 (i) "assuming insurer"; or

1098 (ii) "assuming reinsurer."

1099 (137) "Reinsurer" means any person, firm, association, or corporation licensed in this
1100 state as an insurer with the authority to assume reinsurance.

1101 ~~[(111)]~~ (138) "Residential dwelling liability insurance" means insurance against
1102 liability resulting from or incident to the ownership, maintenance, or use of a residential
1103 dwelling that is a detached single family residence or multifamily residence up to four units.

1104 ~~[(112)]~~ (139) "Retrocession" means reinsurance with another insurer of a liability
1105 assumed under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another
1106 insurer part of a liability assumed under a reinsurance contract.

1107 ~~[(113)]~~ (140) "Rider" means an endorsement to:

1108 (a) an insurance policy; or

1109 (b) an insurance certificate.

1110 ~~[(114)]~~ (141) (a) "Security" means any:

1111 (i) note;

1112 (ii) stock;

- 1113 (iii) bond;
- 1114 (iv) debenture;
- 1115 (v) evidence of indebtedness;
- 1116 (vi) certificate of interest or participation in any profit-sharing agreement;
- 1117 (vii) collateral-trust certificate;
- 1118 (viii) preorganization certificate or subscription;
- 1119 (ix) transferable share;
- 1120 (x) investment contract;
- 1121 (xi) voting trust certificate;
- 1122 (xii) certificate of deposit for a security;
- 1123 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1124 payments out of production under such a title or lease;
- 1125 (xiv) commodity contract or commodity option;
- 1126 (xv) any certificate of interest or participation in, temporary or interim certificate for,
- 1127 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1128 in Subsections [~~(114)~~] (141)(a)(i) through (xiv); or
- 1129 (xvi) any other interest or instrument commonly known as a security.
- 1130 (b) "Security" does not include:
- 1131 (i) any insurance or endowment policy or annuity contract under which an insurance
- 1132 company promises to pay money in a specific lump sum or periodically for life or some other
- 1133 specified period; or
- 1134 (ii) a burial certificate or burial contract.
- 1135 [~~(115)~~] (142) "Self-insurance" means any arrangement under which a person provides
- 1136 for spreading its own risks by a systematic plan.
- 1137 (a) Except as provided in this Subsection [~~(115)~~] (142), self-insurance does not include
- 1138 an arrangement under which a number of persons spread their risks among themselves.
- 1139 (b) Self-insurance does include an arrangement by which a governmental entity, as
- 1140 defined in Section 63-30-2, undertakes to indemnify its employees for liability arising out of
- 1141 the employees' employment.
- 1142 (c) Self-insurance does include an arrangement by which a person with a managed
- 1143 program of self-insurance and risk management undertakes to indemnify its affiliates,

1144 subsidiaries, directors, officers, or employees for liability or risk which is related to the
1145 relationship or employment.

1146 (d) Self-insurance does not include any arrangement with independent contractors.

1147 (143) "Sell" means to exchange a contract of insurance:

1148 (a) by any means;

1149 (b) for money or its equivalent; and

1150 (c) on behalf of an insurance company.

1151 [~~(116)~~] (144) "Short-term care insurance" means any insurance policy or rider
1152 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
1153 insurance but that provides coverage for less than 12 consecutive months for each covered
1154 person.

1155 [~~(117)~~] (145) "Small employer," in connection with a health benefit plan, means an
1156 employer who, with respect to a calendar year and to a plan year:

1157 (a) employed an average of at least two employees but not more than 50 eligible
1158 employees on each business day during the preceding calendar year; and

1159 (b) employs at least two employees on the first day of the plan year.

1160 [~~(118)~~] (146) (a) "Subsidiary" of a person means an affiliate controlled by that person
1161 either directly or indirectly through one or more affiliates or intermediaries.

1162 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1163 shares are owned by that person either alone or with its affiliates, except for the minimum
1164 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1165 others.

1166 [~~(119)~~] (147) Subject to Subsection [~~(63)~~] (78)(b), "surety insurance" includes:

1167 (a) a guarantee against loss or damage resulting from failure of principals to pay or
1168 perform their obligations to a creditor or other obligee;

1169 (b) bail bond insurance; and

1170 (c) fidelity insurance.

1171 [~~(120)~~] (148) (a) "Surplus" means the excess of assets over the sum of paid-in capital
1172 and liabilities.

1173 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been
1174 designated by the insurer as permanent.

1175 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require
1176 that mutuals doing business in this state maintain specified minimum levels of permanent
1177 surplus.

1178 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is
1179 essentially the same as the minimum required capital requirement that applies to stock insurers.

1180 (c) "Excess surplus" means:

1181 (i) for life or accident and health insurers, health organizations, and property and
1182 casualty insurers as defined in Section 31A-17-601, the lesser of:

1183 (A) that amount of an insurer's or health organization's total adjusted capital, as defined
1184 in Subsection [~~(123)~~] (151), that exceeds the product of:

1185 (I) 2.5; and

1186 (II) the sum of the insurer's or health organization's minimum capital or permanent
1187 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1188 (B) that amount of an insurer's or health organization's total adjusted capital, as defined
1189 in Subsection [~~(123)~~] (151), that exceeds the product of:

1190 (I) 3.0; and

1191 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1192 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title
1193 insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1194 (A) 1.5; and

1195 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1196 [~~(121)~~] (149) "Third party administrator" or "administrator" means any person who
1197 collects charges or premiums from, or who, for consideration, adjusts or settles claims of
1198 residents of the state in connection with insurance coverage, annuities, or service insurance
1199 coverage, except:

1200 (a) a union on behalf of its members;

1201 (b) a person administering any:

1202 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1203 1974;

1204 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1205 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1206 (c) an employer on behalf of the employer's employees or the employees of one or
1207 more of the subsidiary or affiliated corporations of the employer;

1208 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance
1209 for which the insurer holds a license in this state; or

1210 (e) a person licensed or exempt from licensing under Chapter ~~[23]~~ 23a, Insurance
1211 Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, or Chapter 26,
1212 Insurance Adjusters, whose activities are limited to those authorized under the license the
1213 person holds or for which the person is exempt.

1214 ~~[(+22)]~~ (150) "Title insurance" means the insuring, guaranteeing, or indemnifying of
1215 owners of real or personal property or the holders of liens or encumbrances on that property, or
1216 others interested in the property against loss or damage suffered by reason of liens or
1217 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
1218 or unenforceability of any liens or encumbrances on the property.

1219 ~~[(+23)]~~ (151) "Total adjusted capital" means the sum of an insurer's or health
1220 organization's statutory capital and surplus as determined in accordance with:

1221 (a) the statutory accounting applicable to the annual financial statements required to be
1222 filed under Section 31A-4-113; and

1223 (b) any other items provided by the RBC instructions, as RBC instructions is defined in
1224 Section 31A-17-601.

1225 ~~[(+24)]~~ (152) (a) "Trustee" means "director" when referring to the board of directors of
1226 a corporation.

1227 (b) "Trustee," when used in reference to an employee welfare fund, means an
1228 individual, firm, association, organization, joint stock company, or corporation, whether acting
1229 individually or jointly and whether designated by that name or any other, that is charged with
1230 or has the overall management of an employee welfare fund.

1231 ~~[(+25)]~~ (153) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted
1232 insurer" means an insurer:

1233 (i) not holding a valid certificate of authority to do an insurance business in this state;
1234 or

1235 (ii) transacting business not authorized by a valid certificate.

1236 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1237 (i) holding a valid certificate of authority to do an insurance business in this state; and
1238 (ii) transacting business as authorized by a valid certificate.

1239 (154) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1240 [~~(126)~~] (155) "Vehicle liability insurance" means insurance against liability resulting
1241 from or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of
1242 vehicle comprehensive and vehicle physical damage coverages under Subsection [~~(103)~~] (128).

1243 [~~(127)~~] (156) "Voting security" means a security with voting rights, and includes any
1244 security convertible into a security with a voting right associated with it.

1245 [~~(128)~~] (157) "Workers' compensation insurance" means:

1246 (a) insurance for indemnification of employers against liability for compensation based
1247 on:

1248 (i) compensable accidental injuries; and

1249 (ii) occupational disease disability;

1250 (b) employer's liability insurance incidental to workers' compensation insurance and
1251 written in connection with it; and

1252 (c) insurance assuring to the persons entitled to workers' compensation benefits the
1253 compensation provided by law.

1254 Section 5. Section **31A-2-205** is amended to read:

1255 **31A-2-205. Examination costs.**

1256 (1) (a) Except as provided in Subsection (3), examinees that are insurers, rate service
1257 organizations, or the subsidiaries of either shall reimburse the Insurance Department for the
1258 reasonable costs of examinations made under Sections 31A-2-203 and 31A-2-204. The
1259 following costs shall be reimbursed:

1260 (i) actual travel expenses[;];

1261 (ii) reasonable living expense allowance[;];

1262 (iii) compensation at reasonable rates for all professionals reasonably employed for the
1263 examination under Subsection (4)[;];

1264 (iv) the administration and supervisory expense of the Insurance Department and the
1265 attorney general's office[;]; and

1266 (v) an amount necessary to cover fringe benefits authorized by the commissioner or
1267 provided by law. In determining rates, the commissioner shall consider the rates recommended

1268 by the National Association of Insurance Commissioners and outlined in the examination
1269 manual sponsored by the association.

1270 (b) Subsection (1) applies to surplus lines [~~brokers~~] producers to the extent that the
1271 examinations are of their surplus lines business.

1272 (2) An insurer requesting the examination of one of its [~~agents~~] producers shall pay the
1273 cost of the examination. Otherwise, the department shall pay the cost of examining licensees
1274 other than those specified under Subsection (1).

1275 (3) On the examinee's request or at the commissioner's discretion, the Insurance
1276 Department may pay all or part of the costs of an examination whenever the commissioner
1277 finds that because of the frequency of examinations or the financial condition of the examinee,
1278 imposition of the costs would place an unreasonable burden on the examinee. The
1279 commissioner shall include in his annual report information about any instance in which the
1280 commissioner has applied this Subsection (3).

1281 (4) Technical experts employed under Subsection 31A-2-203(3) shall present to the
1282 commissioner a statement of all expenses incurred by them in conjunction with an
1283 examination. The examined insurer shall, at the commissioner's direction, pay to the technical
1284 experts or specialists the actual travel expenses, reasonable living expenses, and compensation
1285 at customary rates for expenses necessarily incurred as approved by the commissioner. The
1286 examined insurer shall reimburse department examiners for their actual travel expenses and
1287 reasonable living expenses and shall reimburse the department for the compensation of
1288 department examiners involved in the examination. The examined insurer shall certify the
1289 consolidated account of all charges and expenses for the examination. One copy shall be
1290 retained by the insurer and the other shall be filed with the department as a public record. An
1291 annual report of examination charges paid by examined insurers directly to persons employed
1292 under Subsection 31A-2-203(3) or to department examiners shall be included with the
1293 department's budget request, but amounts paid directly by examined insurers to persons
1294 employed under Subsection 31A-2-203(3) or to department examiners may not be deducted
1295 from the department's appropriation.

1296 (5) The amount payable under Subsection (1) is due ten days after the examinee has
1297 been served with a detailed account of the costs. Payments received by the department under
1298 this Subsection (5) shall be handled as provided by Subsection 31A-3-101.

1299 (6) The commissioner may require an examinee under Subsection (1), or an insurer
1300 requesting an examination under Subsection (2), either before or during an examination, to
1301 make deposits with the state treasurer to pay the costs of examination. Any deposit made under
1302 this Subsection (6) shall be held in trust by the state treasurer until applied to pay the Insurance
1303 Department the costs payable under this section. If a deposit exceeds examination costs, the
1304 state treasurer shall refund the surplus.

1305 (7) Domestic insurers may offset the examination expenses paid under this section
1306 against premium taxes under Subsection 59-9-102(2).

1307 Section 6. Section **31A-2-214** is amended to read:

1308 **31A-2-214. Market assistance programs -- Joint underwriting associations.**

1309 (1) (a) The commissioner may by rule implement a market assistance program whereby
1310 all licensed insurers and [~~agents~~] producers may pool their information as to the available
1311 markets if the commissioner finds that in any part of this state:

1312 (i) a line of insurance:

1313 (A) is not generally available in the marketplace; or

1314 (B) is priced in such a manner as to severely limit its availability; and

1315 (ii) the public interest requires availability of the line of insurance described in
1316 Subsection (1)(a)(i).

1317 (b) Insurers doing business in this state may, at their own instance or at the request of
1318 the commissioner, prepare and submit to the commissioner, for the commissioner's approval
1319 and adoption, voluntary plans providing any line of insurance coverage for all or any part of
1320 this state in which:

1321 (i) the line of insurance:

1322 (A) is not generally available in the voluntary market; or

1323 (B) is priced in such a manner as to severely limit its availability; and

1324 (ii) the public interest requires the availability of the coverage described in Subsection
1325 (1)(b)(i).

1326 (2) (a) If the commissioner finds after notice and hearing that a market assistance
1327 program formed under Subsection (1)(a) or (b) has not met the needs it was intended to
1328 address, the commissioner may by rule form a joint underwriting association to make available
1329 the insurance to applicants who are in good faith entitled to but unable to procure this insurance

1330 through ordinary methods.

1331 (b) The commissioner shall allow any market assistance program formed under
1332 Subsection (1)(a) or (b) a minimum of 30 days operation before the commissioner forms a joint
1333 underwriting association.

1334 (c) The commissioner may not adopt a rule forming a joint underwriting association
1335 under Subsection (2)(a) unless the commissioner finds as a result of the hearing that:

1336 (i) a certain coverage is not available or that the price for that coverage is no longer
1337 commensurate with the risk in this state; and

1338 (ii) the coverage is:

1339 (A) vital to the economic health of this state;

1340 (B) vital to the quality of life in this state;

1341 (C) vital in maintaining competition in insurance in this state; or

1342 (D) the number of people affected is significant enough to justify its creation.

1343 (d) The commissioner may not adopt a rule forming a joint underwriting association
1344 under Subsection (2)(a) on the basis that:

1345 (i) applicants for particular lines of insurance are unable to pay a premium that is
1346 commensurate with the risk involved; or

1347 (ii) the number of applicants or people affected is too small to justify its creation.

1348 (e) Each joint underwriting association formed under Subsection (2)(a) shall require
1349 participation by all insurers licensed and engaged in writing that line of insurance or any
1350 component of that line of insurance within this state.

1351 (f) Each association formed under Subsection (2)(a) shall:

1352 (i) give consideration to:

1353 (A) the need for adequate and readily accessible coverage;

1354 (B) alternative methods of improving the market affected;

1355 (C) the preference of the insurers and ~~agents~~ producers;

1356 (D) the inherent limitations of the insurance mechanism;

1357 (E) the need for reasonable underwriting standards; and

1358 (F) the requirement of reasonable loss prevention measures;

1359 (ii) establish procedures that will create minimum interference with the voluntary
1360 market;

1361 (iii) allocate the burden imposed by the association equitably and efficiently among the
1362 insurers doing business in this state;

1363 (iv) establish procedures for applicants and participants to have grievances reviewed by
1364 an impartial body;

1365 (v) provide for the method of classifying risks and making and filing applicable rates;
1366 and

1367 (vi) specify:

1368 (A) the basis of participation of insurers and [~~agents~~] producers in the association;

1369 (B) the conditions under which risks must be accepted; and

1370 (C) the commission rates to be paid for insurance business placed with the association.

1371 (g) Any deficit in an association in any year shall be recouped by rate increases for the
1372 association, applicable prospectively.

1373 (h) Any surplus in excess of the loss reserves of the association in any year shall be
1374 distributed either by rate decreases or by distribution to the members of the association on a
1375 pro-rata basis.

1376 (3) Notwithstanding Subsection (2), the commissioner may not create a joint
1377 underwriting association under Subsection (2) for:

1378 (a) life insurance;

1379 (b) annuities;

1380 (c) accident and health insurance;

1381 (d) ocean marine insurance;

1382 (e) medical malpractice insurance;

1383 (f) earthquake insurance;

1384 (g) workers' compensation insurance; or

1385 (h) private passenger automobile liability insurance.

1386 (4) Every insurer and [~~agent~~] producer participating in a joint underwriting association
1387 adopted by the commissioner under Subsection (2) shall provide the services prescribed by the
1388 association to any person seeking coverage of the kind available in the plan, including full
1389 information about the requirements and procedures for obtaining coverage with the association.

1390 (5) If the commissioner finds that the lack of cooperating insurers or [~~agents~~] producers
1391 in an area makes the functioning of the association difficult, the commissioner may order the

1392 association to:

1393 (a) establish branch service offices;

1394 (b) make special contracts for provision of the service; or

1395 (c) take other appropriate steps to ensure that service is available.

1396 (6) (a) The association may issue policies for a period of one year.

1397 (b) If, at the end of any one year period, the commissioner determines that the market
1398 conditions justify the continued existence of the association, the commissioner may reauthorize
1399 its existence.

1400 (c) In reauthorizing the association in accordance with this Subsection (6), the
1401 commissioner shall follow the procedure set forth in Subsection (2).

1402 Section 7. Section **31A-2-308** is amended to read:

1403 **31A-2-308. Enforcement penalties and procedures.**

1404 (1) (a) A person who violates any insurance statute or rule or any order issued under
1405 Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from
1406 the violation, in addition to any other forfeiture or penalty imposed.

1407 (b) (i) The commissioner may order an individual [~~agent, broker~~] producer, limited line
1408 producer, customer service representative, managing general agent, reinsurance intermediary,
1409 adjuster, or insurance consultant who violates an insurance statute or rule to forfeit to the state
1410 not more than \$2,500 for each violation.

1411 (ii) The commissioner may order any other person who violates an insurance statute or
1412 rule to forfeit to the state not more than \$5,000 for each violation.

1413 (c) (i) The commissioner may order an individual [~~agent, broker~~] producer, limited line
1414 producer, customer service representative, managing general agent, reinsurance intermediary,
1415 adjuster, or insurance consultant who violates an order issued under Subsection 31A-2-201(4)
1416 to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues
1417 is a separate violation.

1418 (ii) The commissioner may order any other person who violates an order issued under
1419 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each
1420 day the violation continues is a separate violation.

1421 (d) The commissioner may accept or compromise any forfeiture under this Subsection
1422 (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only

1423 the attorney general may compromise the forfeiture.

1424 (2) When a person fails to comply with an order issued under Subsection 31A-2-201(4),
1425 including a forfeiture order, the commissioner may file an action in any court of competent
1426 jurisdiction or obtain a court order or judgment:

1427 (a) enforcing the commissioner's order;

1428 (b) (i) directing compliance with the commissioner's order and restraining further
1429 violation of the order; and

1430 (ii) subjecting the person ordered to the procedures and sanctions available to the court
1431 for punishing contempt if the failure to comply continues; or

1432 (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each
1433 day the failure to comply continues after the filing of the complaint until judgment is rendered.

1434 (3) The Utah Rules of Civil Procedure govern actions brought under Subsection (2),
1435 except that the commissioner may file a complaint seeking a court-ordered forfeiture under
1436 Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's
1437 intention to proceed under Subsection (2)(c). The commissioner's order issued under
1438 Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if
1439 the commissioner's order is disobeyed.

1440 (4) If, after a court order is issued under Subsection (2), the person fails to comply with
1441 the commissioner's order or judgment:

1442 (a) the commissioner may certify the fact of the failure to the court by affidavit; and

1443 (b) the court may, after a hearing following at least five days written notice to the
1444 parties subject to the order or judgment, amend the order or judgment to add the forfeiture or
1445 forfeitures, as prescribed in Subsection (2)(c), until the person complies.

1446 (5) (a) The proceeds of all forfeitures under this section, including collection expenses,
1447 shall be paid into the General Fund.

1448 (b) The expenses of collection shall be credited to the Insurance Department's budget.

1449 (c) The attorney general's budget shall be credited to the extent the Insurance
1450 Department reimburses the attorney general's office for its collection expenses under this
1451 section.

1452 (6) (a) Forfeitures and judgments under this section bear interest at the rate charged by
1453 the United States Internal Revenue Service for past due taxes on the:

- 1454 (i) date of entry of the commissioner's order under Subsection (1); or
1455 (ii) date of judgment under Subsection (2).
- 1456 (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the
1457 forfeiture and accrued interest are fully paid.
- 1458 (7) A forfeiture may not be imposed under Subsection (2)(c) if:
- 1459 (a) at the time the forfeiture action is commenced, the person was in compliance with
1460 the commissioner's order; or
- 1461 (b) the violation of the order occurred during the order's suspension.
- 1462 (8) The commissioner may seek an injunction as an alternative to issuing an order
1463 under Subsection 31A-2-201(4).
- 1464 (9) (a) A person is guilty of a class B misdemeanor if that person:
- 1465 (i) intentionally violates:
- 1466 (A) an insurance statute or rule of this state; or
1467 (B) an order issued under Subsection 31A-2-201(4);
- 1468 (ii) intentionally permits a person over whom that person has authority to violate:
- 1469 (A) an insurance statute or rule of this state; or
1470 (B) an order issued under Subsection 31A-2-201(4); or
- 1471 (iii) intentionally aids any person in violating:
- 1472 (A) an insurance statute or rule of this state; or
1473 (B) an order issued under Subsection 31A-2-201(4).
- 1474 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may
1475 be fined not more than:
- 1476 (i) \$10,000 if a corporation; or
1477 (ii) \$5,000 if a person other than a corporation.
- 1478 (c) If the person is an individual, the person may, in addition, be imprisoned for up to
1479 one year.
- 1480 (d) As used in this Subsection (9), "intentionally" has the same meaning as under
1481 Subsection 76-2-103(1).
- 1482 (10)(a) After a hearing, the commissioner may, in whole or in part, revoke, suspend,
1483 place on probation, limit, or refuse to renew the licensee's license or certificate of authority:
- 1484 (i) when a licensee of the department, other than a domestic insurer:

1485 (A) persistently or substantially violates the insurance law; or
1486 (B) violates an order of the commissioner under Subsection 31A-2-201(4);
1487 (ii) if there are grounds for delinquency proceedings against the licensee under Section
1488 31A-27-301 or Section 31A-27-307; or

1489 (iii) if the licensee's methods and practices in the conduct of the licensee's business
1490 endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate
1491 interests of the licensee's customers and the public.

1492 (b) Additional license termination or probation provisions for licensees other than
1493 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, [~~31A-23-216~~] 31A-23a-111,
1494 [~~31A-23-217~~] 31A-23a-112, 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214,
1495 31A-35-501, and 31A-35-503.

1496 (11) The enforcement penalties and procedures set forth in this section are not
1497 exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to
1498 applicable law.

1499 Section 8. Section **31A-2-309** is amended to read:

1500 **31A-2-309. Service of process through state officer.**

1501 (1) The commissioner, or the lieutenant governor when the subject proceeding is
1502 brought by the state, is the agent for receipt of service of any summons, notice, order, pleading,
1503 or any other legal process relating to a Utah court or administrative agency upon the following:

1504 (a) all insurers authorized to do business in this state, while authorized to do business
1505 in this state, and thereafter in any proceeding arising from or related to any transaction having a
1506 connection with this state;

1507 (b) all surplus lines insurers for any proceeding arising out of a contract of insurance
1508 that is subject to the surplus lines law, or out of a certificate, cover note, or other confirmation
1509 of that type of insurance;

1510 (c) all unauthorized insurers or other persons assisting unauthorized insurers under
1511 Subsection 31A-15-102(1) by doing an act specified in Subsection 31A-15-102(2), for a
1512 proceeding arising out of the transaction that is subject to the unauthorized insurance law;

1513 (d) any nonresident [~~agent, broker~~] producer, consultant, adjuster, and third party
1514 administrator, while authorized to do business in this state, and thereafter in any proceeding
1515 arising from or related to any transaction having a connection with this state; and

1516 (e) any reinsurer submitting to the commissioner's jurisdiction under Subsection
1517 31A-17-404(7).

1518 (2) Each licensed insurer by applying for and receiving a certificate of authority, each
1519 surplus lines insurer by entering into a contract subject to the surplus lines law, each
1520 unauthorized insurer by doing in this state any of the acts prohibited by Section 31A-15-101,
1521 and each nonresident [~~agent, broker~~] producer, consultant, adjuster, and third party
1522 administrator is considered to have irrevocably appointed the commissioner and lieutenant
1523 governor as his agents in accordance with Subsection (1).

1524 (3) The commissioner and lieutenant governor are also agents for the executors,
1525 administrators or personal representatives, receivers, trustees, or other successors in interest of
1526 the persons specified under Subsection (1).

1527 (4) Litigants serving process on the commissioner or lieutenant governor under this
1528 section shall pay the fee applicable under Section 31A-3-103.

1529 (5) The right to substituted service under this section does not limit the right to serve a
1530 summons, notice, order, pleading, demand, or other process upon a person in any other manner
1531 provided by law.

1532 Section 9. Section **31A-3-303** is amended to read:

1533 **31A-3-303. Payment of tax.**

1534 (1) The insurer, all [~~brokers~~] producers involved in the transaction, and the
1535 policyholder are jointly and severally liable for the payment of the taxes required under Section
1536 31A-3-301. The policyholder's liability for payment of the premium tax under Section
1537 31A-3-301 ends when the policyholder pays the tax to the [~~broker~~] producer or insurer. The
1538 insurer and all [~~brokers~~] producers involved in the transaction are jointly and severally liable
1539 for the payment of the additional tax required under Section 31A-3-302. Except for the tax
1540 under Section 31A-3-302, the taxes under this part shall be paid by the policyholder who shall
1541 be billed specifically for the tax when billed for the premium. Except for the tax imposed
1542 under Section 31A-3-302, absorption of the tax by the [~~agent, broker,;~~] producer or insurer is an
1543 unfair method of competition under Section [~~31A-23-302~~] 31A-23a-402.

1544 (2) The commissioner shall by rule prescribe accounting and reporting forms and
1545 procedures for insurers, [~~brokers~~] producers, and policyholders to use in determining the
1546 amount of taxes owed under this part, and the manner and time of payment. If a tax is not paid

1547 within the time prescribed under the commissioner's rule, a penalty shall be imposed of 25% of
1548 the tax due, plus 1-1/2% per month from the time of default until full payment of the tax.

1549 (3) Upon making a record of its actions, and upon reasonable cause shown, the Tax
1550 Commissioner may waive, reduce, or compromise any of the penalties or interest imposed
1551 under this part.

1552 (4) If a policy covers risks that are only partially located in this state, for computation
1553 of tax under this part the premium shall be reasonably allocated among the states on the basis
1554 of risk locations. However, all premiums with respect to surplus lines insurance received in this
1555 state by a surplus lines [~~broker~~] producer or charged on policies written or negotiated in or
1556 from this state are taxable in full under this part, subject to a credit for any tax actually paid in
1557 another state to the extent of a reasonable allocation on the basis of risk locations.

1558 (5) All premium taxes collected under this part by a [~~broker~~] producer or by an insurer
1559 are the property of this state.

1560 (6) If the property of any [~~broker~~] producer is seized under any process in a court in
1561 this state, or if his business is suspended by the action of creditors or put into the hands of an
1562 assignee, receiver, or trustee, all taxes and penalties due this state under this part are preferred
1563 claims and the state is to that extent a preferred creditor.

1564 Section 10. Section **31A-4-106** is amended to read:

1565 **31A-4-106. Provision of health care.**

1566 (1) As used in this section, "health care provider" has the same definition as in Section
1567 78-14-3.

1568 (2) Except under Subsection (3) or (4), a person may not directly or indirectly provide
1569 health care, or arrange for, manage, or administer the provision or arrangement of, collect
1570 advance payments for, or compensate providers of health care unless authorized to do so or
1571 employed by someone authorized to do so under Chapter 5, 7, 8, 9, or 14.

1572 (3) Subsection (2) does not apply to:

1573 (a) a natural person or professional corporation that alone or with others professionally
1574 associated with the natural person or professional corporation, and without receiving
1575 consideration for services in advance of the need for a particular service, provides the service
1576 personally with the aid of nonprofessional assistants;

1577 (b) a health care facility as defined in Section 26-21-2 which:

- 1578 (i) is licensed or exempt from licensing under Title 26, Chapter 21; and
1579 (ii) does not engage in health care insurance as defined under Section 31A-1-301;
1580 (c) a person who files with the commissioner under Section 31A-1-105 a certificate
1581 from the United States Department of Labor, or other evidence satisfactory to the
1582 commissioner, showing that the laws of Utah are preempted under Section 514 of the
1583 Employee Retirement Income Security Act of 1974 or other federal law;
- 1584 (d) a person licensed under Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing
1585 Producers, Consultants, and Reinsurance Intermediaries, who:
- 1586 (i) has arranged for the insurance of all services under:
1587 (A) Subsection (2) by an insurer authorized to do business in Utah;
1588 (B) Section 31A-15-103; or
1589 (C) works for an uninsured employer that complies with Chapter 13; or
1590 (e) an employer that self-funds its obligations to provide health care services or
1591 indemnity for its employees if the employer complies with Chapter 13.
- 1592 (4) A person may not provide administrative or management services for any other
1593 person subject to Subsection (2) and not exempt under Subsection (3) unless the person is an
1594 authorized insurer under Chapter 5, 7, 8, 9, or 14, or complies with Chapter 25.
- 1595 (5) It is unlawful for any insurer or person providing, administering, or managing
1596 health care insurance under Chapter 5, 7, 8, 9, or 14 to enter into a contract that limits a health
1597 care provider's ability to advise the health care provider's patients or clients fully about
1598 treatment options or other issues that affect the health care of the health care provider's patients
1599 or clients.
- 1600 Section 11. Section **31A-5-207** is amended to read:
- 1601 **31A-5-207. Powers under organization permit.**
- 1602 (1) While its organization permit is in effect a stock corporation may:
1603 (a) register stock under Section 31A-5-302, solicit subscriptions subject to Section
1604 16-10a-620, accept payment for the subscriptions in cash or, with the approval of the
1605 commissioner, in other property constituting a permitted investment under Chapter 18, and
1606 issue receipts for payments made at values approved by the commissioner, but no certificates
1607 for shares may be issued until a certificate of authority has been issued; and
1608 (b) transact all other business necessary and appropriate in the organization of the

1609 planned insurance enterprise.

1610 (2) While its organization permit is in effect a mutual may:

1611 (a) register mutual bonds under Section 31A-5-302, solicit applications for qualifying
1612 insurance policies under Subsection 31A-5-211(5), solicit subscriptions for mutual bonds and
1613 contribution notes and accept payment for the subscriptions in cash or, with the approval of the
1614 commissioner, in property constituting a permitted investment under Chapter 18, and issue
1615 receipts for payments made at values approved by the commissioner, but no policies or bonds
1616 are effective or may be issued until a certificate of authority has been issued; and

1617 (b) transact all other business necessary and appropriate in the organization of the
1618 planned insurance enterprise.

1619 (3) (a) The existence of the organization permit may not be used as an inducement in
1620 any solicitation.

1621 (b) No person may knowingly, with intent to deceive, exhibit any false document or
1622 account regarding the affairs of any organization under Section 31A-5-204 or make any
1623 misrepresentation about its affairs.

1624 (4) Solicitations under this section may be made for stock or bond subscriptions only
1625 by persons registered under Title 61, Chapter 1, as broker-dealers or agents. Solicitations
1626 under this section may be made for qualifying insurance policies only by persons licensed
1627 under Chapter ~~[23]~~ 23a. Insurance Marketing - Licensing Producers, Consultants, and
1628 Reinsurance Intermediaries, as insurance ~~[agents]~~ producers. Before any solicitation, the
1629 solicitor shall obtain from the commissioner a license to solicit, after paying the fee applicable
1630 under Section 31A-3-103.

1631 (5) This section does not apply to stock or mutual insurance corporations already in
1632 existence on July 1, 1986.

1633 Section 12. Section **31A-5-218** is amended to read:

1634 **31A-5-218. Subsidiaries.**

1635 (1) Subject to the limitations under Subsection 31A-18-106(1)(k), an insurance
1636 corporation may form or acquire subsidiaries to do any lawful insurance business.

1637 (2) An insurance corporation may form or acquire subsidiaries to hold or manage any
1638 assets that it might hold or manage directly.

1639 (3) (a) An insurance corporation may form or acquire subsidiaries to perform functions

1640 or provide services that are ancillary to its insurance operations.

1641 (b) A subsidiary is an ancillary subsidiary if it is engaged principally in one or more of
1642 the following:

1643 (i) acting as an insurance ~~[agent or broker]~~ producer;

1644 (ii) investing, reinvesting, or trading in securities, or acting as a securities broker,
1645 dealer, or marketing representative;

1646 (iii) managing investment companies registered under the federal Investment Company
1647 Act of 1940, as amended, including related sales and services;

1648 (iv) providing investment advice and services;

1649 (v) acting as administrative agent for a government instrumentality performing an
1650 insurance, public assistance, or related function;

1651 (vi) providing services related to insurance operations, including accounting, actuarial,
1652 pension administration, appraisal, auditing, claims adjusting, collection, data processing,
1653 communications, loss prevention, premium financing, safety engineering, and underwriting
1654 services;

1655 (vii) holding or managing property used by the corporation, alone or with its affiliates
1656 for the convenient transaction of its business;

1657 (viii) engaging in the motor club business under Chapter 11, Motor Clubs;

1658 (ix) engaging in the business of any institution subject to the jurisdiction of the
1659 Department of Financial Institutions under Title 7, Financial Institutions;

1660 (x) providing similar services or performing similar activities which the commissioner
1661 declares ancillary by rule; and

1662 (xi) owning corporations that would be authorized as subsidiaries under Subsections
1663 (3)(b)(i) through (3)(b)(ix) and under Subsections (1) and (2).

1664 (4) An insurance corporation may form or acquire subsidiaries other than those under
1665 Subsections (1) through (3), but only to the extent the insurer has excess surplus as defined
1666 under Section 31A-1-301.

1667 (5) (a) An insurance corporation shall notify the commissioner immediately following
1668 the formation or acquisition of a subsidiary under this section.

1669 (b) Chapter 16 provides additional requirements that are applicable to the acquisition
1670 of certain subsidiaries.

1671 Section 13. Section **31A-6a-103** is amended to read:

1672 **31A-6a-103. Requirements for doing business.**

1673 (1) Service contracts may not be issued, sold, or offered for sale in this state unless the
1674 service contract is insured under a service contract reimbursement insurance policy issued by
1675 an insurer authorized to do business in this state, or a recognized surplus lines carrier.

1676 (2) (a) Service contracts may not be issued, sold, or offered for sale unless a true and
1677 correct copy of the service contract and the provider's reimbursement insurance policy have
1678 been filed with the commissioner. Copies of contracts and policies must be filed no less than
1679 30 days prior to the issuance, sale offering for sale, or use of the service contract or
1680 reimbursement insurance policy in this state.

1681 (b) Each modification of the terms of any service contract or reimbursement insurance
1682 policy must also be filed 30 days prior to its use in this state. Each filing must be accompanied
1683 by a filing fee as required under Subsection 31A-3-103, or the filing shall be rejected.

1684 (c) Persons complying with this chapter are not required to comply with:

1685 (i) Subsections 31A-21-201(1) and [~~31A-23-302~~] 31A-23a-402(3); or

1686 (ii) Chapter 19a, Utah Rate Regulation Act.

1687 (3) (a) Premiums collected on service contracts are not subject to premium taxes.

1688 (b) Premiums collected by issuers of reimbursement insurance policies are subject to
1689 premium taxes.

1690 (4) Persons marketing, selling, or offering to sell service contracts for service contract
1691 providers that comply with this chapter are exempt from the licensing requirements of this title.

1692 (5) Service contract providers complying with this chapter are not required to comply
1693 with:

1694 (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1695 (b) Chapter 7, Nonprofit Health Service Insurance Corporations;

1696 (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1697 (d) Chapter 9, Insurance Fraternal;

1698 (e) Chapter 10, Annuities;

1699 (f) Chapter 11, Motor Clubs;

1700 (g) Chapter 12, State Risk Management Fund;

1701 (h) Chapter 13, Employee Welfare Funds and Plans;

- 1702 (i) Chapter 14, Foreign Insurers;
- 1703 (j) Chapter 19a, Utah Rate Regulation Act;
- 1704 (k) Chapter 25, Third Party Administrators; and
- 1705 (l) Chapter 28, Guaranty Associations.

1706 Section 14. Section **31A-6a-108** is amended to read:

1707 **31A-6a-108. Obligation of reimbursement insurance issuers.**

1708 Providers under this chapter are considered to be the agent of the issuer of the
1709 reimbursement insurance for purposes of Section [~~31A-23-311~~] 31A-23a-410. In cases where a
1710 provider is acting as an administrator and enlists other providers, the provider acting as the
1711 administrator shall notify the issuer of the reimbursement insurance of the other providers.

1712 Section 15. Section **31A-8-103** is amended to read:

1713 **31A-8-103. Applicability to other provisions of law.**

1714 (1) (a) Except for exemptions specifically granted under this title, an organization is
1715 subject to regulation under all of the provisions of this title.

1716 (b) Notwithstanding any provision of this title, an organization licensed under this
1717 chapter:

1718 (i) is wholly exempt from:

1719 (A) Chapter 7, Nonprofit Health Service Insurance Corporations;

1720 (B) Chapter 9, Insurance Fraternal;

1721 (C) Chapter 10, Annuities;

1722 (D) Chapter 11, Motor Clubs;

1723 (E) Chapter 12, State Risk Management Fund;

1724 (F) Chapter 13, Employee Welfare Funds and Plans;

1725 (G) Chapter 19a, Utah Rate Regulation Act; and

1726 (H) Chapter 28, Guaranty Associations; and

1727 (ii) not subject to:

1728 (A) Chapter 3, Department Funding, Fees, and Taxes, except for Part I;

1729 (B) Section 31A-4-107;

1730 (C) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except for
1731 provisions specifically made applicable by this chapter;

1732 (D) Chapter 14, Foreign Insurers, except for provisions specifically made applicable by

- 1733 this chapter;
- 1734 (E) Chapter 17, Determination of Financial Condition, except:
- 1735 (I) Parts II and VI; or
- 1736 (II) as made applicable by the commissioner by rule consistent with this chapter;
- 1737 (F) Chapter 18, Investments, except as made applicable by the commissioner by rule
- 1738 consistent with this chapter; and
- 1739 (G) Chapter 22, Contracts in Specific Lines, except for Parts VI, VII, and XII.
- 1740 (2) The commissioner may by rule waive other specific provisions of this title that the
- 1741 commissioner considers inapplicable to health maintenance organizations or limited health
- 1742 plans, upon a finding that the waiver will not endanger the interests of:
- 1743 (a) enrollees;
- 1744 (b) investors; or
- 1745 (c) the public.
- 1746 (3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16,
- 1747 Chapter 10a, Utah Revised Business Corporation Act, do not apply to an organization except as
- 1748 specifically made applicable by:
- 1749 (a) this chapter;
- 1750 (b) a provision referenced under this chapter; or
- 1751 (c) a rule adopted by the commissioner to deal with corporate law issues of health
- 1752 maintenance organizations that are not settled under this chapter.
- 1753 (4) (a) Whenever in this chapter, Chapter 5, or Chapter 14 is made applicable to an
- 1754 organization, the application is:
- 1755 (i) of those provisions that apply to a mutual corporation if the organization is
- 1756 nonprofit; and
- 1757 (ii) of those that apply to a stock corporation if the organization is for profit.
- 1758 (b) When Chapter 5 or 14 is made applicable to an organization under this chapter,
- 1759 "mutual" means nonprofit organization.
- 1760 (5) Solicitation of enrollees by an organization is not a violation of any provision of
- 1761 law relating to solicitation or advertising by health professionals if that solicitation is made in
- 1762 accordance with:
- 1763 (a) this chapter; and

1764 (b) Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing [Agents, Brokers] Producers,
1765 Consultants, and Reinsurance Intermediaries.

1766 (6) This title does not prohibit any health maintenance organization from meeting the
1767 requirements of any federal law that enables the health maintenance organization to:

1768 (a) receive federal funds; or

1769 (b) obtain or maintain federal qualification status.

1770 (7) Except as provided in Section 31A-8-501, an organization is exempt from statutes
1771 in this title or department rules that restrict or limit the organization's freedom of choice in
1772 contracting with or selecting health care providers, including Section 31A-22-618.

1773 (8) An organization is exempt from the assessment or payment of premium taxes
1774 imposed by Sections 59-9-101 through 59-9-104.

1775 Section 16. Section **31A-11-101** is amended to read:

1776 **31A-11-101. Prohibition of unauthorized motor clubs.**

1777 (1) No person may act as a motor club, except:

1778 (a) a corporation authorized under Chapter 5 or 14 which actually engages in the
1779 insurance of automobiles against liability, physical damage, or both; or

1780 (b) a corporation or division of a corporation authorized under this chapter.

1781 (2) No person is acting as a motor club merely by offering travel-related services that
1782 do not constitute insurance, or by arranging, through ~~[agents]~~ producers qualified under
1783 Chapter ~~[23;]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance
1784 Intermediaries, for insurance coverages underwritten by insurers authorized to do business in
1785 this state.

1786 Section 17. Section **31A-11-102** is amended to read:

1787 **31A-11-102. Activities of motor clubs.**

1788 (1) Motor clubs authorized under this chapter may provide or arrange for the following
1789 services:

1790 (a) service as ~~[agent or broker]~~ producer in obtaining insurance coverage from
1791 authorized insurers, subject to Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers,
1792 Consultants, and Reinsurance Intermediaries;

1793 (b) provision of, or payment for, legal services and costs in the defense of traffic
1794 offenses or other legal problems connected with the ownership or use of a motor vehicle,

1795 provided the maximum amount payable for any one incident is not more than 100 times the
1796 annual charge for the motor club contract;

1797 (c) guaranteed arrest bond certificates and cash bond guarantees as specified under
1798 Section 31A-11-112;

1799 (d) payment of specified expenses resulting from an automobile accident, other than
1800 expenses for personal injury or for damage to an automobile, provided the maximum amount
1801 payable for any one accident is not more than 100 times the annual charge for the motor club
1802 contract;

1803 (e) towing and emergency road services and theft services; and

1804 (f) any services relating to travel not involving the transfer and distribution of risk.

1805 (2) Unless they are also insurers under Chapter 5 or 14, motor clubs may not provide
1806 any liability or physical damage insurance or insurance of life or accident and health, whether
1807 or not related to motor vehicles.

1808 (3) If a motor club is a separate division of a corporation, the activities of the other
1809 divisions of the corporation are not limited by this section, if the motor club division complies
1810 with Subsection 31A-11-106(3).

1811 Section 18. Section **31A-11-104** is amended to read:

1812 **31A-11-104. Applicability of other portions of the Insurance Code.**

1813 In addition to this chapter, motor clubs are subject to the applicable sections of
1814 Chapters 1, 2, 4, 16, 21, 22, 26, and 27, Part I of Chapter 3, Parts I, ~~[H]~~ IV, and ~~[V]~~ V of
1815 Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance
1816 Intermediaries, and Section ~~[31A-23-214]~~ 31A-23a-207. Sections 31A-14-204 and
1817 31A-14-216 apply to nondomestic motor clubs. Section 31A-5-401 applies to domestic motor
1818 clubs. Sections 31A-5-105, 31A-5-106, and 31A-5-216 apply to both domestic and
1819 nondomestic motor clubs. Both domestic and nondomestic motor clubs are subject to the
1820 Insurance Department fees under Section 31A-3-103. Other provisions of the Insurance Code
1821 apply to motor clubs only as specifically provided in this chapter.

1822 Section 19. Section **31A-11-107** is amended to read:

1823 **31A-11-107. Issuance of certificate of authority -- Reinsurance of excess services.**

1824 (1) The commissioner shall issue a certificate applied for under Section 31A-11-106 if
1825 he finds that:

1826 (a) the corporation is able to negotiate, execute, and carry out the motor club business
1827 in a sound, reliable, and ongoing manner;

1828 (b) the reinsurance requirements of Subsection (2) are satisfied; and

1829 (c) all other applicable requirements of law are satisfied.

1830 (2) If a motor club provides legal expense service other than that authorized in
1831 Subsection 31A-11-102(1)(b), or other trip reimbursement service than that authorized in
1832 Subsection 31A-11-102(1)(d), or bail service other than that authorized under Section
1833 31A-11-112, it must fully reinsure the excess service with an insurer authorized under Chapter
1834 5 or 14. That insurer must assume direct liability to the insured, and must fully comply with
1835 Chapter [23] 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance
1836 Intermediaries.

1837 Section 20. Section **31A-14-211** is amended to read:

1838 **31A-14-211. Restrictions on foreign title insurers.**

1839 (1) An authorized foreign title insurer may not insure property in this state except:

1840 (a) through a title insurance [agent] producer who is a resident in Utah;

1841 (b) through a bona fide branch office in Utah under the direction and control of the title
1842 insurer that pays all the expenses of the branch office including compensation of all employees;
1843 or

1844 (c) through a subsidiary title insurer authorized to do business in Utah.

1845 (2) This section does not apply to reinsurance.

1846 Section 21. Section **31A-15-102** is amended to read:

1847 **31A-15-102. Assisting unauthorized insurers.**

1848 (1) No person may do any act enumerated under Subsection (2) who knows or should
1849 know that the act may assist in the illegal placement of insurance with an unauthorized insurer
1850 or the subsequent servicing of an insurance policy illegally placed with an unauthorized
1851 insurer.

1852 (2) An act performed by mail is performed both at the place of mailing and at the place
1853 of delivery. Any of the following acts, whether performed by mail or otherwise, fall within the
1854 prohibition of Subsection (1):

1855 (a) soliciting, making, or proposing to make an insurance contract;

1856 (b) taking, receiving, or forwarding an application for insurance;

- 1857 (c) collecting or receiving, in full or in part, an insurance premium;
- 1858 (d) issuing or delivering an insurance policy or other evidence of an insurance contract
- 1859 except as a messenger not employed by the insurer, or an insurance [~~agent, or a broker~~]
- 1860 producer;
- 1861 (e) doing any of the following in connection with the solicitation, negotiation,
- 1862 procuring, or effectuation of insurance coverage for another: inspecting risks, setting rates,
- 1863 advertising, disseminating information, or advising on risk management;
- 1864 (f) publishing or disseminating any advertisement encouraging the placement or
- 1865 servicing of insurance that would violate Subsection (1); however this provision does not apply
- 1866 to publication or dissemination to an audience primarily outside Utah that also reaches persons
- 1867 in Utah unless the extension to persons inside Utah can be conveniently avoided without
- 1868 substantial expense other than loss of revenue; nor does it apply to regional or national network
- 1869 programs on radio or television unless they originate in Utah;
- 1870 (g) investigating, settling, adjusting, or litigating claims; or
- 1871 (h) representing or assisting any person to do an unauthorized insurance business or to
- 1872 procure insurance from an unauthorized insurer.
- 1873 (3) Subsection (1) does not prohibit:
- 1874 (a) an attorney acting for a client;
- 1875 (b) a full-time salaried employee of an insured acting in the capacity of an insurance
- 1876 buyer or manager; or
- 1877 (c) insurance activities described under Section 31A-15-103.
- 1878 (4) Any act performed in Utah which is prohibited under this section constitutes
- 1879 appointment of the commissioner or the lieutenant governor as agent for service of process
- 1880 under Sections 31A-2-309 and 31A-2-310.
- 1881 Section 22. Section **31A-15-103** is amended to read:
- 1882 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**
- 1883 (1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a
- 1884 certificate of authority to do business in this state under Section 31A-14-202 may negotiate for
- 1885 and make insurance contracts with persons in this state and on risks located in this state,
- 1886 subject to the limitations and requirements of this section.
- 1887 (2) For contracts made under this section, the insurer may, in this state, inspect the

1888 risks to be insured, collect premiums and adjust losses, and do all other acts reasonably
1889 incidental to the contract, through employees or through independent contractors.

1890 (3) (a) Subsections (1) and (2) do not permit any person to solicit business in this state
1891 on behalf of an insurer that has no certificate of authority.

1892 (b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus
1893 lines ~~[broker]~~ producer licensed under Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing
1894 Producers, Consultants, and Reinsurance Intermediaries.

1895 (c) The commissioner may by rule prescribe how a surplus lines ~~[broker]~~ producer
1896 may:

1897 (i) pay or permit the payment, commission, or other remuneration on insurance placed
1898 by the surplus lines ~~[broker]~~ producer under authority of the surplus lines ~~[broker's]~~ producer's
1899 license to one holding a license to act as an insurance ~~[agent]~~ producer; and

1900 (ii) advertise the availability of the surplus lines ~~[broker's]~~ producer's services in
1901 procuring, on behalf of persons seeking insurance, contracts with nonadmitted insurers.

1902 (4) For contracts made under this section, nonadmitted insurers are subject to Sections
1903 ~~[31A-23-302]~~ 31A-23a-402 and ~~[31A-26-303]~~ 31A-23a-403 and the rules adopted under those
1904 sections.

1905 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to
1906 employers located in this state, except for stop loss coverages issued to employers securing
1907 workers' compensation under Subsection 34A-2-201(3).

1908 (6) (a) The commissioner may by rule prohibit making contracts under Subsection (1)
1909 for a specified class of insurance if authorized insurers provide an established market for the
1910 class in this state that is adequate and reasonably competitive.

1911 (b) The commissioner may by rule place restrictions and limitations on and create
1912 special procedures for making contracts under Subsection (1) for a specified class of insurance
1913 if there have been abuses of placements in the class or if the policyholders in the class, because
1914 of limited financial resources, business experience, or knowledge, cannot protect their own
1915 interests adequately.

1916 (c) The commissioner may prohibit an individual insurer from making any contract
1917 under Subsection (1) and all insurance ~~[agents and brokers]~~ producers from dealing with the
1918 insurer if:

1919 (i) the insurer has willfully violated this section, Section 31A-4-102, [~~31A-23-302~~
1920 31A-23a-402, or 31A-26-303, or any rule adopted under any of these sections;

1921 (ii) the insurer has failed to pay the fees and taxes specified under Section 31A-3-301;
1922 or

1923 (iii) the commissioner has reason to believe that the insurer is in an unsound condition
1924 or is operated in a fraudulent, dishonest, or incompetent manner or in violation of the law of its
1925 domicile.

1926 (d) (i) The commissioner may issue lists of unauthorized foreign insurers whose
1927 solidity the commissioner doubts, or whose practices the commissioner considers
1928 objectionable.

1929 (ii) The commissioner shall issue lists of unauthorized foreign insurers the
1930 commissioner considers to be reliable and solid.

1931 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner
1932 may issue other relevant evaluations of unauthorized insurers.

1933 (iv) An action may not lie against the commissioner or any employee of the department
1934 for any written or oral communication made in, or in connection with the issuance of, the lists
1935 or evaluations described in this Subsection (6)(d).

1936 (e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list
1937 only if the unauthorized insurer:

1938 (i) has delivered a request to the commissioner to be on the list;

1939 (ii) has established satisfactory evidence of good reputation and financial integrity;

1940 (iii) has delivered to the commissioner a copy of its current annual statement certified
1941 by the insurer and continues each subsequent year to file its annual statements with the
1942 commissioner within 60 days of its filing with the insurance regulatory authority where it is
1943 domiciled;

1944 (iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part
1945 VI, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is
1946 greater, and maintains in the United States an irrevocable trust fund in either a national bank or
1947 a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit
1948 requirements for insurers in the state where it is made, which trust fund or deposit:

1949 (I) shall be in an amount not less than \$2,500,000 for the protection of all of the

1950 insurer's policyholders in the United States;

1951 (II) may consist of cash, securities, or investments of substantially the same character
1952 and quality as those which are "qualified assets" under Section 31A-17-201; and

1953 (III) may include as part of the trust arrangement a letter of credit that qualifies as
1954 acceptable security under Subsection 31A-17-404(3)(c)(iii); or

1955 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group
1956 of alien individual insurers, maintains a trust fund that:

1957 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all
1958 policyholders and creditors in the United States of each member of the group;

1959 (II) may consist of cash, securities, or investments of substantially the same character
1960 and quality as those which are "qualified assets" under Section 31A-17-201; and

1961 (III) may include as part of this trust arrangement a letter of credit that qualifies as
1962 acceptable security under Subsection 31A-17-404(3)(c)(iii); and

1963 (v) for an alien insurer not domiciled in the United States or a territory of the United
1964 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National
1965 Association of Insurance Commissioners International Insurers Department.

1966 (7) A surplus lines ~~broker~~ producer may not, either knowingly or without reasonable
1967 investigation of the financial condition and general reputation of the insurer, place insurance
1968 under this section with financially unsound insurers or with insurers engaging in unfair
1969 practices, or with otherwise substandard insurers, unless the ~~broker~~ producer gives the
1970 applicant notice in writing of the known deficiencies of the insurer or the limitations on his
1971 investigation, and explains the need to place the business with that insurer. A copy of this
1972 notice shall be kept in the office of the ~~broker~~ producer for at least five years. To be
1973 financially sound, an insurer shall satisfy standards that are comparable to those applied under
1974 the laws of this state to authorized insurers. Insurers on the "doubtful or objectionable" list
1975 under Subsection (6)(d) and insurers not on the commissioner's "reliable" list under Subsection
1976 (6)(e) are presumed substandard.

1977 (8) A policy issued under this section shall include a description of the subject of the
1978 insurance and indicate the coverage, conditions, and term of the insurance, the premium
1979 charged and premium taxes to be collected from the policyholder, and the name and address of
1980 the policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy

1981 shall state the names and addresses of all insurers and the portion of the entire direct risk each
1982 has assumed. All policies issued under the authority of this section shall have attached or
1983 affixed to the policy the following statement: "The insurer issuing this policy does not hold a
1984 certificate of authority to do business in this state and thus is not fully subject to regulation by
1985 the Utah insurance commissioner. This policy receives no protection from any of the guaranty
1986 associations created under Title 31A, Chapter 28."

1987 (9) Upon placing a new or renewal coverage under this section, the [~~broker~~] surplus
1988 lines producer shall promptly deliver to the policyholder or his agent evidence of the insurance
1989 consisting either of the policy as issued by the insurer or, if the policy is not then available, a
1990 certificate, cover note, or other confirmation of insurance complying with Subsection (8).

1991 (10) If the commissioner finds it necessary to protect the interests of insureds and the
1992 public in this state, the commissioner may by rule subject policies issued under this section to
1993 as much of the regulation provided by this title as is required for comparable policies written by
1994 authorized foreign insurers.

1995 (11) (a) Each surplus lines transaction in this state shall be examined to determine
1996 whether it complies with:

1997 (i) the surplus lines tax levied under Chapter 3;

1998 (ii) the solicitation limitations of Subsection (3);

1999 (iii) the requirement of Subsection (3) that placement be through a surplus lines
2000 [~~broker~~] producer;

2001 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

2002 (v) the policy form requirements of Subsections (8) and (10).

2003 (b) The examination described in Subsection (11)(a) shall take place as soon as
2004 practicable after the transaction. The surplus lines [~~broker~~] producer shall submit to the
2005 examiner information necessary to conduct the examination within a period specified by rule.

2006 (c) The examination described in Subsection (11)(a) may be conducted by the
2007 commissioner or by an advisory organization created under Section 31A-15-111 and authorized
2008 by the commissioner to conduct these examinations. The commissioner is not required to
2009 authorize any additional advisory organizations to conduct examinations under this Subsection
2010 (11)(c). The commissioner's authorization of one or more advisory organizations to act as
2011 examiners under this Subsection (11)(c) shall be by rule. In addition, the authorization shall be

2012 evidenced by a contract, on a form provided by the commissioner, between the authorized
2013 advisory organization and the department.

2014 (d) The person conducting the examination described in Subsection (11)(a) shall
2015 collect a stamping fee of an amount not to exceed 1% of the policy premium payable in
2016 connection with the transaction. Stamping fees collected by the commissioner shall be
2017 deposited in the General Fund. The commissioner shall establish this fee by rule. Stamping
2018 fees collected by an advisory organization are the property of the advisory organization to be
2019 used in paying the expenses of the advisory organization. Liability for paying the stamping fee
2020 is as required under Subsection 31A-3-303(1) for taxes imposed under Section 31A-3-301.
2021 The commissioner shall adopt a rule dealing with the payment of stamping fees. If stamping
2022 fees are not paid when due, the commissioner or advisory organization may impose a penalty
2023 of 25% of the fee due, plus 1-1/2% per month from the time of default until full payment of the
2024 fee. Fees relative to policies covering risks located partially in this state shall be allocated in
2025 the same manner as under Subsection 31A-3-303(4).

2026 (e) The commissioner, representatives of the department, advisory organizations,
2027 representatives and members of advisory organizations, authorized insurers, and surplus lines
2028 insurers are not liable for damages on account of statements, comments, or recommendations
2029 made in good faith in connection with their duties under this Subsection (11)(e) or under
2030 Section 31A-15-111.

2031 (f) Examinations conducted under this Subsection (11) and the documents and
2032 materials related to the examinations are confidential.

2033 Section 23. Section **31A-15-104** is amended to read:

2034 **31A-15-104. Direct placement of insurance.**

2035 (1) Subject to this section, any person seeking insurance may obtain it from an
2036 unauthorized insurer if no [~~agent or broker~~] producer resident doing business in Utah is
2037 involved and if negotiations occur primarily outside Utah. Negotiations by mail occur within
2038 Utah if a letter or other document containing insurance-related solicitations or negotiations is
2039 sent from or to a Utah address. Negotiations by telephone take place within Utah if one of the
2040 parties to the conversation is in Utah.

2041 (2) Each policyholder who procures or renews insurance otherwise subject to this code
2042 from any insurer not authorized to do business in Utah, other than insurance procured under

2043 Section 31A-15-103 and the renewal of guaranteed renewable insurance lawfully issued
2044 outside Utah, shall within 60 days after the insurance is procured or renewed, report to the
2045 commissioner in the form required by the commissioner and pay the taxes specified by Section
2046 31A-3-301.

2047 (3) (a) Any insurance on personal property sold on the installment plan, under a
2048 conditional sales contract, or an equivalent security agreement under the Uniform Commercial
2049 Code which charges the buyer, as a part of the consideration in the agreement of sale for
2050 insurance on the property, shall be placed with an insurer authorized to do business in Utah.

2051 (b) Whenever the law of Utah requires a person to purchase insurance on risks in Utah,
2052 it shall be obtained from an insurer authorized to do business in Utah, or under Section
2053 31A-15-103.

2054 Section 24. Section **31A-15-111** is amended to read:

2055 **31A-15-111. Surplus lines advisory organizations.**

2056 (1) Advisory organizations of surplus lines [~~brokers~~] producers may be formed to:

2057 (a) facilitate and encourage compliance by its members with the laws of this state and
2058 the rules of the commissioner relative to surplus lines insurance;

2059 (b) if authorized by the commissioner, perform and report to the commissioner on the
2060 confidential examinations and assess and receive the stamping fees described in Subsection
2061 31A-15-103(11);

2062 (c) make recommendations to the commissioner concerning classes of insurance for
2063 which a rule under Subsection 31A-15-103(6)(a) is appropriate;

2064 (d) investigate "abuses of placements," as described in Subsection 31A-15-103(6)(b),
2065 and provide recommendations to the commissioner concerning rules under Subsection
2066 31A-15-103(6)(b);

2067 (e) bring to the commissioner's attention the existence of grounds for issuing an order
2068 under Subsection 31A-15-103(6)(c) concerning a particular unauthorized insurer;

2069 (f) provide recommendations to the commissioner concerning unauthorized insurers
2070 which should be listed on a "doubtful or objectionable" list under Subsection
2071 31A-15-103(6)(d);

2072 (g) provide comments to the commissioner concerning whether an unauthorized
2073 insurer has a good reputation and financial integrity under Subsection 31A-15-103(6)(d)(ii);

2074 (h) provide recommendations to the commissioner concerning rules under Subsection
2075 31A-15-103(10) necessary to protect the interests of insureds and the public; and

2076 (i) receive and disseminate to its members information relative to surplus lines
2077 coverages.

2078 (2) Every advisory organization formed under this section shall file with the
2079 commissioner:

2080 (a) a copy of its constitution, articles of agreement or association or articles of
2081 incorporation, and any amendments to these documents;

2082 (b) a copy of its bylaws and any other writing governing the organization's activities
2083 and any amendments to these documents;

2084 (c) a list of the names and addresses of residents of this state upon whom notices or
2085 orders of the commissioner or processes issued at his direction may be served, with changes in
2086 this list to be filed within ten days of a change; and

2087 (d) an agreement, on a form provided by the commissioner and executed by the
2088 advisory organization, that the commissioner may examine the advisory organization in
2089 accordance with the provisions of Sections 31A-2-203, 31A-2-204, and 31A-2-205.

2090 (3) The commissioner may by rule or order require each person licensed as a surplus
2091 lines ~~broker~~ producer under Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing Producers,
2092 Consultants, and Reinsurance Intermediaries, to be a member of one or more specified advisory
2093 organizations operating under this section. The commissioner may make compliance with the
2094 rule or order a condition to continued licensure as a surplus lines ~~broker~~ producer.

2095 (4) The comments and recommendations given the commissioner under Subsection (1)
2096 are merely advisory. The formation of an advisory organization under this section does not
2097 alter the commissioner's authority under this chapter.

2098 Section 25. Section **31A-15-204** is amended to read:

2099 **31A-15-204. Risk retention groups not chartered in this state -- Designation of**
2100 **commissioner as agent -- Compliance with unfair claims settlement practices act --**
2101 **Deceptive, false, or fraudulent practices -- Examination regarding financial condition --**
2102 **Prohibitions -- Penalties -- Operation prior to enactment of this part.**

2103 (1) Risk retention groups chartered and licensed in other states and seeking to do
2104 business as a risk retention group in this state shall comply with the following:

2105 (a) Before offering insurance in this state a risk retention group shall submit to the
2106 commissioner:

2107 (i) a statement identifying the states in which the group is chartered and licensed as a
2108 liability insurance company, its charter date, its principal place of business, and any other
2109 information, including information on its membership, the commissioner may require to verify
2110 that the group is a qualified risk retention group as defined in Subsection 31A-15-202(11); and

2111 (ii) a copy of its plan of operations or feasibility study and revisions of the plan or
2112 study submitted to the state in which the risk retention group is chartered and licensed, except a
2113 plan or study is not required for any line or classification of liability insurance that:

2114 (A) was defined in the Product Liability Risk Retention Act of 1981 before October 27,
2115 1986; and

2116 (B) was offered before that date by any risk retention group that had been chartered
2117 and operating for not less than three years before that date.

2118 (b) The risk retention group shall submit to the commissioner a copy of any revision to
2119 its plan or study required by Subsection 31A-15-203(2) at the same time it submits the revision
2120 of its chartering state.

2121 (c) The risk retention group shall submit, on a form approved by the commissioner, a
2122 statement of registration and a notice designating the commissioner as agent for the purpose of
2123 receiving service of legal documents or process.

2124 (d) The risk retention group shall pay annual license fees [~~in this state equal to the~~
2125 ~~license fees required of an admitted liability insurer licensed to transact business in this state]~~
2126 required by Section 31A-3-103.

2127 (2) Any risk retention group doing business in this state shall submit to the
2128 commissioner:

2129 (a) a copy of the group's financial statement submitted to the state in which the risk
2130 retention group is chartered and licensed, which shall be certified by an independent public
2131 accountant and shall contain a statement of opinion on loss and loss adjustment expense
2132 reserves made by a member of the American Academy of Actuaries or a loss reserve specialist
2133 qualified under criteria approved by the commissioner;

2134 (b) a copy of each examination of the risk retention group as certified by the
2135 commissioner or public official conducting the examination;

2136 (c) if the commissioner requests, a copy of any information or document pertaining to
2137 any outside audit performed with respect to the risk retention group; and

2138 (d) any other information required to verify the group's continuing qualification as a
2139 risk retention group within the definition in Subsection 31A-15-202(11).

2140 (3) (a) Each risk retention group shall pay premium taxes and taxes on premiums of
2141 direct business for risks resident or located within this state, and shall report to the Utah State
2142 Tax Commission the net premiums written for risks resident or located within this state. Each
2143 risk retention group shall be subject to taxation, and any applicable fines and penalties related
2144 to taxation, on the same basis as a foreign admitted insurer.

2145 (b) To the extent licensed [~~agents or brokers~~] producers are utilized pursuant to Section
2146 31A-15-212, they shall report to the commissioner the premiums for direct business for all
2147 risks resident or located within this state that the [~~agents or brokers~~] producers have placed
2148 with, or on behalf of, a risk retention group not chartered in this state.

2149 (c) To the extent that insurance [~~agents or brokers~~] producers are utilized pursuant to
2150 Section 31A-15-212 they shall keep a complete and separate record of all policies procured
2151 from each risk retention group. The record shall be open to examination by the commissioner,
2152 as provided under Section [~~31A-23-312~~] 31A-23a-412. These records shall include the
2153 following for each policy and each kind of insurance provided under each policy:

2154 (i) the limit of liability;

2155 (ii) the time period covered;

2156 (iii) the effective date;

2157 (iv) the name of the risk retention group that issued the policy;

2158 (v) the gross premium charged;

2159 (vi) the amount of any returned premiums; and

2160 (vii) additional information required by the insurance commissioner.

2161 (4) Each risk retention group and its agents and representatives shall comply with the
2162 Unfair Claims Settlement Practices Act, including Section 31A-15-207, Title 31A, Chapter 26,
2163 Part 3, Claim Practices, and any other provision of law relating to claims settlement practices.

2164 (5) Each risk retention group shall comply with the laws of this state regarding
2165 deceptive, false, and fraudulent acts, practices regulated under Title 31A, Chapter [~~23~~] 23a,
2166 Part [~~3~~] 4, Marketing Practices, and any other provision of law relating to deceptive, false, or

2167 fraudulent practices. The commissioner may only obtain an injunction regarding the conduct
2168 described in this subsection from a court of competent jurisdiction.

2169 (6) If the commissioner of the jurisdiction in which the group is chartered and licensed
2170 has not initiated an examination or does not initiate an examination within 60 days after a
2171 request by the commissioner of this state, the risk retention group shall submit to an
2172 examination by the commissioner of this state to determine its financial condition. Any
2173 examination conducted under this subsection shall be coordinated to avoid unjustified
2174 repetition and shall be conducted in an expeditious manner and in accordance with the NAIC's
2175 Examiner Handbook.

2176 (7) Each application form for insurance from a risk retention group and each policy and
2177 certificate issued by a risk retention group shall contain the following notice in ten-point type
2178 on its front and declaration pages:

2179 "NOTICE

2180 This policy is issued by your risk retention group. Your risk retention group may not be
2181 subject to all of the insurance laws and regulations of your state. State insurance insolvency
2182 guaranty funds are not available for your risk retention group."

2183 (8) The following acts by a risk retention group are prohibited:

2184 (a) the solicitation or sale of insurance by a risk retention group to any person who is
2185 not eligible for membership in the group; and

2186 (b) the solicitation or sale of insurance by, or operation of, a risk retention group that is
2187 in hazardous financial condition or financially impaired.

2188 (9) A risk retention group may not do business in this state if an insurance company is
2189 directly or indirectly a member or owner of the risk retention group, unless all members of the
2190 group are insurance companies.

2191 (10) The terms of any insurance policy issued by a risk retention group may not
2192 provide, or be construed to provide, coverage prohibited generally by statute of this state or
2193 declared unlawful by the Utah Supreme Court.

2194 (11) A risk retention group not chartered in this state and doing business in this state
2195 shall comply with a lawful order issued in a voluntary dissolution proceeding or in a
2196 delinquency proceeding commenced by any state's insurance commissioner if there has been a
2197 finding of financial impairment after an examination under Subsection (6).

2198 (12) A risk retention group that violates any provision of this part is subject to fines
2199 and penalties applicable to licensed insurers generally, including revocation of its right to do
2200 business in this state.

2201 (13) In addition to complying with the requirements of this section, each risk retention
2202 group operating in this state before the effective date of this part shall comply with Subsection
2203 (1)(a) within 30 days after the effective date of this part.

2204 Section 26. Section **31A-15-207** is amended to read:

2205 **31A-15-207. Purchasing groups -- Exemption from certain laws.**

2206 A purchasing group and its insurers are subject to all applicable laws of this state,
2207 except that a purchasing group and its insurers are exempt, in regard to liability insurance for
2208 the purchasing group, from any law that would:

2209 (1) prohibit the establishment of a purchasing group;

2210 (2) make it unlawful for an insurer to provide, or offer to provide, to a purchasing
2211 group or its members insurance on a basis providing advantages based on their loss and
2212 expense experience not afforded to other persons with respect to rates, policy forms, coverages,
2213 or other matters;

2214 (3) prohibit a purchasing group or its members from purchasing insurance on a group
2215 basis described in Subsection (2);

2216 (4) prohibit a purchasing group from obtaining insurance on a group basis because the
2217 group has not been in existence for a minimum period of time or because any member has not
2218 belonged to the group for a minimum period of time;

2219 (5) require that a purchasing group must have a minimum number of members,
2220 common ownership or affiliation, or certain legal form;

2221 (6) require that a certain percentage of a purchasing group must obtain insurance on a
2222 group basis;

2223 (7) otherwise discriminate against a purchasing group or any of its members; or

2224 (8) require that any insurance policy issued to a purchasing group or any of its
2225 members be countersigned by an insurance ~~agent or broker~~ producer residing in this state.

2226 Section 27. Section **31A-15-210** is amended to read:

2227 **31A-15-210. Purchasing group taxation.**

2228 Premium taxes and taxes on premiums paid for coverage of risks resident or located in

2229 this state by a purchasing group or any members of the purchasing groups are imposed and
2230 must be paid as follows:

2231 (1) If the insurer is an admitted insurer, taxes are imposed on the insurer at the same
2232 rate and in the same manner and subject to the same procedures, interest, and penalties that
2233 apply to premium taxes and other taxes imposed on other admitted liability insurers relative to
2234 coverage of risks resident or located in this state.

2235 (2) If the insurer is an approved, nonadmitted surplus lines insurer, taxes are imposed
2236 on the licensed [~~broker~~] producer who effected coverage on risks resident or located in this
2237 state at the same rate and in the same manner and subject to the same procedures, interest, and
2238 penalties that apply to taxes imposed on other licensed [~~brokers~~] producers effecting coverage
2239 with approved, nonadmitted surplus lines insurers on risks resident or located in this state.

2240 Section 28. Section **31A-15-212** is amended to read:

2241 **31A-15-212. Duty of producers to obtain license -- Risk retention groups --**
2242 **Purchasing groups.**

2243 (1) A person may do the following only if he is licensed as an insurance agent or
2244 broker or is exempt from licensure under Title 31A, Chapter [23] 23a, Insurance Marketing -
2245 Licensing [~~Agents, Brokers~~] Producers, Consultants, and Reinsurance Intermediaries:

2246 (a) solicit, negotiate, or procure liability insurance in this state from a risk retention
2247 group;

2248 (b) solicit, negotiate, or procure liability insurance in this state for a purchasing group
2249 from an authorized insurer or a risk retention group; and

2250 (c) solicit, negotiate, or procure liability insurance coverage in this state for any
2251 member of a purchasing group under a purchasing group's policy.

2252 (2) A person may solicit, negotiate, or procure liability insurance from an insurer not
2253 authorized to do business in this state on behalf of a purchasing group located in this state only
2254 if he is licensed as a surplus lines [~~broker~~] producer or is exempt for licensure under Title 31A,
2255 Chapter [23] 23a, Insurance Marketing - Licensing [~~Agents, Brokers~~] Producers, Consultants,
2256 and Reinsurance Intermediaries.

2257 (3) The requirement of residence in this state does not apply for purposes of acting as
2258 [~~an agent or broker~~] a producer for a risk retention group or purchasing group under
2259 Subsections (1) and (2).

2260 (4) On business placed with a risk retention group or written through a purchasing
2261 group, each person licensed under this title shall provide to each prospective insured the notice
2262 required by Subsection 31A-15-204(7) in the case of a risk retention group, and by Subsection
2263 31A-15-209(1) in the case of a purchasing group.

2264 (5) Solicitation for membership in a purchasing group is not of itself a solicitation for
2265 insurance.

2266 Section 29. Section **31A-17-608** is amended to read:

2267 **31A-17-608. Confidentiality -- Prohibition on announcements -- Prohibition on**
2268 **use in ratemaking.**

2269 (1) (a) The commissioner shall keep confidential to the extent that information in a
2270 report or plan is not required to be included in a publicly available annual statement schedule,
2271 any detail in an RBC report or RBC plan including the results or report of any examination or
2272 analysis of an insurer or health organization performed pursuant to this part, that is filed by a
2273 domestic or foreign insurer or health organization with the commissioner or any corrective
2274 order issued by the commissioner pursuant to examination or analysis.

2275 (b) Information kept confidential under Subsection (1)(a) may not be made public or be
2276 subject to subpoena, other than by the commissioner and then only for the purpose of
2277 enforcement actions taken by the commissioner pursuant to this part or any other provision of
2278 the insurance laws of this state.

2279 (2) (a) Except as otherwise required under this part, any insurer or health organization,
2280 [~~agent, broker~~] producer, or other person engaged in any manner in the insurance business may
2281 not publish, disseminate, circulate or place before the public, or cause, directly or indirectly,
2282 the publishing, disseminating, circulating or placing before the public including, in a
2283 newspaper, magazine, other publication, a notice, circular, pamphlet, letter, or poster, or over
2284 any radio or television station, an advertisement, announcement, or statement containing an
2285 assertion, representation, or statement with regard to the RBC levels of any insurer or health
2286 organization, or of any component derived in the calculation.

2287 (b) If any materially false statement with respect to the comparison regarding an
2288 insurer's or health organization's total adjusted capital to its RBC levels, or an inappropriate
2289 comparison of any other amount to the insurer's or health organization's RBC levels is
2290 published in any written publication and the insurer or health organization is able to

2291 demonstrate to the commissioner with substantial proof the falsity of the statement or the
2292 inappropriateness, the insurer or health organization may publish an announcement in a written
2293 publication if the sole purpose of the announcement is to rebut the materially false statement or
2294 inappropriate comparison.

2295 (3) The commissioner may not use an RBC instruction, report, plan, or revised plan:

2296 (a) for ratemaking;

2297 (b) as evidence in any rate proceeding; or

2298 (c) to calculate or derive any element of an appropriate premium level or rate of return

2299 for any line of insurance or coverage that an insurer or health organization or any affiliate is
2300 authorized to write or cover.

2301 Section 30. Section **31A-19a-209** is amended to read:

2302 **31A-19a-209. Special provisions for title insurance.**

2303 (1) In addition to the considerations in determining compliance with rate standards and
2304 rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, the commissioner shall
2305 also consider the costs and expenses incurred by title insurance companies, agencies, and
2306 [~~agents~~] producers peculiar to the business of title insurance including:

2307 (a) the maintenance of title plants; and

2308 (b) the searching and examining of public records to determine insurability of title to
2309 real redevelopment property.

2310 (2) (a) Every title insurance company, agency, and title insurance [~~agent~~] producer
2311 shall file with the commissioner a schedule of the escrow charges that it proposes to use in this
2312 state for services performed in connection with the issuance of policies of title insurance.

2313 (b) The filing required by Subsection (2)(a) shall state the effective date of this
2314 schedule, which may not be less than 30 calendar days after the date of filing.

2315 (3) A title insurance company, agency, or [~~agent~~] producer may not file or use any rate
2316 or other charge relating to the business of title insurance, including rates or charges filed for
2317 escrow that would cause the title insurance company, agency, or [~~agent~~] producer to:

2318 (a) operate at less than the cost of doing:

2319 (i) the insurance business; or

2320 (ii) the escrow business; or

2321 (b) fail to adequately underwrite a title insurance policy.

2322 (4) (a) All or any of the schedule of rates or schedule of charges, including the schedule
2323 of escrow charges, may be changed or amended at any time, subject to the limitations in this
2324 Subsection (4).

2325 (b) Each change or amendment shall:

2326 (i) be filed with the commissioner; and

2327 (ii) state the effective date of the change or amendment, which may not be less than 30
2328 calendar days after the date of filing.

2329 (c) Any change or amendment remains in force for a period of at least 90 calendar days
2330 from its effective date.

2331 (5) While the schedule of rates and schedule of charges are effective, a copy of each
2332 shall be:

2333 (a) retained in each of the offices of:

2334 (i) the insurance company in this state;

2335 (ii) its ~~[agents]~~ producers in this state; and

2336 (b) upon request, furnished to the public.

2337 (6) Except in accordance with the schedules of rates and charges filed with the
2338 commissioner, a title insurance company, agency, or ~~[agent]~~ producer may not make or impose
2339 any premium or other charge:

2340 (a) in connection with the issuance of a policy of title insurance; or

2341 (b) for escrow services performed in connection with the issuance of a policy of title
2342 insurance.

2343 Section 31. Section **31A-19a-216** is amended to read:

2344 **31A-19a-216. Charging of rates.**

2345 An authorized insurer, licensed insurance ~~[agent]~~ producer, employee, other
2346 representative of an authorized insurer~~[-or licensed insurance broker]~~ may not knowingly:

2347 (1) charge or demand a rate or receive a premium that departs from the rates, rating
2348 plans, classifications, schedules, rules, and standards in effect on behalf of the insurer; or

2349 (2) issue or make any policy or contract involving a violation of Subsection (1).

2350 Section 32. Section **31A-20-110** is amended to read:

2351 **31A-20-110. Underwriting rules for title insurance.**

2352 (1) No title insurance policy may be written until the title insurer or its ~~[agent]~~

2353 producer has conducted a reasonable search and examination of the title and has made a
2354 determination of insurability of title under sound underwriting principles. Evidence of this
2355 search and reasonable determination shall be retained in the files of the title insurer or its
2356 [~~agent~~] producer for not less than 15 years after the policy has been issued, either in its original
2357 form or as recorded by any process which can accurately and reliably reproduce the original.
2358 This section does not apply to a company assuming liability through a contract of reinsurance,
2359 or to a company acting as coinsurer, if another reinsuring company has complied with this
2360 section.

2361 (2) No title insurance policy may be issued except by a title insurance company or by
2362 [~~an agent~~] a producer licensed under Section [~~31A-23-203~~] 31A-23a-105.

2363 (3) This section is enforceable only by the commissioner. It does not create, eliminate,
2364 or modify any private cause of action or remedy.

2365 Section 33. Section **31A-21-302** is amended to read:

2366 **31A-21-302. Premiums.**

2367 (1) Subject to Section 31A-21-310 and Subsection 31A-21-106(1), the policy shall
2368 clearly state the amount of the total premium or shall explain in detail how it is calculated.
2369 Any fee, charge, or other consideration that is not part of the premium shall be disclosed and
2370 explained in writing to the insured. The disclosure and explanation shall be clearly stated
2371 either on the policy, or on the insurer's billing to the insured. The premium need not be
2372 contained in a certificate issued under a group policy. This Subsection (1) does not preclude
2373 premium adjustments or changes upon the renewal or endorsement of an existing policy.
2374 However, the renewal or endorsement notice shall contain or be accompanied by a statement of
2375 the renewal or endorsement premium or credit.

2376 (2) Except as provided in Chapter [~~23~~] 23a, Insurance Marketing - Licensing
2377 Producers, Consultants, and Reinsurance Intermediaries, no person may charge or receive any
2378 consideration for the insurance policy which is not stated in Subsection (1).

2379 (3) No person may knowingly collect any excessive amount as a premium or any
2380 amount for insurance which is not in the course of processing. Any amount unknowingly
2381 collected shall be returned immediately on learning of the mistake. Prepayment of premiums
2382 pursuant to the policy is not an excessive collection. Insurance is in the course of processing if
2383 an application has been made for it which is being considered by the insurer, even though it has

2384 not yet been accepted or rejected.

2385 Section 34. Section **31A-21-305** is amended to read:

2386 **31A-21-305. Cancellation upon request of a premium finance company.**

2387 (1) As used in this section:

2388 (a) "Insurance premium finance company" means a person engaged in the business of
2389 entering into premium finance agreements.

2390 (b) "Premium finance agreement" means an agreement by which an insured or
2391 prospective insured promises to pay to an insurance premium finance company the amount
2392 advanced or to be advanced under the agreement to an insurer or to an insurance [~~agent or~~
2393 ~~broker~~] producer in payment of premiums on an insurance policy, together with a service
2394 charge, an interest charge, or both.

2395 (2) When a premium finance agreement contains a power of attorney or other authority
2396 enabling the insurance premium finance company to cancel any insurance policy listed in the
2397 agreement, the following applies:

2398 (a) Not less than ten days' written notice of the intent of the insurance premium finance
2399 company to order cancellation of the insurance policy, unless the policyholder's default is cured
2400 prior to the date stated in the notice, shall be delivered or mailed first-class to the policyholder.
2401 The insurance [~~agent or insurance broker~~] producer indicated on the premium finance
2402 agreement shall also be given the same notice.

2403 (b) Pursuant to the power of attorney or other authority, evidence of which is delivered
2404 to the insurer, the insurance premium finance company may order cancellation on behalf of the
2405 insured. This cancellation shall be effected by mailing to the insurer a written notice stating
2406 when the cancellation is effective. The insurance policy shall be cancelled as if the notice of
2407 cancellation had been given by the insured, but without requiring the return of the insurance
2408 policy. The insurance premium finance company shall also send a copy of the same notice to
2409 the insured at his last known address and to the insurance [~~agent or insurance broker~~] producer
2410 indicated on the premium finance agreement.

2411 (c) Where statutory, rule, or contractual restrictions provide that the insurance policy
2412 may not be cancelled unless notice is given to a governmental agency, mortgagee, or other third
2413 party, the insurer shall give the prescribed notice on behalf of itself or the insured to that
2414 governmental agency, mortgagee, or other third party within a reasonable time after the day it

2415 receives the notice of cancellation from the premium finance company. When any statutory,
2416 rule, or contractual restrictions require the continuation of insurance beyond the effective date
2417 of cancellation specified by the premium finance company, the insurance is limited to the
2418 coverage required by those restrictions and to the persons those restrictions are designed to
2419 protect.

2420 (d) Whenever a financed insurance policy is cancelled, the insurer shall return any
2421 unearned premiums due under the insurance policy to the insurance premium finance company
2422 for the account of the insured, and this action by the insurer satisfies the insurer's obligations
2423 under the insurance policy which relate to the return of unearned premiums. If the crediting of
2424 return premiums to the account of the insured results in a surplus over the amount due from the
2425 insured, the premium finance company shall refund that excess to the insured if it exceeds \$5.

2426 (3) No filing of the premium finance agreement or recording of a premium finance
2427 transaction is necessary to perfect the validity of the agreement as a secured transaction as
2428 against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns.

2429 Section 35. Section **31A-21-404** is amended to read:

2430 **31A-21-404. Out-of-state insurers.**

2431 Any insurer extending mass marketed life or accident and health insurance under a
2432 group or blanket policy issued outside of this state to residents of this state shall, with respect
2433 to the mass marketed life or accident and health insurance policy:

2434 (1) comply with Sections [~~31A-23-302 and 31A-23-303~~] 31A-23a-402 and
2435 31A-23a-403 and Part III of Chapter 26; and

2436 (2) upon the commissioner's request, deliver to the commissioner a copy of any mass
2437 marketed life or accident and health insurance policy, certificates issued under these policies,
2438 and advertising material used in this state in connection with the policy.

2439 Section 36. Section **31A-23a-101**, which is renumbered from Section 31A-23-101 is
2440 renumbered and amended to read:

2441 **CHAPTER 23a. INSURANCE MARKETING - LICENSING PRODUCERS,**
2442 **CONSULTANTS, AND REINSURANCE INTERMEDIARIES**

2443 **Part 1. General Provisions**

2444 [~~31A-23-101~~]. **31A-23a-101. Purposes.**

2445 The purposes of this chapter include:

- 2446 (1) promoting the professional competence of insurance [~~agents, brokers, and~~
2447 producers, limited line producers, customer service representatives, consultants, managing
2448 general agents, and reinsurance intermediaries;
- 2449 (2) providing maximum freedom of marketing methods for insurance, consistent with
2450 the interests of the Utah public;
- 2451 (3) preserving and encouraging competition at the consumer level;
- 2452 (4) regulating insurance marketing practices in conformity with the general purposes of
2453 this title; [~~and~~]
- 2454 (5) governing the qualifications and procedures for the licensing of insurance
2455 producers[~~;~~], limited line producers, customer service representatives, consultants, managing
2456 general agents, and reinsurance intermediaries; and
- 2457 (6) promoting uniform licensing requirements between the several states.

2458 Section 37. Section **31A-23a-102**, which is renumbered from Section 31A-23-102 is
2459 renumbered and amended to read:

2460 ~~[31A-23-102].~~ **31A-23a-102. Definitions.**

2461 As used in this chapter:

2462 [~~(1) "Actuary" means a person who is a member in good standing of the American~~
2463 ~~Academy of Actuaries.]~~

2464 [~~(2) "Agency" means a person other than an individual, and includes a sole~~
2465 ~~proprietorship by which a natural person does business under an assumed name.]~~

2466 [~~(3) "Broker" means an insurance broker or any other person, firm, association, or~~
2467 ~~corporation that for any compensation, commission, or other thing of value acts or aids in any~~
2468 ~~manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf~~
2469 ~~of an insured other than itself.]~~

2470 [~~(4)~~ (1) "Bail bond [~~agent~~] producer" means [~~an individual~~] a person who:

2471 (a) is appointed by [an authorized bail bond];

2472 (i) a surety insurer [or appointed by a licensed] that issues bail bonds; or

2473 (ii) a bail bond surety company licensed under Chapter 35;

2474 (b) is designated to execute or countersign undertakings of bail in connection with
2475 judicial proceedings; and

2476 [~~(b)~~ (c) [who] receives or is promised money or other things of value for [~~this service]~~

2477 engaging in an act described in Subsection (1)(b).

2478 [~~(5) "Captive insurer" means:~~]

2479 [~~(a) an insurance company owned by another organization whose exclusive purpose is~~
2480 ~~to insure risks of the parent organization and affiliated companies; or]~~

2481 [~~(b) in the case of groups and associations, an insurance organization owned by the~~
2482 ~~insureds whose exclusive purpose is to insure risks of member organizations, group members,~~
2483 ~~and their affiliates.]~~

2484 [~~(6) "Controlled insurer" means a licensed insurer that is either directly or indirectly~~
2485 ~~controlled by a broker.]~~

2486 [~~(7) "Controlling broker" means a broker who either directly or indirectly controls an~~
2487 ~~insurer.]~~

2488 [~~(8) "Controlling person" means any person, firm, association, or corporation that~~
2489 ~~directly or indirectly has the power to direct or cause to be directed, the management, control,~~
2490 ~~or activities of a reinsurance intermediary.]~~

2491 [~~(9) (a) "Escrow" means:~~]

2492 [~~(i) a real estate settlement or real estate closing conducted by a third party pursuant to~~
2493 ~~the requirements of a written agreement between the parties in a real estate transaction; or]~~

2494 [~~(ii) a settlement or closing involving:~~]

2495 [~~(A) a mobile home;]~~

2496 [~~(B) a grazing right;]~~

2497 [~~(C) a water right; or]~~

2498 [~~(D) other personal property authorized by the commissioner.]~~

2499 [~~(b) "Escrow" includes the act of conducting a:]~~

2500 [~~(i) real estate settlement; or]~~

2501 [~~(ii) real estate closing.]~~

2502 (2) "Escrow" means a license subline of authority in conjunction with the title
2503 insurance line of authority that allows a person to conduct escrow as defined in Section
2504 31A-1-301.

2505 [~~(10)] (3) "Home state" means any state or territory of the United States or the District~~

2506 of Columbia in which an insurance producer:

2507 (a) maintains the insurance producer's principal:

2508 (i) place of residence; or
2509 (ii) place of business; and
2510 (b) is licensed to act as an insurance producer.
2511 ~~[(11)]~~ (4) "Insurer" is as defined in Section 31A-1-301, except the following persons or
2512 similar persons are not insurers for purposes of Part 6, ~~[Broker]~~ Producer Controlled Insurers:
2513 (a) all risk retention groups as defined in:
2514 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
2515 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
2516 (iii) Chapter 15, Part II, Risk Retention Groups Act;
2517 (b) all residual market pools and joint underwriting authorities or associations; and
2518 (c) all captive insurers.
2519 ~~[(12)]~~ (5) "License" is defined in Section 31A-1-301.
2520 ~~[(13) "Limited license" means a license that:]~~
2521 ~~[(a) is issued for a specific product of insurance; and]~~
2522 ~~[(b) limits an individual or agency to transact only for that product or insurance.]~~
2523 ~~[(14) "Limited line insurance" includes:]~~
2524 ~~[(a) bail bond;]~~
2525 ~~[(b) limited line credit insurance;]~~
2526 ~~[(c) legal expense insurance;]~~
2527 ~~[(d) motor club insurance;]~~
2528 ~~[(e) rental car-related insurance;]~~
2529 ~~[(f) travel insurance; and]~~
2530 ~~[(g) any other form of limited insurance that the commissioner determines by rule~~
2531 ~~should be designated a form of limited line insurance.]~~
2532 ~~[(15) "Limited line credit insurance" includes the following forms of insurance:]~~
2533 ~~[(a) credit life;]~~
2534 ~~[(b) credit accident and health;]~~
2535 ~~[(c) credit property;]~~
2536 ~~[(d) credit unemployment;]~~
2537 ~~[(e) involuntary unemployment;]~~
2538 ~~[(f) mortgage life;]~~

2539 ~~[(g) mortgage guaranty;]~~
2540 ~~[(h) mortgage accident and health;]~~
2541 ~~[(i) guaranteed automobile protection; and]~~
2542 ~~[(j) any other form of insurance offered in connection with an extension of credit that:]~~
2543 ~~[(i) is limited to partially or wholly extinguishing that credit obligation; and]~~
2544 ~~[(ii) the commissioner determines by rule should be designated as a form of limited~~
2545 ~~line credit insurance.]~~
2546 ~~[(16) "Limited line credit insurance producer" means a person who sells, solicits, or~~
2547 ~~negotiates one or more forms of limited line credit insurance coverage to individuals through a~~
2548 ~~master, corporate, group, or individual policy.]~~
2549 ~~[(17) "Limited lines insurance" includes:]~~
2550 ~~[(a) the lines of insurance listed in Subsection (14); or]~~
2551 ~~[(b) any other line of insurance that the commissioner considers necessary to recognize~~
2552 ~~in the public interest.]~~
2553 ~~[(18) "Limited lines producer" means a person authorized to sell, solicit, or negotiate~~
2554 ~~limited lines insurance.]~~
2555 ~~[(19)]~~ (6) (a) "Managing general agent" means any person, firm, association, or
2556 corporation that:
2557 (i) manages all or part of the insurance business of an insurer, including the
2558 management of a separate division, department, or underwriting office;
2559 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
2560 manager, or other similar term;
2561 (iii) with or without the authority, either separately or together with affiliates, directly
2562 or indirectly produces and underwrites an amount of gross direct written premium equal to, or
2563 more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer
2564 in any one quarter or year; and
2565 (iv) (A) adjusts or pays claims in excess of an amount determined by the
2566 commissioner; or
2567 (B) negotiates reinsurance on behalf of the insurer.
2568 (b) Notwithstanding Subsection (19)(a), the following persons may not be considered
2569 as managing general agent for the purposes of this chapter:

- 2570 (i) an employee of the insurer;
- 2571 (ii) a United States manager of the United States branch of an alien insurer;
- 2572 (iii) an underwriting manager that, pursuant to contract:
- 2573 (A) manages all the insurance operations of the insurer;
- 2574 (B) is under common control with the insurer;
- 2575 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 2576 (D) is not compensated based on the volume of premiums written; and
- 2577 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
- 2578 insurer or inter-insurance exchange under powers of attorney.

2579 ~~[(20)]~~ (7) "Negotiate" means the act of conferring directly with or offering advice

2580 directly to a purchaser or prospective purchaser of a particular contract of insurance concerning

2581 any of the substantive benefits, terms, or conditions of the contract if the person engaged in that

2582 act:

- 2583 (a) sells insurance; or
- 2584 (b) obtains insurance from insurers for purchasers.

2585 ~~[(21) "Personal lines" means property and casualty insurance coverage sold to~~

2586 ~~individuals and families for primarily noncommercial purposes.]~~

2587 ~~[(22) "Producer" means a person required to be licensed under the laws of this state to~~

2588 ~~sell, solicit, or negotiate insurance.]~~

2589 ~~[(23) "Qualified United States financial institution" means an institution that:]~~

2590 ~~[(a) is organized or, in the case of a United States office of a foreign banking~~

2591 ~~organization licensed, under the laws of the United States or any state;]~~

2592 ~~[(b) is regulated, supervised, and examined by United States federal or state authorities~~

2593 ~~having regulatory authority over banks and trust companies; and]~~

2594 ~~[(c) meets the standards of financial condition and standing that are considered~~

2595 ~~necessary and appropriate to regulate the quality of financial institutions whose letters of credit~~

2596 ~~will be acceptable to the commissioner as determined by:]~~

2597 ~~[(i) the commissioner; or]~~

2598 ~~[(ii) the Securities Valuation Office of the National Association of Insurance~~

2599 ~~Commissioners.]~~

2600 ~~[(24)]~~ (8) "Reinsurance intermediary" means a reinsurance intermediary-broker or a

2601 reinsurance intermediary-manager as these terms are defined in Subsections ~~[(25)]~~ (9) and
2602 ~~[(26)]~~ (10).

2603 ~~[(25)]~~ (9) "Reinsurance intermediary-broker" means a person other than an officer or
2604 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
2605 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
2606 or power to bind reinsurance on behalf of the insurer.

2607 ~~[(26)]~~ (10) (a) "Reinsurance intermediary-manager" means a person, firm, association,
2608 or corporation who:

2609 (i) has authority to bind or who manages all or part of the assumed reinsurance
2610 business of a reinsurer, including the management of a separate division, department, or
2611 underwriting office; and

2612 (ii) acts as an agent for the reinsurer whether the person, firm, association, or
2613 corporation is known as a reinsurance intermediary-manager, manager, or other similar term.

2614 (b) Notwithstanding Subsection ~~[(26)]~~ (10)(a), the following persons may not be
2615 considered reinsurance intermediary-managers for the purpose of this chapter with respect to
2616 the reinsurer:

2617 (i) an employee of the reinsurer;

2618 (ii) a United States manager of the United States branch of an alien reinsurer;

2619 (iii) an underwriting manager that, pursuant to contract:

2620 (A) manages all the reinsurance operations of the reinsurer;

2621 (B) is under common control with the reinsurer;

2622 (C) is subject to Chapter 16, Insurance Holding Companies; and

2623 (D) is not compensated based on the volume of premiums written; and

2624 (iv) the manager of a group, association, pool, or organization of insurers that:

2625 (A) engage in joint underwriting or joint reinsurance; and

2626 (B) are subject to examination by the insurance commissioner of the state in which the
2627 manager's principal business office is located.

2628 ~~[(27)] "Reinsurer" means any person, firm, association, or corporation duly licensed in
2629 this state as an insurer with the authority to assume reinsurance.]~~

2630 ~~[(28)]~~ (11) "Search" means a license ~~[category]~~ subline of authority in conjunction with
2631 the title insurance line of authority that allows a person to issue title insurance commitments or

2632 policies on behalf of a title insurer.

2633 ~~[(29)]~~ (12) "Sell" means to exchange a contract of insurance:

2634 (a) by any means;

2635 (b) for money or its equivalent; and

2636 (c) on behalf of an insurance company.

2637 ~~[(30)]~~ (13) "Solicit" means~~[-(a)]~~ attempting to sell ~~[insurance; or];~~

2638 ~~[(b) asking or urging a person to apply:]~~

2639 ~~[(i) for]~~ (a) a particular kind of insurance; and

2640 ~~[(ii)]~~ (b) from a particular insurance company.

2641 ~~[(31) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5)~~

2642 ~~to place insurance with unauthorized insurers in accordance with Section 31A-15-103.]~~

2643 ~~[(32)]~~ (14) "Terminate" means:

2644 (a) the cancellation of the relationship between:

2645 (i) an insurance producer; and

2646 (ii) a particular insurer; or

2647 (b) the termination of the producer's authority to transact insurance on behalf of a

2648 particular insurance company.

2649 ~~[(33)]~~ (15) "Title marketing representative" means a person who:

2650 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

2651 (i) title insurance; or

2652 (ii) escrow services; and

2653 (b) does not have a search or escrow license as provided in Section ~~[31A-23-204]~~

2654 31A-23a-106.

2655 ~~[(34) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.]~~

2656 ~~[(35)]~~ (16) "Uniform application" means the version of the National Association of

2657 Insurance Commissioner's uniform application for resident and nonresident producer licensing

2658 at the time the application is filed.

2659 ~~[(36)]~~ (17) "Uniform business entity application" means the version of the National

2660 Association of Insurance Commissioner's uniform business entity application for resident and

2661 nonresident business entities at the time the application is filed.

2662 Section 38. Section **31A-23a-103**, which is renumbered from Section 31A-23-201 is

2663 renumbered and amended to read:

2664 ~~[31A-23-201].~~ **31A-23a-103. Requirement of license.**

2665 (1) (a) Unless exempted from the licensing requirement under Section ~~[31A-23-201.5]~~
 2666 31A-23a-201 or ~~[31A-23-214]~~ 31A-23a-207, a person may not perform, offer to perform, or
 2667 advertise any service as ~~[an agent, broker, or]~~ a producer, limited line producer, customer
 2668 service representative, consultant, managing general agent, or reinsurance intermediary in Utah,
 2669 without a valid individual or agency license issued under ~~[Section 31A-23-203]~~ this chapter.

2670 (b) A valid license includes at least one license type and one line of authority
 2671 pertaining to that license type.

2672 ~~[(b)]~~ (c) A person may not utilize the services of another as ~~[an]~~ a producer, limited
 2673 line producer, customer service representative, consultant, managing general agent, [broker,] or
 2674 [consultant] reinsurance intermediary if that person knows or should know that the other does
 2675 not have a license as required by law.

2676 (2) This part may not be construed to require an insurer to obtain an insurance producer
 2677 license.

2678 (3) An insurance contract is not invalid as a result of a violation of this section.

2679 Section 39. Section **31A-23a-104**, which is renumbered from Section 31A-23-202 is
 2680 renumbered and amended to read:

2681 ~~[31A-23-202].~~ **31A-23a-104. Application for resident or nonresident**
 2682 **individual license -- Application for resident or nonresident agency license.**

2683 (1) (a) Subject to Subsection (2) ~~[the]~~ an application for ~~[a resident]~~ an individual
 2684 license as [an agent, a broker, or a] a producer, limited line producer, customer service
 2685 representative, consultant, managing general agent, or reinsurance intermediary shall be:

2686 (i) made to the commissioner on forms and in a manner the commissioner prescribes;
 2687 and

2688 (ii) accompanied by ~~[an applicable]~~ a license fee that is not refunded if the application
 2689 is denied~~[, and]~~ or, if incomplete, is never completed by the applicant.

2690 ~~[(b) the application for a nonresident license as an agent, a broker, or a consultant shall~~
 2691 ~~be:]~~

2692 ~~[(i) made on the uniform application; and]~~

2693 ~~[(ii) accompanied by an applicable fee that is not refunded if the application is denied.]~~

2694 (b) Nonresident individual producer applicants may use the National Association of
2695 Insurance Commissioners Uniform Application for Individual Nonresident License.

2696 (2) An application described in Subsection (1)(a) shall provide:

2697 (a) information about the applicant's identity;

2698 (b) the applicant's[:(+)] Social Security number[;or];

2699 [~~(ii) federal employer identification number;~~]

2700 (c) the applicant's personal history, experience, education, and business record;

2701 (d) [~~if the applicant is a natural person,~~] whether the applicant is 18 years of age or
2702 older;

2703 (e) whether the applicant has committed an act that is a ground for denial, suspension,
2704 or revocation as set forth in Section [~~31A-23-216~~] 31A-23a-105 or 31A-23a-111; and

2705 (f) any other information the commissioner reasonably requires.

2706 (3) The commissioner may require any documents reasonably necessary to verify the
2707 information contained in an application.

2708 (4) The following [~~are private records under Subsection 63-2-302(1)(a)(vii), an~~
2709 ~~applicant's~~] information contained in an application filed under this section is a private record
2710 under Title 63, Chapter 2, Government Records Access and Management Act:

2711 (a) an applicant's Social Security number; or

2712 (b) an applicant's federal employer identification number.

2713 (5) (a) Subject to Subsection (5)(c) an application for an agency license as a producer,
2714 limited line producer, customer service representative, consultant, managing general agent, or
2715 reinsurance intermediary shall be:

2716 (i) made to the commissioner on forms and in a manner the commissioner prescribes;

2717 and

2718 (ii) accompanied by a license fee that is not refunded if the application is denied, or, if
2719 incomplete, is never completed by the applicant.

2720 (b) Nonresident producer agency applicants may use the National Association of
2721 Insurance Commissioners Uniform Application for Business Entity Nonresident
2722 License/Registration.

2723 (c) An application described in Subsection (5)(a) shall provide:

2724 (i) information about the applicant's identity;

- 2725 (ii) the applicant's federal employer identification number;
2726 (iii) the designated responsible licensed producer;
2727 (iv) the identity of all owners, partners, officers, and directors;
2728 (v) whether the applicant has committed an act that is a ground for denial, suspension,
2729 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and
2730 (vi) any other information the commissioner reasonably requires.
2731 (d) The commissioner may require any documents reasonably necessary to verify the
2732 information contained in an application.
2733 (e) An applicant's federal employer identification number is a private record under
2734 Subsection 63-2-302(1)(a)(vii).
2735 Section 40. Section **31A-23a-105**, which is renumbered from Section 31A-23-203 is
2736 renumbered and amended to read:
2737 **[31A-23-203]. 31A-23a-105. General requirements for individual and**
2738 **agency license issuance and renewal.**
2739 (1) The commissioner shall issue or renew a license to act as [~~an agent, broker, or~~] a
2740 producer, limited line producer, customer service representative, consultant, managing general
2741 agent, or reinsurance intermediary to any person who, as to the license type and line of
2742 authority classification applied for under Section [31A-23-204] 31A-23a-106:
2743 (a) has satisfied the character requirements under Section [~~31A-23-205~~] 31A-23a-107;
2744 (b) has satisfied any applicable continuing education requirements under Section
2745 [~~31A-23-206~~] 31A-23a-202;
2746 (c) has satisfied any applicable examination requirements under Section [~~31A-23-207~~]
2747 31A-23a-108;
2748 (d) has satisfied any applicable training period requirements under Section
2749 [~~31A-23-208~~] 31A-23a-203;
2750 (e) if a nonresident:
2751 (i) has complied with Section [~~31A-23-209~~] 31A-23a-109; and
2752 (ii) holds an active similar license in that person's state of residence;
2753 (f) [~~as to applicants~~] if an applicant for [licenses to act as] a title insurance [agents]
2754 producer license, has satisfied the requirements of [Section 31A-23-211] Sections
2755 31A-23a-203 and 31A-23a-204; and

2756 (g) has paid the applicable fees under Section 31A-3-103.

2757 (2) (a) This Subsection (2) applies to the following persons:

2758 (i) an applicant for a pending [~~producer's~~] individual or agency producer, limited line

2759 producer, customer service representative, consultant, managing general agent, or reinsurance

2760 intermediary license; or

2761 (ii) a licensed individual or agency producer, limited line producer, customer service

2762 representative, consultant, managing general agent, or reinsurance intermediary.

2763 (b) A person described in Subsection (2)(a) shall report to the commissioner:

2764 (i) any administrative action taken against the person:

2765 (A) in another jurisdiction; or

2766 (B) by another regulatory agency in this state; and

2767 (ii) any criminal prosecution taken against the person in any jurisdiction.

2768 (c) The report required by Subsection (2)(b) shall:

2769 (i) be filed:

2770 (A) at the time the person files the application for [~~a producer's~~] an individual or

2771 agency license; or

2772 (B) within 30 days of the initiation of an action or prosecution described in Subsection

2773 (2)(b); and

2774 (ii) include a copy of the complaint or other relevant legal documents related to the

2775 action or prosecution described in Subsection (2)(b).

2776 (3) (a) The department may request:

2777 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part

2778 2, from the Bureau of Criminal Identification; and

2779 (ii) complete Federal Bureau of Investigation criminal background checks through the

2780 national criminal history system.

2781 (b) Information obtained by the department from the review of criminal history records

2782 received under Subsection (3)(a) shall be used by the department for the purposes of:

2783 (i) determining if a person satisfies the character requirements under Section

2784 [~~31A-23-205~~] 31A-23a-107 for issuance or renewal of a license;

2785 (ii) determining if a person has failed to maintain the character requirements under

2786 Section [~~31A-23-205~~] 31A-23a-107; and

2787 (iii) preventing persons who violate the federal Violent Crime Control and Law
2788 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of
2789 insurance in the state.

2790 (c) If the department requests the criminal background information, the department
2791 shall:

2792 (i) pay to the Department of Public Safety the costs incurred by the Department of
2793 Public Safety in providing the department criminal background information under Subsection
2794 (3)(a)(i);

2795 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
2796 of Investigation in providing the department criminal background information under
2797 Subsection (3)(a)(ii); and

2798 (iii) charge the person applying for a license or for renewal of a license a fee equal to
2799 the aggregate of Subsections (3)(c)(i) and (ii).

2800 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this
2801 section, a person licensed as an insurance producer, limited line producer, customer service
2802 representative, consultant, managing general agent, or reinsurance intermediary in another state
2803 who moves to this state shall apply within 90 days of establishing legal residence in this state.

2804 Section 41. Section **31A-23a-106**, which is renumbered from Section 31A-23-204 is
2805 renumbered and amended to read:

2806 ~~[31A-23-204].~~ **31A-23a-106. License types.**

2807 A resident or nonresident license issued under this chapter shall be issued under the
2808 [~~classifications~~] license types described under Subsections (1) through [~~(6)~~] (7). [~~These~~
2809 ~~classifications~~] License types and lines of authority pertaining to each license type describe the
2810 type of licensee and the lines of business that licensee may sell, solicit, or negotiate. License
2811 types are intended to describe the matters to be considered under any education, examination,
2812 and training required of license applicants under Sections [~~31A-23-206 through 31A-23-208~~
2813 31A-23a-108, 31A-23a-202, and 31A-23a-203.

2814 (1) [~~An agent and broker~~] A producer license [classification] type includes the
2815 following lines of authority:

2816 (a) life insurance, including nonvariable contracts;

2817 (b) variable contracts, including variable life and annuity, if the producer has the life

2818 insurance line of authority;

2819 (c) accident and health insurance, including contracts issued to policyholders under
2820 Chapter 7 or 8;

2821 (d) property[~~/liability~~] insurance[~~, which includes:~~];

2822 [~~(i) property insurance;~~]

2823 [~~(ii) liability insurance;~~]

2824 [~~(iii)~~] (e) casualty insurance, including surety and other bonds; [~~and~~]

2825 [~~(iv) policies containing any combination of these coverages;~~]

2826 [~~(e)~~] (f) title insurance under one or more of the following categories:

2827 (i) search, including authority to act as a title marketing representative;

2828 (ii) escrow, including authority to act as a title marketing representative;

2829 (iii) search and escrow, including authority to act as a title marketing representative;

2830 and

2831 (iv) title marketing representative only;

2832 [~~(f)~~] (g) workers' compensation insurance; [~~and~~]

2833 [~~(g)~~] (h) personal lines insurance; and

2834 (i) surplus lines, if the producer has the property or casualty or both lines of authority.

2835 (2) A limited line producer license [~~classification~~] type includes the following limited
2836 lines of authority:

2837 (a) limited line credit insurance;

2838 (b) travel insurance;

2839 (c) motor club insurance;

2840 (d) car rental related insurance;

2841 (e) legal expense insurance; and

2842 (f) bail bond [~~agent; and~~] producer.

2843 [~~(g) customer service representative.~~]

2844 (3) A [~~consultant~~] customer service representative license [~~classification~~] type includes
2845 the following lines of authority, if held by the customer service representative's employer

2846 producer:

2847 (a) life insurance, including nonvariable contracts;

2848 [~~(b) variable contracts;~~]

- 2849 ~~[(e)]~~ (b) accident and health insurance, including contracts issued to policyholders
2850 under Chapter 7 or 8;
- 2851 ~~[(d)]~~ (c) property~~[/liability] insurance~~~~[, which includes:];~~
2852 (d) casualty insurance, including surety and other bonds;
2853 ~~[(i) property insurance;]~~
2854 ~~[(ii) liability insurance;]~~
2855 ~~[(iii) surety and other bonds; and]~~
2856 ~~[(iv) policies containing any combination of these coverages; and]~~
2857 (e) workers' compensation insurance[-];
2858 (f) personal lines insurance; and
2859 (g) surplus lines, if the employer producer has the property or casualty or both lines of
2860 authority.
- 2861 (4) A consultant license type includes the following lines of authority:
2862 (a) life insurance, including nonvariable contracts;
2863 (b) variable contracts, including variable life and annuity, if the consultant has the life
2864 insurance line of authority;
- 2865 (c) accident and health insurance, including contracts issued to policyholders under
2866 Chapter 7 or 8;
- 2867 (d) property insurance;
2868 (e) casualty insurance, including surety and other bonds;
2869 (e) workers' compensation insurance; and
2870 (f) personal lines insurance.
- 2871 (5) A managing general agent license type includes the following lines of authority:
2872 (a) life insurance, including nonvariable contracts;
2873 (b) variable contracts, including variable life and annuity, if the managing general
2874 agent has the life insurance line of authority;
- 2875 (c) accident and health insurance, including contracts issued to policyholders under
2876 Chapter 7 or 8;
- 2877 (d) property insurance;
2878 (e) casualty insurance, including surety and other bonds;
2879 (f) workers' compensation insurance; and

2880 (g) personal lines insurance.

2881 (6) A reinsurance intermediary license type includes the following lines of authority:

2882 (a) life insurance, including nonvariable contracts;

2883 (b) variable contracts, including variable life and annuity, if the reinsurance

2884 intermediary has the life insurance line of authority;

2885 (c) accident and health insurance, including contracts issued to policyholders under

2886 Chapter 7 or 8;

2887 (d) property insurance;

2888 (e) casualty insurance, including surety and other bonds;

2889 (f) workers' compensation insurance; and

2890 (g) personal lines insurance.

2891 ~~[(4)]~~ (7) A holder of licenses under Subsections (1)~~[(a)], (4), (5), and [(1)(c)]~~ (6) has all
2892 qualifications necessary to act as a holder of a license under ~~[Subsection]~~ Subsections (2)~~[(a)]~~
2893 and (3).

2894 ~~[(5)(a) Upon satisfying the additional applicable requirements, a holder of a brokers~~
2895 ~~license may obtain a license to act as a surplus lines broker.]~~

2896 ~~[(b) A license to act as a surplus lines broker gives the holder the authority to arrange~~
2897 ~~insurance contracts with unauthorized insurers under Section 31A-15-103, but only as to the~~
2898 ~~types of insurance under Subsection (1) for which the broker holds a brokers license.]~~

2899 ~~[(6)]~~ (8) The commissioner may by rule recognize other ~~[agent, broker,]~~ producer,
2900 limited [license] line producer, [or] customer service representative, consultant [license
2901 classifications], managing general agent, or reinsurance intermediary lines of authority as to
2902 kinds of insurance not listed under Subsections (1)~~[(2), and (3)]~~ through (6).

2903 (9) The variable contracts, including variable life and annuity line of authority requires:

2904 (a) licensure as a registered agent or broker by the National Association of Securities
2905 Dealers (NASD); and

2906 (b) current registration with a securities broker/dealer.

2907 (10) A surplus lines producer is a producer who has a surplus lines line of authority.

2908 Section 42. Section **31A-23a-107**, which is renumbered from Section 31A-23-205 is
2909 renumbered and amended to read:

2910 ~~[31A-23-205].~~ **31A-23a-107. Character requirements.**

2911 Each applicant for a license under this chapter shall show to the commissioner that:

2912 (1) the applicant has the intent in good faith, to engage in the type of business that the
2913 license applied for would permit;

2914 (2) if a natural person, the applicant is competent and trustworthy; or, if the applicant is
2915 an agency, all the partners, directors, or principal officers or persons having comparable powers
2916 are trustworthy, and that it will transact business in such a way that all acts that may only be
2917 performed by a licensed ~~[agent]~~ producer, limited line producer, customer service
2918 representative, consultant, managing general agent, ~~[broker, surplus lines broker, or consultant]~~
2919 or reinsurance intermediary are performed exclusively by natural persons who are licensed
2920 under this chapter to transact that type of business and ~~[listed]~~ designated on the agency's
2921 license ~~[under Subsection 31A-23-212(1)(d)]~~;

2922 (3) the applicant intends to comply with Section ~~[31A-23-402]~~ 31A-23a-502; and

2923 (4) if a natural person, the applicant is at least 18 years of age.

2924 Section 43. Section **31A-23a-108**, which is renumbered from Section 31A-23-207 is
2925 renumbered and amended to read:

2926 ~~[31A-23-207]~~. **31A-23a-108. Examination requirements.**

2927 (1) (a) The commissioner may require applicants for any particular ~~[class of]~~ license
2928 type under Section ~~[31A-23-204]~~ 31A-23a-106 to pass ~~[an]~~ a line of authority examination as a
2929 requirement for a license, except that an examination may not be required of applicants for:

2930 (i) licenses under ~~[Subsection 31A-23-204]~~ Subsections 31A-23a-106(2) and (3); or

2931 (ii) other limited line license ~~[classifications]~~ lines of authority recognized by the
2932 commissioner by rule as provided in Subsection ~~[31A-23-204(6)]~~ 31A-23a-106(8).

2933 (b) The examination described in Subsection (1)(a):

2934 (i) shall reasonably relate to the ~~[specific classes]~~ line of authority for which it is
2935 prescribed; and

2936 (ii) may be administered by the commissioner or as otherwise specified by rule.

2937 (2) The commissioner shall waive the requirement of an examination for a nonresident
2938 applicant who:

2939 (a) applies for an insurance producer license in this state;

2940 (b) has been licensed for the same line of authority in another state; and

2941 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant

2942 applies for an insurance producer license in this state; or

2943 (ii) if the application is received within 90 days of the cancellation of the applicant's
2944 previous license:

2945 (A) the prior state certifies that at the time of cancellation, the applicant was in good
2946 standing in that state; or

2947 (B) the state's producer database records maintained by the National Association of
2948 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or
2949 subsidiaries, indicates that the producer is or was licensed in good standing for the line of
2950 authority requested.

2951 (3) ~~[(a) To become a resident licensee in accordance with Sections 31A-23-202 and~~
2952 ~~31A-23-203, a person licensed as an insurance producer in another state] A nonresident
2953 producer licensee who moves to this state ~~[shall make application]~~ and applies for a resident
2954 license within 90 days of establishing legal residence in this state shall be exempt from any line
2955 of authority examination that the producer was authorized on the producer's nonresident
2956 producer license, except where the commissioner determines otherwise by rule.~~

2957 ~~[(b) A person who becomes a resident licensee under Subsection (3)(a) may not be~~
2958 ~~required to meet precicensing education or examination requirements to obtain any line of~~
2959 ~~authority previously held in the prior state unless:]~~

2960 ~~[(i) the prior state would require a prior resident of this state to meet the prior state's~~
2961 ~~precicensing education or examination requirements to become a resident licensee; or]~~

2962 ~~[(ii) the commissioner imposes the requirements by rule.]~~

2963 (4) This section's requirement may only be applied to applicants who are natural
2964 persons.

2965 Section 44. Section **31A-23a-109**, which is renumbered from Section 31A-23-209 is
2966 renumbered and amended to read:

2967 ~~[31A-23-209].~~ **31A-23a-109. Nonresident jurisdictional agreement.**

2968 (1) (a) If a nonresident license applicant has a valid producer, limited line producer,
2969 customer service representative, consultant, managing general agent, or reinsurance
2970 intermediary license from the nonresident license applicant's home state and the conditions of
2971 Subsection (1)(b) are met, the commissioner shall:

2972 (i) waive ~~[any]~~ all license requirement for a license under this chapter; and

- 2973 (ii) issue the nonresident license applicant a nonresident [~~producer~~] license.
- 2974 (b) Subsection (1)(a) applies if:
- 2975 (i) the nonresident license applicant:
- 2976 (A) is licensed as a resident in the nonresident license applicant's home state at the time
- 2977 the nonresident license applicant applies for a nonresident producer, limited line producer,
- 2978 customer service representative, consultant, managing general agent, or reinsurance
- 2979 intermediary license;
- 2980 (B) has submitted the proper request for licensure;
- 2981 (C) has submitted to the commissioner:
- 2982 (I) the application for licensure that the nonresident license applicant submitted to the
- 2983 applicant's home state; or
- 2984 (II) a completed uniform application; and
- 2985 (D) has paid the applicable fees under Section 31A-3-103; and
- 2986 (ii) the nonresident license applicant's license in the applicant's home state is in good
- 2987 standing[~~;and~~].
- 2988 [~~(iii) the nonresident license applicant's home state awards nonresident producer~~
- 2989 ~~licenses to residents of this state on the same basis as this state awards licenses to residents of~~
- 2990 ~~that home state.~~]
- 2991 (2) A nonresident applicant applying under Subsection (1) shall in addition to
- 2992 complying with all license requirements for a license under this chapter execute, in a form
- 2993 acceptable to the commissioner, an agreement to be subject to the jurisdiction of the Utah
- 2994 commissioner and courts on any matter related to the applicant's insurance activities in this
- 2995 state, on the basis of:
- 2996 (a) service of process under Sections 31A-2-309 and 31A-2-310; or
- 2997 (b) service authorized:
- 2998 (i) in the Utah Rules of Civil Procedure; or
- 2999 (ii) under Section 78-27-25.
- 3000 (3) The commissioner may verify [~~the~~] a producer's licensing status through the
- 3001 producer database maintained by:
- 3002 (a) the National Association of Insurance Commissioners; or
- 3003 (b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

3004 (4) The commissioner may not assess a greater fee for an insurance license or related
3005 service to a person not residing in this state solely on the fact that the person does not reside in
3006 this state.

3007 Section 45. Section **31A-23a-110**, which is renumbered from Section 31A-23-212 is
3008 renumbered and amended to read:

3009 ~~[31A-23-212].~~ **31A-23a-110. Form and contents of license.**

3010 (1) Licenses issued under this chapter shall be in the form the commissioner prescribes
3011 and shall set forth:

3012 (a) the name, address, and telephone number of the licensee;

3013 (b) the license ~~[classifications]~~ types and lines of authority under Section ~~[31A-23-204]~~
3014 31A-23a-106;

3015 (c) the date of license issuance; and

3016 (d) any other information the commissioner considers necessary.

3017 (2) ~~[An insurance producer]~~ A licensee under this chapter doing business under any
3018 other name than the ~~[producer's]~~ licensee's legal name shall notify the commissioner prior to
3019 using the assumed name in this state.

3020 ~~[(3) (a) An agency shall be licensed as an agency if the agency acts as:]~~

3021 ~~[(i) an agent;]~~

3022 ~~[(ii) a broker;]~~

3023 ~~[(iii) a surplus lines broker;]~~

3024 ~~[(iv) a managing general agent; or]~~

3025 ~~[(v) a consultant.]~~

3026 ~~[(b) The agency license issued under Subsection (3)(a) shall set forth the names of all~~
3027 ~~natural persons licensed under this chapter who are authorized to act in those capacities for the~~
3028 ~~agency in this state.]~~

3029 ~~[(4) (a) So far as is practicable, the commissioner shall issue a single license to each~~
3030 ~~agent, broker, or consultant for a single fee.]~~

3031 ~~[(b) For purposes of the fee described in Subsection (4)(a), the less expensive license is~~
3032 ~~included within the most expensive license.]~~

3033 Section 46. Section **31A-23a-111**, which is renumbered from Section 31A-23-216 is
3034 renumbered and amended to read:

3035 ~~[31A-23-216].~~ **31A-23a-111. Termination of license.**

3036 (1) A license type issued under this chapter remains in force until:

3037 (a) ~~revoked[;] or suspended[; or limited under Subsection (2);(b) lapsed]~~ under

3038 Subsection ~~[(3)]~~ (4);

3039 ~~[(c)]~~ (b) surrendered to and accepted by the commissioner in lieu of administrative

3040 action; ~~[or]~~

3041 ~~[(d)]~~ (c) the licensee dies or is adjudicated incompetent as defined under:

3042 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3043 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

3044 Minors~~[-]~~;

3045 (d) lapsed under Section 31A-23a-113; or

3046 (e) voluntarily surrendered.

3047 (2) Lapsed or voluntarily surrendered licenses may be reinstated during the current

3048 license period.

3049 (3) A line of authority issued under this chapter remains in force until:

3050 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

3051 or

3052 (b) the supporting license type is revoked or suspended under Subsection (4) or

3053 voluntarily surrendered.

3054 ~~[(2)]~~ (4) (a) If the commissioner makes a finding under Subsection ~~[(2)]~~ (4)(b), after an

3055 adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the

3056 commissioner may:

3057 (i) revoke a license ~~[of an agent, broker, surplus lines broker, or consultant]~~ line of

3058 authority;

3059 (ii) suspend for a specified period of 12 months or less a license ~~[of an agent, broker,~~

3060 ~~surplus lines broker, or consultant]~~ or line of authority; or

3061 (iii) limit in whole or in part ~~[the]~~ a license ~~[of any agent, broker, surplus lines broker,~~

3062 ~~or consultant]~~ or line of authority.

3063 (b) The commissioner may take an action described in Subsection ~~[(2)]~~ (4)(a) if the

3064 commissioner finds that the licensee:

3065 (i) is unqualified for a license or line of authority under ~~[Section 31A-23-203]~~ Sections

- 3066 31A-23a-104 and 31A-23a-105;
- 3067 (ii) has violated:
- 3068 (A) an insurance statute;
- 3069 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 3070 (C) an order that is valid under Subsection 31A-2-201(4);
- 3071 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 3072 delinquency proceedings in any state;
- 3073 (iv) fails to pay any final judgment rendered against the person in this state within 60
- 3074 days after the day the judgment became final;
- 3075 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 3076 admitted insurers;
- 3077 (vi) is affiliated with and under the same general management or interlocking
- 3078 directorate or ownership as another insurance producer that transacts business in this state
- 3079 without a license;
- 3080 (vii) refuses to be examined or to produce its accounts, records, and files for
- 3081 examination;
- 3082 (viii) has an officer who refuses to:
- 3083 (A) give information with respect to the administrator's affairs; or
- 3084 (B) perform any other legal obligation as to an examination;
- 3085 (ix) provided information in the license application that is:
- 3086 (A) incorrect;
- 3087 (B) misleading;
- 3088 (C) incomplete; or
- 3089 (D) materially untrue;
- 3090 (x) has violated any insurance law, valid rule, or valid order of another state's insurance
- 3091 department;
- 3092 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3093 (xii) has improperly withheld, misappropriated, or converted any monies or properties
- 3094 received in the course of doing insurance business;
- 3095 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3096 (A) insurance contract; or

3097 (B) application for insurance;

3098 (xiv) has been convicted of a felony;

3099 (xv) has admitted or been found to have committed any insurance unfair trade practice

3100 or fraud;

3101 (xvi) in the conduct of business in this state or elsewhere has:

3102 (A) used fraudulent, coercive, or dishonest practices; or

3103 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

3104 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in

3105 any other state, province, district, or territory;

3106 (xviii) has forged another's name to:

3107 (A) an application for insurance; or

3108 (B) any document related to an insurance transaction;

3109 (xix) has improperly used notes or any other reference material to complete an

3110 examination for an insurance license;

3111 (xx) has knowingly accepted insurance business from an individual who is not

3112 licensed;

3113 (xxi) has failed to comply with an administrative or court order imposing a child

3114 support obligation;

3115 (xxii) has failed to:

3116 (A) pay state income tax; or

3117 (B) comply with any administrative or court order directing payment of state income

3118 tax;

3119 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and

3120 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

3121 (xxiv) has engaged in methods and practices in the conduct of business that endanger

3122 the legitimate interests of customers and the public.

3123 (c) For purposes of this section, if a license is held by an agency, both the agency itself

3124 and any natural person named on the license are considered to be the holders of the license.

3125 (d) If a natural person named on the agency license commits any act or fails to perform

3126 any duty that is a ground for suspending, revoking, or limiting the natural person's license, the

3127 commissioner may suspend, revoke, or limit the license of:

3128 (i) the natural person;
3129 (ii) the agency, if the agency:
3130 (A) is reckless or negligent in its supervision of the natural person; or
3131 (B) knowingly participated in the act or failure to act that is the ground for suspending,
3132 revoking, or limiting the license; or
3133 (iii) (A) the natural person; and
3134 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
3135 ~~[(3) (a) Any license issued under this chapter shall lapse if the licensee fails:]~~
3136 ~~[(i) to pay when due a fee under Section 31A-3-103;]~~
3137 ~~[(ii) to complete continuing education requirements under Section 31A-23-206 before~~
3138 ~~submitting the license renewal application;]~~
3139 ~~[(iii) to submit a completed renewal application as required by Section 31A-23-202;~~
3140 ~~or]~~
3141 ~~[(iv) to submit additional documentation required to complete the licensing process as~~
3142 ~~related to a specific license type.]~~
3143 ~~[(b) A licensee whose license lapses due to military service or some other extenuating~~
3144 ~~circumstances such as long-term medical disability may request:]~~
3145 ~~[(i) reinstatement of the license; and]~~
3146 ~~[(ii) waiver of any of the following imposed for failure to comply with renewal~~
3147 ~~procedures:]~~
3148 ~~[(A) an examination requirement;]~~
3149 ~~[(B) a fine; or]~~
3150 ~~[(C) other sanction imposed for failure to comply with renewal procedures.]~~
3151 ~~[(c) The commissioner shall by rule prescribe the license renewal and reinstatement~~
3152 ~~procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.]~~
3153 ~~[(4)]~~ (5) A licensee under this chapter whose license is revoked, suspended, ~~[revoked;~~
3154 ~~or]~~ limited, surrendered in lieu of administrative action, lapsed, ~~[but]~~ or voluntarily
3155 surrendered, who continues to act as a licensee or violates the terms of the license limitation, is
3156 subject to the penalties for acting as a licensee without a license.
3157 ~~[(5)]~~ (6) ~~[Any person licensed in this state]~~ A licensee under this chapter shall
3158 immediately report to the commissioner:

3159 (a) a revocation, suspension, or [~~revocation~~] limitation of [~~that~~] the person's license in
3160 any other state, District of Columbia, or territory of the United States;

3161 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
3162 District of Columbia, or territory of the United States; and

3163 (c) a judgment or injunction entered against that person on the basis of conduct
3164 involving fraud, deceit, misrepresentation, or violation of an insurance law or rule.

3165 [~~(6)~~] (7) (a) An order revoking a license under Subsection [~~(2)~~] (4) may specify a time,
3166 not to exceed five years, within which the former licensee may not apply for a new license.

3167 (b) If no time is specified in an order revoking a license under Subsection [~~(2)~~] (4), the
3168 former licensee may not apply for a new license for five years without express approval by the
3169 commissioner.

3170 [~~(7)~~] (a) ~~Any person whose license is suspended or revoked under Subsection (2) shall,~~
3171 ~~when the suspension ends or a new license is issued, pay all fees that would have been payable~~
3172 ~~if the license had not been suspended or revoked, unless the commissioner by order waives the~~
3173 ~~payment of the interim fees.]~~

3174 [~~(b) If a new license is issued more than three years after the revocation of a similar~~
3175 ~~license, this Subsection (7) applies only to the fees that would have accrued during the three~~
3176 ~~years immediately following the revocation.]~~

3177 (8) The division shall promptly withhold, suspend, restrict, or reinstate the use of a
3178 license issued under this part if so ordered by a court.

3179 Section 47. Section **31A-23a-112**, which is renumbered from Section 31A-23-217 is
3180 renumbered and amended to read:

3181 [~~31A-23-217~~]. **31A-23a-112. Probation.**

3182 (1) The commissioner may place a licensee on probation for a period not to exceed 24
3183 months as follows:

3184 [~~(1) In~~] (a) After an adjudicative proceeding under Title 63, Chapter 46b,
3185 Administrative Procedures Act, for any circumstances that would justify a suspension under
3186 Section [~~31A-23-216, the~~] 31A-23a-111; or

3187 (b) at the issuance of a new license:

3188 (i) with an admitted violation under 18 U.S.C. Sections 1033 and 1034; or

3189 (ii) with a response to background information questions on any new license

3190 application indicating that:

3191 (A) the person has been convicted of a crime;

3192 (B) the person is currently charged with a crime, regardless of whether adjudication
3193 was withheld;

3194 (C) the person has been involved in an administrative proceeding regarding any
3195 professional or occupational license; or

3196 (D) any business in which the person is or was an owner, partner, officer, or director
3197 has been involved in an administrative proceeding regarding any professional or occupational
3198 license.

3199 (2) The commissioner may [~~instead, after a formal adjudicative proceeding,~~] put [~~the~~] a
3200 new licensee on probation for a specified period no longer than [~~24~~] 12 months if the licensee
3201 has admitted to violations under 18 U.S.C. Sections 1033 and 1034.

3202 [~~(2)~~] (3) The probation order shall state the conditions for retention of the license,
3203 which shall be reasonable.

3204 [~~(3)~~] (4) Any violation of the probation is grounds for revocation pursuant to any
3205 proceeding authorized under Title 63, Chapter 46b, Administrative Procedures Act.

3206 Section 48. Section **31A-23a-113** is enacted to read:

3207 **31A-23a-113. License lapse and voluntary surrender.**

3208 (1) (a) A license issued under this chapter shall lapse if the licensee fails:

3209 (i) to pay when due a fee under Section 31A-3-103;

3210 (ii) to complete continuing education requirements under Section 31A-23a-202 before
3211 submitting the license renewal application;

3212 (iii) to submit a completed renewal application as required by Section 31A-23a-104 or
3213 31A-23a-301; or

3214 (iv) to submit additional documentation required to complete the licensing process as
3215 related to a specific license type or line of authority.

3216 (b) A licensee whose license lapses due to military service or some other extenuating
3217 circumstances such as long-term medical disability may request:

3218 (i) reinstatement of the license; and

3219 (ii) waiver of any of the following imposed for failure to comply with renewal
3220 procedures:

- 3221 (A) an examination requirement;
3222 (B) reinstatement fees; or
3223 (C) other sanction imposed for failure to comply with renewal procedures.
3224 (2) If a license type or line of authority issued under this chapter is voluntarily
3225 surrendered, the license or line of authority may be reinstated during the current license period.
3226 (3) The commissioner shall by rule prescribe the license renewal and reinstatement
3227 procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
3228 Section 49. Section **31A-23a-114**, which is renumbered from Section 31A-23-218 is
3229 renumbered and amended to read:
3230 ~~[31A-23-218].~~ **31A-23a-114. Temporary individual or agency license --**
3231 **Trustee for terminated licensee's business.**
3232 (1) (a) The commissioner may issue a temporary [~~insurance producer~~] individual or
3233 agency license:
3234 (i) to a person listed in Subsection (1)(b):
3235 (A) if the commissioner considers that the temporary license is necessary:
3236 (I) for the servicing of an insurance business in the public interest; and
3237 (II) to provide continued service to the insureds who procured insurance in a
3238 circumstance described in Subsection (1)(b);
3239 (B) for a period not to exceed 180 days; and
3240 (C) without requiring an examination; or
3241 (ii) in any other circumstance:
3242 (A) if the commissioner considers the public interest will best be served by issuing the
3243 temporary license;
3244 (B) for a period not to exceed 180 days; and
3245 (C) without requiring an examination.
3246 (b) The commissioner may issue a temporary [~~insurance producer~~] individual or
3247 agency license in accordance with Subsection (1)(a) to:
3248 (i) the surviving spouse or court-appointed personal representative of a [~~licensed~~
3249 ~~insurance producer~~] licensee who dies or becomes mentally or physically disabled to allow
3250 adequate time for:
3251 (A) the sale of the insurance business owned by the [~~producer~~] licensee;

3252 (B) recovery or return of the [~~producer~~] licensee to the business; or
3253 (C) the training and licensing of new personnel to operate the [~~producer's~~] licensee's
3254 business;

3255 (ii) to a member or employee of a business entity licensed as an [~~insurance producer~~]
3256 agency upon the death or disability of an individual designated in:

3257 (A) the business entity application; or

3258 (B) the license; or

3259 (iii) the designee of a licensed [~~insurance producer~~] agency entering active service in
3260 the armed forces of the United States of America.

3261 (2) If a person's license is terminated under Section [~~31A-23-216~~] 31A-23a-111 or
3262 31A-23a-113, the commissioner may appoint a trustee to provide in the public interest
3263 continuing service to the insureds who procured insurance through the person whose license is
3264 terminated:

3265 (a) at the request of the person whose license is terminated; or

3266 (b) upon the commissioner's own initiative.

3267 (3) This section does not apply if the deceased or disabled [~~agent or broker~~] licensee
3268 does not or did not own any ownership interest in the accounts and associated expiration lists
3269 that were previously serviced by the [~~agent or broker~~] licensee.

3270 (4) (a) A person issued a temporary license under Subsection (1) receives the license
3271 and shall perform the duties under the license subject to the commissioner's authority to:

3272 (i) require a temporary licensee to have a suitable sponsor who:

3273 (A) is a [~~licensed producer~~] licensee; and

3274 (B) assumes responsibility for all acts of the temporary licensee; or

3275 (ii) impose other requirements that are:

3276 (A) designed to protect the insureds and the public; and

3277 (B) similar to the condition described in Subsection (4)(a)(i).

3278 (b) A trustee appointed under Subsection (2) shall be appointed and perform the
3279 trustee's duties subject to the terms and conditions described in Subsections (4)(b)(i) through
3280 (vi).

3281 (i) (A) A trustee appointed under Subsection (2) shall be licensed under this chapter to
3282 perform the services required by the trustor's clients.

3283 (B) When possible, the commissioner shall appoint a trustee who is no longer actively
3284 engaged on the trustee's own behalf in business as ~~[an agent or broker]~~ a licensee.

3285 (C) The commissioner shall only select a person to act as trustee who is trustworthy
3286 and competent to perform the necessary services.

3287 (ii) (A) If the deceased, disabled, or unlicensed person for whom the trustee is acting
3288 was ~~[an agent]~~ a producer, the insurers through which the former ~~[agent's]~~ producer's business
3289 was written shall cooperate with the trustee in allowing the trustee to service the policies
3290 written through the insurer.

3291 (B) The trustee shall abide by the terms of the agency agreement between the former
3292 ~~[agent]~~ producer and the issuing insurer, except that terms in those agreements terminating the
3293 agreement upon the death, disability, or license termination of the former ~~[agent]~~ producer do
3294 not bar the trustee from continuing to act under the agreement.

3295 (iii) (A) The commissioner shall set the trustee's compensation, which:

3296 (I) may be stated in terms of a percentage of commissions; and

3297 (II) shall be equitable.

3298 (B) The compensation shall be paid exclusively from:

3299 (I) the commissions generated by the former ~~[agent or broker's]~~ licensee's insurance
3300 accounts serviced by the trustee; and

3301 (II) other funds the former ~~[agent or broker]~~ licensee or the ~~[agent's or broker's]~~
3302 licensee's successor in interest agree to pay.

3303 (C) The trustee has no special priority to commissions over the former ~~[agent or~~
3304 ~~broker's]~~ licensee's creditors.

3305 (iv) (A) The commissioner or the state may not be held liable for errors or omissions
3306 of:

3307 (I) the former ~~[agent or broker]~~ licensee; or

3308 (II) the trustee.

3309 (B) The trustee may not be held liable for errors and omissions that were caused in any
3310 material way by the negligence of the former ~~[agent or broker]~~ licensee.

3311 (C) The trustee may be held liable for errors and omissions which arise solely from the
3312 trustee's negligence.

3313 (D) The trustee's compensation level shall be sufficient to allow the trustee to purchase

3314 errors and omissions coverage, if that coverage is not provided the trustee by:

3315 (I) the former [~~agent or broker~~] licensee; or

3316 (II) the [~~agent's or broker's~~] licensee's successor in interest.

3317 (v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's
3318 clients, either directly or indirectly.

3319 (B) The trustee may not purchase the accounts or expiration lists of the former [~~agent~~
3320 ~~or broker~~] licensee, unless the commissioner expressly ratifies the terms of the sale.

3321 (C) The commissioner may adopt rules that:

3322 (I) further define the trustee's fiduciary duties; and

3323 (II) explain how the trustee is to carry out the trustee's responsibilities.

3324 (vi) (A) The trust may be terminated by:

3325 (I) the commissioner; or

3326 (II) the person that requested the trust be established.

3327 (B) The trust is terminated by written notice being delivered to:

3328 (I) the trustee; and

3329 (II) the commissioner.

3330 (5) (a) The commissioner may by order:

3331 (i) limit the authority of any temporary licensee or trustee in any way the commissioner
3332 considers necessary to protect insureds and the public; and

3333 (ii) revoke a temporary license or trustee's appointment if the commissioner finds that
3334 the insureds or the public are endangered.

3335 (b) A temporary license or trustee's appointment may not continue after the owner or
3336 personal representative disposes of the business.

3337 Section 50. Section **31A-23a-115** is enacted to read:

3338 **31A-23a-115. Appointment and listing of individual and agency insurance**
3339 **producer, limited line producer, or managing general agent.**

3340 (1) (a) An insurer shall appoint a natural person or agency that has an insurance
3341 producer, limited line producer, or managing general agent license to act as an insurance
3342 producer, limited line producer, or managing general agent on its behalf prior to any producer,
3343 limited line producer, or managing general agent doing business for the insurer in this state.

3344 (b) All insurers shall report to the commissioner, at intervals and in the form the

3345 commissioner establishes by rule, all new appointments and all terminations of appointments.

3346 (c) All insurers shall submit to the commissioner on or before July 1 of each
3347 odd-numbered year a list of all appointments then in force in this state.

3348 (2) (a) An insurer shall report to the commissioner the cause of termination of an
3349 appointment. The information provided to the commissioner is a private record under Title 63,
3350 Chapter 2, Government Records Access and Management Act.

3351 (b) An insurer is immune from civil action, civil penalty, or damages if the insurer
3352 complies in good faith with this Subsection (2) in reporting to the commissioner the cause of
3353 termination of an appointment.

3354 (c) Notwithstanding any other provision in this section, an insurer is not immune from
3355 any action or resulting penalty imposed on the reporting insurer as a result of proceedings
3356 brought by or on behalf of the department if the action is based on evidence other than the
3357 report submitted in compliance with this Subsection (2).

3358 (3) If an insurer appoints an agency, the insurer need not appoint, report, or pay
3359 appointment reporting fees for natural persons designated on the agency's license under Section
3360 31A-23a-302.

3361 (4) (a) Each insurer shall maintain with the department a list of natural persons with
3362 authority to appoint and remove the company's producers, limited line producers, or managing
3363 general agents in this state on forms:

3364 (i) supplied by the department; and

3365 (ii) signed by any officer of the insurer.

3366 (b) The insurer shall submit the list required under Subsection (4)(a) to the
3367 commissioner pursuant to Subsection (1).

3368 (5) If an insurer lists a licensee in reports submitted under Subsection (2), there is a
3369 rebuttable presumption that in placing a risk with the insurer the appointed licensee or any of
3370 the licensee's licensed employees acted on behalf of the insurer.

3371 Section 51. Section **31A-23a-116**, which is renumbered from Section 31A-23-405 is
3372 renumbered and amended to read:

3373 ~~[31A-23-405].~~ **31A-23a-116. Services performed for unauthorized insurers.**

3374 (1) A person licensed under Chapter ~~[23]~~ 23a, Insurance Marketing - Licensing
3375 Producers, Consultants, and Reinsurance Intermediaries, may not perform any act that assists

3376 any person not authorized as an insurer to act as an insurer.

3377 (2) It is a violation of this section to assist any person purporting to be exempt from
3378 state insurance regulation under Section 514 of the Employee Retirement Income Security Act
3379 of 1974, unless that person has rebutted the presumption of jurisdiction under Section
3380 31A-1-105.

3381 (3) It is not a violation of this section:

3382 (a) to assist persons engaged in self insurance as defined under Section 31A-1-301; or

3383 (b) for a surplus lines ~~broker~~ producer to engage in the placement of insurance under
3384 Section 31A-15-103.

3385 Section 52. Section ~~31A-23a-201~~, which is renumbered from Section 31A-23-201.5 is
3386 renumbered and amended to read:

3387 **Part 2. Producers and Consultants**

3388 ~~[31A-23-201.5]~~. **31A-23a-201. Exceptions to producer licensing.**

3389 (1) The commissioner may not require a license as an insurance producer of:

3390 (a) an officer, director, or employee of an insurer or of an insurance producer if:

3391 (i) the officer, director, or employee does not receive any commission on a policy
3392 written or sold to insure risks residing, located, or to be performed in this state; and

3393 (ii) (A) the officer's, director's, or employee's activities are:

3394 (I) executive, administrative, managerial, clerical, or a combination of these activities;
3395 and

3396 (II) only indirectly related to the sale, solicitation, or negotiation of insurance;

3397 (B) the officer's, director's, or employee's function relates to:

3398 (I) underwriting;

3399 (II) loss control;

3400 (III) inspection; or

3401 (IV) the processing, adjusting, investigating or settling of a claim on a contract of
3402 insurance; or

3403 (C) (I) the officer, director, or employee is acting in the capacity of a special agent or
3404 agency supervisor assisting an insurance producer;

3405 (II) the officer's, director's, or employee's activities are limited to providing technical
3406 advice and assistance to a licensed insurance producer; and

- 3407 (III) the officer's, director's, or employee's activities do not include the sale, solicitation,
3408 or negotiation of insurance;
- 3409 (b) a person who:
- 3410 (i) is paid no commission for the services described in Subsection (1)(b)(ii); and
- 3411 (ii) secures and furnishes information for the purpose of:
- 3412 (A) group life insurance;
- 3413 (B) group property and casualty insurance;
- 3414 (C) group annuities;
- 3415 (D) group or blanket accident and health insurance;
- 3416 (E) enrolling individuals under plans;
- 3417 (F) issuing certificates under plans; or
- 3418 (G) otherwise assisting in administering plans;
- 3419 (c) a person who:
- 3420 (i) is paid no commission for the services described in Subsection (1)(c)(ii); and
- 3421 (ii) performs administrative services related to mass marketed property and casualty
3422 insurance;
- 3423 (d) (i) any of the following if the conditions of Subsection (1)(d)(ii) are met:
- 3424 (A) an employer or association; or
- 3425 (B) an officer, director, employee, or trustee of an employee trust plan;
- 3426 (ii) a person listed in Subsection (1)(d)(i):
- 3427 (A) to the extent that the employer, officer, employee, director, or trustee is engaged in
3428 the administration or operation of a program of employee benefits for:
- 3429 (I) the employer's or association's own employees; or
- 3430 (II) the employees of a subsidiary or affiliate of an employer or association;
- 3431 (B) the program involves the use of insurance issued by an insurer; and
- 3432 (C) the employer, association, officer, director, employee, or trustee is not in any
3433 manner compensated, directly or indirectly, by the company issuing the contract;
- 3434 (e) an employee of an insurer or organization employed by an insurer who:
- 3435 (i) is engaging in:
- 3436 (A) the inspection, rating, or classification of risks; or
- 3437 (B) the supervision of the training of insurance producers; and

- 3438 (ii) is not individually engaged in the sale, solicitation, or negotiation of insurance;
- 3439 (f) a person whose activities in this state are limited to advertising:
- 3440 (i) without the intent to solicit insurance in this state;
- 3441 (ii) through communications in mass media including:
- 3442 (A) a printed publication; or
- 3443 (B) a form of electronic mass media;
- 3444 (iii) that is distributed to residents outside of the state; and
- 3445 (iv) if the person does not sell, solicit, or negotiate insurance that would insure risks
- 3446 residing, located, or to be performed in this state;
- 3447 (g) a person who:
- 3448 (i) is not a resident of this state;
- 3449 (ii) sells, solicits, or negotiates a contract of insurance:
- 3450 (A) for commercial property and casualty risks to an insured with risks located in more
- 3451 than one state insured under that contract; and
- 3452 (B) insures risks located in a state in which the person is licensed as provided in
- 3453 Subsection (1)(g)(iii); and
- 3454 (iii) is licensed as an insurance producer to sell, solicit, or negotiate that insurance in
- 3455 the state where the insured maintains its principal place of business; or
- 3456 (h) if the employee does not sell, solicit, or receive a commission for a contract of
- 3457 insurance, a salaried full-time employee who counsels or advises the employee's employer
- 3458 relating to the insurance interests of:
- 3459 (i) the employer; or
- 3460 (ii) a subsidiary or business affiliate of the employer.
- 3461 (2) The commissioner may by rule exempt a class of persons from the license
- 3462 requirement of Subsection [~~31A-23-201~~] 31A-23a-103(1) if:
- 3463 (a) the functions performed by the class of persons does not require:
- 3464 (i) special competence;
- 3465 (ii) special trustworthiness; or
- 3466 (iii) regulatory surveillance made possible by licensing; or
- 3467 (b) other existing safeguards make regulation unnecessary.
- 3468 Section 53. Section **31A-23a-202**, which is renumbered from Section 31A-23-206 is

3469 renumbered and amended to read:

3470 ~~[31A-23-206].~~ 31A-23a-202. **Continuing education requirements --**

3471 **Regulatory authority.**

3472 (1) The commissioner shall by rule prescribe the continuing education requirements for
3473 ~~[each class of agent's license under Subsection 31A-23-204(1), except that the commissioner~~
3474 ~~may not impose a continuing education requirement on a holder of a license under:]~~ a producer
3475 and a consultant.

3476 ~~[(a) Subsection 31A-23-204(2); or]~~

3477 ~~[(b) a license classification other than under Subsection 31A-23-204(2) that is~~
3478 ~~recognized by the commissioner by rule as provided in Subsection 31A-23-204(6).]~~

3479 (2) (a) The commissioner may not state a continuing education requirement in terms of
3480 formal education.

3481 (b) The commissioner may state a continuing education requirement in terms of
3482 classroom hours, or their equivalent, of insurance-related instruction received.

3483 (c) Insurance-related formal education may be a substitute, in whole or in part, for
3484 classroom hours, or their equivalent, required under Subsection (2)(b).

3485 (3) (a) The commissioner shall impose continuing education requirements in
3486 accordance with a two-year licensing period in which the licensee meets the requirements of
3487 this Subsection (3).

3488 ~~[(b) Except as provided in Subsection (3)(c), for a two-year licensing period described~~
3489 ~~in Subsection (3)(a) the commissioner shall require that the licensee for each line of authority~~
3490 ~~held by the licensee:]~~

3491 ~~[(i) receive five hours of continuing education; or]~~

3492 ~~[(ii) pass a line of authority continuing education examination.]~~

3493 ~~[(c) Notwithstanding Subsection (3)(b):]~~

3494 ~~[(i) the commissioner may not require continuing education for more than four lines of~~
3495 ~~authority held by the licensee;]~~

3496 ~~[(ii) the commissioner shall require:]~~

3497 ~~[(A) a minimum of:]~~

3498 ~~[(I) 12 hours of continuing education;]~~

3499 ~~[(II) passage of two line of authority continuing education examinations; or]~~

3500 ~~[(H) a combination of Subsections (3)(c)(ii)(A)(I) and (H);]~~
3501 ~~[(B) that the minimum continuing education requirement of Subsection (3)(c)(ii)(A)~~
3502 ~~include:]~~
3503 ~~[(I) at least five hours or one line of authority continuing education examination for~~
3504 ~~each line of authority held by the licensee not to exceed four lines of authority held by the~~
3505 ~~licensee; and]~~
3506 ~~[(H) three hours of ethics training.]~~
3507 ~~[(d) (i) If a licensee completes the licensee's continuing education requirement without~~
3508 ~~taking a line of authority continuing education examination, the licensee shall complete at least~~
3509 ~~1/2 of the required hours through classroom hours of insurance-related instruction.]~~
3510 ~~[(ii) The hours not completed through classroom hours in accordance with Subsection~~
3511 ~~(3)(d)(i) may be obtained through:]~~
3512 ~~[(A) home study;]~~
3513 ~~[(B) video tape;]~~
3514 ~~[(C) experience credit; or]~~
3515 ~~[(D) other method provided by rule.]~~
3516 ~~[(e) (i) A licensee may obtain continuing education hours at any time during the~~
3517 ~~two-year licensing period.]~~
3518 ~~[(ii) The licensee may not take a line of authority continuing education examination~~
3519 ~~more than 90 calendar days before the date on which the licensee's license is renewed.]~~
3520 ~~[(f) The commissioner shall make rules for the content and procedures for line of~~
3521 ~~authority continuing education examinations.]~~
3522 ~~[(g) (i) Beginning May 3, 1999, a licensee is exempt from continuing education~~
3523 ~~requirements under this section if:]~~
3524 ~~[(A) as of April 1, 1990, the licensee has completed 20 years of licensure in good~~
3525 ~~standing;]~~
3526 ~~[(B) the licensee requests an exemption from the department; and]~~
3527 ~~[(C) the department approves the exemption.]~~
3528 ~~[(ii) If the department approves the exemption under Subsection (3)(g)(i), the licensee~~
3529 ~~is not required to apply again for the exemption.]~~
3530 ~~[(h) A licensee with a variable contract line of authority is exempt from the~~

3531 requirement for continuing education for that line of authority so long as the:]
3532 ~~[(i) National Association of Securities Dealers requires continuing education for~~
3533 ~~licensees having a securities license; and]~~
3534 ~~[(ii) licensee complies with the National Association of Securities Dealers' continuing~~
3535 ~~education requirements for securities licensees.]~~
3536 ~~[(i) The commissioner shall, by rule:]~~
3537 ~~[(i) publish a list of insurance professional designations whose continuing education~~
3538 ~~requirements can be used to meet the requirements for continuing education under Subsection~~
3539 ~~(3)(c); and]~~
3540 ~~[(ii) authorize professional agent associations to:]~~
3541 ~~[(A) offer qualified programs for all classes of licenses on a geographically accessible~~
3542 ~~basis; and]~~
3543 ~~[(B) collect reasonable fees for funding and administration of the continuing education~~
3544 ~~program, subject to the review and approval of the commissioner.]~~
3545 ~~[(j) (i) The fees permitted under Subsection (3)(i)(ii) that are charged to fund and~~
3546 ~~administer the program shall reasonably relate to the costs of administering the program.]~~
3547 ~~[(ii) Nothing in this section prohibits a provider of continuing education programs or~~
3548 ~~courses from charging fees for attendance at courses offered for continuing education credit.]~~
3549 ~~[(iii) The fees permitted under Subsection (3)(i)(ii) that are charged for attendance at a~~
3550 ~~professional agent association program may be less for an association member, based on the~~
3551 ~~member's affiliation expense, but shall preserve the right of a nonmember to attend without~~
3552 ~~affiliation.]~~
3553 (b) The continuing education requirement shall require:
3554 (i) a minimum of 12 hours of continuing education;
3555 (ii) a maximum of 23 hours of continuing education;
3556 (iii) three hours of ethics continuing education; and
3557 (iv) for each line of authority authorized for a producer or consultant, not to exceed
3558 four lines of authority:
3559 (A) five hours of continuing education;
3560 (B) passing a line of authority examination; or
3561 (C) a combination of Subsections (3)(b)(iv)(A) and (B).

3562 (c) (i) If a licensee completes the licensee's continuing education requirement without
3563 taking a line of authority continuing education examination, the licensee shall complete at least
3564 half of the required hours through classroom hours of insurance-related instruction.

3565 (ii) The hours not completed through classroom hours in accordance with Subsection
3566 (2)(b) may be obtained through:

3567 (A) home study;

3568 (B) video recording;

3569 (C) experience credit; or

3570 (D) other methods provided by rule.

3571 (d) (i) A licensee may obtain continuing education hours at any time during the
3572 two-year licensing period.

3573 (ii) The licensee may not take a line of authority continuing education examination
3574 more than 90 calendar days before the date on which the licensee's license is renewed.

3575 (e) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
3576 commissioner shall adopt rules for the content and procedures for line of authority continuing
3577 education examinations.

3578 (f) (i) Beginning May 3, 1999, a licensee is exempt from continuing education
3579 requirements under this section if:

3580 (A) as of April 1, 1990, the licensee has completed 20 years of licensure in good
3581 standing;

3582 (B) the licensee requests an exemption from the department; and

3583 (C) the department approves the exemption.

3584 (ii) If the department approves the exemption under Subsection (3)(f)(i), the licensee is
3585 not required to apply again for the exemption.

3586 (g) A licensee with a variable contract line of authority is exempt from the requirement
3587 for continuing education for that line of authority so long as the:

3588 (i) National Association of Securities Dealers requires continuing education for
3589 licensees having a securities license; and

3590 (ii) licensee complies with the National Association of Securities Dealers' continuing
3591 education requirements for securities licensees.

3592 (h) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

3593 commissioner shall, by rule:

3594 (i) publish a list of insurance professional designations whose continuing education
3595 requirements can be used to meet the requirements for continuing education under Subsection
3596 (3)(b); and

3597 (ii) authorize continuing education providers and professional producer or consultant
3598 associations to:

3599 (A) offer qualified programs for all license types and lines of authority on a
3600 geographically accessible basis; and

3601 (B) collect reasonable fees for funding and administration of the continuing education
3602 program, subject to the review and approval of the commissioner.

3603 (iii) The fees permitted under Subsection (3)(h)(ii)(B) that are charged for attendance
3604 at a professional producer or consultant association program may be less for an association
3605 member, based on the member's affiliation expense, but shall preserve the right of a
3606 nonmember to attend without affiliation.

3607 (4) The commissioner shall ~~[designate courses, including those presented by insurers,]~~
3608 approve continuing education providers and continuing education courses which satisfy the
3609 requirements of this section.

3610 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
3611 commissioner shall by rule set the processes and procedures for continuing education provider
3612 registration and course approval.

3613 ~~[(5)]~~ (6) The requirements of this section apply only to ~~[applicants]~~ producers or
3614 consultants who are natural persons.

3615 ~~[(6)]~~ (7) A nonresident producer or consultant is considered to have satisfied this state's
3616 continuing education requirements if ~~[(a)]~~ the nonresident producer or consultant satisfies the
3617 nonresident producer's or consultant's home state's continuing education requirements for a
3618 licensed insurance producer~~[-and]~~ or consultant.

3619 ~~[(b) on the same basis as under this Subsection (6) the nonresident producer's home~~
3620 ~~state considers satisfaction of Utah's continuing education requirements for a producer as~~
3621 ~~satisfying the continuing education requirements of the home state.]~~

3622 Section 54. Section **31A-23a-203**, which is renumbered from Section 31A-23-208 is
3623 renumbered and amended to read:

3624 ~~[31A-23-208].~~ 31A-23a-203. Training period requirements.

3625 (1) A ~~[person is eligible to become a broker only if he has been an insurance agent in~~
3626 ~~this or another state in substantially the same license class for a period aggregating not less than~~
3627 ~~two years during the three]~~ producer is eligible to add the surplus lines of authority to the
3628 person's producer's license if the producer:

3629 (a) has passed the applicable examination;

3630 (b) has been a producer for at least three years during the four years immediately
3631 preceding the date of application~~[, or has been regularly employed for that period by an insurer~~
3632 ~~in a capacity which would provide the person with comparable preparation to act as an~~
3633 ~~insurance broker. For the surplus lines broker license class, the applicable period is three of the~~
3634 ~~last four years.]; and~~

3635 (c) has paid the applicable fee under Section 31A-3-303.

3636 (2) A person is eligible to become a consultant only if ~~[he]~~ the person has acted in a
3637 capacity ~~[which]~~ that would provide the person with preparation to act as an insurance
3638 consultant for a period aggregating not less than three years during the four years immediately
3639 preceding the date of application.

3640 (3) A title producer is eligible to become a title agency only if the title producer has
3641 been licensed as a title producer in the search and escrow categories for at least three years
3642 during the four years immediately preceding the date of application.

3643 ~~[(3)]~~ (4) The training periods required under this section apply only to natural persons
3644 applying for licenses under this chapter.

3645 Section 55. Section **31A-23a-204**, which is renumbered from Section 31A-23-211 is
3646 renumbered and amended to read:

3647 ~~[31A-23-211].~~ 31A-23a-204. Special requirements for title insurance
3648 producers.

3649 Title insurance ~~[agents]~~ producers shall be licensed in accordance with this chapter,
3650 with the additional requirements listed in this section.

3651 (1) (a) Every title insurance agency or ~~[agent]~~ producer appointed by an insurer shall
3652 maintain:

3653 (i) a fidelity bond;

3654 (ii) a professional liability insurance policy; or

- 3655 (iii) a financial protection:
- 3656 (A) equivalent to that described in Subsection (1)(a)(i) or (ii); and
- 3657 (B) that the commissioner considers adequate.
- 3658 (b) The bond or insurance required by this Subsection (1):
- 3659 (i) shall be supplied under a contract approved by the commissioner to provide
- 3660 protection against the improper performance of any service in conjunction with the issuance of
- 3661 a contract or policy of title insurance; and
- 3662 (ii) be in a face amount no less than \$50,000.
- 3663 (c) The commissioner may by rule exempt title insurance [agents] producers from the
- 3664 requirements of this Subsection (1) upon a finding that, and only so long as, the required policy
- 3665 or bond is generally unavailable at reasonable rates.
- 3666 (2) (a) (i) Every title insurance agency or [agent] producer appointed by an insurer shall
- 3667 maintain a reserve fund.
- 3668 (ii) The reserve fund required by this Subsection (2) shall be:
- 3669 (A) (I) composed of assets approved by the commissioner;
- 3670 (II) maintained as a separate account; and
- 3671 (III) charged as a reserve liability of the title insurance [agent] producer in determining
- 3672 the [agent's] producer's financial condition; and
- 3673 (B) accumulated by segregating 1% of all gross income received from the title
- 3674 insurance business.
- 3675 (iii) The reserve fund shall contain the accumulated assets for the immediately
- 3676 preceding ten years as defined in Subsection (2)(a)(ii).
- 3677 [~~(iii) Assets accumulated within the reserve fund for more than ten full years shall be:~~]
- 3678 (iv) That portion of the assets held in the reserve fund over ten years may be:
- 3679 (A) withdrawn from the reserve fund; and
- 3680 (B) restored to the income of the [agent] title insurance producer.
- 3681 [~~(iv)~~] (v) The title insurance [agent] producer may withdraw interest from the reserve
- 3682 fund related to the principal amount as it accrues.
- 3683 (b) (i) A disbursement may not be made from the reserve fund except as provided in
- 3684 Subsection (2)(a) unless the title insurance [agent] producer ceases doing business as a result
- 3685 of:

- 3686 (A) sale of assets;
- 3687 (B) merger of the [agent] producer with another [agent] producer;
- 3688 (C) termination of the [agent's] producer's license;
- 3689 (D) insolvency; or
- 3690 (E) any cessation of business by the [agent] producer.
- 3691 (ii) Any disbursements from the reserve fund may be made only to settle claims arising
- 3692 from the improper performance of the title insurance [agent] producer in providing services
- 3693 defined in Section [~~31A-23-307~~] 31A-23a-406.
- 3694 (iii) The commissioner shall be notified ten days before any disbursements from the
- 3695 reserve fund.
- 3696 (iv) The notice required by this Subsection (2)(b) shall contain:
- 3697 (A) the amount of claim;
- 3698 (B) the nature of the claim; and
- 3699 (C) the name of the payee.
- 3700 (c) (i) The reserve fund shall be maintained by the title insurance [agent] producer or
- 3701 the title insurance [agent's] producer's representative for a period of two years after the [agent]
- 3702 producer ceases doing business.
- 3703 (ii) Any assets remaining in the reserve fund at the end of the two years specified in
- 3704 Subsection (2)(c)(i) may be withdrawn and restored to the former [agent] producer.
- 3705 (3) Any examination for licensure shall include questions regarding the search and
- 3706 examination of title to real property.
- 3707 (4) A title insurance [agent] producer may not perform the functions of escrow unless
- 3708 the [agent] producer has been examined on the fiduciary duties and procedures involved in
- 3709 those functions.
- 3710 (5) The commissioner shall adopt rules outlining an examination that will satisfy this
- 3711 section.
- 3712 (6) A license may be issued to a title insurance [agent] producer who has qualified:
- 3713 (a) to perform only searches and examinations of title as specified in Subsection (3);
- 3714 (b) to handle only escrow arrangements as specified in Subsection (4); or
- 3715 (c) to act as a title marketing representative.
- 3716 (7) A person licensed to practice law in Utah is exempt from the requirements of

3717 Subsections (1) and (2) if that person issues 12 or ~~fewer~~ less policies in any 12-month period.

3718 (8) A person licensed to practice law in Utah, whether exempt under Subsection (7) or
3719 not, shall maintain a trust account separate from a law firm trust account for all title and real
3720 estate escrow transactions.

3721 Section 56. Section **31A-23a-205**, which is renumbered from Section 31A-23-211.5 is
3722 renumbered and amended to read:

3723 ~~[31A-23-211.5].~~ **31A-23a-205. Special requirements for bail bond producers**
3724 **and bail bond enforcement agents.**

3725 (1) As used in this section, "bail bond ~~[agent]~~ producer" and "bail enforcement agent"
3726 have the same definitions as in Section 31A-35-102.

3727 (2) A bail bond ~~[agent]~~ producer may not operate in this state without an appointment
3728 from one or more authorized bail bond surety insurers or licensed bail bond surety companies.

3729 (3) A bail bond enforcement agent may not operate in this state without an appointment
3730 from one or more licensed bail bond ~~[agents]~~ producers.

3731 Section 57. Section **31A-23a-206**, which is renumbered from Section 31A-23-211.7 is
3732 renumbered and amended to read:

3733 ~~[31A-23-211.7].~~ **31A-23a-206. Special requirements for variable contracts**
3734 **line of authority.**

3735 (1) Before applying for a variable contracts line of authority, ~~[an agent, broker,]~~ a
3736 producer or consultant shall be licensed under Section 61-1-3 as a:

3737 (a) broker-dealer; or

3738 (b) agent.

3739 (2) ~~[An agent's, broker's,]~~ A producer's or consultant's variable contracts line of
3740 authority is revoked on the day ~~[on which an agent's, broker's,]~~ the producer's or consultant's
3741 license under Section 61-1-3 is no longer valid.

3742 Section 58. Section **31A-23a-207**, which is renumbered from Section 31A-23-214 is
3743 renumbered and amended to read:

3744 ~~[31A-23-214].~~ **31A-23a-207. Registration of motor club agents.**

3745 (1) Subsection ~~[31A-23-207]~~ 31A-23a-103(1) does not apply to persons who sell no
3746 insurance products other than motor club service contracts, if those contracts provide only for
3747 those services described in Subsections 31A-11-102(1)(b) through (f), and personal accident

3748 insurance provided automatically with the purchase of the motor club contract.

3749 (2) Section 31A-11-110 applies to those persons in Subsection (1).

3750 (3) Subsection [~~31A-23-201~~] 31A-23a-103(1) applies to persons selling motor club
3751 contracts providing services in addition to those described under Subsections 31A-11-102(1)(b)
3752 through (1)(f).

3753 Section 59. Section **31A-23a-301** is enacted to read:

3754 **Part 3. Agencies**

3755 **31A-23a-301. Agency license.**

3756 An insurance organization shall be licensed as an agency if the insurance organization
3757 acts as:

3758 (1) a producer;

3759 (2) a limited line producer;

3760 (3) a consultant;

3761 (4) a managing general agent; or

3762 (5) a reinsurance intermediary.

3763 Section 60. Section **31A-23a-302**, which is renumbered from Section 31A-23-219 is
3764 renumbered and amended to read:

3765 [~~31A-23-219~~]. **31A-23a-302. Agency designations.**

3766 [(1) As used in this section, "insurer" includes a bail bond surety as defined in Section
3767 31A-35-102.]

3768 [(2)-(a)] (1) [An insurer shall appoint a natural person or agency that has an insurance
3769 agent or managing general agent] An agency shall designate a natural person that has a
3770 producer, limited line producer, customer service representative, consultant, managing general
3771 agent, or reinsurance intermediary license to act [as an insurance agent] on its behalf prior to
3772 [any agent] the licensee doing business for the [insurer in this state] agency.

3773 [(b)] (2) [All insurers] An agency shall report to the commissioner, at intervals and in
3774 the form the commissioner establishes by rule, all new [appointments] designations, all
3775 renewed designations, and all [terminations of appointments] terminated designations.

3776 [(c) All insurers shall submit to the commissioner on or before July 1 of each
3777 odd-numbered year a list of all agent appointments then in force in this state.]

3778 (3) (a) An [~~insurer~~] agency licensed under this chapter shall report to the commissioner

3779 the cause of termination of ~~[an agent's appointment]~~ a designation.

3780 (b) The information provided ~~[to]~~ the commissioner under Subsection (3)(a) shall
3781 remain confidential.

3782 ~~[(b)]~~ (c) An ~~[insurer]~~ agency is immune from civil action, civil penalty, or damages if
3783 the ~~[insurer]~~ agency complies in good faith with this Subsection (3) in reporting to the
3784 commissioner the cause of termination of ~~[agents' appointments]~~ a designation.

3785 ~~[(c)]~~ (d) Notwithstanding any other provision in this section, an ~~[insurer]~~ agency is not
3786 immune from any action or resulting penalty imposed on the reporting ~~[insurer]~~ agency as a
3787 result of proceedings brought by or on behalf of the department if the action is based on
3788 evidence other than the report submitted in compliance with this Subsection (3).

3789 ~~[(4) If an insurer appoints an agency as its agent, the insurer need not appoint, report,~~
3790 ~~or pay appointment reporting fees for natural person agents designated on the agency's agent's~~
3791 ~~license under Section 31A-23-212.]~~

3792 (4) An agency licensed under this chapter may act in the capacities for which it is
3793 licensed only through natural persons who are licensed under this chapter to act in the same
3794 capacities.

3795 ~~[(5) (a) Each insurer shall maintain with the department a list of natural persons with~~
3796 ~~authority to appoint and remove the company's agents in this state on forms:]~~

3797 ~~[(i) supplied by the department; and]~~

3798 ~~[(ii) signed by any officer of the insurer.]~~

3799 ~~[(b) The insurer shall submit the list required under Subsection (5)(a) to the~~
3800 ~~commissioner pursuant to Subsection (2).]~~

3801 (5) An agency licensed under this chapter shall report to the commissioner by rule the
3802 name of at least one natural person who has authority to act on behalf of the agency in all
3803 matters pertaining to compliance with this title and orders of the commissioner.

3804 (6) If an ~~[insurer lists]~~ agency designates a licensee ~~[as its agent]~~ in reports submitted
3805 under Subsection (2), there is a rebuttable presumption that ~~[in placing a risk with the insurer~~
3806 ~~the appointed licensee or any of the licensee's licensed employees acted as the insurer's agent~~
3807 ~~and not as a broker]~~ the designated licensee acted on behalf of the agency.

3808 Section 61. Section **31A-23a-401**, which is renumbered from Section 31A-23-301 is
3809 renumbered and amended to read:

Part 4. Marketing Practices

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~~[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

3841 renumbered and amended to read:

3842 ~~[31A-23-302].~~ 31A-23a-402. **Unfair marketing practices -- Communication**
3843 **-- Inducement -- Unfair Discrimination -- Coercion or intimidation -- Restriction on**
3844 **choice.**

3845 (1) (a) (i) Any of the following may not make or cause to be made any communication
3846 that contains false or misleading information, relating to an insurance contract, any insurer, or
3847 other licensee under this title, including information that is false or misleading because it is
3848 incomplete:

3849 (A) a person who is or should be licensed under this title;

3850 (B) an employee or ~~[agent]~~ producer of a person described in Subsection (1)(a)(i)(A);

3851 (C) a person whose primary interest is as a competitor of a person licensed under this
3852 title; and

3853 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

3854 (ii) As used in this Subsection (1), "false or misleading information" includes:

3855 (A) assuring the nonobligatory payment of future dividends or refunds of unused
3856 premiums in any specific or approximate amounts, but reporting fully and accurately past
3857 experience is not false or misleading information; and

3858 (B) with intent to deceive a person examining it, filing a report, making a false entry in
3859 a record, or wilfully refraining from making a proper entry in a record.

3860 (iii) ~~[An insurer or other]~~ A licensee under this title may not:

3861 (A) use any business name, slogan, emblem, or related device that is misleading or
3862 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
3863 already in business; or

3864 (B) use any advertisement or other insurance promotional material that would cause a
3865 reasonable person to mistakenly believe that a state or federal government agency:

3866 (I) is responsible for the insurance sales activities of the person;

3867 (II) stands behind the credit of the person;

3868 (III) guarantees any returns on insurance products of or sold by the person; or

3869 (IV) is a source of payment of any insurance obligation of or sold by the person.

3870 (iv) A person who is not an insurer may not assume or use any name that deceptively
3871 implies or suggests that it is an insurer.

3872 (v) A person other than persons licensed as health maintenance organizations under
3873 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
3874 itself.

3875 (b) If [~~an insurance agent or third party administrator~~] a licensee under this title
3876 distributes cards or documents, exhibits a sign, or publishes an advertisement that violates
3877 Subsection (1) (a), with reference to a particular insurer that the [~~agent~~] licensee represents, or
3878 for whom the [~~third party administrator~~] licensee processes claims, and if the cards, documents,
3879 signs, or advertisements are supplied or approved by that insurer, the [~~agent's or the third party~~
3880 ~~administrator's~~] licensee's violation creates a rebuttable presumption that the violation was also
3881 committed by the insurer.

3882 (2) (a) (i) [~~An insurer or~~] A licensee under this [~~chapter~~] title, or an officer or employee
3883 of [~~either~~] a licensee may not induce any person to enter into or continue an insurance contract
3884 or to terminate an existing insurance contract by offering benefits not specified in the policy to
3885 be issued or continued, including premium or commission rebates.

3886 (ii) An insurer may not make or knowingly allow any agreement of insurance that is
3887 not clearly expressed in the policy to be issued or renewed.

3888 (iii) This Subsection (2)(a) does not preclude:

3889 (A) insurers from reducing premiums because of expense savings;

3890 (B) the usual kinds of social courtesies not related to particular transactions; or

3891 (C) an insurer from receiving premiums under an installment payment plan.

3892 (b) [~~An agent, broker, or insurer~~] A licensee under this title may not absorb the tax
3893 under Section 31A-3-301.

3894 (c) (i) A title insurer or [~~agent~~] producer or any officer or employee of either may not
3895 pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to
3896 obtaining any title insurance business, any rebate, reduction, or abatement of any rate or charge
3897 made incident to the issuance of the insurance, any special favor or advantage not generally
3898 available to others, or any money or other consideration or material inducement.

3899 (ii) "Charge made incident to the issuance of the insurance" includes escrow charges,
3900 and any other services that are prescribed by the commissioner.

3901 (iii) An insured or any other person connected, directly or indirectly, with the
3902 transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer,

3903 employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly,
3904 any benefit referred to in Subsection (2)(c)(i).

3905 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
3906 different premiums or by offering different terms of coverage, except on the basis of
3907 classifications related to the nature and the degree of the risk covered or the expenses involved.

3908 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
3909 insured under a group, blanket, or franchise policy, and the terms of those policies are not
3910 unfairly discriminatory merely because they are more favorable than in similar individual
3911 policies.

3912 (4) (a) A person who is or should be licensed under this title, an employee [~~or agent~~] of
3913 that licensee or person who should be licensed, a person whose primary interest is as a
3914 competitor of a person licensed under this title, and one acting on behalf of any of these
3915 persons, may not commit or enter into any agreement to participate in any act of boycott,
3916 coercion, or intimidation that:

3917 (i) tends to produce:

3918 (A) an unreasonable restraint of the business of insurance; or

3919 (B) a monopoly in that business[-]; or

3920 (ii) results in an applicant purchasing or replacing an insurance contract.

3921 (b) A person found in violation of Subsection (4)(a) may be required to forfeit up to
3922 three times the per violation forfeitures in Section 31A-2-308.

3923 (5) (a) A person may not restrict in the choice of an insurer or [~~insurance agent or~~
3924 ~~broker~~] licensee under this chapter, another person who is required to pay for insurance as a
3925 condition for the conclusion of a contract or other transaction or for the exercise of any right
3926 under a contract. The person requiring the coverage may, however, reserve the right to
3927 disapprove the insurer or the coverage selected on reasonable grounds.

3928 (b) The form of corporate organization of an insurer authorized to do business in this
3929 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
3930 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
3931 declining an application for insurance.

3932 (6) A person may not make any charge other than insurance premiums and premium
3933 financing charges for the protection of property or of a security interest in property, as a

3934 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
3935 the lending of money on the security of an interest in the property.

3936 (7) (a) ~~[An agent]~~ A licensee under this title may not refuse or fail to return promptly
3937 all indicia of agency to the principal on demand.

3938 (b) A licensee whose license is suspended, limited, or revoked under Section
3939 31A-2-308, ~~[31A-23-216, or 31A-23-217]~~ 31A-23a-111, or 31A-23a-112 may not refuse or fail
3940 to return the license to the commissioner on demand.

3941 (8) A person may not engage in any other unfair method of competition or any other
3942 unfair or deceptive act or practice in the business of insurance, as defined by the commissioner
3943 by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an
3944 unfair inducement, or unreasonably restrain competition.

3945 Section 63. Section **31A-23a-403**, which is renumbered from Section 31A-23-303 is
3946 renumbered and amended to read:

3947 ~~[31A-23-303].~~ **31A-23a-403. Inherent unsuitability.**

3948 (1) If the commissioner finds after a hearing that a certain type of accident and health
3949 insurance, life insurance, or annuity product is inherently unsuitable for persons of certain ages
3950 or in certain conditions of health, the commissioner shall make a rule declaring the accident
3951 and health insurance, life insurance, or annuity product as inherently unsuitable for persons of
3952 certain ages or in certain conditions of health.

3953 (2) An accident and health insurance, life insurance, or annuity product that is subject
3954 to the rule may not be sold to a person for whom the product has been determined as inherently
3955 unsuitable unless that person purchasing the product signs a receipt acknowledging having
3956 received a statement that expresses that the product has been determined by the commissioner
3957 to be inherently unsuitable for persons of certain ages or in certain conditions of health.

3958 (3) Unless the insurer or its ~~[agent]~~ appointed licensee establishes that its sale of
3959 coverage is inconsistent with the rule made under Subsection (1) is due to excusable neglect,
3960 the purchaser may treat the sale as voidable, if acted upon by the insured within a two-year
3961 period from the date of sale.

3962 Section 64. Section **31A-23a-404**, which is renumbered from Section 31A-23-304 is
3963 renumbered and amended to read:

3964 ~~[31A-23-304].~~ **31A-23a-404. Extension of credit on premiums.**

3965 The extension of credit upon a premium by ~~[an agent or broker]~~ a licensee under this
3966 chapter to the insured, without interest for not exceeding 90 days from the effective date of the
3967 policy, or after that time with interest on the unpaid balance at not less than the legal rate under
3968 Section 15-1-1, is not a violation of Subsection ~~[31A-23-302]~~ 31A-23a-402(2). The
3969 installment or payroll deduction payment of premiums on policies issued under an insurer's
3970 mass marketing program is not an extension of credit.

3971 Section 65. Section **31A-23a-405**, which is renumbered from Section 31A-23-305 is
3972 renumbered and amended to read:

3973 ~~[31A-23-305].~~ **31A-23a-405. Insurer liability.**

3974 (1) As used in this section, "insurer" includes bail bond surety companies as defined in
3975 Section 31A-35-102.

3976 (2) There is a rebuttable presumption that every insurer is bound by any act of its
3977 ~~[agent]~~ appointed licensee performed in this state that is within the scope of the ~~[agent's]~~
3978 appointed licensee's actual (express or implied) or apparent authority, until the insurer has
3979 canceled the ~~[agent's]~~ appointed licensee's appointment and has made reasonable efforts to
3980 recover from the ~~[agent]~~ appointed licensee its policy forms and other indicia of agency.
3981 Reasonable efforts include a formal demand in writing for return of the indicia, and notice to
3982 the commissioner if the ~~[agent]~~ appointed licensee does not promptly comply with the demand.
3983 This Subsection (2) neither waives any common law defense available to insurers, nor
3984 precludes the insured from seeking redress against the ~~[agent]~~ appointed licensee individually
3985 or jointly against the insurer and ~~[agent]~~ licensee.

3986 (3) When a ~~[property/liability insurance agent]~~ licensee under this chapter with
3987 authority to bind more than one insurer on a particular risk agrees to bind coverage on a
3988 particular risk, but fails to outwardly indicate the insurer with which the risk is placed, and
3989 before the risk is placed with a particular insurer a loss occurs, if there is no conclusive
3990 admissible evidence indicating the insurer with which the ~~[agent]~~ licensee exercised his
3991 binding authority, a court may equitably apportion the loss among all insurers with which the
3992 ~~[agent]~~ licensee had binding authority as to the particular type of risk.

3993 Section 66. Section **31A-23a-406**, which is renumbered from Section 31A-23-307 is
3994 renumbered and amended to read:

3995 ~~[31A-23-307].~~ **31A-23a-406. Title insurance producer's business.**

3996 (1) A title insurance ~~[agent]~~ producer may ~~[engage in the]~~ do escrow ~~[business]~~
3997 involving real property transactions if all of the following exist:
3998 (a) the title insurance ~~[agent]~~ producer is ~~[properly]~~ licensed ~~[under this chapter]~~ with
3999 the title line of authority and the escrow subline of authority;
4000 (b) the title insurance ~~[agent]~~ producer is appointed by a title insurer authorized to do
4001 business in the state;
4002 (c) one or more of the following is to be issued as part of the transaction:
4003 (i) an owner's policy of title insurance; or
4004 (ii) a lender's policy of title insurance;
4005 (d) (i) all funds deposited with the ~~[agent]~~ producer in connection with any escrow:
4006 (A) are deposited:
4007 (I) in a federally insured financial institution; and
4008 (II) in a trust account that is separate from all other trust account funds that are not
4009 related to real estate transactions; and
4010 (B) are the property of the persons entitled to them under the provisions of the escrow;
4011 and
4012 (ii) are segregated escrow by escrow in the records of the ~~[agent]~~ producer;
4013 (e) earnings on funds held in escrow may be paid out of the escrow account to any
4014 person in accordance with the conditions of the escrow; and
4015 (f) the escrow does not require the ~~[agent]~~ producer to hold:
4016 (i) construction funds; or
4017 (ii) funds held for exchange under Section 1031, Internal Revenue Code.
4018 (2) Notwithstanding Subsection (1), a title insurance ~~[agent]~~ producer may engage in
4019 the escrow business if:
4020 (a) the escrow involves:
4021 (i) a mobile home;
4022 (ii) a grazing right;
4023 (iii) a water right; or
4024 (iv) other personal property authorized by the commissioner; and
4025 (b) the title insurance ~~[agent]~~ producer complies with all the requirements of this
4026 section except for the requirement of Subsection (1)(c).

- 4027 (3) Funds held in escrow:
- 4028 (a) are not subject to any debts of the [~~agent~~] producer;
- 4029 (b) may only be used to fulfill the terms of the individual escrow under which the funds
- 4030 were accepted; and
- 4031 (c) may not be used until all conditions of the escrow have been met.
- 4032 (4) Assets or property other than escrow funds received by [~~an agent~~] a producer in
- 4033 accordance with an escrow shall be maintained in a manner that will:
- 4034 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;
- 4035 and
- 4036 (b) otherwise comply with all general duties and responsibilities of a fiduciary or
- 4037 bailee.
- 4038 (5) (a) A check may not be drawn, executed or dated, or funds otherwise disbursed
- 4039 unless the segregated escrow account from which funds are to be disbursed contains a
- 4040 sufficient credit balance consisting of collected or cleared funds at the time the check is drawn,
- 4041 executed or dated, or funds are otherwise disbursed.
- 4042 (b) As used in this Subsection (5), funds are considered to be "collected or cleared,"
- 4043 and may be disbursed as follows:
- 4044 (i) cash may be disbursed on the same day the cash is deposited;
- 4045 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;
- 4046 (iii) the following may be disbursed on the day following the date of deposit:
- 4047 (A) a cashier's check;
- 4048 (B) a certified check;
- 4049 (C) a teller's check;
- 4050 (D) a U.S. Postal Service money order; and
- 4051 (E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and
- 4052 (iv) any other check or deposit may be disbursed:
- 4053 (A) within the time limits provided under the Expedited Funds Availability Act, 12
- 4054 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve
- 4055 System; or
- 4056 (B) upon written notification from the financial institution to which the funds have
- 4057 been deposited, that final settlement has occurred on the deposited item.

4058 (6) The title insurance [~~agent~~] producer shall maintain records of all receipts and
4059 disbursements of escrow funds.

4060 (7) The title insurance [~~agent~~] producer shall comply with:

4061 (a) Section [~~31A-23-310~~] 31A-23a-409; and

4062 (b) any rules adopted by the commissioner in accordance with Title 63, Chapter 46a,
4063 Utah Administrative Rulemaking Act, that govern escrows.

4064 Section 67. Section **31A-23a-407**, which is renumbered from Section 31A-23-308 is
4065 renumbered and amended to read:

4066 ~~[31A-23-308].~~ **31A-23a-407. Liability of title insurers for acts of title**
4067 **insurance producers.**

4068 Any title company, represented by one or more title insurance [~~agents~~] producers, is
4069 directly and primarily liable to others dealing with the title insurance [~~agents~~] producers for the
4070 receipt and disbursement of funds deposited in escrows with the title insurance [~~agents~~]
4071 producers in all those transactions where a commitment or binder for or policy or contract of
4072 title insurance of that title insurance company has been ordered, or a preliminary report of the
4073 title insurance company has been issued or distributed. This liability does not modify, mitigate,
4074 impair, or affect the contractual obligations between the title insurance [~~agents~~] producers and
4075 the title insurance company.

4076 Section 68. Section **31A-23a-408**, which is renumbered from Section 31A-23-309 is
4077 renumbered and amended to read:

4078 ~~[31A-23-309].~~ **31A-23a-408. Representations of agency.**

4079 No person may represent himself as [~~the agent~~] acting in behalf of an insurer unless a
4080 written agency contract is in effect giving the person authority from the insurer and the insurer
4081 has appointed that person [~~as its agent~~] to act in behalf of the insurer.

4082 Section 69. Section **31A-23a-409**, which is renumbered from Section 31A-23-310 is
4083 renumbered and amended to read:

4084 ~~[31A-23-310].~~ **31A-23a-409. Trust obligation for funds collected.**

4085 (1) Every [~~agent or broker~~] licensee is a trustee for all funds received or collected [~~as~~
4086 ~~an agent or broker~~] for forwarding to insurers or to insureds. Except for amounts necessary to
4087 pay bank charges, and except for funds paid by insureds and belonging in part to the [~~agent or~~
4088 ~~broker~~] licensee as fees or commissions, [~~an agent or broker~~] a licensee may not commingle

4089 trust funds with the ~~[agent or broker's]~~ licensee's own funds or with funds held in any other
4090 capacity. Except as provided under Subsection (4), every ~~[agent or broker]~~ licensee owes to
4091 insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to
4092 insurers or insureds through the ~~[agent or broker]~~ licensee. Unless the funds are sent to the
4093 appropriate payee by the close of the next business day after their receipt, the licensee shall
4094 deposit them in an account authorized under Subsection (2). Funds so deposited shall remain
4095 in an account authorized under Subsection (2) until sent to the appropriate payee.

4096 (2) Funds required to be deposited under Subsection (1) shall be deposited:

4097 (a) in a federally insured trust account with a financial institution located in this state;

4098 or

4099 (b) in some other account, approved by the commissioner by rule or order, providing
4100 safety comparable to federally insured trust accounts.

4101 (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the
4102 amount of the federal insurance on the accounts.

4103 (4) A trust account into which funds are deposited may be interest bearing. The
4104 interest accrued on the account may be paid to the ~~[agent or broker]~~ licensee, so long as the
4105 ~~[agent or broker]~~ licensee otherwise complies with this section and with the contract with the
4106 insurer.

4107 (5) A financial institution or other organization holding trust funds under this section
4108 may not offset or impound trust account funds against debts and obligations incurred by the
4109 ~~[agent or broker]~~ licensee.

4110 (6) Any licensee who, not being lawfully entitled thereto, diverts or appropriates any
4111 portion of the funds held under Subsection (1) to the licensee's own use, is guilty of theft under
4112 Title 76, Chapter 6, Part 4. Section 76-6-412 applies in determining the classification of the
4113 offense. Sanctions under Section 31A-2-308 also apply.

4114 Section 70. Section ~~31A-23a-410~~, which is renumbered from Section 31A-23-311 is
4115 renumbered and amended to read:

4116 ~~[31A-23-311]~~. 31A-23a-410. Insurer's liability if insured pays premium to a
4117 licensee or group policyholder.

4118 (1) Subject to Subsections (2) and (5), as between the insurer and the insured, the
4119 insurer is considered to have received the premium and is liable to the insured for losses

4120 covered by the insurance and for any unearned premiums upon cancellation of the insurance if
4121 an insurer, including a surplus lines insurer:

- 4122 (a) has assumed a risk; and
- 4123 (b) the premium for that insurance has been received by:
 - 4124 (i) ~~[an agent or broker]~~ a licensee who placed the insurance;
 - 4125 (ii) a group policyholder;
 - 4126 (iii) an employer who deducts part or all of the premium from an employee's wages or
4127 salary; or
 - 4128 (iv) an employer who pays all or part of the premium for an employee.

4129 (2) Subsection (1) does not apply if:

- 4130 (a) the insured pays ~~[an agent or broker]~~ a licensee, knowing the ~~[agent or broker]~~
4131 licensee does not intend to submit the premium to the insurer; or
- 4132 (b) the insured has premium withheld from the insured's wages or salary knowing the
4133 employer does not intend to submit it to the insurer.

4134 (3) In the case of an employer who has received the premium by deducting all or part
4135 of it from the wages or salaries of the certificate holders, the insurer may terminate its liability
4136 by giving certificate holders reasonable notice of coverage termination. The liability of the
4137 insurer for the losses covered by the insurance terminates at the later of:

- 4138 (a) the last day of the coverage period for which premium has been withheld by the
4139 employer; or
- 4140 (b) 15 days after the date the insurer mails actual notice to the certificate holder that
4141 coverage has terminated, but in the event the insurer fails to provide actual notice as required
4142 by this subsection, then the liability of the insurer for losses described in Subsection (1) shall
4143 terminate 45 days from the last date for which premium was received. While the insurer shall
4144 be liable for losses as herein provided, the provisions of this section apply only to apportion the
4145 liability for those losses described and do not operate to extend any insurance contract policy or
4146 coverage beyond its date of termination nor alter or amend provisions thereof.

4147 (4) Despite an employer's collection of premium under Subsection (1), the
4148 responsibility of an insurer to continue to cover the losses covered by the insurance to group
4149 policy certificate holders terminates upon the effective date of notice from the policyholder
4150 that:

4151 (a) coverage of a similar kind and quality has been obtained from another insurer; or
4152 (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage
4153 and has given the employees notice of the termination.

4154 (5) If the insurer is obligated to pay any claims pursuant to the provisions of this
4155 section, the [~~agent, broker,~~] licensee or employer who received the premium and failed to
4156 forward it shall be obligated to the insurer for the entire unpaid premium due under the policy
4157 of insurance together with reasonable expenses of suit and reasonable attorney's fees.

4158 (6) If, under an employee health insurance plan, an employee builds up credit for future
4159 coverage because the employee has not used the policy protection, or in some other way, the
4160 insurer is obligated to the employee for that future coverage earned while the policy was in full
4161 effect.

4162 Section 71. Section ~~31A-23a-411~~ is enacted to read:

4163 **31A-23a-411. Person's liability if premium received is not forwarded to the**
4164 **insurer.**

4165 (1) A person that knowingly fails to forward to the insurer a premium received from an
4166 applicant, policyholder, or certificate holder has committed insurance fraud under Subsection
4167 31A-31-103(1)(c).

4168 (2) A person that knowingly fails to forward to the insurer a premium collected from or
4169 on behalf of an insured employee under an insured employee benefit plan has committed
4170 insurance fraud under Subsection 31A-31-103(1)(c).

4171 Section 72. Section ~~31A-23a-412~~, which is renumbered from Section 31A-23-312 is
4172 renumbered and amended to read:

4173 [~~31A-23-312~~]. **31A-23a-412. Place of business and residence address --**
4174 **Records.**

4175 (1) (a) All licensees under this chapter shall register with the commissioner the address
4176 and telephone numbers of their principal place of business.

4177 (b) If the licensee is an individual, in addition to complying with Subsection (1)(a) the
4178 individual shall provide to the commissioner the individual's residence address and telephone
4179 number.

4180 (c) A licensee shall notify the commissioner[~~, in writing,~~] within 30 days of any change
4181 of address or telephone number.

4182 (2) (a) Except as provided under Subsection (3), every licensee under this chapter shall
4183 keep at the principal place of business address registered under Subsection (1), separate and
4184 distinct books and records of all transactions consummated under the Utah license.

4185 (b) The books and records described in Subsection (2)(a) shall:

4186 (i) be in an organized form;

4187 (ii) be available to the commissioner for inspection upon reasonable notice; and

4188 (iii) include all of the following:

4189 (A) if the licensee is ~~[an agent or broker]~~ a producer, limited line producer, consultant,
4190 managing general agent, or reinsurance intermediary:

4191 (I) a record of each insurance contract procured by or issued through the licensee, with
4192 the names of insurers and insureds, the amount of premium and commissions or other
4193 compensation, and the subject of the insurance;

4194 (II) the names of any other producers, limited line producers, consultants, managing
4195 general agents, or ~~[brokers]~~ reinsurance intermediaries from whom business is accepted, and of
4196 persons to whom commissions or allowances of any kind are promised or paid; and

4197 (III) a record of all consumer complaints forwarded to the licensee by an insurance
4198 regulator;

4199 (B) if the licensee is a consultant, a record of each agreement outlining the work
4200 performed and the fee for the work; and

4201 (C) any additional information which:

4202 (I) is customary for a similar business; or

4203 (II) may reasonably be required by the commissioner by rule.

4204 (3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can
4205 be obtained immediately from a central storage place or elsewhere by on-line computer
4206 terminals located at the registered address.

4207 (4) ~~[An agent]~~ A licensee who represents only a single insurer satisfies Subsection (2)
4208 if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying
4209 Subsections (1) and (5).

4210 (5) (a) The books and records maintained under Subsection (2) or Section
4211 ~~[31A-23-313]~~ 31A-23a-413 shall be available for the inspection of the commissioner during all
4212 business hours for a period of time after the date of the transaction as specified by the

4213 commissioner by rule, but in no case for less than the current calendar year plus three years.

4214 (b) Discarding books and records after the applicable record retention period has
4215 expired does not place the licensee in violation of a later-adopted longer record retention
4216 period.

4217 Section 73. Section **31A-23a-413**, which is renumbered from Section 31A-23-313 is
4218 renumbered and amended to read:

4219 ~~[31A-23-313].~~ **31A-23a-413. Title producer's annual report.**

4220 Every title insurance [agent] producer shall annually file with the commissioner, by a
4221 date and in a form the commissioner specifies by rule, a verified statement of the [agent's]
4222 producer's financial condition, transactions, and affairs as of the end of the preceding calendar
4223 year.

4224 Section 74. Section **31A-23a-414**, which is renumbered from Section 31A-23-314 is
4225 renumbered and amended to read:

4226 ~~[31A-23-314].~~ **31A-23a-414. Consultant's duty to report illegal insurance.**

4227 Section 31A-15-110 applies to a consultant's duty to report illegal insurance.

4228 Section 75. Section **31A-23a-415**, which is renumbered from Section 31A-23-315 is
4229 renumbered and amended to read:

4230 ~~[31A-23-315].~~ **31A-23a-415. Assessment on title insurance agencies or title**
4231 **insurers.**

4232 (1) For purposes of this section:

4233 (a) "Premium" is as defined in Subsection 59-9-101(3).

4234 (b) "Title insurer" means a person:

4235 (i) making any contract or policy of title insurance as:

4236 (A) insurer;

4237 (B) guarantor; or

4238 (C) surety;

4239 (ii) proposing to make any contract or policy of title insurance as:

4240 (A) insurer;

4241 (B) guarantor; or

4242 (C) surety; or

4243 (iii) transacting or proposing to transact any phase of title insurance, including:

- 4244 (A) soliciting;
- 4245 (B) negotiating preliminary to execution;
- 4246 (C) executing of a contract of title insurance;
- 4247 (D) insuring; and
- 4248 (E) transacting matters subsequent to the execution of the contract and arising out of
- 4249 the contract.

4250 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
4251 personal property located in Utah, an owner of real or personal property, the holders of liens or
4252 encumbrances on that property, or others interested in the property against loss or damage
4253 suffered by reason of:

4254 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
4255 property; or

4256 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

4257 (2) (a) Beginning on July 1, 1998, the insurance commissioner may assess each title
4258 insurer and each title insurance agency an annual assessment determined in accordance with
4259 this Subsection (2) to be used for the purposes described in Subsection (3).

4260 (b) A title insurance agency shall be assessed up to:

4261 (i) \$200 for the first office in each county in which the title insurance agency maintains
4262 an office; and

4263 (ii) \$100 for each additional office the title insurance agency maintains in the county
4264 described in Subsection (2)(b)(i).

4265 (c) A title insurer shall be assessed up to:

4266 (i) \$200 for the first office in each county in which the title insurer maintains an office;

4267 (ii) \$100 for each additional office the title insurer maintains in the county described in
4268 Subsection (2)(c)(i); and

4269 (iii) an amount calculated by:

4270 (A) aggregating the assessments imposed on:

4271 (I) title insurance agencies under Subsection (2)(b); and

4272 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

4273 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total
4274 costs and expenses determined under Subsection (2)(d); and

4275 (C) multiplying:

4276 (I) the amount calculated under Subsection (2)(c)(iii)(B); and

4277 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
4278 of the title insurer.

4279 (d) Notwithstanding Section 31A-3-103 and in accordance with Title 63, Chapter 46a,
4280 Utah Administrative Rulemaking Act, the department by rule shall establish the amount of
4281 costs and expenses described under Subsection (3) that will be covered by the assessment,
4282 except the costs or expenses to be covered by the assessment may not exceed \$75,000 annually.

4283 (3) All money received by the state under this section:

4284 (a) shall be deposited in the General Fund as a dedicated credit of the department; and

4285 (b) may be expended by the department only to pay for any cost or expense incurred by
4286 the department in the administration, investigation, and enforcement of Chapter [23] 23a, Parts
4287 [~~III and IV~~] 4 and 5, related to:

4288 (i) the marketing of title insurance; and

4289 (ii) audits of agencies.

4290 (4) The assessment imposed by this section shall be in addition to any premium
4291 assessment imposed under Subsection 59-9-101(3).

4292 Section 76. Section ~~31A-23a-416~~, which is renumbered from Section 31A-23-316 is
4293 renumbered and amended to read:

4294 ~~[31A-23-316].~~ **31A-23a-416. Solicitations to loan applicants.**

4295 (1) (a) A person authorized to engage in insurance activities in this state shall
4296 prominently disclose in writing the information described in Subsection (1)(b) to a person
4297 seeking an extension of credit if:

4298 (i) the person authorized to engage in insurance activities also extends credit directly or
4299 through a subsidiary or an affiliate;

4300 (ii) the person requires a customer to obtain insurance in connection with an extension
4301 of credit; and

4302 (iii) the person offers to the person seeking an extension of credit the line of credit
4303 insurance required in connection with the extension of credit.

4304 (b) The disclosure required by Subsection (1)(a) shall be in a form substantially similar
4305 to the following. "You may obtain insurance required in connection with your extension of

4306 credit from any insurance [agent, broker,] producer[;] or approved insurer that sells such
4307 insurance. Your choice of insurance provider will not affect our credit decision or your credit
4308 terms."

4309 (c) The person shall make the required disclosure under Subsection (1)(a):

4310 (i) at the time of written application for an extension of credit; or

4311 (ii) if there is no written application, before the closing of the extension of credit.

4312 (2) The disclosure required by Subsection (1)(c)(ii) may be in a verbal, electronic, or
4313 other unwritten form if a printed disclosure is included with the first printed statement of terms
4314 and conditions of the extension of credit sent to the person seeking the extension of credit.

4315 (3) This section does not apply when:

4316 (a) a person is contacting a person in the course of direct or mass marketing to a group
4317 of persons in a manner that bears no relation to the person's application for an extension of
4318 credit or credit decision; and

4319 (b) an agreement for the extension of credit is changed or extended, if the person who
4320 originally sought the extension of credit is not required to purchase new or additional
4321 insurance.

4322 (4) (a) For purposes of this section, "approved insurer" means an insurer that is
4323 approved to issue insurance related to the extension of credit by the person that extends the
4324 credit.

4325 (b) The commissioner shall make rules establishing standards that govern the approval
4326 under Subsection (4)(a) of an insurer by a person that extends credit.

4327 Section 77. Section **31A-23a-417**, which is renumbered from Section 31A-23-317 is
4328 renumbered and amended to read:

4329 ~~[31A-23-317].~~ **31A-23a-417. Financial services insurance activities**
4330 **regulation.**

4331 (1) It is the intent of the Legislature that the regulation of insurance activities of any
4332 person in this state be based on functional regulation principles established in the
4333 Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

4334 (2) The insurance activities of any person in this state shall be functionally regulated by
4335 the commissioner subject to Sections 104, 301-308, 501-507, and 509 of the
4336 Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

4337 (3) Under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
4338 commissioner may adopt rules consistent with Section 104(d) of the Gramm-Leach-Bliley Act
4339 of 1999, Pub. L. No. 106-102, and the functional regulation of insurance activities of any
4340 person otherwise subject to the jurisdiction of the commissioner in this state described in
4341 Subsection (2).

4342 (4) The commissioner shall consult and coordinate with the commissioner of the
4343 Department of Financial Institutions and the director of the Division of Securities for the
4344 purpose of assuring, to the extent possible, that the rules prescribed by the department are
4345 consistent and comparable with federal regulations governing the insurance, banking, and
4346 securities industries.

4347 Section 78. Section **31A-23a-501**, which is renumbered from Section 31A-23-401 is
4348 renumbered and amended to read:

4349 **Part 5. Compensation of Producers and Consultants**

4350 ~~[31A-23-401].~~ **31A-23a-501. Licensee compensation.**

4351 (1) As used in this section:

4352 (a) "Commission compensation" includes funds paid to or credited for the benefit of
4353 ~~[an agent or broker]~~ a licensee from:

4354 (i) commission amounts deducted from insurance premiums on insurance sold by or
4355 placed through the ~~[agent or broker]~~ licensee; or

4356 (ii) commission amounts received from an insurer~~[-]~~ or another ~~[agent, or a broker,~~
4357 ~~acting in their professional capacities;]~~ licensee as a result of the sale or placement of
4358 insurance.

4359 (b) (i) "Noncommission compensation" includes all funds paid to or credited for the
4360 benefit of ~~[an agent or broker]~~ a licensee other than commission compensation.

4361 (ii) "Noncommission compensation" does not include charges for pass-through costs
4362 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

4363 (c) "Pass-through costs" include:

4364 (i) costs for copying documents to be submitted to the insurer; and

4365 (ii) bank costs for processing cash or credit card payments.

4366 (2) ~~[(a) Except as provided in Subsection (3), no insurance agent or broker]~~ A licensee
4367 may receive[-, for acting as an agent or broker,] from an insured or from a person purchasing an

4368 insurance policy, ~~[compensation other than commission]~~ noncommission compensation if the
4369 noncommission compensation is stated on a separate, written disclosure.

4370 (a) The disclosure shall:

4371 (i) include the signature of the insured or prospective insured acknowledging the
4372 noncommission compensation;

4373 (ii) clearly specify the amount or extent of the noncommission compensation; and

4374 (iii) be provided to the insured or prospective insured before the performance of the
4375 service.

4376 (b) Noncommission compensation shall be:

4377 (i) limited to actual or reasonable expenses incurred for services; and

4378 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of
4379 business or for a specific service or services.

4380 (c) A copy of the signed disclosure must be maintained by any licensee who collects or
4381 receives the noncommission compensation or any portion thereof.

4382 (d) All accounting records relating to noncommission compensation shall be
4383 maintained in a manner that facilitates an audit.

4384 ~~[(b) As used in this section, "acting as an agent or broker" includes the negotiation or~~
4385 ~~procurement of any insurance contract made or negotiated in this state, and thereafter providing~~
4386 ~~any other services on account of that insurance contract, including the adjustment of claims~~
4387 ~~arising from that insurance contract.]~~

4388 ~~[(3) Subsection (2) does not apply to:]~~

4389 (3) (a) ~~[a broker's receipt of]~~ A licensee may receive noncommission compensation
4390 when acting as a producer for the insured in connection with the actual sale or placement of
4391 insurance~~[, but only if the broker]~~ if:

4392 (i) the producer and the insured have agreed on the [broker's] producer's
4393 noncommission compensation[;]; and

4394 (ii) the [broker] producer has disclosed to the insured the existence and source of [the
4395 commission] any other compensation that accrues to the [broker] producer as a result of the
4396 transaction[; which agreement and].

4397 (b) The disclosure shall [be evidenced by]:

4398 (i) ~~[a written memorandum, signed by the broker and]~~ include the signature of the

4399 insured[, disclosing the existence and source of commission compensation and providing that
4400 the insured will, in addition, pay] or prospective insured acknowledging the noncommission
4401 compensation;

4402 (ii) [~~an application for insurance, signed by the insured, that specifies~~] clearly specify
4403 the amount or extent of the [~~broker's~~] noncommission compensation and [~~discloses~~] the
4404 existence and source of [~~the commission~~] any other compensation; [~~or~~] and

4405 [~~(iii) the insured's payment of an invoice from the broker for the noncommission~~
4406 ~~compensation, which invoice discloses the existence and source of the commission~~
4407 ~~compensation received by the broker with respect to the transaction;~~]

4408 (iii) be provided to the insured or prospective insured before the performance of the
4409 service.

4410 (c) The following additional noncommission compensation is authorized:

4411 [~~(b)~~] (i) compensation received by [~~an agent~~] a producer of a compensated corporate
4412 surety who under procedures approved by a rule or order of the commissioner is paid by surety
4413 bond principal debtors for extra services;

4414 [~~(c)~~] (ii) compensation received by an insurance [~~broker~~] producer who is also licensed
4415 as a public adjuster under Section 31A-26-203, for services performed for an insured in
4416 connection with a claim adjustment, so long as the [~~broker~~] producer does not receive or is not
4417 promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

4418 [~~(d)~~] (iii) compensation received by a consultant as a consulting fee, provided the
4419 consultant complies with the requirements of Section [~~31A-23-301~~] 31A-23a-401; or

4420 [~~(e)~~] (iv) other compensation arrangements approved by the commissioner after a
4421 finding that they do not violate Section [~~31A-23-301~~] 31A-23a-401 and are not harmful to the
4422 public.

4423 (4) This section does not alter the right of any [~~agent or broker~~] licensee to recover
4424 from an insured the amount of any premium due for insurance effected by or through that
4425 [~~agent or broker~~] licensee or to charge a reasonable rate of interest upon past-due accounts.

4426 (5) This section does not apply to bail bond [~~agents~~] producers or bail enforcement
4427 agents as defined in Section 31A-35-102.

4428 Section 79. Section **31A-23a-502**, which is renumbered from Section 31A-23-402 is
4429 renumbered and amended to read:

4430 ~~[31A-23-402].~~ 31A-23a-502. **Controlled business, except as to title**
4431 **insurance.**

4432 (1) As used in this section, "controlled business" means insurance procured by:

4433 (a) an insurance ~~[agent or broker]~~ producer who is a natural person upon the life,
4434 person, or property of himself, his relative within the second degree by blood or marriage, his
4435 employer, employees, or organization; or

4436 (b) an insurance ~~[agent or broker]~~ producer that is an organization upon its own
4437 property or upon the life, person, or property of its partners, shareholders, directors, or
4438 employees, or their relatives within the second degree by blood or marriage.

4439 (2) No ~~[agent or broker]~~ producer may receive any compensation from an insurer for
4440 effecting insurance upon controlled business unless during the preceding 12 months the ~~[agent~~
4441 ~~or broker]~~ producer had effected other insurance with aggregate premiums exceeding the
4442 premiums on the controlled business.

4443 (3) This section does not apply to title insurance.

4444 Section 80. Section **31A-23a-503**, which is renumbered from Section 31A-23-403 is
4445 renumbered and amended to read:

4446 ~~[31A-23-403].~~ 31A-23a-503. **Controlled business in title insurance.**

4447 (1) As used in this section:

4448 (a) "Associate" means any:

4449 (i) business organized for profit in which a ~~[producer of]~~ person who refers title
4450 business is a director, officer, partner, or employee;

4451 (ii) spouse or relative within the second degree by blood or marriage of a ~~[producer of]~~
4452 person who refers title business, who is a natural person;

4453 (iii) employee of a ~~[producer of]~~ person who refers title business; or

4454 (iv) person with whom a ~~[producer of]~~ person who refers title business or any associate
4455 of that producer has any agreement, arrangement, or understanding, or pursues any course of
4456 conduct, designed to avoid the provisions of this chapter.

4457 (b) "Controlled business" means that portion of the title insurance business of a title
4458 insurer or ~~[agent]~~ producer in this state that is referred to it by all those producers of title
4459 business who have a financial interest in the title insurer or ~~[agent]~~ producer and by all
4460 associates of those producers. Business is referred if there is influence over the selection of the

4461 person with whom the business is placed.

4462 (c) "~~[Producer of]~~ A person who refers title business" includes any person engaged in
4463 this state in a business of:

4464 (i) buying or selling interests in real property;

4465 (ii) making loans secured by interests in real property; or

4466 (iii) acting as a representative or employee of a person who buys or sells any interest in
4467 real property or who lends or borrows money with interest as security, other than acting as a
4468 licensed title insurer or ~~[agent]~~ producer doing the business of title insurance.

4469 (d) "Financial interest" means any legal or beneficial interest that together with other
4470 interests entitles the holder to more than 1% of the net profits or net worth of the business in
4471 which the interest is held.

4472 (2) A title insurer or ~~[agent]~~ producer or person having a financial interest in a title
4473 insurer or ~~[agent]~~ producer may not knowingly be a party to or knowingly permit to continue in
4474 any arrangement in which the title insurer, ~~[agent]~~ producer, or person knows or has reason to
4475 believe that any ~~[producer of]~~ person who refers title business has or will have, directly or
4476 indirectly, a financial interest in the title insurer or ~~[agent]~~ producer, if it reasonably appears
4477 that a substantial factor in the ~~[producer's]~~ person who refers title business owning or acquiring
4478 the financial interest is the expected realization of financial profit or gain derived in whole or in
4479 part from controlled business.

4480 (3) A title insurer may not appoint or knowingly continue its authorization of any title
4481 insurance ~~[agent]~~ producer in which the company knows or has reason to believe that any
4482 ~~[producer of]~~ person who refers title business has or will have, directly or indirectly, a financial
4483 interest, if it reasonably appears that a substantial factor in the ~~[producer's]~~ person who refers
4484 title business owning or acquiring the financial interest is the ~~[producer's]~~ person's expected
4485 realization of financial profit or gain derived in whole or part from controlled business.

4486 (4) If for any calendar quarter, the gross operating revenues of a title insurer or ~~[agent]~~
4487 producer derived from all sources of controlled business in this state amount to more than 1/3
4488 of its gross operating revenues from all other sources of its business of title insurance in this
4489 state, it is presumed that the expected realization of financial profit or gain derived in whole or
4490 in part from controlled business was a substantial factor in the ownership of financial interest
4491 in the title insurer or ~~[agent by producers]~~ producer. The title insurer or ~~[agent]~~ producer has

4492 the burden of overcoming this presumption. Subsection (4) does not authorize any controlled
4493 business if a violation of the standards set forth in Subsection (2) or (3) exists.

4494 (5) No title insurance company or ~~[agent]~~ producer may accept any order for the
4495 business of title insurance that it knows or has reason to believe constitutes controlled business,
4496 unless it records and maintains in its permanent records on forms prescribed by the
4497 commissioner the facts relating to the transactions.

4498 (6) An applicant for qualification as a title insurance company or ~~[agent]~~ producer may
4499 not be granted a license if it reasonably appears that the expected realization of financial profit
4500 or gain to be derived in whole or in part from controlled business is or will be a substantial
4501 factor in the applicant's plan of operation or in the ownership or acquisition of financial
4502 interests in the applicant by any ~~[producers of]~~ person who refers title business.

4503 (7) Each title insurer and ~~[agent]~~ producer shall maintain permanent records relating to
4504 its controlled business on forms prescribed by the commissioner.

4505 (8) (a) Each title insurer and ~~[agent]~~ producer shall file annually with the
4506 commissioner, on forms prescribed by the commissioner, reports setting forth:

4507 (i) the names and addresses of any persons owning a financial interest in the title
4508 insurer or ~~[agent]~~ producer as of the last day of the calendar year, who are known or reasonably
4509 believed by the title insurance company or ~~[agent]~~ producer to be ~~[producers of]~~ a person who
4510 refers title business; and

4511 (ii) a summary compiled from the title insurer's or ~~[agent's]~~ producer's records of the
4512 controlled business, sufficient to inform the commissioner as to the proportion of the title
4513 insurer's or ~~[agent's]~~ producer's gross operating revenues attributable to controlled business
4514 during the preceding calendar year.

4515 (b) The reports shall be filed with the reports required under Section ~~[31A-23-313]~~
4516 31A-23a-413 and shall contain the certification of an officer of the title insurer or ~~[agent]~~
4517 producer that the information contained in them is true to the best of the officer's knowledge,
4518 information, and belief. Upon filing, the reports are public records.

4519 (9) An attorney who is also a licensed title insurance ~~[agent]~~ producer and who issues
4520 as ~~[agent]~~ producer a policy of title insurance to a client on behalf of whom the attorney is also
4521 acting as an attorney and who, in so doing, acts consistently with the applicable ethical
4522 standards of the Utah State Bar pertaining to the billing and receipt of legal fees and the receipt

4523 of a commission on a policy of title insurance is not, without more, considered to be engaged in
4524 controlled business.

4525 Section 81. Section **31A-23a-504**, which is renumbered from Section 31A-23-404 is
4526 renumbered and amended to read:

4527 ~~[31A-23-404].~~ **31A-23a-504. Sharing commissions.**

4528 (1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter
4529 or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the
4530 licensee knows that the person is licensed under this chapter to act as ~~[an agent or broker]~~ a
4531 producer, limited line producer, customer service representative, consultant, managing general
4532 agent, or reinsurance intermediary in Utah as to the particular type of insurance.

4533 (b) A person may only accept commission compensation or other compensation as ~~[an]~~
4534 a producer, limited line producer, customer service representative, consultant, managing
4535 general agent, [broker, or consultant] or reinsurance intermediary that is directly or indirectly
4536 the result of any insurance transaction if that person is licensed under this chapter to act as ~~[an]~~
4537 a producer, limited line producer, customer service representative, consultant, managing
4538 general agent, or [broker] reinsurance intermediary as to the particular type of insurance.

4539 (2) (a) Except as provided in Section ~~[31A-23-301]~~ 31A-23a-501, a consultant may not
4540 pay or receive any commission or other compensation that is directly or indirectly the result of
4541 any insurance transaction.

4542 (b) A consultant may share a consultant fee or other compensation received for
4543 consulting services performed within Utah only with another consultant licensed under this
4544 chapter, and only to the extent that the other consultant contributed to the services performed.

4545 (3) This section does not prohibit the payment of renewal commissions to former
4546 licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a
4547 deferred compensation or agency sales agreement.

4548 (4) This section does not prohibit compensation paid to or received by ~~[an individual]~~ a
4549 person for referral of a potential customer that seeks to purchase or obtain an opinion or advice
4550 on an insurance product if:

4551 (a) the person is not licensed to sell insurance;

4552 (b) the person sells or provides opinions or advice on the product; and

4553 (c) the compensation does not depend on whether the referral results in a purchase or

4554 sale.

4555 (5) In selling any policy of title insurance, no sharing of commissions under Subsection
4556 (1) may occur if it will result in an unlawful rebate, or in compensation in connection with
4557 controlled business, or in payment of a forwarding fee or finder's fee. A person may share
4558 compensation for the issuance of a title insurance policy only to the extent that he contributed
4559 to the search and examination of the title or other services connected with it.

4560 (6) This section does not apply to bail bond [~~agents~~] producers or bail enforcement
4561 agents as defined in Section 31A-35-102.

4562 Section 82. Section **31A-23a-505**, which is renumbered from Section 31A-23-406 is
4563 renumbered and amended to read:

4564 [~~31A-23-406~~]. **31A-23a-505. Benefit plans for producers.**

4565 An authorized insurer may establish retirement, insurance, and other benefit plans for
4566 [~~agents~~] producers on a basis approved by the commissioner.

4567 Section 83. Section **31A-23a-601**, which is renumbered from Section 31A-23-501 is
4568 renumbered and amended to read:

4569 **Part 6. Managing General Agents**

4570 [~~31A-23-501~~]. **31A-23a-601. Licensure.**

4571 (1) A person, firm, association, or corporation may not act in the capacity of managing
4572 general agent with respect to risks located in this state for an insurer licensed in this state
4573 unless the person is a licensed producer in this state.

4574 (2) A person, firm, association, or corporation may not act in the capacity of a
4575 managing general agent representing an insurer domiciled in this state with respect to risks
4576 located outside this state unless the person is licensed as a producer in this state pursuant to this
4577 chapter. The license may be a nonresident license.

4578 (3) The commissioner may require a bond in an amount he finds acceptable for the
4579 protection of each insurer represented.

4580 (4) The commissioner may require the managing general agent to maintain an errors
4581 and omissions policy or other security acceptable to the commissioner.

4582 Section 84. Section **31A-23a-602**, which is renumbered from Section 31A-23-502 is
4583 renumbered and amended to read:

4584 [~~31A-23-502~~]. **31A-23a-602. Required contract provisions.**

4585 A person, firm, association, or corporation acting in the capacity of a managing general
4586 agent may not place business with an insurer unless there is in force a written contract between
4587 the parties which sets forth the responsibilities of each party, and where both parties share
4588 responsibility for a particular function, the contract specifies the division of shared
4589 responsibilities. The written contract shall contain the following minimum provisions:

4590 (1) The insurer may terminate the contract for cause upon written notice to the
4591 managing general agent. The insurer may suspend the underwriting authority of the managing
4592 general agent during the pendency of any dispute regarding the cause for termination.

4593 (2) The managing general agent will render accounts to the insurer detailing all
4594 transactions and remit all funds due under the contract to the insurer at least monthly.

4595 (3) All funds collected for the account of an insurer will be held by the managing
4596 general agent in a fiduciary capacity in a bank which is insured by the FDIC. This account
4597 shall be used for all payments on behalf of the insurer. The managing general agent may retain
4598 no more than three months estimated claims payments and allocated loss adjustment expenses.

4599 (4) Separate records of business written by the managing general agent shall be
4600 maintained. The insurer shall have access and the right to copy all accounts and records related
4601 to its business and shall have access to all books, bank accounts, and records of the managing
4602 general agent. The records shall be retained according to Section [~~31A-23-312~~] 31A-23a-412
4603 and shall be kept in a form usable by the insurer and the commissioner.

4604 (5) The contract may not be assigned in whole or part by the managing general agent.

4605 (6) The insurer shall have the right to cancel or nonrenew any policy of insurance
4606 subject to the applicable laws and rules. The contract shall contain appropriate underwriting
4607 guidelines including:

4608 (a) the maximum annual premium volume;

4609 (b) the basis of the rates to be charged;

4610 (c) the types of risks which may be written;

4611 (d) maximum limits of liability;

4612 (e) applicable exclusions;

4613 (f) territorial limitations;

4614 (g) policy cancellation provisions; and

4615 (h) the maximum policy period.

4616 (7) If the contract permits the managing general agent to settle claims on behalf of the
4617 insurer:

4618 (a) All claims must be reported to the company in a timely manner.

4619 (b) A copy of the claim file shall be sent to the insurer at its request, or as soon as it
4620 becomes known that the claim:

4621 (i) has the potential to exceed the lesser of an amount determined by the commissioner
4622 or the limit set by the company;

4623 (ii) involves a coverage dispute;

4624 (iii) may exceed the managing general agent's claims settlement authority;

4625 (iv) is open for more than six months; or

4626 (v) is closed by payment the lesser of an amount set by the commissioner or an amount
4627 set by the company.

4628 (c) All claim files will be the joint property of the insurer and managing general agent.
4629 However, upon an order of liquidation of the insurer, the files become the sole property of the
4630 insurer or its estate. The managing general agent shall have reasonable access to and the right
4631 to copy the files on a timely basis.

4632 (d) Any settlement authority granted to the managing general agent may be terminated
4633 for cause upon the insurer's written notice to the managing general agent or upon the
4634 termination of the contract. The insurer may suspend the settlement authority during the
4635 pendency of any dispute regarding the cause for termination.

4636 (8) Where electronic claims files are in existence, the contract must address the timely
4637 transmission of the data.

4638 (9) If the contract provides for a sharing of interim profits by the managing general
4639 agent, and the managing general agent has the authority to determine the amount of the interim
4640 profits by establishing loss reserves, controlling claim payments, or in any other manner,
4641 interim profits may not be paid to the managing general agent until one year after they are
4642 earned for property insurance business, and five years after they are earned on casualty
4643 business, but not until the profits have been verified by a review conducted pursuant to Section
4644 [~~31A-23-503~~] 31A-23a-603.

4645 (10) The managing general agent may not:

4646 (a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing

4647 general agent may bind facultative reinsurance contracts pursuant to obligatory facultative
4648 agreements if the contract with the insurer contains reinsurance underwriting guidelines
4649 including, for both reinsurance assumed and ceded, a list of reinsurers with which the
4650 automatic agreements are in effect, the coverages and amounts or percentages that may be
4651 reinsured, and commission schedules;

4652 (b) commit the insurer to participate in insurance or reinsurance syndicates;

4653 (c) appoint any producer without assuring that the producer is lawfully licensed to
4654 transact the type of insurance for which he is appointed;

4655 (d) without prior approval of the insurer, pay or commit the insurer to pay a claim over
4656 a specified amount, net of reinsurance, which shall not exceed 1% of the insurer's
4657 policyholder's surplus as of December 31 of the last completed calendar year;

4658 (e) collect any payment from a reinsurer or commit the insurer to any claim settlement
4659 with a reinsurer without prior approval of the insurer; if prior approval is given, a report must
4660 be promptly forwarded to the insurer;

4661 (f) permit its subproducer to serve on the insurer's board of directors;

4662 (g) jointly employ an individual who is employed with the insurer; or

4663 (h) appoint a submanaging general agent.

4664 Section 85. Section **31A-23a-603**, which is renumbered from Section 31A-23-503 is
4665 renumbered and amended to read:

4666 ~~[31A-23-503].~~ **31A-23a-603. Duties of insurers.**

4667 (1) The insurer shall have on file an independent financial examination, in a form
4668 acceptable to the commissioner, of each managing general agent with which the insurer has
4669 done business.

4670 (2) (a) If a managing general agent establishes loss reserves, the insurer shall annually
4671 obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses
4672 incurred and outstanding on business produced by the managing general agent.

4673 (b) The requirement of Subsection (2)(a) is in addition to any other required loss
4674 reserve certification.

4675 (3) The insurer shall at least semiannually conduct an on-site review of the
4676 underwriting and claims processing operations of the managing general agent.

4677 (4) Binding authority for all reinsurance contracts or participation in insurance or

4678 reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with
4679 the managing general agent.

4680 (5) (a) Within 30 days after entering into or terminating a contract with a managing
4681 general agent, the insurer shall provide written notification of the appointment or termination to
4682 the commissioner.

4683 (b) A notice of appointment of a managing general agent shall include:

4684 (i) a statement of duties that the applicant is expected to perform on behalf of the
4685 insurer;

4686 (ii) the lines of insurance for which the applicant is to be authorized to act; and

4687 (iii) any other information the commissioner may request.

4688 (6) (a) An insurer shall review the insurer's books and records each quarter to
4689 determine if any producer, as defined in Section [~~31A-23-102~~] 31A-1-301, has become a
4690 managing general agent as defined in Section [~~31A-23-102~~] 31A-23a-102.

4691 (b) If the insurer determines that a producer has become a managing general agent:

4692 (i) the insurer shall promptly notify the producer and the commissioner of the
4693 determination; and

4694 (ii) the insurer and producer shall fully comply with the provisions of this chapter
4695 within 30 days.

4696 (7) (a) An insurer may not appoint officers, directors, employees, subproducers, or
4697 controlling shareholders of the insurer's managing general agents to the insurer's board of
4698 directors.

4699 (b) This Subsection (7) does not apply to relationships governed by:

4700 (i) Chapter 16, Insurance Holding Companies; or

4701 (ii) Chapter [~~23~~] 23a, Part [~~6, Broker~~] 7, Producer Controlled Insurers, if it applies.

4702 Section 86. Section **31A-23a-604**, which is renumbered from Section 31A-23-504 is
4703 renumbered and amended to read:

4704 ~~[31A-23-504].~~ **31A-23a-604. Examination authority.**

4705 The acts of the managing general agent are considered to be the acts of the insurer on
4706 whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

4707 Section 87. Section **31A-23a-605**, which is renumbered from Section 31A-23-505 is
4708 renumbered and amended to read:

4709 ~~[31A-23-505]~~. 31A-23a-605. **Penalties and liabilities.**

4710 (1) If the commissioner finds after a hearing that any person has violated any provision
4711 of this part, the commissioner may order:

4712 (a) for each separate violation, a penalty in an amount of \$5,000;

4713 (b) revocation or suspension of the producer's license; and

4714 (c) the managing general agent to reimburse the insurer, the rehabilitator, or liquidator
4715 of the insurer for any losses incurred by the insurer caused by the managing general agent's
4716 violation.

4717 (2) Nothing contained in this section affects the right of the commissioner to impose
4718 any other penalties provided for in this title.

4719 (3) Nothing contained in this part is intended to, or in any manner limits or restricts the
4720 rights of policyholders, claimants, and auditors.

4721 Section 88. Section **31A-23a-701**, which is renumbered from Section 31A-23-601 is
4722 renumbered and amended to read:

4723 **Part 7. Producer Controlled Insurers**

4724 ~~[31A-23-601]~~. 31A-23a-701. **Applicability.**

4725 (1) This part applies to licensed insurers, as defined in Section ~~[31A-23-102]~~
4726 31A-23a-102, that are domiciled:

4727 (a) in this state; or

4728 (b) in a state that does not have a substantially similar law.

4729 (2) All provisions of Chapter 16, Insurance Holding Companies, to the extent they are
4730 not superseded by this part, continue to apply to all parties within holding company systems
4731 subject to this part.

4732 Section 89. Section **31A-23a-702**, which is renumbered from Section 31A-23-602 is
4733 renumbered and amended to read:

4734 ~~[31A-23-602]~~. 31A-23a-702. **Minimum standards.**

4735 (1) This section applies if, in any calendar year, the aggregate amount of gross written
4736 premium on business placed with a controlled insurer by a controlling ~~[broker]~~ producer is
4737 equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the
4738 controlled insurer's quarterly statement filed as of September 30 of the prior year.

4739 (2) Notwithstanding Subsection (1), this section does not apply if:

4740 (a) the controlling [broker] producer places insurance only with the controlled insurer,
4741 or only with the controlled insurer and members of the controlled insurer's holding company
4742 system, or with the controlled insurer's parent, affiliate, or subsidiary and receives no
4743 compensation based upon the amount of premiums written in connection with the insurance
4744 placed;

4745 (b) the controlling [broker] producer accepts insurance placements only from
4746 nonaffiliated [subbrokers] producers who are not controlling producers, and not directly from
4747 insureds; and

4748 (c) the controlled insurer, except for insurance business written through a residual
4749 market facility, accepts insurance business only from a controlling [broker] producer, a
4750 [broker] producer controlled by the controlled insurer, or a [broker] producer that is a
4751 subsidiary of the controlled insurer.

4752 (3) A controlled insurer may not accept business from a controlling [broker] producer
4753 and a controlling [broker] producer may not place business with a controlled insurer unless
4754 there is a written contract between the controlling [broker] producer and the insurer that
4755 specifies the responsibilities of each party and that has been approved by the board of directors
4756 of the insurer. The contract shall contain the following minimum provisions:

4757 (a) The controlled insurer may terminate the contract for cause, upon written notice to
4758 the controlling [broker] producer. The controlled insurer shall suspend the authority of the
4759 controlling [broker] producer to write business during the pendency of any dispute regarding
4760 the cause for the termination.

4761 (b) The controlling [broker] producer shall render accounts to the controlled insurer
4762 detailing all material transactions, including information necessary to support all commissions,
4763 charges, and other fees received by, or owing to, the controlling [broker] producer.

4764 (c) The controlling [broker] producer shall remit all funds due under the terms of the
4765 contract to the controlled insurer at least monthly. The due date shall be fixed so that
4766 premiums or premium installments collected shall be remitted no later than 90 days after the
4767 effective date of any policy placed with the controlled insurer under the contract.

4768 (d) All funds collected for the controlled insurer's account shall be held by the
4769 controlling [broker] producer in a fiduciary capacity, in one or more appropriately identified
4770 bank accounts in banks that are members of the Federal Reserve System FDIC, in accordance

4771 with applicable provisions of this title. However, funds of a controlling [broker] producer not
4772 required to be licensed in this state shall be maintained in compliance with the requirements of
4773 the controlling [broker's] producer's domiciliary jurisdiction.

4774 (e) The controlling [broker] producer shall maintain separately identifiable records of
4775 business written for the controlled insurer.

4776 (f) The contract may not be assigned in whole or in part by the controlling [broker]
4777 producer.

4778 (g) The controlled insurer shall provide the controlling [broker] producer with its
4779 underwriting standards, rules, procedures, and manuals setting forth the rates to be charged,
4780 and the conditions for the acceptance or rejection of risks. The controlling [broker] producer
4781 shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules,
4782 procedures, rates, and conditions shall be the same as those applicable to comparable business
4783 placed with the controlled insurer by a [broker] producer other than the controlling [broker]
4784 producer.

4785 (h) The contract shall state the rates and terms of the controlling [broker's] producer's
4786 commissions, charges, or other fees and the purposes for those charges or fees. The rates of the
4787 commissions, charges, and other fees may not be greater than those applicable to comparable
4788 business and services placed with the controlled insurer by [brokers] producers other than
4789 controlling [brokers] producers. For purposes of ~~[this] Subsections [and Subsection (g)] (3)(g)~~
4790 and (h), examples of "comparable business and services" include the same lines of insurance,
4791 same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of
4792 business.

4793 (i) If the contract provides that the controlling [broker] producer, on insurance business
4794 placed with the insurer, is to be compensated contingent upon the insurer's profits on that
4795 business, then the compensation may not be determined and paid until at least five years after
4796 the premiums on liability insurance are earned, and at least one year after the premiums are
4797 earned on any other insurance. In no event may the commissions be paid until the adequacy of
4798 the controlled insurer's reserves on remaining claims has been independently verified pursuant
4799 to Subsection ~~[(3)]~~ (5).

4800 (j) The contract shall include a limit on the controlling [broker's] producer's writings in
4801 relation to the controlled insurer's surplus and total writings. The insurer may establish a

4802 different limit to each line or subline of business. The controlled insurer shall notify the
4803 controlling ~~[broker]~~ producer when the applicable limit is approached and shall not accept
4804 business from the controlling ~~[broker]~~ producer if the limit is reached. The controlling ~~[broker]~~
4805 producer may not place business with the controlled insurer if it has been notified by the
4806 controlled insurer that the limit has been reached.

4807 (k) The controlling ~~[broker]~~ producer may negotiate but may not bind reinsurance on
4808 behalf of the controlled insurer on business the controlling ~~[broker]~~ producer places with the
4809 controlled insurer. However, the controlling ~~[broker]~~ producer may bind facultative
4810 reinsurance contracts pursuant to obligatory facultative agreements if the contract with the
4811 controlled insurer contains underwriting guidelines including, for both reinsurance assumed
4812 and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages
4813 and amounts or percentages that may be reinsured, and commission schedules.

4814 (4) Each controlled insurer shall have an audit committee of the board of directors.
4815 The audit committee shall annually meet to review the adequacy of the insurer's loss reserves.
4816 The committee shall meet with management, the insurer's independent certified public
4817 accountants, and an independent casualty actuary or any other independent loss reserve
4818 specialists acceptable to the commissioner.

4819 (5) (a) In addition to any other required loss reserve certification, the controlled insurer
4820 shall file with the commissioner on April 1 of each year an opinion of an independent casualty
4821 actuary, or any other independent loss reserve specialist acceptable to the commissioner. The
4822 opinion shall report loss ratios for each line of business written and shall attest to the adequacy
4823 of loss reserves established for losses incurred and outstanding as of year-end on business
4824 placed by the producer including losses incurred but not reported.

4825 (b) The controlled insurer shall annually report to the commissioner the amount of
4826 commissions paid to the ~~[broker]~~ producer, the percentage that amount represents of the net
4827 premiums written, and comparable amounts and percentage paid to noncontrolling ~~[brokers]~~
4828 producers for placements of the same kinds of insurance.

4829 Section 90. Section ~~31A-23a-703~~, which is renumbered from Section 31A-23-603 is
4830 renumbered and amended to read:

4831 ~~[31A-23-603]~~. 31A-23a-703. Disclosure.

4832 The ~~[broker]~~ producer, prior to the effective date of the policy, shall deliver written

4833 notice to the prospective insured disclosing the relationship between the [broker] producer and
4834 the controlled insurer. However, if the business is placed through a [sub-broker] producer who
4835 is not a controlling [broker] producer, the controlling [broker] producer shall retain in his
4836 records a signed commitment from the [sub-broker] noncontrolling producer that the
4837 [sub-broker] noncontrolling producer is aware of the relationship between the insurer and the
4838 [broker] producer and that the [sub-broker] noncontrolling producer has, or will, notify the
4839 insured.

4840 Section 91. Section **31A-23a-704**, which is renumbered from Section 31A-23-604 is
4841 renumbered and amended to read:

4842 ~~**[31A-23-604].**~~ **31A-23a-704. Penalties.**

4843 (1) (a) If, after notice and opportunity to be heard, the commissioner finds that the
4844 controlling [broker] producer or any other person has not materially complied with this part, or
4845 any rule made or order issued under the part, the commissioner may order the controlling
4846 [broker] producer to cease placing business with the controlled insurer.

4847 (b) If the commissioner finds that because of the material noncompliance that the
4848 controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage,
4849 the commissioner may maintain a civil action or may intervene in an action brought by or on
4850 behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of
4851 the insurer or policyholder or he may seek other appropriate relief.

4852 (2) If an order for liquidation or rehabilitation of the controlled insurer has been
4853 entered pursuant to Title 31A, Chapter 27, Insurers Rehabilitation and Liquidation, and the
4854 receiver appointed under that order believes that the controlling [broker] producer or any other
4855 person has not materially complied with this part, or any rule made or order issued under this
4856 part, and the insurer suffered any loss or damage as a result of the noncompliance, the receiver
4857 may maintain a civil action for recovery of damages or other appropriate sanctions for the
4858 benefit of the insurer.

4859 (3) Nothing in this section affects the right of the commissioner to impose any other
4860 penalties provided for in this title.

4861 (4) Nothing contained in this section is intended to or shall in any manner alter or
4862 affect the rights of policyholders, claimants, creditors, or other third parties.

4863 Section 92. Section **31A-23a-801**, which is renumbered from Section 31A-23-701 is

4864 renumbered and amended to read:

4865 **Part 8. Reinsurance Intermediaries**

4866 ~~[31A-23-701].~~ **31A-23a-801. Licensure.**

4867 (1) A person, firm, association, or corporation may not act as a reinsurance
4868 intermediary-broker in this state if the reinsurance intermediary-broker maintains an office
4869 either directly or as a member or employee of a firm or association, or an officer, director, or
4870 employee of a corporation unless:

4871 (a) in this state, the reinsurance intermediary-broker is a licensed producer in this state;

4872 or

4873 (b) in another state, the reinsurance intermediary-broker is a licensed producer in this
4874 state or another state having a licensing law substantially similar to this part, or the reinsurance
4875 intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

4876 (2) A person, firm, association, or corporation may not act as a reinsurance
4877 intermediary-manager:

4878 (a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager
4879 is a licensed producer in this state;

4880 (b) in this state, if the reinsurance intermediary-manager maintains an office either
4881 directly or as a member or employee of a firm or association, or as an officer, director, or
4882 employee of a corporation in this state, unless the reinsurance intermediary-manager is a
4883 licensed producer in this state; or

4884 (c) in another state for a nondomestic insurer, unless the reinsurance
4885 intermediary-manager is a licensed producer in this state or another state having a licensing law
4886 substantially similar to this chapter, or the person is licensed in this state as a nonresident
4887 reinsurance intermediary.

4888 (3) The commissioner may require a bond in an amount he finds acceptable for the
4889 protection of each reinsurer represented.

4890 (4) (a) The commissioner may issue a reinsurance intermediary license to any person,
4891 firm, association, or corporation which has complied with the requirements of this chapter.

4892 (i) Any license issued to a firm or association will authorize all the members of the
4893 firm or association, and any designated employees, to act as reinsurance intermediaries under
4894 the license. Each member, employee, or similar person shall be named in the application and

4895 any supplements to the application.

4896 (ii) Any license issued to a corporation shall authorize all of the officers, directors, and
4897 any designated employees to act as reinsurance intermediaries on behalf of the corporation, and
4898 all authorized persons shall be named in the application and any supplements to the
4899 application.

4900 (b) If the applicant for a reinsurance intermediary license is a nonresident, the
4901 applicant, as a condition precedent to receiving or holding a license, shall designate the
4902 commissioner as agent for service of process in the manner, and with the same legal effect,
4903 provided for by this title for designation of service of process upon unauthorized insurers. The
4904 applicant also shall furnish the commissioner with the name and address of a resident of this
4905 state upon whom notices or orders of the commissioner or process affecting the nonresident
4906 reinsurance intermediary may be served. The licensee shall promptly notify the commissioner
4907 in writing of every change in its designated agent for service of process, and the change does
4908 not become effective until acknowledged by the commissioner.

4909 (5) The commissioner may refuse to issue a reinsurance intermediary license if he
4910 determines that the applicant, any one named on the application, or any member, principal,
4911 officer, or director of the applicant, is not trustworthy, or that any controlling person of the
4912 applicant is not trustworthy to act as a reinsurance intermediary, or that any of the persons
4913 named has given cause for revocation or suspension of the license, or has failed to comply with
4914 any prerequisite for the issuance of the license. Upon written request the commissioner will
4915 furnish a summary of the basis for his refusal to issue a license. The summary document shall
4916 be confidential.

4917 (6) Licensed attorneys-at-law of this state when acting in their professional capacity as
4918 attorneys are exempt from this section.

4919 Section 93. Section **31A-23a-802**, which is renumbered from Section 31A-23-702 is
4920 renumbered and amended to read:

4921 ~~[31A-23-702].~~ **31A-23a-802. Required contract provisions -- Reinsurance**
4922 **intermediary-broker.**

4923 Transactions between a reinsurance intermediary-broker and the insurer it represents in
4924 that capacity may only be entered into pursuant to a written authorization, which specifies the
4925 responsibilities of each party. The authorization shall, at a minimum, provide that the

4926 reinsurance intermediary-broker:

4927 (1) may have his authority terminated by the insurer at any time;

4928 (2) will render accounts to the insurer accurately detailing all material transactions,
4929 including information necessary to support all commissions, charges and other fees received
4930 by, or owing to the reinsurance intermediary-broker, and that he will remit all funds due to the
4931 insurer within 30 days of receipt;

4932 (3) shall hold, in a fiduciary capacity, all funds collected for the insurer's account in a
4933 ~~[bank]~~ financial institution, which is a qualified United States financial institution;

4934 (4) will comply with Section ~~[31A-23-703]~~ 31A-23a-803;

4935 (5) will comply with the written standards established by the insurer for the cession or
4936 retrocession of all risks; and

4937 (6) will disclose to the insurer any relationship with any reinsurer to which business
4938 will be ceded or retroceded.

4939 Section 94. Section **31A-23a-803**, which is renumbered from Section 31A-23-703 is
4940 renumbered and amended to read:

4941 ~~[31A-23-703]~~. **31A-23a-803. Books and records -- Reinsurance**
4942 **intermediary-broker.**

4943 (1) For at least ten years after expiration of each contract of reinsurance transacted by
4944 the reinsurance intermediary-broker, he will keep a complete record for each transaction
4945 showing:

4946 (a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

4947 (b) the period of coverage, including the effective and expiration dates, cancellation
4948 provisions, and notice required of cancellation;

4949 (c) reporting and settlement requirements of balances;

4950 (d) the rate used to compute the reinsurance premium;

4951 (e) the names and addresses of assuming reinsurers;

4952 (f) the rates of all reinsurance commissions, including the commissions on any
4953 retrocessions handled by the reinsurance intermediary-broker;

4954 (g) related correspondence and memoranda;

4955 (h) proof of placement;

4956 (i) details regarding retrocessions handled by the reinsurance intermediary-broker,

4957 including the identity of retrocessionaires and percentage of each contract assumed or ceded;

4958 (j) financial records including premium and loss accounts; and

4959 (k) when the reinsurance intermediary-broker procures a reinsurance contract on behalf
4960 of a licensed ceding insurer:

4961 (i) directly from any assuming reinsurer, written evidence that the assuming reinsurer
4962 has agreed to assume the risk; or

4963 (ii) if placed through a representative of the assuming reinsurer, other than an
4964 employee, written evidence that the reinsurer has delegated binding authority to the
4965 representative.

4966 (2) The insurer will have access and the right to copy and audit all accounts and
4967 records maintained by the reinsurance intermediary-broker related to its business in a form
4968 usable by the insurer.

4969 Section 95. Section **31A-23a-804**, which is renumbered from Section 31A-23-704 is
4970 renumbered and amended to read:

4971 ~~[31A-23-704].~~ **31A-23a-804. Duties of insurers utilizing the services of a**
4972 **reinsurance intermediary-broker.**

4973 (1) An insurer may not engage the services of any person, firm, association, or
4974 corporation to act as a reinsurance intermediary-broker on its behalf unless the person is
4975 licensed as required by Subsection ~~[31A-23-704]~~ 31A-23a-801(1).

4976 (2) An insurer may not employ an individual who is employed by a reinsurance
4977 intermediary-broker with which it transacts business, unless the reinsurance
4978 intermediary-broker is under common control with the insurer and subject to Title 31A,
4979 Chapter 16, Insurance Holding Companies.

4980 (3) The insurer shall annually obtain a copy of statements of the financial condition of
4981 each reinsurance intermediary-broker with which it transacts business.

4982 Section 96. Section **31A-23a-805**, which is renumbered from Section 31A-23-705 is
4983 renumbered and amended to read:

4984 ~~[31A-23-705].~~ **31A-23a-805. Required contract provisions -- Reinsurance**
4985 **intermediary-manager.**

4986 Transactions between a reinsurance intermediary-manager and the reinsurer it
4987 represents in that capacity may only be entered into pursuant to a written contract, which

4988 specifies the responsibilities of each party, and which shall be approved by the reinsurer's board
4989 of directors. At least 30 days before the reinsurer assumes or cedes business through the
4990 producer, a true copy of the approved contract shall be filed with the commissioner for
4991 approval. The contract shall, at a minimum, provide or require the following:

4992 (1) The reinsurer may terminate the contract for cause upon written notice to the
4993 reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of
4994 the reinsurance intermediary-manager to assume or cede business during the pendency of any
4995 dispute regarding the cause for termination.

4996 (2) The reinsurance intermediary-manager will render accounts to the reinsurer
4997 accurately detailing all material transactions, including information necessary to support all
4998 commissions, charges, and other fees received by, or owing to the reinsurance
4999 intermediary-manager, and he shall remit all funds due under the contract to the reinsurer at
5000 least monthly.

5001 (3) All funds collected for the reinsurer's account will be held by the reinsurance
5002 intermediary-manager in a fiduciary capacity in a ~~[bank]~~ financial institution which is a
5003 qualified United States financial institution. The reinsurance intermediary-manager may retain
5004 no more than three months estimated claims payments and allocated loss adjustment expenses.
5005 The reinsurance intermediary-manager shall maintain a separate ~~[bank]~~ account for each
5006 reinsurer that it represents.

5007 (4) For at least ten years after expiration of each contract of reinsurance transacted by
5008 the reinsurance intermediary-manager, he shall keep a complete record for each transactions
5009 showing:

5010 (a) the type of contract, limits, underwriting restrictions, classes of risks, and territory;

5011 (b) period of coverage, including effective and expiration dates, cancellation provisions
5012 and notice required of cancellation, and disposition of outstanding reserves on covered risks;

5013 (c) reporting and settlement requirements of balances;

5014 (d) rates used to compute the reinsurance premium;

5015 (e) names and addresses of reinsurers;

5016 (f) rates of all reinsurance commissions, including the commissions on any
5017 retrocessions handled by the reinsurance intermediary-manager;

5018 (g) related correspondence and memoranda;

- 5019 (h) proof of placement;
- 5020 (i) details regarding retrocessions handled by the reinsurance intermediary-manager, as
- 5021 permitted by Subsection [~~31A-23-707~~] 31A-23a-807(4), including the identity of
- 5022 retrocessionaires and percentage of each contract assumed or ceded;
- 5023 (j) financial records, including premium and loss accounts; and
- 5024 (k) when the reinsurance intermediary-manager places a reinsurance contract on behalf
- 5025 of a ceding insurer:
 - 5026 (i) directly from any assuming reinsurer, written evidence that the assuming reinsurer
 - 5027 has agreed to assume the risk; or
 - 5028 (ii) if placed through a representative of the assuming reinsurer, other than an
 - 5029 employee, written evidence that the reinsurer has delegated binding authority to the
 - 5030 representative.
- 5031 (5) The reinsurer will have access and the right to copy all accounts and records
- 5032 maintained by the reinsurance intermediary-manager which are related to its business, in a form
- 5033 usable by the reinsurer.
- 5034 (6) The contract cannot be assigned in whole or in part by the reinsurance
- 5035 intermediary-manager.
- 5036 (7) The reinsurance intermediary-manager will comply with the written underwriting
- 5037 and rating standards established by the insurer for the acceptance, rejection, or cession of all
- 5038 risks.
- 5039 (8) The contract shall set forth the rates, terms, and purposes of commissions, charges,
- 5040 and other fees which the reinsurance intermediary-manager may levy against the reinsurer.
- 5041 (9) If the contract permits the reinsurance intermediary-manager to settle claims on
- 5042 behalf of the reinsurer:
 - 5043 (a) All claims will be reported to the reinsurer in a timely manner.
 - 5044 (b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it
 - 5045 becomes known that the claim:
 - 5046 (i) has the potential to exceed the lesser of an amount determined by the commissioner
 - 5047 or the limit set by the reinsurer;
 - 5048 (ii) involves a coverage dispute;
 - 5049 (iii) may exceed the reinsurance intermediary-manager claims settlement authority;

5050 (iv) is open for more than six months; or

5051 (v) is closed by payment of the lesser of an amount set by the commissioner or an
5052 amount set by the reinsurer.

5053 (c) All claim files will be the joint property of the reinsurer and reinsurance
5054 intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall
5055 become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager
5056 shall have reasonable access to and the right to copy the files on a timely basis.

5057 (d) Any settlement authority granted to the reinsurance intermediary-manager may be
5058 terminated for cause upon the reinsurer's written notice to the reinsurance
5059 intermediary-manager, or upon the termination of the contract. The reinsurer may suspend the
5060 settlement authority during the pendency of the dispute regarding the cause of termination.

5061 (10) If the contract provides for a sharing of interim profits by the reinsurance
5062 intermediary-manager, that the contract shall provide interim profits will not be paid until one
5063 year after the end of each underwriting period for property business and five years after the end
5064 of each underwriting period for casualty business, or a later time period set by the
5065 commissioner for specified lines of insurance, and not until the adequacy of reserves on
5066 remaining claims has been verified pursuant to Subsection [~~31A-23-707~~] 31A-23a-807(3).

5067 (11) The reinsurance intermediary-manager will annually provide the reinsurer with a
5068 statement of its financial condition prepared by an independent certified public accountant.

5069 (12) The reinsurer shall at least semi-annually conduct an on-site review of the
5070 underwriting and claims processing operations of the reinsurance intermediary-manager.

5071 (13) The reinsurance intermediary-manager will disclose to the reinsurer any
5072 relationship it has with any insurer prior to ceding or assuming any business with the insurer
5073 pursuant to this contract.

5074 (14) Within the scope of its actual or apparent authority the acts of the reinsurance
5075 intermediary-manager shall be considered to be the acts of the reinsurer on whose behalf it is
5076 acting.

5077 Section 97. Section **31A-23a-806**, which is renumbered from Section 31A-23-706 is
5078 renumbered and amended to read:

5079 [~~31A-23-706~~]. **31A-23a-806. Prohibited acts.**

5080 (1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the

5081 reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions
5082 pursuant to obligatory facultative agreements if the contract with the reinsurer contains
5083 reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include
5084 a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer,
5085 the coverages and amounts or percentages that may be reinsured, and commission schedules.

5086 (2) The reinsurance intermediary-manager may not commit the reinsurer to participate
5087 in reinsurance syndicates.

5088 (3) The reinsurance intermediary-manager may not appoint any producer without
5089 assuring that the producer is lawfully licensed to transact the type of reinsurance for which he
5090 is appointed.

5091 (4) The reinsurance intermediary-manager may not, without prior approval of the
5092 reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the
5093 lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as
5094 of December 31 of the last complete calendar year.

5095 (5) The reinsurance intermediary-manager may not collect any payment from a
5096 retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire,
5097 without prior approval of the reinsurer. If prior approval is given, a report must be promptly
5098 forwarded to the reinsurer.

5099 (6) The reinsurance intermediary-manager may not jointly employ an individual who is
5100 employed by the reinsurer unless the reinsurance intermediary-manager is under common
5101 control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.

5102 (7) The reinsurance intermediary-manager may not appoint a subreinsurance
5103 intermediary-manager.

5104 Section 98. Section **31A-23a-807**, which is renumbered from Section 31A-23-707 is
5105 renumbered and amended to read:

5106 ~~[31A-23-707].~~ **31A-23a-807. Duties of reinsurers utilizing the services of**
5107 **reinsurance.**

5108 (1) A reinsurer may not engage the services of any person, firm, association, or
5109 corporation to act as a reinsurance intermediary-manager on its behalf unless the person is
5110 licensed as required by Subsection ~~[31A-23-707]~~ 31A-23a-801(2).

5111 (2) The reinsurer shall annually obtain a copy of statements of the financial condition

5112 of each reinsurance intermediary-manager which the reinsurer has engaged, which shall be
5113 prepared by an independent certified public accountant in a form acceptable to the
5114 commissioner.

5115 (3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall
5116 annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established
5117 for losses incurred and outstanding on business produced by the reinsurance
5118 intermediary-manager. The actuary's opinion shall be in addition to any other required loss
5119 reserve certification.

5120 (4) Binding authority for all retrocessional contracts or participation in reinsurance
5121 syndicates shall rest with an officer of the reinsurer, who may not be affiliated with the
5122 reinsurance intermediary-manager.

5123 (5) Within 30 days of termination of a contract with a reinsurance
5124 intermediary-manager, the reinsurer shall provide written notification of the termination to the
5125 commissioner.

5126 (6) A reinsurer may not appoint to its board of directors, any officer, director,
5127 employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager.
5128 This subsection does not apply to relationships governed by Title 31A, Chapter 16, Insurance
5129 Holding Companies, or Chapter [23] 23a, Part [~~6, Broker~~] 7, Producer Controlled Insurers, if it
5130 applies.

5131 Section 99. Section **31A-23a-808**, which is renumbered from Section 31A-23-708 is
5132 renumbered and amended to read:

5133 ~~[31A-23-708].~~ **31A-23a-808. Examination authority.**

5134 (1) A reinsurance intermediary shall be subject to examination by the commissioner.

5135 The commissioner shall have access to all books, bank accounts, and records of the reinsurance
5136 intermediary, which shall be kept in a form usable to the commissioner.

5137 (2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

5138 Section 100. Section **31A-23a-809**, which is renumbered from Section 31A-23-709 is
5139 renumbered and amended to read:

5140 ~~[31A-23-709].~~ **31A-23a-809. Penalties and liabilities.**

5141 (1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a
5142 hearing conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to

5143 be in violation of any provisions of this title, shall:

5144 (a) for each separate violation, pay a civil penalty in an amount not exceeding \$5,000;

5145 (b) be subject to revocation or suspension of its license; and

5146 (c) if a violation was committed by the reinsurance intermediary, the reinsurance
5147 intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the
5148 insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the
5149 violation.

5150 (2) Nothing contained in this section affects the right of the commissioner to impose
5151 any other penalties provided in this title.

5152 (3) Nothing contained in this part is intended to, or in any manner limits or restricts the
5153 rights of policyholders, claimants, creditors, or other third parties; nor does it confer any rights
5154 to such persons.

5155 Section 101. Section **31A-26-201** is amended to read:

5156 **31A-26-201. Requirement of license.**

5157 (1) Except as provided in Subsection (2), no person may perform, offer to perform, or
5158 solicit the opportunity to perform any act of insurance adjusting without a valid license under
5159 Section 31A-26-203; and no person may use the insurance adjusting services of another if the
5160 person knows or should know that the one providing these services does not have a license as
5161 required by law.

5162 (2) The following are exempt from the license requirement of Subsection (1), when
5163 acting in the indicated capacities:

5164 (a) a person engaged in insurance adjusting as a regular salaried employee of, and not
5165 an independent contractor for, an insurer;

5166 (b) an arbitrator or an umpire selected by the claimant and insurer to decide, alone or
5167 with others, whether a claim should be paid and how much should be paid;

5168 (c) an attorney at law acting in an attorney-client relationship;

5169 (d) an insurance ~~[agent]~~ producer, but only as to the classes of insurance for which he
5170 is licensed under Section ~~[31A-23-204]~~ 31A-23a-106 and only as to claims adjusted on the
5171 request of an insurer for which he is ~~[an agent]~~ a producer;

5172 (e) a regular salaried employee of, and not an independent contractor for, a
5173 policyholder or claimant under an insurance policy;

5174 (f) an employee of a licensed insurance adjuster who provides only administrative or
5175 clerical assistance;

5176 (g) person who does not do insurance adjusting under Section 31A-26-102, but who is
5177 specially employed to obtain facts about a loss for or furnish technical assistance to a licensed
5178 adjuster or a company adjuster, including a photographer, estimator or appraiser, marine
5179 surveyor, private detective, engineer, and handwriting expert;

5180 (h) a holder of a group insurance policy, with respect to administrative activities in
5181 connection with that policy, who receives no compensation for his services beyond the actual
5182 expenses estimated on a reasonable basis;

5183 (i) a person engaged in insurance adjusting as a regular salaried employee of, and not
5184 an independent contractor for, an administrator licensed under Chapter 25; and

5185 (j) a person who gives advice or assistance without compensation or expectation of
5186 compensation, direct or indirect.

5187 (3) No claim settlement between an insurer and an insured or a claimant under an
5188 insurance contract is invalid as a result of a violation of this section.

5189 Section 102. Section **31A-27-103** is amended to read:

5190 **31A-27-103. Jurisdiction and venue.**

5191 (1) Except as provided in Subsection (2), a delinquency proceeding may not be
5192 commenced under this chapter by anyone other than the Utah commissioner.

5193 (2) (a) Three or more judgment creditors holding unrelated judgments against an
5194 insurer, which judgments aggregate more than \$5,000 in excess of any security held by those
5195 creditors may commence proceedings against the insurer under the conditions and in the
5196 manner prescribed in this Subsection (2), by serving notice upon the commissioner and the
5197 insurer of intention to file a petition for liquidation under Section 31A-27-307 or 31A-27-402.

5198 (b) Each of the judgments described in Subsection (2)(a):

5199 (i) shall have been rendered against the insurer by a Utah court having jurisdiction over
5200 the subject matter and the insurer;

5201 (ii) shall have been entered more than 60 days before the service of notice under
5202 Subsection (2)(a);

5203 (iii) may not have been satisfied in full;

5204 (iv) may not be the subject of a valid contract between the insurer and any judgment

5205 creditor for payment of the judgment, unless that contract has been breached by the insurer;

5206 (v) may not be a judgment assigned in order to institute proceedings under this

5207 Subsection (2); and

5208 (vi) may not be a judgment on which an appeal or review is pending or may yet be

5209 brought.

5210 (c) If any one of the judgments in favor of a petitioning creditor remains unpaid for 30

5211 days after service of the notice under Subsection (2)(a), and the commissioner has not then

5212 filed a petition for liquidation:

5213 (i) the creditor may file a verified petition for liquidation of the insurer:

5214 (A) in the manner prescribed by Section 31A-27-307 or 31A-27-402; and

5215 (B) alleging the conditions stated in this Subsection (2); and

5216 (ii) the commissioner shall be served and joined in the action.

5217 (3) Except in accordance with this chapter, a court of this state does not have

5218 jurisdiction to entertain, hear, or determine any complaint praying for:

5219 (a) the dissolution, liquidation, rehabilitation, sequestration, conservation, or

5220 receivership of any insurer; or

5221 (b) an injunction or restraining order or other relief preliminary to, incidental to, or

5222 relating to the type of proceedings described in Subsection (3)(a).

5223 (4) (a) Venue for proceedings arising under this chapter shall be laid initially as

5224 specified in the sections providing for those proceedings.

5225 (b) All other actions and proceedings initiated by the receiver may be commenced and

5226 tried where:

5227 (i) the delinquency proceedings are then pending; or

5228 (ii) venue would be laid by applicable Utah law.

5229 (c) All other actions and proceedings against the receiver shall be commenced and tried

5230 in the county where the delinquency proceedings are pending.

5231 (d) Upon motion of any party, venue may be changed by order of the court or the

5232 presiding judge of the court to any other district court in Utah, whenever the convenience of the

5233 parties and witnesses and the ends of justice require it.

5234 (e) This Subsection (4) relates only to venue and is not jurisdictional.

5235 (5) In addition to other grounds for jurisdiction provided by the law of Utah, a Utah

5236 court having jurisdiction of the subject matter has jurisdiction over a person properly served in
5237 an action brought by the receiver of a domestic insurer or an alien insurer domiciled in Utah:

5238 (a) if the person served is obligated to the insurer in any way as an incident to any
5239 agency or brokerage arrangement that may exist or has existed between them, in any action on
5240 or incident to the obligation;

5241 (b) if the person served is a reinsurer who has at any time written a policy of
5242 reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when
5243 the action is commenced;

5244 (c) if the person served is [~~an agent of or broker~~] a producer for the reinsurer described
5245 in Subsection (5)(b), in any action on or incident to the reinsurance contract; or

5246 (d) if the person served is or has been an officer, manager, trustee, organizer, promoter,
5247 or person in a position of comparable authority or influence in an insurer against which a
5248 rehabilitation or liquidation order is in effect when the action is commenced, in any action
5249 resulting from the relationship with the insurer.

5250 (6) (a) Subject to Sections 31A-27-305 and 31A-27-317, the court in which a
5251 delinquency proceeding is pending has exclusive jurisdiction for:

5252 (i) all actions and proceedings brought against the receiver of a rehabilitation or
5253 liquidation estate of the insurer; or

5254 (ii) any action or proceeding in any way related to a rehabilitation or liquidation estate
5255 of an insurer.

5256 (b) An action described in Subsection (6)(a) shall be commenced and tried in the court
5257 having exclusive jurisdiction.

5258 (7) If the court on the motion of any party finds that any action commenced under
5259 Subsection (5) should, as a matter of substantial justice, be tried in a forum outside Utah, the
5260 court may enter an order to stay further proceedings on the action in Utah.

5261 Section 103. Section **31A-27-316** is amended to read:

5262 **31A-27-316. Duties of producers.**

5263 Any [~~agent or broker~~] producer doing business with an insurer subject to a liquidation
5264 order shall, upon the liquidator's request, provide the liquidator with information in the [~~agent
5265 or broker's~~] producer's possession relative to the policyholders of the insurer who is subject to
5266 the liquidation order. The commissioner's request under this section shall impose a time limit

5267 within which the requested information shall be provided. This time limit may not be less than
5268 five working days.

5269 Section 104. Section **31A-27-324** is amended to read:

5270 **31A-27-324. Recovery of premiums owed.**

5271 (1) An insured is obligated to pay any unpaid earned premium due the insurer at the
5272 time of the termination of coverage under Subsection 31A-27-311(1).

5273 (2) Any person other than the insured who is responsible for the payment of a premium
5274 is obligated to pay any unpaid premium, including the amount representing the commission for
5275 the full policy term due the insurer at the time of the termination of coverage under Subsection
5276 31A-27-311(1), whether earned or unearned, as shown on the records of the insurer. Credits or
5277 setoffs may not be allowed to [~~an agent, broker~~] a producer, or premium finance company for
5278 any amounts advanced to the insurer by the [~~agent, broker,~~] producer or premium finance
5279 company on behalf of, but in the absence of a payment by, the insured.

5280 Section 105. Section **31A-30-104** is amended to read:

5281 **31A-30-104. Applicability and scope.**

5282 (1) This chapter applies to any:

5283 (a) health benefit plan that provides coverage to:

5284 (i) individuals;

5285 (ii) small employers; or

5286 (iii) both Subsections (1)(a)(i) and (ii); or

5287 (b) individual conversion policy for purposes of Sections 31A-30-106.5 and
5288 31A-30-107.5.

5289 (2) This chapter applies to a health benefit plan that provides coverage to small
5290 employers or individuals regardless of:

5291 (a) whether the contract is issued to:

5292 (i) an association;

5293 (ii) a trust;

5294 (iii) a discretionary group; or

5295 (iv) other similar grouping; or

5296 (b) the situs of delivery of the policy or contract.

5297 (3) This chapter does not apply to:

5298 (a) a large employer health benefit plan; or

5299 (b) short-term limited duration health insurance.

5300 (4) (a) Except as provided in Subsection (4)(b), for the purposes of this chapter:

5301 (i) carriers that are affiliated companies or that are eligible to file a consolidated tax
5302 return shall be treated as one carrier; and

5303 (ii) any restrictions or limitations imposed by this chapter shall apply as if all health
5304 benefit plans delivered or issued for delivery to covered insureds in this state by the affiliated
5305 carriers were issued by one carrier.

5306 (b) Upon a finding of the commissioner, an affiliated carrier that is a health
5307 maintenance organization having a certificate of authority under this title may be considered to
5308 be a separate carrier for the purposes of this chapter.

5309 (c) Unless otherwise authorized by the commissioner, a covered carrier may not enter
5310 into one or more ceding arrangements with respect to health benefit plans delivered or issued
5311 for delivery to covered insureds in this state if the ceding arrangements would result in less
5312 than 50% of the insurance obligation or risk for the health benefit plans being retained by the
5313 ceding carrier.

5314 (d) Section 31A-22-1201 applies if a covered carrier cedes or assumes all of the
5315 insurance obligation or risk with respect to one or more health benefit plans delivered or issued
5316 for delivery to covered insureds in this state.

5317 (5) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal
5318 Labor Management Relations Act, or a carrier with the written authorization of such a trust,
5319 may make a written request to the commissioner for a waiver from the application of any of the
5320 provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the
5321 trust.

5322 (b) The commissioner may grant a trust or carrier described in Subsection (5)(a) a
5323 waiver if the commissioner finds that application with respect to the trust would:

5324 (i) have a substantial adverse effect on the participants and beneficiaries of the trust;
5325 and

5326 (ii) require significant modifications to one or more collective bargaining arrangements
5327 under which the trust is established or maintained.

5328 (c) A waiver granted under this Subsection (5) may not apply to an individual if the

5329 person participates in a Taft Hartley trust as an associate member of any employee
5330 organization.

5331 (6) Sections 31A-30-106, 31A-30-106.5, 31A-30-106.7, 31A-30-107, 31A-30-108, and
5332 31A-30-111 apply to:

5333 (a) any insurer engaging in the business of insurance related to the risk of a small
5334 employer for medical, surgical, hospital, or ancillary health care expenses of the small
5335 employer's employees provided as an employee benefit; and

5336 (b) any contract of an insurer, other than a workers' compensation policy, related to the
5337 risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the
5338 small employer's employees provided as an employee benefit.

5339 (7) The commissioner may make rules requiring that the marketing practices be
5340 consistent with this chapter for:

5341 (a) a small employer carrier;

5342 (b) a small employer carrier's agent;

5343 (c) an insurance [~~broker~~] producer; and

5344 (d) an insurance consultant.

5345 Section 106. Section **31A-35-102** is amended to read:

5346 **31A-35-102. Definitions.**

5347 As used in this chapter:

5348 (1) "Bail bond" means a bond for a specified monetary amount that is:

5349 (a) executed by a bail bond [~~agent~~] producer licensed in accordance with Section
5350 31A-35-401; and

5351 (b) issued to a court, magistrate, or authorized officer as security for the subsequent
5352 court appearance of the defendant upon the defendant's release from actual custody pending the
5353 appearance.

5354 (2) "Bail bond [~~agent~~] producer" means an individual who:

5355 (a) is appointed by:

5356 (i) a surety insurer that issues bail bonds; or

5357 (ii) a bail bond surety company licensed under this chapter;

5358 (b) is appointed to execute or countersign undertakings of bail in connection with
5359 judicial proceedings; and

5360 (c) receives or is promised money or other things of value for engaging in an act
5361 described in Subsection (2)(b).

5362 (3) "Bail bond surety" means a person that:

5363 (a) (i) is a bail bond surety company licensed under this chapter; or

5364 (ii) a surety insurer; and

5365 (b) issues bonds to secure:

5366 (i) the release of a person from incarceration; and

5367 (ii) the appearance of that person at court hearings.

5368 (4) "Bail bond surety company" means any sole proprietor or entity who:

5369 (a) (i) is the agent of a surety insurer that issues a bail bond in connection with judicial
5370 proceedings;

5371 (ii) pledges the assets of a letter of credit from a Utah depository institution for a bail
5372 bond in connection with judicial proceedings; or

5373 (iii) pledges personal or real property, or both, as security for a bail bond in connection
5374 with judicial proceedings; and

5375 (b) receives or is promised money or other things of value for a service described in
5376 Subsection (4)(a).

5377 (5) "Bail enforcement agent" means an individual who:

5378 (a) is employed or contracted with to:

5379 (i) enforce the terms and conditions of a defendant's release on bail in a civil or
5380 criminal proceeding;

5381 (ii) apprehend a defendant or surrender a defendant to custody; or

5382 (iii) both Subsections (5)(a)(i) and (ii); and

5383 (b) receives or is promised monies or other things of value for the services described in
5384 Subsection (5)(a).

5385 (6) "Board" means the Bail Bond Surety Oversight Board created in Section
5386 31A-35-201.

5387 (7) "Certificate" means a certificate of authority issued under this chapter to allow an
5388 insurer to operate as a surety insurer.

5389 (8) "Indemnitor" means an entity or natural person who enters into an agreement with a
5390 bail bond surety to hold the bail bond surety harmless from loss incurred as a result of

5391 executing a bail bond.

5392 (9) "Liquid assets" means financial holdings that can be converted into cash in a timely
5393 manner without the loss of principal.

5394 (10) "Principal" means an individual or corporation whose performance is guaranteed
5395 by bond.

5396 (11) "Surety insurer" means an insurer that:

5397 (a) is licensed under Chapter 4, 5, or 14;

5398 (b) receives a certificate under this title; and

5399 (c) issues bail bonds.

5400 (12) "Utah depository institution" is a depository institution, as defined in Section
5401 7-1-103, that:

5402 (a) has Utah as its home state; or

5403 (b) operates a branch in Utah.

5404 Section 107. Section **31A-35-301** is amended to read:

5405 **31A-35-301. The commissioner's authority.**

5406 (1) The commissioner shall:

5407 (a) make rules as necessary for the administration of this chapter;

5408 (b) with information as provided by the board, issue or deny licensure under this
5409 chapter;

5410 (c) take action regarding a license, including suspension or revocation; and

5411 (d) maintain and publish a current list of licensed bail bond surety companies and
5412 [~~agents~~] producers.

5413 (2) The commissioner may establish fees for the issuance, renewal, and reinstatement
5414 of a bail bond surety company license in accordance with Section 63-38-3.2.

5415 Section 108. Section **31A-35-401** is amended to read:

5416 **31A-35-401. Requirement for license or certificate of authority -- Process -- Fees**
5417 **-- Limitations.**

5418 (1) (a) A person may not engage in the bail bond surety insurance business unless that
5419 person:

5420 (i) is a bail bond surety company licensed under this chapter;

5421 (ii) is a surety insurer that is granted a certificate under this section in the same manner

5422 as other insurers doing business in this state are granted certificates of authority under this title;
5423 or

5424 (iii) is a bail bond [agent] producer licensed in accordance with this section.

5425 (b) A bail bond surety company shall be licensed under this chapter as an agency.

5426 (c) A bail bond [agent] producer shall be licensed under Chapter ~~[23]~~ 23a, Insurance
5427 Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, as ~~[an agent]~~ a
5428 limited lines producer.

5429 (2) A person applying for a bail bond surety company license under this chapter shall
5430 submit to the commissioner:

5431 (a) a completed application form as prescribed by the commissioner;

5432 (b) a fee as determined by the commissioner in accordance with Section 63-38-3.2; and

5433 (c) any additional information required by rule.

5434 (3) Fees required under this section are not refundable.

5435 (4) Fees collected from a bail bond surety company shall be deposited in a restricted
5436 account created in Section 31A-35-407.

5437 (5) (a) A bail bond surety company shall be domiciled in Utah.

5438 (b) A bail bond [agent] producer shall be a resident of Utah.

5439 (c) A foreign surety insurer that is granted a certificate to issue bail bonds may only
5440 issue bail bonds through a bail bond surety company licensed under this chapter.

5441 Section 109. Section **31A-35-402** is amended to read:

5442 **31A-35-402. Authority related to bail bonds.**

5443 (1) A bail bond surety company may only issue bail bonds.

5444 (2) ~~[A]~~ In accordance with Section 31A-23a-205, a bail bond [agent] producer may not
5445 execute or issue a bail bond in this state without holding a current appointment from a bail
5446 bond surety or current designation from a bail bond company.

5447 (3) A bail bond surety may not allow any person who is not a bail bond [agent]
5448 producer to engage in the bail bond surety business on the bail bond surety's behalf, except for
5449 individuals:

5450 (a) employed solely for the performance of clerical, stenographic, investigative, or
5451 other administrative duties that do not require a license as:

5452 (i) a bail bond surety company; or

- 5453 (ii) a bail bond ~~[agent]~~ producer; and
5454 (b) whose compensation is not related to or contingent upon the number of bonds
5455 written.

5456 Section 110. Section **31A-35-403** is amended to read:

5457 **31A-35-403. Exemptions to licensing requirements.**

5458 This chapter does not affect the negotiation through a licensed ~~[broker or agent]~~
5459 producer for, or the execution or delivery of, an undertaking of bail executed by an insurer for
5460 its insured under a policy of automobile insurance or of liability insurance upon the automobile
5461 of the insured.

5462 Section 111. Section **31A-35-502** is amended to read:

5463 **31A-35-502. Notification of violation of chapter.**

5464 If the commissioner has reason to believe a person licensed as a bail bond surety
5465 company or a bail bond ~~[agent]~~ producer has violated this chapter, written notice shall be sent
5466 to that person, advising the person of:

- 5467 (1) the alleged violation;
5468 (2) the commissioner's authority to take action against the person's license;
5469 (3) the person's right to an administrative hearing under Title 63, Chapter 46b,
5470 Administrative Procedures Act; and
5471 (4) the period of time within which the hearing described in Subsection (3) shall be
5472 requested if the person requests a hearing.

5473 Section 112. Section **31A-35-503** is amended to read:

5474 **31A-35-503. Disciplinary action -- Hearing -- Appeal.**

5475 (1) Based on information the commissioner receives during a hearing described in
5476 Section 31A-35-502 regarding a person licensed as a bail bond surety company or bail bond
5477 ~~[agent]~~ producer, the commissioner may:

- 5478 (a) dismiss the complaint if the commissioner finds it is without merit;
5479 (b) fix a period and terms of probation best adopted to educate the person;
5480 (c) place the license on suspension for a period of not more than 12 months; or
5481 (d) revoke the license.
5482 (2) The commissioner shall advise the person described in Subsection (1) in writing of:
5483 (a) the commissioner's findings based on the hearing; and

5484 (b) the person's rights of appeal under this chapter.

5485 (3)(a) Unless the conditions of Subsection (3)(b) are met, if a bail bond surety company
5486 license is suspended or revoked under this chapter, a member, employee, officer, or director of
5487 that corporation may not:

5488 (i) be licensed as a bail bond surety company or bail bond [agent] producer; or

5489 (ii) be designated in any license to exercise authority under this chapter during the
5490 period of the suspension or revocation.

5491 (b) Subsection (3)(a) does not apply if the commissioner determines upon substantial
5492 evidence that the member, employee, officer, or director:

5493 (i) was not personally at fault; and

5494 (ii) did not acquiesce in the matter on account of which the license was suspended or
5495 revoked.

5496 Section 113. Section **31A-35-601** is amended to read:

5497 **31A-35-601. Acts of agent.**

5498 (1) As used in this section[;]:

5499 (a) "Bail recovery agent" means an individual employed by a bail enforcement agent to
5500 assist the bail enforcement agent regarding civil or criminal defendants released on bail by:

5501 (i) presenting a defendant for required court appearances;

5502 (ii) apprehending or surrendering a defendant to a court; or

5503 (iii) keeping the defendant under necessary surveillance.

5504 (b) "Bail recovery apprentice" means an individual who:

5505 (i) is employed by a bail enforcement agent; and

5506 (ii) works under the direct supervision of that bail enforcement agent or under the
5507 direct supervision of a bail recovery agent employed also by the bail enforcement agent, unless
5508 the bail recovery apprentice is conducting activities at the direction of the employing bail
5509 enforcement agent that do not require direct supervision.

5510 (2) The acts or conduct of any bail bond [agent] producer or bail enforcement agent,
5511 bail recovery agent, or bail recovery apprentice who acts within the scope of the authority
5512 delegated to him by the bail bond surety, are considered to be the acts or conduct of the bail
5513 bond surety for which the bail bond [agent] producer or bail bond enforcement agent, bail
5514 recovery agent, or bail recovery apprentice is acting as agent.

5515 (3) The acts or conduct of any bail bond [agent] producer or bail enforcement agent,
5516 bail recovery agent, or bail recovery apprentice who acts within the scope of the authority
5517 delegated to him by the bail bond [agent] producer are considered to be the acts or conduct of
5518 the bail bond [agent] producer for which the bail enforcement agent is acting as agent.

5519 Section 114. Section **31A-35-603** is amended to read:

5520 **31A-35-603. Collateral security.**

5521 (1) A bail bond [agent] producer may accept collateral security in connection with a
5522 bail transaction, if the collateral security is reasonable in relation to the face amount of the bail
5523 bond.

5524 (2) (a) The collateral security described in Subsection (1) shall be received by the bail
5525 bond [agent] producer in the bail bond [agent's] producer's fiduciary capacity.

5526 (b) Before any judgment of forfeiture of bail, the bail bond [agent] producer shall keep
5527 the collateral separate and apart from any other funds or assets of the licensee.

5528 (3) (a) Any collateral that is deposited with a bail bond [agent] producer or bail bond
5529 surety shall be returned to the person who deposited it within ten days after the return is
5530 requested by the person who deposited it if:

5531 (i) the bail bond has been exonerated; and

5532 (ii) all fees owed to the bail bond [agent] producer or bail bond surety have been paid.

5533 (b) A certified copy of the minute order from the court stating the bail or undertaking
5534 was ordered exonerated is prima facie evidence of exoneration or termination of liability.

5535 (4) (a) If a bail bond [agent] producer accepts collateral, the bail bond [agent] producer
5536 shall give a written receipt for the collateral.

5537 (b) The receipt required by Subsection (4)(a) shall include a fully detailed account of
5538 the collateral received.

5539 (5) Upon return of collateral to the person who posted it, if any amount has been
5540 deducted by the bail bond surety or bail bond [agent] producer as expense, the bail bond surety
5541 or bail bond [agent] producer shall:

5542 (a) include with the returned collateral an itemized statement of all expenses deducted
5543 from the collateral; and

5544 (b) maintain a copy of the statement required by Subsection (5)(a) in the records of the
5545 bail bond surety or bail bond [agent] producer.

5546 (6) If the bail bond secured by the collateral is forfeited and the bail bond [agent]
5547 producer or bail bond surety retains possession of the collateral in payment of the forfeiture or
5548 otherwise disposes of the collateral, the person retaining possession or disposing of the
5549 property shall maintain a written record of the collateral, including any disposition.

5550 (7) (a) If a document that conveys title to real property is used as collateral in a bail
5551 bond transaction, the document shall state on its face that it is executed as part of a security
5552 transaction.

5553 (b) If the document described in Subsection (7)(a) is recorded, the bail bond [agent]
5554 producer or the bail bond surety shall:

5555 (i) execute a reconveyance of the property, executed so that the reconveyance can be
5556 recorded; and

5557 (ii) promptly deliver the reconveyance document to:

5558 (A) the person executing the original conveyance; or

5559 (B) the heirs, legal representative, or successor in interest of the person described in
5560 Subsection (7)(b)(ii)(A).

5561 Section 115. Section **31A-35-604** is amended to read:

5562 **31A-35-604. Records.**

5563 (1) A bail bond [agent] producer shall maintain at the bail bond [agent's] producer's
5564 place of business:

5565 (a) records of all bail bonds the bail bond [agent] producer executes or countersigns, so
5566 the public may obtain all necessary information concerning those bail bonds for at least one
5567 year after the liability of the bail bond surety has been terminated; and

5568 (b) any additional information the commissioner may reasonably require by rule.

5569 (2) Records required to be maintained under Subsection (1) shall be available for
5570 examination by the commissioner or the commissioner's representatives during regular
5571 business hours.

5572 (3) The bail bond surety company shall maintain for three years after receipt all records
5573 of any bail bond executed or countersigned by a bail bond [agent] producer appointed by the
5574 bail bond surety company.

5575 Section 116. Section **31A-35-605** is amended to read:

5576 **31A-35-605. Guarantors -- Agreement and enforcement.**

5577 (1) All agreements of persons to act as guarantor for a bail bond shall be in writing or
5578 reduced to writing as soon as possible after completion.

5579 (2) When a person executes an agreement to act as a guarantor, the bail bond surety
5580 company or the bail bond [agent] producer shall deliver to that person a copy of the agreement
5581 promptly upon that person's execution of the agreement.

5582 (3) A bail bond [agent] producer may not enforce any guarantor agreement without
5583 disclosing to the guarantor all collateral held by the bail bond [agent] producer indemnifying
5584 the bond to which the agreement relates, and the identity of each other guarantor.

5585 Section 117. Section **31A-35-606** is amended to read:

5586 **31A-35-606. Bail agreement prior to commission of offense prohibited.**

5587 A bail bond surety or bail bond [agent] producer may not enter into an agreement or
5588 arrangement with any person, guaranteeing or assuring in advance of the commission of any
5589 offense that bail will be furnished to that person or any other party if arrested.

5590 Section 118. Section **31A-35-608** is amended to read:

5591 **31A-35-608. Premiums and authorized charges.**

5592 (1) A bail bond surety or bail bond [agent] producer may not, in any bail transaction or
5593 in connection with that transaction, directly or indirectly, charge or collect money or other
5594 valuable consideration from any person except to:

5595 (a) pay the premium on the bail at the rates established by the bail bond surety;

5596 (b) provide collateral;

5597 (c) reimburse himself for actual expenses, as described in Subsection (2), incurred in
5598 connection with the bail bond transaction; or

5599 (d) to reimburse himself, or to establish a right of action against the principal or any
5600 indemnitor, for actual expenses the bail bond surety or bail bond [agent] producer incurred:

5601 (i) in good faith; and

5602 (ii) which were by reason of breach by the defendant of any of the terms of the written
5603 agreement under which the undertaking of bail or bail bond was written.

5604 (2) (a) A bail bond surety may bring an action in a court of law to enforce its equitable
5605 rights against the principal and the principal's indemnitors in exoneration if:

5606 (i) a bail bond [agent] producer did not establish a written agreement; or

5607 (ii) there is only an incomplete writing.

5608 (b) Reimbursement claimed under this Subsection (2) may not exceed the sum of:

5609 (i) the principal sum of the bail bond or undertaking; and

5610 (ii) any reasonable expenses that:

5611 (A) are verified by receipt;

5612 (B) in total do not amount to more than the principal sum of the bail bond or
5613 undertaking; and

5614 (C) are incurred in good faith by the bail bond surety, its ~~[agents]~~ producers, and
5615 employees by reason of the principal's breach.

5616 (3) This section does not affect or impede the right of a bail bond ~~[agent]~~ producer to
5617 execute undertaking of bail on behalf of a nonresident ~~[agent]~~ producer of the bail bond surety
5618 the bail bond ~~[agent]~~ producer represents.

5619 Section 119. Section **31A-35-701** is amended to read:

5620 **31A-35-701. Prohibited acts.**

5621 (1) A bail bond ~~[agent]~~ producer or bail bond surety may not:

5622 (a) solicit business in or about:

5623 (i) any place where persons in the custody of the state or any local law enforcement or
5624 correctional agency are confined; or

5625 (ii) any court;

5626 (b) pay a fee or rebate or give or promise anything of value to any person in order to
5627 secure a settlement, compromise, remission, or reduction of the amount of any undertaking or
5628 bail bond;

5629 (c) pay a fee or rebate or give anything of value to an attorney in regard to any bail
5630 bond matter, except payment for legal services actually rendered for the bail bond ~~[agent]~~
5631 producer or bail bond surety;

5632 (d) pay a fee or rebate or give or promise anything of value to the principal or anyone
5633 in the principal's behalf; or

5634 (e) engage in any other act prohibited by the commissioner by rule.

5635 (2) The following persons may not act as bail bond ~~[agents]~~ producers and may not,
5636 directly or indirectly, receive any benefits from the execution of any bail bond:

5637 (a) a person employed at any jail, correctional facility, or other facility used for the
5638 incarceration of persons;

5639 (b) a peace officer;
5640 (c) a judge; and
5641 (d) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility
5642 used for the incarceration of persons.

5643 (3) A bail bond [agent] producer may not:

5644 (a) sign or countersign in blank any bail bond; or

5645 (b) give the power of attorney to, or otherwise authorize anyone to, countersign in the
5646 bail bond [agent's] producer's name to a bail bond.

5647 (4) A bail bond [agent] producer may not advertise or hold himself out to be a bail
5648 bond surety.

5649 (5) The following persons or members of their immediate families may not solicit
5650 business on behalf of a bail bond surety or bail bond [agent] producer:

5651 (a) a person employed at any jail, correctional facility, or other facility used for the
5652 incarceration of persons;

5653 (b) a peace officer;

5654 (c) a judge; and

5655 (d) a trustee or prisoner incarcerated in any jail, correctional facility, or other facility
5656 used for the incarceration of persons.

5657 Section 120. Section **31A-35-702** is amended to read:

5658 **31A-35-702. Early surrender without cause.**

5659 (1) The bail or bail bond premium shall be returned in full if a bail bond [agent]
5660 producer without good cause surrenders a defendant to custody before:

5661 (a) the time specified in the undertaking of bail or the bail bond for the appearance of
5662 the defendant; or

5663 (b) any other occasion where the presence of the defendant in court is lawfully
5664 required.

5665 (2) As used in this section, "good cause" includes:

5666 (a) the defendant providing materially false information on the application for bail or a
5667 bail bond;

5668 (b) the court's increasing the amount of bail beyond sound underwriting criteria
5669 employed by:

- 5670 (i) the bail bond [agent] producer; or
- 5671 (ii) the bail bond surety;
- 5672 (c) a material and detrimental change in the collateral posted by:
- 5673 (i) the defendant; or
- 5674 (ii) a person acting on the defendant's behalf;
- 5675 (d) the defendant changing the defendant's address or telephone number without giving
- 5676 reasonable notice to:

- 5677 (i) the bail bond [agent] producer; or
- 5678 (ii) the bail bond surety;
- 5679 (e) the defendant commits another crime, other than a minor traffic violation, as
- 5680 defined by department rule, while on bail;
- 5681 (f) failure by the defendant to appear in court at the appointed time; or
- 5682 (g) a finding of guilt against the defendant by a court of competent jurisdiction.

5683 Section 121. Section **31A-35-703** is amended to read:

5684 **31A-35-703. Disciplinary action.**

5685 (1) A person found to be in violation of the statutes or rules governing the conduct of

5686 bail bond [agents] producers and bail bond sureties under this chapter is subject to:

- 5687 (a) disciplinary action by the commissioner against that person's:
- 5688 (i) license, if the person is a bail bond surety company or bail bond [agent] producer; or
- 5689 (ii) certificate, if the person is a surety insurer; and
- 5690 (b) imposition of civil penalties, as authorized under Title 31A, Chapter 2,
- 5691 Administration of the Insurance Laws.

5692 (2) Penalties collected under this section shall be deposited in the restricted account

5693 created in Section 31A-35-407.

5694 Section 122. Section **31A-35-704** is amended to read:

5695 **31A-35-704. Submission of bail bond sureties and producers to jurisdiction of**

5696 **court.**

5697 By applying for and receiving a license or certificate to engage in the bail bond surety

5698 insurance business in accordance with this chapter, a bail bond surety or bail bond [agent]

5699 producer:

- 5700 (1) submits to the jurisdiction of the court;

5701 (2) irrevocably appoints the clerk of the court as agent upon whom any papers affecting
5702 the bail bond surety's or bail bond [agent's] producer's liability on the undertaking may be
5703 served; and

5704 (3) acknowledges that liability may be enforced on motion and upon notice as the court
5705 may require, without the necessity of an independent action.

5706 Section 123. Section **34A-2-104** is amended to read:

5707 **34A-2-104. "Employee," "worker," and "operative" defined -- Mining lessees**
5708 **and sublessees -- Corporate officers and directors -- Real estate agents and brokers --**
5709 **Prison inmates -- Insurance producers -- Certain domestic workers.**

5710 (1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee,"
5711 "worker," and "operative" mean:

5712 (a) (i) each elective and appointive officer and any other person:

5713 (A) in the service of:

5714 (I) the state;

5715 (II) a county, city, or town within the state; or

5716 (III) a school district within the state;

5717 (B) serving the state, or any county, city, town, or school district under:

5718 (I) an election;

5719 (II) appointment; or

5720 (III) any contract of hire, express or implied, written or oral; and

5721 (ii) including:

5722 (A) an officer or employee of the state institutions of learning; and

5723 (B) a member of the National Guard while on state active duty; and

5724 (b) each person in the service of any employer, as defined in Section 34A-2-103, who
5725 employs one or more workers or operatives regularly in the same business, or in or about the
5726 same establishment:

5727 (i) under any contract of hire:

5728 (A) express or implied; and

5729 (B) oral or written;

5730 (ii) including aliens and minors, whether legally or illegally working for hire; and

5731 (iii) not including any person whose employment:

- 5732 (A) is casual; and
5733 (B) not in the usual course of the trade, business, or occupation of the employee's
5734 employer.
- 5735 (2) (a) Unless a lessee provides coverage as an employer under this chapter and
5736 Chapter 3, any lessee in mines or of mining property and each employee and sublessee of the
5737 lessee shall be:
- 5738 (i) covered for compensation by the lessor under this chapter and Chapter 3;
5739 (ii) subject to this chapter and Chapter 3; and
5740 (iii) entitled to the benefits of this chapter and Chapter 3, to the same extent as if the
5741 lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees
5742 for substantially similar work.
- 5743 (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount
5744 equal to the insurance premium for that type of work.
- 5745 (3) (a) A partnership or sole proprietorship may elect to include any partner of the
5746 partnership or owner of the sole proprietorship as an employee of the partnership or sole
5747 proprietorship under this chapter and Chapter 3.
- 5748 (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a),
5749 the partnership or sole proprietorship shall serve written notice upon its insurance carrier
5750 naming the persons to be covered.
- 5751 (c) A partner of a partnership or owner of a sole proprietorship may not be considered
5752 an employee of the partner's partnership or the owner's sole proprietorship under this chapter or
5753 Chapter 3 until the notice described in Subsection (3)(b) is given.
- 5754 (d) For premium rate making, the insurance carrier shall assume the salary or wage of
5755 the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the
5756 state's average weekly wage.
- 5757 (4) (a) A corporation may elect not to include any director or officer of the corporation
5758 as an employee under this chapter and Chapter 3.
- 5759 (b) If a corporation makes an election under Subsection (4)(a), the corporation shall
5760 serve written notice upon its insurance carrier naming the persons to be excluded from
5761 coverage.
- 5762 (c) A director or officer of a corporation is considered an employee under this chapter

5763 and Chapter 3 until the notice described in Subsection (4)(b) is given.

5764 (5) As used in this chapter and Chapter 3, "employee," "worker," and "operative" do
5765 not include:

5766 (a) a real estate sales agent or real estate broker, as defined in Section 61-2-2, who
5767 performs services in that capacity for a real estate broker if:

5768 (i) substantially all of the real estate sales agent's or associated broker's income for
5769 services is from real estate commissions; and

5770 (ii) the services of the real estate sales agent or associated broker are performed under a
5771 written contract that:

5772 (A) the real estate agent is an independent contractor; and

5773 (B) the real estate sales agent or associated broker is not to be treated as an employee
5774 for federal income tax purposes;

5775 (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as
5776 required by federal statute or regulation;

5777 (c) an individual who for an insurance [~~agent or broker~~] producer, as defined in Section
5778 31A-1-301, solicits, negotiates, places or procures insurance if:

5779 (i) substantially all of the individual's income from those services is from insurance
5780 commissions; and

5781 (ii) the services of the individual are performed under a written contract that states that
5782 the individual:

5783 (A) is an independent contractor;

5784 (B) is not to be treated as an employee for federal income tax purposes; and

5785 (C) can derive income from more than one insurance company; or

5786 (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic
5787 work for a person if:

5788 (i) the person for whom the domestic work is being provided receives or is eligible to
5789 receive the domestic work under a state or federal program designed to pay the costs of
5790 domestic work to prevent the person from being placed in:

5791 (A) an institution; or

5792 (B) a more restrictive placement than where that person resides at the time the person
5793 receives the domestic work;

5794 (ii) the individual is paid by a person designated by the Secretary of the Treasury in
5795 accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person
5796 that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

5797 (iii) the domestic work is performed under a written contract that notifies the
5798 individual that the individual is not an employee under this chapter or Chapter 3.

5799 (6) An individual described in Subsection (5)(d) may become an employee under this
5800 chapter and Chapter 3 if the employer of the individual complies with:

5801 (a) this chapter and Chapter 3; and

5802 (b) commission rules.

5803 Section 124. Section **35A-4-205** is amended to read:

5804 **35A-4-205. Exempt employment.**

5805 (1) If the services are also exempted under the Federal Unemployment Tax Act, as
5806 amended, employment does not include:

5807 (a) service performed prior to January 1, 1973, in the employ of a state, except as
5808 provided in Subsection 35A-4-204(2)(d);

5809 (b) service performed in the employ of a political subdivision of a state, except as
5810 provided in Subsection 35A-4-204(2)(d);

5811 (c) service performed in the employ of the United States Government or an
5812 instrumentality of the United States immune under the United States Constitution from the
5813 contributions imposed by this chapter, except that, to the extent that the Congress of the United
5814 States shall permit, this chapter shall apply to those instrumentalities and to services performed
5815 for the instrumentalities to the same extent as to all other employers, employing units,
5816 individuals and services; provided, that if this state is not certified for any year by the Secretary
5817 of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304,
5818 the payments required of the instrumentalities with respect to that year shall be refunded by the
5819 division from the fund in the same manner and within the same period as is provided in
5820 Subsection 35A-4-306(5) with respect to contributions erroneously collected;

5821 (d) service performed after June 30, 1939, as an employee representative as defined in
5822 the Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq., and service performed after
5823 June 30, 1939, for an employer as defined in that act except that if the division determines that
5824 any employing unit which is principally engaged in activities not included in those definitions

5825 constitutes such an employer only to the extent of an identifiable and separable portion of its
5826 activities, this exemption applies only to services performed for the identifiable and separable
5827 portion of its activities;

5828 (e) agricultural labor as defined in Section 35A-4-206;

5829 (f) domestic service in a private home, local college club, or local chapter of a college
5830 fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);

5831 (g) (i) service performed in the employ of a school, college, or university, if the service
5832 is performed:

5833 (A) by a student who is enrolled and is regularly attending classes at that school,
5834 college, or university; or

5835 (B) by the spouse of the student, if the spouse is advised, at the time the spouse
5836 commences to perform that service, that the employment of that spouse to perform that service
5837 is provided under a program to provide financial assistance to the student by the school,
5838 college, or university, and that the employment will not be covered by any program of
5839 unemployment insurance;

5840 (ii) service performed by an individual who is enrolled at a nonprofit or public
5841 educational institution, that normally maintains a regular faculty and curriculum and normally
5842 has a regularly organized body of students in attendance at the place where its educational
5843 activities are carried on, as a student in a full-time program taken for credit at the institution,
5844 that combines academic instruction with work experience, if the service is an integral part of
5845 the program and the institution has so certified to the employer, but this Subsection (1) does
5846 not apply to service performed in a program established for or on behalf of an employer or
5847 group of employers; or

5848 (iii) service performed in the employ of a hospital, if the service is performed by a
5849 patient of the hospital;

5850 (h) service performed by an individual in the employ of the individual's son, daughter,
5851 or spouse, and service performed by a child under the age of 21 in the employ of the child's
5852 parent;

5853 (i) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:

5854 (i) in the employ of:

5855 (A) a church or convention or association of churches; or

5856 (B) an organization that is operated primarily for religious purposes and that is
5857 operated, supervised, controlled, or principally supported by a church or convention or
5858 association of churches;

5859 (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise
5860 of the minister's ministry or by a member of a religious order in the exercise of duties required
5861 by the order;

5862 (iii) after December 31, 1977, in the employ of a governmental entity referred to in
5863 Subsection 35A-4-204(2) if the service is performed by an individual in the exercise of the
5864 individual's duties:

5865 (A) as an elected official;

5866 (B) as a member of a legislative body or the judiciary of the state or its political
5867 subdivisions;

5868 (C) as a member of the National Guard or Air National Guard;

5869 (D) as an employee serving on a temporary basis in case of fire, storm, snow,
5870 earthquake, flood, or similar emergency; or

5871 (E) in an advisory position or a policymaking position the performance of the duties of
5872 which ordinarily does not require more than eight hours per week;

5873 (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation
5874 for individuals whose earning capacity is impaired by age, physical or mental deficiency,
5875 injury, or providing a remunerative work for individuals who, because of their impaired
5876 physical or mental capacity, cannot be readily absorbed in the competitive labor market by an
5877 individual receiving that rehabilitation or remunerative work;

5878 (v) as part of an unemployment work-relief or work-training program, assisted or
5879 financed in whole or in part by any federal agency or an agency of a state or political
5880 subdivision of the state, by an individual receiving the work-relief or work-training; and

5881 (vi) prior to January 1, 1978, for a hospital in a state prison or other state correctional
5882 institution by an inmate of the prison or correctional institution and after December 31, 1977,
5883 by an inmate of a custodial or penal institution;

5884 (j) casual labor not in the course of the employing unit's trade or business;

5885 (k) service performed in any calendar quarter in the employ of any organization exempt
5886 from income tax under Subsection 501(a), Internal Revenue Code, other than an organization

5887 described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for
5888 the service is less than \$50;

5889 (l) service is performed in the employ of a foreign government, including service as a
5890 consular or other officer, other employee, or a nondiplomatic representative;

5891 (m) service performed in the employ of an instrumentality wholly owned by a foreign
5892 government:

5893 (i) if the service is of a character similar to that performed in foreign countries by
5894 employees of the United States government or its instrumentalities; and

5895 (ii) if the division finds that the United States Secretary of State has certified to the
5896 United States Secretary of the Treasury that the foreign government with respect to whose
5897 instrumentality exemption is claimed grants an equivalent exemption with respect to similar
5898 service performed in the foreign country by employees of the United States government and its
5899 instrumentalities;

5900 (n) service performed by an individual for a person as an insurance ~~[agent]~~ producer or
5901 as an insurance solicitor, if all the service performed by the individual for that person is
5902 performed for remuneration solely by way of commission;

5903 (o) service performed by an individual in the delivery or distribution of newspapers or
5904 shopping news, not including delivery or distribution to any point for subsequent delivery or
5905 distribution;

5906 (p) service covered by an arrangement between the division and the agency charged
5907 with the administration of any other state or federal unemployment compensation law under
5908 which all services performed by an individual for an employing unit during the period covered
5909 by the employing unit's duly approved election, are considered to be performed entirely within
5910 the agency's state or under the federal law;

5911 (q) service performed by lessees engaged in metal mining under lease agreements,
5912 unless the individual lease agreement, or the practice in actual operation under the agreement,
5913 is such as would constitute the lessees' employees of the lessor at common law;

5914 (r) service performed by an individual for a person as a licensed real estate agent or
5915 salesman if all the service performed by the individual for that person is performed for
5916 remuneration solely by way of commission;

5917 (s) service performed by an individual for a person as a licensed securities agent or

5918 salesman, registered representative, if the service performed by the individual for that person is
5919 performed for remuneration solely by way of commission;

5920 (t) services as an outside salesman paid solely by way of commission if the services
5921 were performed outside of all places of business of the enterprises for which the services are
5922 performed except:

5923 (i) as provided in Subsection 35A-4-204(2)(i); or

5924 (ii) if the services would constitute employment at common law;

5925 (u) service performed by an individual as a telephone survey conductor or pollster if:

5926 (i) the individual does not perform the service on the principal's premises; and

5927 (ii) the individual is paid for the service solely on a piece-rate or commission basis; or

5928 (v) service performed by a nurse licensed or registered under Title 58, Chapter 31b,
5929 Nurse Practice Act, if:

5930 (i) the service of the nurse is performed in the home of the patient;

5931 (ii) substantially all of the nurse's compensation for the service is from health insurance
5932 proceeds; and

5933 (iii) no compensation or fee for the service is paid to any agency or company as a
5934 business furnishing nursing services.

5935 (2) "Included and excluded service" means if the services performed during 1/2 or
5936 more of any pay period by an individual for the person employing the individual constitute
5937 employment, all the services of the individual for the period are considered to be employment;
5938 but if the services performed during more than half of any such pay period by an individual for
5939 the person employing the individual do not constitute employment, then none of the services of
5940 the individual for the period are considered to be employment. As used in this Subsection (2),
5941 "pay period" means a period of not more than 31 consecutive days for which payment of
5942 remuneration is ordinarily made to the individual by the person employing the individual.

5943 Section 125. Section **41-12a-303.2** is amended to read:

5944 **41-12a-303.2. Evidence of owner's or operator's security to be carried when**
5945 **operating motor vehicle -- Defense -- Penalties.**

5946 (1) As used in this section:

5947 (a) "Division" means the Motor Vehicle Division of the State Tax Commission.

5948 (b) "Registration materials" means the evidences of motor vehicle registration,

5949 including all registration cards, license plates, temporary permits, and nonresident temporary
5950 permits.

5951 (2) (a) (i) A person operating a motor vehicle shall:

5952 (A) have in the person's immediate possession evidence of owner's or operator's
5953 security for the motor vehicle the person is operating; and

5954 (B) display it upon demand of a peace officer.

5955 (ii) A person is exempt from the requirements of Subsection (2)(a)(i) if the person is
5956 operating:

5957 (A) a government-owned or leased motor vehicle; or

5958 (B) an employer-owned or leased motor vehicle and is driving it with the employer's
5959 permission.

5960 (b) Evidence of owner's or operator's security includes any one of the following:

5961 (i) a copy of the operator's valid:

5962 (A) insurance policy;

5963 (B) insurance policy declaration page;

5964 (C) binder notice;

5965 (D) renewal notice; or

5966 (E) card issued by an insurance company as evidence of insurance;

5967 (ii) a certificate of insurance issued under Section 41-12a-402;

5968 (iii) a certified copy of a surety bond issued under Section 41-12a-405;

5969 (iv) a certificate of the state treasurer issued under Section 41-12a-406;

5970 (v) a certificate of self-funded coverage issued under Section 41-12a-407; or

5971 (vi) information that the vehicle or driver is insured from the Uninsured Motorist

5972 Identification Database Program created under Title 41, Chapter 12a, Part 8.

5973 (c) Evidence of owner's or operator's security from the Uninsured Motorist

5974 Identification Database Program described under Subsection (2)(b)(vi) supercedes any

5975 evidence of owner's or operator's security described under Subsection (2)(b)(i)(D) or (E).

5976 (3) It is an affirmative defense to a charge under this section that the person had
5977 owner's or operator's security in effect for the vehicle the person was operating at the time of
5978 the person's citation or arrest.

5979 (4) (a) Evidence of owner's or operator's security as defined under Subsection (2)(b)

5980 except Subsections (2)(b)(i)(D) and (E) or a written statement from an insurance [agent]
5981 producer or company verifying that the person had the required motor vehicle insurance
5982 coverage on the date specified is considered proof of owner's or operator's security for purposes
5983 of Subsection (3) and Section 41-12a-804.

5984 (b) The court considering a citation issued under this section shall allow the evidence
5985 or a written statement under Subsection (4)(a) and a copy of the citation to be faxed or mailed
5986 to the clerk of the court to satisfy Subsection (3).

5987 (c) The notice under Section 41-12a-804 shall specify that the written statement under
5988 Subsection (4)(a) and a copy of the notice shall be faxed or mailed to the designated agent to
5989 satisfy the proof of owner's or operator's security required under Section 41-12a-804.

5990 (5) A violation of this section is a class B misdemeanor, and the fine shall be not less
5991 than:

5992 (a) \$400 for a first offense; and

5993 (b) \$1,000 for a second and subsequent offense within three years of a previous
5994 conviction or bail forfeiture.

5995 (6) Upon receiving notification from a court of a conviction for a violation of this
5996 section, the department:

5997 (a) shall suspend the person's driver license; and

5998 (b) may not renew the person's driver license or issue a driver license to the person
5999 until the person gives the department proof of owner's or operator's security.

6000 (i) This proof of owner's or operator's security shall be given by any of the ways
6001 required under Section 41-12a-401.

6002 (ii) This proof of owner's or operator's security shall be maintained with the department
6003 for a three-year period.

6004 (iii) An insurer that provides a certificate of insurance as provided under Section
6005 41-12a-402 or 41-12a-403 may not terminate the insurance policy unless notice of termination
6006 is filed with the department no later than ten days after termination as required under Section
6007 41-12a-404.

6008 (iv) If a person who has canceled the certificate of insurance applies for a license
6009 within three years from the date proof of owner's or operator's security was originally required,
6010 the department shall refuse the application unless the person reestablishes proof of owner's or

6011 operator's security and maintains the proof for the remainder of the three-year period.

6012 Section 126. Section **57-1-39** is amended to read:

6013 **57-1-39. Definitions.**

6014 As used in Sections 57-1-40 and 57-1-44:

6015 (1) "Beneficiary" means the record owner of the beneficiary's interest under a trust
6016 deed, including successors in interest.

6017 (2) "Deliver" or "delivered" means:

6018 (a) by overnight delivery by a reputable carrier; or

6019 (b) by United States certified mail or express mail.

6020 (3) "Mortgage" is as described in Section 57-1-14.

6021 (4) "Mortgagee" means the record owner of the mortgagee's interest under a mortgage,
6022 including a successor in interest.

6023 (5) "Satisfactory evidence of the full payment of the obligation secured by a trust deed
6024 or mortgage" means written information adequate, in the opinion of a title insurer or title agent,
6025 to establish that the obligation secured by the trust deed or mortgage has been paid in full.

6026 (6) "Servicer" means a person or entity that collects loan payments on behalf of a
6027 beneficiary or mortgagee.

6028 (7) "Title agent" means a title insurance [~~agent~~] producer licensed as an organization
6029 under Title 31A, Chapter [~~23, Part II, Licensing of Agents, Brokers~~] 23a, Part 2, Producers and
6030 Consultants.

6031 (8) "Title insurer" means a title insurer authorized to conduct business in the state
6032 under Title 31A, Chapter [~~23, Part II, Licensing of Agents, Brokers~~] 23a, Part 2, Producers and
6033 Consultants.

6034 (9) "Trust deed" is as defined in Subsection 57-1-19(3).

6035 Section 127. Section **59-9-101** is amended to read:

6036 **59-9-101. Tax basis -- Rates -- Exemptions.**

6037 (1) (a) Except for annuity considerations, insurance premiums paid by institutions
6038 within the state system of higher education as specified in Section 53B-1-102, and ocean
6039 marine insurance, every admitted insurer shall pay to the commission on or before March 31 in
6040 each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar
6041 year from insurance covering property or risks located in this state.

- 6042 (b) This Subsection (1) does not apply to:
- 6043 (i) workers' compensation insurance, assessed under Subsection (2); and
- 6044 (ii) title insurance premiums taxed under Subsection (3).
- 6045 (c) The taxable premium under this Subsection (1) shall be reduced by:
- 6046 (i) all premiums returned or credited to policyholders on direct business subject to tax
- 6047 in this state;
- 6048 (ii) all premiums received for reinsurance of property or risks located in this state; and
- 6049 (iii) the dividends, including premium reduction benefits maturing within the year, paid
- 6050 or credited to policyholders in this state or applied in abatement or reduction of premiums due
- 6051 during the preceding calendar year.
- 6052 (2) (a) Every admitted insurer writing workers' compensation insurance in this state,
- 6053 including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers'
- 6054 Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a
- 6055 premium assessment of between 1% and 8% of the total workers' compensation premium
- 6056 income received by the insurer from workers' compensation insurance in this state during the
- 6057 preceding calendar year.
- 6058 (b) Total workers' compensation premium income means the net written premium as
- 6059 calculated before any premium reduction for any insured employer's deductible, retention, or
- 6060 reimbursement amounts and also those amounts equivalent to premiums as provided in Section
- 6061 34A-2-202.
- 6062 (c) The percentage of premium assessment applicable for a calendar year shall be
- 6063 determined by the Labor Commission under Subsection (2)(d). The total premium income
- 6064 shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not
- 6065 as provided in Subsection (1)(c)(iii). The tax commission shall promptly remit from the
- 6066 premium assessment collected under Subsection (2):
- 6067 (i) an amount of up to 7.25% of the premium income to the state treasurer for credit to
- 6068 the Employers' Reinsurance Fund created under Subsection 34A-2-702(1);
- 6069 (ii) an amount equal to 0.25% of the premium income to the state treasurer for credit to
- 6070 the restricted account in the General Fund, created by Section 34A-2-701; and
- 6071 (iii) an amount of up to 0.50% and any remaining assessed percentage of the premium
- 6072 income to the state treasurer for credit to the Uninsured Employers' Fund created under Section

6073 34A-2-704.

6074 (d) (i) The Labor Commission shall determine the amount of the premium assessment
6075 for each year on or before each October 15 of the preceding year. The Labor Commission shall
6076 make this determination following a public hearing. The determination shall be based upon the
6077 recommendations of a qualified actuary.

6078 (ii) The actuary shall recommend a premium assessment rate sufficient to provide
6079 payments of benefits and expenses from the Employers' Reinsurance Fund and to project a
6080 funded condition with assets greater than liabilities by no later than June 30, 2025.

6081 (iii) The actuary shall recommend a premium assessment rate sufficient to provide
6082 payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a
6083 funded condition with assets equal to or greater than liabilities.

6084 (iv) At the end of each fiscal year the minimum approximate assets in the Employers'
6085 Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in
6086 1990 by multiplying by the ratio that the total workers' compensation premium income for the
6087 preceding calendar year bears to the total workers' compensation premium income for the
6088 calendar year 1988.

6089 (v) The requirements of Subsection (2)(d)(iv) cease when the future annual
6090 disbursements from the Employers' Reinsurance Fund are projected to be less than the
6091 calculations of the corresponding future minimum required assets. The Labor Commission
6092 shall, after a public hearing, determine if the future annual disbursements are less than the
6093 corresponding future minimum required assets from projections provided by the actuary.

6094 (vi) At the end of each fiscal year the minimum approximate assets in the Uninsured
6095 Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in
6096 1990 by multiplying by the ratio that the total workers' compensation premium income for the
6097 preceding calendar year bears to the total workers' compensation premium income for the
6098 calendar year 1988.

6099 (e) A premium assessment that is to be transferred into the General Fund may be
6100 collected on premiums received from Utah public agencies.

6101 (3) Every admitted insurer writing title insurance in this state shall pay to the
6102 commission, on or before March 31 in each year, a tax of .45% of the total premium received
6103 by either the insurer or by its agents during the preceding calendar year from title insurance

6104 concerning property located in this state. In calculating this tax, "premium" includes the
6105 charges made to an insured under or to an applicant for a policy or contract of title insurance
6106 for:

6107 (a) the assumption by the title insurer of the risks assumed by the issuance of the policy
6108 or contract of title insurance; and

6109 (b) abstracting title, title searching, examining title, or determining the insurability of
6110 title, and every other activity, exclusive of escrow, settlement, or closing charges, whether
6111 denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title
6112 insurance [agent] producer, or any of them.

6113 (4) Beginning July 1, 1986, former county mutuals and former mutual benefit
6114 associations shall pay the premium tax or assessment due under this chapter. All premiums
6115 received after July 1, 1986, shall be considered in determining the tax or assessment.

6116 (5) The following insurers are not subject to the premium tax on health care insurance
6117 that would otherwise be applicable under Subsection (1):

6118 (a) insurers licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance
6119 Corporations;

6120 (b) insurers licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance
6121 Corporations;

6122 (c) insurers licensed under Title 31A, Chapter 8, Health Maintenance Organizations
6123 and Limited Health Plans;

6124 (d) insurers licensed under Title 31A, Chapter 9, Insurance Fraternal;

6125 (e) insurers licensed under Title 31A, Chapter 11, Motor Clubs;

6126 (f) insurers licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans;

6127 and

6128 (g) insurers licensed under Title 31A, Chapter 14, Foreign Insurers.

6129 (6) An insurer issuing multiple policies to an insured may not artificially allocate the
6130 premiums among the policies for purposes of reducing the aggregate premium tax or
6131 assessment applicable to the policies.

6132 (7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and
6133 Taxes, apply to the tax or assessment imposed under this chapter.

6134 Section 128. Section **63-2-202** is amended to read:

6135 **63-2-202. Access to private, controlled, and protected documents.**

6136 (1) Upon request, a governmental entity shall disclose a private record to:

6137 (a) the subject of the record;

6138 (b) the parent or legal guardian of an unemancipated minor who is the subject of the

6139 record;

6140 (c) the legal guardian of a legally incapacitated individual who is the subject of the

6141 record;

6142 (d) any other individual who:

6143 (i) has a power of attorney from the subject of the record;

6144 (ii) submits a notarized release from the subject of the record or his legal representative

6145 dated no more than 90 days before the date the request is made; or

6146 (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health

6147 care provider, as defined in Section 26-33a-102, if releasing the record or information in the

6148 record is consistent with normal professional practice and medical ethics; or

6149 (e) any person to whom the record must be provided pursuant to court order as

6150 provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

6151 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

6152 (i) a physician, psychologist, certified social worker, insurance provider or ~~agent~~6153 producer, or a government public health agency upon submission of a release from the subject

6154 of the record that is dated no more than 90 days prior to the date the request is made and a

6155 signed acknowledgment of the terms of disclosure of controlled information as provided by

6156 Subsection (2)(b); and

6157 (ii) any person to whom the record must be disclosed pursuant to court order as

6158 provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

6159 (b) A person who receives a record from a governmental entity in accordance with

6160 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,

6161 including the subject of the record.

6162 (3) If there is more than one subject of a private or controlled record, the portion of the

6163 record that pertains to another subject shall be segregated from the portion that the requester is

6164 entitled to inspect.

6165 (4) Upon request, a governmental entity shall disclose a protected record to:

- 6166 (a) the person who submitted the record;
- 6167 (b) any other individual who:
- 6168 (i) has a power of attorney from all persons, governmental entities, or political
- 6169 subdivisions whose interests were sought to be protected by the protected classification; or
- 6170 (ii) submits a notarized release from all persons, governmental entities, or political
- 6171 subdivisions whose interests were sought to be protected by the protected classification or from
- 6172 their legal representatives dated no more than 90 days prior to the date the request is made;
- 6173 (c) any person to whom the record must be provided pursuant to a court order as
- 6174 provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14; or
- 6175 (d) the owner of a mobile home park, subject to the conditions of Subsection
- 6176 41-1a-116(5).
- 6177 (5) A governmental entity may disclose a private, controlled, or protected record to
- 6178 another governmental entity, political subdivision, another state, the United States, or a foreign
- 6179 government only as provided by Section 63-2-206.
- 6180 (6) Before releasing a private, controlled, or protected record, the governmental entity
- 6181 shall obtain evidence of the requester's identity.
- 6182 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
- 6183 signed by a judge from a court of competent jurisdiction, provided that:
- 6184 (a) the record deals with a matter in controversy over which the court has jurisdiction;
- 6185 (b) the court has considered the merits of the request for access to the record; and
- 6186 (c) the court has considered and, where appropriate, limited the requester's use and
- 6187 further disclosure of the record in order to protect privacy interests in the case of private or
- 6188 controlled records, business confidentiality interests in the case of records protected under
- 6189 Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other
- 6190 protected records;
- 6191 (d) to the extent the record is properly classified private, controlled, or protected, the
- 6192 interests favoring access, considering limitations thereon, outweigh the interests favoring
- 6193 restriction of access; and
- 6194 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
- 6195 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
- 6196 (8) (a) A governmental entity may disclose or authorize disclosure of private or

6197 controlled records for research purposes if the governmental entity:

6198 (i) determines that the research purpose cannot reasonably be accomplished without
6199 use or disclosure of the information to the researcher in individually identifiable form;

6200 (ii) determines that the proposed research is bona fide, and that the value of the
6201 research outweighs the infringement upon personal privacy;

6202 (iii) requires the researcher to assure the integrity, confidentiality, and security of the
6203 records and requires the removal or destruction of the individual identifiers associated with the
6204 records as soon as the purpose of the research project has been accomplished;

6205 (iv) prohibits the researcher from disclosing the record in individually identifiable
6206 form, except as provided in Subsection (8)(b), or from using the record for purposes other than
6207 the research approved by the governmental entity; and

6208 (v) secures from the researcher a written statement of his understanding of and
6209 agreement to the conditions of this Subsection (8) and his understanding that violation of the
6210 terms of this Subsection (8) may subject him to criminal prosecution under Section 63-2-801.

6211 (b) A researcher may disclose a record in individually identifiable form if the record is
6212 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
6213 or disclosure of the record in individually identifiable form will be made by the auditor or
6214 evaluator except as provided by this section.

6215 (c) A governmental entity may require indemnification as a condition of permitting
6216 research under this Subsection (8).

6217 (9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6), a governmental entity may
6218 disclose records that are private under Section 63-2-302, or protected under Section 63-2-304
6219 to persons other than those specified in this section.

6220 (b) Under Subsection 63-2-403(11)(b), the Records Committee may require the
6221 disclosure of records that are private under Section 63-2-302, controlled under Section
6222 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this
6223 section.

6224 (c) Under Subsection 63-2-404(8), the court may require the disclosure of records that
6225 are private under Section 63-2-302, controlled under Section 63-2-303, or protected under
6226 Section 63-2-304 to persons other than those specified in this section.

6227 Section 129. Section **63-2-302 (Effective 07/01/03)** is amended to read:

- 6228 **63-2-302 (Effective 07/01/03). Private records.**
- 6229 (1) The following records are private:
- 6230 (a) records concerning an individual's eligibility for unemployment insurance benefits,
- 6231 social services, welfare benefits, or the determination of benefit levels;
- 6232 (b) records containing data on individuals describing medical history, diagnosis,
- 6233 condition, treatment, evaluation, or similar medical data;
- 6234 (c) records of publicly funded libraries that when examined alone or with other records
- 6235 identify a patron;
- 6236 (d) records received or generated for a Senate or House Ethics Committee concerning
- 6237 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
- 6238 meeting, if the ethics committee meeting was closed to the public;
- 6239 (e) records received or generated for a Senate confirmation committee concerning
- 6240 character, professional competence, or physical or mental health of an individual:
- 6241 (i) if prior to the meeting, the chair of the committee determines release of the records:
- 6242 (A) reasonably could be expected to interfere with the investigation undertaken by the
- 6243 committee; or
- 6244 (B) would create a danger of depriving a person of a right to a fair proceeding or
- 6245 impartial hearing;
- 6246 (ii) after the meeting, if the meeting was closed to the public;
- 6247 (f) employment records concerning a current or former employee of, or applicant for
- 6248 employment with, a governmental entity that would disclose that individual's home address,
- 6249 home telephone number, Social Security number, insurance coverage, marital status, or payroll
- 6250 deductions;
- 6251 (g) records or parts of records under Section 63-2-302.5 that a current or former
- 6252 employee identifies as private according to the requirements of that section;
- 6253 (h) that part of a record indicating a person's Social Security number if provided under
- 6254 Section [~~31A-23-202~~] 31A-23a-104, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;
- 6255 (i) that part of a voter registration record identifying a voter's driver license or
- 6256 identification card number, Social Security number, or last four digits of the Social Security
- 6257 number; [~~and~~]
- 6258 (j) a record that:

- 6259 (i) contains information about an individual;
- 6260 (ii) is voluntarily provided by the individual; and
- 6261 (iii) goes into an electronic database that:
- 6262 (A) is designated by and administered under the authority of the Chief Information
- 6263 Officer; and
- 6264 (B) acts as a repository of information about the individual that can be electronically
- 6265 retrieved and used to facilitate the individual's online interaction with a state agency[-]; and
- 6266 (k) information provided to the Commissioner of Insurance under Subsection
- 6267 31A-23a-115(2)(a).
- 6268 (2) The following records are private if properly classified by a governmental entity:
- 6269 (a) records concerning a current or former employee of, or applicant for employment
- 6270 with a governmental entity, including performance evaluations and personal status information
- 6271 such as race, religion, or disabilities, but not including records that are public under Subsection
- 6272 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);
- 6273 (b) records describing an individual's finances, except that the following are public:
- 6274 (i) records described in Subsection 63-2-301(1);
- 6275 (ii) information provided to the governmental entity for the purpose of complying with
- 6276 a financial assurance requirement; or
- 6277 (iii) records that must be disclosed in accordance with another statute;
- 6278 (c) records of independent state agencies if the disclosure of those records would
- 6279 conflict with the fiduciary obligations of the agency;
- 6280 (d) other records containing data on individuals the disclosure of which constitutes a
- 6281 clearly unwarranted invasion of personal privacy; and
- 6282 (e) records provided by the United States or by a government entity outside the state
- 6283 that are given with the requirement that the records be managed as private records, if the
- 6284 providing entity states in writing that the record would not be subject to public disclosure if
- 6285 retained by it.
- 6286 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
- 6287 records, statements, history, diagnosis, condition, treatment, and evaluation.
- 6288 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
- 6289 doctors, or affiliated entities are not private records or controlled records under Section

6290 63-2-303 when the records are sought:

6291 (i) in connection with any legal or administrative proceeding in which the patient's
6292 physical, mental, or emotional condition is an element of any claim or defense; or

6293 (ii) after a patient's death, in any legal or administrative proceeding in which any party
6294 relies upon the condition as an element of the claim or defense.

6295 (c) Medical records are subject to production in a legal or administrative proceeding
6296 according to state or federal statutes or rules of procedure and evidence as if the medical
6297 records were in the possession of a nongovernmental medical care provider.

6298 Section 130. Section **63-2-302 (Superseded 07/01/03)** is amended to read:

6299 **63-2-302 (Superseded 07/01/03). Private records.**

6300 (1) The following records are private:

6301 (a) records concerning an individual's eligibility for unemployment insurance benefits,
6302 social services, welfare benefits, or the determination of benefit levels;

6303 (b) records containing data on individuals describing medical history, diagnosis,
6304 condition, treatment, evaluation, or similar medical data;

6305 (c) records of publicly funded libraries that when examined alone or with other records
6306 identify a patron;

6307 (d) records received or generated for a Senate or House Ethics Committee concerning
6308 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
6309 meeting, if the ethics committee meeting was closed to the public;

6310 (e) records received or generated for a Senate confirmation committee concerning
6311 character, professional competence, or physical or mental health of an individual:

6312 (i) if prior to the meeting, the chair of the committee determines release of the records:

6313 (A) reasonably could be expected to interfere with the investigation undertaken by the
6314 committee; or

6315 (B) would create a danger of depriving a person of a right to a fair proceeding or
6316 impartial hearing;

6317 (ii) after the meeting, if the meeting was closed to the public;

6318 (f) records concerning a current or former employee of, or applicant for employment
6319 with, a governmental entity that would disclose that individual's home address, home telephone
6320 number, social security number, insurance coverage, marital status, or payroll deductions;

6321 (g) that part of a record indicating a person's social security number if provided under
6322 Section [~~31A-23-202~~] 31A-23a-104, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

6323 (h) that part of a voter registration record identifying a voter's driver license or
6324 identification card number, Social Security number, or last four digits of the Social Security
6325 number; [~~and~~]

6326 (i) a record that:

6327 (i) contains information about an individual;

6328 (ii) is voluntarily provided by the individual; and

6329 (iii) goes into an electronic database that:

6330 (A) is designated by and administered under the authority of the Chief Information
6331 Officer; and

6332 (B) acts as a repository of information about the individual that can be electronically
6333 retrieved and used to facilitate the individual's online interaction with a state agency[-]; and

6334 (j) information provided to the Commissioner of Insurance under Subsection
6335 31A-23a-115(2)(a).

6336 (2) The following records are private if properly classified by a governmental entity:

6337 (a) records concerning a current or former employee of, or applicant for employment
6338 with a governmental entity, including performance evaluations and personal status information
6339 such as race, religion, or disabilities, but not including records that are public under Subsection
6340 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

6341 (b) records describing an individual's finances, except that the following are public:

6342 (i) records described in Subsection 63-2-301(1);

6343 (ii) information provided to the governmental entity for the purpose of complying with
6344 a financial assurance requirement; or

6345 (iii) records that must be disclosed in accordance with another statute;

6346 (c) records of independent state agencies if the disclosure of those records would
6347 conflict with the fiduciary obligations of the agency;

6348 (d) other records containing data on individuals the disclosure of which constitutes a
6349 clearly unwarranted invasion of personal privacy; and

6350 (e) records provided by the United States or by a government entity outside the state
6351 that are given with the requirement that the records be managed as private records, if the

6352 providing entity states in writing that the record would not be subject to public disclosure if
6353 retained by it.

6354 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
6355 records, statements, history, diagnosis, condition, treatment, and evaluation.

6356 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
6357 doctors, or affiliated entities are not private records or controlled records under Section
6358 63-2-303 when the records are sought:

6359 (i) in connection with any legal or administrative proceeding in which the patient's
6360 physical, mental, or emotional condition is an element of any claim or defense; or

6361 (ii) after a patient's death, in any legal or administrative proceeding in which any party
6362 relies upon the condition as an element of the claim or defense.

6363 (c) Medical records are subject to production in a legal or administrative proceeding
6364 according to state or federal statutes or rules of procedure and evidence as if the medical
6365 records were in the possession of a nongovernmental medical care provider.

6366 Section 131. Section **63-55b-131** is amended to read:

6367 **63-55b-131. Repeal dates, Title 31A.**

6368 (1) Section 31A-22-626 is repealed July 1, 2004.

6369 (2) Section [~~31A-23-315~~] 31A-23a-415 is repealed July 1, 2006.

6370 Section 132. Section **73-1-10** is amended to read:

6371 **73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording**
6372 **of deed -- Report of water right conveyance.**

6373 (1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a
6374 diligence claim to the use of surface or underground water, or a water user's claim filed in
6375 general determination proceedings, shall be transferred by deed in substantially the same
6376 manner as is real estate.

6377 (b) The deed must be recorded in the office of the recorder of the county where the
6378 point of diversion of the water is located and in the county where the water is used.

6379 (c) A recorded deed of a water right shall from the time of its recording in the office of
6380 the county recorder constitute notice of its contents to all persons.

6381 (2) The right to the use of water evidenced by shares of stock in a corporation shall be
6382 transferred in accordance with the procedures applicable to securities set forth in Title 70A,

6383 Chapter 8, Uniform Commercial Code - Investment Securities.

6384 (3) (a) To update water right ownership on the records of the state engineer, a water
6385 right owner shall submit a report of water right conveyance to the state engineer.

6386 (b) The report of water right conveyance shall be on forms provided by the state
6387 engineer.

6388 (c) The report shall be prepared by:

6389 (i) or prepared under the direction of and certified by, any of the following persons
6390 licensed in Utah:

6391 (A) an attorney;

6392 (B) a professional engineer;

6393 (C) a title insurance ~~agent~~ producer; or

6394 (D) a professional land surveyor; or

6395 (ii) the water right owner as authorized by rule of the state engineer.

6396 (d) The filing and processing of a report of water right conveyance with the state
6397 engineer is neither an adjudication of water right ownership nor an opinion as to title or validity
6398 of the water right.

6399 (e) The state engineer shall adopt rules that specify:

6400 (i) the information required in a report of water right conveyance; and

6401 (ii) the procedures for processing the reports.

6402 Section 133. Section **73-18c-304** is amended to read:

6403 **73-18c-304. Evidence of owner's or operator's security to be carried when**
6404 **operating personal watercraft -- Defense -- Penalties.**

6405 (1) (a) (i) Except as provided in Subsection (1)(a)(ii), a person operating a personal
6406 watercraft shall:

6407 (A) have in the person's immediate possession evidence of owner's or operator's
6408 security for the personal watercraft the person is operating; and

6409 (B) display it upon demand of a peace officer.

6410 (ii) A person operating a government-owned or government-leased personal watercraft
6411 is exempt from the requirements of Subsection (1)(a)(i).

6412 (b) Evidence of owner's or operator's security includes any one of the following:

6413 (i) the operator's:

- 6414 (A) insurance policy;
- 6415 (B) binder notice;
- 6416 (C) renewal notice; or
- 6417 (D) card issued by an insurance company as evidence of insurance;
- 6418 (ii) a copy of a surety bond, certified by the surety, which conforms to Section
- 6419 73-18c-102;
- 6420 (iii) a certificate of the state treasurer issued under Section 73-18c-305; or
- 6421 (iv) a certificate of self-funded coverage issued under Section 73-18c-306.
- 6422 (2) It is an affirmative defense to a charge under this section that the person had
- 6423 owner's or operator's security in effect for the personal watercraft the person was operating at
- 6424 the time of the person's citation or arrest.
- 6425 (3) (a) A letter from an insurance [agent] producer or company verifying that the
- 6426 person had the required liability insurance coverage on the date specified is considered proof of
- 6427 owner's or operator's security for purposes of Subsection (2).
- 6428 (b) The court considering a citation issued under this section shall allow the letter
- 6429 under Subsection (3)(a) and a copy of the citation to be faxed or mailed to the clerk of the court
- 6430 to satisfy Subsection (2).
- 6431 (4) A violation of this section is a class B misdemeanor.
- 6432 (5) If a person is convicted of a violation of this section and if the person is the owner
- 6433 of a personal watercraft, the court shall:
- 6434 (a) require the person to surrender the person's registration materials to the court; and
- 6435 (b) forward the registration materials, together with a copy of the conviction, to the
- 6436 division.
- 6437 (6) (a) Upon receiving notification from a court of a conviction for a violation of this
- 6438 section, the division shall revoke the person's personal watercraft registration.
- 6439 (b) Any registration revoked may not be renewed for a period of one year following the
- 6440 date of revocation.
- 6441 Section 134. Section **76-10-915** is amended to read:
- 6442 **76-10-915. Exempt activities.**
- 6443 (1) No provision of this act shall be construed to prohibit:
- 6444 (a) the activities of any public utility to the extent that those activities are subject to

6445 regulation by the public service commission, the state or federal department of transportation,
6446 the federal energy regulatory commission, the federal communications commission, the
6447 interstate commerce commission, or successor agencies;

6448 (b) the activities of any insurer, insurance [~~agent, insurance broker~~] producer,
6449 independent insurance adjuster or rating organization including, but not limited to, making or
6450 participating in joint underwriting or reinsurance arrangements, to the extent that those
6451 activities are subject to regulation by the commissioner of insurance;

6452 (c) the activities of securities dealers, issuers or agents, to the extent that those
6453 activities are subject to regulation under the laws of either this state or the United States;

6454 (d) the activities of any state or national banking institution, to the extent that such
6455 activities are regulated or supervised by state government officers or agencies under the
6456 banking laws of this state or by federal government officers or agencies under the banking laws
6457 of the United States;

6458 (e) the activities of any state or federal savings and loan association to the extent that
6459 those activities are regulated or supervised by state government officers or agencies under the
6460 banking laws of this state or federal government officers or agencies under the banking laws of
6461 the United States;

6462 (f) the activities of a municipality to the extent authorized or directed by state law; or

6463 (g) the activities of an emergency medical service provider licensed under Title 26,
6464 Chapter 8a, Utah Emergency Medical Service System Act, to the extent that those activities are
6465 regulated by state government officers or agencies under that act.

6466 (2) The labor of a human being is not a commodity or article of commerce. Nothing
6467 contained in the antitrust laws shall be construed to forbid the existence and operation of labor,
6468 agricultural or horticultural organizations, instituted for the purpose of mutual help and not
6469 having capital stock or conducted for profit, or to forbid or restrain individual members of such
6470 organizations from lawfully carrying out the legitimate object thereof; nor shall such
6471 organizations or membership in them be held to be illegal combinations or conspiracies in
6472 restraint of trade under the antitrust laws.

6473 Section 135. **Repealer.**

6474 This act repeals:

6475 Section 31A-23-103, **Transition provisions.**

6476 Section **31A-23-215, Agency licensees -- Reports -- Suspension, revocation, or**
6477 **limitation of license.**

6478 Section 136. **Effective date.**

6479 This act takes effect May 5, 2003, except that the amendments to Section 63-2-302
6480 (Effective 07/01/03) take effect on July 1, 2003.

6481 Section 137. **Coordination clause.**

6482 (1) If this bill and H.B. 4, Viatical Settlements, both pass, it is the intent of the
6483 Legislature that the Office of Legislative Research and General Counsel in preparing the Utah
6484 Code database for publication, shall:

6485 (a) replace the references in Subsection 31A-36-104(2) of H.B. 4 to "Sections
6486 31A-23-216 and 31A-23-217" with references to "Sections 31A-23a-111, 31A-23a-112, and
6487 31A-23a-113";

6488 (b) renumber Section 31A-23-221, enacted in H.B. 4, as 31A-23a-117;

6489 (c) merge the language from H.B. 4, Subsection 31A-23-203(1)(g) into this bill as
6490 Subsection 31A-23a-105(1)(g), modify the language to read "(g) if an applicant for a license to
6491 act as a provider or producer of viatical settlements, has satisfied the requirements of Section
6492 31A-23a-117", and renumber remaining subsections accordingly; and

6493 (d) merge the language from H.B. 4, Subsection 31A-23-204(2)(h) into this bill as
6494 Subsection 31A-23a-106(2)(g).

6495 (2) If this bill and H.B. 373, Insurance Law Revisions, both pass, it is the intent of the
6496 Legislature that the Office of Legislative Research and General Counsel in preparing the Utah
6497 Code database for publication, shall:

6498 (a) replace the phrase "title insurance agent" in Subsection 31A-19a-209(2)(a)(i) of
6499 H.B. 373 with the phrase "title insurance producer"; and

6500 (b) merge the language from H.B. 373, Subsection 31A-23-202(4) into this bill as
6501 Subsection 31A-23a-104(4).

Legislative Review Note
as of 2-20-03 12:40 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0374

Insurance Producers Amendments

24-Feb-03

3:37 PM

State Impact

No fiscal impact.

Individual and Business Impact

There are some small changes in continuing education requirements. Title insurers must have experience before opening their own agencies.

Office of the Legislative Fiscal Analyst