

**BAILBOND AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory H. Hughes**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code and the Code of Criminal Procedure regarding bail bond securities.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of "bail bond insurance";
- ▶ allows a bail bond company to pay a bond forfeiture prior to judgment;
- ▶ amends the process regarding posting proof of a surety bond;
- ▶ provides that for purposes of the sureties on an undertaking, a plea in abeyance is considered to be the same as a guilty plea;
- ▶ provides that the bail bond surety is not responsible regarding suspended or deferred sentencing;
- ▶ amends the court procedure for notifying the surety when a defendant fails to post bail;
- ▶ amends the procedures for forfeiting or reinstating a bond if a defendant misses a court date; and
- ▶ provides that the court may enter a judgment in the surety's name, and not in the name of an individual owner, principal, or employee of the surety.

**Monies Appropriated in this Bill:**

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **31A-1-301**, as last amended by Chapter 78, Laws of Utah 2005

33 **31A-35-504**, as last amended by Chapter 219, Laws of Utah 2005

34 **77-20-7**, as last amended by Chapter 293, Laws of Utah 1998

35 **77-20b-101**, as last amended by Chapter 91, Laws of Utah 2004

36 **77-20b-102**, as last amended by Chapter 259, Laws of Utah 2000

37 **77-20b-104**, as last amended by Chapter 245, Laws of Utah 2001



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

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

41 **31A-1-301. Definitions.**

42 As used in this title, unless otherwise specified:

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

45 (i) a medical condition including:

46 (A) medical care expenses; or

47 (B) the risk of disability;

48 (ii) accident; or

49 (iii) sickness.

50 (b) "Accident and health insurance":

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

52 (A) an income replacement contract;

53 (B) a health care contract;

54 (C) an expense reimbursement contract;

55 (D) a credit accident and health contract;

56 (E) a continuing care contract; and

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

58 (ii) may provide:

- 59 (A) hospital coverage;
- 60 (B) surgical coverage;
- 61 (C) medical coverage; or
- 62 (D) loss of income coverage.
- 63 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 64 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 65 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 66 (3) "Administrator" is defined in Subsection (155).
- 67 (4) "Adult" means a natural person who has attained the age of at least 18 years.
- 68 (5) "Affiliate" means any person who controls, is controlled by, or is under common
- 69 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 70 ownership, if substantially the same group of natural persons manages the corporations.
- 71 (6) "Agency" means:
- 72 (a) a person other than an individual, including a sole proprietorship by which a natural
- 73 person does business under an assumed name; and
- 74 (b) an insurance organization licensed or required to be licensed under Section
- 75 31A-23a-301.
- 76 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 77 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 78 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 79 over the lifetime of one or more natural persons if the making or continuance of all or some of
- 80 the series of the payments, or the amount of the payment, is dependent upon the continuance of
- 81 human life.
- 82 (10) "Application" means a document:
- 83 (a) (i) completed by an applicant to provide information about the risk to be insured;
- 84 and
- 85 (ii) that contains information that is used by the insurer to evaluate risk and decide
- 86 whether to:
- 87 (A) insure the risk under:
- 88 (I) the coverages as originally offered; or
- 89 (II) a modification of the coverage as originally offered; or

90 (B) decline to insure the risk; or

91 (b) used by the insurer to gather information from the applicant before issuance of an  
92 annuity contract.

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

97 (12) "Bail bond insurance" means a guarantee that a person will attend court when  
98 required, [~~or will obey the orders or judgment of the court~~] up to and including surrender of the  
99 person in execution of any sentence imposed under Subsection 77-20-7(1), as a condition to the  
100 release of that person from confinement.

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

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

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

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

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

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

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

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

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

116 (19) "Captive insurance company" means:

117 (a) an insurance company:

118 (i) owned by another organization; and

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

- 121 (b) in the case of groups and associations, an insurance organization:
- 122 (i) owned by the insureds; and
- 123 (ii) whose exclusive purpose is to insure risks of:
- 124 (A) member organizations;
- 125 (B) group members; and
- 126 (C) affiliates of:
- 127 (I) member organizations; or
- 128 (II) group members.
- 129 (20) "Casualty insurance" means liability insurance as defined in Subsection (94).
- 130 (21) "Certificate" means evidence of insurance given to:
- 131 (a) an insured under a group insurance policy; or
- 132 (b) a third party.
- 133 (22) "Certificate of authority" is included within the term "license."
- 134 (23) "Claim," unless the context otherwise requires, means a request or demand on an
- 135 insurer for payment of benefits according to the terms of an insurance policy.
- 136 (24) "Claims-made coverage" means an insurance contract or provision limiting
- 137 coverage under a policy insuring against legal liability to claims that are first made against the
- 138 insured while the policy is in force.
- 139 (25) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 140 commissioner.
- 141 (b) When appropriate, the terms listed in Subsection (25)(a) apply to the equivalent
- 142 supervisory official of another jurisdiction.
- 143 (26) (a) "Continuing care insurance" means insurance that:
- 144 (i) provides board and lodging;
- 145 (ii) provides one or more of the following services:
- 146 (A) personal services;
- 147 (B) nursing services;
- 148 (C) medical services; or
- 149 (D) other health-related services; and
- 150 (iii) provides the coverage described in Subsection (26)(a)(i) under an agreement
- 151 effective:

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

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

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

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

159 (i) by contract;

160 (ii) by common management;

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

162 (iv) by a means other than those described in Subsections (27)(a)(i) through (iii).

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

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

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

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

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

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

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

178 (i) a corporation doing business:

179 (A) as:

180 (I) an insurance producer;

181 (II) a limited line producer;

182 (III) a consultant;

- 183 (IV) a managing general agent;
- 184 (V) a reinsurance intermediary;
- 185 (VI) a third party administrator; or
- 186 (VII) an adjuster; and
- 187 (B) under:
  - 188 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
  - 189 Reinsurance Intermediaries;
  - 190 (II) Chapter 25, Third Party Administrators; or
  - 191 (III) Chapter 26, Insurance Adjusters; or
  - 192 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
  - 193 Holding Companies.
    - 194 (b) "Stock corporation" means a stock insurance corporation.
    - 195 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
    - 196 (32) "Creditable coverage" has the same meaning as provided in federal regulations
    - 197 adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L.
    - 198 104-191, 110 Stat. 1936.
    - 199 (33) "Credit accident and health insurance" means insurance on a debtor to provide
    - 200 indemnity for payments coming due on a specific loan or other credit transaction while the
    - 201 debtor is disabled.
    - 202 (34) (a) "Credit insurance" means insurance offered in connection with an extension of
    - 203 credit that is limited to partially or wholly extinguishing that credit obligation.
      - 204 (b) "Credit insurance" includes:
        - 205 (i) credit accident and health insurance;
        - 206 (ii) credit life insurance;
        - 207 (iii) credit property insurance;
        - 208 (iv) credit unemployment insurance;
        - 209 (v) guaranteed automobile protection insurance;
        - 210 (vi) involuntary unemployment insurance;
        - 211 (vii) mortgage accident and health insurance;
        - 212 (viii) mortgage guaranty insurance; and
        - 213 (ix) mortgage life insurance.

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

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

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

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

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

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

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

222 (i) specific loan; or

223 (ii) credit transaction.

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

225 (a) matured;

226 (b) unmatured;

227 (c) liquidated;

228 (d) unliquidated;

229 (e) secured;

230 (f) unsecured;

231 (g) absolute;

232 (h) fixed; or

233 (i) contingent.

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

236 (i) for the customer service representative's:

237 (A) producer; or

238 (B) consultant employer; and

239 (ii) to the customer service representative's employer's:

240 (A) customer;

241 (B) client; or

242 (C) organization.

243 (b) A customer service representative may only operate within the scope of authority of  
244 the customer service representative's producer or consultant employer.



245 (40) "Deadline" means the final date or time:

246 (a) imposed by:

247 (i) statute;

248 (ii) rule; or

249 (iii) order; and

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

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

255 (42) "Degree of relationship" means the number of steps between two persons  
256 determined by counting the generations separating one person from a common ancestor and  
257 then counting the generations to the other person.

258 (43) "Department" means the Insurance Department.

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

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

262 (a) perform the duties of:

263 (i) that individual's occupation; or

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

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

267 (i) eating;

268 (ii) toileting;

269 (iii) transferring;

270 (iv) bathing; or

271 (v) dressing.

272 (46) "Disability income insurance" is defined in Subsection (73).

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

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

275 (a) is incorporated;

- 276 (b) is organized; or
- 277 (c) in the case of an alien insurer, enters into the United States.
- 278 (49) (a) "Eligible employee" means:
- 279 (i) an employee who:
- 280 (A) works on a full-time basis; and
- 281 (B) has a normal work week of 30 or more hours; or
- 282 (ii) a person described in Subsection (49)(b).
- 283 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 284 plan of a small employer:
- 285 (i) a sole proprietor;
- 286 (ii) a partner in a partnership; or
- 287 (iii) an independent contractor.
- 288 (c) "Eligible employee" does not include, unless eligible under Subsection (49)(b):
- 289 (i) an individual who works on a temporary or substitute basis for a small employer;
- 290 (ii) an employer's spouse; or
- 291 (iii) a dependent of an employer.
- 292 (50) "Employee" means any individual employed by an employer.
- 293 (51) "Employee benefits" means one or more benefits or services provided to:
- 294 (a) employees; or
- 295 (b) dependents of employees.
- 296 (52) (a) "Employee welfare fund" means a fund:
- 297 (i) established or maintained, whether directly or through trustees, by:
- 298 (A) one or more employers;
- 299 (B) one or more labor organizations; or
- 300 (C) a combination of employers and labor organizations; and
- 301 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 302 from investments of the fund, by or on behalf of an employer doing business in this state or for
- 303 the benefit of any person employed in this state.
- 304 (b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax
- 305 revenues.
- 306 (53) "Endorsement" means a written agreement attached to a policy or certificate to

307 modify one or more of the provisions of the policy or certificate.

308 (54) "Enrollment date," with respect to a health benefit plan, means the first day of  
309 coverage or, if there is a waiting period, the first day of the waiting period.

310 (55) (a) "Escrow" means:

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

313 (ii) a settlement or closing involving:

314 (A) a mobile home;

315 (B) a grazing right;

316 (C) a water right; or

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

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

319 (i) real estate settlement; or

320 (ii) real estate closing.

321 (56) "Escrow agent" means:

322 (a) an insurance producer with:

323 (i) a title insurance line of authority; and

324 (ii) an escrow subline of authority; or

325 (b) a person defined as an escrow agent in Section 7-22-101.

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

328 (58) "Expense reimbursement insurance" means insurance:

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

331 (b) written:

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

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

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

336 (60) (a) "Filed" means that a filing is:

337 (i) submitted to the department as required by and in accordance with any applicable

338 statute, rule, or filing order;

339 (ii) received by the department within the time period provided in the applicable

340 statute, rule, or filing order; and

341 (iii) accompanied by the appropriate fee in accordance with:

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

343 (B) rule.

344 (b) "Filed" does not include a filing that is rejected by the department because it is not  
345 submitted in accordance with Subsection (60)(a).

346 (61) "Filing," when used as a noun, means an item required to be filed with the  
347 department including:

348 (a) a policy;

349 (b) a rate;

350 (c) a form;

351 (d) a document;

352 (e) a plan;

353 (f) a manual;

354 (g) an application;

355 (h) a report;

356 (i) a certificate;

357 (j) an endorsement;

358 (k) an actuarial certification;

359 (l) a licensee annual statement;

360 (m) a licensee renewal application; or

361 (n) an advertisement.

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

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

366 (64) (a) "Form" means one of the following prepared for general use:

367 (i) a policy;

368 (ii) a certificate;

- 369 (iii) an application; or
- 370 (iv) an outline of coverage.
- 371 (b) "Form" does not include a document specially prepared for use in an individual
- 372 case.
- 373 (65) "Franchise insurance" means individual insurance policies provided through a
- 374 mass marketing arrangement involving a defined class of persons related in some way other
- 375 than through the purchase of insurance.
- 376 (66) "General lines of authority" include:
- 377 (a) the general lines of insurance in Subsection (67);
- 378 (b) title insurance under one of the following sublines of authority:
- 379 (i) search, including authority to act as a title marketing representative;
- 380 (ii) escrow, including authority to act as a title marketing representative;
- 381 (iii) search and escrow, including authority to act as a title marketing representative;
- 382 and
- 383 (iv) title marketing representative only;
- 384 (c) surplus lines;
- 385 (d) workers' compensation; and
- 386 (e) any other line of insurance that the commissioner considers necessary to recognize
- 387 in the public interest.
- 388 (67) "General lines of insurance" include:
- 389 (a) accident and health;
- 390 (b) casualty;
- 391 (c) life;
- 392 (d) personal lines;
- 393 (e) property; and
- 394 (f) variable contracts, including variable life and annuity.
- 395 (68) "Group health plan" means an employee welfare benefit plan to the extent that the
- 396 plan provides medical care:
- 397 (a) (i) to employees; or
- 398 (ii) to a dependent of an employee; and
- 399 (b) (i) directly;

400 (ii) through insurance reimbursement; or

401 (iii) through any other method.

402 (69) "Guaranteed automobile protection insurance" means insurance offered in  
403 connection with an extension of credit that pays the difference in amount between the  
404 insurance settlement and the balance of the loan if the insured automobile is a total loss.

405 (70) (a) Except as provided in Subsection (70)(b), "health benefit plan" means a policy  
406 or certificate that:

407 (i) provides health care insurance;

408 (ii) provides major medical expense insurance; or

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

410 (A) a hospital confinement indemnity; or

411 (B) a limited benefit plan.

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

413 (i) provides benefits solely for:

414 (A) accident;

415 (B) dental;

416 (C) income replacement;

417 (D) long-term care;

418 (E) a Medicare supplement;

419 (F) a specified disease;

420 (G) vision; or

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

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

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

425 (a) professional services;

426 (b) personal services;

427 (c) facilities;

428 (d) equipment;

429 (e) devices;

430 (f) supplies; or

- 431 (g) medicine.
- 432 (72) (a) "Health care insurance" or "health insurance" means insurance providing:
- 433 (i) health care benefits; or
- 434 (ii) payment of incurred health care expenses.
- 435 (b) "Health care insurance" or "health insurance" does not include accident and health
- 436 insurance providing benefits for:
- 437 (i) replacement of income;
- 438 (ii) short-term accident;
- 439 (iii) fixed indemnity;
- 440 (iv) credit accident and health;
- 441 (v) supplements to liability;
- 442 (vi) workers' compensation;
- 443 (vii) automobile medical payment;
- 444 (viii) no-fault automobile;
- 445 (ix) equivalent self-insurance; or
- 446 (x) any type of accident and health insurance coverage that is a part of or attached to
- 447 another type of policy.
- 448 (73) "Income replacement insurance" or "disability income insurance" means insurance
- 449 written to provide payments to replace income lost from accident or sickness.
- 450 (74) "Indemnity" means the payment of an amount to offset all or part of an insured
- 451 loss.
- 452 (75) "Independent adjuster" means an insurance adjuster required to be licensed under
- 453 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.
- 454 (76) "Independently procured insurance" means insurance procured under Section
- 455 31A-15-104.
- 456 (77) "Individual" means a natural person.
- 457 (78) "Inland marine insurance" includes insurance covering:
- 458 (a) property in transit on or over land;
- 459 (b) property in transit over water by means other than boat or ship;
- 460 (c) bailee liability;
- 461 (d) fixed transportation property such as bridges, electric transmission systems, radio

462 and television transmission towers and tunnels; and

463 (e) personal and commercial property floaters.

464 (79) "Insolvency" means that:

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

466 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level

467 RBC under Subsection 31A-17-601(8)(c); or

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

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

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

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

474 (b) "Insurance" includes:

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

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

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

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

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

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

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

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

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

492 (c) providing annuities, including those issued in return for gifts, except those provided



- 493 by persons specified in Subsections 31A-22-1305(2) and (3);
- 494 (d) providing the characteristic services of motor clubs as outlined in Subsection (110);
- 495 (e) providing other persons with insurance as defined in Subsection (80);
- 496 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 497 or surety, any contract or policy of title insurance;
- 498 (g) transacting or proposing to transact any phase of title insurance, including:
- 499 (i) solicitation;
- 500 (ii) negotiation preliminary to execution;
- 501 (iii) execution of a contract of title insurance;
- 502 (iv) insuring; and
- 503 (v) transacting matters subsequent to the execution of the contract and arising out of
- 504 the contract, including reinsurance; and
- 505 (h) doing, or proposing to do, any business in substance equivalent to Subsections
- 506 (82)(a) through (g) in a manner designed to evade the provisions of this title.
- 507 (83) "Insurance consultant" or "consultant" means a person who:
- 508 (a) advises other persons about insurance needs and coverages;
- 509 (b) is compensated by the person advised on a basis not directly related to the insurance
- 510 placed; and
- 511 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 512 indirectly by an insurer or producer for advice given.
- 513 (84) "Insurance holding company system" means a group of two or more affiliated
- 514 persons, at least one of whom is an insurer.
- 515 (85) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 516 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 517 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an
- 518 insurance customer or an insured:
- 519 (i) "producer for the insurer" means a producer who is compensated directly or
- 520 indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer; and
- 521 (ii) "producer for the insured" means a producer who:
- 522 (A) is compensated directly and only by an insurance customer or an insured; and
- 523 (B) receives no compensation directly or indirectly from an insurer for selling,

524 soliciting, or negotiating any product of that insurer to an insurance customer or insured.

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

527 (i) policyholders;

528 (ii) subscribers;

529 (iii) members; and

530 (iv) beneficiaries.

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

532 (i) applies only to this title; and

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

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

537 (A) fraternal benefit societies;

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

540 (C) motor clubs;

541 (D) employee welfare plans; and

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

544 (ii) "Insurer" does not include a governmental entity to the extent it is engaged in the  
545 activities described in Section 31A-12-107.

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

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

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

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

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

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

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

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

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

- 555 (a) offered in connection with an extension of credit;
- 556 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
557 coming due on a:
- 558 (i) specific loan; or
- 559 (ii) credit transaction.
- 560 (90) "Large employer," in connection with a health benefit plan, means an employer  
561 who, with respect to a calendar year and to a plan year:
- 562 (a) employed an average of at least 51 eligible employees on each business day during  
563 the preceding calendar year; and
- 564 (b) employs at least two employees on the first day of the plan year.
- 565 (91) "Late enrollee," with respect to an employer health benefit plan, means an  
566 individual whose enrollment is a late enrollment.
- 567 (92) "Late enrollment," with respect to an employer health benefit plan, means  
568 enrollment of an individual other than:
- 569 (a) on the earliest date on which coverage can become effective for the individual  
570 under the terms of the plan; or
- 571 (b) through special enrollment.
- 572 (93) (a) Except for a retainer contract or legal assistance described in Section  
573 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for  
574 specified legal expenses.
- 575 (b) "Legal expense insurance" includes arrangements that create reasonable  
576 expectations of enforceable rights.
- 577 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,  
578 legal services incidental to other insurance coverages.
- 579 (94) (a) "Liability insurance" means insurance against liability:
- 580 (i) for death, injury, or disability of any human being, or for damage to property,  
581 exclusive of the coverages under:
- 582 (A) Subsection (104) for medical malpractice insurance;
- 583 (B) Subsection (131) for professional liability insurance; and
- 584 (C) Subsection (164) for workers' compensation insurance;
- 585 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the

586 insured who are injured, irrespective of legal liability of the insured, when issued with or  
587 supplemental to insurance against legal liability for the death, injury, or disability of human  
588 beings, exclusive of the coverages under:

- 589 (A) Subsection (104) for medical malpractice insurance;
- 590 (B) Subsection (131) for professional liability insurance; and
- 591 (C) Subsection (164) for workers' compensation insurance;
- 592 (iii) for loss or damage to property resulting from accidents to or explosions of boilers,  
593 pipes, pressure containers, machinery, or apparatus;
- 594 (iv) for loss or damage to any property caused by the breakage or leakage of sprinklers,  
595 water pipes and containers, or by water entering through leaks or openings in buildings; or
- 596 (v) for other loss or damage properly the subject of insurance not within any other kind  
597 or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or  
598 public policy.

599 (b) "Liability insurance" includes:

- 600 (i) vehicle liability insurance as defined in Subsection (161);
- 601 (ii) residential dwelling liability insurance as defined in Subsection (142); and
- 602 (iii) making inspection of, and issuing certificates of inspection upon, elevators,  
603 boilers, machinery, and apparatus of any kind when done in connection with insurance on  
604 them.

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

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

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

610 (b) The business of life insurance includes:

- 611 (i) granting death benefits;
- 612 (ii) granting annuity benefits;
- 613 (iii) granting endowment benefits;
- 614 (iv) granting additional benefits in the event of death by accident;
- 615 (v) granting additional benefits to safeguard the policy against lapse in the event of  
616 disability; and

- 617 (vi) providing optional methods of settlement of proceeds.
- 618 (97) "Limited license" means a license that:
- 619 (a) is issued for a specific product of insurance; and
- 620 (b) limits an individual or agency to transact only for that product or insurance.
- 621 (98) "Limited line credit insurance" includes the following forms of insurance:
- 622 (a) credit life;
- 623 (b) credit accident and health;
- 624 (c) credit property;
- 625 (d) credit unemployment;
- 626 (e) involuntary unemployment;
- 627 (f) mortgage life;
- 628 (g) mortgage guaranty;
- 629 (h) mortgage accident and health;
- 630 (i) guaranteed automobile protection; and
- 631 (j) any other form of insurance offered in connection with an extension of credit that:
- 632 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 633 (ii) the commissioner determines by rule should be designated as a form of limited line
- 634 credit insurance.
- 635 (99) "Limited line credit insurance producer" means a person who sells, solicits, or
- 636 negotiates one or more forms of limited line credit insurance coverage to individuals through a
- 637 master, corporate, group, or individual policy.
- 638 (100) "Limited line insurance" includes:
- 639 (a) bail bond;
- 640 (b) limited line credit insurance;
- 641 (c) legal expense insurance;
- 642 (d) motor club insurance;
- 643 (e) rental car-related insurance;
- 644 (f) travel insurance; and
- 645 (g) any other form of limited insurance that the commissioner determines by rule
- 646 should be designated a form of limited line insurance.
- 647 (101) "Limited lines authority" includes:

- 648 (a) the lines of insurance listed in Subsection (100); and
- 649 (b) a customer service representative.
- 650 (102) "Limited lines producer" means a person who sells, solicits, or negotiates limited
- 651 lines insurance.
- 652 (103) (a) "Long-term care insurance" means an insurance policy or rider advertised,
- 653 marketed, offered, or designated to provide coverage:
- 654 (i) in a setting other than an acute care unit of a hospital;
- 655 (ii) for not less than 12 consecutive months for each covered person on the basis of:
- 656 (A) expenses incurred;
- 657 (B) indemnity;
- 658 (C) prepayment; or
- 659 (D) another method;
- 660 (iii) for one or more necessary or medically necessary services that are:
- 661 (A) diagnostic;
- 662 (B) preventative;
- 663 (C) therapeutic;
- 664 (D) rehabilitative;
- 665 (E) maintenance; or
- 666 (F) personal care; and
- 667 (iv) that may be issued by:
- 668 (A) an insurer;
- 669 (B) a fraternal benefit society;
- 670 (C) (I) a nonprofit health hospital; and
- 671 (II) a medical service corporation;
- 672 (D) a prepaid health plan;
- 673 (E) a health maintenance organization; or
- 674 (F) an entity similar to the entities described in Subsections (103)(a)(iv)(A) through (E)
- 675 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 676 (b) "Long-term care insurance" includes:
- 677 (i) any of the following that provide directly or supplement long-term care insurance:
- 678 (A) a group or individual annuity or rider; or

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

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

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

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

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

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

720 (a) licensed under:

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

722 (ii) Chapter 11, Motor Clubs; or

723 (iii) Chapter 14, Foreign Insurers; and

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

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

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

727 (iii) trip reimbursement, towing services, emergency road services, stolen automobile  
728 services, a combination of these services, or any other services given in Subsections  
729 31A-11-102(1)(b) through (f).

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

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

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

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

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

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

739 (a) ships or hulls of ships;

740 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,



741 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia  
742 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

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

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

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

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

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

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

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

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

763 (a) individuals; and

764 (b) families.

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

766 (122) "Plan year" means:

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

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

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

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

772 (i) the year used to determine deductibles or limits;  
773 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;  
774 or  
775 (iii) the employer's taxable year if:  
776 (A) the plan does not impose deductibles or limits on a yearly basis; and  
777 (B) (I) the plan is not insured; or  
778 (II) the insurance policy is not renewed on an annual basis; or  
779 (c) in a case not described in Subsection (122)(a) or (b), the calendar year.  
780 (123) (a) (i) "Policy" means any document, including attached endorsements and riders,  
781 purporting to be an enforceable contract, which memorializes in writing some or all of the  
782 terms of an insurance contract.  
783 (ii) "Policy" includes a service contract issued by:  
784 (A) a motor club under Chapter 11, Motor Clubs;  
785 (B) a service contract provided under Chapter 6a, Service Contracts; and  
786 (C) a corporation licensed under:  
787 (I) Chapter 7, Nonprofit Health Service Insurance Corporations; or  
788 (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.  
789 (iii) "Policy" does not include:  
790 (A) a certificate under a group insurance contract; or  
791 (B) a document that does not purport to have legal effect.  
792 (b) (i) "Group insurance policy" means a policy covering a group of persons that is  
793 issued to a policyholder on behalf of the group, for the benefit of group members who are  
794 selected under procedures defined in the policy or in agreements which are collateral to the  
795 policy.  
796 (ii) A group insurance policy may include members of the policyholder's family or  
797 dependents.  
798 (c) "Blanket insurance policy" means a group policy covering classes of persons  
799 without individual underwriting, where the persons insured are determined by definition of the  
800 class with or without designating the persons covered.  
801 (124) "Policyholder" means the person who controls a policy, binder, or oral contract  
802 by ownership, premium payment, or otherwise.

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

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

807 (127) "Preexisting condition," with respect to a health benefit plan:

808 (a) means a condition that was present before the effective date of coverage, whether or  
809 not any medical advice, diagnosis, care, or treatment was recommended or received before that  
810 day; and

811 (b) does not include a condition indicated by genetic information unless an actual  
812 diagnosis of the condition by a physician has been made.

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

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

815 (i) assessments;

816 (ii) membership fees;

817 (iii) required contributions; or

818 (iv) monetary consideration.

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

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

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

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

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

828 (132) "Property insurance" means insurance against loss or damage to real or personal  
829 property of every kind and any interest in that property, from all hazards or causes, and against  
830 loss consequential upon the loss or damage including vehicle comprehensive and vehicle  
831 physical damage coverages, but excluding inland marine insurance and ocean marine insurance  
832 as defined under Subsections (78) and (114).

833 (133) "Qualified long-term care insurance contract" or "federally tax qualified

834 long-term care insurance contract" means:

835 (a) an individual or group insurance contract that meets the requirements of Section  
836 7702B(b), Internal Revenue Code; or

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

838 (i) (A) by rider; or

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

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

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

843 (a) is:

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

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

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

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

852 (i) the commissioner by rule; or

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

854 Commissioners.

855 (135) (a) "Rate" means:

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

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

859 (A) a single number; or

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

862 (I) expenses;

863 (II) profit; and

864 (III) individual insurer variation in loss experience.

- 865 (b) "Rate" does not include a minimum premium.
- 866 (136) (a) Except as provided in Subsection (136)(b), "rate service organization" means
- 867 any person who assists insurers in rate making or filing by:
  - 868 (i) collecting, compiling, and furnishing loss or expense statistics;
  - 869 (ii) recommending, making, or filing rates or supplementary rate information; or
  - 870 (iii) advising about rate questions, except as an attorney giving legal advice.
- 871 (b) "Rate service organization" does not mean:
  - 872 (i) an employee of an insurer;
  - 873 (ii) a single insurer or group of insurers under common control;
  - 874 (iii) a joint underwriting group; or
  - 875 (iv) a natural person serving as an actuarial or legal consultant.
- 876 (137) "Rating manual" means any of the following used to determine initial and
- 877 renewal policy premiums:
  - 878 (a) a manual of rates;
  - 879 (b) classifications;
  - 880 (c) rate-related underwriting rules; and
  - 881 (d) rating formulas that describe steps, policies, and procedures for determining initial
  - 882 and renewal policy premiums.
- 883 (138) "Received by the department" means:
  - 884 (a) except as provided in Subsection (138)(b), the date delivered to and stamped
  - 885 received by the department, whether delivered:
    - 886 (i) in person; or
    - 887 (ii) electronically; and
    - 888 (b) if delivered to the department by a delivery service, the delivery service's postmark
    - 889 date or pick-up date unless otherwise stated in:
      - 890 (i) statute;
      - 891 (ii) rule; or
      - 892 (iii) a specific filing order.
  - 893 (139) "Reciprocal" or "interinsurance exchange" means any unincorporated association
  - 894 of persons:
    - 895 (a) operating through an attorney-in-fact common to all of them; and

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

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

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

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

903 (i) "assuming insurer"; or

904 (ii) "assuming reinsurer."

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

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

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

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

914 (a) an insurance policy; or

915 (b) an insurance certificate.

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

917 (i) note;

918 (ii) stock;

919 (iii) bond;

920 (iv) debenture;

921 (v) evidence of indebtedness;

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

923 (vii) collateral-trust certificate;

924 (viii) preorganization certificate or subscription;

925 (ix) transferable share;

926 (x) investment contract;

- 927 (xi) voting trust certificate;
- 928 (xii) certificate of deposit for a security;
- 929 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in  
930 payments out of production under such a title or lease;
- 931 (xiv) commodity contract or commodity option;
- 932 (xv) any certificate of interest or participation in, temporary or interim certificate for,  
933 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed  
934 in Subsections (145)(a)(i) through (xiv); or
- 935 (xvi) any other interest or instrument commonly known as a security.
- 936 (b) "Security" does not include:
- 937 (i) any of the following under which an insurance company promises to pay money in a  
938 specific lump sum or periodically for life or some other specified period:
- 939 (A) insurance;
- 940 (B) endowment policy; or
- 941 (C) annuity contract; or
- 942 (ii) a burial certificate or burial contract.
- 943 (146) "Self-insurance" means any arrangement under which a person provides for  
944 spreading its own risks by a systematic plan.
- 945 (a) Except as provided in this Subsection (146), "self-insurance" does not include an  
946 arrangement under which a number of persons spread their risks among themselves.
- 947 (b) "Self-insurance" includes:
- 948 (i) an arrangement by which a governmental entity undertakes to indemnify its  
949 employees for liability arising out of the employees' employment; and
- 950 (ii) an arrangement by which a person with a managed program of self-insurance and  
951 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or  
952 employees for liability or risk which is related to the relationship or employment.
- 953 (c) "Self-insurance" does not include any arrangement with independent contractors.
- 954 (147) "Sell" means to exchange a contract of insurance:
- 955 (a) by any means;
- 956 (b) for money or its equivalent; and
- 957 (c) on behalf of an insurance company.

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

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

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

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

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

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

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

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

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

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

980 (b) bail bond insurance; and

981 (c) fidelity insurance.

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

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

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



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

991 (c) "Excess surplus" means:

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

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

996 (I) 2.5; and

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

999 (B) 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) 3.0; and

1002 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1003 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title  
1004 insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1005 (A) 1.5; and

1006 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1007 (155) "Third party administrator" or "administrator" means any person who collects  
1008 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of  
1009 the state in connection with insurance coverage, annuities, or service insurance coverage,  
1010 except:

1011 (a) a union on behalf of its members;

1012 (b) a person administering any:

1013 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1014 1974;

1015 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1016 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1017 (c) an employer on behalf of the employer's employees or the employees of one or  
1018 more of the subsidiary or affiliated corporations of the employer;

1019 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance

1020 for which the insurer holds a license in this state; or

1021 (e) a person:

1022 (i) licensed or exempt from licensing under:

1023 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

1024 Reinsurance Intermediaries; or

1025 (B) Chapter 26, Insurance Adjusters; and

1026 (ii) whose activities are limited to those authorized under the license the person holds

1027 or for which the person is exempt.

1028 (156) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of

1029 real or personal property or the holders of liens or encumbrances on that property, or others

1030 interested in the property against loss or damage suffered by reason of liens or encumbrances

1031 upon, defects in, or the unmarketability of the title to the property, or invalidity or

1032 unenforceability of any liens or encumbrances on the property.

1033 (157) "Total adjusted capital" means the sum of an insurer's or health organization's

1034 statutory capital and surplus as determined in accordance with:

1035 (a) the statutory accounting applicable to the annual financial statements required to be

1036 filed under Section 31A-4-113; and

1037 (b) any other items provided by the RBC instructions, as RBC instructions is defined in

1038 Section 31A-17-601.

1039 (158) (a) "Trustee" means "director" when referring to the board of directors of a

1040 corporation.

1041 (b) "Trustee," when used in reference to an employee welfare fund, means an

1042 individual, firm, association, organization, joint stock company, or corporation, whether acting

1043 individually or jointly and whether designated by that name or any other, that is charged with

1044 or has the overall management of an employee welfare fund.

1045 (159) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"

1046 means an insurer:

1047 (i) not holding a valid certificate of authority to do an insurance business in this state;

1048 or

1049 (ii) transacting business not authorized by a valid certificate.

1050 (b) "Admitted insurer" or "authorized insurer" means an insurer:

- 1051 (i) holding a valid certificate of authority to do an insurance business in this state; and  
1052 (ii) transacting business as authorized by a valid certificate.
- 1053 (160) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.
- 1054 (161) "Vehicle liability insurance" means insurance against liability resulting from or  
1055 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle  
1056 comprehensive and vehicle physical damage coverages under Subsection (132).
- 1057 (162) "Voting security" means a security with voting rights, and includes any security  
1058 convertible into a security with a voting right associated with the security.
- 1059 (163) "Waiting period" for a health benefit plan means the period that must pass before  
1060 coverage for an individual, who is otherwise eligible to enroll under the terms of the health  
1061 benefit plan, can become effective.
- 1062 (164) "Workers' compensation insurance" means:
- 1063 (a) insurance for indemnification of employers against liability for compensation based  
1064 on:
- 1065 (i) compensable accidental injuries; and  
1066 (ii) occupational disease disability;
- 1067 (b) employer's liability insurance incidental to workers' compensation insurance and  
1068 written in connection with workers' compensation insurance; and
- 1069 (c) insurance assuring to the persons entitled to workers' compensation benefits the  
1070 compensation provided by law.
- 1071 Section 2. Section **31A-35-504** is amended to read:
- 1072 **31A-35-504. Failure to pay bail bond forfeiture -- Grounds for suspension and**  
1073 **revocation of bail bond surety license.**
- 1074 (1) As used in this section:
- 1075 (a) "Company" means a bail bond surety company.  
1076 (b) "Judgment" means a judgment of bond forfeiture issued under Section 77-20b-104.
- 1077 (2) (a) (i) A company shall pay a judgment not later than 15 days following service of  
1078 notice upon the company from a prosecutor of the entry of the judgment.
- 1079 (ii) A company may pay a bond forfeiture to the court prior to judgment.
- 1080 (b) A prosecutor who does not receive proof of or notice of payment of the judgment  
1081 within 15 days after the service of notice to the company of a judgment shall notify the

1082 commissioner of the failure to pay the judgment.

1083 (c) If notice of entry of judgment is served upon the company by mail, three additional  
1084 days are added to the 15 days provided in Subsections (2)(a), (2)(b), and (2)(d).

1085 (d) A prosecutor may not proceed under Subsection (2)(b) if a company provides,  
1086 within 15 days after the day on which service of notice of the entry of judgment is served:

1087 (i) notice of a motion to set aside judgment or notice of an application for an  
1088 extraordinary writ [~~filed within 15 days after the day on which service of notice of the entry of~~  
1089 ~~a judgment is served.]; and~~

1090 (ii) proof that the surety has posted the judgment amount with the court in the form of  
1091 cash, a cashier's check, or certified funds.

1092 (e) [~~For purposes of~~] As used in this section, the filing of the following [~~shall toll~~] tolls  
1093 the time within which a company is required to pay a judgment if the motion or application is  
1094 filed within 15 days after the day on which service of notice of the entry of a judgment is  
1095 served:

1096 (i) a motion to set aside a judgment; or

1097 (ii) an application for extraordinary writ.

1098 (3) The commissioner shall suspend the license of the company not later than five days  
1099 following receipt of notice from a prosecutor of the company's failure to pay the judgment.

1100 (4) If the prosecutor receives proof of or notice of payment of the judgment during the  
1101 suspension period under Subsection (3), the prosecutor shall immediately notify the  
1102 commissioner of the payment. The notice shall be in writing and by the most expeditious  
1103 means possible, including facsimile or other electronic means.

1104 (5) The commissioner shall lift a suspension under Subsection (3) within five days of  
1105 the day on which all of the following conditions are met:

1106 (a) the suspension has been in place for no fewer than 14 days;

1107 (b) the commissioner has received written notice of payment of the unpaid forfeiture  
1108 from the prosecutor; and

1109 (c) the commissioner has received:

1110 (i) no other notice of any unpaid forfeiture from a prosecutor; or

1111 (ii) if a notice of unpaid forfeiture is received, written notice from the prosecutor that  
1112 the unpaid forfeiture has been paid.

1113 (6) The commissioner shall commence an administrative proceeding and revoke the  
1114 license of a company that fails to meet the conditions under Subsection (5) within 60 days  
1115 following the initial date of suspension.

1116 (7) This section does not restrict or otherwise affect the rights of a prosecutor to  
1117 commence collection proceedings under Subsection 77-20b-104(5).

1118 Section 3. Section **77-20-7** is amended to read:

1119 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**  
1120 **if charges not filed.**

1121 (1) (a) The [~~principal and the~~] sureties on the written undertaking are liable [~~thereon~~]  
1122 on the undertaking during all proceedings and for all court appearances required of the  
1123 defendant up to and including the surrender of the defendant in execution of any sentence  
1124 [~~imposed irrespective of any contrary provision in the undertaking~~].

1125 [~~(2) Notice of any required appearance by the defendant may be given by the court to~~  
1126 ~~the sureties who shall thereupon cause the defendant's appearance as required. Any failure of~~  
1127 ~~the defendant to appear when required is a breach of the conditions of the undertaking or bail~~  
1128 ~~and subjects it to forfeiture irrespective of whether or not notice was given to the sureties.]~~

1129 (b) For purposes of this section, a plea in abeyance is considered to be the same as a  
1130 sentencing upon a guilty plea.

1131 (c) Any suspended or deferred sentencing is not the responsibility of the surety and the  
1132 bond is exonerated without any motion, upon acceptance of the court and the defendant of a  
1133 plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred  
1134 sentencing reviews or any other deferred sentencing agreement.

1135 [~~(3)~~] (2) If no information or indictment charging a person with an offense is filed in  
1136 court within 120 days after the date of the bail undertaking or cash receipt, the court may  
1137 relieve a person from conditions of release at the person's request, and the bond or undertaking  
1138 is exonerated without further order of the court unless the prosecutor requests an extension of  
1139 time before the end of the 120-day period by:

1140 (a) filing a notice for extension with the court; and

1141 (b) serving the notice for extension upon the sureties and the person or his attorney.

1142 [~~(4)~~] (3) A court may extend bail and conditions of release for good cause.

1143 [~~(5)~~] (4) Subsection [~~(3)~~] (2) does not prohibit the filing of charges against a person at

1144 any time.

1145 Section 4. Section **77-20b-101** is amended to read:

1146 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**  
1147 **failure of timely notice.**

1148 (1) If a defendant who has posted bail fails to appear before the appropriate court when  
1149 required [~~and~~], the court [~~issues~~] shall issue a bench warrant [~~or directs~~] that includes the  
1150 original case number. The court shall direct that the surety be given notice of the  
1151 nonappearance[~~, the~~]. The clerk of the court shall:

1152 (a) mail notice of nonappearance by certified mail, return receipt requested, within 30  
1153 days to the address of the surety who posted the bond;

1154 (b) notify the surety of the name, address, telephone number, and fax number of the  
1155 prosecutor;

1156 (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at  
1157 the same time notice is sent under Subsection (1)(a); and

1158 (d) ensure that the name, address, and telephone number of the surety is stated on the  
1159 bench warrant.

1160 (2) The prosecutor may mail notice of nonappearance by certified mail, return receipt  
1161 requested, to the address of the surety within 37 days after the date of the defendant's failure to  
1162 appear.

1163 (3) If notice of nonappearance is not mailed to a surety, other than the defendant, in  
1164 accordance with Subsection (1) or (2), the surety is relieved of further obligation under the  
1165 bond if the surety's current name and address are on the bail bond in the court's file.

1166 (4) (a) If a defendant appears in court within seven days after a missed, scheduled court  
1167 appearance, [~~even though the court has ordered the bond forfeited,~~] the court may reinstate the  
1168 bond without further notice to the bond company[~~;~~], unless the defendant has been booked,  
1169 arrested, or is currently incarcerated for the same or a different criminal charge.

1170 (b) If a defendant fails to appear within seven days after a scheduled court appearance  
1171 [~~and the court has ordered the bond forfeited~~], the court may not reinstate the bond without the  
1172 consent of the surety.

1173 (c) If the defendant is arrested and booked into a county jail booking facility pursuant  
1174 to a warrant for failure to appear on the original charges, the surety may file a motion with the

1175 court to exonerate the bond. The surety shall deliver a copy of the motion to the prosecutor.

1176 (d) Unless the court makes a finding of good cause why the bond should not be  
1177 exonerated, it shall exonerate the bond if:

1178 (i) the surety has delivered the defendant to the county jail booking facility in the  
1179 county where the original charge is pending;

1180 (ii) the defendant has been released on a bond secured from a subsequent surety for the  
1181 original charge and the failure to appear;

1182 (iii) after an arrest, the defendant has escaped from jail or has been released on the  
1183 defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail  
1184 capacity, or by a sheriff's release under Section 17-22-5.5; or

1185 (iv) the surety has transported or agreed to pay for the transportation of the defendant  
1186 from a location outside of the county back to the county where the original charge is pending,  
1187 and the payment is in an amount equal to government transportation expenses listed in Section  
1188 76-3-201.

1189 (e) Under circumstances not otherwise provided for in this section, the court may  
1190 exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's  
1191 motion and there is good cause for the bond to be exonerated.

1192 (f) If a surety's bond has been exonerated under this section and the surety remains  
1193 liable for the cost of transportation of the defendant, the surety may take custody of the  
1194 defendant for the purpose of transporting the defendant to the jurisdiction where the charge is  
1195 pending.

1196 Section 5. Section **77-20b-102** is amended to read:

1197 **77-20b-102. Time for bringing defendant to court.**

1198 (1) If notice of nonappearance has been mailed to a surety under Section 77-20b-101,  
1199 the surety may bring the defendant before the court or surrender the defendant into the custody  
1200 of a county sheriff within the state within six months of the most recent postmarked date of  
1201 mailed notice to the surety of nonappearance, during which time a forfeiture action on the bond  
1202 may not be brought.

1203 (2) A surety may request an extension of the six-month time period in Subsection (1),  
1204 if the surety within that time:

1205 (a) files a motion for extension with the court; and

1206 (b) mails the motion for extension and a notice of hearing on the motion to the  
1207 prosecutor.

1208 (3) The court may extend the six-month time in Subsection (1) for not more than 60  
1209 days, if the surety has complied with Subsection (2) and the court finds good cause.

1210 Section 6. Section **77-20b-104** is amended to read:

1211 **77-20b-104. Forfeiture of bail.**

1212 (1) If a surety fails to bring the defendant before the court within the time provided in  
1213 Section 77-20b-102, the prosecuting attorney may request the forfeiture of the bail by:

1214 (a) filing a motion for bail forfeiture with the court, supported by proof of notice to the  
1215 surety of the defendant's nonappearance; and

1216 (b) mailing a copy of the motion to the surety.

1217 (2) A court shall enter judgment of bail forfeiture in the surety's name without further  
1218 notice if it finds by a preponderance of the evidence:

1219 (a) the defendant failed to appear as required;

1220 (b) the surety was given notice of the defendant's nonappearance in accordance with  
1221 Section 77-20b-101;

1222 (c) the surety failed to bring the defendant to the court within the six-month period  
1223 under Section 77-20b-102; and

1224 (d) the prosecutor has complied with the notice requirements under Subsection (1).

1225 (3) A court may only enter a judgment in the surety's name and not in the name of any  
1226 principal, owner, or employee of a surety.

1227 [~~(3)~~] (4) If the surety shows by a preponderance of the evidence that it has failed to  
1228 bring the defendant before the court because the defendant is deceased through no act of the  
1229 surety, the defendant is in federal custody, or the defendant has been deported, the court may  
1230 not enter judgment of bail forfeiture and the bond is exonerated.

1231 [~~(4)~~] (5) The amount of bail forfeited is the face amount of the bail bond, but if the  
1232 defendant is in the custody of another jurisdiction and the state extradites or intends to extradite  
1233 the defendant, the court may reduce the amount forfeited to the actual or estimated costs of  
1234 returning the defendant to the court's jurisdiction. A judgment under this Subsection [~~(4)~~] (5)  
1235 shall:

1236 (a) identify the surety against whom judgment is granted;



- 1237 (b) specify the amount of bail forfeited;
- 1238 (c) grant the forfeiture of the bail; and
- 1239 (d) be docketed by the clerk of the court in the civil judgment docket.
- 1240 [~~5~~] (6) A prosecutor may immediately commence collection proceedings to execute a
- 1241 judgment of bond forfeiture against the assets of the surety.

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**Legislative Review Note**

as of 2-10-06 11:24 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0403**

**Bailbond Amendments**

*17-Feb-06*

*8:51 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**