

Representative Gregory H. Hughes proposes the following substitute bill:

BAILBOND AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: L. Alma Mansell

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;
- ▶ 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; and



26 ▶ provides procedures for bond revocation.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill coordinates with H.B. 272, Insurance Law Amendments, by providing that
31 certain amendments in this bill supersede the amendments in H.B. 272.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **31A-1-301**, as last amended by Chapter 78, Laws of Utah 2005

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

36 **77-20-7**, as last amended by Chapter 293, Laws of Utah 1998

37 **77-20b-101**, as last amended by Chapter 91, Laws of Utah 2004

38 **77-20b-104**, as last amended by Chapter 245, Laws of Utah 2001

39 ENACTS:

40 **77-20b-105**, Utah Code Annotated 1953



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

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

44 **31A-1-301. Definitions.**

45 As used in this title, unless otherwise specified:

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

48 (i) a medical condition including:

49 (A) medical care expenses; or

50 (B) the risk of disability;

51 (ii) accident; or

52 (iii) sickness.

53 (b) "Accident and health insurance":

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

55 (A) an income replacement contract;

56 (B) a health care contract;

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

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

90 (A) insure the risk under:

91 (I) the coverages as originally offered; or

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

93 (B) decline to insure the risk; or

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

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

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

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

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

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

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

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

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

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

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

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

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

- 150 (B) nursing services;
- 151 (C) medical services; or
- 152 (D) other health-related services; and
- 153 (iii) provides the coverage described in Subsection (26)(a)(i) under an agreement
- 154 effective:
- 155 (A) for the life of the insured; or
- 156 (B) for a period in excess of one year.
- 157 (b) Insurance is continuing care insurance regardless of whether or not the board and
- 158 lodging are provided at the same location as the services described in Subsection (26)(a)(ii).
- 159 (27) (a) "Control," "controlling," "controlled," or "under common control" means the
- 160 direct or indirect possession of the power to direct or cause the direction of the management
- 161 and policies of a person. This control may be:
- 162 (i) by contract;
- 163 (ii) by common management;
- 164 (iii) through the ownership of voting securities; or
- 165 (iv) by a means other than those described in Subsections (27)(a)(i) through (iii).
- 166 (b) There is no presumption that an individual holding an official position with another
- 167 person controls that person solely by reason of the position.
- 168 (c) A person having a contract or arrangement giving control is considered to have
- 169 control despite the illegality or invalidity of the contract or arrangement.
- 170 (d) There is a rebuttable presumption of control in a person who directly or indirectly
- 171 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
- 172 voting securities of another person.
- 173 (28) "Controlled insurer" means a licensed insurer that is either directly or indirectly
- 174 controlled by a producer.
- 175 (29) "Controlling person" means any person that directly or indirectly has the power to
- 176 direct or cause to be directed, the management, control, or activities of a reinsurance
- 177 intermediary.
- 178 (30) "Controlling producer" means a producer who directly or indirectly controls an
- 179 insurer.
- 180 (31) (a) "Corporation" means an insurance corporation, except when referring to:

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

212 (v) guaranteed automobile protection insurance;

213 (vi) involuntary unemployment insurance;

214 (vii) mortgage accident and health insurance;

215 (viii) mortgage guaranty insurance; and

216 (ix) mortgage life insurance.

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

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

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

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

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

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

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

225 (i) specific loan; or

226 (ii) credit transaction.

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

228 (a) matured;

229 (b) unmatured;

230 (c) liquidated;

231 (d) unliquidated;

232 (e) secured;

233 (f) unsecured;

234 (g) absolute;

235 (h) fixed; or

236 (i) contingent.

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

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

240 (A) producer; or

241 (B) consultant employer; and

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

- 243 (A) customer;
- 244 (B) client; or
- 245 (C) organization.

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

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

- 249 (a) imposed by:
 - 250 (i) statute;
 - 251 (ii) rule; or
 - 252 (iii) order; and

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

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

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

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

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

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

- 265 (a) perform the duties of:
 - 266 (i) that individual's occupation; or
 - 267 (ii) any occupation for which the individual is reasonably suited by education, training,
268 or experience; or

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

- 270 (i) eating;
- 271 (ii) toileting;
- 272 (iii) transferring;
- 273 (iv) bathing; or

- 274 (v) dressing.
- 275 (46) "Disability income insurance" is defined in Subsection (73).
- 276 (47) "Domestic insurer" means an insurer organized under the laws of this state.
- 277 (48) "Domiciliary state" means the state in which an insurer:
- 278 (a) is incorporated;
- 279 (b) is organized; or
- 280 (c) in the case of an alien insurer, enters into the United States.
- 281 (49) (a) "Eligible employee" means:
- 282 (i) an employee who:
- 283 (A) works on a full-time basis; and
- 284 (B) has a normal work week of 30 or more hours; or
- 285 (ii) a person described in Subsection (49)(b).
- 286 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 287 plan of a small employer:
- 288 (i) a sole proprietor;
- 289 (ii) a partner in a partnership; or
- 290 (iii) an independent contractor.
- 291 (c) "Eligible employee" does not include, unless eligible under Subsection (49)(b):
- 292 (i) an individual who works on a temporary or substitute basis for a small employer;
- 293 (ii) an employer's spouse; or
- 294 (iii) a dependent of an employer.
- 295 (50) "Employee" means any individual employed by an employer.
- 296 (51) "Employee benefits" means one or more benefits or services provided to:
- 297 (a) employees; or
- 298 (b) dependents of employees.
- 299 (52) (a) "Employee welfare fund" means a fund:
- 300 (i) established or maintained, whether directly or through trustees, by:
- 301 (A) one or more employers;
- 302 (B) one or more labor organizations; or
- 303 (C) a combination of employers and labor organizations; and
- 304 (ii) that provides employee benefits paid or contracted to be paid, other than income

305 from investments of the fund, by or on behalf of an employer doing business in this state or for
306 the benefit of any person employed in this state.

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

309 (53) "Endorsement" means a written agreement attached to a policy or certificate to
310 modify one or more of the provisions of the policy or certificate.

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

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

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

316 (ii) a settlement or closing involving:

317 (A) a mobile home;

318 (B) a grazing right;

319 (C) a water right; or

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

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

322 (i) real estate settlement; or

323 (ii) real estate closing.

324 (56) "Escrow agent" means:

325 (a) an insurance producer with:

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

327 (ii) an escrow subline of authority; or

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

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

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

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

334 (b) written:

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

336 (ii) to have a one or two day waiting period following a hospitalization.
337 (59) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding
338 positions of public or private trust.
339 (60) (a) "Filed" means that a filing is:
340 (i) submitted to the department as required by and in accordance with any applicable
341 statute, rule, or filing order;
342 (ii) received by the department within the time period provided in the applicable
343 statute, rule, or filing order; and
344 (iii) accompanied by the appropriate fee in accordance with:
345 (A) Section 31A-3-103; or
346 (B) rule.
347 (b) "Filed" does not include a filing that is rejected by the department because it is not
348 submitted in accordance with Subsection (60)(a).
349 (61) "Filing," when used as a noun, means an item required to be filed with the
350 department including:
351 (a) a policy;
352 (b) a rate;
353 (c) a form;
354 (d) a document;
355 (e) a plan;
356 (f) a manual;
357 (g) an application;
358 (h) a report;
359 (i) a certificate;
360 (j) an endorsement;
361 (k) an actuarial certification;
362 (l) a licensee annual statement;
363 (m) a licensee renewal application; or
364 (n) an advertisement.
365 (62) "First party insurance" means an insurance policy or contract in which the insurer
366 agrees to pay claims submitted to it by the insured for the insured's losses.

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

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

370 (i) a policy;

371 (ii) a certificate;

372 (iii) an application; or

373 (iv) an outline of coverage.

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

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

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

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

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

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

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

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

385 and

386 (iv) title marketing representative only;

387 (c) surplus lines;

388 (d) workers' compensation; and

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

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

392 (a) accident and health;

393 (b) casualty;

394 (c) life;

395 (d) personal lines;

396 (e) property; and

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

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

- 400 (a) (i) to employees; or
- 401 (ii) to a dependent of an employee; and
- 402 (b) (i) directly;
- 403 (ii) through insurance reimbursement; or
- 404 (iii) through any other method.

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

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

- 410 (i) provides health care insurance;
- 411 (ii) provides major medical expense insurance; or
- 412 (iii) is offered as a substitute for hospital or medical expense insurance such as:
 - 413 (A) a hospital confinement indemnity; or
 - 414 (B) a limited benefit plan.

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

- 416 (i) provides benefits solely for:
 - 417 (A) accident;
 - 418 (B) dental;
 - 419 (C) income replacement;
 - 420 (D) long-term care;
 - 421 (E) a Medicare supplement;
 - 422 (F) a specified disease;
 - 423 (G) vision; or
 - 424 (H) a short-term limited duration; or
- 425 (ii) is offered and marketed as supplemental health insurance.

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

- 428 (a) professional services;

- 429 (b) personal services;
- 430 (c) facilities;
- 431 (d) equipment;
- 432 (e) devices;
- 433 (f) supplies; or
- 434 (g) medicine.

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

- 436 (i) health care benefits; or
- 437 (ii) payment of incurred health care expenses.

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

- 440 (i) replacement of income;
- 441 (ii) short-term accident;
- 442 (iii) fixed indemnity;
- 443 (iv) credit accident and health;
- 444 (v) supplements to liability;
- 445 (vi) workers' compensation;
- 446 (vii) automobile medical payment;
- 447 (viii) no-fault automobile;
- 448 (ix) equivalent self-insurance; or
- 449 (x) any type of accident and health insurance coverage that is a part of or attached to

450 another type of policy.

451 (73) "Income replacement insurance" or "disability income insurance" means insurance
452 written to provide payments to replace income lost from accident or sickness.

453 (74) "Indemnity" means the payment of an amount to offset all or part of an insured
454 loss.

455 (75) "Independent adjuster" means an insurance adjuster required to be licensed under
456 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.

457 (76) "Independently procured insurance" means insurance procured under Section
458 31A-15-104.

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

- 460 (78) "Inland marine insurance" includes insurance covering:
461 (a) property in transit on or over land;
462 (b) property in transit over water by means other than boat or ship;
463 (c) bailee liability;
464 (d) fixed transportation property such as bridges, electric transmission systems, radio
465 and television transmission towers and tunnels; and
466 (e) personal and commercial property floaters.
- 467 (79) "Insolvency" means that:
468 (a) an insurer is unable to pay its debts or meet its obligations as they mature;
469 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
470 RBC under Subsection 31A-17-601(8)(c); or
471 (c) an insurer is determined to be hazardous under this title.
- 472 (80) (a) "Insurance" means:
473 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
474 persons to one or more other persons; or
475 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
476 group of persons that includes the person seeking to distribute that person's risk.
- 477 (b) "Insurance" includes:
478 (i) risk distributing arrangements providing for compensation or replacement for
479 damages or loss through the provision of services or benefits in kind;
480 (ii) contracts of guaranty or suretyship entered into by the guarantor or surety as a
481 business and not as merely incidental to a business transaction; and
482 (iii) plans in which the risk does not rest upon the person who makes the arrangements,
483 but with a class of persons who have agreed to share it.
- 484 (81) "Insurance adjuster" means a person who directs the investigation, negotiation, or
485 settlement of a claim under an insurance policy other than life insurance or an annuity, on
486 behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 487 (82) "Insurance business" or "business of insurance" includes:
488 (a) providing health care insurance, as defined in Subsection (72), by organizations that
489 are or should be licensed under this title;
490 (b) providing benefits to employees in the event of contingencies not within the control

491 of the employees, in which the employees are entitled to the benefits as a right, which benefits
492 may be provided either:

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

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

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

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

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

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

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

502 (i) solicitation;

503 (ii) negotiation preliminary to execution;

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

505 (iv) insuring; and

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

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

509 (82)(a) through (g) in a manner designed to evade the provisions of this title.

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

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

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

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

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

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

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

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

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

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

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

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

530 (i) policyholders;

531 (ii) subscribers;

532 (iii) members; and

533 (iv) beneficiaries.

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

535 (i) applies only to this title; and

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

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

540 (A) fraternal benefit societies;

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

542 and (3);

543 (C) motor clubs;

544 (D) employee welfare plans; and

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

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

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

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

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

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

- 553 (f) "Foreign insurer" is defined in Subsection (63).
- 554 (g) "Nonadmitted insurer" is defined in Subsection (159)(a).
- 555 (h) "Unauthorized insurer" is defined in Subsection (159)(a).
- 556 (88) "Interinsurance exchange" is defined in Subsection (139).
- 557 (89) "Involuntary unemployment insurance" means insurance:
- 558 (a) offered in connection with an extension of credit;
- 559 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
- 560 coming due on a:
- 561 (i) specific loan; or
- 562 (ii) credit transaction.
- 563 (90) "Large employer," in connection with a health benefit plan, means an employer
- 564 who, with respect to a calendar year and to a plan year:
- 565 (a) employed an average of at least 51 eligible employees on each business day during
- 566 the preceding calendar year; and
- 567 (b) employs at least two employees on the first day of the plan year.
- 568 (91) "Late enrollee," with respect to an employer health benefit plan, means an
- 569 individual whose enrollment is a late enrollment.
- 570 (92) "Late enrollment," with respect to an employer health benefit plan, means
- 571 enrollment of an individual other than:
- 572 (a) on the earliest date on which coverage can become effective for the individual
- 573 under the terms of the plan; or
- 574 (b) through special enrollment.
- 575 (93) (a) Except for a retainer contract or legal assistance described in Section
- 576 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for
- 577 specified legal expenses.
- 578 (b) "Legal expense insurance" includes arrangements that create reasonable
- 579 expectations of enforceable rights.
- 580 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
- 581 legal services incidental to other insurance coverages.
- 582 (94) (a) "Liability insurance" means insurance against liability:
- 583 (i) for death, injury, or disability of any human being, or for damage to property,

584 exclusive of the coverages under:

585 (A) Subsection (104) for medical malpractice insurance;

586 (B) Subsection (131) for professional liability insurance; and

587 (C) Subsection (164) for workers' compensation insurance;

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

592 (A) Subsection (104) for medical malpractice insurance;

593 (B) Subsection (131) for professional liability insurance; and

594 (C) Subsection (164) for workers' compensation insurance;

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

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

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

602 (b) "Liability insurance" includes:

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

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

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

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

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

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

613 (b) The business of life insurance includes:

614 (i) granting death benefits;

- 615 (ii) granting annuity benefits;
- 616 (iii) granting endowment benefits;
- 617 (iv) granting additional benefits in the event of death by accident;
- 618 (v) granting additional benefits to safeguard the policy against lapse in the event of
- 619 disability; and
- 620 (vi) providing optional methods of settlement of proceeds.

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

- 622 (a) is issued for a specific product of insurance; and
- 623 (b) limits an individual or agency to transact only for that product or insurance.

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

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

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

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

640 master, corporate, group, or individual policy.

641 (100) "Limited line insurance" includes:

- 642 (a) bail bond;
- 643 (b) limited line credit insurance;
- 644 (c) legal expense insurance;
- 645 (d) motor club insurance;

- 646 (e) rental car-related insurance;
- 647 (f) travel insurance; and
- 648 (g) any other form of limited insurance that the commissioner determines by rule
- 649 should be designated a form of limited line insurance.
- 650 (101) "Limited lines authority" includes:
- 651 (a) the lines of insurance listed in Subsection (100); and
- 652 (b) a customer service representative.
- 653 (102) "Limited lines producer" means a person who sells, solicits, or negotiates limited
- 654 lines insurance.
- 655 (103) (a) "Long-term care insurance" means an insurance policy or rider advertised,
- 656 marketed, offered, or designated to provide coverage:
- 657 (i) in a setting other than an acute care unit of a hospital;
- 658 (ii) for not less than 12 consecutive months for each covered person on the basis of:
- 659 (A) expenses incurred;
- 660 (B) indemnity;
- 661 (C) prepayment; or
- 662 (D) another method;
- 663 (iii) for one or more necessary or medically necessary services that are:
- 664 (A) diagnostic;
- 665 (B) preventative;
- 666 (C) therapeutic;
- 667 (D) rehabilitative;
- 668 (E) maintenance; or
- 669 (F) personal care; and
- 670 (iv) that may be issued by:
- 671 (A) an insurer;
- 672 (B) a fraternal benefit society;
- 673 (C) (I) a nonprofit health hospital; and
- 674 (II) a medical service corporation;
- 675 (D) a prepaid health plan;
- 676 (E) a health maintenance organization; or

677 (F) an entity similar to the entities described in Subsections (103)(a)(iv)(A) through (E)
678 to the extent that the entity is otherwise authorized to issue life or health care insurance.

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

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

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

682 (B) a life insurance policy or rider;

683 (ii) a policy or rider that provides for payment of benefits based on:

684 (A) cognitive impairment; or

685 (B) functional capacity; or

686 (iii) a qualified long-term care insurance contract.

687 (c) "Long-term care insurance" does not include:

688 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;

689 (ii) basic hospital expense coverage;

690 (iii) basic medical/surgical expense coverage;

691 (iv) hospital confinement indemnity coverage;

692 (v) major medical expense coverage;

693 (vi) income replacement or related asset-protection coverage;

694 (vii) accident only coverage;

695 (viii) coverage for a specified:

696 (A) disease; or

697 (B) accident;

698 (ix) limited benefit health coverage; or

699 (x) a life insurance policy that accelerates the death benefit to provide the option of a
700 lump sum payment:

701 (A) if the following are not conditioned on the receipt of long-term care:

702 (I) benefits; or

703 (II) eligibility; and

704 (B) the coverage is for one or more the following qualifying events:

705 (I) terminal illness;

706 (II) medical conditions requiring extraordinary medical intervention; or

707 (III) permanent institutional confinement.

708 (104) "Medical malpractice insurance" means insurance against legal liability incident
709 to the practice and provision of medical services other than the practice and provision of dental
710 services.

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

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

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

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

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

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

723 (a) licensed under:

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

725 (ii) Chapter 11, Motor Clubs; or

726 (iii) Chapter 14, Foreign Insurers; and

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

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

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

730 (iii) trip reimbursement, towing services, emergency road services, stolen automobile
731 services, a combination of these services, or any other services given in Subsections

732 31A-11-102(1)(b) through (f).

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

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

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

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

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

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

742 (a) ships or hulls of ships;

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

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

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

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

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

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

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

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

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

766 (a) individuals; and

767 (b) families.

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

769 (122) "Plan year" means:

770 (a) the year that is designated as the plan year in:
771 (i) the plan document of a group health plan; or
772 (ii) a summary plan description of a group health plan;
773 (b) if the plan document or summary plan description does not designate a plan year or
774 there is no plan document or summary plan description:
775 (i) the year used to determine deductibles or limits;
776 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
777 or
778 (iii) the employer's taxable year if:
779 (A) the plan does not impose deductibles or limits on a yearly basis; and
780 (B) (I) the plan is not insured; or
781 (II) the insurance policy is not renewed on an annual basis; or
782 (c) in a case not described in Subsection (122)(a) or (b), the calendar year.
783 (123) (a) (i) "Policy" means any document, including attached endorsements and riders,
784 purporting to be an enforceable contract, which memorializes in writing some or all of the
785 terms of an insurance contract.
786 (ii) "Policy" includes a service contract issued by:
787 (A) a motor club under Chapter 11, Motor Clubs;
788 (B) a service contract provided under Chapter 6a, Service Contracts; and
789 (C) a corporation licensed under:
790 (I) Chapter 7, Nonprofit Health Service Insurance Corporations; or
791 (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
792 (iii) "Policy" does not include:
793 (A) a certificate under a group insurance contract; or
794 (B) a document that does not purport to have legal effect.
795 (b) (i) "Group insurance policy" means a policy covering a group of persons that is
796 issued to a policyholder on behalf of the group, for the benefit of group members who are
797 selected under procedures defined in the policy or in agreements which are collateral to the
798 policy.
799 (ii) A group insurance policy may include members of the policyholder's family or
800 dependents.

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

804 (124) "Policyholder" means the person who controls a policy, binder, or oral contract
805 by ownership, premium payment, or otherwise.

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

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

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

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

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

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

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

818 (i) assessments;

819 (ii) membership fees;

820 (iii) required contributions; or

821 (iv) monetary consideration.

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

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

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

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

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

831 (132) "Property insurance" means insurance against loss or damage to real or personal

832 property of every kind and any interest in that property, from all hazards or causes, and against
833 loss consequential upon the loss or damage including vehicle comprehensive and vehicle
834 physical damage coverages, but excluding inland marine insurance and ocean marine insurance
835 as defined under Subsections (78) and (114).

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

838 (a) an individual or group insurance contract that meets the requirements of Section
839 7702B(b), Internal Revenue Code; or

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

841 (i) (A) by rider; or

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

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

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

846 (a) is:

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

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

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

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

855 (i) the commissioner by rule; or

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

857 Commissioners.

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

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

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

862 (A) a single number; or

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

- 865 (I) expenses;
- 866 (II) profit; and
- 867 (III) individual insurer variation in loss experience.

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

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

- 871 (i) collecting, compiling, and furnishing loss or expense statistics;
- 872 (ii) recommending, making, or filing rates or supplementary rate information; or
- 873 (iii) advising about rate questions, except as an attorney giving legal advice.

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

- 875 (i) an employee of an insurer;
- 876 (ii) a single insurer or group of insurers under common control;
- 877 (iii) a joint underwriting group; or
- 878 (iv) a natural person serving as an actuarial or legal consultant.

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

- 881 (a) a manual of rates;
- 882 (b) classifications;
- 883 (c) rate-related underwriting rules; and
- 884 (d) rating formulas that describe steps, policies, and procedures for determining initial
885 and renewal policy premiums.

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

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

- 889 (i) in person; or
- 890 (ii) electronically; and

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

- 893 (i) statute;

- 894 (ii) rule; or
895 (iii) a specific filing order.
896 (139) "Reciprocal" or "interinsurance exchange" means any unincorporated association
897 of persons:
898 (a) operating through an attorney-in-fact common to all of them; and
899 (b) exchanging insurance contracts with one another that provide insurance coverage
900 on each other.
901 (140) "Reinsurance" means an insurance transaction where an insurer, for
902 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
903 reinsurance transactions, this title sometimes refers to:
904 (a) the insurer transferring the risk as the "ceding insurer"; and
905 (b) the insurer assuming the risk as the:
906 (i) "assuming insurer"; or
907 (ii) "assuming reinsurer."
908 (141) "Reinsurer" means any person licensed in this state as an insurer with the
909 authority to assume reinsurance.
910 (142) "Residential dwelling liability insurance" means insurance against liability
911 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
912 a detached single family residence or multifamily residence up to four units.
913 (143) "Retrocession" means reinsurance with another insurer of a liability assumed
914 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer
915 part of a liability assumed under a reinsurance contract.
916 (144) "Rider" means an endorsement to:
917 (a) an insurance policy; or
918 (b) an insurance certificate.
919 (145) (a) "Security" means any:
920 (i) note;
921 (ii) stock;
922 (iii) bond;
923 (iv) debenture;
924 (v) evidence of indebtedness;

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

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

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

958 (a) by any means;

959 (b) for money or its equivalent; and

960 (c) on behalf of an insurance company.

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

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

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

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

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

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

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

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

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

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

983 (b) bail bond insurance; and

984 (c) fidelity insurance.

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

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

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

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

994 (c) "Excess surplus" means:

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

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

999 (I) 2.5; and

1000 (II) the sum of the insurer's or health organization's minimum capital or permanent
1001 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1002 (B) that amount of an insurer's or health organization's total adjusted capital, as defined
1003 in Subsection (157), that exceeds the product of:

1004 (I) 3.0; and

1005 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1006 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title
1007 insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1008 (A) 1.5; and

1009 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1010 (155) "Third party administrator" or "administrator" means any person who collects
1011 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1012 the state in connection with insurance coverage, annuities, or service insurance coverage,
1013 except:

1014 (a) a union on behalf of its members;

1015 (b) a person administering any:

1016 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1017 1974;

- 1018 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
- 1019 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1020 (c) an employer on behalf of the employer's employees or the employees of one or
- 1021 more of the subsidiary or affiliated corporations of the employer;
- 1022 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance
- 1023 for which the insurer holds a license in this state; or
- 1024 (e) a person:
- 1025 (i) licensed or exempt from licensing under:
- 1026 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 1027 Reinsurance Intermediaries; or
- 1028 (B) Chapter 26, Insurance Adjusters; and
- 1029 (ii) whose activities are limited to those authorized under the license the person holds
- 1030 or for which the person is exempt.
- 1031 (156) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of
- 1032 real or personal property or the holders of liens or encumbrances on that property, or others
- 1033 interested in the property against loss or damage suffered by reason of liens or encumbrances
- 1034 upon, defects in, or the unmarketability of the title to the property, or invalidity or
- 1035 unenforceability of any liens or encumbrances on the property.
- 1036 (157) "Total adjusted capital" means the sum of an insurer's or health organization's
- 1037 statutory capital and surplus as determined in accordance with:
- 1038 (a) the statutory accounting applicable to the annual financial statements required to be
- 1039 filed under Section 31A-4-113; and
- 1040 (b) any other items provided by the RBC instructions, as RBC instructions is defined in
- 1041 Section 31A-17-601.
- 1042 (158) (a) "Trustee" means "director" when referring to the board of directors of a
- 1043 corporation.
- 1044 (b) "Trustee," when used in reference to an employee welfare fund, means an
- 1045 individual, firm, association, organization, joint stock company, or corporation, whether acting
- 1046 individually or jointly and whether designated by that name or any other, that is charged with
- 1047 or has the overall management of an employee welfare fund.
- 1048 (159) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"

1049 means an insurer:

1050 (i) not holding a valid certificate of authority to do an insurance business in this state;

1051 or

1052 (ii) transacting business not authorized by a valid certificate.

1053 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1054 (i) holding a valid certificate of authority to do an insurance business in this state; and

1055 (ii) transacting business as authorized by a valid certificate.

1056 (160) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1057 (161) "Vehicle liability insurance" means insurance against liability resulting from or
1058 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
1059 comprehensive and vehicle physical damage coverages under Subsection (132).

1060 (162) "Voting security" means a security with voting rights, and includes any security
1061 convertible into a security with a voting right associated with the security.

1062 (163) "Waiting period" for a health benefit plan means the period that must pass before
1063 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
1064 benefit plan, can become effective.

1065 (164) "Workers' compensation insurance" means:

1066 (a) insurance for indemnification of employers against liability for compensation based
1067 on:

1068 (i) compensable accidental injuries; and

1069 (ii) occupational disease disability;

1070 (b) employer's liability insurance incidental to workers' compensation insurance and
1071 written in connection with workers' compensation insurance; and

1072 (c) insurance assuring to the persons entitled to workers' compensation benefits the
1073 compensation provided by law.

1074 Section 2. Section **31A-35-504** is amended to read:

1075 **31A-35-504. Failure to pay bail bond forfeiture -- Grounds for suspension and**
1076 **revocation of bail bond surety license.**

1077 (1) As used in this section:

1078 (a) "Company" means a bail bond surety company.

1079 (b) "Judgment" means a judgment of bond forfeiture issued under Section 77-20b-104.

1080 (2) (a) (i) A company shall pay a judgment not later than 15 days following service of
1081 notice upon the company from a prosecutor of the entry of the judgment.

1082 (ii) A company may pay a bond forfeiture to the court prior to judgment.

1083 (b) A prosecutor who does not receive proof of or notice of payment of the judgment
1084 within 15 days after the service of notice to the company of a judgment shall notify the
1085 commissioner of the failure to pay the judgment.

1086 (c) If notice of entry of judgment is served upon the company by mail, three additional
1087 days are added to the 15 days provided in Subsections (2)(a), (2)(b), and (2)(d).

1088 (d) A prosecutor may not proceed under Subsection (2)(b) if a company [~~provides~~
1089 ~~notice of~~], within 15 days after service of notice of the entry of judgment is served:

1090 (i) files a motion to set aside the judgment or [~~notice of~~] files an application for an
1091 extraordinary writ [~~filed within 15 days after the day on which service of notice of the entry of~~
1092 ~~a judgment is served.~~]; and

1093 (ii) provides proof that the surety has posted the judgment amount with the court in the
1094 form of cash, a cashier's check, or certified funds.

1095 (e) [~~For purposes of~~] As used in this section, the filing of the following [~~shall toll~~] tolls
1096 the time within which a company is required to pay a judgment if the motion or application is
1097 filed within 15 days after the day on which service of notice of the entry of a judgment is
1098 served:

1099 (i) a motion to set aside a judgment; or

1100 (ii) an application for extraordinary writ.

1101 (3) The commissioner shall suspend the license of the company not later than five days
1102 following receipt of notice from a prosecutor of the company's failure to pay the judgment.

1103 (4) If the prosecutor receives proof of or notice of payment of the judgment during the
1104 suspension period under Subsection (3), the prosecutor shall immediately notify the
1105 commissioner of the payment. The notice shall be in writing and by the most expeditious
1106 means possible, including facsimile or other electronic means.

1107 (5) The commissioner shall lift a suspension under Subsection (3) within five days of
1108 the day on which all of the following conditions are met:

1109 (a) the suspension has been in place for no fewer than 14 days;

1110 (b) the commissioner has received written notice of payment of the unpaid forfeiture

1111 from the prosecutor; and

1112 (c) the commissioner has received:

1113 (i) no other notice of any unpaid forfeiture from a prosecutor; or

1114 (ii) if a notice of unpaid forfeiture is received, written notice from the prosecutor that
1115 the unpaid forfeiture has been paid.

1116 (6) The commissioner shall commence an administrative proceeding and revoke the
1117 license of a company that fails to meet the conditions under Subsection (5) within 60 days
1118 following the initial date of suspension.

1119 (7) This section does not restrict or otherwise affect the rights of a prosecutor to
1120 commence collection proceedings under Subsection 77-20b-104(5).

1121 Section 3. Section 77-20-7 is amended to read:

1122 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
1123 **if charges not filed.**

1124 (1) (a) The principal and the sureties on the written undertaking are liable ~~[thereon]~~ on
1125 the undertaking during all proceedings and for all court appearances required of the defendant
1126 up to and including the surrender of the defendant in execution of any sentence imposed
1127 irrespective of any contrary provision in the undertaking. [~~(2) Notice of any required~~
1128 ~~appearance by the defendant may be given by the court to the sureties who shall thereupon~~
1129 ~~cause the defendant's appearance as required.] Any failure of the defendant to appear up to and
1130 including execution of sentence when required is a breach of the conditions of the undertaking
1131 or bail and subjects it to forfeiture irrespective of whether or not notice of appearance was
1132 given to the sureties.~~

1133 (b) For purposes of this section, a plea in abeyance is considered to be the same as a
1134 sentencing upon a guilty plea.

1135 (c) Any suspended or deferred sentencing is not the responsibility of the surety and the
1136 bond is exonerated without any motion, upon acceptance of the court and the defendant of a
1137 plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred
1138 sentencing reviews or any other deferred sentencing agreement.

1139 (d) If a surety issues a bond after the execution of sentence, the surety is liable on the
1140 undertaking during all proceedings and for all court appearances required of the defendant up
1141 to and including the next execution of sentence imposed under Subsection 77-20-7(1).

1142 [(3)] (2) If no information or indictment charging a person with an offense is filed in
1143 court within 120 days after the date of the bail undertaking or cash receipt, the court may
1144 relieve a person from conditions of release at the person's request, and the bond or undertaking
1145 is exonerated without further order of the court unless the prosecutor requests an extension of
1146 time before the end of the 120-day period by:

- 1147 (a) filing a notice for extension with the court; and
1148 (b) serving the notice for extension upon the sureties and the person or his attorney.

1149 [(4)] (3) A court may extend bail and conditions of release for good cause.

1150 [(5)] (4) Subsection [(3)] (2) does not prohibit the filing of charges against a person at
1151 any time.

1152 Section 4. Section **77-20b-101** is amended to read:

1153 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
1154 **failure of timely notice.**

1155 (1) If a defendant who has posted bail fails to appear before the appropriate court when
1156 required and the court [~~issues~~] chooses to order forfeiture of the bail, the court shall issue a
1157 bench warrant [or directs] that includes the original case number. The court shall also direct
1158 that the surety be given notice of the nonappearance[,-the]. The clerk of the court shall:

1159 (a) mail notice of nonappearance by certified mail, return receipt requested, within 30
1160 days to the address of the surety [~~who posted the bond~~] or its agent as listed on the bond;

1161 (b) notify the surety or its agent as listed on the bond of the name, address, telephone
1162 number, and fax number of the prosecutor;

1163 (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at
1164 the same time notice is sent under Subsection (1)(a); and

1165 (d) ensure that the name, address, and telephone number of the surety or its agent as
1166 listed on the bond is stated on the bench warrant.

1167 (2) The prosecutor may mail notice of nonappearance by certified mail, return receipt
1168 requested, to the address of the surety or its agent as listed on the bond within 37 days after the
1169 date of the defendant's failure to appear.

1170 (3) If notice of nonappearance is not mailed to a surety or its agent as listed on the
1171 bond, other than the defendant, in accordance with Subsection (1) or (2), the surety is relieved
1172 of further obligation under the bond if the surety's current name and address or the current

1173 name and address of the surety's agent are on the bail bond in the court's file.

1174 (4) (a) (i) If a defendant appears in court within seven days after a missed, scheduled
1175 court appearance, [~~even though the court has ordered the bond forfeited,~~] the court may
1176 reinstate the bond without further notice to the bond company.

1177 (ii) If the defendant, while in custody, appears on the case for which the bond was
1178 posted, the court may not reinstate the bond without the consent of the bond company.

1179 (b) If a defendant fails to appear within seven days after a scheduled court appearance
1180 [~~and the court has ordered the bond forfeited~~], the court may not reinstate the bond without the
1181 consent of the surety.

1182 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
1183 to a warrant for failure to appear on the original charges, the surety may file a motion with the
1184 court to exonerate the bond. The surety shall deliver a copy of the motion to the prosecutor.

1185 (d) Unless the court makes a finding of good cause why the bond should not be
1186 exonerated, it shall exonerate the bond if:

1187 (i) the surety has delivered the defendant to the county jail booking facility in the
1188 county where the original charge is pending;

1189 (ii) the defendant has been released on a bond secured from a subsequent surety for the
1190 original charge and the failure to appear;

1191 (iii) after an arrest, the defendant has escaped from jail or has been released on the
1192 defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail
1193 capacity, or by a sheriff's release under Section 17-22-5.5; [~~or~~]

1194 (iv) the surety has transported or agreed to pay for the transportation of the defendant
1195 from a location outside of the county back to the county where the original charge is pending,
1196 and the payment is in an amount equal to government transportation expenses listed in Section
1197 76-3-201[~~;~~]; or

1198 (v) the surety demonstrates by a preponderance of the evidence that:

1199 (A) at the time the surety issued the bond, it had made reasonable efforts to determine
1200 that the defendant was legally present in the United States;

1201 (B) a reasonable person would have concluded, based on the surety's determination,
1202 that the defendant was legally present in the United States; and

1203 (C) the surety has failed to bring the defendant before the court because the defendant

1204 is in federal custody or has been deported.

1205 (e) Under circumstances not otherwise provided for in this section, the court may
1206 exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's
1207 motion and there is good cause for the bond to be exonerated.

1208 (f) If a surety's bond has been exonerated under this section and the surety remains
1209 liable for the cost of transportation of the defendant, the surety may take custody of the
1210 defendant for the purpose of transporting the defendant to the jurisdiction where the charge is
1211 pending.

1212 Section 5. Section **77-20b-104** is amended to read:

1213 **77-20b-104. Forfeiture of bail.**

1214 (1) If a surety fails to bring the defendant before the court within the time provided in
1215 Section 77-20b-102, the prosecuting attorney may request the forfeiture of the bail by:

1216 (a) filing a motion for bail forfeiture with the court, supported by proof of notice to the
1217 surety of the defendant's nonappearance; and

1218 (b) mailing a copy of the motion to the surety.

1219 (2) A court shall enter judgment of bail forfeiture without further notice if it finds by a
1220 preponderance of the evidence:

1221 (a) the defendant failed to appear as required;

1222 (b) the surety was given notice of the defendant's nonappearance in accordance with
1223 Section 77-20b-101;

1224 (c) the surety failed to bring the defendant to the court within the six-month period
1225 under Section 77-20b-102; and

1226 (d) the prosecutor has complied with the notice requirements under Subsection (1).

1227 (3) If the surety shows by a preponderance of the evidence that it has failed to bring the
1228 defendant before the court because the defendant is deceased through no act of the surety, the
1229 court may not enter judgment of bail forfeiture and the bond is exonerated.

1230 (4) The amount of bail forfeited is the face amount of the bail bond, but if the
1231 defendant is in the custody of another jurisdiction and the state extradites or intends to extradite
1232 the defendant, the court may reduce the amount forfeited to the actual or estimated costs of
1233 returning the defendant to the court's jurisdiction. A judgment under this Subsection [~~(4)~~] (5)
1234 shall:

- 1235 (a) identify the surety against whom judgment is granted;
- 1236 (b) specify the amount of bail forfeited;
- 1237 (c) grant the forfeiture of the bail; and
- 1238 (d) be docketed by the clerk of the court in the civil judgment docket.
- 1239 (5) A prosecutor may immediately commence collection proceedings to execute a
- 1240 judgment of bond forfeiture against the assets of the surety.

1241 Section 6. Section **77-20b-105** is enacted to read:

1242 **77-20b-105. Revocation of bond.**

1243 The surety is entitled to obtain the exoneration of its bond prior to judgment by
1244 providing written proof to the court and the prosecutor that:

1245 (1) the defendant has been booked for failure to appear regarding the charge for which
1246 the bond was issued; or

1247 (2) the defendant is in custody and the surety has served the defendant's bond
1248 revocation on the custodial authority.

1249 Section 7. **Coordinating H.B. 403 with H.B. 272 -- Superseding amendments.**

1250 If this H.B. 403 and H.B. 272, Insurance Law Amendments, both pass, it is the intent of
1251 the Legislature that the amendments to Subsection 31A-1-301(12) in this bill supersede the
1252 amendments to Subsection 31A-1-301(12) in H.B. 272 when the Office of Legislative
1253 Research and General Counsel prepares the Utah Code database for publication.

Fiscal Note
Bill Number HB0403S02

Bailbond Amendments

24-Feb-06

11:19 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst