

INSURANCE LAW AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd E. Kiser

Senate Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill modifies the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ amends definition of life insurance;
- ▶ expands immunity provision to include authorized representatives of the commissioner or an examiner appointed by the commissioner;
- ▶ clarifies taxation of a captive insurance company;
- ▶ modifies citations related to voluntary dissolution of a domestic insurance corporation;
- ▶ provides that the Utah Life and Health Insurance Guaranty Association is not a state agency; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 31A-1-301**, as last amended by Chapter 78, Laws of Utah 2005
- 31A-2-213**, as enacted by Chapter 242, Laws of Utah 1985
- 31A-3-304**, as last amended by Chapter 122, Laws of Utah 2005

30 **31A-5-504**, as last amended by Chapter 300, Laws of Utah 2000

31 **31A-28-106**, as last amended by Chapters 116 and 161, Laws of Utah 2001

32

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

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

35 **31A-1-301. Definitions.**

36 As used in this title, unless otherwise specified:

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

39 (i) a medical condition including:

40 (A) medical care expenses; or

41 (B) the risk of disability;

42 (ii) accident; or

43 (iii) sickness.

44 (b) "Accident and health insurance":

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

46 (A) an income replacement contract;

47 (B) a health care contract;

48 (C) an expense reimbursement contract;

49 (D) a credit accident and health contract;

50 (E) a continuing care contract; and

51 (F) a long-term care contract; and

52 (ii) may provide:

53 (A) hospital coverage;

54 (B) surgical coverage;

55 (C) medical coverage; or

56 (D) loss of income coverage.

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

58 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
59 63, Chapter 46a, Utah Administrative Rulemaking Act.

60 (3) "Administrator" is defined in Subsection (155).

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

62 (5) "Affiliate" means any person who controls, is controlled by, or is under common
63 control with, another person. A corporation is an affiliate of another corporation, regardless of
64 ownership, if substantially the same group of natural persons manages the corporations.

65 (6) "Agency" means:

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

68 (b) an insurance organization licensed or required to be licensed under Section
69 31A-23a-301.

70 (7) "Alien insurer" means an insurer domiciled outside the United States.

71 (8) "Amendment" means an endorsement to an insurance policy or certificate.

72 (9) "Annuity" means an agreement to make periodical payments for a period certain or
73 over the lifetime of one or more natural persons if the making or continuance of all or some of
74 the series of the payments, or the amount of the payment, is dependent upon the continuance of
75 human life.

76 (10) "Application" means a document:

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

79 (ii) that contains information that is used by the insurer to evaluate risk and decide
80 whether to:

81 (A) insure the risk under:

82 (I) the coverages as originally offered; or

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

84 (B) decline to insure the risk; or

85 (b) used by the insurer to gather information from the applicant before issuance of an

86 annuity contract.

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

91 (12) "Bail bond insurance" means a guarantee that [~~a person will attend court when~~
92 ~~required, or will obey the orders or judgment of the court~~], as a condition to the release of that
93 person from confinement[-], a person will:

94 (a) attend court when required; or

95 (b) obey the orders or judgment of the court.

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

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

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

101 (16) "Business of insurance" is defined in Subsection (82).

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

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

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

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

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

111 (19) "Captive insurance company" means:

112 (a) an insurance company:

113 (i) owned by another organization; and

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

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

117 (i) owned by the insureds; and

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

119 (A) member organizations;

120 (B) group members; and

121 (C) affiliates of:

122 (I) member organizations; or

123 (II) group members.

124 (20) "Casualty insurance" means liability insurance as defined in Subsection (94).

125 (21) "Certificate" means evidence of insurance given to:

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

127 (b) a third party.

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

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

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

134 (25) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
135 commissioner.

136 (b) When appropriate, the terms listed in Subsection (25)(a) apply to the equivalent
137 supervisory official of another jurisdiction.

138 (26) (a) "Continuing care insurance" means insurance that:

139 (i) provides board and lodging;

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

141 (A) personal services;

142 (B) nursing services;
143 (C) medical services; or
144 (D) other health-related services; and
145 (iii) provides the coverage described in Subsection (26)(a)(i) under an agreement
146 effective:

147 (A) for the life of the insured; or
148 (B) for a period in excess of one year.

149 (b) Insurance is continuing care insurance regardless of whether or not the board and
150 lodging are provided at the same location as the services described in Subsection (26)(a)(ii).

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

154 (i) by contract;
155 (ii) by common management;
156 (iii) through the ownership of voting securities; or
157 (iv) by a means other than those described in Subsections (27)(a)(i) through (iii).

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

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

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

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

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

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

172 (31) (a) "Corporation" means an insurance corporation, except when referring to:

173 (i) a corporation doing business:

174 (A) as:

175 (I) an insurance producer;

176 (II) a limited line producer;

177 (III) a consultant;

178 (IV) a managing general agent;

179 (V) a reinsurance intermediary;

180 (VI) a third party administrator; or

181 (VII) an adjuster; and

182 (B) under:

183 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

184 Reinsurance Intermediaries;

185 (II) Chapter 25, Third Party Administrators; or

186 (III) Chapter 26, Insurance Adjusters; or

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

188 Holding Companies.

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

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

191 (32) "Creditable coverage" has the same meaning as provided in federal regulations
192 adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L.
193 104-191, 110 Stat. 1936.

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

197 (34) (a) "Credit insurance" means insurance offered in connection with an extension of

198 credit that is limited to partially or wholly extinguishing that credit obligation.

199 (b) "Credit insurance" includes:

200 (i) credit accident and health insurance;

201 (ii) credit life insurance;

202 (iii) credit property insurance;

203 (iv) credit unemployment insurance;

204 (v) guaranteed automobile protection insurance;

205 (vi) involuntary unemployment insurance;

206 (vii) mortgage accident and health insurance;

207 (viii) mortgage guaranty insurance; and

208 (ix) mortgage life insurance.

209 (35) "Credit life insurance" means insurance on the life of a debtor in connection with
210 an extension of credit that pays a person if the debtor dies.

211 (36) "Credit property insurance" means insurance:

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

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

214 (37) "Credit unemployment insurance" means insurance:

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

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

217 (i) specific loan; or

218 (ii) credit transaction.

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

220 (a) matured;

221 (b) unmatured;

222 (c) liquidated;

223 (d) unliquidated;

224 (e) secured;

225 (f) unsecured;

- 226 (g) absolute;
- 227 (h) fixed; or
- 228 (i) contingent.
- 229 (39) (a) "Customer service representative" means a person that provides insurance
- 230 services and insurance product information:
- 231 (i) for the customer service representative's:
- 232 (A) producer; or
- 233 (B) consultant employer; and
- 234 (ii) to the customer service representative's employer's:
- 235 (A) customer;
- 236 (B) client; or
- 237 (C) organization.
- 238 (b) A customer service representative may only operate within the scope of authority of
- 239 the customer service representative's producer or consultant employer.
- 240 (40) "Deadline" means the final date or time:
- 241 (a) imposed by:
- 242 (i) statute;
- 243 (ii) rule; or
- 244 (iii) order; and
- 245 (b) by which a required filing or payment must be received by the department.
- 246 (41) "Deemer clause" means a provision under this title under which upon the
- 247 occurrence of a condition precedent, the commissioner is deemed to have taken a specific
- 248 action. If the statute so provides, the condition precedent may be the commissioner's failure to
- 249 take a specific action.
- 250 (42) "Degree of relationship" means the number of steps between two persons
- 251 determined by counting the generations separating one person from a common ancestor and
- 252 then counting the generations to the other person.
- 253 (43) "Department" means the Insurance Department.

- 254 (44) "Director" means a member of the board of directors of a corporation.
- 255 (45) "Disability" means a physiological or psychological condition that partially or
256 totally limits an individual's ability to:
- 257 (a) perform the duties of:
- 258 (i) that individual's occupation; or
- 259 (ii) any occupation for which the individual is reasonably suited by education, training,
260 or experience; or
- 261 (b) perform two or more of the following basic activities of daily living:
- 262 (i) eating;
- 263 (ii) toileting;
- 264 (iii) transferring;
- 265 (iv) bathing; or
- 266 (v) dressing.
- 267 (46) "Disability income insurance" is defined in Subsection (73).
- 268 (47) "Domestic insurer" means an insurer organized under the laws of this state.
- 269 (48) "Domiciliary state" means the state in which an insurer:
- 270 (a) is incorporated;
- 271 (b) is organized; or
- 272 (c) in the case of an alien insurer, enters into the United States.
- 273 (49) (a) "Eligible employee" means:
- 274 (i) an employee who:
- 275 (A) works on a full-time basis; and
- 276 (B) has a normal work week of 30 or more hours; or
- 277 (ii) a person described in Subsection (49)(b).
- 278 (b) "Eligible employee" includes, if the individual is included under a health benefit
279 plan of a small employer:
- 280 (i) a sole proprietor;
- 281 (ii) a partner in a partnership; or

- 282 (iii) an independent contractor.
- 283 (c) "Eligible employee" does not include, unless eligible under Subsection (49)(b):
- 284 (i) an individual who works on a temporary or substitute basis for a small employer;
- 285 (ii) an employer's spouse; or
- 286 (iii) a dependent of an employer.
- 287 (50) "Employee" means any individual employed by an employer.
- 288 (51) "Employee benefits" means one or more benefits or services provided to:
- 289 (a) employees; or
- 290 (b) dependents of employees.
- 291 (52) (a) "Employee welfare fund" means a fund:
- 292 (i) established or maintained, whether directly or through trustees, by:
- 293 (A) one or more employers;
- 294 (B) one or more labor organizations; or
- 295 (C) a combination of employers and labor organizations; and
- 296 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 297 from investments of the fund, by or on behalf of an employer doing business in this state or for
- 298 the benefit of any person employed in this state.
- 299 (b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax
- 300 revenues.
- 301 (53) "Endorsement" means a written agreement attached to a policy or certificate to
- 302 modify one or more of the provisions of the policy or certificate.
- 303 (54) "Enrollment date," with respect to a health benefit plan, means the first day of
- 304 coverage or, if there is a waiting period, the first day of the waiting period.
- 305 (55) (a) "Escrow" means:
- 306 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
- 307 the requirements of a written agreement between the parties in a real estate transaction; or
- 308 (ii) a settlement or closing involving:
- 309 (A) a mobile home;

- 310 (B) a grazing right;
- 311 (C) a water right; or
- 312 (D) other personal property authorized by the commissioner.
- 313 (b) "Escrow" includes the act of conducting a:
- 314 (i) real estate settlement; or
- 315 (ii) real estate closing.
- 316 (56) "Escrow agent" means:
- 317 (a) an insurance producer with:
- 318 (i) a title insurance line of authority; and
- 319 (ii) an escrow subline of authority; or
- 320 (b) a person defined as an escrow agent in Section 7-22-101.
- 321 (57) "Excludes" is not exhaustive and does not mean that other things are not also
- 322 excluded. The items listed are representative examples for use in interpretation of this title.
- 323 (58) "Expense reimbursement insurance" means insurance:
- 324 (a) written to provide payments for expenses relating to hospital confinements resulting
- 325 from illness or injury; and
- 326 (b) written:
- 327 (i) as a daily limit for a specific number of days in a hospital; and
- 328 (ii) to have a one or two day waiting period following a hospitalization.
- 329 (59) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding
- 330 positions of public or private trust.
- 331 (60) (a) "Filed" means that a filing is:
- 332 (i) submitted to the department as required by and in accordance with any applicable
- 333 statute, rule, or filing order;
- 334 (ii) received by the department within the time period provided in the applicable
- 335 statute, rule, or filing order; and
- 336 (iii) accompanied by the appropriate fee in accordance with:
- 337 (A) Section 31A-3-103; or

- 338 (B) rule.
- 339 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 340 submitted in accordance with Subsection (60)(a).
- 341 (61) "Filing," when used as a noun, means an item required to be filed with the
- 342 department including:
 - 343 (a) a policy;
 - 344 (b) a rate;
 - 345 (c) a form;
 - 346 (d) a document;
 - 347 (e) a plan;
 - 348 (f) a manual;
 - 349 (g) an application;
 - 350 (h) a report;
 - 351 (i) a certificate;
 - 352 (j) an endorsement;
 - 353 (k) an actuarial certification;
 - 354 (l) a licensee annual statement;
 - 355 (m) a licensee renewal application; or
 - 356 (n) an advertisement.
- 357 (62) "First party insurance" means an insurance policy or contract in which the insurer
- 358 agrees to pay claims submitted to it by the insured for the insured's losses.
- 359 (63) "Foreign insurer" means an insurer domiciled outside of this state, including an
- 360 alien insurer.
- 361 (64) (a) "Form" means one of the following prepared for general use:
 - 362 (i) a policy;
 - 363 (ii) a certificate;
 - 364 (iii) an application; or
 - 365 (iv) an outline of coverage.

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

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

371 (66) "General lines of authority" include:

372 (a) the general lines of insurance in Subsection (67);

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

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

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

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

377 and

378 (iv) title marketing representative only;

379 (c) surplus lines;

380 (d) workers' compensation; and

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

383 (67) "General lines of insurance" include:

384 (a) accident and health;

385 (b) casualty;

386 (c) life;

387 (d) personal lines;

388 (e) property; and

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

390 (68) "Group health plan" means an employee welfare benefit plan to the extent that the
391 plan provides medical care:

392 (a) (i) to employees; or

393 (ii) to a dependent of an employee; and

394 (b) (i) directly;

395 (ii) through insurance reimbursement; or

396 (iii) through any other method.

397 (69) "Guaranteed automobile protection insurance" means insurance offered in

398 connection with an extension of credit that pays the difference in amount between the

399 insurance settlement and the balance of the loan if the insured automobile is a total loss.

400 (70) (a) Except as provided in Subsection (70)(b), "health benefit plan" means a policy

401 or certificate that:

402 (i) provides health care insurance;

403 (ii) provides major medical expense insurance; or

404 (iii) is offered as a substitute for hospital or medical expense insurance such as:

405 (A) a hospital confinement indemnity; or

406 (B) a limited benefit plan.

407 (b) "Health benefit plan" does not include a policy or certificate that:

408 (i) provides benefits solely for:

409 (A) accident;

410 (B) dental;

411 (C) income replacement;

412 (D) long-term care;

413 (E) a Medicare supplement;

414 (F) a specified disease;

415 (G) vision; or

416 (H) a short-term limited duration; or

417 (ii) is offered and marketed as supplemental health insurance.

418 (71) "Health care" means any of the following intended for use in the diagnosis,

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

420 (a) professional services;

421 (b) personal services;

422 (c) facilities;

423 (d) equipment;

424 (e) devices;

425 (f) supplies; or

426 (g) medicine.

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

428 (i) health care benefits; or

429 (ii) payment of incurred health care expenses.

430 (b) "Health care insurance" or "health insurance" does not include accident and health

431 insurance providing benefits for:

432 (i) replacement of income;

433 (ii) short-term accident;

434 (iii) fixed indemnity;

435 (iv) credit accident and health;

436 (v) supplements to liability;

437 (vi) workers' compensation;

438 (vii) automobile medical payment;

439 (viii) no-fault automobile;

440 (ix) equivalent self-insurance; or

441 (x) any type of accident and health insurance coverage that is a part of or attached to

442 another type of policy.

443 (73) "Income replacement insurance" or "disability income insurance" means insurance

444 written to provide payments to replace income lost from accident or sickness.

445 (74) "Indemnity" means the payment of an amount to offset all or part of an insured

446 loss.

447 (75) "Independent adjuster" means an insurance adjuster required to be licensed under

448 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.

449 (76) "Independently procured insurance" means insurance procured under Section

450 31A-15-104.

451 (77) "Individual" means a natural person.

452 (78) "Inland marine insurance" includes insurance covering:

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

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

455 (c) bailee liability;

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

458 (e) personal and commercial property floaters.

459 (79) "Insolvency" means that:

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

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

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

464 (80) (a) "Insurance" means:

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

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

469 (b) "Insurance" includes:

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

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

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

476 (81) "Insurance adjuster" means a person who directs the investigation, negotiation, or
477 settlement of a claim under an insurance policy other than life insurance or an annuity, on

478 behalf of an insurer, policyholder, or a claimant under an insurance policy.

479 (82) "Insurance business" or "business of insurance" includes:

480 (a) providing health care insurance, as defined in Subsection (72), by organizations that
481 are or should be licensed under this title;

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

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

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

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

489 (d) providing the characteristic services of motor clubs as outlined in Subsection (110);

490 (e) providing other persons with insurance as defined in Subsection (80);

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

493 (g) transacting or proposing to transact any phase of title insurance, including:

494 (i) solicitation;

495 (ii) negotiation preliminary to execution;

496 (iii) execution of a contract of title insurance;

497 (iv) insuring; and

498 (v) transacting matters subsequent to the execution of the contract and arising out of
499 the contract, including reinsurance; and

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

502 (83) "Insurance consultant" or "consultant" means a person who:

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

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

506 (c) except as provided in Section 31A-23a-501, is not compensated directly or
507 indirectly by an insurer or producer for advice given.

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

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

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

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

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

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

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

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

522 (i) policyholders;

523 (ii) subscribers;

524 (iii) members; and

525 (iv) beneficiaries.

526 (b) The definition in Subsection (86)(a):

527 (i) applies only to this title; and

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

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

532 (A) fraternal benefit societies;

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

534 and (3);

535 (C) motor clubs;

536 (D) employee welfare plans; and

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

538 that person's own account.

539 (ii) "Insurer" does not include a governmental entity to the extent it is engaged in the

540 activities described in Section 31A-12-107.

541 (b) "Admitted insurer" is defined in Subsection (159)(b).

542 (c) "Alien insurer" is defined in Subsection (7).

543 (d) "Authorized insurer" is defined in Subsection (159)(b).

544 (e) "Domestic insurer" is defined in Subsection (47).

545 (f) "Foreign insurer" is defined in Subsection (63).

546 (g) "Nonadmitted insurer" is defined in Subsection (159)(a).

547 (h) "Unauthorized insurer" is defined in Subsection (159)(a).

548 (88) "Interinsurance exchange" is defined in Subsection (139).

549 (89) "Involuntary unemployment insurance" means insurance:

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

551 (b) that provides indemnity if the debtor is involuntarily unemployed for payments

552 coming due on a:

553 (i) specific loan; or

554 (ii) credit transaction.

555 (90) "Large employer," in connection with a health benefit plan, means an employer

556 who, with respect to a calendar year and to a plan year:

557 (a) employed an average of at least 51 eligible employees on each business day during

558 the preceding calendar year; and

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

560 (91) "Late enrollee," with respect to an employer health benefit plan, means an

561 individual whose enrollment is a late enrollment.

562 (92) "Late enrollment," with respect to an employer health benefit plan, means
563 enrollment of an individual other than:

- 564 (a) on the earliest date on which coverage can become effective for the individual
565 under the terms of the plan; or
- 566 (b) through special enrollment.

567 (93) (a) Except for a retainer contract or legal assistance described in Section
568 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for
569 specified legal expenses.

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

574 (94) (a) "Liability insurance" means insurance against liability:

- 575 (i) for death, injury, or disability of any human being, or for damage to property,
576 exclusive of the coverages under:
 - 577 (A) Subsection (104) for medical malpractice insurance;
 - 578 (B) Subsection (131) for professional liability insurance; and
 - 579 (C) Subsection (164) for workers' compensation insurance;
- 580 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the
581 insured who are injured, irrespective of legal liability of the insured, when issued with or
582 supplemental to insurance against legal liability for the death, injury, or disability of human
583 beings, exclusive of the coverages under:
 - 584 (A) Subsection (104) for medical malpractice insurance;
 - 585 (B) Subsection (131) for professional liability insurance; and
 - 586 (C) Subsection (164) for workers' compensation insurance;
- 587 (iii) for loss or damage to property resulting from accidents to or explosions of boilers,
588 pipes, pressure containers, machinery, or apparatus;
- 589 (iv) for loss or damage to any property caused by the breakage or leakage of sprinklers,

590 water pipes and containers, or by water entering through leaks or openings in buildings; or

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

594 (b) "Liability insurance" includes:

595 (i) vehicle liability insurance as defined in Subsection (161);

596 (ii) residential dwelling liability insurance as defined in Subsection (142); and

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

600 (95) (a) "License" means the authorization issued by the commissioner to engage in
601 some activity that is part of or related to the insurance business.

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

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

605 (b) The business of life insurance includes:

606 (i) granting death benefits;

607 (ii) granting annuity benefits;

608 (iii) granting endowment benefits;

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

610 (v) granting additional benefits to safeguard the policy against lapse [~~in the event of~~
611 ~~disability~~]; and

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

613 (97) "Limited license" means a license that:

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

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

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

617 (a) credit life;

- 618 (b) credit accident and health;
- 619 (c) credit property;
- 620 (d) credit unemployment;
- 621 (e) involuntary unemployment;
- 622 (f) mortgage life;
- 623 (g) mortgage guaranty;
- 624 (h) mortgage accident and health;
- 625 (i) guaranteed automobile protection; and
- 626 (j) any other form of insurance offered in connection with an extension of credit that:
- 627 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 628 (ii) the commissioner determines by rule should be designated as a form of limited line
- 629 credit insurance.

630 (99) "Limited line credit insurance producer" means a person who sells, solicits, or

631 negotiates one or more forms of limited line credit insurance coverage to individuals through a

632 master, corporate, group, or individual policy.

633 (100) "Limited line insurance" includes:

- 634 (a) bail bond;
- 635 (b) limited line credit insurance;
- 636 (c) legal expense insurance;
- 637 (d) motor club insurance;
- 638 (e) rental car-related insurance;
- 639 (f) travel insurance; and
- 640 (g) any other form of limited insurance that the commissioner determines by rule
- 641 should be designated a form of limited line insurance.

642 (101) "Limited lines authority" includes:

- 643 (a) the lines of insurance listed in Subsection (100); and
- 644 (b) a customer service representative.

645 (102) "Limited lines producer" means a person who sells, solicits, or negotiates limited

646 lines insurance.

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

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

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

651 (A) expenses incurred;

652 (B) indemnity;

653 (C) prepayment; or

654 (D) another method;

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

656 (A) diagnostic;

657 (B) preventative;

658 (C) therapeutic;

659 (D) rehabilitative;

660 (E) maintenance; or

661 (F) personal care; and

662 (iv) that may be issued by:

663 (A) an insurer;

664 (B) a fraternal benefit society;

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

666 (II) a medical service corporation;

667 (D) a prepaid health plan;

668 (E) a health maintenance organization; or

669 (F) an entity similar to the entities described in Subsections (103)(a)(iv)(A) through (E)

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

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

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

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

- 674 (B) a life insurance policy or rider;
- 675 (ii) a policy or rider that provides for payment of benefits based on:
- 676 (A) cognitive impairment; or
- 677 (B) functional capacity; or
- 678 (iii) a qualified long-term care insurance contract.
- 679 (c) "Long-term care insurance" does not include:
- 680 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 681 (ii) basic hospital expense coverage;
- 682 (iii) basic medical/surgical expense coverage;
- 683 (iv) hospital confinement indemnity coverage;
- 684 (v) major medical expense coverage;
- 685 (vi) income replacement or related asset-protection coverage;
- 686 (vii) accident only coverage;
- 687 (viii) coverage for a specified:
- 688 (A) disease; or
- 689 (B) accident;
- 690 (ix) limited benefit health coverage; or
- 691 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 692 lump sum payment:
- 693 (A) if the following are not conditioned on the receipt of long-term care:
- 694 (I) benefits; or
- 695 (II) eligibility; and
- 696 (B) the coverage is for one or more the following qualifying events:
- 697 (I) terminal illness;
- 698 (II) medical conditions requiring extraordinary medical intervention; or
- 699 (III) permanent institutional confinement.
- 700 (104) "Medical malpractice insurance" means insurance against legal liability incident
- 701 to the practice and provision of medical services other than the practice and provision of dental

702 services.

703 (105) "Member" means a person having membership rights in an insurance
704 corporation.

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

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

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

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

714 (110) "Motor club" means a person:

715 (a) licensed under:

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

717 (ii) Chapter 11, Motor Clubs; or

718 (iii) Chapter 14, Foreign Insurers; and

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

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

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

722 (iii) (A) trip reimbursement[;];

723 (B) towing services[;];

724 (C) emergency road services[;];

725 (D) stolen automobile services[;];

726 (E) a combination of [~~these~~] the services[;] listed in Subsections (110)(b)(iii)(A)

727 through (D); or

728 (F) any other services given in Subsections 31A-11-102(1)(b) through (f).

729 (111) "Mutual" means a mutual insurance corporation.

730 (112) "Network plan" means health care insurance:

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

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

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

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

738 (a) ships or hulls of ships;

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

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

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

747 (115) "Order" means an order of the commissioner.

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

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

752 (118) "Participation," as used in a health benefit plan, means a requirement relating to
753 the minimum percentage of eligible employees that must be enrolled in relation to the total
754 number of eligible employees of an employer reduced by each eligible employee who
755 voluntarily declines coverage under the plan because the employee has other group health care
756 insurance coverage.

757 (119) "Person" includes an individual, partnership, corporation, incorporated or

758 unincorporated association, joint stock company, trust, limited liability company, reciprocal,
759 syndicate, or any similar entity or combination of entities acting in concert.

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

762 (a) individuals; and

763 (b) families.

764 (121) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

765 (122) "Plan year" means:

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

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

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

769 (b) if the plan document or summary plan description does not designate a plan year or
770 there is no plan document or summary plan description:

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

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

773 or

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

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

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

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

778 (c) in a case not described in Subsection (122)(a) or (b), the calendar year.

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

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

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

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

785 (C) a corporation licensed under:

786 (I) Chapter 7, Nonprofit Health Service Insurance Corporations; or
787 (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
788 (iii) "Policy" does not include:
789 (A) a certificate under a group insurance contract; or
790 (B) a document that does not purport to have legal effect.
791 (b) (i) "Group insurance policy" means a policy covering a group of persons that is
792 issued:
793 (A) to a policyholder on behalf of the group~~[-];~~ and
794 (B) for the benefit of group members who are selected under procedures defined in:
795 (I) the policy; or ~~[in]~~
796 (II) agreements which are collateral to the policy.
797 (ii) A group insurance policy may include members of the policyholder's family or
798 dependents.
799 (c) "Blanket insurance policy" means a group policy covering classes of persons
800 without individual underwriting, where the persons insured are determined by definition of the
801 class with or without designating the persons covered.
802 (124) "Policyholder" means the person who controls a policy, binder, or oral contract
803 by ownership, premium payment, or otherwise.
804 (125) "Policy illustration" means a presentation or depiction that includes
805 nonguaranteed elements of a policy of life insurance over a period of years.
806 (126) "Policy summary" means a synopsis describing the elements of a life insurance
807 policy.
808 (127) "Preexisting condition," with respect to a health benefit plan:
809 (a) means a condition that was present before the effective date of coverage, whether or
810 not any medical advice, diagnosis, care, or treatment was recommended or received before that
811 day; and
812 (b) does not include a condition indicated by genetic information unless an actual
813 diagnosis of the condition by a physician has been made.

814 (128) (a) "Premium" means the monetary consideration for an insurance policy.

815 (b) "Premium" includes, however designated:

816 (i) assessments;

817 (ii) membership fees;

818 (iii) required contributions; or

819 (iv) monetary consideration.

820 (c) (i) Consideration paid to third party administrators for their services is not
821 "premium."

822 (ii) Amounts paid by third party administrators to insurers for insurance on the risks
823 administered by the third party administrators are "premium."

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

826 (130) "Proceedings" includes actions and special statutory proceedings.

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

829 (132) [~~"Property"~~] (a) Except as provided in Subsection (132)(b), "property insurance"
830 means insurance against loss or damage to real or personal property of every kind and any
831 interest in that property[;];

832 (i) from all hazards or causes[;]; and

833 (ii) against loss consequential upon the loss or damage including vehicle
834 comprehensive and vehicle physical damage coverages[~~, but excluding~~].

835 (b) "Property insurance" does not include:

836 (i) inland marine insurance as defined in Subsection (78); and

837 (ii) ocean marine insurance as defined under [~~Subsections (78) and~~] Subsection (114).

838 (133) "Qualified long-term care insurance contract" or "federally tax qualified
839 long-term care insurance contract" means:

840 (a) an individual or group insurance contract that meets the requirements of Section
841 7702B(b), Internal Revenue Code; or

842 (b) the portion of a life insurance contract that provides long-term care insurance:
843 (i) (A) by rider; or
844 (B) as a part of the contract; and
845 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
846 Code.
847 (134) "Qualified United States financial institution" means an institution that:
848 (a) is:
849 (i) organized under the laws of the United States or any state; or
850 (ii) in the case of a United States office of a foreign banking organization, licensed
851 under the laws of the United States or any state;
852 (b) is regulated, supervised, and examined by United States federal or state authorities
853 having regulatory authority over banks and trust companies; and
854 (c) meets the standards of financial condition and standing that are considered
855 necessary and appropriate to regulate the quality of financial institutions whose letters of credit
856 will be acceptable to the commissioner as determined by:
857 (i) the commissioner by rule; or
858 (ii) the Securities Valuation Office of the National Association of Insurance
859 Commissioners.
860 (135) (a) "Rate" means:
861 (i) the cost of a given unit of insurance; or
862 (ii) for property-casualty insurance, that cost of insurance per exposure unit either
863 expressed as:
864 (A) a single number; or
865 (B) a pure premium rate, adjusted before any application of individual risk variations
866 based on loss or expense considerations to account for the treatment of:
867 (I) expenses;
868 (II) profit; and
869 (III) individual insurer variation in loss experience.

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

871 (136) (a) Except as provided in Subsection (136)(b), "rate service organization" means
872 any person who assists insurers in rate making or filing by:

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

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

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

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

877 (i) an employee of an insurer;

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

879 (iii) a joint underwriting group; or

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

881 (137) "Rating manual" means any of the following used to determine initial and
882 renewal policy premiums:

883 (a) a manual of rates;

884 (b) classifications;

885 (c) rate-related underwriting rules; and

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

888 (138) "Received by the department" means:

889 (a) except as provided in Subsection (138)(b), the date delivered to and stamped
890 received by the department, whether delivered:

891 (i) in person; or

892 (ii) electronically; and

893 (b) if delivered to the department by a delivery service, the delivery service's postmark
894 date or pick-up date unless otherwise stated in:

895 (i) statute;

896 (ii) rule; or

897 (iii) a specific filing order.

898 (139) "Reciprocal" or "interinsurance exchange" means any unincorporated association
899 of persons:

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

903 (140) "Reinsurance" means an insurance transaction where an insurer, for
904 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
905 reinsurance transactions, this title sometimes refers to:

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

910 (141) "Reinsurer" means any person licensed in this state as an insurer with the
911 authority to assume reinsurance.

912 (142) "Residential dwelling liability insurance" means insurance against liability
913 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
914 a detached single family residence or multifamily residence up to four units.

915 (143) "Retrocession" means reinsurance with another insurer of a liability assumed
916 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer
917 part of a liability assumed under a reinsurance contract.

918 (144) "Rider" means an endorsement to:

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

921 (145) (a) "Security" means any:

- 922 (i) note;
- 923 (ii) stock;
- 924 (iii) bond;
- 925 (iv) debenture;

- 926 (v) evidence of indebtedness;
- 927 (vi) certificate of interest or participation in any profit-sharing agreement;
- 928 (vii) collateral-trust certificate;
- 929 (viii) preorganization certificate or subscription;
- 930 (ix) transferable share;
- 931 (x) investment contract;
- 932 (xi) voting trust certificate;
- 933 (xii) certificate of deposit for a security;
- 934 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 935 payments out of production under such a title or lease;
- 936 (xiv) commodity contract or commodity option;
- 937 (xv) [any] certificate of interest or participation in, temporary or interim certificate for,
- 938 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 939 in Subsections (145)(a)(i) through (xiv); or
- 940 (xvi) [any] other interest or instrument commonly known as a security.
- 941 (b) "Security" does not include:
- 942 (i) any of the following under which an insurance company promises to pay money in a
- 943 specific lump sum or periodically for life or some other specified period:
- 944 (A) insurance;
- 945 (B) endowment policy; or
- 946 (C) annuity contract; or
- 947 (ii) a burial certificate or burial contract.
- 948 (146) "Self-insurance" means any arrangement under which a person provides for
- 949 spreading its own risks by a systematic plan.
- 950 (a) Except as provided in this Subsection (146), "self-insurance" does not include an
- 951 arrangement under which a number of persons spread their risks among themselves.
- 952 (b) "Self-insurance" includes:
- 953 (i) an arrangement by which a governmental entity undertakes to indemnify its

954 employees for liability arising out of the employees' employment; and

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

958 (c) "Self-insurance" does not include any arrangement with independent contractors.

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

960 (a) by any means;

961 (b) for money or its equivalent; and

962 (c) on behalf of an insurance company.

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

966 (149) "Significant break in coverage" means a period of 63 consecutive days during
967 each of which an individual does not have any creditable coverage.

968 (150) "Small employer," in connection with a health benefit plan, means an employer
969 who, with respect to a calendar year and to a plan year:

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

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

973 (151) "Special enrollment period," in connection with a health benefit plan, has the
974 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
975 Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

976 (152) (a) "Subsidiary" of a person means an affiliate controlled by that person either
977 directly or indirectly through one or more affiliates or intermediaries.

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

982 (153) Subject to Subsection (80)(b), "surety insurance" includes:

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

985 (b) bail bond insurance; and

986 (c) fidelity insurance.

987 (154) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
988 liabilities.

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

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

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

996 (c) "Excess surplus" means:

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

999 (A) that amount of an insurer's or health organization's total adjusted capital, as defined
1000 in Subsection (157), that exceeds the product of:

1001 (I) 2.5; and

1002 (II) the sum of the insurer's or health organization's minimum capital or permanent
1003 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1004 (B) that amount of an insurer's or health organization's total adjusted capital, as defined
1005 in Subsection (157), that exceeds the product of:

1006 (I) 3.0; and

1007 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1008 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title
1009 insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1010 (A) 1.5; and
1011 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
1012 (155) "Third party administrator" or "administrator" means any person who collects
1013 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1014 the state in connection with insurance coverage, annuities, or service insurance coverage,
1015 except:

- 1016 (a) a union on behalf of its members;
- 1017 (b) a person administering any:
 - 1018 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1019 1974;
 - 1020 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
 - 1021 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1022 (c) an employer on behalf of the employer's employees or the employees of one or
1023 more of the subsidiary or affiliated corporations of the employer;
- 1024 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance
1025 for which the insurer holds a license in this state; or
- 1026 (e) a person:
 - 1027 (i) licensed or exempt from licensing under:
 - 1028 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
1029 Reinsurance Intermediaries; or
 - 1030 (B) Chapter 26, Insurance Adjusters; and
 - 1031 (ii) whose activities are limited to those authorized under the license the person holds
1032 or for which the person is exempt.
- 1033 (156) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of
1034 real or personal property or the holders of liens or encumbrances on that property, or others
1035 interested in the property against loss or damage suffered by reason of liens or encumbrances
1036 upon, defects in, or the unmarketability of the title to the property, or invalidity or
1037 unenforceability of any liens or encumbrances on the property.

1038 (157) "Total adjusted capital" means the sum of an insurer's or health organization's
1039 statutory capital and surplus as determined in accordance with:

1040 (a) the statutory accounting applicable to the annual financial statements required to be
1041 filed under Section 31A-4-113; and

1042 (b) any other items provided by the RBC instructions, as RBC instructions is defined in
1043 Section 31A-17-601.

1044 (158) (a) "Trustee" means "director" when referring to the board of directors of a
1045 corporation.

1046 (b) "Trustee," when used in reference to an employee welfare fund, means an
1047 individual, firm, association, organization, joint stock company, or corporation, whether acting
1048 individually or jointly and whether designated by that name or any other, that is charged with
1049 or has the overall management of an employee welfare fund.

1050 (159) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
1051 means an insurer:

1052 (i) not holding a valid certificate of authority to do an insurance business in this state;

1053 or

1054 (ii) transacting business not authorized by a valid certificate.

1055 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1056 (i) holding a valid certificate of authority to do an insurance business in this state; and

1057 (ii) transacting business as authorized by a valid certificate.

1058 (160) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1059 (161) "Vehicle liability insurance" means insurance against liability resulting from or
1060 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
1061 comprehensive and vehicle physical damage coverages under Subsection (132).

1062 (162) "Voting security" means a security with voting rights, and includes any security
1063 convertible into a security with a voting right associated with the security.

1064 (163) "Waiting period" for a health benefit plan means the period that must pass before
1065 coverage for an individual, who is otherwise eligible to enroll under the terms of the health

1066 benefit plan, can become effective.

1067 (164) "Workers' compensation insurance" means:

1068 (a) insurance for indemnification of employers against liability for compensation based
1069 on:

1070 (i) compensable accidental injuries; and

1071 (ii) occupational disease disability;

1072 (b) employer's liability insurance incidental to workers' compensation insurance and
1073 written in connection with workers' compensation insurance; and

1074 (c) insurance assuring to the persons entitled to workers' compensation benefits the
1075 compensation provided by law.

1076 Section 2. Section **31A-2-213** is amended to read:

1077 **31A-2-213. Immunity.**

1078 (1) (a) In the absence of actual malice, [~~neither the commissioner nor any employee of~~
1079 ~~the Insurance Department shall be~~] a person listed in Subsection (1)(b) is not subject to any
1080 civil liability for any cause of action arising out of any communication, written or oral, made to
1081 [~~any~~]:

1082 (i) a law enforcement agency [~~or~~];

1083 (ii) a governmental authority[~~;~~]; or [~~to~~]

1084 (iii) the National Association of Insurance Commissioners. [~~Nothing herein is~~]

1085 (b) This section applies to:

1086 (i) the commissioner;

1087 (ii) an authorized representative of the commissioner;

1088 (iii) an examiner appointed by the commissioner; or

1089 (iv) any employee of the department.

1090 (2) This section is not intended to abrogate or modify in any way any common-law or
1091 statutory privilege or immunity enjoyed by any person.

1092 Section 3. Section **31A-3-304** is amended to read:

1093 **31A-3-304. Annual fees -- Other taxes or fees prohibited.**

1094 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
1095 to obtain or renew a certificate of authority.

1096 (b) The commissioner shall:

1097 (i) determine the annual fee pursuant to Sections 31A-3-103 and 63-38-3.2; and

1098 (ii) consider whether the annual fee is competitive with fees imposed by other states on
1099 captive insurance companies.

1100 (2) A captive insurance company that fails to pay the fee required by this section is
1101 subject to the relevant sanctions of this title.

1102 (3) (a) Except as provided in Subsection (3)(b) and notwithstanding Title 59, Chapter
1103 9, Taxation of Admitted Insurers, the fee provided for in this section constitutes the sole tax or
1104 fee under the laws of this state that may be otherwise levied or assessed on a captive insurance
1105 company, and no other occupation tax or other tax or fee may be levied or collected from a
1106 captive insurance company by the state or a county, city, or municipality within this state.

1107 (b) Notwithstanding Subsection (3)(a), a captive insurance company is subject to real
1108 and personal property taxes.

1109 (4) A captive insurance company shall pay the fee imposed by this section to the
1110 department by March 31 of each year.

1111 (5) (a) The funds received pursuant to Subsection (2) shall be deposited into the
1112 General Fund as a dedicated credit to be used by the department to:

1113 (i) administer and enforce Chapter 37, Captive Insurance Companies Act; and

1114 (ii) promote the captive insurance industry in Utah.

1115 (b) At the end of each fiscal year, funds received by the department in excess of
1116 \$250,000 shall be treated as free revenue in the General Fund.

1117 Section 4. Section **31A-5-504** is amended to read:

1118 **31A-5-504. Voluntary dissolution of domestic insurance corporations.**

1119 (1) [~~Under~~] (a) Except as otherwise modified by this section, a domestic stock
1120 insurance corporation may dissolve under [~~the provisions of~~] Sections 16-10a-1401 through
1121 [~~16-10a-1405~~] 16-10a-1409 and Section 16-10a-1440.

1122 ~~[Under]~~ (b) Except as otherwise modified by this section, a domestic mutual insurance
1123 corporation may dissolve under ~~[Section 16-6a-1405]~~ Sections 16-6a-1401 through 16-6a-1409
1124 and Section 16-6a-1419.

1125 (2) (a) At least 60 days prior to the submission to shareholders or policyholders of any
1126 proposed voluntary dissolution of an insurance corporation, the plan of dissolution shall be
1127 filed with the commissioner.

1128 (b) The commissioner may require the submission of any ~~[additional]~~ information in
1129 addition to the plan of dissolution that will establish:

1130 (i) the financial condition of the corporation; or

1131 (ii) other facts relevant to the proposed dissolution.

1132 (c) If the shareholders or policyholders adopt the resolution to dissolve, the
1133 commissioner shall, within 30 days after the adoption of the resolution, begin an examination
1134 of the corporation. ~~[He]~~

1135 (d) The commissioner shall approve the dissolution unless ~~[he]~~ the commissioner
1136 finds, after a hearing, that the corporation:

1137 (i) is insolvent; or

1138 (ii) may become insolvent in the process of dissolution.

1139 (e) Upon approval, the corporation may:

1140 (i) transfer all of its obligations under insurance policies to other insurers approved by
1141 the commissioner; and ~~[then may]~~

1142 (ii) after the transfers described in Subsection (2)(e)(i), dissolve under Subsection (1).

1143 (f) If the commissioner disapproves the dissolution, the commissioner shall petition the
1144 court for a liquidation under Section 31A-27-307.

1145 (3) During the ~~[liquidation]~~ dissolution under Subsection (1), the corporation may
1146 apply to the commissioner to have the ~~[liquidation]~~ dissolution continued under ~~[his]~~ the
1147 commissioner's supervision. After receiving this application, the commissioner shall apply to
1148 the court for a liquidation under Section 31A-27-307.

1149 (4) If the corporation revokes the voluntary dissolution proceedings under Section

1150 16-6a-1404 or 16-10a-1404, [it] the corporation shall file a copy of the revocation of voluntary
1151 dissolution proceedings with the commissioner.

1152 (5) In distributing the assets in the dissolution of a nonlife mutual, Subsection
1153 31A-27-337(4) applies.

1154 (6) (a) No remedy available to or against the corporation, its directors, officers, or
1155 shareholders is taken away or impaired if an action or other proceeding is brought within two
1156 years after dissolution for any right or claim existing, or any liability incurred, prior to the
1157 voluntary dissolution under this section. [~~This~~]

1158 (b) The action or proceeding described in Subsection (6)(a) may be prosecuted or
1159 defended by the corporation in its corporate name. The shareholders, directors, and officers
1160 may take appropriate corporate or other action to protect the remedy, right, or claim.

1161 (c) A corporation which is dissolved by the expiration of its period of duration may
1162 amend its articles of incorporation during the two years to provide for perpetual existence.

1163 (7) During the voluntary dissolution of a domestic insurance corporation under this
1164 section, its corporate existence continues to allow the winding up of the corporation's affairs
1165 regarding any property and assets not distributed or otherwise disposed of prior to dissolution.
1166 To effect that purpose, the corporation may:

1167 (a) sell or otherwise dispose of the property and assets[;];

1168 (b) sue and be sued[;];

1169 (c) contract[;]; and

1170 (d) exercise all other necessary powers.

1171 Section 5. Section **31A-28-106** is amended to read:

1172 **31A-28-106. Continuation of the association -- Association duties -- Allocation of**
1173 **assessments -- Not agency of state.**

1174 (1) (a) There is continued under this part the nonprofit legal entity known as the Utah
1175 Life and Health Insurance Guaranty Association created under former provisions of this title.

1176 (b) All member insurers shall be and remain members of the association as a condition
1177 of their authority to transact insurance in this state.

- 1178 (c) The association shall:
- 1179 (i) perform its functions under the plan of operation established and approved under
- 1180 Section 31A-28-110; and
- 1181 (ii) exercise its powers through a board of directors established under Section
- 1182 31A-28-107.
- 1183 (d) The association shall allocate assessments among the following classes or
- 1184 subclasses:
- 1185 (i) the life insurance and annuity class, which includes the following subclasses:
- 1186 (A) the life insurance subclass;
- 1187 (B) the annuity subclass:
- 1188 (I) which includes annuity contracts owned by a governmental retirement plan, or its
- 1189 trustee, established under Section 401, 403(b), or 457, Internal Revenue Code; and
- 1190 (II) otherwise excludes unallocated annuities; and
- 1191 (C) the unallocated annuity subclass, which excludes contracts owned by a
- 1192 governmental retirement benefit plan, or its trustee, established under Sections 401, 403(b), or
- 1193 457, Internal Revenue Code; and
- 1194 (ii) the accident and health insurance class.
- 1195 (2) (a) The association shall:
- 1196 (i) come under the immediate supervision of the commissioner; and
- 1197 (ii) be subject to the applicable provisions of the insurance laws of this state.
- 1198 (b) Meetings or records of the association may be opened to the public upon majority
- 1199 vote of the board of directors of the association.
- 1200 (3) The association is not an agency of the state.