

INSURANCE CODE AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: John L. Valentine

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill modifies the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ provides for rulemaking authority related to annual financial reporting requirements similar to those adopted by the National Association of Insurance Commissioners;
- ▶ modifies provisions related to audit committees:
 - making the board of directors an audit committee in certain circumstances;
 - providing rulemaking authority for rules pertaining to an audit committee requirement; and
 - clarifying insider directors;
- ▶ addresses the suicide provisions;
- ▶ authorizes the commissioner to make rules related to federal law requirements involving genetic information and involving marketing;
- ▶ addresses general requirements for licensing and when the commissioner may deny a license application;
- ▶ modifies license types and classifications;



- 28 ▶ addresses reinstatement of a voluntarily surrendered license;
- 29 ▶ modifies requirements related to a title insurance producer's reserve fund;
- 30 ▶ addresses designations by an insurer, agency licensee, or organization of an
31 individual licensee;
- 32 ▶ makes certain records private records under the Government Records Access and
33 Management Act;
- 34 ▶ addresses loss of a license if an individual licensee commits an act or fails to
35 perform a duty;
- 36 ▶ exempts a nonresident licensee from trust account requirements of this state by
37 requiring that the licensee comply with the trust account requirements of the
38 licensee's home state;
- 39 ▶ modifies notice requirements related to termination of coverage when an employer
40 receives premium by deducting wages or salary;
- 41 ▶ modifies exemptions from the prohibition on sharing commissions;
- 42 ▶ modifies provisions related to a bail bond licensee;
- 43 ▶ shortens the period of time an applicant for a bail bond surety company license has
44 to request a hearing for a denial;
- 45 ▶ modifies the renewal process for a bail bond surety company;
- 46 ▶ permits the commissioner to accept a comprehensive annual independent audit in
47 lieu of an examination for a captive insurance company; and
- 48 ▶ makes technical and conforming amendments, including repealing outdated
49 language.

50 **Monies Appropriated in this Bill:**

51 None

52 **Other Special Clauses:**

53 None

54 **Utah Code Sections Affected:**

55 AMENDS:

56 **31A-1-301**, as last amended by Laws of Utah 2008, Chapters 345 and 382

57 **31A-2-203**, as last amended by Laws of Utah 2008, Chapters 345 and 382

58 **31A-5-412**, as last amended by Laws of Utah 1987, Chapters 91 and 95

- 59 **31A-8-215**, as last amended by Laws of Utah 2004, Chapter 90
- 60 **31A-22-404**, as last amended by Laws of Utah 2008, Chapter 345
- 61 **31A-22-620**, as last amended by Laws of Utah 2005, Chapter 78
- 62 **31A-22-1602**, as enacted by Laws of Utah 2002, Chapter 120
- 63 **31A-23a-102**, as last amended by Laws of Utah 2004, Chapters 90 and 173
- 64 **31A-23a-104**, as last amended by Laws of Utah 2008, Chapter 382
- 65 **31A-23a-105**, as last amended by Laws of Utah 2008, Chapter 345
- 66 **31A-23a-106**, as last amended by Laws of Utah 2007, Chapter 325
- 67 **31A-23a-111**, as last amended by Laws of Utah 2008, Chapters 345 and 382
- 68 **31A-23a-113**, as last amended by Laws of Utah 2006, Chapter 312
- 69 **31A-23a-115**, as last amended by Laws of Utah 2008, Chapter 382
- 70 **31A-23a-203**, as last amended by Laws of Utah 2005, Chapter 124
- 71 **31A-23a-204**, as last amended by Laws of Utah 2008, Chapter 220
- 72 **31A-23a-302**, as last amended by Laws of Utah 2008, Chapter 382
- 73 **31A-23a-409**, as last amended by Laws of Utah 2004, Chapter 2
- 74 **31A-23a-410**, as renumbered and amended by Laws of Utah 2003, Chapter 298
- 75 **31A-23a-504**, as last amended by Laws of Utah 2007, Chapter 307
- 76 **31A-25-203**, as last amended by Laws of Utah 2008, Chapter 345
- 77 **31A-25-208**, as last amended by Laws of Utah 2008, Chapter 382
- 78 **31A-25-210**, as enacted by Laws of Utah 2006, Chapter 312
- 79 **31A-26-203**, as last amended by Laws of Utah 2008, Chapter 345
- 80 **31A-26-204**, as last amended by Laws of Utah 2007, Chapter 325
- 81 **31A-26-210**, as last amended by Laws of Utah 2007, Chapter 306
- 82 **31A-26-213**, as last amended by Laws of Utah 2008, Chapter 382
- 83 **31A-26-214.5**, as enacted by Laws of Utah 2006, Chapter 312
- 84 **31A-35-405**, as last amended by Laws of Utah 2008, Chapter 382
- 85 **31A-35-406**, as last amended by Laws of Utah 2008, Chapter 382
- 86 **31A-37-502**, as last amended by Laws of Utah 2008, Chapter 302
- 87 **31A-37a-402**, as enacted by Laws of Utah 2008, Chapter 302
- 88 **63G-2-302**, as last amended by Laws of Utah 2008, Chapter 91 and renumbered and
- 89 amended by Laws of Utah 2008, Chapter 382

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

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

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

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

(i) a medical condition including:

(A) a medical care expense; or

(B) the risk of disability;

(ii) accident; or

(iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

(A) an income replacement contract;

(B) a health care contract;

(C) an expense reimbursement contract;

(D) a credit accident and health contract;

(E) a continuing care contract; and

(F) a long-term care contract; and

(ii) may provide:

(A) hospital coverage;

(B) surgical coverage;

(C) medical coverage;

(D) loss of income coverage;

(E) prescription drug coverage;

(F) dental coverage; or

(G) vision coverage.

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

(2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

121 (3) "Administrator" is defined in Subsection (159).

122 (4) "Adult" means [~~a natural person~~] an individual who has attained the age of at least
123 18 years.

124 (5) "Affiliate" means a person who controls, is controlled by, or is under common
125 control with, another person. A corporation is an affiliate of another corporation, regardless of
126 ownership, if substantially the same group of [~~natural persons manages~~] individuals manage the
127 corporations.

128 (6) "Agency" means:

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

131 (b) an insurance organization licensed or required to be licensed under Section
132 31A-23a-301.

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

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

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

139 (10) "Application" means a document:

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

141 and

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

144 (A) insure the risk under:

145 (I) the coverage as originally offered; or

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

147 (B) decline to insure the risk; or

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

150 (11) "Articles" or "articles of incorporation" means:

151 (a) the original articles;

- 152 (b) a special law;
- 153 (c) a charter;
- 154 (d) an amendment;
- 155 (e) restated articles;
- 156 (f) articles of merger or consolidation;
- 157 (g) a trust instrument;
- 158 (h) another constitutive document for a trust or other entity that is not a corporation;

159 and

160 (i) an amendment to an item listed in Subsections (11)(a) through (h).

161 (12) "Bail bond insurance" means a guarantee that a person will attend court when
162 required, up to and including surrender of the person in execution of a sentence imposed under
163 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

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

165 (14) "Blanket insurance policy" means a group policy covering a defined class of
166 persons:

- 167 (a) without individual underwriting or application; and
- 168 (b) that is determined by definition with or without designating each person covered.

169 (15) "Board," "board of trustees," or "board of directors" means the group of persons
170 with responsibility over, or management of, a corporation, however designated.

171 (16) "Business entity" means:

- 172 (a) a corporation;
- 173 (b) an association;
- 174 (c) a partnership;
- 175 (d) a limited liability company;
- 176 (e) a limited liability partnership; or
- 177 (f) another legal entity.

178 (17) "Business of insurance" is defined in Subsection (85).

179 (18) "Business plan" means the information required to be supplied to the
180 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
181 when these subsections apply by reference under:

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

- 183 (b) Section 31A-8-205; or
184 (c) Subsection 31A-9-205(2).
- 185 (19) (a) "Bylaws" means the rules adopted for the regulation or management of a
186 corporation's affairs, however designated.
- 187 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
188 corporation.
- 189 (20) "Captive insurance company" means:
- 190 (a) an insurer:
- 191 (i) owned by another organization; and
192 (ii) whose exclusive purpose is to insure risks of the parent organization and an
193 affiliated company; or
- 194 (b) in the case of a group or association, an insurer:
- 195 (i) owned by the insureds; and
196 (ii) whose exclusive purpose is to insure risks of:
- 197 (A) a member organization;
198 (B) a group member; or
199 (C) an affiliate of:
- 200 (I) a member organization; or
201 (II) a group member.
- 202 (21) "Casualty insurance" means liability insurance [~~as defined in Subsection (97)~~].
- 203 (22) "Certificate" means evidence of insurance given to:
- 204 (a) an insured under a group insurance policy; or
205 (b) a third party.
- 206 (23) "Certificate of authority" is included within the term "license."
- 207 (24) "Claim," unless the context otherwise requires, means a request or demand on an
208 insurer for payment of a benefit according to the terms of an insurance policy.
- 209 (25) "Claims-made coverage" means an insurance contract or provision limiting
210 coverage under a policy insuring against legal liability to claims that are first made against the
211 insured while the policy is in force.
- 212 (26) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
213 commissioner.

214 (b) When appropriate, the terms listed in Subsection (26)(a) apply to the equivalent
215 supervisory official of another jurisdiction.

216 (27) (a) "Continuing care insurance" means insurance that:

217 (i) provides board and lodging;

218 (ii) provides one or more of the following:

219 (A) a personal service;

220 (B) a nursing service;

221 (C) a medical service; or

222 (D) any other health-related service; and

223 (iii) provides the coverage described in this Subsection (27)(a)[~~(f)~~] under an agreement
224 effective:

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

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

227 (b) Insurance is continuing care insurance regardless of whether or not the board and
228 lodging are provided at the same location as a service described in Subsection (27)(a)(ii).

229 (28) (a) "Control," "controlling," "controlled," or "under common control" means the
230 direct or indirect possession of the power to direct or cause the direction of the management
231 and policies of a person. This control may be:

232 (i) by contract;

233 (ii) by common management;

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

235 (iv) by a means other than those described in Subsections (28)(a)(i) through (iii).

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

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

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

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

245 (30) "Controlling person" means a person that directly or indirectly has the power to
246 direct or cause to be directed, the management, control, or activities of a reinsurance
247 intermediary.

248 (31) "Controlling producer" means a producer who directly or indirectly controls an
249 insurer.

250 (32) (a) "Corporation" means an insurance corporation, except when referring to:

251 (i) a corporation doing business:

252 (A) as:

253 (I) an insurance producer;

254 (II) a limited line producer;

255 (III) a consultant;

256 (IV) a managing general agent;

257 (V) a reinsurance intermediary;

258 (VI) a third party administrator; or

259 (VII) an adjuster; and

260 (B) under:

261 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
262 Reinsurance Intermediaries;

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

264 (III) Chapter 26, Insurance Adjusters; or

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

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

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

269 (33) "Creditable coverage" has the same meaning as provided in federal regulations
270 adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L.
271 104-191, 110 Stat. 1936.

272 (34) "Credit accident and health insurance" means insurance on a debtor to provide
273 indemnity for payments coming due on a specific loan or other credit transaction while the
274 debtor is disabled.

275 (35) (a) "Credit insurance" means insurance offered in connection with an extension of

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

277 (b) "Credit insurance" includes:

278 (i) credit accident and health insurance;

279 (ii) credit life insurance;

280 (iii) credit property insurance;

281 (iv) credit unemployment insurance;

282 (v) guaranteed automobile protection insurance;

283 (vi) involuntary unemployment insurance;

284 (vii) mortgage accident and health insurance;

285 (viii) mortgage guaranty insurance; and

286 (ix) mortgage life insurance.

287 (36) "Credit life insurance" means insurance on the life of a debtor in connection with

288 an extension of credit that pays a person if the debtor dies.

289 (37) "Credit property insurance" means insurance:

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

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

292 (38) "Credit unemployment insurance" means insurance:

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

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

295 (i) specific loan; or

296 (ii) credit transaction.

297 (39) "Creditor" means a person, including an insured, having a claim, whether:

298 (a) matured;

299 (b) unmatured;

300 (c) liquidated;

301 (d) unliquidated;

302 (e) secured;

303 (f) unsecured;

304 (g) absolute;

305 (h) fixed; or

306 (i) contingent.

307 (40) (a) "Customer service representative" means a person that provides an insurance
308 service and insurance product information:

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

310 (A) producer; or

311 (B) consultant employer; and

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

313 (A) customer;

314 (B) client; or

315 (C) organization.

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

318 (41) "Deadline" means ~~the~~ a final date or time:

319 (a) imposed by:

320 (i) statute;

321 (ii) rule; or

322 (iii) order; and

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

324 (42) "Deemer clause" means a provision under this title under which upon the
325 occurrence of a condition precedent, the commissioner is considered to have taken a specific
326 action. If the statute so provides, a condition precedent may be the commissioner's failure to
327 take a specific action.

328 (43) "Degree of relationship" means the number of steps between two persons
329 determined by counting the generations separating one person from a common ancestor and
330 then counting the generations to the other person.

331 (44) "Department" means the Insurance Department.

332 (45) "Director" means a member of the board of directors of a corporation.

333 (46) "Disability" means a physiological or psychological condition that partially or
334 totally limits an individual's ability to:

335 (a) perform the duties of:

336 (i) that individual's occupation; or

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

338 or experience; or

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

340 (i) eating;

341 (ii) toileting;

342 (iii) transferring;

343 (iv) bathing; or

344 (v) dressing.

345 (47) "Disability income insurance" is defined in Subsection (76).

346 (48) "Domestic insurer" means an insurer organized under the laws of this state.

347 (49) "Domiciliary state" means the state in which an insurer:

348 (a) is incorporated;

349 (b) is organized; or

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

351 (50) (a) "Eligible employee" means:

352 (i) an employee who:

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

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

355 (ii) a person described in Subsection (50)(b).

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

358 (i) a sole proprietor;

359 (ii) a partner in a partnership; or

360 (iii) an independent contractor.

361 (c) "Eligible employee" does not include, unless eligible under Subsection (50)(b):

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

363 (ii) an employer's spouse; or

364 (iii) a dependent of an employer.

365 (51) "Employee" means an individual employed by an employer.

366 (52) "Employee benefits" means one or more benefits or services provided to:

367 (a) an employee; or

368 (b) a dependent of an employee.

- 369 (53) (a) "Employee welfare fund" means a fund:
370 (i) established or maintained, whether directly or through a trustee, by:
371 (A) one or more employers;
372 (B) one or more labor organizations; or
373 (C) a combination of employers and labor organizations; and
374 (ii) that provides employee benefits paid or contracted to be paid, other than income
375 from investments of the fund:
376 (A) by or on behalf of an employer doing business in this state; or
377 (B) for the benefit of a person employed in this state.
378 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
379 revenues.
- 380 (54) "Endorsement" means a written agreement attached to a policy or certificate to
381 modify [~~one or more of the provisions of~~] the policy or certificate coverage.
- 382 (55) "Enrollment date," with respect to a health benefit plan, means:
383 (a) the first day of coverage; or
384 (b) if there is a waiting period, the first day of the waiting period.
- 385 (56) (a) "Escrow" means:
386 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
387 the requirements of a written agreement between the parties in a real estate transaction; or
388 (ii) a settlement or closing involving:
389 (A) a mobile home;
390 (B) a grazing right;
391 (C) a water right; or
392 (D) other personal property authorized by the commissioner.
393 (b) "Escrow" includes the act of conducting a:
394 (i) real estate settlement; or
395 (ii) real estate closing.
- 396 (57) "Escrow agent" means:
397 (a) an insurance producer with:
398 (i) a title insurance line of authority; and
399 (ii) an escrow subline of authority; or

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

401 (58) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
402 excluded.

403 (b) The items listed in a list using the term "excludes" are representative examples for
404 use in interpretation of this title.

405 (59) "Exclusion" means for the purposes of accident and health insurance that an
406 insurer does not provide insurance coverage, for whatever reason, for one of the following:

407 (a) a specific physical condition;

408 (b) a specific medical procedure;

409 (c) a specific disease or disorder; or

410 (d) a specific prescription drug or class of prescription drugs.

411 (60) "Expense reimbursement insurance" means insurance:

412 (a) written to provide a payment for an expense relating to hospital confinement
413 resulting from illness or injury; and

414 (b) written:

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

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

417 (61) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
418 a position of public or private trust.

419 (62) (a) "Filed" means that a filing is:

420 (i) submitted to the department as required by and in accordance with applicable
421 statute, rule, or filing order;

422 (ii) received by the department within the time period provided in applicable statute,
423 rule, or filing order; and

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

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

426 (B) rule.

427 (b) "Filed" does not include a filing that is rejected by the department because it is not
428 submitted in accordance with Subsection (62)(a).

429 (63) "Filing," when used as a noun, means an item required to be filed with the
430 department including:

- 431 (a) a policy;
- 432 (b) a rate;
- 433 (c) a form;
- 434 (d) a document;
- 435 (e) a plan;
- 436 (f) a manual;
- 437 (g) an application;
- 438 (h) a report;
- 439 (i) a certificate;
- 440 (j) an endorsement;
- 441 (k) an actuarial certification;
- 442 (l) a licensee annual statement;
- 443 (m) a licensee renewal application;
- 444 (n) an advertisement; or
- 445 (o) an outline of coverage.

446 (64) "First party insurance" means an insurance policy or contract in which the insurer
447 agrees to pay a claim submitted to it by the insured for the insured's losses.

448 (65) "Foreign insurer" means an insurer domiciled outside of this state, including an
449 alien insurer.

450 (66) (a) "Form" means one of the following prepared for general use:

- 451 (i) a policy;
- 452 (ii) a certificate;
- 453 (iii) an application;
- 454 (iv) an outline of coverage; or
- 455 (v) an endorsement.

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

458 (67) "Franchise insurance" means an individual insurance policy provided through a
459 mass marketing arrangement involving a defined class of persons related in some way other
460 than through the purchase of insurance.

461 (68) "General lines of authority" include:

- 462 (a) the general lines of insurance in Subsection (69);
- 463 (b) title insurance under one of the following sublines of authority:
- 464 (i) search, including authority to act as a title marketing representative;
- 465 (ii) escrow, including authority to act as a title marketing representative; and
- 466 [~~(iii) search and escrow, including authority to act as a title marketing representative;~~
- 467 ~~and]~~
- 468 [~~(iv)~~] (iii) title marketing representative only;
- 469 (c) surplus lines;
- 470 (d) workers' compensation; and
- 471 (e) any other line of insurance that the commissioner considers necessary to recognize
- 472 in the public interest.

473 (69) "General lines of insurance" include:

- 474 (a) accident and health;
- 475 (b) casualty;
- 476 (c) life;
- 477 (d) personal lines;
- 478 (e) property; and
- 479 (f) variable contracts, including variable life and annuity.

480 (70) "Group health plan" means an employee welfare benefit plan to the extent that the
481 plan provides medical care:

- 482 (a) (i) to an employee; or
- 483 (ii) to a dependent of an employee; and
- 484 (b) (i) directly;
- 485 (ii) through insurance reimbursement; or
- 486 (iii) through another method.

487 (71) (a) "Group insurance policy" means a policy covering a group of persons that is
488 issued:

- 489 (i) to a policyholder on behalf of the group; and
- 490 (ii) for the benefit of a member of the group who is selected under a procedure defined

491 in:

- 492 (A) the policy; or

493 (B) an agreement that is collateral to the policy.

494 (b) A group insurance policy may include a member of the policyholder's family or a
495 dependent.

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

499 (73) (a) Except as provided in Subsection (73)(b), "health benefit plan" means a policy
500 or certificate that:

501 (i) provides health care insurance;

502 (ii) provides major medical expense insurance; or

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

504 (A) a hospital confinement indemnity; or

505 (B) a limited benefit plan.

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

507 (i) provides benefits solely for:

508 (A) accident;

509 (B) dental;

510 (C) income replacement;

511 (D) long-term care;

512 (E) a Medicare supplement;

513 (F) a specified disease;

514 (G) vision; or

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

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

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

519 (a) a professional service;

520 (b) a personal service;

521 (c) a facility;

522 (d) equipment;

523 (e) a device;

- 524 (f) supplies; or
- 525 (g) medicine.
- 526 (75) (a) "Health care insurance" or "health insurance" means insurance providing:
- 527 (i) a health care benefit; or
- 528 (ii) payment of an incurred health care expense.
- 529 (b) "Health care insurance" or "health insurance" does not include accident and health
- 530 insurance providing a benefit for:
- 531 (i) replacement of income;
- 532 (ii) short-term accident;
- 533 (iii) fixed indemnity;
- 534 (iv) credit accident and health;
- 535 (v) supplements to liability;
- 536 (vi) workers' compensation;
- 537 (vii) automobile medical payment;
- 538 (viii) no-fault automobile;
- 539 (ix) equivalent self-insurance; or
- 540 (x) a type of accident and health insurance coverage that is a part of or attached to
- 541 another type of policy.
- 542 (76) "Income replacement insurance" or "disability income insurance" means insurance
- 543 written to provide payments to replace income lost from accident or sickness.
- 544 (77) "Indemnity" means the payment of an amount to offset all or part of an insured
- 545 loss.
- 546 (78) "Independent adjuster" means an insurance adjuster required to be licensed under
- 547 Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.
- 548 (79) "Independently procured insurance" means insurance procured under Section
- 549 31A-15-104.
- 550 (80) "Individual" means a natural person.
- 551 (81) "Inland marine insurance" includes insurance covering:
- 552 (a) property in transit on or over land;
- 553 (b) property in transit over water by means other than boat or ship;
- 554 (c) bailee liability;

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

557 (e) personal and commercial property floaters.

558 (82) "Insolvency" means that:

559 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
560 obligations mature;

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

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

564 (83) (a) "Insurance" means:

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

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

569 (b) "Insurance" includes:

570 (i) a risk distributing arrangement providing for compensation or replacement for
571 damages or loss through the provision of a service or a benefit in kind;

572 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
573 business and not as merely incidental to a business transaction; and

574 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
575 but with a class of persons who have agreed to share the risk.

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

579 (85) "Insurance business" or "business of insurance" includes:

580 (a) providing health care insurance[~~as defined in Subsection (75);~~] by an organization
581 that is or ~~should~~ is required to be licensed under this title;

582 (b) providing a benefit to an employee in the event of a contingency not within the
583 control of the employee, in which the employee is entitled to the benefit as a right, which
584 benefit may be provided either:

585 (i) by a single employer or by multiple employer groups; or

- 586 (ii) through one or more trusts, associations, or other entities;
- 587 (c) providing an annuity:
- 588 (i) including an annuity issued in return for a gift; and
- 589 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
- 590 and (3);
- 591 (d) providing the characteristic services of a motor club as outlined in Subsection
- 592 (113);
- 593 (e) providing another person with insurance [~~as defined in Subsection (83)~~];
- 594 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 595 or surety, a contract or policy of title insurance;
- 596 (g) transacting or proposing to transact any phase of title insurance, including:
- 597 (i) solicitation;
- 598 (ii) negotiation preliminary to execution;
- 599 (iii) execution of a contract of title insurance;
- 600 (iv) insuring; and
- 601 (v) transacting matters subsequent to the execution of the contract and arising out of
- 602 the contract, including reinsurance; and
- 603 (h) doing, or proposing to do, any business in substance equivalent to Subsections
- 604 (85)(a) through (g) in a manner designed to evade [~~the provisions of~~] this title.
- 605 (86) "Insurance consultant" or "consultant" means a person who:
- 606 (a) advises another person about insurance needs and coverages;
- 607 (b) is compensated by the person advised on a basis not directly related to the insurance
- 608 placed; and
- 609 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 610 indirectly by an insurer or producer for advice given.
- 611 (87) "Insurance holding company system" means a group of two or more affiliated
- 612 persons, at least one of whom is an insurer.
- 613 (88) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 614 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 615 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an
- 616 insurance customer or an insured:

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

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

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

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

623 (89) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
 624 promise in an insurance policy and includes:

625 (i) a policyholder;

626 (ii) a subscriber;

627 (iii) a member; and

628 (iv) a beneficiary.

629 (b) The definition in Subsection (89)(a):

630 (i) applies only to this title; and

631 (ii) does not define the meaning of this word as used in an insurance policy or
 632 certificate.

633 (90) (a) ~~(i)~~ "Insurer" means a person doing an insurance business as a principal
 634 including:

635 ~~(A)~~ (i) a fraternal benefit society;

636 ~~(B)~~ (ii) an issuer of a gift annuity other than an annuity specified in Subsections
 637 31A-22-1305(2) and (3);

638 ~~(C)~~ (iii) a motor club;

639 ~~(D)~~ (iv) an employee welfare plan; and

640 ~~(E)~~ (v) a person purporting or intending to do an insurance business as a principal on
 641 that person's own account.

642 ~~(i)~~ (b) "Insurer" does not include a governmental entity to the extent the
 643 governmental entity is engaged in an activity described in Section 31A-12-107.

644 ~~(b) "Admitted insurer" is defined in Subsection (163)(b).]~~

645 ~~(c) "Alien insurer" is defined in Subsection (7).]~~

646 ~~(d) "Authorized insurer" is defined in Subsection (163)(b).]~~

647 ~~(e) "Domestic insurer" is defined in Subsection (48).]~~

648 ~~[(f) "Foreign insurer" is defined in Subsection (65).]~~
649 ~~[(g) "Nonadmitted insurer" is defined in Subsection (163)(a).]~~
650 ~~[(h) "Unauthorized insurer" is defined in Subsection (163)(a).]~~
651 (91) "Interinsurance exchange" is defined in Subsection (142).
652 (92) "Involuntary unemployment insurance" means insurance:
653 (a) offered in connection with an extension of credit; and
654 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
655 coming due on a:
656 (i) specific loan; or
657 (ii) credit transaction.
658 (93) "Large employer," in connection with a health benefit plan, means an employer
659 who, with respect to a calendar year and to a plan year:
660 (a) employed an average of at least 51 eligible employees on each business day during
661 the preceding calendar year; and
662 (b) employs at least two employees on the first day of the plan year.
663 (94) "Late enrollee," with respect to an employer health benefit plan, means an
664 individual whose enrollment is a late enrollment.
665 (95) "Late enrollment," with respect to an employer health benefit plan, means
666 enrollment of an individual other than:
667 (a) on the earliest date on which coverage can become effective for the individual
668 under the terms of the plan; or
669 (b) through special enrollment.
670 (96) (a) Except for a retainer contract or legal assistance described in Section
671 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
672 specified legal expense.
673 (b) "Legal expense insurance" includes an arrangement that creates a reasonable
674 expectation of an enforceable right.
675 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
676 legal services incidental to other insurance coverage.
677 (97) (a) "Liability insurance" means insurance against liability:
678 (i) for death, injury, or disability of a human being, or for damage to property,

679 exclusive of the coverages under:

680 (A) Subsection (107) for medical malpractice insurance;

681 (B) Subsection (134) for professional liability insurance; and

682 (C) Subsection (168) for workers' compensation insurance;

683 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the

684 insured who is injured, irrespective of legal liability of the insured, when issued with or

685 supplemental to insurance against legal liability for the death, injury, or disability of a human

686 being, exclusive of the coverages under:

687 (A) Subsection (107) for medical malpractice insurance;

688 (B) Subsection (134) for professional liability insurance; and

689 (C) Subsection (168) for workers' compensation insurance;

690 (iii) for loss or damage to property resulting from an accident to or explosion of a

691 boiler, pipe, pressure container, machinery, or apparatus;

692 (iv) for loss or damage to property caused by:

693 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or

694 (B) water entering through a leak or opening in a building; or

695 (v) for other loss or damage properly the subject of insurance not within another kind

696 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

697 (b) "Liability insurance" includes:

698 (i) vehicle liability insurance [~~as defined in Subsection (165)~~];

699 (ii) residential dwelling liability insurance [~~as defined in Subsection (145)~~]; and

700 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,

701 boiler, machinery, or apparatus of any kind when done in connection with insurance on the

702 elevator, boiler, machinery, or apparatus.

703 (98) (a) "License" means [~~the~~] authorization issued by the commissioner to engage in
704 an activity that is part of or related to the insurance business.

705 (b) "License" includes a certificate of authority issued to an insurer.

706 (99) (a) "Life insurance" means:

707 (i) insurance on a human life; and

708 (ii) insurance pertaining to or connected with human life.

709 (b) The business of life insurance includes:

- 710 (i) granting a death benefit;
- 711 (ii) granting an annuity benefit;
- 712 (iii) granting an endowment benefit;
- 713 (iv) granting an additional benefit in the event of death by accident;
- 714 (v) granting an additional benefit to safeguard the policy against lapse; and
- 715 (vi) providing an optional method of settlement of proceeds.
- 716 (100) "Limited license" means a license that:
 - 717 (a) is issued for a specific product of insurance; and
 - 718 (b) limits an individual or agency to transact only for that product or insurance.
- 719 (101) "Limited line credit insurance" includes the following forms of insurance:
 - 720 (a) credit life;
 - 721 (b) credit accident and health;
 - 722 (c) credit property;
 - 723 (d) credit unemployment;
 - 724 (e) involuntary unemployment;
 - 725 (f) mortgage life;
 - 726 (g) mortgage guaranty;
 - 727 (h) mortgage accident and health;
 - 728 (i) guaranteed automobile protection; and
 - 729 (j) another form of insurance offered in connection with an extension of credit that:
 - 730 (i) is limited to partially or wholly extinguishing the credit obligation; and
 - 731 (ii) the commissioner determines by rule should be designated as a form of limited line
 - 732 credit insurance.
- 733 (102) "Limited line credit insurance producer" means a person who sells, solicits, or
- 734 negotiates one or more forms of limited line credit insurance coverage to an individual through
- 735 a master, corporate, group, or individual policy.
- 736 (103) "Limited line insurance" includes:
 - 737 (a) bail bond;
 - 738 (b) limited line credit insurance;
 - 739 (c) legal expense insurance;
 - 740 (d) motor club insurance;

- 741 (e) rental car-related insurance;
- 742 (f) travel insurance; [~~and~~]
- 743 (g) crop insurance;
- 744 (h) self-service storage insurance; and
- 745 [~~(g)~~] (i) another form of limited insurance that the commissioner determines by rule
- 746 should be designated a form of limited line insurance.
- 747 (104) "Limited lines authority" includes:
- 748 (a) the lines of insurance listed in Subsection (103); and
- 749 (b) a customer service representative.
- 750 (105) "Limited lines producer" means a person who sells, solicits, or negotiates limited
- 751 lines insurance.
- 752 (106) (a) "Long-term care insurance" means an insurance policy or rider advertised,
- 753 marketed, offered, or designated to provide coverage:
- 754 (i) in a setting other than an acute care unit of a hospital;
- 755 (ii) for not less than 12 consecutive months for a covered person on the basis of:
- 756 (A) expenses incurred;
- 757 (B) indemnity;
- 758 (C) prepayment; or
- 759 (D) another method;
- 760 (iii) for one or more necessary or medically necessary services that are:
- 761 (A) diagnostic;
- 762 (B) preventative;
- 763 (C) therapeutic;
- 764 (D) rehabilitative;
- 765 (E) maintenance; or
- 766 (F) personal care; and
- 767 (iv) that may be issued by:
- 768 (A) an insurer;
- 769 (B) a fraternal benefit society;
- 770 (C) (I) a nonprofit health hospital; and
- 771 (II) a medical service corporation;

- 772 (D) a prepaid health plan;
- 773 (E) a health maintenance organization; or
- 774 (F) an entity similar to the entities described in Subsections (106)(a)(iv)(A) through (E)
- 775 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 776 (b) "Long-term care insurance" includes:
- 777 (i) any of the following that provide directly or supplement long-term care insurance:
- 778 (A) a group or individual annuity or rider; or
- 779 (B) a life insurance policy or rider;
- 780 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 781 (A) cognitive impairment; or
- 782 (B) functional capacity; or
- 783 (iii) a qualified long-term care insurance contract.
- 784 (c) "Long-term care insurance" does not include:
- 785 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 786 (ii) basic hospital expense coverage;
- 787 (iii) basic medical/surgical expense coverage;
- 788 (iv) hospital confinement indemnity coverage;
- 789 (v) major medical expense coverage;
- 790 (vi) income replacement or related asset-protection coverage;
- 791 (vii) accident only coverage;
- 792 (viii) coverage for a specified:
- 793 (A) disease; or
- 794 (B) accident;
- 795 (ix) limited benefit health coverage; or
- 796 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 797 lump sum payment:
- 798 (A) if the following are not conditioned on the receipt of long-term care:
- 799 (I) benefits; or
- 800 (II) eligibility; and
- 801 (B) the coverage is for one or more the following qualifying events:
- 802 (I) terminal illness;

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

804 (III) permanent institutional confinement.

805 (107) "Medical malpractice insurance" means insurance against legal liability incident
806 to the practice and provision of a medical service other than the practice and provision of a
807 dental service.

808 (108) "Member" means a person having membership rights in an insurance
809 corporation.

810 (109) "Minimum capital" or "minimum required capital" means the capital that must be
811 constantly maintained by a stock insurance corporation as required by statute.

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

815 (111) "Mortgage guaranty insurance" means surety insurance under which a mortgagee
816 or other creditor is indemnified against losses caused by the default of a debtor.

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

819 (113) "Motor club" means a person:

820 (a) licensed under:

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

822 (ii) Chapter 11, Motor Clubs; or

823 (iii) Chapter 14, Foreign Insurers; and

824 (b) that promises for an advance consideration to provide for a stated period of time
825 one or more:

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

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

828 (iii) (A) trip reimbursement;

829 (B) towing services;

830 (C) emergency road services;

831 (D) stolen automobile services;

832 (E) a combination of the services listed in Subsections (113)(b)(iii)(A) through (D); or

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

834 (114) "Mutual" means a mutual insurance corporation.

835 (115) "Network plan" means health care insurance:

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

837 (b) under which the financing and delivery of medical care is provided, in whole or in
838 part, through a defined set of providers under contract with the insurer, including the financing
839 and delivery of an item paid for as medical care.

840 (116) "Nonparticipating" means a plan of insurance under which the insured is not
841 entitled to receive a dividend representing a share of the surplus of the insurer.

842 (117) "Ocean marine insurance" means insurance against loss of or damage to:

843 (a) ships or hulls of ships;

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

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

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

852 (118) "Order" means an order of the commissioner.

853 (119) "Outline of coverage" means a summary that explains an accident and health
854 insurance policy.

855 (120) "Participating" means a plan of insurance under which the insured is entitled to
856 receive a dividend representing a share of the surplus of the insurer.

857 (121) "Participation," as used in a health benefit plan, means a requirement relating to
858 the minimum percentage of eligible employees that must be enrolled in relation to the total
859 number of eligible employees of an employer reduced by each eligible employee who
860 voluntarily declines coverage under the plan because the employee:

861 (a) has other group health care insurance coverage; or

862 (b) receives:

863 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
864 Security Amendments of 1965; or

865 (ii) another government health benefit.

866 (122) "Person" includes:

867 (a) an individual;

868 (b) a partnership;

869 (c) a corporation;

870 (d) an incorporated or unincorporated association;

871 (e) a joint stock company;

872 (f) a trust;

873 (g) a limited liability company;

874 (h) a reciprocal;

875 (i) a syndicate; or

876 (j) another similar entity or combination of entities acting in concert.

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

879 (a) an individual; or

880 (b) a family.

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

882 (125) "Plan year" means:

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

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

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

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

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

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

890 or

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

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

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

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

895 (c) in a case not described in Subsection (125)(a) or (b), the calendar year.

896 (126) (a) "Policy" means a document, including any attached endorsement or
897 application that:

898 (i) purports to be an enforceable contract; and
899 (ii) memorializes in writing some or all of the terms of an insurance contract.

900 (b) "Policy" includes a service contract issued by:

901 (i) a motor club under Chapter 11, Motor Clubs;
902 (ii) a service contract provided under Chapter 6a, Service Contracts; and
903 (iii) a corporation licensed under:

904 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
905 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

906 (c) "Policy" does not include:

907 (i) a certificate under a group insurance contract; or
908 (ii) a document that does not purport to have legal effect.

909 (127) "Policyholder" means ~~the~~ a person who controls a policy, binder, or oral
910 contract by ownership, premium payment, or otherwise.

911 (128) "Policy illustration" means a presentation or depiction that includes
912 nonguaranteed elements of a policy of life insurance over a period of years.

913 (129) "Policy summary" means a synopsis describing the elements of a life insurance
914 policy.

915 (130) "Preexisting condition," with respect to a health benefit plan:

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

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

921 (131) (a) "Premium" means the monetary consideration for an insurance policy.

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

923 (i) an assessment;
924 (ii) a membership fee;
925 (iii) a required contribution; or
926 (iv) monetary consideration.

927 (c) (i) "Premium" does not include consideration paid to a third party administrator for
928 the third party administrator's services.

929 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
930 insurance on the risks administered by the third party administrator.

931 (132) "Principal officers" ~~[of]~~ for a corporation means the officers designated under
932 Subsection 31A-5-203(3).

933 (133) "Proceeding" includes an action or special statutory proceeding.

934 (134) "Professional liability insurance" means insurance against legal liability incident
935 to the practice of a profession and provision of a professional service.

936 (135) (a) Except as provided in Subsection (135)(b), "property insurance" means
937 insurance against loss or damage to real or personal property of every kind and any interest in
938 that property:

939 (i) from all hazards or causes; and

940 (ii) against loss consequential upon the loss or damage including vehicle
941 comprehensive and vehicle physical damage coverages.

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

943 (i) inland marine insurance ~~[as defined in Subsection (81)]~~; and

944 (ii) ocean marine insurance ~~[as defined under Subsection (117)]~~.

945 (136) "Qualified long-term care insurance contract" or "federally tax qualified
946 long-term care insurance contract" means:

947 (a) an individual or group insurance contract that meets the requirements of Section
948 7702B(b), Internal Revenue Code; or

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

950 (i) (A) by rider; or

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

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

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

955 (a) is:

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

957 (ii) in the case of a United States office of a foreign banking organization, licensed

958 under the laws of the United States or any state;

959 (b) is regulated, supervised, and examined by a United States federal or state authority
960 having regulatory authority over a bank or trust company; and

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

964 (i) the commissioner by rule; or

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

966 Commissioners.

967 (138) (a) "Rate" means:

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

969 (ii) for [~~property-casualty~~] property or casualty insurance, that cost of insurance per
970 exposure unit either expressed as:

971 (A) a single number; or

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

974 (I) expenses;

975 (II) profit; and

976 (III) individual insurer variation in loss experience.

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

978 (139) (a) Except as provided in Subsection (139)(b), "rate service organization" means
979 a person who assists an insurer in rate making or filing by:

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

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

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

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

984 (i) an employee of an insurer;

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

986 (iii) a joint underwriting group; or

987 (iv) [~~a natural person~~] an individual serving as an actuarial or legal consultant.

988 (140) "Rating manual" means any of the following used to determine initial and

989 renewal policy premiums:

990 (a) a manual of rates;

991 (b) a classification;

992 (c) a rate-related underwriting rule; and

993 (d) a rating formula that describes steps, policies, and procedures for determining
994 initial and renewal policy premiums.

995 (141) "Received by the department" means:

996 (a) ~~[except as provided in Subsection (141)(b);]~~ the date delivered to and stamped

997 received by the department, ~~[whether]~~ if delivered~~[-(i)]~~ in person; ~~[or]~~

998 ~~[(ii) electronically; and]~~

999 ~~[(b) if delivered to the department by a delivery service, the delivery service's postmark
1000 date or pick-up date unless otherwise stated in:]~~

1001 (b) the post mark date, if delivered by mail;

1002 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;

1003 (d) the received date recorded on an item delivered, if delivered by:

1004 (i) facsimile;

1005 (ii) email; or

1006 (iii) another electronic method; or

1007 (e) a date specified in:

1008 (i) a statute;

1009 (ii) a rule; or

1010 (iii) ~~[a specific filing]~~ an order.

1011 (142) "Reciprocal" or "interinsurance exchange" means an unincorporated association
1012 of persons:

1013 (a) operating through an attorney-in-fact common to all of the persons; and

1014 (b) exchanging insurance contracts with one another that provide insurance coverage
1015 on each other.

1016 (143) "Reinsurance" means an insurance transaction where an insurer, for
1017 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1018 reinsurance transactions, this title sometimes refers to:

1019 (a) the insurer transferring the risk as the "ceding insurer"; and

- 1020 (b) the insurer assuming the risk as the:
- 1021 (i) "assuming insurer"; or
- 1022 (ii) "assuming reinsurer."
- 1023 (144) "Reinsurer" means a person licensed in this state as an insurer with the authority
- 1024 to assume reinsurance.
- 1025 (145) "Residential dwelling liability insurance" means insurance against liability
- 1026 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
- 1027 a detached single family residence or multifamily residence up to four units.
- 1028 (146) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
- 1029 under a reinsurance contract.
- 1030 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
- 1031 liability assumed under a reinsurance contract.
- 1032 (147) "Rider" means an endorsement to:
- 1033 (a) an insurance policy; or
- 1034 (b) an insurance certificate.
- 1035 (148) (a) "Security" means a:
- 1036 (i) note;
- 1037 (ii) stock;
- 1038 (iii) bond;
- 1039 (iv) debenture;
- 1040 (v) evidence of indebtedness;
- 1041 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1042 (vii) collateral-trust certificate;
- 1043 (viii) preorganization certificate or subscription;
- 1044 (ix) transferable share;
- 1045 (x) investment contract;
- 1046 (xi) voting trust certificate;
- 1047 (xii) certificate of deposit for a security;
- 1048 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1049 payments out of production under such a title or lease;
- 1050 (xiv) commodity contract or commodity option;

1051 (xv) certificate of interest or participation in, temporary or interim certificate for, receipt
1052 for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in
1053 Subsections (148)(a)(i) through (xiv); or
1054 (xvi) another interest or instrument commonly known as a security.
1055 (b) "Security" does not include:
1056 (i) any of the following under which an insurance company promises to pay money in a
1057 specific lump sum or periodically for life or some other specified period:
1058 (A) insurance;
1059 (B) an endowment policy; or
1060 (C) an annuity contract; or
1061 (ii) a burial certificate or burial contract.
1062 (149) "Secondary medical condition" means a complication related to an exclusion
1063 from coverage in accident and health insurance.
1064 (150) "Self-insurance" means an arrangement under which a person provides for
1065 spreading its own risks by a systematic plan.
1066 (a) Except as provided in this Subsection (150), "self-insurance" does not include an
1067 arrangement under which a number of persons spread their risks among themselves.
1068 (b) "Self-insurance" includes:
1069 (i) an arrangement by which a governmental entity undertakes to indemnify an
1070 employee for liability arising out of the employee's employment; and
1071 (ii) an arrangement by which a person with a managed program of self-insurance and
1072 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1073 employees for liability or risk [~~which~~ that is related to the relationship or employment.
1074 (c) "Self-insurance" does not include an arrangement with an independent contractor.
1075 (151) "Sell" means to exchange a contract of insurance:
1076 (a) by any means;
1077 (b) for money or its equivalent; and
1078 (c) on behalf of an insurance company.
1079 (152) "Short-term care insurance" means an insurance policy or rider advertised,
1080 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,
1081 but that provides coverage for less than 12 consecutive months for each covered person.

1082 (153) "Significant break in coverage" means a period of 63 consecutive days during
1083 each of which an individual does not have creditable coverage.

1084 (154) "Small employer," in connection with a health benefit plan, means an employer
1085 who, with respect to a calendar year and to a plan year:

1086 (a) employed an average of at least two employees but not more than 50 eligible
1087 employees on each business day during the preceding calendar year; and

1088 (b) employs at least two employees on the first day of the plan year.

1089 (155) "Special enrollment period," in connection with a health benefit plan, has the
1090 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1091 Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

1092 (156) (a) "Subsidiary" of a person means an affiliate controlled by that person either
1093 directly or indirectly through one or more affiliates or intermediaries.

1094 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1095 shares are owned by that person either alone or with its affiliates, except for the minimum
1096 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1097 others.

1098 (157) Subject to Subsection (83)(b), "surety insurance" includes:

1099 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1100 perform the principal's obligations to a creditor or other obligee;

1101 (b) bail bond insurance; and

1102 (c) fidelity insurance.

1103 (158) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
1104 liabilities.

1105 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by
1106 the insurer as permanent.

1107 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require
1108 that mutuals doing business in this state maintain specified minimum levels of permanent
1109 surplus.

1110 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is
1111 [essentially] the same as the minimum required capital requirement that applies to stock
1112 insurers.

- 1113 (c) "Excess surplus" means:
- 1114 (i) for a life insurer, accident and health insurer, health organization, or property and
 1115 casualty insurer as defined in Section 31A-17-601, the lesser of:
- 1116 (A) that amount of an insurer's or health organization's total adjusted capital~~[, as~~
 1117 ~~defined in Subsection (161),]~~ that exceeds the product of:
- 1118 (I) 2.5; and
- 1119 (II) the sum of the insurer's or health organization's minimum capital or permanent
 1120 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or
- 1121 (B) that amount of an insurer's or health organization's total adjusted capital~~[, as~~
 1122 ~~defined in Subsection (161),]~~ that exceeds the product of:
- 1123 (I) 3.0; and
- 1124 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and
- 1125 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
 1126 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:
- 1127 (A) 1.5; and
- 1128 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
- 1129 (159) "Third party administrator" or "administrator" means a person who collects
 1130 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
 1131 the state in connection with insurance coverage, annuities, or service insurance coverage,
 1132 except:
- 1133 (a) a union on behalf of its members;
- 1134 (b) a person administering a:
- 1135 (i) pension plan subject to the federal Employee Retirement Income Security Act of
 1136 1974;
- 1137 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
- 1138 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1139 (c) an employer on behalf of the employer's employees or the employees of one or
 1140 more of the subsidiary or affiliated corporations of the employer;
- 1141 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance
 1142 for which the insurer holds a license in this state; or
- 1143 (e) a person:

1144 (i) licensed or exempt from licensing under:
1145 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
1146 Reinsurance Intermediaries; or
1147 (B) Chapter 26, Insurance Adjusters; and
1148 (ii) whose activities are limited to those authorized under the license the person holds
1149 or for which the person is exempt.

1150 (160) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner
1151 of real or personal property or the holder of liens or encumbrances on that property, or others
1152 interested in the property against loss or damage suffered by reason of liens or encumbrances
1153 upon, defects in, or the unmarketability of the title to the property, or invalidity or
1154 unenforceability of any liens or encumbrances on the property.

1155 (161) "Total adjusted capital" means the sum of an insurer's or health organization's
1156 statutory capital and surplus as determined in accordance with:

1157 (a) the statutory accounting applicable to the annual financial statements required to be
1158 filed under Section 31A-4-113; and

1159 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1160 Section 31A-17-601.

1161 (162) (a) "Trustee" means "director" when referring to the board of directors of a
1162 corporation.

1163 (b) "Trustee," when used in reference to an employee welfare fund, means an
1164 individual, firm, association, organization, joint stock company, or corporation, whether acting
1165 individually or jointly and whether designated by that name or any other, that is charged with
1166 or has the overall management of an employee welfare fund.

1167 (163) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
1168 means an insurer:

1169 (i) not holding a valid certificate of authority to do an insurance business in this state;
1170 or

1171 (ii) transacting business not authorized by a valid certificate.

1172 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1173 (i) holding a valid certificate of authority to do an insurance business in this state; and

1174 (ii) transacting business as authorized by a valid certificate.

1175 (164) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1176 (165) "Vehicle liability insurance" means insurance against liability resulting from or
1177 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle
1178 comprehensive or vehicle physical damage coverage under Subsection (135).

1179 (166) "Voting security" means a security with voting rights, and includes a security
1180 convertible into a security with a voting right associated with the security.

1181 (167) "Waiting period" for a health benefit plan means the period that must pass before
1182 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
1183 benefit plan, can become effective.

1184 (168) "Workers' compensation insurance" means:

1185 (a) insurance for indemnification of an employer against liability for compensation
1186 based on:

1187 (i) a compensable accidental injury; and

1188 (ii) occupational disease disability;

1189 (b) employer's liability insurance incidental to workers' compensation insurance and
1190 written in connection with workers' compensation insurance; and

1191 (c) insurance assuring to a person entitled to workers' compensation benefits the
1192 compensation provided by law.

1193 Section 2. Section **31A-2-203** is amended to read:

1194 **31A-2-203. Examinations and alternatives.**

1195 (1) (a) [~~Whenever~~] When the commissioner determines that information is needed
1196 about a matter related to the enforcement of this title, the commissioner may examine the
1197 affairs and condition of:

1198 (i) a licensee under this title;

1199 (ii) an applicant for a license under this title;

1200 (iii) a person or organization of persons doing or in process of organizing to do an
1201 insurance business in this state; or

1202 (iv) a person who is not, but [~~should~~] is required to be, licensed under this title.

1203 (b) When reasonably necessary for an examination under Subsection (1)(a), the
1204 commissioner may examine:

1205 (i) so far as it relates to the examinee, an account, record, document, or evidence of a

1206 transaction of:

1207 (A) the insurer or other licensee;

1208 (B) an officer or other person who has executive authority over or is in charge of any
1209 segment of the examinee's affairs; or

1210 (C) an affiliate of the examinee; or

1211 (ii) a third party model or product used by the examinee.

1212 (c) (i) On demand, an examinee under Subsection (1)(a) shall make available to the
1213 commissioner for examination:

1214 (A) the examinee's own account, record, file, document, or evidence of a transaction;
1215 and

1216 (B) to the extent reasonably necessary for an examination, an account, record, file,
1217 document, or evidence of a transaction of a person described under Subsection (1)(b).

1218 (ii) Except as provided in Subsection (1)(c)(iii), failure to make an item described in
1219 Subsection (1)(c)(i) available is concealment of records under Subsection 31A-27a-207(1)(e).

1220 (iii) If ~~the~~ an examinee is unable to obtain an account, record, file, document, or
1221 evidence of a transaction from a person described under Subsection (1)(b), that failure is not
1222 concealment of records if the examinee immediately terminates the relationship with the other
1223 person.

1224 (d) (i) ~~Neither the~~ The commissioner ~~[nor]~~ or an examiner may not remove an
1225 account, record, file, document, evidence of a transaction, or other property of ~~the~~ an
1226 examinee from the examinee's offices unless:

1227 (A) the examinee consents in writing; or

1228 (B) a court grants permission.

1229 (ii) The commissioner may make and remove a copy or abstract of the following
1230 described in Subsection (1)(d)(i):

1231 (A) an account;

1232 (B) a record;

1233 (C) a file;

1234 (D) a document;

1235 (E) evidence of a transaction; or

1236 (F) other property.

1237 (2) (a) Subject to the other provisions of this section, the commissioner shall examine
1238 as needed and as otherwise provided by law:

1239 (i) every insurer, both domestic and nondomestic;

1240 (ii) every licensed rate service organization; and

1241 (iii) any other licensee.

1242 (b) The commissioner shall examine an insurer, both domestic and nondomestic, no
1243 less frequently than once every five years, but the commissioner may use in lieu an
1244 examination under Subsection (4) to satisfy this requirement.

1245 (c) The commissioner shall revoke the certificate of authority of an insurer or the
1246 license of a rate service organization that has not been examined, or submitted an acceptable in
1247 lieu report under Subsection (4), within the past five years.

1248 (d) (i) Any 25 persons who are policyholders, shareholders, or creditors of a domestic
1249 insurer may by verified petition demand a hearing under Section 31A-2-301 to determine
1250 whether the commissioner should conduct an unscheduled examination of the insurer.

1251 (ii) Persons demanding the hearing under this Subsection (2)(d) shall be given an
1252 opportunity in the hearing to present evidence that an examination of the insurer is necessary.

1253 (iii) If the evidence justifies an examination, the commissioner shall order an
1254 examination.

1255 (e) (i) If the board of directors of a domestic insurer requests that the commissioner
1256 examine the insurer, the commissioner shall examine the insurer as soon as reasonably
1257 possible.

1258 (ii) If the examination requested under this Subsection (2)(e) is conducted within two
1259 years after completion of a comprehensive examination by the commissioner, costs of the
1260 requested examination may not be deducted from premium taxes under Section 59-9-102
1261 unless the commissioner's order specifically provides for the deduction.

1262 (f) A bail bond surety company, as defined in Section 31A-35-102, is exempt from:

1263 (i) the five-year examination requirement in Subsection (2)(b);

1264 (ii) the revocation under Subsection (2)(c); and

1265 (iii) Subsections (2)(d) and (2)(e).

1266 (3) (a) The commissioner may order an independent audit or examination by one or
1267 more technical experts, including a certified public accountant or actuary:

- 1268 (i) in lieu of all or part of an examination under Subsection (1) or (2); or
1269 (ii) in addition to an examination under Subsection (1) or (2).
- 1270 (b) An audit or evaluation under this Subsection (3) is subject to Subsection (5),
1271 Section 31A-2-204, and Subsection 31A-2-205(4).
- 1272 (4) (a) In lieu of all or a part of an examination under this section, the commissioner
1273 may accept the report of an examination made by:
- 1274 (i) the insurance department of another state; or
1275 (ii) another government agency in:
1276 (A) this state;
1277 (B) the federal government; or
1278 (C) another state.
- 1279 (b) An examination by the commissioner under Subsection (1) or (2) or accepted by the
1280 commissioner under this Subsection (4) may use:
- 1281 (i) an audit [~~already made~~] completed by a certified public accountant; or
1282 (ii) an actuarial evaluation made by an actuary approved by the commissioner.
- 1283 (5) (a) An examination may be comprehensive or limited with respect to the
1284 examinee's affairs and condition. The commissioner shall determine the nature and scope of
1285 [~~each~~] an examination, taking into account all relevant factors, including:
- 1286 (i) the length of time the examinee has been licensed in this state;
1287 (ii) the nature of the business being examined;
1288 (iii) the nature of the accounting or other records available;
1289 (iv) one or more reports from:
1290 (A) independent auditors; and
1291 (B) self-certification entities; and
1292 (v) the nature of examinations performed elsewhere.
- 1293 (b) The examination of an alien insurer is limited to one or more insurance transactions
1294 and assets in the United States, unless the commissioner orders otherwise after finding that
1295 extraordinary circumstances necessitate a broader examination.
- 1296 (6) To effectively administer this section, the commissioner:
1297 (a) shall:
1298 (i) maintain one or more effective financial condition and market regulation

1299 surveillance systems including:

1300 (A) financial and market analysis; and

1301 (B) a review of insurance regulatory information system reports;

1302 (ii) employ a priority scheduling method that focuses on insurers and other licensees

1303 most in need of examination; and

1304 (iii) use examination management techniques similar to those outlined in the Financial

1305 Condition Examination Handbook of the National Association of Insurance Commissioners;

1306 and

1307 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

1308 may make rules pertaining to:

1309 (i) a financial condition and market regulation surveillance system~~[-]; and~~

1310 (ii) annual financial reporting requirements similar to those outlined in the Annual

1311 Financial Reporting Model Regulation of the National Association of Insurance

1312 Commissioners.

1313 Section 3. Section **31A-5-412** is amended to read:

1314 **31A-5-412. Committees of directors.**

1315 (1) (a) If provided for in the articles or bylaws of a corporation, the board, by resolution
1316 adopted by a majority of the full board, may designate one or more committees. ~~[Each of these~~
1317 ~~committees]~~

1318 (b) A committee designated under this Subsection (1) shall consist of three or more
1319 directors serving at the pleasure of the board.

1320 (c) The board may designate one or more directors as alternate members of ~~[any]~~ a
1321 committee to substitute for an absent member at any meeting of the committee.

1322 (d) The designation of a committee and delegation of authority to ~~[it]~~ the committee
1323 does not relieve the board or ~~[any]~~ a director of responsibility imposed by law upon ~~[it or him~~
1324 ~~by law]~~ the board or director.

1325 (2) (a) (i) Except for ~~[corporations]~~ a corporation described under Subsection
1326 31A-5-407(4), ~~[every]~~ a corporation shall have an audit committee.

1327 (ii) A corporation's entire board constitutes the audit committee if the corporation:

1328 (A) is described under Subsection 31A-5-407(4); and

1329 (B) does not have an audit committee that complies with this Subsection (2).

1330 (b) ~~[No]~~ If a corporation is required to have an audit committee under Subsection
 1331 (2)(a), a member of the audit committee may not be an inside director as defined under
 1332 Subsection 31A-5-407(3).

1333 (c) ~~[The]~~ An audit committee shall maintain an overview of the audit activities,
 1334 systems, and staff of the company and of the activities of the outside auditors, in order to
 1335 advise the board on the adequacy of fiscal control. ~~[The]~~

1336 (d) A corporation shall give an audit committee ~~[has]~~ direct and private access to
 1337 company data and personnel as that committee considers necessary~~[, and]~~.

1338 (e) An audit committee may meet privately with the outside directors as ~~[it]~~ the audit
 1339 committee sees fit.

1340 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 1341 commissioner may make rules pertaining to audit committee requirements similar to those
 1342 outlined in the Annual Financial Reporting Model Regulation of the National Association of
 1343 Insurance Commissioners.

1344 (3) (a) When the board is not in session, a committee may exercise the powers of the
 1345 board in the management of the business and affairs of the corporation to the extent authorized
 1346 in the resolution or in the articles or bylaws, except action regarding:

1347 ~~[(a)]~~ (i) compensation or indemnification of ~~[any]~~ a person who is:

1348 (A) a director~~[-];~~

1349 (B) a principal officer~~[-];~~ or

1350 (C) one of the three most highly paid employees;

1351 ~~[(b)]~~ (ii) benefits or payments requiring shareholder or policyholder approval;

1352 ~~[(c)]~~ (iii) approval of a contract requiring board approval under Section 31A-5-414~~[-~~
 1353 ~~or]~~;

1354 (iv) approval of ~~[any other]~~ a transaction in which a director has a material interest
 1355 adverse to the corporation;

1356 ~~[(d)]~~ (v) amendment of the articles or bylaws;

1357 ~~[(e)]~~ (vi) merger or consolidation under Section 31A-5-501, 31A-5-502, or
 1358 31A-5-503~~[-];~~

1359 (vii) conversion under Section 31A-5-505, 31A-5-506, 31A-5-507, or 31A-5-509~~[-];~~

1360 (viii) voluntary dissolution under Section 31A-5-504~~[-or]~~;

1361 (ix) transfer of business or assets under Section 31A-5-508;
 1362 ~~[(f)]~~ (x) any other decision requiring shareholder or policyholder approval;
 1363 ~~[(g)]~~ (xi) amendment or repeal of an action taken by the full board, which by its terms
 1364 is not subject to amendment or repeal by a committee;

1365 ~~[(h)]~~ (xii) dividends or other distributions to shareholders, policyholders, or voting
 1366 members other than in the routine implementation of a policy ~~[determinations]~~ determination
 1367 of the full board;

1368 ~~[(i)]~~ (xiii) selection of a principal ~~[officers]~~ officer; and

1369 ~~[(j)]~~ (xiv) filling ~~[vacancies]~~ a vacancy on the board or on a committee created under
 1370 Subsection (1), except that the articles or bylaws may provide for a temporary ~~[appointments]~~
 1371 appointment to fill ~~[vacancies]~~ a vacancy on the board or a committee. ~~[These temporary~~
 1372 appointments]

1373 (b) A temporary appointment provided for in Subsection (3)(a)(xiv) may last only until
 1374 the end of the next board meeting.

1375 (4) ~~[At the next meeting following action by any committee, the]~~ The full board shall
 1376 review ~~[any]~~ a transaction in which an officer has a material financial interest adverse to the
 1377 corporation at the next board meeting after the transaction.

1378 Section 4. Section **31A-8-215** is amended to read:

1379 **31A-8-215. Management.**

1380 Chapter 5, Part 4, Management of Insurance Corporations, applies to organizations,
 1381 except that for purposes of this chapter, ~~[Subsection]~~ Subsections 31A-5-412(3)~~[(e)]~~(a)(vi)
 1382 through (ix) shall be read: "corporate reorganizations under Section 31A-8-216."

1383 Section 5. Section **31A-22-404** is amended to read:

1384 **31A-22-404. Suicide.**

1385 (1) (a) Suicide is not a defense to a claim under a life insurance policy that is in force
 1386 ~~[as to a policyholder or certificate holder]~~ for two years from the date of issuance of the later
 1387 of:

1388 (i) the policy; or

1389 (ii) the certificate.

1390 (b) Subsection (1)(a) applies whether:

1391 (i) the insured's death by suicide is voluntary or involuntary; or

1392 (ii) the insured is sane or insane.

1393 (c) If a suicide occurs within the two-year period described in Subsection (1)(a), the
1394 insurer shall pay to the beneficiary an amount not less than the premium paid less the
1395 following:

1396 (i) a dividend paid;

1397 (ii) an indebtedness; and

1398 (iii) a partial withdrawal.

1399 (2) (a) If after a life insurance policy is in effect the policy allows the ~~[insured to~~
1400 ~~obtain]~~ policyholder to purchase a death benefit that is larger than when the policy was
1401 originally effective for an additional premium, the payment of the additional increment of
1402 benefit may be limited in the event of a suicide within a two-year period beginning on the day
1403 on which the increment increase takes effect.

1404 (b) If a suicide occurs within the two-year period described in Subsection (2)(a), the
1405 insurer shall pay to the beneficiary an amount not less than the additional premium paid for the
1406 additional increment of benefit.

1407 (3) For a survivorship life insurance policy, this section applies when within two years
1408 from the day on which the survivorship life insurance policy is issued:

1409 (a) the death of all insureds results from suicide; or

1410 (b) the death of the surviving insured results from suicide.

1411 ~~[(3)]~~ (4) This section does not apply to:

1412 (a) a policy insuring against death by accident only; or

1413 (b) an accident or double indemnity provision of an insurance policy.

1414 Section 6. Section **31A-22-620** is amended to read:

1415 **31A-22-620. Medicare Supplement Insurance Minimum Standards Act.**

1416 (1) As used in this section:

1417 (a) "Applicant" means:

1418 (i) in the case of an individual Medicare supplement policy, the person who seeks to
1419 contract for insurance benefits; and

1420 (ii) in the case of a group Medicare supplement policy, the proposed certificate holder.

1421 (b) "Certificate" means any certificate delivered or issued for delivery in this state
1422 under a group Medicare supplement policy.

1423 (c) "Certificate form" means the form on which the certificate is delivered or issued for
1424 delivery by the issuer.

1425 (d) "Issuer" includes insurance companies, fraternal benefit societies, health care
1426 service plans, health maintenance organizations, and any other entity delivering, or issuing for
1427 delivery in this state, Medicare supplement policies or certificates.

1428 (e) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the
1429 Social Security Amendments of 1965, as then constituted or later amended.

1430 (f) "Medicare Supplement Policy":

1431 (i) means a group or individual policy of disability insurance, other than a policy issued
1432 pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section
1433 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. Section
1434 1395ss(g)(1), that is advertised, marketed, or designed primarily as a supplement to
1435 reimbursements under Medicare for the hospital, medical, or surgical expenses of persons
1436 eligible for Medicare; and

1437 (ii) does not include Medicare Advantage plans established under Medicare Part C,
1438 outpatient prescription drug plans established under Medicare Part D, or any health care
1439 prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A)
1440 of the Social Security Act.

1441 (g) "Policy form" means the form on which the policy is delivered or issued for
1442 delivery by the issuer.

1443 (2) (a) Except as otherwise specifically provided, this section applies to:

1444 (i) all Medicare supplement policies delivered or issued for delivery in this state on or
1445 after the effective date of this section;

1446 (ii) all certificates issued under group Medicare supplement policies, that have been
1447 delivered or issued for delivery in this state on or after the effective date of this section; and

1448 (iii) policies or certificates that were in force prior to the effective date of this section,
1449 with respect to requirements for benefits, claims payment, and policy reporting practice under
1450 Subsection (3)(d), and loss ratios under Subsection (4).

1451 (b) This section does not apply to a policy of one or more employers or labor
1452 organizations, or of the trustees of a fund established by one or more employers or labor
1453 organizations, or a combination of employers and labor unions, for employees or former

1454 employees or a combination of employees and former employees, or for members or former
1455 members of the labor organizations, or a combination of members and former members of
1456 labor organizations.

1457 (c) This section does not prohibit, nor does it apply to insurance policies or health care
1458 benefit plans, including group conversion policies, provided to Medicare eligible persons that
1459 are not marketed or held out to be Medicare supplement policies or benefit plans.

1460 (3) (a) A Medicare supplement policy or certificate in force in the state may not contain
1461 benefits that duplicate benefits provided by Medicare.

1462 (b) Notwithstanding any other provision of law of this state, a Medicare supplement
1463 policy or certificate may not exclude or limit benefits for loss incurred more than six months
1464 from the effective date of coverage because it involved a preexisting condition. The policy or
1465 certificate may not define a preexisting condition more restrictively than: "A condition for
1466 which medical advice was given or treatment was recommended by or received from a
1467 physician within six months before the effective date of coverage."

1468 (c) The commissioner shall adopt rules to establish specific standards for policy
1469 provisions of Medicare supplement policies and certificates. The standards adopted shall be in
1470 addition to and in accordance with applicable laws of this state. A requirement of this title
1471 relating to minimum required policy benefits, other than the minimum standards contained in
1472 this section, may not apply to Medicare supplement policies and certificates. The standards
1473 may include:

- 1474 (i) terms of renewability;
- 1475 (ii) initial and subsequent conditions of eligibility;
- 1476 (iii) nonduplication of coverage;
- 1477 (iv) probationary periods;
- 1478 (v) benefit limitations, exceptions, and reductions;
- 1479 (vi) elimination periods;
- 1480 (vii) requirements for replacement;
- 1481 (viii) recurrent conditions; and
- 1482 (ix) definitions of terms.

1483 (d) The commissioner shall adopt rules establishing minimum standards for benefits,
1484 claims payment, marketing practices, compensation arrangements, and reporting practices for

1485 Medicare supplement policies and certificates.

1486 (e) The commissioner may adopt rules to conform Medicare supplement policies and
1487 certificates to the requirements of federal law and regulations, including:

1488 (i) requiring refunds or credits if the policies do not meet loss ratio requirements;

1489 (ii) establishing a uniform methodology for calculating and reporting loss ratios;

1490 (iii) assuring public access to policies, premiums, and loss ratio information of issuers
1491 of Medicare supplement insurance;

1492 (iv) establishing a process for approving or disapproving policy forms and certificate
1493 forms and proposed premium increases;

1494 (v) establishing a policy for holding public hearings prior to approval of premium
1495 increases; ~~and~~

1496 (vi) establishing standards for Medicare select policies and certificates~~[-]; and~~

1497 (vii) nondiscrimination for genetic testing or genetic information.

1498 (f) The commissioner may adopt rules that prohibit policy provisions not otherwise
1499 specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or
1500 unfairly discriminatory to any person insured or proposed to be insured under a Medicare
1501 supplement policy or certificate.

1502 (4) Medicare supplement policies shall return to policyholders benefits that are
1503 reasonable in relation to the premium charged. The commissioner shall make rules to establish
1504 minimum standards for loss ratios of Medicare supplement policies on the basis of incurred
1505 claims experience, or incurred health care expenses where coverage is provided by a health
1506 maintenance organization on a service basis rather than on a reimbursement basis, and earned
1507 premiums in accordance with accepted actuarial principles and practices.

1508 (5) (a) To provide for full and fair disclosure in the sale of Medicare supplement
1509 policies, a Medicare supplement policy or certificate may not be delivered in this state unless
1510 an outline of coverage is delivered to the applicant at the time application is made.

1511 (b) The commissioner shall prescribe the format and content of the outline of coverage
1512 required by Subsection (5)(a).

1513 (c) For purposes of this section, "format" means style arrangements and overall
1514 appearance, including such items as the size, color, and prominence of type and arrangement of
1515 text and captions. The outline of coverage shall include:

- 1516 (i) a description of the principal benefits and coverage provided in the policy;
- 1517 (ii) a statement of the renewal provisions, including any reservation by the issuer of a
1518 right to change premiums; and disclosure of the existence of any automatic renewal premium
1519 increases based on the policyholder's age; and
- 1520 (iii) a statement that the outline of coverage is a summary of the policy issued or
1521 applied for and that the policy should be consulted to determine governing contractual
1522 provisions.
- 1523 (d) The commissioner may make rules for captions or notice if the commissioner finds
1524 that the rules are:
- 1525 (i) in the public interest; and
- 1526 (ii) designed to inform prospective insureds that particular insurance coverages are not
1527 Medicare supplement coverages, for all accident and health insurance policies sold to persons
1528 eligible for Medicare, other than:
- 1529 (A) a medicare supplement policy; or
1530 (B) a disability income policy.
- 1531 (e) The commissioner may prescribe by rule a standard form and the contents of an
1532 informational brochure for persons eligible for Medicare, that is intended to improve the
1533 buyer's ability to select the most appropriate coverage and improve the buyer's understanding of
1534 Medicare. Except in the case of direct response insurance policies, the commissioner may
1535 require by rule that the informational brochure be provided concurrently with delivery of the
1536 outline of coverage to any prospective insureds eligible for Medicare. With respect to direct
1537 response insurance policies, the commissioner may require by rule that the prescribed brochure
1538 be provided upon request to any prospective insureds eligible for Medicare, but in no event
1539 later than the time of policy delivery.
- 1540 (f) The commissioner may adopt reasonable rules to govern the full and fair disclosure
1541 of the information in connection with the replacement of accident and health policies,
1542 subscriber contracts, or certificates by persons eligible for Medicare.
- 1543 (6) Notwithstanding Subsection (1), Medicare supplement policies and certificates
1544 shall have a notice prominently printed on the first page of the policy or certificate, or attached
1545 to the front page, stating in substance that the applicant has the right to return the policy or
1546 certificate within 30 days of its delivery and to have the premium refunded if, after examination

1547 of the policy or certificate, the applicant is not satisfied for any reason. Any refund made
 1548 pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

1549 (7) Every issuer of Medicare supplement insurance policies or certificates in this state
 1550 shall provide a copy of any Medicare supplement advertisement intended for use in this state,
 1551 whether through written or broadcast medium, to the commissioner for review.

1552 (8) The commissioner may adopt rules to conform Medicare and Medicare supplement
 1553 policies and certificates to the marketing requirements of federal law and regulation.

1554 Section 7. Section **31A-22-1602** is amended to read:

1555 **31A-22-1602. Genetic testing restrictions.**

1556 [~~With~~] Except as provided under Section 31A-22-620, with respect to [~~matters~~] a
 1557 matter related to genetic testing and private genetic information, an insurer shall comply with
 1558 [~~Section 26-45-104 and the other~~] the applicable provisions of Title 26, Chapter 45, Genetic
 1559 Testing Privacy Act, including Section 26-45-104.

1560 Section 8. Section **31A-23a-102** is amended to read:

1561 **31A-23a-102. Definitions.**

1562 As used in this chapter:

1563 (1) "Bail bond producer" means a person who:

1564 (a) is appointed by:

1565 (i) a surety insurer that issues bail bonds; or

1566 (ii) a bail bond surety company licensed under Chapter 35, Bail Bond Act;

1567 (b) is designated to execute or countersign undertakings of bail in connection with a
 1568 judicial [~~proceedings~~] proceeding; and

1569 (c) receives or is promised money or other things of value for engaging in an act
 1570 described in Subsection (1)(b).

1571 (2) "Escrow" means a license subline of authority in conjunction with the title
 1572 insurance line of authority that allows a person to conduct escrow as defined in Section
 1573 31A-1-301.

1574 (3) "Home state" means [~~any~~] a state or territory of the United States or the District of
 1575 Columbia in which an insurance producer:

1576 (a) maintains the insurance producer's principal:

1577 (i) place of residence; or

- 1578 (ii) place of business; and
- 1579 (b) is licensed to act as an insurance producer.
- 1580 (4) "Insurer" is as defined in Section 31A-1-301, except that the following persons or
- 1581 similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:
- 1582 (a) ~~[all]~~ a risk retention [groups] group as defined in:
- 1583 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
- 1584 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
- 1585 (iii) Chapter 15, Part 2, Risk Retention Groups Act;
- 1586 (b) ~~[all]~~ a residual market [pools and] pool;
- 1587 (c) a joint underwriting [authorities or associations] authority or association; and
- 1588 ~~[(c) all]~~ (d) a captive [insurers] insurer.
- 1589 (5) "License" is defined in Section 31A-1-301.
- 1590 (6) (a) "Managing general agent" means ~~[any]~~ a person that:
- 1591 (i) manages all or part of the insurance business of an insurer, including the
- 1592 management of a separate division, department, or underwriting office;
- 1593 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
- 1594 manager, or other similar term;
- 1595 (iii) ~~[with or without the authority, either separately or together with affiliates, directly~~
- 1596 ~~or indirectly]~~ produces and underwrites an amount of gross direct written premium equal to, or
- 1597 more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer
- 1598 in any one quarter or year~~[-and]~~;
- 1599 (A) with or without the authority;
- 1600 (B) separately or together with an affiliate; and
- 1601 (C) directly or indirectly; and
- 1602 (iv) (A) adjusts or pays claims in excess of an amount determined by the
- 1603 commissioner; or
- 1604 (B) negotiates reinsurance on behalf of the insurer.
- 1605 (b) Notwithstanding Subsection (6)(a), the following persons may not be considered as
- 1606 managing general agent for the purposes of this chapter:
- 1607 (i) an employee of the insurer;
- 1608 (ii) a United States manager of the United States branch of an alien insurer;

- 1609 (iii) an underwriting manager that, pursuant to contract:
1610 (A) manages all the insurance operations of the insurer;
1611 (B) is under common control with the insurer;
1612 (C) is subject to Chapter 16, Insurance Holding Companies; and
1613 (D) is not compensated based on the volume of premiums written; and
1614 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
1615 insurer or inter-insurance exchange under powers of attorney.
- 1616 (7) "Negotiate" means the act of conferring directly with or offering advice directly to a
1617 purchaser or prospective purchaser of a particular contract of insurance concerning ~~[any of the]~~
1618 a substantive [benefits, terms, or conditions] benefit, term, or condition of the contract if the
1619 person engaged in that act:
- 1620 (a) sells insurance; or
1621 (b) obtains insurance from insurers for purchasers.
- 1622 (8) "Reinsurance intermediary" means:
1623 (a) a reinsurance intermediary-broker; or
1624 (b) a reinsurance intermediary-manager.
- 1625 (9) "Reinsurance intermediary-broker" means a person other than an officer or
1626 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
1627 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
1628 or power to bind reinsurance on behalf of the insurer.
- 1629 (10) (a) "Reinsurance intermediary-manager" means a person who:
1630 (i) has authority to bind or who manages all or part of the assumed reinsurance
1631 business of a reinsurer, including the management of a separate division, department, or
1632 underwriting office; and
1633 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
1634 intermediary-manager, manager, or other similar term.
- 1635 (b) Notwithstanding Subsection (10)(a), the following persons may not be considered
1636 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:
1637 (i) an employee of the reinsurer;
1638 (ii) a United States manager of the United States branch of an alien reinsurer;
1639 (iii) an underwriting manager that, pursuant to contract:

- 1640 (A) manages all the reinsurance operations of the reinsurer;
- 1641 (B) is under common control with the reinsurer;
- 1642 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 1643 (D) is not compensated based on the volume of premiums written; and
- 1644 (iv) the manager of a group, association, pool, or organization of insurers that:
 - 1645 (A) engage in joint underwriting or joint reinsurance; and
 - 1646 (B) are subject to examination by the insurance commissioner of the state in which the
 - 1647 manager's principal business office is located.

1648 (11) "Search" means a license subline of authority in conjunction with the title
1649 insurance line of authority that allows a person to issue title insurance commitments or policies
1650 on behalf of a title insurer.

1651 (12) "Sell" means to exchange a contract of insurance:

- 1652 (a) by any means;
- 1653 (b) for money or its equivalent; and
- 1654 (c) on behalf of an insurance company.

1655 (13) "Solicit" means:

- 1656 (a) attempting to sell insurance;
- 1657 (b) asking or urging a person to apply for:
 - 1658 (i) a particular kind of insurance; and
 - 1659 (ii) insurance from a particular insurance company;
- 1660 (c) advertising insurance, including advertising for the purpose of obtaining leads for
- 1661 the sale of insurance; or
- 1662 (d) holding oneself out as being in the insurance business.

1663 (14) "Terminate" means:

1664 (a) the cancellation of the relationship between:

1665 [~~(i) an insurance producer; and~~]

1666 [~~(ii) a particular insurer; or~~]

1667 (i) an individual licensee or agency licensee and a particular insurer; or

1668 (ii) an individual licensee and a particular agency licensee; or

1669 (b) the termination of ~~[the producer's];~~

1670 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf

1671 of a particular insurance company[-]; or

1672 (ii) an individual licensee's authority to transact insurance on behalf of a particular
1673 agency licensee.

1674 (15) "Title marketing representative" means a person who:

1675 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

1676 (i) title insurance; or

1677 (ii) escrow services; and

1678 (b) does not have a search or escrow license as provided in Section 31A-23a-106.

1679 (16) "Uniform application" means the version of the National Association of Insurance
1680 Commissioner's uniform application for resident and nonresident producer licensing at the time
1681 the application is filed.

1682 (17) "Uniform business entity application" means the version of the National
1683 Association of Insurance Commissioner's uniform business entity application for resident and
1684 nonresident business entities at the time the application is filed.

1685 Section 9. Section **31A-23a-104** is amended to read:

1686 **31A-23a-104. Application for individual license -- Application for agency license.**

1687 (1) This section applies to an initial or renewal license as a:

1688 (a) producer;

1689 (b) limited line producer;

1690 (c) customer service representative;

1691 (d) consultant;

1692 (e) managing general agent; or

1693 (f) reinsurance intermediary.

1694 (2) (a) Subject to Subsection (2)(b), an application for an initial or renewal individual
1695 license shall be:

1696 (i) made to the commissioner on forms and in a manner the commissioner prescribes;

1697 and

1698 (ii) accompanied by a license fee that is not refunded if the application:

1699 (A) is denied; or

1700 (B) if incomplete, is never completed by the applicant.

1701 (b) An application described in this Subsection (2) shall provide:

- 1702 (i) information about the applicant's identity;
- 1703 (ii) the applicant's Social Security number;
- 1704 (iii) the applicant's personal history, experience, education, and business record;
- 1705 (iv) whether the applicant is 18 years of age or older;
- 1706 (v) whether the applicant has committed an act that is a ground for denial, suspension,
- 1707 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and
- 1708 (vi) any other information the commissioner reasonably requires.

1709 (3) The commissioner may require ~~[any documents]~~ a document reasonably necessary
1710 to verify the information contained in an application filed under this section.

1711 (4) An applicant's Social Security number contained in an application filed under this
1712 section is a private record under Section 63G-2-302.

1713 (5) (a) Subject to Subsection (5)(b), an application for an initial or renewal agency
1714 license shall be:

1715 (i) made to the commissioner on forms and in a manner the commissioner prescribes;
1716 and

1717 (ii) accompanied by a license fee that is not refunded if the application:

1718 (A) is denied; or

1719 (B) if incomplete, is never completed by the applicant.

1720 (b) An application described in Subsection (5)(a) shall provide:

1721 (i) information about the applicant's identity;

1722 (ii) the applicant's federal employer identification number;

1723 (iii) the designated responsible licensed producer;

1724 (iv) the identity of all owners, partners, officers, and directors;

1725 (v) whether the applicant has committed an act that is a ground for denial, suspension,
1726 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

1727 (vi) any other information the commissioner reasonably requires.

1728 Section 10. Section **31A-23a-105** is amended to read:

1729 **31A-23a-105. General requirements for individual and agency license issuance**
1730 **and renewal.**

1731 (1) (a) The commissioner shall issue or renew a license to a person described in
1732 Subsection (1)(b) to act as:

- 1733 (i) a producer[;];
- 1734 (ii) a limited line producer[;];
- 1735 (iii) a customer service representative[;];
- 1736 (iv) a consultant[;];
- 1737 (v) a managing general agent[;]; or
- 1738 (vi) a reinsurance intermediary [~~to any person~~].
- 1739 (b) The commissioner shall issue or renew a license under Subsection (1)(a) to a
- 1740 person who, as to the license type and line of authority classification applied for under Section
- 1741 31A-23a-106:
- 1742 (a) satisfies the application requirements under Section 31A-23a-104;
- 1743 (b) satisfies the character requirements under Section 31A-23a-107;
- 1744 (c) satisfies any applicable continuing education requirements under Section
- 1745 31A-23a-202;
- 1746 (d) satisfies any applicable examination requirements under Section 31A-23a-108;
- 1747 (e) satisfies any applicable training period requirements under Section 31A-23a-203;
- 1748 (f) has not committed an act that is a ground for denial, suspension, or revocation as
- 1749 provided in Section 31A-23a-111;
- 1750 [~~(f)~~] (g) if a nonresident:
- 1751 (i) complies with Section 31A-23a-109; and
- 1752 (ii) holds an active similar license in that person's state of residence;
- 1753 [~~(g)~~] (h) if an applicant for a title insurance producer license, satisfies the requirements
- 1754 of Sections 31A-23a-203 and 31A-23a-204;
- 1755 [~~(h)~~] (i) if an applicant for a license to act as a viatical settlement provider or viatical
- 1756 settlement producer, satisfies the requirements of Section 31A-23a-117; and
- 1757 [~~(i)~~] (j) pays the applicable fees under Section 31A-3-103.
- 1758 (2) (a) This Subsection (2) applies to the following persons:
- 1759 (i) an applicant for a pending:
- 1760 (A) individual or agency producer license;
- 1761 (B) limited line producer license;
- 1762 (C) customer service representative license;
- 1763 (D) consultant license;

- 1764 (E) managing general agent license; or
- 1765 (F) reinsurance intermediary license; or
- 1766 (ii) a licensed:
 - 1767 (A) individual or agency producer;
 - 1768 (B) limited line producer;
 - 1769 (C) customer service representative;
 - 1770 (D) consultant;
 - 1771 (E) managing general agent; or
 - 1772 (F) reinsurance intermediary.
- 1773 (b) A person described in Subsection (2)(a) shall report to the commissioner:
 - 1774 (i) ~~any~~ an administrative action taken against the person:
 - 1775 (A) in another jurisdiction; or
 - 1776 (B) by another regulatory agency in this state; and
 - 1777 (ii) ~~any~~ a criminal prosecution taken against the person in any jurisdiction.
- 1778 (c) The report required by Subsection (2)(b) shall:
 - 1779 (i) be filed:
 - 1780 (A) at the time the person files the application for an individual or agency license; and
 - 1781 (B) for an action or prosecution that occurs on or after the day on which the person
 - 1782 files the application:
 - 1783 (I) for an administrative action, within 30 days of the final disposition of the
 - 1784 administrative action; or
 - 1785 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
 - 1786 and
 - 1787 (ii) include a copy of the complaint or other relevant legal documents related to the
 - 1788 action or prosecution described in Subsection (2)(b).
 - 1789 (3) (a) The department may require a person applying for a license or for consent to
 - 1790 engage in the business of insurance to submit to a criminal background check as a condition of
 - 1791 receiving a license or consent.
 - 1792 (b) A person, if required to submit to a criminal background check under Subsection
 - 1793 (3)(a), shall:
 - 1794 (i) submit a fingerprint card in a form acceptable to the department; and

- 1795 (ii) consent to a fingerprint background check by:
- 1796 (A) the Utah Bureau of Criminal Identification; and
- 1797 (B) the Federal Bureau of Investigation.
- 1798 (c) For a person who submits a fingerprint card and consents to a fingerprint
- 1799 background check under Subsection (3)(b), the department may request:
- 1800 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
- 1801 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
- 1802 (ii) complete Federal Bureau of Investigation criminal background checks through the
- 1803 national criminal history system.
- 1804 (d) Information obtained by the department from the review of criminal history records
- 1805 received under this Subsection (3) shall be used by the department for the purposes of:
- 1806 (i) determining if a person satisfies the character requirements under Section
- 1807 31A-23a-107 for issuance or renewal of a license;
- 1808 (ii) determining if a person has failed to maintain the character requirements under
- 1809 Section 31A-23a-107; and
- 1810 (iii) preventing [~~persons~~] a person who [~~violate~~] violates the federal Violent Crime
- 1811 Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in
- 1812 the business of insurance in the state.
- 1813 (e) If the department requests the criminal background information, the department
- 1814 shall:
- 1815 (i) pay to the Department of Public Safety the costs incurred by the Department of
- 1816 Public Safety in providing the department criminal background information under Subsection
- 1817 (3)(c)(i);
- 1818 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
- 1819 of Investigation in providing the department criminal background information under
- 1820 Subsection (3)(c)(ii); and
- 1821 (iii) charge the person applying for a license[~~, for renewal of a license,~~] or for consent
- 1822 to engage in the business of insurance a fee equal to the aggregate of Subsections (3)(e)(i) and
- 1823 (ii).
- 1824 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this
- 1825 section, a person licensed as one of the following in another state who moves to this state shall

1826 apply within 90 days of establishing legal residence in this state:

- 1827 (a) insurance producer;
- 1828 (b) limited line producer;
- 1829 (c) customer service representative;
- 1830 (d) consultant;
- 1831 (e) managing general agent; or
- 1832 (f) reinsurance intermediary.

1833 (5) (a) The commissioner may deny a license application for a license listed in
 1834 Subsection (5)(b) if the person applying for the license, as to the license type and line of
 1835 authority classification applied for under Section 31A-23a-106:

- 1836 (i) fails to satisfy the requirements as set forth in this section; or
- 1837 (ii) commits an act that is grounds for denial, suspension, or revocation as set forth in
 1838 Section 31A-23a-111.

1839 (b) This Subsection (5) applies to the following licenses:

- 1840 (i) producer;
- 1841 (ii) limited line producer;
- 1842 (iii) customer service representative;
- 1843 (iv) consultant;
- 1844 (v) managing general agent; or
- 1845 (vi) reinsurance intermediary.

1846 [~~5~~] (6) Notwithstanding the other provisions of this section, the commissioner may:

- 1847 (a) issue a license to an applicant for a license for a title insurance line of authority only
- 1848 with the concurrence of the Title and Escrow Commission; and
- 1849 (b) renew a license for a title insurance line of authority only with the concurrence of
- 1850 the Title and Escrow Commission.

1851 Section 11. Section **31A-23a-106** is amended to read:

1852 **31A-23a-106. License types.**

1853 (1) (a) A resident or nonresident license issued under this chapter shall be issued under
1854 the license types described under Subsection (2).

1855 (b) [~~License types~~] A license type and [~~lines~~] a line of authority pertaining to [~~each~~] a
1856 license type describe the type of licensee and the lines of business that a licensee may sell,

1857 solicit, or negotiate. [~~License types are~~] A license type is intended to describe the matters to be
 1858 considered under any education, examination, and training required of a license [~~applicants~~
 1859 applicant under Sections 31A-23a-108, 31A-23a-202, and 31A-23a-203.

1860 (2) (a) A producer license type includes the following lines of authority:

1861 (i) life insurance, including a nonvariable [~~contracts~~] contract;

1862 (ii) variable contracts, including variable life and annuity, if the producer has the life
 1863 insurance line of authority;

1864 (iii) accident and health insurance, including [~~contracts~~] a contract issued to
 1865 [~~policyholders~~] a policyholder under Chapter 7, Nonprofit Health Service Insurance
 1866 Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1867 (iv) property insurance;

1868 (v) casualty insurance, including a surety [~~and~~] or other [~~bonds~~] bond;

1869 (vi) title insurance under one or more of the following categories:

1870 (A) search, including authority to act as a title marketing representative;

1871 (B) escrow, including authority to act as a title marketing representative; and

1872 [~~(C) search and escrow, including authority to act as a title marketing representative;~~

1873 and]

1874 [~~(D)~~] (C) title marketing representative only;

1875 [~~(vii) workers' compensation insurance;~~

1876 [~~(viii)~~] (vii) personal lines insurance; and

1877 [~~(ix)~~] (viii) surplus lines, if the producer has the property or casualty or both lines of
 1878 authority.

1879 (b) A limited line producer license type includes the following limited lines of
 1880 authority:

1881 (i) limited line credit insurance;

1882 (ii) travel insurance;

1883 (iii) motor club insurance;

1884 (iv) car rental related insurance;

1885 (v) legal expense insurance; [~~and~~]

1886 (vi) crop insurance;

1887 (vii) self-service storage insurance; and

- 1888 [~~(vi)~~] (viii) bail bond producer.
- 1889 (c) A customer service representative license type includes the following lines of
 1890 authority, if held by the customer service representative's employer producer:
- 1891 (i) life insurance, including a nonvariable [~~contracts~~] contract;
- 1892 (ii) accident and health insurance, including [~~contracts~~] a contract issued to
 1893 [~~policyholders~~] a policyholder under Chapter 7, Nonprofit Health Service Insurance
 1894 Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1895 (iii) property insurance;
- 1896 (iv) casualty insurance, including a surety [~~and~~] or other [~~bonds;~~] bond;
- 1897 [~~(v) workers' compensation insurance;~~]
- 1898 [~~(vi)~~] (v) personal lines insurance; and
- 1899 [~~(vii)~~] (vi) surplus lines, if the employer producer has the property or casualty or both
 1900 lines of authority.
- 1901 (d) A consultant license type includes the following lines of authority:
- 1902 (i) life insurance, including a nonvariable [~~contracts~~] contract;
- 1903 (ii) variable contracts, including variable life and annuity, if the consultant has the life
 1904 insurance line of authority;
- 1905 (iii) accident and health insurance, including [~~contracts~~] a contract issued to
 1906 [~~policyholders~~] a policyholder under Chapter 7, Nonprofit Health Service Insurance
 1907 Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1908 (iv) property insurance;
- 1909 (v) casualty insurance, including a surety [~~and~~] or other [~~bonds;~~] bond; and
- 1910 [~~(vi) workers' compensation insurance; and~~]
- 1911 [~~(vii)~~] (vi) personal lines insurance.
- 1912 (e) A managing general agent license type includes the following lines of authority:
- 1913 (i) life insurance, including a nonvariable [~~contracts~~] contract;
- 1914 (ii) variable contracts, including variable life and annuity, if the managing general
 1915 agent has the life insurance line of authority;
- 1916 (iii) accident and health insurance, including [~~contracts~~] a contract issued to
 1917 [~~policyholders~~] a policyholder under Chapter 7, Nonprofit Health Service Insurance
 1918 Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

- 1919 (iv) property insurance;
- 1920 (v) casualty insurance, including a surety [~~and~~] or other [~~bonds;~~] bond; and
- 1921 [~~(vi) workers' compensation insurance; and~~]
- 1922 [~~(vii)~~] (vi) personal lines insurance.
- 1923 (f) A reinsurance intermediary license type includes the following lines of authority:
- 1924 (i) life insurance, including a nonvariable [~~contracts~~] contract;
- 1925 (ii) variable contracts, including variable life and annuity, if the reinsurance
- 1926 intermediary has the life insurance line of authority;
- 1927 (iii) accident and health insurance, including [~~contracts~~] a contract issued to
- 1928 [~~policyholders~~] a policyholder under Chapter 7, Nonprofit Health Service Insurance
- 1929 Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1930 (iv) property insurance;
- 1931 (v) casualty insurance, including a surety [~~and~~] or other [~~bonds;~~] bond; and
- 1932 [~~(vi) workers' compensation insurance; and~~]
- 1933 [~~(vii)~~] (vi) personal lines insurance.
- 1934 (g) A holder of licenses under Subsections (2)(a), (d), (e), and (f) has all qualifications
- 1935 necessary to act as a holder of a license under Subsections (2)(b) and (c).
- 1936 (3) (a) The commissioner may by rule recognize other producer, limited line producer,
- 1937 customer service representative, consultant, managing general agent, or reinsurance
- 1938 intermediary lines of authority as to kinds of insurance not listed under Subsections (2)(a)
- 1939 through (f).
- 1940 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and
- 1941 Escrow Commission may by rule, with the concurrence of the commissioner and subject to
- 1942 Section 31A-2-404, recognize other categories for a title insurance producer line of authority
- 1943 not listed under Subsection (2)(a)(vi).
- 1944 (4) The variable contracts, including variable life and annuity line of authority requires:
- 1945 (a) licensure as a registered agent or broker by the National Association of Securities
- 1946 Dealers; and
- 1947 (b) current registration with a securities [~~broker/dealer~~] broker-dealer.
- 1948 (5) A surplus lines producer is a producer who has a surplus lines line of authority.
- 1949 Section 12. Section **31A-23a-111** is amended to read:

- 1950 **31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
1951 **terminating a license -- Rulemaking for renewal or reinstatement.**
- 1952 (1) A license type issued under this chapter remains in force until:
- 1953 (a) revoked or suspended under Subsection (5);
- 1954 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
1955 administrative action;
- 1956 (c) the licensee dies or is adjudicated incompetent as defined under:
- 1957 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- 1958 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
1959 Minors;
- 1960 (d) lapsed under Section 31A-23a-113; or
- 1961 (e) voluntarily surrendered.
- 1962 (2) The following may be reinstated within one year after the day on which the license
1963 is ~~inactivated~~ no longer in force:
- 1964 (a) a lapsed license; or
- 1965 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
1966 not be reinstated after the license period in which the license is voluntarily surrendered.
- 1967 (3) Unless otherwise stated in the written agreement for the voluntary surrender of a
1968 license, submission and acceptance of a voluntary surrender of a license does not prevent the
1969 department from pursuing additional disciplinary or other action authorized under:
- 1970 (a) this title; or
- 1971 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
1972 Administrative Rulemaking Act.
- 1973 (4) A line of authority issued under this chapter remains in force until:
- 1974 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;
1975 or
- 1976 (b) the supporting license type:
- 1977 (i) is revoked or suspended under Subsection (5); ~~or~~
- 1978 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
1979 administrative action[-];
- 1980 (iii) the licensee dies or is adjudicated incompetent as defined under:

- 1981 (A) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
 1982 (B) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
 1983 Minors;
 1984 (iv) lapsed under Section 31A-23a-113; or
 1985 (v) voluntarily surrendered.
 1986 (5) (a) If the commissioner makes a finding under Subsection (5)(b), [~~after~~] as part of
 1987 an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
 1988 commissioner may:
 1989 (i) revoke:
 1990 (A) a license; or
 1991 (B) a line of authority;
 1992 (ii) suspend for a specified period of 12 months or less:
 1993 (A) a license; or
 1994 (B) a line of authority; [~~or~~]
 1995 (iii) limit in whole or in part:
 1996 (A) a license; or
 1997 (B) a line of authority[~~:~~]; or
 1998 (iv) deny a license application.
 1999 (b) The commissioner may take an action described in Subsection (5)(a) if the
 2000 commissioner finds that the licensee:
 2001 (i) is unqualified for a license or line of authority under [~~Sections~~] Section
 2002 31A-23a-104 [~~and~~], 31A-23a-105, or 31A-23a-107;
 2003 (ii) violates:
 2004 (A) an insurance statute;
 2005 (B) a rule that is valid under Subsection 31A-2-201(3); or
 2006 (C) an order that is valid under Subsection 31A-2-201(4);
 2007 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
 2008 delinquency proceedings in any state;
 2009 (iv) fails to pay [~~any~~] a final judgment rendered against the person in this state within
 2010 60 days after the day on which the judgment became final;
 2011 (v) fails to meet the same good faith obligations in claims settlement that is required of

2012 admitted insurers;

2013 (vi) is affiliated with and under the same general management or interlocking

2014 directorate or ownership as another insurance producer that transacts business in this state

2015 without a license;

2016 (vii) refuses:

2017 (A) to be examined; or

2018 (B) to produce its accounts, records, and files for examination;

2019 (viii) has an officer who refuses to:

2020 (A) give information with respect to the insurance producer's affairs; or

2021 (B) perform any other legal obligation as to an examination;

2022 (ix) provides information in the license application that is:

2023 (A) incorrect;

2024 (B) misleading;

2025 (C) incomplete; or

2026 (D) materially untrue;

2027 (x) violates an insurance law, valid rule, or valid order of another state's insurance

2028 department;

2029 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;

2030 (xii) improperly withholds, misappropriates, or converts [~~any~~] monies or properties

2031 received in the course of doing insurance business;

2032 (xiii) intentionally misrepresents the terms of an actual or proposed:

2033 (A) insurance contract;

2034 (B) application for insurance; or

2035 (C) viatical settlement;

2036 (xiv) is convicted of a felony;

2037 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;

2038 (xvi) in the conduct of business in this state or elsewhere:

2039 (A) uses fraudulent, coercive, or dishonest practices; or

2040 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;

2041 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in

2042 another state, province, district, or territory;

- 2043 (xviii) forges another's name to:
2044 (A) an application for insurance; or
2045 (B) a document related to an insurance transaction;
- 2046 (xix) improperly uses notes or another reference material to complete an examination
2047 for an insurance license;
- 2048 (xx) knowingly accepts insurance business from an individual who is not licensed;
2049 (xxi) fails to comply with an administrative or court order imposing a child support
2050 obligation;
- 2051 (xxii) fails to:
2052 (A) pay state income tax; or
2053 (B) comply with an administrative or court order directing payment of state income
2054 tax;
- 2055 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law
2056 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or
2057 (xxiv) engages in a method or practice in the conduct of business that endangers the
2058 legitimate interests of customers and the public.
- 2059 (c) For purposes of this section, if a license is held by an agency, both the agency itself
2060 and any [~~natural person named on~~] individual designated under the license are considered to be
2061 the holders of the license.
- 2062 (d) If [~~a natural person named on~~] an individual designated under the agency license
2063 commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting
2064 the [~~natural person's~~] individual's license, the commissioner may suspend, revoke, or limit the
2065 license of:
- 2066 (i) the [~~natural person~~] individual;
2067 (ii) the agency, if the agency:
2068 (A) is reckless or negligent in its supervision of the [~~natural person~~] individual; or
2069 (B) knowingly participates in the act or failure to act that is the ground for suspending,
2070 revoking, or limiting the license; or
2071 (iii) (A) the [~~natural person~~] individual; and
2072 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
2073 (6) A licensee under this chapter is subject to the penalties for acting as a licensee

2074 without a license if:

2075 (a) the licensee's license is:

2076 (i) revoked;

2077 (ii) suspended;

2078 (iii) limited;

2079 (iv) surrendered in lieu of administrative action;

2080 (v) lapsed; or

2081 (vi) voluntarily surrendered; and

2082 (b) the licensee:

2083 (i) continues to act as a licensee; or

2084 (ii) violates the terms of the license limitation.

2085 (7) A licensee under this chapter shall immediately report to the commissioner:

2086 (a) a revocation, suspension, or limitation of the person's license in another state, the
2087 District of Columbia, or a territory of the United States;

2088 (b) the imposition of a disciplinary sanction imposed on that person by another state,
2089 the District of Columbia, or a territory of the United States; or

2090 (c) a judgment or injunction entered against that person on the basis of conduct
2091 involving:

2092 (i) fraud;

2093 (ii) deceit;

2094 (iii) misrepresentation; or

2095 (iv) a violation of an insurance law or rule.

2096 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
2097 license in lieu of administrative action may specify a time, not to exceed five years, within
2098 which the former licensee may not apply for a new license.

2099 (b) If no time is specified in [~~the~~] an order or agreement described in Subsection (8)(a),
2100 the former licensee may not apply for a new license for five years from the day on which the
2101 order or agreement is made without the express approval by the commissioner.

2102 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2103 a license issued under this part if so ordered by a court.

2104 (10) The commissioner shall by rule prescribe the license renewal and reinstatement

2105 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2106 Section 13. Section **31A-23a-113** is amended to read:

2107 **31A-23a-113. License lapse and voluntary surrender.**

2108 (1) (a) A license issued under this chapter shall lapse if the licensee fails to:

2109 (i) pay when due a fee under Section 31A-3-103;

2110 (ii) complete continuing education requirements under Section 31A-23a-202 before
2111 submitting the license renewal application;

2112 (iii) submit a completed renewal application as required by Section 31A-23a-104;

2113 (iv) submit additional documentation required to complete the licensing process as
2114 related to a specific license type or line of authority; or

2115 (v) maintain an active license in a resident state if the licensee is a nonresident
2116 licensee.

2117 (b) (i) A licensee whose license lapses due to the following may request an action
2118 described in Subsection (1)(b)(ii):

2119 (A) military service;

2120 (B) voluntary service for a period of time designated by the person for whom the
2121 licensee provides voluntary service; or

2122 (C) some other extenuating circumstances, such as long-term medical disability.

2123 (ii) A licensee described in Subsection (1)(b)(i) may request:

2124 (A) reinstatement of the license no later than one year after the day on which the
2125 license lapses; and

2126 (B) waiver of any of the following imposed for failure to comply with renewal
2127 procedures:

2128 (I) an examination requirement;

2129 (II) reinstatement fees set under Section 31A-3-103;

2130 (III) continuing education requirements; or

2131 (IV) other sanction imposed for failure to comply with renewal procedures.

2132 (2) If a license [~~type or line of authority~~] issued under this chapter is voluntarily
2133 surrendered, the license or line of authority may be reinstated [~~within one year~~]:

2134 (a) during the license period in which the license is voluntarily surrendered; and

2135 (b) no later than one year after the day on which the license [~~or line of authority is~~

2136 ~~inactivated]~~ is voluntarily surrendered.

2137 Section 14. Section **31A-23a-115** is amended to read:

2138 **31A-23a-115. Appointment of individual and agency insurance producer, limited**
2139 **line producer, or managing general agent -- Reports and lists.**

2140 (1) (a) An insurer shall appoint ~~[a natural person]~~ an individual or agency ~~[that has an]~~
2141 with whom it has a contract as an insurance producer, limited line producer, or managing
2142 general agent ~~[license]~~ to act ~~[as an insurance producer, limited line producer, or managing~~
2143 ~~general agent on the insurer's behalf prior to any producer, limited line producer, or managing~~
2144 ~~general agent doing]~~ on the insurer's behalf in order for the licensee to do business for the
2145 insurer in this state.

2146 (b) An insurer shall report to the commissioner, at intervals and in the form the
2147 commissioner establishes by rule:

2148 (i) ~~[a]~~ a new [appointments] appointment; and

2149 ~~[(ii) all terminations of appointments.]~~

2150 (ii) a termination of appointment.

2151 (2) (a) (i) An insurer shall report to the commissioner the cause of termination of an
2152 appointment~~[-]~~ if:

2153 (A) the reason for termination is a reason described in Subsection 31A-23a-111(5)(b);

2154 or

2155 (B) the insurer has knowledge that the individual or agency licensee is found to have
2156 engaged in an activity described in Subsection 31A-23a-111(5)(b) by:

2157 (I) a court;

2158 (II) a government body; or

2159 (III) a self-regulatory organization, which the commissioner may define by rule made
2160 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2161 (ii) The information provided to the commissioner under this Subsection (2) is a
2162 private record under Title 63G, Chapter 2, Government Records Access and Management Act.

2163 (b) An insurer is immune from civil action, civil penalty, or damages if the insurer
2164 complies in good faith with this Subsection (2) in reporting to the commissioner the cause of
2165 termination of an appointment.

2166 (c) Notwithstanding any other provision in this section, an insurer is not immune from

2167 any action or resulting penalty imposed on the reporting insurer as a result of proceedings
2168 brought by or on behalf of the department if the action is based on evidence other than the
2169 report submitted in compliance with this Subsection (2).

2170 (3) If an insurer appoints an agency, the insurer need not appoint, report, or pay
2171 appointment reporting fees for ~~[natural persons]~~ an individual designated on the agency's
2172 license under Section 31A-23a-302.

2173 (4) If an insurer lists a licensee in a report submitted under Subsection (2), there is a
2174 rebuttable presumption that in placing a risk with the insurer the appointed licensee or any of
2175 the licensee's licensed employees ~~[acted]~~ act on behalf of the insurer.

2176 Section 15. Section **31A-23a-203** is amended to read:

2177 **31A-23a-203. Training period requirements.**

2178 (1) A producer is eligible to add the surplus lines of authority to the person's producer's
2179 license if the producer:

2180 (a) has passed the applicable examination;

2181 (b) has been a producer with property and casualty lines of authority for at least three
2182 years during the four years immediately preceding the date of application; and

2183 (c) has paid the applicable fee under Section 31A-3-103.

2184 (2) A person is eligible to become a consultant only if the person has acted in a
2185 capacity that would provide the person with preparation to act as an insurance consultant for a
2186 period aggregating not less than three years during the four years immediately preceding the
2187 date of application.

2188 (3) The training periods required under this section apply only to ~~[natural persons]~~ an
2189 individual applying for ~~[licenses]~~ a license under this chapter.

2190 Section 16. Section **31A-23a-204** is amended to read:

2191 **31A-23a-204. Special requirements for title insurance producers and agencies.**

2192 A title insurance producer, including an agency, shall be licensed in accordance with
2193 this chapter, with the additional requirements listed in this section.

2194 (1) (a) A person that receives a new license under this title ~~[on or after July 1, 2007]~~ as
2195 a title insurance agency, shall at the time of licensure be owned or managed by one or more
2196 ~~[natural persons]~~ individuals who are licensed ~~[with the following lines of authority]~~ for at least
2197 three of the five years immediately proceeding the date on which the title insurance agency

2198 applies for a license[~~-(i)~~] with both [a]:

2199 [~~(A)~~] (i) a search line of authority; and

2200 [~~(B)~~] (ii) an escrow line of authority[~~;-or~~].

2201 [~~(ii) a search and escrow line of authority.~~]

2202 (b) A title insurance agency subject to Subsection (1)(a) may comply with Subsection
2203 (1)(a) by having the title insurance agency owned or managed by:

2204 (i) one or more [~~natural persons~~] individuals who are licensed with the search line of
2205 authority for the time period provided in Subsection (1)(a); and

2206 (ii) one or more [~~natural persons~~] individuals who are licensed with the escrow line of
2207 authority for the time period provided in Subsection (1)(a).

2208 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
2209 exempt an attorney with real estate experience from the experience requirements in Subsection
2210 (1)(a).

2211 (2) (a) A title insurance agency or producer appointed by an insurer shall maintain:

2212 (i) a fidelity bond;

2213 (ii) a professional liability insurance policy; or

2214 (iii) a financial protection:

2215 (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

2216 (B) that the commissioner considers adequate.

2217 (b) The bond, insurance, or financial protection required by this Subsection (2):

2218 (i) shall be supplied under a contract approved by the commissioner to provide
2219 protection against the improper performance of any service in conjunction with the issuance of
2220 a contract or policy of title insurance; and

2221 (ii) be in a face amount no less than \$50,000.

2222 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
2223 exempt title insurance producers from the requirements of this Subsection (2) upon a finding
2224 that, and only so long as, the required policy or bond is generally unavailable at reasonable
2225 rates.

2226 (3) [~~(a)~~] A title insurance agency or producer appointed by an insurer [~~shall~~] may
2227 maintain a reserve fund to the extent [~~required by this Subsection (3)~~] monies were deposited
2228 before July 1, 2008, and not withdrawn to the income of the title insurance producer.

2229 ~~[(b) On or after July 1, 2008, a title insurance agency or producer may not deposit~~
2230 ~~monies to a reserve fund required by this Subsection (3).]~~

2231 ~~[(c) On or after July 1, 2008, a title insurance agency or producer for the portion of the~~
2232 ~~assets held in the reserve fund over the preceding ten years may:]~~

2233 ~~[(i) withdraw from the reserve fund in accordance with a time schedule adopted by the~~
2234 ~~title insurance agency or producer that allows:]~~

2235 ~~[(A) all the monies to be withdrawn in one year; or]~~

2236 ~~[(B) the monies to be withdrawn in equal partial withdrawals of principal over a time~~
2237 ~~period of two years, three years, four years, five years, or ten years; and]~~

2238 ~~[(ii) restore the amounts withdrawn to the income of the title insurance producer.]~~

2239 ~~[(d) The title insurance producer may withdraw interest from the reserve fund related to~~
2240 ~~the principal amount as it accrues.]~~

2241 ~~[(e) (i) A disbursement may not be made from the reserve fund except as provided in~~
2242 ~~Subsection (3)(c) unless the title insurance producer ceases doing business as a result of:]~~

2243 ~~[(A) a sale of assets;]~~

2244 ~~[(B) a merger of the producer with another producer;]~~

2245 ~~[(C) a termination of the producer's license;]~~

2246 ~~[(D) an insolvency; or]~~

2247 ~~[(E) any cessation of business by the producer.]~~

2248 ~~[(ii) A disbursement from the reserve fund may be made only to settle a claim arising~~
2249 ~~from the improper performance of the title insurance producer in providing services defined in~~
2250 ~~Section 31A-23a-406.]~~

2251 ~~[(iii) The commissioner shall be notified ten days before any disbursement from the~~
2252 ~~reserve fund:]~~

2253 ~~[(iv) The notice required by this Subsection (3)(e) shall contain:]~~

2254 ~~[(A) the amount of claim;]~~

2255 ~~[(B) the nature of the claim; and]~~

2256 ~~[(C) the name of the payee.]~~

2257 ~~[(f) (i) Except as provided in Subsection (3)(c), the reserve fund shall be maintained by~~
2258 ~~the title insurance producer or the title insurance producer's representative for a period of two~~
2259 ~~years after the day on which the title insurance producer ceases doing business.]~~

2260 ~~[(ii) Any assets remaining in the reserve fund at the end of the two years specified in~~
2261 ~~Subsection (3)(c)(i) may be withdrawn and restored to the former title insurance producer.]~~

2262 (4) ~~[Any]~~ An examination for licensure shall include questions regarding the search
2263 and examination of title to real property.

2264 (5) A title insurance producer may not perform the functions of escrow unless the title
2265 insurance producer has been examined on the fiduciary duties and procedures involved in those
2266 functions.

2267 (6) The Title and Escrow Commission shall adopt rules, subject to Section 31A-2-404,
2268 after consulting with the department and the department's test administrator, establishing an
2269 examination for a license that will satisfy this section.

2270 (7) A license may be issued to a title insurance producer who has qualified:

2271 (a) to perform only searches and examinations of title as specified in Subsection (4);

2272 (b) to handle only escrow arrangements as specified in Subsection (5); or

2273 (c) to act as a title marketing representative.

2274 (8) (a) A person licensed to practice law in Utah is exempt from the requirements of
2275 Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

2276 (b) In determining the number of policies issued by a person licensed to practice law in
2277 Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a
2278 policy to more than one party to the same closing, the person is considered to have issued only
2279 one policy.

2280 (9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or
2281 not, shall maintain a trust account separate from a law firm trust account for all title and real
2282 estate escrow transactions.

2283 Section 17. Section **31A-23a-302** is amended to read:

2284 **31A-23a-302. Agency designations.**

2285 (1) An agency shall designate ~~[a natural person]~~ an individual that has ~~[a]~~ an individual
2286 producer, limited line producer, customer service representative, consultant, managing general
2287 agent, or reinsurance intermediary license to act on ~~[its]~~ the agency's behalf ~~[prior to]~~ in order
2288 for the licensee ~~[doing]~~ to do business for the agency in this state.

2289 (2) An agency shall report to the commissioner, at intervals and in the form the
2290 commissioner establishes by rule:

- 2291 (a) ~~[all]~~ a new ~~[designations]~~ designation; and
- 2292 (b) ~~[all]~~ a terminated ~~[designations]~~ designation.
- 2293 (3) (a) An agency licensed under this chapter shall report to the commissioner the
- 2294 cause of termination of a designation~~[-]~~ if:
- 2295 (A) the reason for termination is a reason described in Subsection 31A-23a-111(5)(b);
- 2296 or
- 2297 (B) the agency has knowledge that the individual licensee is found to have engaged in
- 2298 an activity described in Subsection 31A-23a-111(5)(b) by:
- 2299 (I) a court;
- 2300 (II) a government body; or
- 2301 (III) a self-regulatory organization, which the commissioner may define by rule made
- 2302 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 2303 (b) The information provided the commissioner under Subsection (3)(a) is a private
- 2304 record under Title 63G, Chapter 2, Government Records Access and Management Act.
- 2305 (c) An agency is immune from civil action, civil penalty, or damages if the agency
- 2306 complies in good faith with this Subsection (3) in reporting to the commissioner the cause of
- 2307 termination of a designation.
- 2308 (d) Notwithstanding any other provision in this section, an agency is not immune from
- 2309 ~~[any]~~ an action or resulting penalty imposed on the reporting agency as a result of proceedings
- 2310 brought by or on behalf of the department if the action is based on evidence other than the
- 2311 report submitted in compliance with this Subsection (3).
- 2312 (4) An agency licensed under this chapter may act in ~~[the capacities]~~ a capacity for
- 2313 which it is licensed only through ~~[natural persons who are]~~ an individual who is licensed under
- 2314 this chapter to act in the same ~~[capacities]~~ capacity.
- 2315 (5) An agency licensed under this chapter shall designate and report to the
- 2316 commissioner ~~[by rule]~~ in accordance with any rule made by the commissioner the name of ~~[at~~
- 2317 ~~least one natural person]~~ the designated responsible licensed individual who has authority to act
- 2318 on behalf of the agency in all matters pertaining to compliance with this title and orders of the
- 2319 commissioner.
- 2320 (6) If an agency designates a licensee in reports submitted under Subsection (2) or (5),
- 2321 there is a rebuttable presumption that the designated licensee ~~[acted]~~ acts on behalf of the

2322 agency.

2323 (7) (a) When a license is held by an agency, both the agency itself and any individual
 2324 designated under the agency license shall be considered to be the holder of the agency license
 2325 for purposes of this section.

2326 (b) If an individual designated under the agency license commits an act or fails to
 2327 perform a duty that is a ground for suspending, revoking, or limiting the agency license, the
 2328 commissioner may suspend, revoke, or limit the license of:

2329 (i) the individual;

2330 (ii) the agency, if the agency:

2331 (A) is reckless or negligent in its supervision of the individual; or

2332 (B) knowingly participates in the act or failure to act that is the ground for suspending,
 2333 revoking, or limiting the license; or

2334 (iii) (A) the individual; and

2335 (B) the agency if the agency meets the requirements of Subsection (7)(b)(ii).

2336 Section 18. Section **31A-23a-409** is amended to read:

2337 **31A-23a-409. Trust obligation for monies collected.**

2338 (1) (a) ~~[Every]~~ Subject to Subsection (7), a licensee is a trustee for [all funds] monies
 2339 received or collected for forwarding to insurers or to insureds.

2340 (b) (i) ~~Except [for amounts necessary to pay bank charges, and except for funds paid by~~
 2341 ~~insureds and belonging in part to the licensee as fees or commissions] as provided in~~
 2342 Subsection (1)(b)(ii), a licensee may not commingle trust funds with:

2343 ~~[(i)]~~ (A) the licensee's own [funds] monies; or

2344 ~~[(ii) funds]~~ (B) monies held in any other capacity.

2345 (ii) This Subsection (1)(b) does not apply to:

2346 (A) amounts necessary to pay bank charges; and

2347 (B) monies paid by insureds and belonging in part to the licensee as a fee or
 2348 commission.

2349 (c) Except as provided under Subsection (4), ~~[every]~~ a licensee owes to insureds and
 2350 insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or
 2351 insureds through the licensee.

2352 (d) (i) Unless ~~[the funds]~~ monies are sent to the appropriate payee by the close of the

2353 next business day after their receipt, the licensee shall deposit them in an account authorized
2354 under Subsection (2).

2355 (ii) [~~Funds~~] Monies deposited under this Subsection (1)(d) shall remain in an account
2356 authorized under Subsection (2) until sent to the appropriate payee.

2357 (2) [~~Funds~~] Monies required to be deposited under Subsection (1) shall be deposited:

2358 (a) in a federally insured trust account in a depository institution, as defined in Section
2359 7-1-103, which:

2360 (i) has an office in this state, if the licensee depositing the monies is a resident licensee;

2361 (ii) has federal deposit insurance; and

2362 (iii) is authorized by its primary regulator to engage in the trust business, as defined by
2363 Section 7-5-1, in this state; or

2364 (b) in some other account, approved by the commissioner by rule or order, providing
2365 safety comparable to federally insured trust accounts.

2366 (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the
2367 amount of the federal insurance on the accounts.

2368 (4) A trust account into which [~~funds~~] monies are deposited may be interest bearing.

2369 The interest accrued on the account may be paid to the licensee, so long as the licensee
2370 otherwise complies with this section and with the contract with the insurer.

2371 (5) A [~~financial~~] depository institution or other organization holding trust funds under
2372 this section may not offset or impound trust account funds against debts and obligations
2373 incurred by the licensee.

2374 (6) [~~Any~~] A licensee who, not being lawfully entitled [~~thereto~~] to do so, diverts or
2375 appropriates any portion of the [~~funds~~] monies held under Subsection (1) to the licensee's own
2376 use, is guilty of theft under Title 76, Chapter 6, Part 4, Theft. Section 76-6-412 applies in
2377 determining the classification of the offense. Sanctions under Section 31A-2-308 also apply.

2378 (7) A nonresident licensee:

2379 (a) shall comply with Subsection (1)(a) by complying with the trust account
2380 requirements of the nonresident licensee's home state; and

2381 (b) is not required to comply with the other provisions of this section.

2382 Section 19. Section **31A-23a-410** is amended to read:

2383 **31A-23a-410. Insurer's liability if insured pays premium to a licensee or group**

2384 **policyholder.**

2385 (1) Subject to Subsections (2) and (5), as between the insurer and the insured, the
 2386 insurer is considered to have received the premium and is liable to the insured for losses
 2387 covered by the insurance and for any unearned premiums upon cancellation of the insurance if
 2388 an insurer, including a surplus lines insurer:

2389 (a) ~~[has assumed]~~ assumes a risk; and

2390 (b) the premium for that insurance ~~[has been]~~ is received by:

2391 (i) a licensee who placed the insurance;

2392 (ii) a group policyholder;

2393 (iii) an employer who deducts part or all of the premium from an employee's wages or
 2394 salary; or

2395 (iv) an employer who pays all or part of the premium for an employee.

2396 (2) Subsection (1) does not apply if:

2397 (a) the insured pays a licensee, knowing the licensee does not intend to submit the
 2398 premium to the insurer; or

2399 (b) the insured has premium withheld from the insured's wages or salary knowing the
 2400 employer does not intend to submit it to the insurer.

2401 (3) (a) In the case of an employer who has received the premium by deducting all or
 2402 part of it from the wages or salaries of the certificate holders, the insurer may terminate its
 2403 liability by giving notice of coverage termination to:

2404 (i) the certificate holders ~~[reasonable notice of coverage termination.];~~

2405 (ii) the policyholder; and

2406 (iii) the producer, if any, for the policy.

2407 (b) The liability of the insurer for the losses covered by the insurance terminates at the
 2408 later of:

2409 ~~[(a)]~~ (i) the last day of the coverage period for which premium has been withheld by
 2410 the employer; ~~[or]~~

2411 ~~[(b)-15]~~ (ii) ten days after the date the insurer mails ~~[actual]~~ notice to the certificate
 2412 holder that coverage has terminated~~[, but in the event];~~ or

2413 (iii) if the insurer fails to provide ~~[actual]~~ notice as required by this Subsection (3),

2414 ~~[then the liability of the insurer for losses described in Subsection (1) shall terminate]~~ 45 days

2415 from the last date for which premium [was] is received. [~~While the insurer shall be liable for~~
 2416 ~~losses as herein provided, the provisions of this section apply only to apportion the liability for~~
 2417 ~~those losses described and do not operate to extend any insurance contract policy or coverage~~
 2418 ~~beyond its date of termination nor alter or amend provisions thereof.]~~

2419 (c) The insurer may not send the notice required by Subsection (3)(a) to a certificate
 2420 holder before 20 days after the day on which premium is due and unpaid.

2421 (4) Despite an employer's collection of premium under Subsection (1), the
 2422 responsibility of an insurer to continue to cover the losses covered by the insurance to group
 2423 policy certificate holders terminates upon the effective date of notice from the policyholder
 2424 that:

2425 (a) coverage of a similar kind and quality has been obtained from another insurer; or

2426 (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage
 2427 and has given the employees notice of the termination.

2428 (5) If the insurer is obligated to pay [~~any claims~~] a claim pursuant to [~~the provisions of~~]
 2429 this section, the licensee or employer who received the premium and failed to forward it [~~shall~~
 2430 ~~be~~] is obligated to the insurer for the entire unpaid premium due under the policy [~~of insurance~~]
 2431 together with reasonable expenses of suit and reasonable [~~attorney's~~] attorney fees.

2432 (6) If, under an employee health insurance plan, an employee builds up credit for future
 2433 coverage because the employee has not used the policy protection, or in some other way, the
 2434 insurer is obligated to the employee for that future coverage earned while the policy was in full
 2435 effect.

2436 (7) (a) Notwithstanding that an insurer is liable for losses as provided in this section,
 2437 this section applies only to apportion the liability for the losses described in this section.

2438 (b) This section does not:

2439 (i) extend a policy or coverage beyond its date of termination; or

2440 (ii) alter or amend a provision of a policy.

2441 Section 20. Section **31A-23a-504** is amended to read:

2442 **31A-23a-504. Sharing commissions.**

2443 (1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter
 2444 or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the
 2445 licensee knows that the person is licensed under this chapter as to the particular type of

2446 insurance to act in Utah as:

- 2447 (i) a producer;
- 2448 (ii) a limited line producer;
- 2449 (iii) a customer service representative;
- 2450 (iv) a consultant;
- 2451 (v) a managing general agent; or
- 2452 (vi) a reinsurance intermediary.

2453 (b) A person may only accept commission compensation or other compensation as a
 2454 person described in Subsections (1)(a)(i) through (vi) that is directly or indirectly the result of
 2455 ~~[any]~~ an insurance transaction if that person is licensed under this chapter to act as described in
 2456 Subsection (1)(a).

2457 (2) (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive
 2458 ~~[any]~~ a commission or other compensation that is directly or indirectly the result of ~~[any]~~ an
 2459 insurance transaction.

2460 (b) A consultant may share a consultant fee or other compensation received for
 2461 consulting services performed within Utah only:

- 2462 (i) with another consultant licensed under this chapter; and
- 2463 (ii) to the extent that the other consultant contributed to the services performed.

2464 (3) This section does not prohibit:

2465 (a) the payment of renewal commissions to former licensees under this chapter, former
 2466 Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency
 2467 sales agreement[-];

2468 ~~[(4) This section does not prohibit]~~

2469 (b) compensation paid to or received by a person for referral of a potential customer
 2470 that seeks to purchase or obtain an opinion or advice on an insurance product if:

- 2471 ~~[(a)]~~ (i) the person is not licensed to sell insurance;
- 2472 ~~[(b)]~~ (ii) the person does not sell or provide opinions or advice on the product; and
- 2473 ~~[(c)]~~ (iii) the compensation does not depend on whether the referral results in a
 2474 purchase or sale[-]; or

2475 (c) the payment or assignment of a commission, service fee, brokerage, or other
 2476 valuable consideration to an agency or a person who does not sell, solicit, or negotiate

2477 insurance in this state, unless the payment would constitute an inducement or commission
 2478 rebate under Section 31A-23a-402.

2479 ~~[(5)]~~ (4) (a) In selling a policy of title insurance, sharing of commissions under
 2480 Subsection (1) may not occur if it will result in:

- 2481 (i) an unlawful rebate;
- 2482 (ii) compensation in connection with controlled business; or
- 2483 (iii) payment of a forwarding fee or finder's fee.

2484 (b) A person may share compensation for the issuance of a title insurance policy only
 2485 to the extent that the person contributed to the search and examination of the title or other
 2486 services connected with the title insurance policy.

2487 ~~[(6)]~~ (5) This section does not apply to a bail bond [~~producers~~] producer or bail
 2488 enforcement [~~agents~~] agent as defined in Section 31A-35-102.

2489 Section 21. Section **31A-25-203** is amended to read:

2490 **31A-25-203. General requirements for license issuance.**

2491 (1) The commissioner shall issue a license to act as a third party administrator to a
 2492 person who:

- 2493 (a) satisfies the character requirements under Section 31A-25-204;
- 2494 (b) satisfies the financial responsibility requirement under Section 31A-25-205;
- 2495 (c) has not committed an act that is a ground for denial, suspension, or revocation
 2496 provided in Section 31A-25-208;

2497 ~~[(e)]~~ (d) if a nonresident, complies with Section 31A-25-206; and

2498 ~~[(f)]~~ (e) pays the applicable fees under Section 31A-3-103.

2499 ~~[(2) The license of a third party administrator licensed under former Title 31, Chapter~~
 2500 ~~15a, is continued under this chapter.]~~

2501 ~~[(3)]~~ (2) (a) This Subsection ~~[(3)]~~ (2) applies to the following persons:

- 2502 (i) an applicant for a third party administrator's license; or
- 2503 (ii) a licensed third party administrator.
- 2504 (b) A person described in Subsection ~~[(3)]~~ (2)(a) shall report to the commissioner:
 - 2505 (i) an administrative action taken against the person:
 - 2506 (A) in another jurisdiction; or
 - 2507 (B) by another regulatory agency in this state; and

- 2508 (ii) a criminal prosecution taken against the person in any jurisdiction.
- 2509 (c) The report required by Subsection [~~(3)~~] (2)(b) shall:
- 2510 (i) be filed:
- 2511 (A) at the time the person applies for a third party administrator's license; and
- 2512 (B) [~~for~~] if an action or prosecution [~~that~~] occurs on or after the day on which the
- 2513 person applies for a third party administrator license:
- 2514 (I) for an administrative action, within 30 days of the final disposition of the
- 2515 administrative action; or
- 2516 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
- 2517 and
- 2518 (ii) include a copy of the complaint or other relevant legal documents related to the
- 2519 action or prosecution described in Subsection [~~(3)~~] (2)(b).
- 2520 [~~(4)~~] (3) (a) The department may require a person applying for a license or for consent
- 2521 to engage in the business of insurance to submit to a criminal background check as a condition
- 2522 of receiving a license or consent.
- 2523 (b) A person, if required to submit to a criminal background check under Subsection
- 2524 [~~(4)~~] (3)(a), shall:
- 2525 (i) submit a fingerprint card in a form acceptable to the department; and
- 2526 (ii) consent to a fingerprint background check by:
- 2527 (A) the Utah Bureau of Criminal Identification; and
- 2528 (B) the Federal Bureau of Investigation.
- 2529 (c) For a person who submits a fingerprint card and consents to a fingerprint
- 2530 background check under Subsection [~~(4)~~] (3)(b), the department may request concerning a
- 2531 person applying for a third party administrator's license:
- 2532 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
- 2533 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
- 2534 (ii) complete Federal Bureau of Investigation criminal background checks through the
- 2535 national criminal history system.
- 2536 (d) Information obtained by the department from the review of criminal history records
- 2537 received under this Subsection [~~(4)~~] (3) shall be used by the department for the purposes of:
- 2538 (i) determining if a person satisfies the character requirements under Section

2539 31A-25-204 for issuance or renewal of a license;

2540 (ii) determining if a person has failed to maintain the character requirements under
2541 Section 31A-25-204; and

2542 (iii) preventing ~~[persons]~~ a person who ~~[violate]~~ violates the federal Violent Crime
2543 Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in
2544 the business of insurance in the state.

2545 (e) If the department requests the criminal background information, the department
2546 shall:

2547 (i) pay to the Department of Public Safety the costs incurred by the Department of
2548 Public Safety in providing the department criminal background information under Subsection
2549 ~~[(4)]~~ (3)(c)(i);

2550 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
2551 of Investigation in providing the department criminal background information under
2552 Subsection ~~[(4)]~~ (3)(c)(ii); and

2553 (iii) charge the person applying for a license ~~[, for renewal of a license,]~~ or for consent
2554 to engage in the business of insurance a fee equal to the aggregate of Subsections ~~[(4)]~~ (3)(e)(i)
2555 and (ii).

2556 (4) The commissioner may deny a license application to act as a third party
2557 administrator to a person who:

2558 (a) fails to satisfy the requirements of this section; or

2559 (b) commits an act that is a ground for denial, suspension, or revocation provided in
2560 Section 31A-25-208.

2561 Section 22. Section **31A-25-208** is amended to read:

2562 **31A-25-208. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
2563 **terminating a license -- Rulemaking for renewal and reinstatement.**

2564 (1) A license type issued under this chapter remains in force until:

2565 (a) revoked or suspended under Subsection (4);

2566 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2567 administrative action;

2568 (c) the licensee dies or is adjudicated incompetent as defined under:

2569 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2570 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2571 Minors;

2572 (d) lapsed under Section 31A-25-210; or
2573 (e) voluntarily surrendered.

2574 (2) The following may be reinstated within one year after the day on which the license
2575 is [~~inactivated~~] no longer in force:

2576 (a) a lapsed license; or
2577 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
2578 not be reinstated after the license period in which the license is voluntarily surrendered.

2579 (3) Unless otherwise stated in the written agreement for the voluntary surrender of a
2580 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2581 department from pursuing additional disciplinary or other action authorized under:

2582 (a) this title; or
2583 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2584 Administrative Rulemaking Act.

2585 (4) (a) If the commissioner makes a finding under Subsection (4)(b), [~~after~~] as part of
2586 an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2587 commissioner may:

2588 (i) revoke a license;
2589 (ii) suspend a license for a specified period of 12 months or less; [~~or~~]
2590 (iii) limit a license in whole or in part[-]; or
2591 deny a license application.

2592 (b) The commissioner may take an action described in Subsection (4)(a) if the
2593 commissioner finds that the licensee:

2594 (i) is unqualified for a license under [~~Sections~~] Section 31A-25-202 [and],
2595 31A-25-203, or 31A-25-204;

2596 (ii) has violated:
2597 (A) an insurance statute;
2598 (B) a rule that is valid under Subsection 31A-2-201(3); or
2599 (C) an order that is valid under Subsection 31A-2-201(4);
2600 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other

- 2601 delinquency proceedings in any state;
- 2602 (iv) fails to pay [~~any~~] a final judgment rendered against the person in this state within
- 2603 60 days after the day on which the judgment became final;
- 2604 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 2605 admitted insurers;
- 2606 (vi) is affiliated with and under the same general management or interlocking
- 2607 directorate or ownership as another third party administrator that transacts business in this state
- 2608 without a license;
- 2609 (vii) refuses:
- 2610 (A) to be examined; or
- 2611 (B) to produce its accounts, records, and files for examination;
- 2612 (viii) has an officer who refuses to:
- 2613 (A) give information with respect to the third party administrator's affairs; or
- 2614 (B) perform any other legal obligation as to an examination;
- 2615 (ix) provides information in the license application that is:
- 2616 (A) incorrect;
- 2617 (B) misleading;
- 2618 (C) incomplete; or
- 2619 (D) materially untrue;
- 2620 (x) has violated an insurance law, valid rule, or valid order of another state's insurance
- 2621 department;
- 2622 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 2623 (xii) has improperly withheld, misappropriated, or converted [~~any~~] monies or
- 2624 properties received in the course of doing insurance business;
- 2625 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 2626 (A) insurance contract; or
- 2627 (B) application for insurance;
- 2628 (xiv) has been convicted of a felony;
- 2629 (xv) has admitted or been found to have committed [~~any~~] an insurance unfair trade
- 2630 practice or fraud;
- 2631 (xvi) in the conduct of business in this state or elsewhere has:

- 2632 (A) used fraudulent, coercive, or dishonest practices; or
- 2633 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 2634 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in
- 2635 any other state, province, district, or territory;
- 2636 (xviii) has forged another's name to:
- 2637 (A) an application for insurance; or
- 2638 (B) a document related to an insurance transaction;
- 2639 (xix) has improperly used notes or any other reference material to complete an
- 2640 examination for an insurance license;
- 2641 (xx) has knowingly accepted insurance business from an individual who is not
- 2642 licensed;
- 2643 (xxi) has failed to comply with an administrative or court order imposing a child
- 2644 support obligation;
- 2645 (xxii) has failed to:
- 2646 (A) pay state income tax; or
- 2647 (B) comply with ~~[any]~~ an administrative or court order directing payment of state
- 2648 income tax;
- 2649 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
- 2650 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or
- 2651 (xxiv) has engaged in methods and practices in the conduct of business that endanger
- 2652 the legitimate interests of customers and the public.
- 2653 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 2654 and any ~~[natural person named on]~~ individual designated under the license are considered to be
- 2655 the holders of the agency license.
- 2656 (d) If ~~[a natural person named on]~~ an individual designated under the agency license
- 2657 commits ~~[any]~~ an act or fails to perform ~~[any]~~ a duty that is a ground for suspending, revoking,
- 2658 or limiting the ~~[natural person's]~~ individual's license, the commissioner may suspend, revoke,
- 2659 or limit the license of:
- 2660 (i) the ~~[natural person]~~ individual;
- 2661 (ii) the agency if the agency:
- 2662 (A) is reckless or negligent in its supervision of the ~~[natural person]~~ individual; or

- 2663 (B) knowingly participated in the act or failure to act that is the ground for suspending,
2664 revoking, or limiting the license; or
- 2665 (iii) (A) the ~~[natural person]~~ individual; and
- 2666 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
- 2667 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
2668 without a license if:
- 2669 (a) the licensee's license is:
- 2670 (i) revoked;
- 2671 (ii) suspended;
- 2672 (iii) limited;
- 2673 (iv) surrendered in lieu of administrative action;
- 2674 (v) lapsed; or
- 2675 (vi) voluntarily surrendered; and
- 2676 (b) the licensee:
- 2677 (i) continues to act as a licensee; or
- 2678 (ii) violates the terms of the license limitation.
- 2679 (6) A licensee under this chapter shall immediately report to the commissioner:
- 2680 (a) a revocation, suspension, or limitation of the person's license in any other state, the
2681 District of Columbia, or a territory of the United States;
- 2682 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
2683 the District of Columbia, or a territory of the United States; or
- 2684 (c) a judgment or injunction entered against the person on the basis of conduct
2685 involving:
- 2686 (i) fraud;
- 2687 (ii) deceit;
- 2688 (iii) misrepresentation; or
- 2689 (iv) a violation of an insurance law or rule.
- 2690 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
2691 license in lieu of administrative action may specify a time, not to exceed five years, within
2692 which the former licensee may not apply for a new license.
- 2693 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the

2694 former licensee may not apply for a new license for five years from the day on which the order
2695 or agreement is made without the express approval of the commissioner.

2696 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2697 a license issued under this part if so ordered by the court.

2698 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
2699 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2700 Section 23. Section **31A-25-210** is amended to read:

2701 **31A-25-210. License lapse and voluntary surrender.**

2702 (1) (a) A license issued under this chapter shall lapse if the licensee fails to:

2703 (i) pay when due a fee under Section 31A-3-103;

2704 (ii) submit a completed renewal application as required by Section 31A-25-202;

2705 (iii) produce, when due, evidence of compliance with the financial responsibility
2706 requirement under Section 31A-25-205; or

2707 (iv) maintain an active license in a resident state if the licensee is a nonresident
2708 licensee.

2709 (b) (i) A licensee whose license lapses due to the following may request an action
2710 described in Subsection (1)(b)(ii):

2711 (A) military service;

2712 (B) voluntary service for a period of time designated by the person for whom the
2713 licensee provides voluntary service; or

2714 (C) some other extenuating circumstances, such as long-term medical disability.

2715 (ii) A licensee described in Subsection (1)(b)(i) may request:

2716 (A) reinstatement of the license no later than one year from the day on which the
2717 license lapses; and

2718 (B) waiver of any of the following imposed for failure to comply with renewal
2719 procedures:

2720 (I) an examination requirement;

2721 (II) reinstatement fees set under Section 31A-3-103; or

2722 (III) other sanction imposed for failure to comply with renewal procedures.

2723 (2) If a license issued under this chapter is voluntarily surrendered, the license may be
2724 reinstated [~~within one year~~];

2725 (a) during the license period in which the license is voluntarily surrendered; and
 2726 (b) no later than one year after the day on which the license is [~~inactivated~~] voluntarily
 2727 surrendered.

2728 Section 24. Section **31A-26-203** is amended to read:

2729 **31A-26-203. Adjuster's license required.**

2730 (1) The commissioner shall issue a license to act as an independent adjuster or public
 2731 adjuster to a person who, as to the license classification applied for under Section 31A-26-204:

2732 (a) satisfies the character requirements under Section 31A-26-205;

2733 (b) satisfies the applicable continuing education requirements under Section
 2734 31A-26-206;

2735 (c) satisfies the applicable examination requirements under Section 31A-26-207;

2736 (d) has not committed an act that is a ground for denial, suspension, or revocation
 2737 provided for in Section 31A-26-213;

2738 [~~(d)~~] (e) if a nonresident, complies with Section 31A-26-208; and

2739 [~~(e)~~] (f) pays the applicable fees under Section 31A-3-103.

2740 (2) (a) This Subsection (2) applies to the following persons:

2741 (i) an applicant for:

2742 (A) an independent adjuster's license; or

2743 (B) a public adjuster's license;

2744 (ii) a licensed independent adjuster; or

2745 (iii) a licensed public adjuster.

2746 (b) A person described in Subsection (2)(a) shall report to the commissioner:

2747 (i) an administrative action taken against the person:

2748 (A) in another jurisdiction; or

2749 (B) by another regulatory agency in this state; and

2750 (ii) a criminal prosecution taken against the person in any jurisdiction.

2751 (c) The report required by Subsection (2)(b) shall:

2752 (i) be filed:

2753 (A) at the time the person applies for an adjustor's license; and

2754 (B) [~~for~~] if an action or prosecution [~~that~~] occurs on or after the day on which the
 2755 person applies for an adjustor's license:

2756 (I) for an administrative action, within 30 days of the final disposition of the
2757 administrative action; or
2758 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
2759 and
2760 (ii) include a copy of the complaint or other relevant legal documents related to the
2761 action or prosecution described in Subsection (2)(b).
2762 (3) (a) The department may require a person applying for a license or for consent to
2763 engage in the business of insurance to submit to a criminal background check as a condition of
2764 receiving a license or consent.
2765 (b) A person, if required to submit to a criminal background check under Subsection
2766 (3)(a), shall:
2767 (i) submit a fingerprint card in a form acceptable to the department; and
2768 (ii) consent to a fingerprint background check by:
2769 (A) the Utah Bureau of Criminal Identification; and
2770 (B) the Federal Bureau of Investigation.
2771 (c) For a person who submits a fingerprint card and consents to a fingerprint
2772 background check under Subsection (3)(b), the department may request concerning a person
2773 applying for an independent or public adjuster's license:
2774 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
2775 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
2776 (ii) complete Federal Bureau of Investigation criminal background checks through the
2777 national criminal history system.
2778 (d) Information obtained by the department from the review of criminal history records
2779 received under this Subsection (3) shall be used by the department for the purposes of:
2780 (i) determining if a person satisfies the character requirements under Section
2781 31A-26-205 for issuance or renewal of a license;
2782 (ii) determining if a person has failed to maintain the character requirements under
2783 Section ~~[31A-25-204]~~ 31A-26-205; and
2784 (iii) preventing ~~[persons]~~ a person who ~~[violates]~~ violates the federal Violent Crime
2785 Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in
2786 the business of insurance in the state.

2787 (e) If the department requests the criminal background information, the department
2788 shall:

2789 (i) pay to the Department of Public Safety the costs incurred by the Department of
2790 Public Safety in providing the department criminal background information under Subsection
2791 (3)(c)(i);

2792 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
2793 of Investigation in providing the department criminal background information under
2794 Subsection (3)(c)(ii); and

2795 (iii) charge the person applying for a license~~[-for renewal of a license,]~~ or for consent
2796 to engage in the business of insurance a fee equal to the aggregate of Subsections (3)(e)(i) and
2797 (ii).

2798 (4) The commissioner may deny a license application to act as an independent adjuster
2799 or public adjuster to a person who, as to the license classification applied for under Section
2800 31A-26-204:

2801 (a) fails to satisfy the requirements in this section; or

2802 (b) commits an act that is a ground for denial, suspension, or revocation provided for in
2803 Section 31A-26-213.

2804 ~~[(4)]~~ (5) Notwithstanding the other provisions of this section, the commissioner may:

2805 (a) issue a license to an applicant for a license for a title insurance classification only
2806 with the concurrence of the Title and Escrow Commission; or

2807 (b) renew a license for a title insurance classification only with the concurrence of the
2808 Title and Escrow Commission.

2809 Section 25. Section **31A-26-204** is amended to read:

2810 **31A-26-204. License classifications.**

2811 A resident or nonresident license issued under this chapter shall be issued under the
2812 classifications described under Subsections (1), (2), and (3). ~~[These classifications are~~
2813 ~~intended to describe]~~ A classification describes the matters to be considered under ~~[any]~~ a
2814 prerequisite education ~~[and]~~ or examination required of license applicants under Sections
2815 31A-26-206 and 31A-26-207.

2816 (1) Independent adjuster license classifications include:

2817 (a) accident and health insurance, including related service insurance under Chapter 7,

2818 Nonprofit Health Service Insurance [~~Corporation~~] Corporations, or Chapter 8, Health
2819 Maintenance Organizations and Limited Health Plans;

2820 (b) property and [~~liability~~] casualty insurance, [~~which includes:~~] including a surety or
2821 other bond;

2822 [~~(i) property insurance;~~]

2823 [~~(ii) liability insurance;~~]

2824 [~~(iii) surety bonds; and~~]

2825 [~~(iv) policies containing combinations or variations of these coverages;~~]

2826 [~~(e) service insurance;~~]

2827 [~~(d) title insurance;~~]

2828 [~~(e) credit insurance; and~~]

2829 (c) crop insurance; and

2830 [~~(f)~~] (d) workers' compensation insurance.

2831 (2) Public adjuster license classifications include:

2832 (a) accident and health insurance, including related service insurance under Chapter 7
2833 or 8;

2834 (b) property and [~~liability~~] casualty insurance, [~~which includes:~~] including a surety or
2835 other bond;

2836 [(i) property insurance;]

2837 [(ii) liability insurance;]

2838 [(iii) surety bonds; and]

2839 [(iv) policies containing combinations or variations of these coverages;]

2840 [(e) service insurance;]

2841 [(d) title insurance;]

2842 [(e) credit insurance; and]

2843 (c) crop insurance; and

2844 [~~(f)~~] (d) workers' compensation insurance.

2845 (3) (a) The commissioner may by rule:

2846 (i) recognize other independent adjuster or public adjuster license classifications as to
2847 other kinds of insurance not listed under Subsection (1); and

2848 (ii) create license classifications that grant only part of the authority arising under

2849 another license class.

2850 (b) Notwithstanding Subsection (3)(a), for purpose of title insurance, the Title and
2851 Escrow Commission may make the rules provided for in Subsection (3)(a), subject to Section
2852 31A-2-404.

2853 Section 26. Section **31A-26-210** is amended to read:

2854 **31A-26-210. Reports from organizations licensed as adjusters.**

2855 ~~[(1) Organizations licensed as adjusters under Section 31A-26-203 shall report to the~~
2856 ~~commissioner, at the times and in the detail and form as prescribed by rule, every change in the~~
2857 ~~list of natural person adjusters authorized to act in that position for the organization.]~~

2858 ~~[(2) Each organization licensed as an adjuster shall, at the time of paying its license~~
2859 ~~continuation fee under Section 31A-3-103, report to the commissioner, in the form established~~
2860 ~~by the commissioner by rule, all natural person adjusters acting in that position for the~~
2861 ~~organization.]~~

2862 ~~[(3) Organizations]~~

2863 (1) An organization licensed as an adjuster under Section 31A-26-203 shall designate
2864 an individual who has an individual adjuster license to act on the organization's behalf in order
2865 for the licensee to do business for the organization in this state.

2866 (2) An organization licensed under this chapter shall report to the commissioner, at
2867 intervals and in the form the commissioner establishes by rule:

2868 (a) a new designation; and

2869 (b) a terminated designation.

2870 (3) (a) An organization licensed under this chapter shall report to the commissioner the
2871 cause of termination of a designation if:

2872 (i) the reason for termination is a reason described in Subsection 31A-26-213(5)(b); or

2873 (ii) the organization has knowledge that the individual licensee is found to have
2874 engaged in an activity described in Subsection 31A-26-213(5)(b) by:

2875 (A) a court;

2876 (B) a government body; or

2877 (C) a self-regulatory organization, which the commissioner may define by rule made in
2878 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2879 (b) The information provided the commissioner under Subsection (3)(a) is a private

2880 record under Title 63G, Chapter 2, Government Records Access and Management Act.

2881 (c) An organization is immune from civil action, civil penalty, or damages if the
2882 organization complies in good faith with this Subsection (3) in reporting to the commissioner
2883 the cause of termination of a designation.

2884 (d) Notwithstanding any other provision in this section, an organization is not immune
2885 from an action or resulting penalty imposed on the reporting organization as a result of a
2886 proceeding brought by or on behalf of the department if the action is based on evidence other
2887 than the report submitted in compliance with this Subsection (3).

2888 (4) An organization licensed under this chapter may act in a capacity for which it is
2889 licensed only through an individual who is licensed under this chapter to act in the same
2890 capacity.

2891 (5) An organization licensed under this chapter shall designate and report promptly to
2892 the commissioner the name of [at least one natural person] the designated responsible licensed
2893 individual who has authority to act on behalf of the organization in all matters pertaining to
2894 compliance with this title and orders of the commissioner.

2895 (6) If an agency designates a licensee in a report submitted under Subsection (2) or (5),
2896 there is a rebuttable presumption that the designated licensee acts on behalf of the agency.

2897 ~~[(4) Where]~~ (7) (a) When a license is held by an organization, both the organization
2898 itself and [any persons named on] an individual designated under the license shall, for purposes
2899 of this section, be considered to be the holders of the organization license.

2900 (b) If [a person named on] an individual designated under the organization license
2901 commits [any] an act or fails to perform [any] a duty [which] that is a ground for suspending,
2902 revoking, or limiting the organization license, the commissioner may suspend, revoke, or limit
2903 the license of [that person or the organization, or both]:

2904 (i) that individual;

2905 (ii) the organization, if the organization:

2906 (A) is reckless or negligent in its supervision of the individual; or

2907 (B) knowingly participates in the act or failure to act that is the ground for suspending,
2908 revoking, or limiting the license; or

2909 (iii) (A) the individual; and

2910 (B) the organization, if the organization meets the requirements of Subsection

2911 (7)(b)(ii).

2912 Section 27. Section **31A-26-213** is amended to read:

2913 **31A-26-213. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
2914 **terminating a license -- Rulemaking for renewal or reinstatement.**

2915 (1) A license type issued under this chapter remains in force until:

2916 (a) revoked or suspended under Subsection (5);

2917 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2918 administrative action;

2919 (c) the licensee dies or is adjudicated incompetent as defined under:

2920 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2921 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2922 Minors;

2923 (d) lapsed under Section 31A-26-214.5; or

2924 (e) voluntarily surrendered.

2925 (2) The following may be reinstated within one year after the day on which the license
2926 is [~~inactivated~~] no longer in force:

2927 (a) a lapsed license; or

2928 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
2929 not be reinstated after the license period in which it is voluntarily surrendered.

2930 (3) Unless otherwise stated in the written agreement for the voluntary surrender of a
2931 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2932 department from pursuing additional disciplinary or other action authorized under:

2933 (a) this title; or

2934 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2935 Administrative Rulemaking Act.

2936 (4) A license classification issued under this chapter remains in force until:

2937 (a) the qualifications pertaining to a license classification are no longer met by the
2938 licensee; or

2939 (b) the supporting license type:

2940 (i) is revoked or suspended under Subsection (5); or

2941 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of

2942 administrative action.

2943 (5) (a) If the commissioner makes a finding under Subsection (5)(b) ~~[after]~~ as part of
2944 an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2945 commissioner may:

2946 (i) revoke:

2947 (A) a license; or

2948 (B) a license classification;

2949 (ii) suspend for a specified period of 12 months or less:

2950 (A) a license; or

2951 (B) a license classification; ~~[or]~~

2952 (iii) limit in whole or in part:

2953 (A) a license; or

2954 (B) a license classification~~[-];~~ or

2955 (iv) deny a license application.

2956 (b) The commissioner may take an action described in Subsection (5)(a) if the
2957 commissioner finds that the licensee:

2958 (i) is unqualified for a license or license classification under ~~[Sections]~~ Section
2959 31A-26-202, 31A-26-203, ~~[and]~~ 31A-26-204, or 31A-26-205;

2960 (ii) has violated:

2961 (A) an insurance statute;

2962 (B) a rule that is valid under Subsection 31A-2-201(3); or

2963 (C) an order that is valid under Subsection 31A-2-201(4);

2964 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
2965 delinquency proceedings in any state;

2966 (iv) fails to pay ~~[any]~~ a final judgment rendered against the person in this state within
2967 60 days after the judgment became final;

2968 (v) fails to meet the same good faith obligations in claims settlement that is required of
2969 admitted insurers;

2970 (vi) is affiliated with and under the same general management or interlocking
2971 directorate or ownership as another insurance adjuster that transacts business in this state
2972 without a license;

- 2973 (vii) refuses:
- 2974 (A) to be examined; or
- 2975 (B) to produce its accounts, records, and files for examination;
- 2976 (viii) has an officer who refuses to:
- 2977 (A) give information with respect to the insurance adjuster's affairs; or
- 2978 (B) perform any other legal obligation as to an examination;
- 2979 (ix) provides information in the license application that is:
- 2980 (A) incorrect;
- 2981 (B) misleading;
- 2982 (C) incomplete; or
- 2983 (D) materially untrue;
- 2984 (x) has violated [~~any~~] an insurance law, valid rule, or valid order of another state's
- 2985 insurance department;
- 2986 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 2987 (xii) has improperly withheld, misappropriated, or converted [~~any~~] monies or
- 2988 properties received in the course of doing insurance business;
- 2989 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 2990 (A) insurance contract; or
- 2991 (B) application for insurance;
- 2992 (xiv) has been convicted of a felony;
- 2993 (xv) has admitted or been found to have committed [~~any~~] an insurance unfair trade
- 2994 practice or fraud;
- 2995 (xvi) in the conduct of business in this state or elsewhere has:
- 2996 (A) used fraudulent, coercive, or dishonest practices; or
- 2997 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 2998 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
- 2999 any other state, province, district, or territory;
- 3000 (xviii) has forged another's name to:
- 3001 (A) an application for insurance; or
- 3002 (B) [~~any~~] a document related to an insurance transaction;
- 3003 (xix) has improperly used notes or any other reference material to complete an

3004 examination for an insurance license;

3005 (xx) has knowingly accepted insurance business from an individual who is not

3006 licensed;

3007 (xxi) has failed to comply with an administrative or court order imposing a child

3008 support obligation;

3009 (xxii) has failed to:

3010 (A) pay state income tax; or

3011 (B) comply with ~~[any]~~ an administrative or court order directing payment of state

3012 income tax;

3013 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and

3014 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

3015 (xxiv) has engaged in methods and practices in the conduct of business that endanger

3016 the legitimate interests of customers and the public.

3017 (c) For purposes of this section, if a license is held by an agency, both the agency itself

3018 and any ~~[natural person named on]~~ individual designated under the license are considered to be

3019 the holders of the license.

3020 (d) If ~~[a natural person named on]~~ an individual designated under the agency license

3021 commits ~~[any]~~ an act or fails to perform ~~[any]~~ a duty that is a ground for suspending, revoking,

3022 or limiting the ~~[natural person's]~~ individual's license, the commissioner may suspend, revoke,

3023 or limit the license of:

3024 (i) the ~~[natural person]~~ individual;

3025 (ii) the agency, if the agency:

3026 (A) is reckless or negligent in its supervision of the ~~[natural person]~~ individual; or

3027 (B) knowingly participated in the act or failure to act that is the ground for suspending,

3028 revoking, or limiting the license; or

3029 (iii) (A) the ~~[natural person]~~ individual; and

3030 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

3031 (6) A licensee under this chapter is subject to the penalties for conducting an insurance

3032 business without a license if:

3033 (a) the licensee's license is:

3034 (i) revoked;

3035 (ii) suspended;
3036 (iii) limited;
3037 (iv) surrendered in lieu of administrative action;
3038 (v) lapsed; or
3039 (vi) voluntarily surrendered; and
3040 (b) the licensee:
3041 (i) continues to act as a licensee; or
3042 (ii) violates the terms of the license limitation.
3043 (7) A licensee under this chapter shall immediately report to the commissioner:
3044 (a) a revocation, suspension, or limitation of the person's license in any other state, the
3045 District of Columbia, or a territory of the United States;
3046 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
3047 the District of Columbia, or a territory of the United States; or
3048 (c) a judgment or injunction entered against that person on the basis of conduct
3049 involving:
3050 (i) fraud;
3051 (ii) deceit;
3052 (iii) misrepresentation; or
3053 (iv) a violation of an insurance law or rule.
3054 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
3055 license in lieu of administrative action may specify a time not to exceed five years within
3056 which the former licensee may not apply for a new license.
3057 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
3058 former licensee may not apply for a new license for five years without the express approval of
3059 the commissioner.
3060 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
3061 a license issued under this part if so ordered by a court.
3062 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
3063 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
3064 Section 28. Section **31A-26-214.5** is amended to read:
3065 **31A-26-214.5. License lapse and voluntary surrender.**

3066 (1) (a) A license issued under this chapter shall lapse if the licensee fails to:
3067 (i) pay when due a fee under Section 31A-3-103;
3068 (ii) complete continuing education requirements under Section 31A-26-206 before
3069 submitting the license renewal application;
3070 (iii) submit a completed renewal application as required by Section 31A-26-202;
3071 (iv) submit additional documentation required to complete the licensing process as
3072 related to a specific license type or license classification; or
3073 (v) maintain an active license in a resident state if the licensee is a nonresident
3074 licensee.
3075 (b) (i) A licensee whose license lapses due to the following may request an action
3076 described in Subsection (1)(b)(ii):
3077 (A) military service;
3078 (B) voluntary service for a period of time designated by the person for whom the
3079 licensee provides voluntary service; or
3080 (C) some other extenuating circumstances, such as long-term medical disability.
3081 (ii) A licensee described in Subsection (1)(b)(i) may request:
3082 (A) reinstatement of the license no later than one year after the day on which the
3083 license lapses; and
3084 (B) waiver of any of the following imposed for failure to comply with renewal
3085 procedures:
3086 (I) an examination requirement;
3087 (II) reinstatement fees set under Section 31A-3-103;
3088 (III) continuing education requirements; or
3089 (IV) other sanction imposed for failure to comply with renewal procedures.
3090 (2) If a license [~~type or license classification~~] issued under this chapter is voluntarily
3091 surrendered, the license [~~type or license classification~~] may be reinstated [~~within one year~~]:
3092 (a) during the license period in which it is voluntarily surrendered; and
3093 (b) no later than one year after the day on which the license [~~type or license~~
3094 classification is inactivated] is voluntarily surrendered.
3095 Section 29. Section **31A-35-405** is amended to read:
3096 **31A-35-405. Issuance of license -- Denial -- Right of appeal.**

3097 (1) Upon a determination by the board that a person applying for a bail bond surety
 3098 company license meets the requirements for issuance of a license under this chapter, the
 3099 commissioner shall issue to that person a bail bond surety company license.

3100 (2) (a) If the commissioner denies an application for a bail bond surety company
 3101 license under this chapter, the commissioner shall provide prompt written notification to the
 3102 person applying for licensure:

3103 (i) stating the grounds for denial; and

3104 (ii) notifying the person applying for licensure as a bail bond surety company that:

3105 (A) the person is entitled to a hearing if that person wants to contest the denial; and

3106 (B) if the person wants a hearing, the person shall submit the request in writing to the
 3107 commissioner within [~~30~~] 15 days after the issuance of the denial.

3108 (b) The department shall schedule a hearing described in Subsection (2)(a) [~~shall be~~
 3109 ~~scheduled not~~] no later than 60 days after the commissioner's receipt of the request.

3110 (c) The department shall hear the appeal, and may:

3111 (i) return the case to the commissioner for reconsideration;

3112 (ii) modify the commissioner's decision; or

3113 (iii) reverse the commissioner's decision.

3114 (3) A decision under this section is subject to review under Title 63G, Chapter 4,
 3115 Administrative Procedures Act.

3116 Section 30. Section ~~31A-35-406~~ is amended to read:

3117 **31A-35-406. Renewal and reinstatement.**

3118 (1) (a) To renew its license under this chapter, on or before the last day of the month in
 3119 which the license expires a bail bond surety company shall:

3120 (i) complete and submit a renewal application to the department; and

3121 (ii) pay the department the applicable renewal fee established in accordance with
 3122 Section 63J-1-303.

3123 (b) A bail bond surety company shall renew its license under this chapter annually as
 3124 established by department rule, regardless of when the license is issued.

3125 [~~(2) A bail bond surety company may renew a bail bond surety company license not~~
 3126 ~~renewed under Subsection (1) within 30 days after the expiration date by:]~~

3127 [~~(a) submitting a renewal application required by Subsection (1); and]~~

3128 [~~(b)~~] paying a late renewal fee established in accordance with Section 63J-1-303.;

3129 [~~(3)~~] (2) A bail bond surety company may apply for reinstatement of an expired bail
3130 bond surety company license [~~between 31 days and six months~~] within one year following the
3131 expiration of the license under Subsection (1) by:

3132 (a) submitting the renewal application required by Subsection (1); and

3133 (b) paying a license reinstatement fee established in accordance with Section
3134 63J-1-303.

3135 [~~(4)~~] (3) If a bail bond surety company license has been expired for more than [~~six~~
3136 ~~months~~] one year, the person applying for reinstatement of the bail bond surety license shall:

3137 (a) submit [~~an~~] a new application form to the commissioner; and

3138 (b) pay the application fee established in accordance with Section 63J-1-303.

3139 [~~(5)~~] (4) If a bail bond surety company license is suspended, the applicant may not
3140 submit an application for a bail bond surety company license until after the end of the period of
3141 suspension.

3142 [~~(6)~~] (5) Fees collected under this section shall be deposited in the restricted account
3143 created in Section 31A-35-407.

3144 Section 31. Section **31A-37-502** is amended to read:

3145 **31A-37-502. Examination.**

3146 (1) (a) As provided in this section, the commissioner or a person appointed by the
3147 commissioner, shall examine each captive insurance company in each three-year period.

3148 (b) The three-year period described in Subsection (1)(a) shall be determined on the
3149 basis of three full annual accounting periods of operation.

3150 (c) The examination is to be made as of:

3151 (i) December 31 of the full three-year period; or

3152 (ii) the last day of the month of an annual accounting period authorized for a captive
3153 insurance company under this section.

3154 (d) In addition to an examination required under this Subsection (1), the commissioner,
3155 or a person appointed by the commissioner may examine a captive insurance company
3156 whenever the commissioner determines it to be prudent.

3157 (2) During an examination under this section the commissioner, or a person appointed
3158 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance

3159 company to ascertain:

3160 (a) the financial condition of the captive insurance company;

3161 (b) the ability of the captive insurance company to fulfill the obligations of the captive
3162 insurance company; and

3163 (c) whether the captive insurance company has complied with this chapter.

3164 (3) The commissioner upon application may enlarge the three-year period described in
3165 Subsection (1) to five years, if a captive insurance company is subject to a comprehensive
3166 annual audit during that period:

3167 (a) of a scope satisfactory to the commissioner; and

3168 (b) performed by independent auditors approved by the commissioner.

3169 (4) The commissioner may accept a comprehensive annual independent audit in lieu of
3170 an examination:

3171 (a) of a scope satisfactory to the commissioner; and

3172 (b) performed by an independent auditor approved by the commissioner.

3173 ~~[(4)]~~ (5) A captive insurance company that is inspected and examined under this
3174 section shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an
3175 inspection and examination.

3176 Section 32. Section **31A-37a-402** is amended to read:

3177 **31A-37a-402. Permitted reinsurance.**

3178 (1) (a) A special purpose financial captive insurance company may reinsure only the
3179 risks of a ceding insurer, pursuant to a reinsurance contract.

3180 (b) A special purpose financial captive insurance company may not issue a contract of
3181 insurance or a contract for assumption of risk or indemnification of loss other than a
3182 reinsurance contract described in Subsection (1)(a).

3183 (2) Unless otherwise approved in advance by the commissioner, a special purpose
3184 financial captive insurance company may not assume or retain exposure to insurance or
3185 reinsurance losses for its own account that are not funded by:

3186 (a) proceeds from a special purpose financial captive insurance company insurance
3187 securitization;

3188 (b) a letter of credit; ~~[or]~~

3189 (c) an asset described in Subsection 31A-37a-102(1)(c);

3190 (d) a premium or another amount payable by the ceding insurer to the special purpose
3191 financial captive insurance company pursuant to the reinsurance contract; [~~and~~] or

3192 (e) a return on investment of an item described in Subsections (2)(a) through (d).

3193 (3) (a) A reinsurance contract shall contain a provision reasonably required or
3194 approved by the commissioner.

3195 (b) A requirement described in Subsection (3)(a) shall take into account the laws
3196 applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance
3197 provided under the reinsurance contract.

3198 (4) Subject to the prior approval of the commissioner, a special purpose financial
3199 captive insurance company may cede risks assumed through a reinsurance contract to one or
3200 more reinsurers through the purchase of reinsurance.

3201 (5) (a) This Subsection (5) applies to a contract or commercial activity that:

3202 (i) relates to or is incidental to a reinsurance contract; and

3203 (ii) is necessary to fulfill the purposes of:

3204 (A) a reinsurance contract;

3205 (B) insurance securitization; and

3206 (C) this chapter.

3207 (b) A special purpose financial captive insurance company may engage in a contract or
3208 commercial activity described in Subsection (5)(a) if the contract or commercial activity is:

3209 (i) in the special purpose financial captive insurance company's plan of operation; or

3210 (ii) approved in advance by the commissioner.

3211 (c) A contract or commercial activity described in Subsection (5)(a) includes:

3212 (i) entering into a reinsurance contract;

3213 (ii) issuing a special purpose financial captive insurance company security;

3214 (iii) complying with a term of a contract or security described in Subsection (5)(c)(i) or

3215 (ii);

3216 (iv) entering into:

3217 (A) a trust;

3218 (B) a guaranteed investment contract;

3219 (C) a swap;

3220 (D) a derivative transaction;

- 3221 (E) a tax transaction;
- 3222 (F) an administration transaction;
- 3223 (G) a reimbursement transaction; or
- 3224 (H) a fiscal agent transaction;
- 3225 (v) complying with a trust indenture, reinsurance, or retrocession; and
- 3226 (vi) another agreement necessary or incidental to effect an insurance securitization in
- 3227 compliance with:
- 3228 (A) the special purpose financial captive insurance company's plan of operation; and
- 3229 (B) this chapter.
- 3230 (6) Unless otherwise approved in advance by the commissioner, a reinsurance contract
- 3231 may not contain a provision for payment by the special purpose financial captive insurance
- 3232 company in discharge of its obligations under the reinsurance contract to a person other than
- 3233 the ceding insurer or any receiver of the ceding insurer.
- 3234 (7) A special purpose financial captive insurance company shall notify the
- 3235 commissioner immediately of an action by a ceding insurer or another person to foreclose on or
- 3236 otherwise take possession of collateral provided by the special purpose financial captive
- 3237 insurance company to secure an obligation of the special purpose financial captive insurance
- 3238 company.
- 3239 Section 33. Section **63G-2-302** is amended to read:
- 3240 **63G-2-302. Private records.**
- 3241 (1) The following records are private:
- 3242 (a) records concerning an individual's eligibility for unemployment insurance benefits,
- 3243 social services, welfare benefits, or the determination of benefit levels;
- 3244 (b) records containing data on individuals describing medical history, diagnosis,
- 3245 condition, treatment, evaluation, or similar medical data;
- 3246 (c) records of publicly funded libraries that when examined alone or with other records
- 3247 identify a patron;
- 3248 (d) records received or generated for a Senate or House Ethics Committee concerning
- 3249 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
- 3250 meeting, if the ethics committee meeting was closed to the public;
- 3251 (e) records received or generated for a Senate confirmation committee concerning

3252 character, professional competence, or physical or mental health of an individual:

3253 (i) if prior to the meeting, the chair of the committee determines release of the records:

3254 (A) reasonably could be expected to interfere with the investigation undertaken by the

3255 committee; or

3256 (B) would create a danger of depriving a person of a right to a fair proceeding or

3257 impartial hearing; and

3258 (ii) after the meeting, if the meeting was closed to the public;

3259 (f) employment records concerning a current or former employee of, or applicant for

3260 employment with, a governmental entity that would disclose that individual's home address,

3261 home telephone number, Social Security number, insurance coverage, marital status, or payroll

3262 deductions;

3263 (g) records or parts of records under Section 63G-2-303 that a current or former

3264 employee identifies as private according to the requirements of that section;

3265 (h) that part of a record indicating a person's Social Security number or federal

3266 employer identification number if provided under Section 31A-23a-104, 31A-25-202,

3267 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

3268 (i) that part of a voter registration record identifying a voter's driver license or

3269 identification card number, Social Security number, or last four digits of the Social Security

3270 number;

3271 (j) a record that:

3272 (i) contains information about an individual;

3273 (ii) is voluntarily provided by the individual; and

3274 (iii) goes into an electronic database that:

3275 (A) is designated by and administered under the authority of the Chief Information

3276 Officer; and

3277 (B) acts as a repository of information about the individual that can be electronically

3278 retrieved and used to facilitate the individual's online interaction with a state agency;

3279 (k) information provided to the Commissioner of Insurance under:

3280 (i) Subsection 31A-23a-115(2)(a); [~~or~~]

3281 (ii) Subsection 31A-23a-302(3); [~~and~~] or

3282 (iii) Subsection 31A-26-210(3); and

3283 (1) information obtained through a criminal background check under Title 11, Chapter
3284 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

3285 (2) The following records are private if properly classified by a governmental entity:

3286 (a) records concerning a current or former employee of, or applicant for employment
3287 with a governmental entity, including performance evaluations and personal status information
3288 such as race, religion, or disabilities, but not including records that are public under Subsection
3289 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

3290 (b) records describing an individual's finances, except that the following are public:

3291 (i) records described in Subsection 63G-2-301(2);

3292 (ii) information provided to the governmental entity for the purpose of complying with
3293 a financial assurance requirement; or

3294 (iii) records that must be disclosed in accordance with another statute;

3295 (c) records of independent state agencies if the disclosure of those records would
3296 conflict with the fiduciary obligations of the agency;

3297 (d) other records containing data on individuals the disclosure of which constitutes a
3298 clearly unwarranted invasion of personal privacy;

3299 (e) records provided by the United States or by a government entity outside the state
3300 that are given with the requirement that the records be managed as private records, if the
3301 providing entity states in writing that the record would not be subject to public disclosure if
3302 retained by it; and

3303 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
3304 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
3305 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

3306 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
3307 records, statements, history, diagnosis, condition, treatment, and evaluation.

3308 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
3309 doctors, or affiliated entities are not private records or controlled records under Section
3310 63G-2-304 when the records are sought:

3311 (i) in connection with any legal or administrative proceeding in which the patient's
3312 physical, mental, or emotional condition is an element of any claim or defense; or

3313 (ii) after a patient's death, in any legal or administrative proceeding in which any party

3314 relies upon the condition as an element of the claim or defense.

3315 (c) Medical records are subject to production in a legal or administrative proceeding

3316 according to state or federal statutes or rules of procedure and evidence as if the medical

3317 records were in the possession of a nongovernmental medical care provider.

Legislative Review Note
as of 11-20-08 4:25 PM

Office of Legislative Research and General Counsel

H.B. 52 - Insurance Code Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Businesses and individuals may be impacted by regulatory and reporting requirements included in the bill.
