

**CONSOLIDATION OF INSURANCE DEPARTMENT INTO
THE DEPARTMENT OF COMMERCE**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to commerce and insurance to merge the Utah Insurance Department into the Department of Commerce, including providing for a transition.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ creates the Division of Insurance within the Department of Commerce, including:
 - providing for a transition;
 - providing for the appointment of a commissioner by the executive director;
 - addressing staff; and
 - addressing money collected under the Insurance Code; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:



28 AMENDS:

- 29 **7-1-104**, as last amended by Laws of Utah 2009, Chapter 356
- 30 **7-1-1006**, as last amended by Laws of Utah 2010, Chapter 65
- 31 **7-5-1**, as last amended by Laws of Utah 2003, Chapter 301
- 32 **13-1-2**, as last amended by Laws of Utah 2010, Chapter 278
- 33 **17B-2a-818.5**, as last amended by Laws of Utah 2010, Chapter 229
- 34 **19-1-206**, as last amended by Laws of Utah 2010, Chapters 218 and 229
- 35 **26-1-37**, as last amended by Laws of Utah 2010, Chapter 68
- 36 **26-18-14**, as enacted by Laws of Utah 2008, Chapter 383
- 37 **26-33a-106.1**, as last amended by Laws of Utah 2010, Chapter 68
- 38 **26-45-104**, as enacted by Laws of Utah 2002, Chapter 120
- 39 **31A-1-301**, as last amended by Laws of Utah 2010, Chapter 10
- 40 **34A-2-103**, as last amended by Laws of Utah 2008, Chapters 250, 263, and 318
- 41 **34A-2-107**, as last amended by Laws of Utah 2010, Chapter 286
- 42 **34A-2-202**, as last amended by Laws of Utah 2009, Chapter 212
- 43 **35A-1-104.5**, as enacted by Laws of Utah 2008, Chapter 383
- 44 **35A-4-312**, as last amended by Laws of Utah 2009, Chapter 349
- 45 **36-12-5**, as last amended by Laws of Utah 2008, Chapter 142
- 46 **41-3-201**, as last amended by Laws of Utah 2010, Chapter 393
- 47 **49-20-405**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 48 **58-9-302**, as last amended by Laws of Utah 2009, Chapter 183
- 49 **58-9-701**, as last amended by Laws of Utah 2008, Chapter 382
- 50 **58-56-17**, as last amended by Laws of Utah 2009, Chapter 72
- 51 **59-9-105**, as last amended by Laws of Utah 2002, Chapter 308
- 52 **59-10-1023**, as enacted by Laws of Utah 2008, Chapter 389
- 53 **63A-5-205**, as last amended by Laws of Utah 2010, Chapter 229
- 54 **63C-6-101**, as last amended by Laws of Utah 2007, Chapter 66
- 55 **63C-9-403**, as last amended by Laws of Utah 2010, Chapter 229
- 56 **63G-2-302**, as last amended by Laws of Utah 2010, Chapters 36 and 379
- 57 **63J-1-201**, as last amended by Laws of Utah 2010, Chapter 415
- 58 **63K-1-102**, as last amended by Laws of Utah 2010, Chapter 334

- 59 **63M-1-2503**, as enacted by Laws of Utah 2008, Chapter 383
- 60 **63M-1-2504**, as last amended by Laws of Utah 2010, Chapter 68
- 61 **63M-1-2506**, as last amended by Laws of Utah 2010, Chapter 68
- 62 **67-19-6.7**, as last amended by Laws of Utah 2010, Chapter 249
- 63 **67-19c-101**, as last amended by Laws of Utah 2006, Chapter 139
- 64 **67-22-2**, as last amended by Laws of Utah 2009, Chapter 369
- 65 **70C-6-105**, as enacted by Laws of Utah 1985, Chapter 159
- 66 **70C-6-106**, as enacted by Laws of Utah 1985, Chapter 159
- 67 **70C-6-203**, as last amended by Laws of Utah 2004, Chapter 90
- 68 **72-6-107.5**, as last amended by Laws of Utah 2010, Chapter 229
- 69 **76-6-521**, as last amended by Laws of Utah 2004, Chapter 104
- 70 **76-10-915**, as last amended by Laws of Utah 2010, Chapter 154
- 71 **77-20-5**, as last amended by Laws of Utah 1998, Chapter 293
- 72 **78B-3-403**, as last amended by Laws of Utah 2009, Chapter 220
- 73 **78B-3-413**, as last amended by Laws of Utah 2009, Chapter 146
- 74 **79-2-404**, as last amended by Laws of Utah 2010, Chapter 229

75 ENACTS:

- 76 **31A-2a-101**, Utah Code Annotated 1953
- 77 **31A-2a-102**, Utah Code Annotated 1953
- 78 **31A-2a-103**, Utah Code Annotated 1953
- 79 **31A-2a-201**, Utah Code Annotated 1953
- 80 **31A-2a-202**, Utah Code Annotated 1953
- 81 **31A-2a-203**, Utah Code Annotated 1953
- 82 **31A-2a-204**, Utah Code Annotated 1953

83 REPEALS:

- 84 **31A-2-102**, as last amended by Laws of Utah 2002, Chapter 176
- 85 **31A-2-103**, as last amended by Laws of Utah 1994, Chapter 128
- 86 **31A-2-105**, as last amended by Laws of Utah 1993, Chapter 305



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

89 Section 1. Section **7-1-104** is amended to read:

90 **7-1-104. Exemptions from application of title.**

91 (1) This title does not apply to:

92 (a) investment companies registered under the Investment Company Act of 1940, 15
93 U.S.C. Sec. 80a-1 et seq.;

94 (b) securities brokers and dealers registered pursuant to:

95 (i) Title 61, Chapter 1, Utah Uniform Securities Act; or

96 (ii) the federal Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.;

97 (c) depository or other institutions performing transaction account services, including
98 third party transactions, in connection with:

99 (i) the purchase and redemption of investment company shares; or

100 (ii) access to a margin or cash securities account maintained by a person identified in
101 Subsection (1)(b); or

102 (d) insurance companies selling interests in an investment company or "separate
103 account" and subject to regulation by the [~~Utah Insurance Department~~] Department of
104 Commerce under Title 31A, Insurance Code, which may delegate this function to the Division
105 of Insurance.

106 (2) (a) An institution, organization, or person is not exempt from this title if, within
107 this state, it holds itself out to the public as receiving and holding deposits from residents of
108 this state, whether evidenced by a certificate, promissory note, or otherwise.

109 (b) An investment company is not exempt from this title unless the investment
110 company is registered with the United States Securities and Exchange Commission under the
111 Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., and is advised by an
112 investment adviser:

113 (i) which is registered with the United States Securities and Exchange Commission
114 under the Investment Advisers Act of 1940, 15 U.S.C. Sec. 80b-1 et seq.; and

115 (ii) which advises investment companies and other accounts with a combined value of
116 at least \$50,000,000.

117 Section 2. Section **7-1-1006** is amended to read:

118 **7-1-1006. Inapplicable to certain official investigations.**

119 (1) Sections 7-1-1002 and 7-1-1003 do not apply if an examination of a record is a part
120 of an official investigation by:

- 121 (a) local police;
- 122 (b) a sheriff;
- 123 (c) a peace officer;
- 124 (d) a city attorney;
- 125 (e) a county attorney;
- 126 (f) a district attorney;
- 127 (g) the attorney general;
- 128 (h) the Department of Public Safety;
- 129 (i) the Office of Recovery Services of the Department of Human Services;
- 130 [~~(j)~~ the Insurance Department;]
- 131 [~~(k)~~ (j) the Department of Commerce;
- 132 [~~(l)~~ (k) the Benefit Payment Control Unit or the Payment Error Prevention Unit of the
- 133 Department of Workforce Services;
- 134 [~~(n)~~ (l) the state auditor; or
- 135 [~~(o)~~ (m) the State Tax Commission.

136 (2) Except for the Office of Recovery Services, if a governmental entity listed in
 137 Subsection (1) seeks a record, the entity shall obtain the record as follows:

- 138 (a) if the record is a nonprotected record, by request in writing that:
 - 139 (i) certifies that an official investigation is being conducted; and
 - 140 (ii) is signed by a representative of the governmental entity that is conducting the
 - 141 official investigation; or
- 142 (b) if the record is a protected record, by obtaining:
 - 143 (i) a subpoena authorized by statute;
 - 144 (ii) other legal process:
 - 145 (A) ordered by a court of competent jurisdiction; and
 - 146 (B) served upon the financial institution; or
 - 147 (iii) written permission from all account holders of the account referenced in the record
 - 148 to be examined.

149 (3) If the Office of Recovery Services seeks a record, the Office of Recovery Services
 150 shall obtain the record pursuant to:

- 151 (a) Subsection 62A-11-104(1)(g);

- 152 (b) Section 62A-11-304.1;
- 153 (c) Section 62A-11-304.5; or
- 154 (d) Title IV, Part D of the Social Security Act as codified in 42 U.S.C. Sec. 651 et seq.

155 (4) A financial institution may not give notice to an account holder or person named or
 156 referenced within the record disclosed pursuant to Subsection (2)(a).

157 (5) In accordance with Section 7-1-1004, the governmental entity conducting the
 158 official investigation that obtains a record from a financial institution under this section shall
 159 reimburse the financial institution for costs reasonably and directly incurred by the financial
 160 institution.

161 Section 3. Section **7-5-1** is amended to read:

162 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

163 (1) As used in this chapter:

164 (a) "Business trust" means an entity engaged in a trade or business that is created by a
 165 declaration of trust that transfers property to trustees, to be held and managed by them for the
 166 benefit of persons holding certificates representing the beneficial interest in the trust estate and
 167 assets.

168 (b) "Trust business" means, except as provided in Subsection (1)(c), a business in
 169 which one acts in any agency or fiduciary capacity, including that of personal representative,
 170 executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under
 171 appointment as trustee for any purpose permitted by law, including the definition of "trust" set
 172 forth in [~~Subsection~~] Section 75-1-201[(53)].

173 (c) "Trust business" does not include the following means of holding funds, assets, or
 174 other property:

175 (i) funds held in a client trust account by an attorney authorized to practice law in this
 176 state;

177 (ii) funds held in connection with the purchase or sale of real estate by a person
 178 authorized to act as a real estate broker in this state;

179 (iii) funds or other assets held in escrow by a person authorized by the department in
 180 accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the [~~Utah~~
 181 ~~Insurance Department~~] Department of Commerce under Title 31A, Insurance Code, which may
 182 delegate this function to the Division of Insurance, to act as an escrow agent in this state;

- 183 (iv) funds held by a homeowners' association or similar organization to pay
184 maintenance and other related costs for commonly owned property;
- 185 (v) funds held in connection with the collection of debts or payments on loans by a
186 person acting solely as the agent or representative or otherwise at the sole direction of the
187 person to which the debt or payment is owed, including funds held by an escrow agent for
188 payment of taxes or insurance;
- 189 (vi) funds and other assets held in trust on an occasional or isolated basis by a person
190 who does not represent that he is engaged in the trust business in Utah;
- 191 (vii) funds or other assets found by a court to be held in an implied, resulting, or
192 constructive trust;
- 193 (viii) funds or other assets held by a court appointed conservator, guardian, receiver,
194 trustee, or other fiduciary if:
 - 195 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the
196 court in the same manner as a personal representative under Title 75, Chapter 3, Part 5,
197 Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure;
 - 198 (B) the conservator, trustee, or other fiduciary is a certified public accountant or has
199 qualified for and received a designation as a certified financial planner, chartered financial
200 consultant, certified financial analyst, or similar designation suitable to the court, that
201 evidences the conservator's, trustee's, or other fiduciary's professional competence to manage
202 financial matters;
 - 203 (C) no trust company is willing or eligible to serve as conservator, guardian, trustee, or
204 receiver after notice has been given pursuant to Section 75-1-401 to all trust companies doing
205 business in this state, including a statement of the value of the assets to be managed. That
206 notice need not be provided, however, if a trust company has been employed by the fiduciary to
207 manage the assets; and
 - 208 (D) in the event guardianship services are needed, the person seeking appointment as a
209 guardian under this Subsection (1) is a specialized care professional, as that term is defined in
210 Section 75-5-311, or a business or state agency that employs the services of one of those
211 professionals for the purpose of caring for the incapacitated person, so long as the specialized
212 care professional, business, or state agency does not:
 - 213 (I) profit financially or otherwise from, or receive compensation for acting in that

214 capacity, except for the direct costs of providing guardianship or conservatorship services; or
215 (II) otherwise have a conflict of interest in providing those services;
216 (ix) funds or other assets held by a credit services organization operating in compliance
217 with Title 13, Chapter 21, Credit Services Organizations Act;
218 (x) funds, securities, or other assets held in a customer account in connection with the
219 purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or
220 (xi) funds, assets, and other property held in a business trust for the benefit of holders
221 of certificates of beneficial interest if the fiduciary activities of the business trust are merely
222 incidental to conducting business in the business trust form.
223 (d) "Trust company" means an institution authorized to engage in the trust business
224 under this chapter. Only the following may be a trust company:
225 (i) a Utah depository institution or its wholly owned subsidiary;
226 (ii) an out-of-state depository institution authorized to engage in business as a
227 depository institution in Utah or its wholly owned subsidiary;
228 (iii) a corporation, including a credit union service organization, owned entirely by one
229 or more federally insured depository institutions as defined in Subsection 7-1-103(8);
230 (iv) a direct or indirect subsidiary of a depository institution holding company that also
231 has a direct or indirect subsidiary authorized to engage in business as a depository institution in
232 Utah; and
233 (v) any other corporation continuously and lawfully engaged in the trust business in
234 this state since before July 1, 1981.
235 (2) Only a trust company may engage in the trust business in this state.
236 (3) The requirements of this chapter do not apply to:
237 (a) an institution authorized to engage in a trust business in another state that is
238 engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created
239 and administered in another state;
240 (b) a national bank, federal savings bank, federal savings and loan association, or
241 federal credit union authorized to engage in business as a depository institution in Utah, or any
242 wholly owned subsidiary of any of these, to the extent the institution is authorized by its
243 primary federal regulator to engage in the trust business in this state; or
244 (c) a state agency that is otherwise authorized by statute to act as a conservator,

245 receiver, guardian, trustee, or in any other fiduciary capacity.

246 Section 4. Section 13-1-2 is amended to read:

247 **13-1-2. Creation and functions of department -- Divisions created -- Fees --**
248 **Commerce Service Account.**

249 (1) (a) There is created the Department of Commerce.

250 (b) The department shall execute and administer state laws regulating business
251 activities and occupations affecting the public interest.

252 (2) Within the department the following divisions are created:

253 (a) the Division of Occupational and Professional Licensing;

254 (b) the Division of Real Estate;

255 (c) the Division of Securities;

256 (d) the Division of Public Utilities;

257 (e) the Division of Consumer Protection; ~~and~~

258 (f) the Division of Corporations and Commercial Code~~[-]; and~~

259 (g) the Division of Insurance.

260 (3) (a) Unless otherwise provided by statute, the department may adopt a schedule of
261 fees assessed for services provided by the department by following the procedures and
262 requirements of Section 63J-1-504.

263 (b) The department shall submit each fee established in this manner to the Legislature
264 for its approval as part of the department's annual appropriations request.

265 (c) (i) There is created a restricted account within the General Fund known as the
266 "Commerce Service Account."

267 (ii) The restricted account created in Subsection (3)(c)(i) consists of fees collected by
268 each division and by the department.

269 (iii) At the end of each fiscal year, the director of the Division of Finance shall transfer
270 into the General Fund any fee collections that are greater than the legislative appropriations
271 from the Commerce Service Account for that year.

272 (d) The department may not charge or collect a fee or expend money from the
273 restricted account without approval by the Legislature.

274 Section 5. Section 17B-2a-818.5 is amended to read:

275 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**

276 coverage.

277 (1) For purposes of this section:

278 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
279 34A-2-104 who:

280 (i) works at least 30 hours per calendar week; and

281 (ii) meets employer eligibility waiting requirements for health care insurance which
282 may not exceed the first day of the calendar month following 90 days from the date of hire.

283 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

284 (c) "Qualified health insurance coverage" means at the time the contract is entered into
285 or renewed:

286 (i) a health benefit plan and employer contribution level with a combined actuarial
287 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
288 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
289 a contribution level of 50% of the premium for the employee and the dependents of the
290 employee who reside or work in the state, in which:

291 (A) the employer pays at least 50% of the premium for the employee and the
292 dependents of the employee who reside or work in the state; and

293 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

294 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket
295 maximum based on income levels:

296 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

297 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

298 (II) dental coverage is not required; and

299 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
300 apply; or

301 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
302 deductible that is either:

303 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

304 or

305 (II) a deductible that is higher than the lowest deductible permitted for a federally
306 qualified high deductible health plan, but includes an employer contribution to a health savings

307 account in a dollar amount at least equal to the dollar amount difference between the lowest
308 deductible permitted for a federally qualified high deductible plan and the deductible for the
309 employer offered federally qualified high deductible plan;

310 (B) an out-of-pocket maximum that does not exceed three times the amount of the
311 annual deductible; and

312 (C) under which the employer pays 75% of the premium for the employee and the
313 dependents of the employee who work or reside in the state.

314 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

315 (2) (a) Except as provided in Subsection (3), this section applies to a design or
316 construction contract entered into by the public transit district on or after July 1, 2009, and to a
317 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

318 (b) (i) A prime contractor is subject to this section if the prime contract is in the
319 amount of \$1,500,000 or greater.

320 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
321 \$750,000 or greater.

322 (3) This section does not apply if:

323 (a) the application of this section jeopardizes the receipt of federal funds;

324 (b) the contract is a sole source contract; or

325 (c) the contract is an emergency procurement.

326 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-102~~]
327 63G-6-103, or a modification to a contract, when the contract does not meet the initial
328 threshold required by Subsection (2).

329 (b) A person who intentionally uses change orders or contract modifications to
330 circumvent the requirements of Subsection (2) is guilty of an infraction.

331 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
332 district that the contractor has and will maintain an offer of qualified health insurance coverage
333 for the contractor's employees and the employee's dependents during the duration of the
334 contract.

335 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
336 shall demonstrate to the public transit district that the subcontractor has and will maintain an
337 offer of qualified health insurance coverage for the subcontractor's employees and the

338 employee's dependents during the duration of the contract.

339 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
340 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
341 the public transit district under Subsection (6).

342 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
343 requirements of Subsection (5)(b).

344 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
345 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
346 the public transit district under Subsection (6).

347 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
348 requirements of Subsection (5)(a).

349 (6) The public transit district shall adopt ordinances:

350 (a) in coordination with:

351 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

352 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

353 (iii) the State Building Board in accordance with Section 63A-5-205;

354 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

355 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

356 (b) which establish:

357 (i) the requirements and procedures a contractor must follow to demonstrate to the
358 public transit district compliance with this section which shall include:

359 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

360 (b) more than twice in any 12-month period; and

361 (B) that the actuarially equivalent determination required in Subsection (1) is met by
362 the contractor if the contractor provides the department or division with a written statement of
363 actuarial equivalency from either:

364 (I) the ~~Utah Insurance Department~~ Department of Commerce under Title 31A,
365 Insurance Code, which may delegate this function to the Division of Insurance;

366 (II) an actuary selected by the contractor or the contractor's insurer; or

367 (III) an underwriter who is responsible for developing the employer group's premium
368 rates;

369 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
370 violates the provisions of this section, which may include:

371 (A) a three-month suspension of the contractor or subcontractor from entering into
372 future contracts with the public transit district upon the first violation;

373 (B) a six-month suspension of the contractor or subcontractor from entering into future
374 contracts with the public transit district upon the second violation;

375 (C) an action for debarment of the contractor or subcontractor in accordance with
376 Section 63G-6-804 upon the third or subsequent violation; and

377 (D) monetary penalties which may not exceed 50% of the amount necessary to
378 purchase qualified health insurance coverage for employees and dependents of employees of
379 the contractor or subcontractor who were not offered qualified health insurance coverage
380 during the duration of the contract; and

381 (iii) a website on which the district shall post the benchmark for the qualified health
382 insurance coverage identified in Subsection (1)(c)(i).

383 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
384 or subcontractor who intentionally violates the provisions of this section shall be liable to the
385 employee for health care costs that would have been covered by qualified health insurance
386 coverage.

387 (ii) An employer has an affirmative defense to a cause of action under Subsection
388 (7)(a)(i) if:

389 (A) the employer relied in good faith on a written statement of actuarial equivalency
390 provided by an:

391 (I) actuary; or

392 (II) underwriter who is responsible for developing the employer group's premium rates;
393 or

394 (B) a department or division determines that compliance with this section is not
395 required under the provisions of Subsection (3) or (4).

396 (b) An employee has a private right of action only against the employee's employer to
397 enforce the provisions of this Subsection (7).

398 (8) Any penalties imposed and collected under this section shall be deposited into the
399 Medicaid Restricted Account created in Section 26-18-402.

400 (9) The failure of a contractor or subcontractor to provide qualified health insurance
401 coverage as required by this section:

402 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
403 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
404 Legal and Contractual Remedies; and

405 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
406 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
407 or construction.

408 Section 6. Section **19-1-206** is amended to read:

409 **19-1-206. Contracting powers of department -- Health insurance coverage.**

410 (1) For purposes of this section:

411 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
412 34A-2-104 who:

413 (i) works at least 30 hours per calendar week; and

414 (ii) meets employer eligibility waiting requirements for health care insurance which
415 may not exceed the first day of the calendar month following 90 days from the date of hire.

416 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

417 (c) "Qualified health insurance coverage" means at the time the contract is entered into
418 or renewed:

419 (i) a health benefit plan and employer contribution level with a combined actuarial
420 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
421 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
422 a contribution level of 50% of the premium for the employee and the dependents of the
423 employee who reside or work in the state, in which:

424 (A) the employer pays at least 50% of the premium for the employee and the
425 dependents of the employee who reside or work in the state; and

426 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

427 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket
428 maximum based on income levels:

429 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

430 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

431 (II) dental coverage is not required; and
432 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
433 apply; or
434 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
435 deductible that is either:
436 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
437 or
438 (II) a deductible that is higher than the lowest deductible permitted for a federally
439 qualified high deductible health plan, but includes an employer contribution to a health savings
440 account in a dollar amount at least equal to the dollar amount difference between the lowest
441 deductible permitted for a federally qualified high deductible plan and the deductible for the
442 employer offered federally qualified high deductible plan;
443 (B) an out-of-pocket maximum that does not exceed three times the amount of the
444 annual deductible; and
445 (C) under which the employer pays 75% of the premium for the employee and the
446 dependents of the employee who work or reside in the state.
447 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
448 (2) (a) Except as provided in Subsection (3), this section applies to a design or
449 construction contract entered into by or delegated to the department or a division or board of
450 the department on or after July 1, 2009, and to a prime contractor or subcontractor in
451 accordance with Subsection (2)(b).
452 (b) (i) A prime contractor is subject to this section if the prime contract is in the
453 amount of \$1,500,000 or greater.
454 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
455 \$750,000 or greater.
456 (3) This section does not apply to contracts entered into by the department or a division
457 or board of the department if:
458 (a) the application of this section jeopardizes the receipt of federal funds;
459 (b) the contract or agreement is between:
460 (i) the department or a division or board of the department; and
461 (ii) (A) another agency of the state;

462 (B) the federal government;
463 (C) another state;
464 (D) an interstate agency;
465 (E) a political subdivision of this state; or
466 (F) a political subdivision of another state;
467 (c) the executive director determines that applying the requirements of this section to a
468 particular contract interferes with the effective response to an immediate health and safety
469 threat from the environment; or
470 (d) the contract is:
471 (i) a sole source contract; or
472 (ii) an emergency procurement.
473 (4) (a) This section does not apply to a change order as defined in Section 63G-6-103,
474 or a modification to a contract, when the contract does not meet the initial threshold required
475 by Subsection (2).
476 (b) A person who intentionally uses change orders or contract modifications to
477 circumvent the requirements of Subsection (2) is guilty of an infraction.
478 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
479 director that the contractor has and will maintain an offer of qualified health insurance
480 coverage for the contractor's employees and the employees' dependents during the duration of
481 the contract.
482 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
483 demonstrate to the executive director that the subcontractor has and will maintain an offer of
484 qualified health insurance coverage for the subcontractor's employees and the employees'
485 dependents during the duration of the contract.
486 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
487 of the contract is subject to penalties in accordance with administrative rules adopted by the
488 department under Subsection (6).
489 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
490 requirements of Subsection (5)(b).
491 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
492 the duration of the contract is subject to penalties in accordance with administrative rules

493 adopted by the department under Subsection (6).

494 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
495 requirements of Subsection (5)(a).

496 (6) The department shall adopt administrative rules:

497 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

498 (b) in coordination with:

499 (i) a public transit district in accordance with Section 17B-2a-818.5;

500 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

501 (iii) the State Building Board in accordance with Section 63A-5-205;

502 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

503 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

504 (vi) the Legislature's Administrative Rules Review Committee; and

505 (c) which establish:

506 (i) the requirements and procedures a contractor must follow to demonstrate to the
507 public transit district compliance with this section which shall include:

508 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

509 (b) more than twice in any 12-month period; and

510 (B) that the actuarially equivalent determination required in Subsection (1) is met by
511 the contractor if the contractor provides the department or division with a written statement of
512 actuarial equivalency from either:

513 (I) the ~~[Utah Insurance Department]~~ Department of Commerce under Title 31A,
514 Insurance Code, which may delegate this function to the Division of Insurance;

515 (II) an actuary selected by the contractor or the contractor's insurer; or

516 (III) an underwriter who is responsible for developing the employer group's premium
517 rates;

518 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
519 violates the provisions of this section, which may include:

520 (A) a three-month suspension of the contractor or subcontractor from entering into
521 future contracts with the state upon the first violation;

522 (B) a six-month suspension of the contractor or subcontractor from entering into future
523 contracts with the state upon the second violation;

524 (C) an action for debarment of the contractor or subcontractor in accordance with
525 Section 63G-6-804 upon the third or subsequent violation; and

526 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
527 of the amount necessary to purchase qualified health insurance coverage for an employee and
528 the dependents of an employee of the contractor or subcontractor who was not offered qualified
529 health insurance coverage during the duration of the contract; and

530 (iii) a website on which the department shall post the benchmark for the qualified
531 health insurance coverage identified in Subsection (1)(c)(i).

532 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
533 subcontractor who intentionally violates the provisions of this section shall be liable to the
534 employee for health care costs that would have been covered by qualified health insurance
535 coverage.

536 (ii) An employer has an affirmative defense to a cause of action under Subsection
537 (7)(a)(i) if:

538 (A) the employer relied in good faith on a written statement of actuarial equivalency
539 provided by:

540 (I) an actuary; or

541 (II) an underwriter who is responsible for developing the employer group's premium
542 rates; or

543 (B) the department determines that compliance with this section is not required under
544 the provisions of Subsection (3) or (4).

545 (b) An employee has a private right of action only against the employee's employer to
546 enforce the provisions of this Subsection (7).

547 (8) Any penalties imposed and collected under this section shall be deposited into the
548 Medicaid Restricted Account created in Section 26-18-402.

549 (9) The failure of a contractor or subcontractor to provide qualified health insurance
550 coverage as required by this section:

551 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
552 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
553 Legal and Contractual Remedies; and

554 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

555 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
556 or construction.

557 Section 7. Section **26-1-37** is amended to read:

558 **26-1-37. Duty to establish standards for the electronic exchange of clinical health**
559 **information.**

560 (1) For purposes of this section:

561 (a) "Affiliate" means an organization that directly or indirectly through one or more
562 intermediaries controls, is controlled by, or is under common control with another
563 organization.

564 (b) "Clinical health information" shall be defined by the department by administrative
565 rule adopted in accordance with Subsection (2).

566 (c) "Electronic exchange":

567 (i) includes:

568 (A) the electronic transmission of clinical health data via Internet or extranet; and

569 (B) physically moving clinical health information from one location to another using
570 magnetic tape, disk, or compact disc media; and

571 (ii) does not include exchange of information by telephone or fax.

572 (d) "Health care provider" means a licensing classification that is either:

573 (i) licensed under Title 58, Occupations and Professions, to provide health care; or

574 (ii) licensed under Chapter 21, Health Care Facility Licensing and Inspection Act.

575 (e) "Health care system" shall include:

576 (i) affiliated health care providers;

577 (ii) affiliated third party payers; and

578 (iii) other arrangement between organizations or providers as described by the
579 department by administrative rule.

580 (f) "Qualified network" means an entity that:

581 (i) is a non-profit organization;

582 (ii) is accredited by the Electronic Healthcare Network Accreditation Commission, or
583 another national accrediting organization recognized by the department; and

584 (iii) performs the electronic exchange of clinical health information among multiple
585 health care providers not under common control, multiple third party payers not under common

586 control, the department, and local health departments.

587 (g) "Third party payer" means:

588 (i) all insurers offering health insurance who are subject to Section 31A-22-614.5; and

589 (ii) the state Medicaid program.

590 (2) (a) In addition to the duties listed in Section 26-1-30, the department shall, in
591 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

592 (i) define:

593 (A) "clinical health information" subject to this section; and

594 (B) "health system arrangements between providers or organizations" as described in
595 Subsection (1)(e)(iii); and

596 (ii) adopt standards for the electronic exchange of clinical health information between
597 health care providers and third party payers that are for treatment, payment, health care
598 operations, or public health reporting, as provided for in 45 C.F.R. Parts 160, 162, and 164,
599 Health Insurance Reform: Security Standards.

600 (b) The department shall coordinate its rule making authority under the provisions of
601 this section with the rulemaking authority of the [~~Insurance Department~~] Department of
602 Commerce under Title 31A, Insurance Code, which may delegate this function to the Division
603 of Insurance, under Section 31A-22-614.5. The department shall establish procedures for
604 developing the rules adopted under this section, which ensure that the [~~Insurance Department~~]
605 Department of Commerce is given the opportunity to comment on proposed rules.

606 (3) (a) Except as provided in Subsection (3)(e), a health care provider or third party
607 payer in Utah is required to use the standards adopted by the department under the provisions
608 of Subsection (2) if the health care provider or third party payer elects to engage in an
609 electronic exchange of clinical health information with another health care provider or third
610 party payer.

611 (b) A health care provider or third party payer may disclose information to the
612 department or a local health department, by electronic exchange of clinical health information,
613 as permitted by Subsection 45 C.F.R. 164.512(b).

614 (c) When functioning in its capacity as a health care provider or payer, the department
615 or a local health department may disclose clinical health information by electronic exchange to
616 another health care provider or third party payer.

617 (d) An electronic exchange of clinical health information by a health care provider, a
618 third party payer, the department, or a local health department is a disclosure for treatment,
619 payment, or health care operations if it complies with Subsection (3)(a) or (c) and is for
620 treatment, payment, or health care operations, as those terms are defined in 45 C.F.R. Parts
621 160, 162, and 164.

622 (e) A health care provider or third party payer is not required to use the standards
623 adopted by the department under the provisions of Subsection (2) if the health care provider or
624 third party payer engage in the electronic exchange of clinical health information within a
625 particular health care system.

626 (4) Nothing in this section shall limit the number of networks eligible to engage in the
627 electronic data interchange of clinical health information using the standards adopted by the
628 department under Subsection (2)(a)(ii).

629 (5) The department, a local health department, a health care provider, a third party
630 payer, or a qualified network is not subject to civil liability for a disclosure of clinical health
631 information if the disclosure is in accordance both with Subsection (3)(a) and with Subsection
632 (3)(b), (3)(c), or (3)(d).

633 (6) Within a qualified network, information generated or disclosed in the electronic
634 exchange of clinical health information is not subject to discovery, use, or receipt in evidence
635 in any legal proceeding of any kind or character.

636 (7) The department shall report on the use of the standards for the electronic exchange
637 of clinical health information to the legislative Health and Human Services Interim Committee
638 no later than October 15 of each year. The report shall include publicly available information
639 concerning the costs and savings for the department, third party payers, and health care
640 providers associated with the standards for the electronic exchange of clinical health records.

641 Section 8. Section **26-18-14** is amended to read:

642 **26-18-14. Strategic plan for health system reform -- Medicaid program.**

643 The department, including the Division of Health Care Financing within the
644 department, shall:

645 (1) work with the Governor's Office of Economic Development, the [~~Insurance~~
646 ~~Department~~] Department of Commerce, which may delegate this function to the Division of
647 Insurance, the Department of Workforce Services, and the Legislature to develop health system

648 reform in accordance with the strategic plan described in Title 63M, Chapter 1, Part 25, Health
649 System Reform Act;

650 (2) develop and submit amendments and waivers for the state's Medicaid plan as
651 necessary to carry out the provisions of the Health System Reform Act;

652 (3) seek federal approval of an amendment to Utah's Premium Partnership for Health
653 Insurance that would allow the state's Medicaid program to subsidize the purchase of health
654 insurance by an individual who does not have access to employer sponsored health insurance;

655 (4) in coordination with the Department of Workforce Services:

656 (a) establish a Children's Health Insurance Program eligibility policy, consistent with
657 federal requirements and Subsection 26-40-105(1)(d), that prohibits enrollment of a child in the
658 program if the child's parent qualifies for assistance under Utah's Premium Partnership for
659 Health Insurance; and

660 (b) involve community partners, insurance agents and producers, community based
661 service organizations, and the education community to increase enrollment of eligible
662 employees and individuals in Utah's Premium Partnership for Health Insurance and the
663 Children's Health Insurance Program; and

664 (5) as funding permits, and in coordination with the department's adoption of standards
665 for the electronic exchange of clinical health data, help the private sector form an alliance of
666 employers, hospitals and other health care providers, patients, and health insurers to develop
667 and use evidence-based health care quality measures for the purpose of improving health care
668 decision making by health care providers, consumers, and third party payers.

669 Section 9. Section **26-33a-106.1** is amended to read:

670 **26-33a-106.1. Health care cost and reimbursement data.**

671 (1) (a) The committee shall, as funding is available, establish an advisory panel to
672 advise the committee on the development of a plan for the collection and use of health care
673 data pursuant to Subsection 26-33a-104(6) and this section.

674 (b) The advisory panel shall include:

675 (i) the chairman of the Utah Hospital Association;

676 (ii) a representative of a rural hospital as designated by the Utah Hospital Association;

677 (iii) a representative of the Utah Medical Association;

678 (iv) a physician from a small group practice as designated by the Utah Medical

679 Association;

680 (v) two representatives who are health insurers, appointed by the committee;

681 (vi) a representative from the Department of Health as designated by the executive
682 director of the department;

683 (vii) a representative from the committee;

684 (viii) a consumer advocate appointed by the committee;

685 (ix) a member of the House of Representatives appointed by the speaker of the House;

686 and

687 (x) a member of the Senate appointed by the president of the Senate.

688 (c) The advisory panel shall elect a chair from among its members, and shall be staffed
689 by the committee.

690 (2) (a) The committee shall, as funding is available:

691 (i) establish a plan for collecting data from data suppliers, as defined in Section
692 26-33a-102, to determine measurements of cost and reimbursements for risk adjusted episodes
693 of health care;

694 (ii) assist the demonstration projects implemented by the [~~Insurance Department~~
695 Department of Commerce under Title 31A, Insurance Code, which may delegate this function
696 to the Division of Insurance, pursuant to Section 31A-22-614.6, with access to cost data,
697 reimbursement data, care process data, and provider service data necessary for the
698 demonstration projects' research, statistical analysis, and quality improvement activities:

699 (A) notwithstanding Subsection 26-33a-108(1) and Section 26-33a-109;

700 (B) contingent upon approval by the committee; and

701 (C) subject to a contract between the department and the entity providing analysis for
702 the demonstration project;

703 (iii) share data regarding insurance claims with insurers participating in the defined
704 contribution market created in Title 31A, Chapter 30, Part 2, Defined Contribution
705 Arrangements, only to the extent necessary for:

706 (A) renewals of policies in the defined contribution arrangement market; and

707 (B) risk adjusting in the defined contribution arrangement market; and

708 (iv) assist the Legislature and the public with awareness of, and the promotion of,
709 transparency in the health care market by reporting on:

710 (A) geographic variances in medical care and costs as demonstrated by data available
711 to the committee; and

712 (B) rate and price increases by health care providers:

713 (I) that exceed the Consumer Price Index - Medical as provided by the United States
714 Bureau of Labor statistics;

715 (II) as calculated yearly from June to June; and

716 (III) as demonstrated by data available to the committee.

717 (b) The plan adopted under this Subsection (2) shall include:

718 (i) the type of data that will be collected;

719 (ii) how the data will be evaluated;

720 (iii) how the data will be used;

721 (iv) the extent to which, and how the data will be protected; and

722 (v) who will have access to the data.

723 Section 10. Section **26-45-104** is amended to read:

724 **26-45-104. Restrictions on health insurers.**

725 (1) Except as provided in Subsection (2), an insurer offering health care insurance as
726 defined in Section 31A-1-301 may not in connection with the offer or renewal of an insurance
727 product or in the determination of premiums, coverage, renewal, cancellation, or any other
728 underwriting decision that pertains directly to the individual or any group of which the
729 individual is a member that purchases insurance jointly:

730 (a) access or otherwise take into consideration private genetic information about an
731 asymptomatic individual;

732 (b) request or require an asymptomatic individual to consent to a release for the
733 purpose of accessing private genetic information about the individual;

734 (c) request or require an asymptomatic individual or his blood relative to submit to a
735 genetic test; and

736 (d) inquire into or otherwise take into consideration the fact that an asymptomatic
737 individual or his blood relative has taken or refused to take a genetic test.

738 (2) An insurer offering health care insurance:

739 (a) may request information regarding the necessity of a genetic test, but not the results
740 of the test, if a claim for payment for the test has been made against an individual's health

741 insurance policy;

742 (b) may request that portion of private genetic information that is necessary to
743 determine the insurer's obligation to pay for health care services where:

744 (i) the primary basis for rendering such services to an individual is the result of a
745 genetic test; and

746 (ii) a claim for payment for such services has been made against the individual's health
747 insurance policy;

748 (c) may only store information obtained under this Subsection (2) in accordance with
749 the provisions of the Health Insurance Portability and Accountability Act of 1996; and

750 (d) may only use or otherwise disclose the information obtained under this Subsection
751 (2) in connection with a proceeding to determine the obligation of an insurer to pay for a
752 genetic test or health care services, provided that, in accordance with the provisions of the
753 Health Insurance Portability and Accountability Act of 1996, the insurer makes a reasonable
754 effort to limit disclosure to the minimum necessary to carry out the purposes of the disclosure.

755 (3) (a) An insurer may, to the extent permitted by Subsection (2), seek an order
756 compelling the disclosure of private genetic information held by an individual or third party.

757 (b) An order authorizing the disclosure of private genetic information pursuant to this
758 Subsection (2) shall:

759 (i) limit disclosure to those parts of the record containing information essential to
760 fulfill the objectives of the order;

761 (ii) limit disclosure to those persons whose need for the information is the basis for the
762 order; and

763 (iii) include such other measures as may be necessary to limit disclosure for the
764 protection of the individual.

765 (4) Nothing in this section may be construed as restricting the ability of an insurer to
766 use information other than private genetic information to take into account the health status of
767 an individual, group, or population in determining premiums or making other underwriting
768 decisions.

769 (5) Nothing in this section may be construed as requiring an insurer to pay for genetic
770 testing.

771 (6) Information maintained by an insurer about an individual under this section may be

772 redisclosed:

773 (a) to protect the interests of the insurer in detecting, prosecuting, or taking legal action
774 against criminal activity, fraud, material misrepresentations, and material omissions;

775 (b) to enable business decisions to be made about the purchase, transfer, merger,
776 reinsurance, or sale of all or part of the insurer's business; and

777 (c) to the [~~commissioner of insurance~~] Department of Commerce under Title 31A,
778 Insurance Code, which may delegate this function to the Division of Insurance, upon formal
779 request.

780 Section 11. Section **31A-1-301** is amended to read:

781 **31A-1-301. Definitions.**

782 As used in this title, unless otherwise specified:

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

785 (i) a medical condition including:

786 (A) a medical care expense; or

787 (B) the risk of disability;

788 (ii) accident; or

789 (iii) sickness.

790 (b) "Accident and health insurance":

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

792 (A) an income replacement contract;

793 (B) a health care contract;

794 (C) an expense reimbursement contract;

795 (D) a credit accident and health contract;

796 (E) a continuing care contract; and

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

798 (ii) may provide:

799 (A) hospital coverage;

800 (B) surgical coverage;

801 (C) medical coverage;

802 (D) loss of income coverage;

- 803 (E) prescription drug coverage;
- 804 (F) dental coverage; or
- 805 (G) vision coverage.
- 806 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 807 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 808 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 809 (3) "Administrator" is defined in Subsection (159).
- 810 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 811 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 812 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 813 ownership, if substantially the same group of individuals manage the corporations.
- 814 (6) "Agency" means:
- 815 (a) a person other than an individual, including a sole proprietorship by which an
- 816 individual does business under an assumed name; and
- 817 (b) an insurance organization licensed or required to be licensed under Section
- 818 31A-23a-301.
- 819 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 820 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 821 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 822 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 823 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 824 human life.
- 825 (10) "Application" means a document:
- 826 (a) (i) completed by an applicant to provide information about the risk to be insured;
- 827 and
- 828 (ii) that contains information that is used by the insurer to evaluate risk and decide
- 829 whether to:
- 830 (A) insure the risk under:
- 831 (I) the coverage as originally offered; or
- 832 (II) a modification of the coverage as originally offered; or
- 833 (B) decline to insure the risk; or

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

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

837 (a) the original articles;

838 (b) a special law;

839 (c) a charter;

840 (d) an amendment;

841 (e) restated articles;

842 (f) articles of merger or consolidation;

843 (g) a trust instrument;

844 (h) another constitutive document for a trust or other entity that is not a corporation;

845 and

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

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

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

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

853 (a) without individual underwriting or application; and

854 (b) that is determined by definition with or without designating each person covered.

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

857 (16) "Business entity" means:

858 (a) a corporation;

859 (b) an association;

860 (c) a partnership;

861 (d) a limited liability company;

862 (e) a limited liability partnership; or

863 (f) another legal entity.

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

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

- 868 (a) Section 31A-7-201;
- 869 (b) Section 31A-8-205; or
- 870 (c) Subsection 31A-9-205(2).

871 (19) (a) "Bylaws" means the rules adopted for the regulation or management of a
872 corporation's affairs, however designated.

873 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
874 corporation.

875 (20) "Captive insurance company" means:

- 876 (a) an insurer:
 - 877 (i) owned by another organization; and
 - 878 (ii) whose exclusive purpose is to insure risks of the parent organization and an
879 affiliated company; or

880 (b) in the case of a group or association, an insurer:

- 881 (i) owned by the insureds; and
- 882 (ii) whose exclusive purpose is to insure risks of:
 - 883 (A) a member organization;
 - 884 (B) a group member; or
 - 885 (C) an affiliate of:
 - 886 (I) a member organization; or
 - 887 (II) a group member.

888 (21) "Casualty insurance" means liability insurance.

889 (22) "Certificate" means evidence of insurance given to:

- 890 (a) an insured under a group insurance policy; or
- 891 (b) a third party.

892 (23) "Certificate of authority" is included within the term "license."

893 (24) "Claim," unless the context otherwise requires, means a request or demand on an
894 insurer for payment of a benefit according to the terms of an insurance policy.

895 (25) "Claims-made coverage" means an insurance contract or provision limiting

896 coverage under a policy insuring against legal liability to claims that are first made against the
897 insured while the policy is in force.

898 (26) (a) "Commissioner," ~~[or] "commissioner of insurance," [means Utah's insurance~~
899 ~~commissioner.]~~ or "insurance commissioner" means the executive director of the Department
900 of Commerce appointed in accordance with Section 13-1-3:

901 (i) except that the executive director may delegate a power or duty of the executive
902 director under this title to the commissioner of the division under Section 31A-2a-202;

903 (ii) notwithstanding that it is defined otherwise in this title; and

904 (iii) unless the context requires otherwise.

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

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

908 (i) provides board and lodging;

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

910 (A) a personal service;

911 (B) a nursing service;

912 (C) a medical service; or

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

914 (iii) provides the coverage described in this Subsection (27)(a) under an agreement
915 effective:

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

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

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

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

923 (i) by contract;

924 (ii) by common management;

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

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

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

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

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

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

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

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

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

942 (i) a corporation doing business:

943 (A) as:

944 (I) an insurance producer;

945 (II) a limited line producer;

946 (III) a consultant;

947 (IV) a managing general agent;

948 (V) a reinsurance intermediary;

949 (VI) a third party administrator; or

950 (VII) an adjuster; and

951 (B) under:

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

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

955 (III) Chapter 26, Insurance Adjusters; or

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

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

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

960 (33) (a) "Creditable coverage" has the same meaning as provided in federal regulations
961 adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L.
962 104-191, 110 Stat. 1936.

963 (b) "Creditable coverage" includes coverage that is offered through a public health plan
964 such as:

965 (i) the Primary Care Network Program under a Medicaid primary care network
966 demonstration waiver obtained subject to Section 26-18-3;

967 (ii) the Children's Health Insurance Program under Section 26-40-106; or

968 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
969 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

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

973 (35) (a) "Credit insurance" means insurance offered in connection with an extension of
974 credit that is limited to partially or wholly extinguishing that credit obligation.

975 (b) "Credit insurance" includes:

976 (i) credit accident and health insurance;

977 (ii) credit life insurance;

978 (iii) credit property insurance;

979 (iv) credit unemployment insurance;

980 (v) guaranteed automobile protection insurance;

981 (vi) involuntary unemployment insurance;

982 (vii) mortgage accident and health insurance;

983 (viii) mortgage guaranty insurance; and

984 (ix) mortgage life insurance.

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

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

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

- 989 (b) that protects the property until the debt is paid.
- 990 (38) "Credit unemployment insurance" means insurance:
- 991 (a) offered in connection with an extension of credit; and
- 992 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
- 993 (i) specific loan; or
- 994 (ii) credit transaction.
- 995 (39) "Creditor" means a person, including an insured, having a claim, whether:
- 996 (a) matured;
- 997 (b) unmatured;
- 998 (c) liquidated;
- 999 (d) unliquidated;
- 1000 (e) secured;
- 1001 (f) unsecured;
- 1002 (g) absolute;
- 1003 (h) fixed; or
- 1004 (i) contingent.
- 1005 (40) (a) "Customer service representative" means a person that provides an insurance
- 1006 service and insurance product information:
- 1007 (i) for the customer service representative's:
- 1008 (A) producer; or
- 1009 (B) consultant employer; and
- 1010 (ii) to the customer service representative's employer's:
- 1011 (A) customer;
- 1012 (B) client; or
- 1013 (C) organization.
- 1014 (b) A customer service representative may only operate within the scope of authority of
- 1015 the customer service representative's producer or consultant employer.
- 1016 (41) "Deadline" means a final date or time:
- 1017 (a) imposed by:
- 1018 (i) statute;
- 1019 (ii) rule; or

- 1020 (iii) order; and
- 1021 (b) by which a required filing or payment must be received by the department.
- 1022 (42) "Deemer clause" means a provision under this title under which upon the
- 1023 occurrence of a condition precedent, the commissioner is considered to have taken a specific
- 1024 action. If the statute so provides, a condition precedent may be the commissioner's failure to
- 1025 take a specific action.
- 1026 (43) "Degree of relationship" means the number of steps between two persons
- 1027 determined by counting the generations separating one person from a common ancestor and
- 1028 then counting the generations to the other person.
- 1029 (44) "Department," "insurance department," or "department of insurance" means the
- 1030 ~~[Insurance Department.]~~ Department of Commerce created in Section 13-1-2:
- 1031 (a) except that the executive director may delegate a power or duty of the department
- 1032 under this title to the Division of Insurance;
- 1033 (b) notwithstanding that it is defined otherwise in this title; and
- 1034 (c) unless the context requires otherwise.
- 1035 (45) "Director" means a member of the board of directors of a corporation.
- 1036 (46) "Disability" means a physiological or psychological condition that partially or
- 1037 totally limits an individual's ability to:
- 1038 (a) perform the duties of:
- 1039 (i) that individual's occupation; or
- 1040 (ii) any occupation for which the individual is reasonably suited by education, training,
- 1041 or experience; or
- 1042 (b) perform two or more of the following basic activities of daily living:
- 1043 (i) eating;
- 1044 (ii) toileting;
- 1045 (iii) transferring;
- 1046 (iv) bathing; or
- 1047 (v) dressing.
- 1048 (47) "Disability income insurance" is defined in Subsection (76).
- 1049 (48) "Domestic insurer" means an insurer organized under the laws of this state.
- 1050 (49) "Domiciliary state" means the state in which an insurer:

- 1051 (a) is incorporated;
- 1052 (b) is organized; or
- 1053 (c) in the case of an alien insurer, enters into the United States.
- 1054 (50) (a) "Eligible employee" means:
- 1055 (i) an employee who:
- 1056 (A) works on a full-time basis; and
- 1057 (B) has a normal work week of 30 or more hours; or
- 1058 (ii) a person described in Subsection (50)(b).
- 1059 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 1060 plan of a small employer:
- 1061 (i) a sole proprietor;
- 1062 (ii) a partner in a partnership; or
- 1063 (iii) an independent contractor.
- 1064 (c) "Eligible employee" does not include, unless eligible under Subsection (50)(b):
- 1065 (i) an individual who works on a temporary or substitute basis for a small employer;
- 1066 (ii) an employer's spouse; or
- 1067 (iii) a dependent of an employer.
- 1068 (51) "Employee" means an individual employed by an employer.
- 1069 (52) "Employee benefits" means one or more benefits or services provided to:
- 1070 (a) an employee; or
- 1071 (b) a dependent of an employee.
- 1072 (53) (a) "Employee welfare fund" means a fund:
- 1073 (i) established or maintained, whether directly or through a trustee, by:
- 1074 (A) one or more employers;
- 1075 (B) one or more labor organizations; or
- 1076 (C) a combination of employers and labor organizations; and
- 1077 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 1078 from investments of the fund:
- 1079 (A) by or on behalf of an employer doing business in this state; or
- 1080 (B) for the benefit of a person employed in this state.
- 1081 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax

1082 revenues.

1083 (54) "Endorsement" means a written agreement attached to a policy or certificate to
1084 modify the policy or certificate coverage.

1085 (55) "Enrollment date," with respect to a health benefit plan, means:

1086 (a) the first day of coverage; or

1087 (b) if there is a waiting period, the first day of the waiting period.

1088 (56) (a) "Escrow" means:

1089 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
1090 the requirements of a written agreement between the parties in a real estate transaction; or

1091 (ii) a settlement or closing involving:

1092 (A) a mobile home;

1093 (B) a grazing right;

1094 (C) a water right; or

1095 (D) other personal property authorized by the commissioner.

1096 (b) "Escrow" includes the act of conducting a:

1097 (i) real estate settlement; or

1098 (ii) real estate closing.

1099 (57) "Escrow agent" means:

1100 (a) an insurance producer with:

1101 (i) a title insurance line of authority; and

1102 (ii) an escrow subline of authority; or

1103 (b) a person defined as an escrow agent in Section 7-22-101.

1104 (58) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
1105 excluded.

1106 (b) The items listed in a list using the term "excludes" are representative examples for
1107 use in interpretation of this title.

1108 (59) "Exclusion" means for the purposes of accident and health insurance that an
1109 insurer does not provide insurance coverage, for whatever reason, for one of the following:

1110 (a) a specific physical condition;

1111 (b) a specific medical procedure;

1112 (c) a specific disease or disorder; or

- 1113 (d) a specific prescription drug or class of prescription drugs.
- 1114 (60) "Expense reimbursement insurance" means insurance:
- 1115 (a) written to provide a payment for an expense relating to hospital confinement
- 1116 resulting from illness or injury; and
- 1117 (b) written:
- 1118 (i) as a daily limit for a specific number of days in a hospital; and
- 1119 (ii) to have a one or two day waiting period following a hospitalization.
- 1120 (61) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
- 1121 a position of public or private trust.
- 1122 (62) (a) "Filed" means that a filing is:
- 1123 (i) submitted to the department as required by and in accordance with applicable
- 1124 statute, rule, or filing order;
- 1125 (ii) received by the department within the time period provided in applicable statute,
- 1126 rule, or filing order; and
- 1127 (iii) accompanied by the appropriate fee in accordance with:
- 1128 (A) Section 31A-3-103; or
- 1129 (B) rule.
- 1130 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 1131 submitted in accordance with Subsection (62)(a).
- 1132 (63) "Filing," when used as a noun, means an item required to be filed with the
- 1133 department including:
- 1134 (a) a policy;
- 1135 (b) a rate;
- 1136 (c) a form;
- 1137 (d) a document;
- 1138 (e) a plan;
- 1139 (f) a manual;
- 1140 (g) an application;
- 1141 (h) a report;
- 1142 (i) a certificate;
- 1143 (j) an endorsement;

- 1144 (k) an actuarial certification;
- 1145 (l) a licensee annual statement;
- 1146 (m) a licensee renewal application;
- 1147 (n) an advertisement; or
- 1148 (o) an outline of coverage.

1149 (64) "First party insurance" means an insurance policy or contract in which the insurer
1150 agrees to pay a claim submitted to it by the insured for the insured's losses.

1151 (65) "Foreign insurer" means an insurer domiciled outside of this state, including an
1152 alien insurer.

1153 (66) (a) "Form" means one of the following prepared for general use:

- 1154 (i) a policy;
- 1155 (ii) a certificate;
- 1156 (iii) an application;
- 1157 (iv) an outline of coverage; or
- 1158 (v) an endorsement.

1159 (b) "Form" does not include a document specially prepared for use in an individual
1160 case.

1161 (67) "Franchise insurance" means an individual insurance policy provided through a
1162 mass marketing arrangement involving a defined class of persons related in some way other
1163 than through the purchase of insurance.

1164 (68) "General lines of authority" include:

- 1165 (a) the general lines of insurance in Subsection (69);
- 1166 (b) title insurance under one of the following sublines of authority:
 - 1167 (i) search, including authority to act as a title marketing representative;
 - 1168 (ii) escrow, including authority to act as a title marketing representative; and
 - 1169 (iii) title marketing representative only;
- 1170 (c) surplus lines;
- 1171 (d) workers' compensation; and
- 1172 (e) any other line of insurance that the commissioner considers necessary to recognize
1173 in the public interest.

1174 (69) "General lines of insurance" include:

- 1175 (a) accident and health;
- 1176 (b) casualty;
- 1177 (c) life;
- 1178 (d) personal lines;
- 1179 (e) property; and
- 1180 (f) variable contracts, including variable life and annuity.
- 1181 (70) "Group health plan" means an employee welfare benefit plan to the extent that the
- 1182 plan provides medical care:
 - 1183 (a) (i) to an employee; or
 - 1184 (ii) to a dependent of an employee; and
 - 1185 (b) (i) directly;
 - 1186 (ii) through insurance reimbursement; or
 - 1187 (iii) through another method.
- 1188 (71) (a) "Group insurance policy" means a policy covering a group of persons that is
- 1189 issued:
 - 1190 (i) to a policyholder on behalf of the group; and
 - 1191 (ii) for the benefit of a member of the group who is selected under a procedure defined
 - 1192 in:
 - 1193 (A) the policy; or
 - 1194 (B) an agreement that is collateral to the policy.
 - 1195 (b) A group insurance policy may include a member of the policyholder's family or a
 - 1196 dependent.
- 1197 (72) "Guaranteed automobile protection insurance" means insurance offered in
- 1198 connection with an extension of credit that pays the difference in amount between the
- 1199 insurance settlement and the balance of the loan if the insured automobile is a total loss.
- 1200 (73) (a) Except as provided in Subsection (73)(b), "health benefit plan" means a policy
- 1201 or certificate that:
 - 1202 (i) provides health care insurance;
 - 1203 (ii) provides major medical expense insurance; or
 - 1204 (iii) is offered as a substitute for hospital or medical expense insurance, such as:
 - 1205 (A) a hospital confinement indemnity; or

- 1206 (B) a limited benefit plan.
- 1207 (b) "Health benefit plan" does not include a policy or certificate that:
- 1208 (i) provides benefits solely for:
- 1209 (A) accident;
- 1210 (B) dental;
- 1211 (C) income replacement;
- 1212 (D) long-term care;
- 1213 (E) a Medicare supplement;
- 1214 (F) a specified disease;
- 1215 (G) vision; or
- 1216 (H) a short-term limited duration; or
- 1217 (ii) is offered and marketed as supplemental health insurance.
- 1218 (74) "Health care" means any of the following intended for use in the diagnosis,
- 1219 treatment, mitigation, or prevention of a human ailment or impairment:
- 1220 (a) a professional service;
- 1221 (b) a personal service;
- 1222 (c) a facility;
- 1223 (d) equipment;
- 1224 (e) a device;
- 1225 (f) supplies; or
- 1226 (g) medicine.
- 1227 (75) (a) "Health care insurance" or "health insurance" means insurance providing:
- 1228 (i) a health care benefit; or
- 1229 (ii) payment of an incurred health care expense.
- 1230 (b) "Health care insurance" or "health insurance" does not include accident and health
- 1231 insurance providing a benefit for:
- 1232 (i) replacement of income;
- 1233 (ii) short-term accident;
- 1234 (iii) fixed indemnity;
- 1235 (iv) credit accident and health;
- 1236 (v) supplements to liability;

- 1237 (vi) workers' compensation;
- 1238 (vii) automobile medical payment;
- 1239 (viii) no-fault automobile;
- 1240 (ix) equivalent self-insurance; or
- 1241 (x) a type of accident and health insurance coverage that is a part of or attached to
- 1242 another type of policy.
- 1243 (76) "Income replacement insurance" or "disability income insurance" means insurance
- 1244 written to provide payments to replace income lost from accident or sickness.
- 1245 (77) "Indemnity" means the payment of an amount to offset all or part of an insured
- 1246 loss.
- 1247 (78) "Independent adjuster" means an insurance adjuster required to be licensed under
- 1248 Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.
- 1249 (79) "Independently procured insurance" means insurance procured under Section
- 1250 31A-15-104.
- 1251 (80) "Individual" means a natural person.
- 1252 (81) "Inland marine insurance" includes insurance covering:
- 1253 (a) property in transit on or over land;
- 1254 (b) property in transit over water by means other than boat or ship;
- 1255 (c) bailee liability;
- 1256 (d) fixed transportation property such as bridges, electric transmission systems, radio
- 1257 and television transmission towers and tunnels; and
- 1258 (e) personal and commercial property floaters.
- 1259 (82) "Insolvency" means that:
- 1260 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
- 1261 obligations mature;
- 1262 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
- 1263 RBC under Subsection 31A-17-601(8)(c); or
- 1264 (c) an insurer is determined to be hazardous under this title.
- 1265 (83) (a) "Insurance" means:
- 1266 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
- 1267 persons to one or more other persons; or

1268 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
1269 group of persons that includes the person seeking to distribute that person's risk.

1270 (b) "Insurance" includes:

1271 (i) a risk distributing arrangement providing for compensation or replacement for
1272 damages or loss through the provision of a service or a benefit in kind;

1273 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
1274 business and not as merely incidental to a business transaction; and

1275 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
1276 but with a class of persons who have agreed to share the risk.

1277 (84) "Insurance adjuster" means a person who directs the investigation, negotiation, or
1278 settlement of a claim under an insurance policy other than life insurance or an annuity, on
1279 behalf of an insurer, policyholder, or a claimant under an insurance policy.

1280 (85) "Insurance business" or "business of insurance" includes:

1281 (a) providing health care insurance by an organization that is or is required to be
1282 licensed under this title;

1283 (b) providing a benefit to an employee in the event of a contingency not within the
1284 control of the employee, in which the employee is entitled to the benefit as a right, which
1285 benefit may be provided either:

1286 (i) by a single employer or by multiple employer groups; or

1287 (ii) through one or more trusts, associations, or other entities;

1288 (c) providing an annuity:

1289 (i) including an annuity issued in return for a gift; and

1290 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)

1291 and (3);

1292 (d) providing the characteristic services of a motor club as outlined in Subsection
1293 (113);

1294 (e) providing another person with insurance;

1295 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
1296 or surety, a contract or policy of title insurance;

1297 (g) transacting or proposing to transact any phase of title insurance, including:

1298 (i) solicitation;

- 1299 (ii) negotiation preliminary to execution;
- 1300 (iii) execution of a contract of title insurance;
- 1301 (iv) insuring;
- 1302 (v) transacting matters subsequent to the execution of the contract and arising out of
- 1303 the contract, including reinsurance; and
- 1304 (vi) transacting or proposing a life settlement; and
- 1305 (h) doing, or proposing to do, any business in substance equivalent to Subsections
- 1306 (85)(a) through (g) in a manner designed to evade this title.
- 1307 (86) "Insurance consultant" or "consultant" means a person who:
- 1308 (a) advises another person about insurance needs and coverages;
- 1309 (b) is compensated by the person advised on a basis not directly related to the insurance
- 1310 placed; and
- 1311 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 1312 indirectly by an insurer or producer for advice given.
- 1313 (87) "Insurance holding company system" means a group of two or more affiliated
- 1314 persons, at least one of whom is an insurer.
- 1315 (88) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 1316 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 1317 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an
- 1318 insurance customer or an insured:
- 1319 (i) "producer for the insurer" means a producer who is compensated directly or
- 1320 indirectly by an insurer for selling, soliciting, or negotiating a product of that insurer; and
- 1321 (ii) "producer for the insured" means a producer who:
- 1322 (A) is compensated directly and only by an insurance customer or an insured; and
- 1323 (B) receives no compensation directly or indirectly from an insurer for selling,
- 1324 soliciting, or negotiating a product of that insurer to an insurance customer or insured.
- 1325 (89) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
- 1326 promise in an insurance policy and includes:
- 1327 (i) a policyholder;
- 1328 (ii) a subscriber;
- 1329 (iii) a member; and

- 1330 (iv) a beneficiary.
- 1331 (b) The definition in Subsection (89)(a):
- 1332 (i) applies only to this title; and
- 1333 (ii) does not define the meaning of this word as used in an insurance policy or
- 1334 certificate.
- 1335 (90) (a) "Insurer" means a person doing an insurance business as a principal including:
- 1336 (i) a fraternal benefit society;
- 1337 (ii) an issuer of a gift annuity other than an annuity specified in Subsections
- 1338 31A-22-1305(2) and (3);
- 1339 (iii) a motor club;
- 1340 (iv) an employee welfare plan; and
- 1341 (v) a person purporting or intending to do an insurance business as a principal on that
- 1342 person's own account.
- 1343 (b) "Insurer" does not include a governmental entity to the extent the governmental
- 1344 entity is engaged in an activity described in Section 31A-12-107.
- 1345 (91) "Interinsurance exchange" is defined in Subsection (142).
- 1346 (92) "Involuntary unemployment insurance" means insurance:
- 1347 (a) offered in connection with an extension of credit; and
- 1348 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
- 1349 coming due on a:
- 1350 (i) specific loan; or
- 1351 (ii) credit transaction.
- 1352 (93) "Large employer," in connection with a health benefit plan, means an employer
- 1353 who, with respect to a calendar year and to a plan year:
- 1354 (a) employed an average of at least 51 eligible employees on each business day during
- 1355 the preceding calendar year; and
- 1356 (b) employs at least two employees on the first day of the plan year.
- 1357 (94) "Late enrollee," with respect to an employer health benefit plan, means an
- 1358 individual whose enrollment is a late enrollment.
- 1359 (95) "Late enrollment," with respect to an employer health benefit plan, means
- 1360 enrollment of an individual other than:

1361 (a) on the earliest date on which coverage can become effective for the individual
1362 under the terms of the plan; or

1363 (b) through special enrollment.

1364 (96) (a) Except for a retainer contract or legal assistance described in Section
1365 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
1366 specified legal expense.

1367 (b) "Legal expense insurance" includes an arrangement that creates a reasonable
1368 expectation of an enforceable right.

1369 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
1370 legal services incidental to other insurance coverage.

1371 (97) (a) "Liability insurance" means insurance against liability:

1372 (i) for death, injury, or disability of a human being, or for damage to property,
1373 exclusive of the coverages under:

1374 (A) Subsection (107) for medical malpractice insurance;

1375 (B) Subsection (134) for professional liability insurance; and

1376 (C) Subsection (168) for workers' compensation insurance;

1377 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
1378 insured who is injured, irrespective of legal liability of the insured, when issued with or
1379 supplemental to insurance against legal liability for the death, injury, or disability of a human
1380 being, exclusive of the coverages under:

1381 (A) Subsection (107) for medical malpractice insurance;

1382 (B) Subsection (134) for professional liability insurance; and

1383 (C) Subsection (168) for workers' compensation insurance;

1384 (iii) for loss or damage to property resulting from an accident to or explosion of a
1385 boiler, pipe, pressure container, machinery, or apparatus;

1386 (iv) for loss or damage to property caused by:

1387 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or

1388 (B) water entering through a leak or opening in a building; or

1389 (v) for other loss or damage properly the subject of insurance not within another kind
1390 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

1391 (b) "Liability insurance" includes:

- 1392 (i) vehicle liability insurance;
- 1393 (ii) residential dwelling liability insurance; and
- 1394 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
- 1395 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
- 1396 elevator, boiler, machinery, or apparatus.
- 1397 (98) (a) "License" means authorization issued by the commissioner to engage in an
- 1398 activity that is part of or related to the insurance business.
- 1399 (b) "License" includes a certificate of authority issued to an insurer.
- 1400 (99) (a) "Life insurance" means:
- 1401 (i) insurance on a human life; and
- 1402 (ii) insurance pertaining to or connected with human life.
- 1403 (b) The business of life insurance includes:
- 1404 (i) granting a death benefit;
- 1405 (ii) granting an annuity benefit;
- 1406 (iii) granting an endowment benefit;
- 1407 (iv) granting an additional benefit in the event of death by accident;
- 1408 (v) granting an additional benefit to safeguard the policy against lapse; and
- 1409 (vi) providing an optional method of settlement of proceeds.
- 1410 (100) "Limited license" means a license that:
- 1411 (a) is issued for a specific product of insurance; and
- 1412 (b) limits an individual or agency to transact only for that product or insurance.
- 1413 (101) "Limited line credit insurance" includes the following forms of insurance:
- 1414 (a) credit life;
- 1415 (b) credit accident and health;
- 1416 (c) credit property;
- 1417 (d) credit unemployment;
- 1418 (e) involuntary unemployment;
- 1419 (f) mortgage life;
- 1420 (g) mortgage guaranty;
- 1421 (h) mortgage accident and health;
- 1422 (i) guaranteed automobile protection; and

1423 (j) another form of insurance offered in connection with an extension of credit that:
1424 (i) is limited to partially or wholly extinguishing the credit obligation; and
1425 (ii) the commissioner determines by rule should be designated as a form of limited line
1426 credit insurance.

1427 (102) "Limited line credit insurance producer" means a person who sells, solicits, or
1428 negotiates one or more forms of limited line credit insurance coverage to an individual through
1429 a master, corporate, group, or individual policy.

1430 (103) "Limited line insurance" includes:

- 1431 (a) bail bond;
- 1432 (b) limited line credit insurance;
- 1433 (c) legal expense insurance;
- 1434 (d) motor club insurance;
- 1435 (e) rental car-related insurance;
- 1436 (f) travel insurance;
- 1437 (g) crop insurance;
- 1438 (h) self-service storage insurance; and

1439 (i) another form of limited insurance that the commissioner determines by rule should
1440 be designated a form of limited line insurance.

1441 (104) "Limited lines authority" includes:

- 1442 (a) the lines of insurance listed in Subsection (103); and
- 1443 (b) a customer service representative.

1444 (105) "Limited lines producer" means a person who sells, solicits, or negotiates limited
1445 lines insurance.

1446 (106) (a) "Long-term care insurance" means an insurance policy or rider advertised,
1447 marketed, offered, or designated to provide coverage:

- 1448 (i) in a setting other than an acute care unit of a hospital;
- 1449 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 1450 (A) expenses incurred;
 - 1451 (B) indemnity;
 - 1452 (C) prepayment; or
 - 1453 (D) another method;

- 1454 (iii) for one or more necessary or medically necessary services that are:
- 1455 (A) diagnostic;
- 1456 (B) preventative;
- 1457 (C) therapeutic;
- 1458 (D) rehabilitative;
- 1459 (E) maintenance; or
- 1460 (F) personal care; and
- 1461 (iv) that may be issued by:
- 1462 (A) an insurer;
- 1463 (B) a fraternal benefit society;
- 1464 (C) (I) a nonprofit health hospital; and
- 1465 (II) a medical service corporation;
- 1466 (D) a prepaid health plan;
- 1467 (E) a health maintenance organization; or
- 1468 (F) an entity similar to the entities described in Subsections (106)(a)(iv)(A) through (E)
- 1469 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 1470 (b) "Long-term care insurance" includes:
- 1471 (i) any of the following that provide directly or supplement long-term care insurance:
- 1472 (A) a group or individual annuity or rider; or
- 1473 (B) a life insurance policy or rider;
- 1474 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 1475 (A) cognitive impairment; or
- 1476 (B) functional capacity; or
- 1477 (iii) a qualified long-term care insurance contract.
- 1478 (c) "Long-term care insurance" does not include:
- 1479 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 1480 (ii) basic hospital expense coverage;
- 1481 (iii) basic medical/surgical expense coverage;
- 1482 (iv) hospital confinement indemnity coverage;
- 1483 (v) major medical expense coverage;
- 1484 (vi) income replacement or related asset-protection coverage;

- 1485 (vii) accident only coverage;
- 1486 (viii) coverage for a specified:
 - 1487 (A) disease; or
 - 1488 (B) accident;
- 1489 (ix) limited benefit health coverage; or
- 1490 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 1491 lump sum payment:
 - 1492 (A) if the following are not conditioned on the receipt of long-term care:
 - 1493 (I) benefits; or
 - 1494 (II) eligibility; and
 - 1495 (B) the coverage is for one or more the following qualifying events:
 - 1496 (I) terminal illness;
 - 1497 (II) medical conditions requiring extraordinary medical intervention; or
 - 1498 (III) permanent institutional confinement.
- 1499 (107) "Medical malpractice insurance" means insurance against legal liability incident
- 1500 to the practice and provision of a medical service other than the practice and provision of a
- 1501 dental service.
- 1502 (108) "Member" means a person having membership rights in an insurance
- 1503 corporation.
- 1504 (109) "Minimum capital" or "minimum required capital" means the capital that must be
- 1505 constantly maintained by a stock insurance corporation as required by statute.
- 1506 (110) "Mortgage accident and health insurance" means insurance offered in connection
- 1507 with an extension of credit that provides indemnity for payments coming due on a mortgage
- 1508 while the debtor is disabled.
- 1509 (111) "Mortgage guaranty insurance" means surety insurance under which a mortgagee
- 1510 or other creditor is indemnified against losses caused by the default of a debtor.
- 1511 (112) "Mortgage life insurance" means insurance on the life of a debtor in connection
- 1512 with an extension of credit that pays if the debtor dies.
- 1513 (113) "Motor club" means a person:
 - 1514 (a) licensed under:
 - 1515 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

- 1516 (ii) Chapter 11, Motor Clubs; or
- 1517 (iii) Chapter 14, Foreign Insurers; and
- 1518 (b) that promises for an advance consideration to provide for a stated period of time
- 1519 one or more:
- 1520 (i) legal services under Subsection 31A-11-102(1)(b);
- 1521 (ii) bail services under Subsection 31A-11-102(1)(c); or
- 1522 (iii) (A) trip reimbursement;
- 1523 (B) towing services;
- 1524 (C) emergency road services;
- 1525 (D) stolen automobile services;
- 1526 (E) a combination of the services listed in Subsections (113)(b)(iii)(A) through (D); or
- 1527 (F) other services given in Subsections 31A-11-102(1)(b) through (f).
- 1528 (114) "Mutual" means a mutual insurance corporation.
- 1529 (115) "Network plan" means health care insurance:
- 1530 (a) that is issued by an insurer; and
- 1531 (b) under which the financing and delivery of medical care is provided, in whole or in
- 1532 part, through a defined set of providers under contract with the insurer, including the financing
- 1533 and delivery of an item paid for as medical care.
- 1534 (116) "Nonparticipating" means a plan of insurance under which the insured is not
- 1535 entitled to receive a dividend representing a share of the surplus of the insurer.
- 1536 (117) "Ocean marine insurance" means insurance against loss of or damage to:
- 1537 (a) ships or hulls of ships;
- 1538 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
- 1539 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
- 1540 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
- 1541 (c) earnings such as freight, passage money, commissions, or profits derived from
- 1542 transporting goods or people upon or across the oceans or inland waterways; or
- 1543 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
- 1544 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
- 1545 in connection with maritime activity.
- 1546 (118) "Order" means an order of the commissioner.

1547 (119) "Outline of coverage" means a summary that explains an accident and health
1548 insurance policy.

1549 (120) "Participating" means a plan of insurance under which the insured is entitled to
1550 receive a dividend representing a share of the surplus of the insurer.

1551 (121) "Participation," as used in a health benefit plan, means a requirement relating to
1552 the minimum percentage of eligible employees that must be enrolled in relation to the total
1553 number of eligible employees of an employer reduced by each eligible employee who
1554 voluntarily declines coverage under the plan because the employee:

1555 (a) has other group health care insurance coverage; or

1556 (b) receives:

1557 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
1558 Security Amendments of 1965; or

1559 (ii) another government health benefit.

1560 (122) "Person" includes:

1561 (a) an individual;

1562 (b) a partnership;

1563 (c) a corporation;

1564 (d) an incorporated or unincorporated association;

1565 (e) a joint stock company;

1566 (f) a trust;

1567 (g) a limited liability company;

1568 (h) a reciprocal;

1569 (i) a syndicate; or

1570 (j) another similar entity or combination of entities acting in concert.

1571 (123) "Personal lines insurance" means property and casualty insurance coverage sold
1572 for primarily noncommercial purposes to:

1573 (a) an individual; or

1574 (b) a family.

1575 (124) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

1576 (125) "Plan year" means:

1577 (a) the year that is designated as the plan year in:

1578 (i) the plan document of a group health plan; or
1579 (ii) a summary plan description of a group health plan;
1580 (b) if the plan document or summary plan description does not designate a plan year or
1581 there is no plan document or summary plan description:
1582 (i) the year used to determine deductibles or limits;
1583 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
1584 or
1585 (iii) the employer's taxable year if:
1586 (A) the plan does not impose deductibles or limits on a yearly basis; and
1587 (B) (I) the plan is not insured; or
1588 (II) the insurance policy is not renewed on an annual basis; or
1589 (c) in a case not described in Subsection (125)(a) or (b), the calendar year.
1590 (126) (a) "Policy" means a document, including an attached endorsement or application
1591 that:
1592 (i) purports to be an enforceable contract; and
1593 (ii) memorializes in writing some or all of the terms of an insurance contract.
1594 (b) "Policy" includes a service contract issued by:
1595 (i) a motor club under Chapter 11, Motor Clubs;
1596 (ii) a service contract provided under Chapter 6a, Service Contracts; and
1597 (iii) a corporation licensed under:
1598 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
1599 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
1600 (c) "Policy" does not include:
1601 (i) a certificate under a group insurance contract; or
1602 (ii) a document that does not purport to have legal effect.
1603 (127) "Policyholder" means a person who controls a policy, binder, or oral contract by
1604 ownership, premium payment, or otherwise.
1605 (128) "Policy illustration" means a presentation or depiction that includes
1606 nonguaranteed elements of a policy of life insurance over a period of years.
1607 (129) "Policy summary" means a synopsis describing the elements of a life insurance
1608 policy.

- 1609 (130) "Preexisting condition," with respect to a health benefit plan:
1610 (a) means a condition that was present before the effective date of coverage, whether or
1611 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
1612 and
1613 (b) does not include a condition indicated by genetic information unless an actual
1614 diagnosis of the condition by a physician has been made.
- 1615 (131) (a) "Premium" means the monetary consideration for an insurance policy.
1616 (b) "Premium" includes, however designated:
1617 (i) an assessment;
1618 (ii) a membership fee;
1619 (iii) a required contribution; or
1620 (iv) monetary consideration.
- 1621 (c) (i) "Premium" does not include consideration paid to a third party administrator for
1622 the third party administrator's services.
1623 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1624 insurance on the risks administered by the third party administrator.
- 1625 (132) "Principal officers" for a corporation means the officers designated under
1626 Subsection 31A-5-203(3).
- 1627 (133) "Proceeding" includes an action or special statutory proceeding.
- 1628 (134) "Professional liability insurance" means insurance against legal liability incident
1629 to the practice of a profession and provision of a professional service.
- 1630 (135) (a) Except as provided in Subsection (135)(b), "property insurance" means
1631 insurance against loss or damage to real or personal property of every kind and any interest in
1632 that property:
1633 (i) from all hazards or causes; and
1634 (ii) against loss consequential upon the loss or damage including vehicle
1635 comprehensive and vehicle physical damage coverages.
- 1636 (b) "Property insurance" does not include:
1637 (i) inland marine insurance; and
1638 (ii) ocean marine insurance.
- 1639 (136) "Qualified long-term care insurance contract" or "federally tax qualified

1640 long-term care insurance contract" means:

1641 (a) an individual or group insurance contract that meets the requirements of Section
1642 7702B(b), Internal Revenue Code; or

1643 (b) the portion of a life insurance contract that provides long-term care insurance:

1644 (i) (A) by rider; or

1645 (B) as a part of the contract; and

1646 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1647 Code.

1648 (137) "Qualified United States financial institution" means an institution that:

1649 (a) is:

1650 (i) organized under the laws of the United States or any state; or

1651 (ii) in the case of a United States office of a foreign banking organization, licensed
1652 under the laws of the United States or any state;

1653 (b) is regulated, supervised, and examined by a United States federal or state authority
1654 having regulatory authority over a bank or trust company; and

1655 (c) meets the standards of financial condition and standing that are considered
1656 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1657 will be acceptable to the commissioner as determined by:

1658 (i) the commissioner by rule; or

1659 (ii) the Securities Valuation Office of the National Association of Insurance

1660 Commissioners.

1661 (138) (a) "Rate" means:

1662 (i) the cost of a given unit of insurance; or

1663 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
1664 expressed as:

1665 (A) a single number; or

1666 (B) a pure premium rate, adjusted before the application of individual risk variations
1667 based on loss or expense considerations to account for the treatment of:

1668 (I) expenses;

1669 (II) profit; and

1670 (III) individual insurer variation in loss experience.

- 1671 (b) "Rate" does not include a minimum premium.
- 1672 (139) (a) Except as provided in Subsection (139)(b), "rate service organization" means
- 1673 a person who assists an insurer in rate making or filing by:
- 1674 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1675 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1676 (iii) advising about rate questions, except as an attorney giving legal advice.
- 1677 (b) "Rate service organization" does not mean:
- 1678 (i) an employee of an insurer;
- 1679 (ii) a single insurer or group of insurers under common control;
- 1680 (iii) a joint underwriting group; or
- 1681 (iv) an individual serving as an actuarial or legal consultant.
- 1682 (140) "Rating manual" means any of the following used to determine initial and
- 1683 renewal policy premiums:
- 1684 (a) a manual of rates;
- 1685 (b) a classification;
- 1686 (c) a rate-related underwriting rule; and
- 1687 (d) a rating formula that describes steps, policies, and procedures for determining
- 1688 initial and renewal policy premiums.
- 1689 (141) "Received by the department" means:
- 1690 (a) the date delivered to and stamped received by the department, if delivered in
- 1691 person;
- 1692 (b) the post mark date, if delivered by mail;
- 1693 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1694 (d) the received date recorded on an item delivered, if delivered by:
- 1695 (i) facsimile;
- 1696 (ii) email; or
- 1697 (iii) another electronic method; or
- 1698 (e) a date specified in:
- 1699 (i) a statute;
- 1700 (ii) a rule; or
- 1701 (iii) an order.

1702 (142) "Reciprocal" or "interinsurance exchange" means an unincorporated association
1703 of persons:

1704 (a) operating through an attorney-in-fact common to all of the persons; and

1705 (b) exchanging insurance contracts with one another that provide insurance coverage
1706 on each other.

1707 (143) "Reinsurance" means an insurance transaction where an insurer, for
1708 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1709 reinsurance transactions, this title sometimes refers to:

1710 (a) the insurer transferring the risk as the "ceding insurer"; and

1711 (b) the insurer assuming the risk as the:

1712 (i) "assuming insurer"; or

1713 (ii) "assuming reinsurer."

1714 (144) "Reinsurer" means a person licensed in this state as an insurer with the authority
1715 to assume reinsurance.

1716 (145) "Residential dwelling liability insurance" means insurance against liability
1717 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
1718 a detached single family residence or multifamily residence up to four units.

1719 (146) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
1720 under a reinsurance contract.

1721 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1722 liability assumed under a reinsurance contract.

1723 (147) "Rider" means an endorsement to:

1724 (a) an insurance policy; or

1725 (b) an insurance certificate.

1726 (148) (a) "Security" means a:

1727 (i) note;

1728 (ii) stock;

1729 (iii) bond;

1730 (iv) debenture;

1731 (v) evidence of indebtedness;

1732 (vi) certificate of interest or participation in a profit-sharing agreement;

- 1733 (vii) collateral-trust certificate;
- 1734 (viii) preorganization certificate or subscription;
- 1735 (ix) transferable share;
- 1736 (x) investment contract;
- 1737 (xi) voting trust certificate;
- 1738 (xii) certificate of deposit for a security;
- 1739 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1740 payments out of production under such a title or lease;
- 1741 (xiv) commodity contract or commodity option;
- 1742 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1743 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1744 in Subsections (148)(a)(i) through (xiv); or
- 1745 (xvi) another interest or instrument commonly known as a security.
- 1746 (b) "Security" does not include:
- 1747 (i) any of the following under which an insurance company promises to pay money in a
- 1748 specific lump sum or periodically for life or some other specified period:
- 1749 (A) insurance;
- 1750 (B) an endowment policy; or
- 1751 (C) an annuity contract; or
- 1752 (ii) a burial certificate or burial contract.
- 1753 (149) "Secondary medical condition" means a complication related to an exclusion
- 1754 from coverage in accident and health insurance.
- 1755 (150) "Self-insurance" means an arrangement under which a person provides for
- 1756 spreading its own risks by a systematic plan.
- 1757 (a) Except as provided in this Subsection (150), "self-insurance" does not include an
- 1758 arrangement under which a number of persons spread their risks among themselves.
- 1759 (b) "Self-insurance" includes:
- 1760 (i) an arrangement by which a governmental entity undertakes to indemnify an
- 1761 employee for liability arising out of the employee's employment; and
- 1762 (ii) an arrangement by which a person with a managed program of self-insurance and
- 1763 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or

1764 employees for liability or risk that is related to the relationship or employment.

1765 (c) "Self-insurance" does not include an arrangement with an independent contractor.

1766 (151) "Sell" means to exchange a contract of insurance:

1767 (a) by any means;

1768 (b) for money or its equivalent; and

1769 (c) on behalf of an insurance company.

1770 (152) "Short-term care insurance" means an insurance policy or rider advertised,
1771 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,
1772 but that provides coverage for less than 12 consecutive months for each covered person.

1773 (153) "Significant break in coverage" means a period of 63 consecutive days during
1774 each of which an individual does not have creditable coverage.

1775 (154) "Small employer," in connection with a health benefit plan, means an employer
1776 who, with respect to a calendar year and to a plan year:

1777 (a) employed an average of at least two employees but not more than 50 eligible
1778 employees on each business day during the preceding calendar year; and

1779 (b) employs at least two employees on the first day of the plan year.

1780 (155) "Special enrollment period," in connection with a health benefit plan, has the
1781 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1782 Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936.

1783 (156) (a) "Subsidiary" of a person means an affiliate controlled by that person either
1784 directly or indirectly through one or more affiliates or intermediaries.

1785 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1786 shares are owned by that person either alone or with its affiliates, except for the minimum
1787 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1788 others.

1789 (157) Subject to Subsection (83)(b), "surety insurance" includes:

1790 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1791 perform the principal's obligations to a creditor or other obligee;

1792 (b) bail bond insurance; and

1793 (c) fidelity insurance.

1794 (158) (a) "Surplus" means the excess of assets over the sum of paid-in capital and

1795 liabilities.

1796 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by
1797 the insurer as permanent.

1798 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require
1799 that mutuals doing business in this state maintain specified minimum levels of permanent
1800 surplus.

1801 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1802 same as the minimum required capital requirement that applies to stock insurers.

1803 (c) "Excess surplus" means:

1804 (i) for a life insurer, accident and health insurer, health organization, or property and
1805 casualty insurer as defined in Section 31A-17-601, the lesser of:

1806 (A) that amount of an insurer's or health organization's total adjusted capital that
1807 exceeds the product of:

1808 (I) 2.5; and

1809 (II) the sum of the insurer's or health organization's minimum capital or permanent
1810 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1811 (B) that amount of an insurer's or health organization's total adjusted capital that
1812 exceeds the product of:

1813 (I) 3.0; and

1814 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1815 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1816 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1817 (A) 1.5; and

1818 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1819 (159) "Third party administrator" or "administrator" means a person who collects
1820 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1821 the state in connection with insurance coverage, annuities, or service insurance coverage,
1822 except:

1823 (a) a union on behalf of its members;

1824 (b) a person administering a:

1825 (i) pension plan subject to the federal Employee Retirement Income Security Act of

1826 1974;

1827 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1828 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1829 (c) an employer on behalf of the employer's employees or the employees of one or

1830 more of the subsidiary or affiliated corporations of the employer;

1831 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance

1832 for which the insurer holds a license in this state; or

1833 (e) a person:

1834 (i) licensed or exempt from licensing under:

1835 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

1836 Reinsurance Intermediaries; or

1837 (B) Chapter 26, Insurance Adjusters; and

1838 (ii) whose activities are limited to those authorized under the license the person holds
1839 or for which the person is exempt.

1840 (160) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner
1841 of real or personal property or the holder of liens or encumbrances on that property, or others
1842 interested in the property against loss or damage suffered by reason of liens or encumbrances
1843 upon, defects in, or the unmarketability of the title to the property, or invalidity or
1844 unenforceability of any liens or encumbrances on the property.

1845 (161) "Total adjusted capital" means the sum of an insurer's or health organization's
1846 statutory capital and surplus as determined in accordance with:

1847 (a) the statutory accounting applicable to the annual financial statements required to be
1848 filed under Section 31A-4-113; and

1849 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1850 Section 31A-17-601.

1851 (162) (a) "Trustee" means "director" when referring to the board of directors of a
1852 corporation.

1853 (b) "Trustee," when used in reference to an employee welfare fund, means an
1854 individual, firm, association, organization, joint stock company, or corporation, whether acting
1855 individually or jointly and whether designated by that name or any other, that is charged with
1856 or has the overall management of an employee welfare fund.

1857 (163) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"

1858 means an insurer:

1859 (i) not holding a valid certificate of authority to do an insurance business in this state;

1860 or

1861 (ii) transacting business not authorized by a valid certificate.

1862 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1863 (i) holding a valid certificate of authority to do an insurance business in this state; and

1864 (ii) transacting business as authorized by a valid certificate.

1865 (164) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1866 (165) "Vehicle liability insurance" means insurance against liability resulting from or
1867 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle
1868 comprehensive or vehicle physical damage coverage under Subsection (135).

1869 (166) "Voting security" means a security with voting rights, and includes a security
1870 convertible into a security with a voting right associated with the security.

1871 (167) "Waiting period" for a health benefit plan means the period that must pass before
1872 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
1873 benefit plan, can become effective.

1874 (168) "Workers' compensation insurance" means:

1875 (a) insurance for indemnification of an employer against liability for compensation
1876 based on:

1877 (i) a compensable accidental injury; and

1878 (ii) occupational disease disability;

1879 (b) employer's liability insurance incidental to workers' compensation insurance and
1880 written in connection with workers' compensation insurance; and

1881 (c) insurance assuring to a person entitled to workers' compensation benefits the
1882 compensation provided by law.

1883 Section 12. Section **31A-2a-101** is enacted to read:

CHAPTER 2a. DIVISION OF INSURANCE ACT

Part 1. General Provisions

31A-2a-101. Title.

This chapter is known as the "Division of Insurance Act."

1888 Section 13. Section **31A-2a-102** is enacted to read:

1889 **31A-2a-102. Definitions.**

1890 As used in this chapter:

1891 (1) "Commissioner" means the commissioner of the Division of Insurance appointed in
1892 accordance with Section 31A-2a-202.

1893 (2) "Department" means the Department of Commerce created in Section 13-1-2.

1894 (3) "Division" means the Division of Insurance created in Section 31A-2a-201.

1895 (4) "Executive director" means the executive director of the Department of Commerce
1896 appointed under Section 13-1-3.

1897 Section 14. Section **31A-2a-103** is enacted to read:

1898 **31A-2a-103. Transition provisions.**

1899 (1) As used in this section:

1900 (a) "Enacting legislation" means this bill.

1901 (b) "Previous agency" means the Utah Insurance Department that is terminated
1902 effective July 1, 2011.

1903 (c) "Transition period" means the period:

1904 (i) beginning July 1, 2011; and

1905 (ii) ending the effective date of legislation terminating the transition period.

1906 (2) (a) It is the intent of the Legislature that the enacting legislation's only substantive
1907 change is to consolidate the operations of the previous agency into the Department of
1908 Commerce.

1909 (b) To accomplish the intent described in Subsection (2)(a), and notwithstanding the
1910 other provisions of this title:

1911 (i) the governor may not appoint a commissioner as provided in Section 31A-2-102,
1912 repealed by the enacting legislation;

1913 (ii) the executive director shall appoint the commissioner of the Division of Insurance
1914 in accordance with Section 31A-2a-202;

1915 (iii) effective July 1, 2011, the department shall administer this title, in accordance
1916 with this section;

1917 (iv) a requirement in this title for an officer or employee of the previous agency to take
1918 an oath as a condition for service does not apply to the department; and

1919 (v) if an ambiguity arises as to how to interpret this title, as modified by this section,
1920 the executive director may provide for the implementation of this title in a manner consistent
1921 with the intent described in Subsection (2)(a).

1922 (3) (a) The previous agency shall assist the executive director with consolidation into
1923 the department effective July 1, 2011.

1924 (b) A previous agency shall systematically transfer the powers and duties granted to the
1925 previous agency under this title to the department effective July 1, 2011, in accordance with the
1926 executive director's plan developed in accordance with this section.

1927 (c) Notwithstanding Section 63J-1-410, records, personnel, property, equipment,
1928 grants, unexpended and unexpired balances of appropriations, allocations and other funds used,
1929 held, employed, available or to be made available to the previous agency for the activities,
1930 powers, duties, functions, and responsibilities transferred to the department by the enacting
1931 legislation are transferred to the department at the direction of the executive director and in
1932 accordance with this section.

1933 (4) (a) The executive director shall serve as the transition director to provide executive
1934 direction and supervision for the implementation of the transfer of the powers and duties of the
1935 previous agency to the department in accordance with this section.

1936 (b) The executive director shall:

1937 (i) initiate coordination with the chief executive officer of the previous agency to
1938 facilitate the transfer of programs, positions, and administrative functions; and

1939 (ii) develop memoranda of record identifying any pending settlements, issues of
1940 compliance with applicable federal and state laws and regulations, or other obligations to be
1941 resolved related to the authority to be transferred.

1942 (c) The executive director shall administer the enacting legislation in a manner that
1943 promotes efficient administration and shall make internal organizational changes as necessary
1944 to complete the realignment of responsibilities required by the enacting legislation.

1945 (d) The executive director may request the assistance of the previous agency with
1946 respect to personnel, budgeting, procurement, information systems, and other management
1947 related functions, and the previous agency shall provide the requested assistance.

1948 (5) The rules, orders, contracts, grants, and agreements relating to the functions of the
1949 department lawfully adopted before July 1, 2011, by the previous agency shall continue to be

1950 effective until revised, amended, or rescinded.

1951 (6) A suit, action, or other proceeding lawfully commenced by, against, or before the
1952 previous agency does not abate by reason of the enacting legislation.

1953 (7) (a) The executive director shall study the items listed in Subsection (7)(b), and
1954 report to the Business and Labor Interim Committee by no later than its November interim
1955 committee meeting regarding the results of the study and the need, if any, for legislation.

1956 (b) The study items to be studied by the executive director include the following:

1957 (i) to what extent, if any, the Division of Insurance within the department needs to be
1958 restructured or consolidated;

1959 (ii) how best to combine from the previous agency the following:

1960 (A) human resources functions;

1961 (B) information technology;

1962 (C) purchasing;

1963 (D) administrative functions;

1964 (E) management functions; and

1965 (F) personnel; and

1966 (iii) whether a position of commissioner of a division should be modified to be a
1967 deputy director.

1968 (8) (a) The Business and Labor Interim Committee may prepare legislation by no later
1969 than its November interim committee meeting for consideration in the 2012 General Session
1970 that modifies this title to reflect the consolidation enacted by the enacting legislation.

1971 (b) In preparing the legislation required by Subsection (8)(a), the Business and Labor
1972 Interim Committee shall consult with the executive director.

1973 Section 15. Section **31A-2a-201** is enacted to read:

Part 2. Division of Insurance Created

31A-2a-201. Division of Insurance -- Creation.

1976 (1) There is created within the Department of Commerce the Division of Insurance.

1977 (2) To the extent delegated to it by the executive director, the division shall administer
1978 and enforce this title.

1979 Section 16. Section **31A-2a-202** is enacted to read:

31A-2a-202. Commissioner.

1981 (1) To the extent delegated by the executive director, the chief administrative officer of
1982 the division is the commissioner, who shall serve as the executive and administrative head of
1983 the division.

1984 (2) (a) The executive director shall appoint the commissioner with the concurrence of
1985 the governor.

1986 (b) The commissioner shall be experienced in administration and possess such
1987 additional qualifications as determined by the executive director.

1988 (c) The executive director may remove the commissioner from that position at the will
1989 of the executive director.

1990 (d) The commissioner shall receive compensation as provided by Title 67, Chapter 19,
1991 Utah State Personnel Management Act.

1992 Section 17. Section **31A-2a-203** is enacted to read:

1993 **31A-2a-203. Employment of staff.**

1994 The commissioner, with the approval of the executive director, may employ necessary
1995 staff, including specialists and professionals, to assist the commissioner in performing the
1996 duties, functions, and responsibilities of the division.

1997 Section 18. Section **31A-2a-204** is enacted to read:

1998 **31A-2a-204. Money collected under this title.**

1999 Subsection 13-1-2(3) does not apply to money collected under this title.

2000 Section 19. Section **34A-2-103** is amended to read:

2001 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
2002 **Statutory employers.**

2003 (1) (a) The state, and each county, city, town, and school district in the state are
2004 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

2005 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
2006 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is
2007 considered to be a single employer and includes any office, department, agency, authority,
2008 commission, board, institution, hospital, college, university, or other instrumentality of the
2009 state.

2010 (2) (a) Except as provided in Subsection (4), each person, including each public utility
2011 and each independent contractor, who regularly employs one or more workers or operatives in

2012 the same business, or in or about the same establishment, under any contract of hire, express or
2013 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
2014 Occupational Disease Act.

2015 (b) As used in this Subsection (2):

2016 (i) "Independent contractor" means any person engaged in the performance of any work
2017 for another who, while so engaged, is:

2018 (A) independent of the employer in all that pertains to the execution of the work;

2019 (B) not subject to the routine rule or control of the employer;

2020 (C) engaged only in the performance of a definite job or piece of work; and

2021 (D) subordinate to the employer only in effecting a result in accordance with the
2022 employer's design.

2023 (ii) "Regularly" includes all employments in the usual course of the trade, business,
2024 profession, or occupation of the employer, whether continuous throughout the year or for only a
2025 portion of the year.

2026 (3) (a) The client under a professional employer organization agreement regulated
2027 under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

2028 (i) is considered the employer of a covered employee; and

2029 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a
2030 covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.

2031 (b) The division shall promptly inform the ~~[Insurance Department]~~ Department of
2032 Commerce, which may delegate this function to the Division of Insurance, if the division has
2033 reason to believe that a professional employer organization is not in compliance with
2034 Subsection 34A-2-201(1) or (2) and commission rules.

2035 (4) A domestic employer who does not employ one employee or more than one
2036 employee at least 40 hours per week is not considered an employer under this chapter and
2037 Chapter 3, Utah Occupational Disease Act.

2038 (5) (a) As used in this Subsection (5):

2039 (i) (A) "agricultural employer" means a person who employs agricultural labor as
2040 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
2041 Subsection 35A-4-206(3); and

2042 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a

2043 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
2044 employer is a corporation, partnership, or other business entity, "agricultural employer" means
2045 an officer, director, or partner of the business entity;

2046 (ii) "employer's immediate family" means:

2047 (A) an agricultural employer's:

2048 (I) spouse;

2049 (II) grandparent;

2050 (III) parent;

2051 (IV) sibling;

2052 (V) child;

2053 (VI) grandchild;

2054 (VII) nephew; or

2055 (VIII) niece;

2056 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

2057 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as

2058 defined by rules of the commission; and

2059 (iii) "nonimmediate family" means a person who is not a member of the employer's
2060 immediate family.

2061 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
2062 agricultural employer is not considered an employer of a member of the employer's immediate
2063 family.

2064 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
2065 agricultural employer is not considered an employer of a nonimmediate family employee if:

2066 (i) for the previous calendar year the agricultural employer's total annual payroll for all
2067 nonimmediate family employees was less than \$8,000; or

2068 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
2069 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
2070 \$50,000; and

2071 (B) the agricultural employer maintains insurance that covers job-related injuries of the
2072 employer's nonimmediate family employees in at least the following amounts:

2073 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

2074 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
2075 defined in Section 31A-1-301.

2076 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
2077 agricultural employer is considered an employer of a nonimmediate family employee if:

2078 (i) for the previous calendar year the agricultural employer's total annual payroll for all
2079 nonimmediate family employees is equal to or greater than \$50,000; or

2080 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
2081 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

2082 (B) the agricultural employer fails to maintain the insurance required under Subsection
2083 (5)(c)(ii)(B).

2084 (6) An employer of agricultural laborers or domestic servants who is not considered an
2085 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
2086 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

2087 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

2088 (b) the rules of the commission.

2089 (7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following
2090 persons that procures work to be done by a contractor notwithstanding whether or not the
2091 person directly employs a person:

2092 (A) a sole proprietorship;

2093 (B) a corporation;

2094 (C) a partnership;

2095 (D) a limited liability company; or

2096 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

2097 (ii) If an employer procures any work to be done wholly or in part for the employer by
2098 a contractor over whose work the employer retains supervision or control, and this work is a
2099 part or process in the trade or business of the employer, the contractor, all persons employed by
2100 the contractor, all subcontractors under the contractor, and all persons employed by any of
2101 these subcontractors, are considered employees of the original employer for the purposes of
2102 this chapter and Chapter 3, Utah Occupational Disease Act.

2103 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a
2104 residence that the person owns or is in the process of acquiring as the person's personal

2105 residence may not be considered an employee or employer solely by operation of Subsection
2106 (7)(a).

2107 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
2108 employee under Subsection (7)(a) if the employer who procures work to be done by the
2109 partnership or sole proprietorship obtains and relies on either:

2110 (i) a valid certification of the partnership's or sole proprietorship's compliance with
2111 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
2112 workers' compensation benefits pursuant to Section 34A-2-201; or

2113 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
2114 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
2115 issued by an insurer pursuant to Section 31A-22-1011 stating that:

2116 (A) the partnership or sole proprietorship is customarily engaged in an independently
2117 established trade, occupation, profession, or business; and

2118 (B) the partner or owner personally waives the partner's or owner's entitlement to the
2119 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the
2120 partnership or sole proprietorship.

2121 (d) A director or officer of a corporation is not considered an employee under
2122 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
2123 34A-2-104(4).

2124 (e) A contractor or subcontractor is not an employee of the employer under Subsection
2125 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
2126 and relies on either:

2127 (i) a valid certification of the contractor's or subcontractor's compliance with Section
2128 34A-2-201; or

2129 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
2130 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
2131 workers' compensation coverage waiver issued by an insurer pursuant to Section 31A-22-1011
2132 stating that:

2133 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
2134 independently established trade, occupation, profession, or business; and

2135 (B) the partner, corporate officer, or owner personally waives the partner's, corporate

2136 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah
2137 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
2138 proprietorship's enterprise under a contract of hire for services.

2139 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:
2140 (A) is an employer; and
2141 (B) procures work to be done wholly or in part for the employer by a contractor,
2142 including:

2143 (I) all persons employed by the contractor;
2144 (II) all subcontractors under the contractor; and
2145 (III) all persons employed by any of these subcontractors.

2146 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
2147 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
2148 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
2149 or subcontractor described in Subsection (7)(f)(i)(B).

2150 (iii) Subsection (7)(f)(ii) applies if the eligible employer:
2151 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
2152 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
2153 comply with Section 34A-2-201;

2154 (B) (I) secures the payment of workers' compensation benefits for the contractor or
2155 subcontractor pursuant to Section 34A-2-201;
2156 (II) procures work to be done that is part or process of the trade or business of the
2157 eligible employer; and
2158 (III) does the following with regard to a written workplace accident and injury
2159 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

2160 (Aa) adopts the workplace accident and injury reduction program;
2161 (Bb) posts the workplace accident and injury reduction program at the work site at
2162 which the eligible employer procures work; and
2163 (Cc) enforces the workplace accident and injury reduction program according to the
2164 terms of the workplace accident and injury reduction program; or
2165 (C) (I) obtains and relies on:
2166 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

2167 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or
2168 (7)(e)(ii); or

2169 (Cc) proof that a director or officer is excluded from coverage under Subsection
2170 34A-2-104(4);

2171 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
2172 if the contractor or subcontractor fails to comply with Section 34A-2-201;

2173 (III) procures work to be done that is part or process in the trade or business of the
2174 eligible employer; and

2175 (IV) does the following with regard to a written workplace accident and injury
2176 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

2177 (Aa) adopts the workplace accident and injury reduction program;

2178 (Bb) posts the workplace accident and injury reduction program at the work site at
2179 which the eligible employer procures work; and

2180 (Cc) enforces the workplace accident and injury reduction program according to the
2181 terms of the workplace accident and injury reduction program.

2182 Section 20. Section **34A-2-107** is amended to read:

2183 **34A-2-107. Appointment of workers' compensation advisory council --**
2184 **Composition -- Terms of members -- Duties -- Compensation.**

2185 (1) The commissioner shall appoint a workers' compensation advisory council
2186 composed of:

2187 (a) the following voting members:

2188 (i) five employer representatives; and

2189 (ii) five employee representatives; and

2190 (b) the following nonvoting members:

2191 (i) a representative of the Workers' Compensation Fund;

2192 (ii) a representative of a private insurance carrier;

2193 (iii) a representative of health care providers;

2194 (iv) the [~~Utah insurance commissioner or the insurance commissioner's~~] executive
2195 director of the Department of Commerce, or the executive director's designee; and

2196 (v) the commissioner or the commissioner's designee.

2197 (2) Employers and employees shall consider nominating members of groups who

2198 historically may have been excluded from the council, such as women, minorities, and
2199 individuals with disabilities.

2200 (3) (a) Except as required by Subsection (3)(b), as terms of current council members
2201 expire, the commissioner shall appoint each new member or reappointed member to a two-year
2202 term beginning July 1 and ending June 30.

2203 (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at
2204 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
2205 council members are staggered so that approximately half of the council is appointed every two
2206 years.

2207 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
2208 be appointed for the unexpired term.

2209 (b) The commissioner shall terminate the term of a council member who ceases to be
2210 representative as designated by the member's original appointment.

2211 (5) (a) The council shall confer at least quarterly for the purpose of advising the
2212 commission, the division, and the Legislature on:

- 2213 (i) the Utah workers' compensation and occupational disease laws;
- 2214 (ii) the administration of the laws described in Subsection (5)(a)(i);
- 2215 (iii) rules related to the laws described in Subsection (5)(a)(i); and
- 2216 (iv) advising the Legislature in accordance with Subsection (5)(b).

2217 (b) (i) The council and the commission shall jointly study during 2009 the premium
2218 assessment under Section 59-9-101 on an admitted insurer writing workers' compensation
2219 insurance in this state and on a self-insured employer under Section 34A-2-202 as to:

- 2220 (A) whether or not the premium assessment should be changed; or
- 2221 (B) whether or not changes should be made to how the premium assessment is used.

2222 (ii) The council and commission shall jointly report the results of the study described in
2223 this Subsection (5)(b) to the Business and Labor Interim Committee by no later than the 2009
2224 November interim meeting.

2225 (6) Regarding workers' compensation, rehabilitation, and reemployment of employees
2226 who are disabled because of an industrial injury or occupational disease the council shall:

- 2227 (a) offer advice on issues requested by:
 - 2228 (i) the commission;

- 2229 (ii) the division; and
- 2230 (iii) the Legislature; and
- 2231 (b) make recommendations to:
- 2232 (i) the commission; and
- 2233 (ii) the division.
- 2234 (7) The commissioner or the commissioner's designee shall serve as the chair of the
- 2235 council and call the necessary meetings.
- 2236 (8) The commission shall provide staff support to the council.
- 2237 (9) A member may not receive compensation or benefits for the member's service, but
- 2238 may receive per diem and travel expenses in accordance with:
- 2239 (a) Section 63A-3-106;
- 2240 (b) Section 63A-3-107; and
- 2241 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 2242 63A-3-107.
- 2243 Section 21. Section **34A-2-202** is amended to read:
- 2244 **34A-2-202. Assessment on self-insured employers including the state, counties,**
- 2245 **cities, towns, or school districts paying compensation direct.**
- 2246 (1) (a) (i) A self-insured employer, including a county, city, town, or school district,
- 2247 shall pay annually, on or before March 31, an assessment in accordance with this section and
- 2248 rules made by the commission under this section.
- 2249 (ii) For purposes of this section, "self-insured employer" is as defined in Section
- 2250 34A-2-201.5, except it includes the state if the state self-insures under Section 34A-2-203.
- 2251 (b) The assessment required by Subsection (1)(a) is:
- 2252 (i) to be collected by the State Tax Commission;
- 2253 (ii) paid by the State Tax Commission into the state treasury as provided in Subsection
- 2254 59-9-101(2); and
- 2255 (iii) subject to the offset provided in Section 34A-2-202.5.
- 2256 (c) The assessment under Subsection (1)(a) shall be based on a total calculated
- 2257 premium multiplied by the premium assessment rate established pursuant to Subsection
- 2258 59-9-101(2).
- 2259 (d) The total calculated premium, for purposes of calculating the assessment under

2260 Subsection (1)(a), shall be calculated by:

2261 (i) multiplying the total of the standard premium for each class code calculated in

2262 Subsection (1)(e) by the self-insured employer's experience modification factor; and

2263 (ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under

2264 Subsection (1)(g).

2265 (e) A standard premium shall be calculated by:

2266 (i) multiplying the prospective loss cost for the year being considered, as filed with the
2267 ~~[insurance department]~~ Department of Commerce under Title 31A, Insurance Code, which may

2268 delegate this function to the Division of Insurance, pursuant to Section 31A-19a-406, for each
2269 applicable class code by 1.10 to determine the manual rate for each class code; and

2270 (ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each
2271 \$100 of the self-insured employer's covered payroll for each class code.

2272 (f) (i) Each self-insured employer paying compensation direct shall annually obtain the
2273 experience modification factor required in Subsection (1)(d)(i) by using:

2274 (A) the rate service organization designated by the ~~[insurance commissioner]~~ executive
2275 director of the Department of Commerce, or the executive director's designee, in Section
2276 31A-19a-404; or

2277 (B) for a self-insured employer that is a public agency insurance mutual, an actuary
2278 approved by the commission.

2279 (ii) If a self-insured employer's experience modification factor under Subsection
2280 (1)(f)(i) is less than 0.50, the self-insured employer shall use an experience modification factor
2281 of 0.50 in determining the total calculated premium.

2282 (g) To provide incentive for improved safety, the safety factor required in Subsection
2283 (1)(d)(ii) shall be determined based on the self-insured employer's experience modification
2284 factor as follows:

2285	EXPERIENCE	
2286	MODIFICATION FACTOR	SAFETY FACTOR
2287	Less than or equal to 0.90	0.56
2288	Greater than 0.90 but less than or equal to 1.00	0.78
2289	Greater than 1.00 but less than or equal to 1.10	1.00

Greater than 1.10 but less than or equal to 1.20 1.22

2290

2291 Greater than 1.20 1.44

2292 (h) (i) A premium or premium assessment modification other than a premium or
2293 premium assessment modification under this section may not be allowed.

2294 (ii) If a self-insured employer paying compensation direct fails to obtain an experience
2295 modification factor as required in Subsection (1)(f)(i) within the reasonable time period
2296 established by rule by the State Tax Commission, the State Tax Commission shall use an
2297 experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total
2298 calculated premium for purposes of determining the assessment.

2299 (iii) Prior to calculating the total calculated premium under Subsection (1)(h)(ii), the
2300 State Tax Commission shall provide the self-insured employer with written notice that failure
2301 to obtain an experience modification factor within a reasonable time period, as established by
2302 rule by the State Tax Commission:

2303 (A) shall result in the State Tax Commission using an experience modification factor
2304 of 2.00 and a safety factor of 2.00 in calculating the total calculated premium for purposes of
2305 determining the assessment; and

2306 (B) may result in the division revoking the self-insured employer's right to pay
2307 compensation direct.

2308 (i) The division may immediately revoke a self-insured employer's certificate issued
2309 under Sections 34A-2-201 and 34A-2-201.5 that permits the self-insured employer to pay
2310 compensation direct if the State Tax Commission assigns an experience modification factor
2311 and a safety factor under Subsection (1)(h) because the self-insured employer failed to obtain
2312 an experience modification factor.

2313 (2) Notwithstanding the annual payment requirement in Subsection (1)(a), a
2314 self-insured employer whose total assessment obligation under Subsection (1)(a) for the
2315 preceding year was \$10,000 or more shall pay the assessment in quarterly installments in the
2316 same manner provided in Section 59-9-104 and subject to the same penalty provided in Section
2317 59-9-104 for not paying or underpaying an installment.

2318 (3) (a) The State Tax Commission shall have access to all the records of the division
2319 for the purpose of auditing and collecting any amounts described in this section.

2320 (b) Time periods for the State Tax Commission to allow a refund or make an

2321 assessment shall be determined in accordance with Title 59, Chapter 1, Part 14, Assessment,
2322 Collections, and Refunds Act.

2323 (4) (a) A review of appropriate use of job class assignment and calculation
2324 methodology may be conducted as directed by the division at any reasonable time as a
2325 condition of the self-insured employer's certification of paying compensation direct.

2326 (b) The State Tax Commission shall make any records necessary for the review
2327 available to the commission.

2328 (c) The commission shall make the results of any review available to the State Tax
2329 Commission.

2330 Section 22. Section **35A-1-104.5** is amended to read:

2331 **35A-1-104.5. Strategic plan for health system reform.**

2332 The department shall work with the Department of Health, the [~~Insurance Department~~]
2333 Department of Commerce, which may delegate this function to the Division of Insurance, the
2334 Governor's Office of Economic Development, and the Legislature to develop the health system
2335 reform in accordance with Title 63M, Chapter 1, Part 25, Health System Reform Act.

2336 Section 23. Section **35A-4-312** is amended to read:

2337 **35A-4-312. Records.**

2338 (1) (a) An employing unit shall keep true and accurate work records containing any
2339 information the department may prescribe by rule.

2340 (b) A record shall be open to inspection and subject to being copied by the division or
2341 its authorized representatives at a reasonable time and as often as may be necessary.

2342 (c) An employing unit shall make a record available in the state for three years after the
2343 calendar year in which the services are rendered.

2344 (2) The division may require from an employing unit a sworn or unsworn report with
2345 respect to a person employed by the employing unit that the division considers necessary for
2346 the effective administration of this chapter.

2347 (3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106,
2348 information obtained under this chapter or obtained from an individual may not be published or
2349 open to public inspection in any manner revealing the employing unit's or individual's identity.

2350 (4) (a) The information obtained by the division under this section may not be used in
2351 court or admitted into evidence in an action or proceeding, except:

- 2352 (i) in an action or proceeding arising out of this chapter;
- 2353 (ii) if the Labor Commission enters into a written agreement with the division under
- 2354 Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce:
- 2355 (A) Title 34, Chapter 23, Employment of Minors;
- 2356 (B) Title 34, Chapter 28, Payment of Wages;
- 2357 (C) Title 34, Chapter 40, Utah Minimum Wage Act; or
- 2358 (D) Title 34A, Utah Labor Code; or
- 2359 (iii) under the terms of a court order obtained under Subsection 63G-2-202(7) and
- 2360 Section 63G-2-207.
- 2361 (b) The information obtained by the division under this section shall be disclosed to:
- 2362 (i) a party to an unemployment insurance hearing before an administrative law judge of
- 2363 the department or a review by the Workforce Appeals Board to the extent necessary for the
- 2364 proper presentation of the party's case; or
- 2365 (ii) an employer, upon request in writing for any information concerning a claim for a
- 2366 benefit with respect to a former employee of the employer.
- 2367 (5) The information obtained by the division under this section may be disclosed to:
- 2368 (a) an employee of the department in the performance of the employee's duties in
- 2369 administering this chapter or other programs of the department;
- 2370 (b) an employee of the Labor Commission for the purpose of carrying out the programs
- 2371 administered by the Labor Commission;
- 2372 (c) an employee of the Department of Commerce for the purpose of carrying out the
- 2373 programs administered by the Department of Commerce;
- 2374 (d) an employee of the governor's office or another state governmental agency
- 2375 administratively responsible for statewide economic development, to the extent necessary for
- 2376 economic development policy analysis and formulation;
- 2377 (e) an employee of another governmental agency that is specifically identified and
- 2378 authorized by federal or state law to receive the information for the purposes stated in the law
- 2379 authorizing the employee of the agency to receive the information;
- 2380 (f) an employee of a governmental agency or workers' compensation insurer to the
- 2381 extent the information will aid in:
- 2382 (i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:

- 2383 (A) a workers' compensation program; or
- 2384 (B) public assistance funds; or
- 2385 (ii) the recovery of overpayments of workers' compensation or public assistance funds;
- 2386 (g) an employee of a law enforcement agency to the extent the disclosure is necessary
- 2387 to avoid a significant risk to public safety or in aid of a felony criminal investigation;
- 2388 (h) an employee of the State Tax Commission or the Internal Revenue Service for the
- 2389 purposes of:
 - 2390 (i) audit verification or simplification;
 - 2391 (ii) state or federal tax compliance;
 - 2392 (iii) verification of a code or classification of the:
 - 2393 (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of
 - 2394 the President, Office of Management and Budget; or
 - 2395 (B) 2002 North American Industry Classification System of the federal Executive
 - 2396 Office of the President, Office of Management and Budget; and
 - 2397 (iv) statistics;
 - 2398 (i) an employee or contractor of the department or an educational institution, or other
 - 2399 governmental entity engaged in workforce investment and development activities under the
 - 2400 Workforce Investment Act of 1998 for the purpose of:
 - 2401 (i) coordinating services with the department;
 - 2402 (ii) evaluating the effectiveness of those activities; and
 - 2403 (iii) measuring performance;
 - 2404 (j) an employee of the Governor's Office of Economic Development, for the purpose of
 - 2405 periodically publishing in the Directory of Business and Industry, the name, address, telephone
 - 2406 number, number of employees by range, code or classification of an employer, and type of
 - 2407 ownership of Utah employers;
 - 2408 (k) the public for any purpose following a written waiver by all interested parties of
 - 2409 their rights to nondisclosure;
 - 2410 (l) an individual whose wage data is submitted to the department by an employer, so
 - 2411 long as no information other than the individual's wage data and the identity of the employer
 - 2412 who submitted the information is provided to the individual; or
 - 2413 (m) an employee of the [~~Insurance Department~~] Department of Commerce for the

2414 purpose of administering Title 31A, Chapter 40, Professional Employer Organization Licensing
2415 Act.

2416 (6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5),
2417 with the exception of Subsections (5)(a) and (g), shall be made only if:

2418 (a) the division determines that the disclosure will not have a negative effect on:

2419 (i) the willingness of employers to report wage and employment information; or

2420 (ii) the willingness of individuals to file claims for unemployment benefits; and

2421 (b) the agency enters into a written agreement with the division in accordance with
2422 rules made by the department.

2423 (7) (a) The employees of a division of the department other than the Workforce
2424 Development and Information Division and the Unemployment Insurance Division or an
2425 agency receiving private information from the division under this chapter are subject to the
2426 same requirements of privacy and confidentiality and to the same penalties for misuse or
2427 improper disclosure of the information as employees of the division.

2428 (b) Use of private information obtained from the department by a person, or for a
2429 purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

2430 Section 24. Section **36-12-5** is amended to read:

2431 **36-12-5. Duties of interim committees.**

2432 (1) Except as otherwise provided by law, each interim committee shall:

2433 (a) receive study assignments by resolution from the Legislature;

2434 (b) receive study assignments from the Legislative Management Committee, created
2435 under Section 36-12-6;

2436 (c) place matters on its study agenda after requesting approval of the study from the
2437 Legislative Management Committee, which request, if not disapproved by the Legislative
2438 Management Committee within 30 days of receipt of the request, the interim committee shall
2439 consider it approved and may proceed with the requested study;

2440 (d) request research reports from the professional legislative staff pertaining to the
2441 committee's agenda of study;

2442 (e) investigate and study possibilities for improvement in government services within
2443 its subject area;

2444 (f) accept reports from the professional legislative staff and make recommendations for

2445 legislative action with respect to such reports; and
2446 (g) prepare and recommend to the Legislature a legislative program in response to the
2447 committee's study agenda.
2448 (2) (a) As used in this Subsection (2):
2449 (i) "Health insurance" is as defined in Section 31A-1-301.
2450 (ii) "Health insurance mandate" means a mandatory obligation with respect to a
2451 coverage, benefit, or provider that, but for Title 31A, Insurance Code, would not be required
2452 for a policy of health insurance.
2453 (iii) "Review committee" means:
2454 (A) the Business and Labor Interim Committee; and
2455 (B) the Health and Human Services Interim Committee.
2456 (b) In addition to the duties established pursuant to Subsection (1), annually each
2457 review committee shall:
2458 (i) identify the one or more health insurance mandates listed under Subsection (2)(d)
2459 that:
2460 (A) are in effect for five or more years as of May 1; and
2461 (B) have not been reviewed during the previous 10 years as of May 1;
2462 (ii) select which of the one or more health insurance mandates identified under
2463 Subsection (2)(b)(i) that the review committee elects to review, subject to the direction of the
2464 Legislative Management Committee; and
2465 (iii) review a health insurance mandate selected under Subsection (2)(b)(ii) to
2466 determine whether the health insurance mandate should be continued, modified, or repealed.
2467 (c) The review under this Subsection (2) shall include:
2468 (i) the estimated fiscal impact of the health insurance mandate on state and private
2469 health insurance; and
2470 (ii) the purpose and effectiveness of the health insurance mandate.
2471 (d) The ~~[Insurance Department]~~ Department of Commerce under Title 31A, Insurance
2472 Code, which may delegate this function to the Division of Insurance, shall:
2473 (i) provide a list of the health insurance mandates in this state in its annual report; and
2474 (ii) assist in a review if requested by a review committee.
2475 (3) Except as otherwise provided by law, reports and recommendations of the interim

2476 committees shall be completed and made public prior to any legislative session at which the
2477 reports and recommendations are submitted. A copy of the reports and recommendations shall
2478 be mailed to each member or member-elect of the Legislature, to each elective state officer, and
2479 to the state library.

2480 Section 25. Section **41-3-201** is amended to read:

2481 **41-3-201. Licenses required -- Restitution -- Education.**

2482 (1) As used in this section, "new applicant" means a person who is applying for a
2483 license that the person has not been issued during the previous licensing year.

2484 (2) A person may not act as any of the following without having procured a license
2485 issued by the administrator:

2486 (a) a dealer;

2487 (b) salvage vehicle buyer;

2488 (c) salesperson;

2489 (d) manufacturer;

2490 (e) transporter;

2491 (f) dismantler;

2492 (g) distributor;

2493 (h) factory branch and representative;

2494 (i) distributor branch and representative;

2495 (j) crusher;

2496 (k) remanufacturer; or

2497 (l) body shop.

2498 (3) (a) Except as provided in Subsection (3)(c), a person may not bid on or purchase a
2499 vehicle with a salvage certificate as defined in Section 41-1a-1001 at or through a motor
2500 vehicle auction unless the person is a licensed salvage vehicle buyer.

2501 (b) Except as provided in Subsection (3)(c), a person may not offer for sale, sell, or
2502 exchange a vehicle with a salvage certificate as defined in Section 41-1a-1001 at or through a
2503 motor vehicle auction except to a licensed salvage vehicle buyer.

2504 (c) A person may offer for sale, sell, or exchange a vehicle with a salvage certificate as
2505 defined in Section 41-1a-1001 at or through a motor vehicle auction:

2506 (i) to an out-of-state or out-of-country purchaser not licensed under this section, but

2507 that is authorized to do business in the domestic or foreign jurisdiction in which the person is
2508 domiciled or registered to do business; and

2509 (ii) subject to the restriction in Subsection (3)(d), to an in-state purchaser not licensed
2510 under this section that:

2511 (A) is registered to do business in Utah; and

2512 (B) has a Utah sales tax license.

2513 (d) An operator of a motor vehicle auction may only offer for sale, sell, or exchange
2514 five vehicles with a salvage certificate as defined in Section 41-1a-1001 at or through a motor
2515 vehicle auction in any 12 month period to an in-state purchaser that does not have a salvage
2516 vehicle buyer license issued in accordance with Subsection 41-3-202(15).

2517 (e) (i) An in-state purchaser of a vehicle with a salvage certificate as defined in Section
2518 41-1a-1001 that is purchased at or through a motor vehicle auction shall title the vehicle within
2519 15 days of the purchase if the purchaser does not have a salvage vehicle buyer license, dealer
2520 license, body shop license, or dismantler license issued in accordance with Section 41-3-202.

2521 (ii) An operator of a motor vehicle auction may not offer for sale, sell, or exchange
2522 additional vehicles with a salvage certificate as defined in Section 41-1a-1001 at or through a
2523 motor vehicle auction to a purchaser if notified that the purchaser has not titled previously
2524 purchased vehicles with a salvage certificate as required under Subsection (3)(e)(i).

2525 (f) The commission may impose an administrative entrance fee established in
2526 accordance with the procedures and requirements of Section 63J-1-504 not to exceed \$10 on a
2527 person not holding a license described in Subsection (3)(e)(i) that enters the physical premises
2528 of a motor vehicle auction for the purpose of viewing available salvage vehicles prior to an
2529 auction.

2530 (4) (a) An operator of a motor vehicle auction shall keep a record of the sale of each
2531 salvage vehicle.

2532 (b) A record described under Subsection (4)(a) shall contain:

2533 (i) the purchaser's name and address; and

2534 (ii) the year, make, and vehicle identification number for each salvage vehicle sold.

2535 (c) An operator of a motor vehicle auction shall:

2536 (i) retain the record described in this Subsection (4) for five years from the date of sale;

2537 and

2538 (ii) make a record described in this Subsection (4) available for inspection by the
2539 division at the location of the motor vehicle auction during normal business hours.

2540 (5) (a) An operator of a motor vehicle auction that sells a salvage vehicle to a person
2541 that is an out-of-country buyer shall:

2542 (i) stamp on the face of the title so as not to obscure the name, date, or mileage
2543 statement the words "FOR EXPORT ONLY" in all capital, black letters; and

2544 (ii) stamp in each unused reassignment space on the back of the title the words "FOR
2545 EXPORT ONLY."

2546 (b) The words "FOR EXPORT ONLY" shall be:

2547 (i) at least two inches wide; and

2548 (ii) clearly legible.

2549 (6) A supplemental license shall be secured by a dealer, manufacturer, remanufacturer,
2550 transporter, dismantler, crusher, or body shop for each additional place of business maintained
2551 by the licensee.

2552 (7) A person who has been convicted of any law relating to motor vehicle commerce or
2553 motor vehicle fraud may not be issued a license unless full restitution regarding those
2554 convictions has been made.

2555 (8) (a) The division may not issue a license to a new applicant for a new or used motor
2556 vehicle dealer license, a new or used motorcycle dealer license, or a small trailer dealer license
2557 unless the new applicant completes an eight-hour orientation class approved by the division
2558 that includes education on motor vehicle laws and rules.

2559 (b) The approved costs of the orientation class shall be paid by the new applicant.

2560 (c) The class shall be completed by the new applicant and the applicant's partners,
2561 corporate officers, bond indemnitors, and managers.

2562 (d) (i) The division shall approve:

2563 (A) providers of the orientation class; and

2564 (B) costs of the orientation class.

2565 (ii) A provider of an orientation class shall submit the orientation class curriculum to
2566 the division for approval prior to teaching the orientation class.

2567 (iii) A provider of an orientation class shall include in the orientation materials:

2568 (A) ethics training;

- 2569 (B) motor vehicle title and registration processes;
- 2570 (C) provisions of Title 13, Chapter 5, Unfair Practices Act, relating to motor vehicles;
- 2571 (D) ~~[Department of Insurance]~~ Department of Commerce requirements relating to
- 2572 motor vehicles established under Title 31A, Insurance Code, which may delegate this function
- 2573 to the Division of Insurance;
- 2574 (E) Department of Public Safety requirements relating to motor vehicles;
- 2575 (F) federal requirements related to motor vehicles as determined by the division; and
- 2576 (G) any required disclosure compliance forms as determined by the division.

2577 Section 26. Section **49-20-405** is amended to read:

2578 **49-20-405. Audit required -- Report to governor and Legislature.**

2579 The ~~[Insurance Department]~~ Department of Commerce acting under Title 31A,

2580 Insurance Code, which may delegate this function to the Division of Insurance, shall biennially

2581 audit the Public Employees' Trust Fund and programs authorized under this chapter and report

2582 its findings to the governor and the Legislature, but the ~~[commissioner]~~ Department of

2583 Commerce may accept the annual audited statement of the programs under this chapter in lieu

2584 of the biennial audit requirement.

2585 Section 27. Section **58-9-302** is amended to read:

2586 **58-9-302. Qualifications for licensure.**

- 2587 (1) Each applicant for licensure as a funeral service director shall:
- 2588 (a) submit an application in a form prescribed by the division;
- 2589 (b) pay a fee as determined by the department under Section 63J-1-504;
- 2590 (c) be of good moral character in that the applicant has not been convicted of:
- 2591 (i) a first or second degree felony;
- 2592 (ii) a misdemeanor involving moral turpitude; or
- 2593 (iii) any other crime that when considered with the duties and responsibilities of a
- 2594 funeral service director is considered by the division and the board to indicate that the best
- 2595 interests of the public are not served by granting the applicant a license;
- 2596 (d) have obtained a high school diploma or its equivalent or a higher education degree;
- 2597 (e) have obtained an associate degree, or its equivalent, in mortuary science from a
- 2598 school of funeral service accredited by the American Board of Funeral Service Education or
- 2599 other accrediting body recognized by the ~~[U.S.]~~ United States Department of Education;

2600 (f) have completed not less than 2,000 hours and 50 embalmings, over a period of not
2601 less than one year, of satisfactory performance in training as a licensed funeral service intern
2602 under the supervision of a licensed funeral service director; and

2603 (g) obtain a passing score on examinations approved by the division in collaboration
2604 with the board.

2605 (2) Each applicant for licensure as a funeral service intern shall:

2606 (a) submit an application in a form prescribed by the division;

2607 (b) pay a fee as determined by the department under Section 63J-1-504;

2608 (c) be of good moral character in that the applicant has not been convicted of:

2609 (i) a first or second degree felony;

2610 (ii) a misdemeanor involving moral turpitude; or

2611 (iii) any other crime that when considered with the duties and responsibilities of a
2612 funeral service intern is considered by the division and the board to indicate that the best
2613 interests of the public are not served by granting the applicant a license;

2614 (d) have obtained a high school diploma or its equivalent or a higher education degree;
2615 and

2616 (e) obtain a passing score on an examination approved by the division in collaboration
2617 with the board.

2618 (3) Each applicant for licensure as a funeral service establishment and each funeral
2619 service establishment licensee shall:

2620 (a) submit an application in a form prescribed by the division;

2621 (b) pay a fee as determined by the department under Section 63J-1-504;

2622 (c) have in place:

2623 (i) an embalming room for preparing dead human bodies for burial or final disposition,
2624 which may serve one or more facilities operated by the applicant;

2625 (ii) a refrigeration room that maintains a temperature of not more than 40 degrees
2626 fahrenheit for preserving dead human bodies prior to burial or final disposition, which may
2627 serve one or more facilities operated by the applicant; and

2628 (iii) maintain at all times a licensed funeral service director who is responsible for the
2629 day-to-day operation of the funeral service establishment and who is personally available to
2630 perform the services for which the license is required;

2631 (d) affiliate with a licensed preneed funeral arrangement sales agent or funeral service
2632 director if the funeral service establishment sells preneed funeral arrangements;

2633 (e) file with the completed application a copy of each form of contract or agreement the
2634 applicant will use in the sale of preneed funeral arrangements; and

2635 (f) provide evidence of appropriate licensure with the [~~Insurance Department~~]
2636 Department of Commerce under Title 31A, Insurance Code, which may delegate this function
2637 to the Division of Insurance, if the applicant intends to engage in the sale of any preneed
2638 funeral arrangements funded in whole or in part by an insurance policy or product to be sold by
2639 the provider or the provider's sales agent.

2640 (4) Each applicant for licensure as a preneed funeral arrangement sales agent shall:

2641 (a) submit an application in a form prescribed by the division;

2642 (b) pay a fee as determined by the department under Section 63J-1-504;

2643 (c) be of good moral character in that the applicant has not been convicted of:

2644 (i) a first or second degree felony;

2645 (ii) a misdemeanor involving moral turpitude; or

2646 (iii) any other crime that when considered with the duties and responsibilities of a
2647 preneed funeral sales agent is considered by the division and the board to indicate that the best
2648 interests of the public are not served by granting the applicant a license;

2649 (d) have obtained a high school diploma or its equivalent or a higher education degree;

2650 (e) have obtained a passing score on an examination approved by the division in
2651 collaboration with the board;

2652 (f) affiliate with a licensed funeral service establishment; and

2653 (g) provide evidence of appropriate licensure with the [~~Insurance Department~~]
2654 Department of Commerce under Title 31A, Insurance Code, which may delegate this function
2655 to the Division of Insurance, if the applicant intends to engage in the sale of any preneed
2656 funeral arrangements funded in whole or in part by an insurance policy or product.

2657 Section 28. Section **58-9-701** is amended to read:

2658 **58-9-701. Preneed contract requirements.**

2659 (1) (a) Every preneed funeral arrangement sold in Utah shall be evidenced by a written
2660 contract.

2661 (b) The funeral service establishment shall maintain a copy of the contract until five

- 2662 years after all of its obligations under the contract have been executed.
- 2663 (2) Each preneed contract form shall:
- 2664 (a) be written in clear and understandable language printed in an easy-to-read type size
2665 and style;
- 2666 (b) bear the preprinted name, address, telephone number, and license number of the
2667 funeral service establishment obligated to provide the services under the contract terms;
- 2668 (c) be sequentially numbered by contract form;
- 2669 (d) clearly identify that the contract is a guaranteed product contract;
- 2670 (e) provide that a trust is established in accordance with the provisions of Section
2671 58-9-702;
- 2672 (f) if the contract is funded by an insurance policy or product, provide that the
2673 insurance policy or product is filed with the [~~Insurance Department~~] Department of Commerce
2674 under Title 31A, Insurance Code, which may delegate this function to the Division of
2675 Insurance, and meets the requirements of Title 31A, Insurance Code; and
- 2676 (g) conform to other standards created by rule under Title 63G, Chapter 3, Utah
2677 Administrative Rulemaking Act, to protect the interests of buyers and potential buyers.
- 2678 (3) A preneed contract shall provide for payment by the buyer in a form which may be
2679 liquidated by the funeral service establishment within 30 days after the day the funeral service
2680 establishment or sales agent receives the payment.
- 2681 (4) A preneed contract may not be revocable by the funeral service establishment
2682 except:
- 2683 (a) in the event of nonpayment; and
- 2684 (b) under terms and conditions clearly set forth in the contract.
- 2685 (5) (a) A preneed contract may not be revocable by the buyer or beneficiary except:
- 2686 (i) in the event of:
- 2687 (A) a substantial contract breach by the funeral service establishment; or
- 2688 (B) substantial evidence that the funeral service establishment is or will be unable to
2689 provide the personal property or services to the beneficiary as provided under the contract; or
- 2690 (ii) under terms and conditions clearly set forth in the contract.
- 2691 (b) The contract shall contain a clear statement of the manner in which payments made
2692 on the contract shall be refunded to the buyer or beneficiary upon revocation by the beneficiary.

2693 (6) (a) A preneed contract shall provide the buyer the option to require the funeral
2694 service establishment to furnish a written disclosure to a person who does not live at the same
2695 residence as the buyer.

2696 (b) The buyer may choose:

2697 (i) a full disclosure containing a copy of the entire preneed contract;

2698 (ii) a partial disclosure informing the recipient of:

2699 (A) the existence of a preneed contract; and

2700 (B) the name, address, telephone number, and license number of the funeral service
2701 establishment obligated to provide the services under the preneed contract; or

2702 (iii) not to require the funeral service establishment to furnish a written disclosure to
2703 another person.

2704 Section 29. Section **58-56-17** is amended to read:

2705 **58-56-17. Fees on sale -- Escrow agents -- Sales tax.**

2706 (1) A dealer shall collect and remit a fee of \$75 to the division for each factory built
2707 home the dealer sells that, as of the date of the sale, has not been permanently affixed to real
2708 property and converted to real property as provided in Section 70D-2-401. The fee shall be
2709 payable within 30 days following the close of each calendar quarter for all units sold during
2710 that calendar quarter. The fee shall be deposited in a restricted account as provided in Section
2711 58-56-17.5.

2712 (2) A principal real estate broker, associate broker, or sales agent exempt from
2713 registration as a dealer under Section 58-56-16 who sells a factory built home that has not been
2714 permanently affixed to real property shall close the sale only through a qualified escrow agent
2715 in this state registered with the [~~Insurance Department or the~~] Department of Financial
2716 Institutions or the Department of Commerce under Title 31A, Insurance Code, which may
2717 delegate this function to the Division of Insurance.

2718 (3) An escrow agent through which a sale is closed under Subsection (2) shall remit all
2719 required sales tax to the state.

2720 Section 30. Section **59-9-105** is amended to read:

2721 **59-9-105. Tax on certain insurers to pay for relative value study and other**
2722 **publications or services.**

2723 (1) Each insurer providing coverage for motor vehicle liability, uninsured motorist, and

2724 personal injury protection shall pay to the State Tax Commission on or before March 31 of
2725 each year, a tax of .01% on the total premiums received for these coverages during the
2726 preceding calendar year from policies covering motor vehicle risks in this state.

2727 (2) The taxable premium under this section shall be reduced by all premiums returned
2728 or credited to policyholders on direct business subject to tax in this state.

2729 (3) All money received by the state under this section shall be deposited in the General
2730 Fund as a dedicated credit for the purpose of providing funds to pay for any costs and expenses
2731 incurred by the [~~Insurance Department~~] Department of Commerce, which may delegate this
2732 function to the Division of Insurance:

2733 (a) in conducting, maintaining, and administering the relative value study referred to in
2734 Section 31A-22-307;

2735 (b) to prepare, publish, and distribute publications relating to insurance and consumers
2736 of insurance as provided in Section 31A-2-208; and

2737 (c) in providing the services of the [~~Insurance Department~~] Department of Commerce
2738 under Title 31A, Insurance Code, through the use of:

2739 (i) electronic commerce; and

2740 (ii) other information technology.

2741 Section 31. Section **59-10-1023** is amended to read:

2742 **59-10-1023. Nonrefundable tax credit for amounts paid under a health benefit**
2743 **plan.**

2744 (1) As used in this section:

2745 (a) "Claimant with dependents" means a claimant:

2746 (i) regardless of the claimant's filing status for purposes of filing a federal individual
2747 income tax return for the taxable year; and

2748 (ii) who claims one or more dependents under Section 151, Internal Revenue Code, as
2749 allowed on the claimant's federal individual income tax return for the taxable year.

2750 (b) "Eligible insured individual" means:

2751 (i) the claimant who is insured under a health benefit plan;

2752 (ii) the spouse of the claimant described in Subsection (1)(b)(i) if:

2753 (A) the claimant files a single return jointly under this chapter with the claimant's
2754 spouse for the taxable year; and

2755 (B) the spouse is insured under the health benefit plan described in Subsection
2756 (1)(b)(i); or
2757 (iii) a dependent of the claimant described in Subsection (1)(b)(i) if:
2758 (A) the claimant claims the dependent under Section 151, Internal Revenue Code, as
2759 allowed on the claimant's federal individual income tax return for the taxable year; and
2760 (B) the dependent is insured under the health benefit plan described in Subsection
2761 (1)(b)(i).
2762 (c) "Excluded expenses" means an amount a claimant pays for insurance offered under
2763 a health benefit plan for a taxable year if:
2764 (i) the claimant claims a tax credit for that amount under Section 35, Internal Revenue
2765 Code:
2766 (A) on the claimant's federal individual income tax return for the taxable year; and
2767 (B) with respect to an eligible insured individual;
2768 (ii) the claimant deducts that amount under Section 162 or 213, Internal Revenue
2769 Code:
2770 (A) on the claimant's federal individual income tax return for the taxable year; and
2771 (B) with respect to an eligible insured individual; or
2772 (iii) the claimant excludes that amount from gross income under Section 106 or 125,
2773 Internal Revenue Code, with respect to an eligible insured individual.
2774 (d) (i) "Health benefit plan" is as defined in Section 31A-1-301.
2775 (ii) "Health benefit plan" does not include equivalent self-insurance as defined [~~by the~~
2776 ~~Insurance Department~~] by rule made in accordance with Title 63G, Chapter 3, Utah
2777 Administrative Rulemaking Act, by the Department of Commerce under Title 31A, Insurance
2778 Code, which may delegate this function to the Division of Insurance.
2779 (e) "Joint claimant with no dependents" means a husband and wife who:
2780 (i) file a single return jointly under this chapter for the taxable year; and
2781 (ii) do not claim a dependent under Section 151, Internal Revenue Code, on the
2782 husband's and wife's federal individual income tax return for the taxable year.
2783 (f) "Single claimant with no dependents" means:
2784 (i) a single individual who:
2785 (A) files a single federal individual income tax return for the taxable year; and

2786 (B) does not claim a dependent under Section 151, Internal Revenue Code, on the
2787 single individual's federal individual income tax return for the taxable year;

2788 (ii) a head of household:

2789 (A) as defined in Section 2(b), Internal Revenue Code, who files a single federal
2790 individual income tax return for the taxable year; and

2791 (B) who does not claim a dependent under Section 151, Internal Revenue Code, on the
2792 head of household's federal individual income tax return for the taxable year; or

2793 (iii) a married individual who:

2794 (A) does not file a single federal individual income tax return jointly with that married
2795 individual's spouse for the taxable year; and

2796 (B) does not claim a dependent under Section 151, Internal Revenue Code, on that
2797 married individual's federal individual income tax return for the taxable year.

2798 (2) Subject to Subsection (3), and except as provided in Subsection (4), for taxable
2799 years beginning on or after January 1, 2009, a claimant may claim a nonrefundable tax credit
2800 equal to the product of:

2801 (a) the difference between:

2802 (i) the total amount the claimant pays during the taxable year for:

2803 (A) insurance offered under a health benefit plan; and

2804 (B) an eligible insured individual; and

2805 (ii) excluded expenses; and

2806 (b) 5%.

2807 (3) The maximum amount of a tax credit described in Subsection (2) a claimant may
2808 claim on a return for a taxable year is:

2809 (a) for a single claimant with no dependents, \$300;

2810 (b) for a joint claimant with no dependents, \$600; or

2811 (c) for a claimant with dependents, \$900.

2812 (4) A claimant may not claim a tax credit under this section if the claimant is eligible to
2813 participate in insurance offered under a health benefit plan maintained and funded in whole or
2814 in part by:

2815 (a) the claimant's employer; or

2816 (b) another person's employer.

2817 (5) A claimant may not carry forward or carry back a tax credit under this section.

2818 Section 32. Section **63A-5-205** is amended to read:

2819 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
2820 **coverage.**

2821 (1) As used in this section:

2822 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

2823 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

2824 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
2825 34A-2-104 who:

2826 (i) works at least 30 hours per calendar week; and

2827 (ii) meets employer eligibility waiting requirements for health care insurance which
2828 may not exceed the first day of the calendar month following 90 days from the date of hire.

2829 (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

2830 (e) "Qualified health insurance coverage" means at the time the contract is entered into
2831 or renewed:

2832 (i) a health benefit plan and employer contribution level with a combined actuarial
2833 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
2834 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
2835 a contribution level of 50% of the premium for the employee and the dependents of the
2836 employee who reside or work in the state, in which:

2837 (A) the employer pays at least 50% of the premium for the employee and the
2838 dependents of the employee who reside or work in the state; and

2839 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(e)(i):

2840 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket
2841 maximum based on income levels:

2842 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

2843 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

2844 (II) dental coverage is not required; and

2845 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
2846 apply; or

2847 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a

2848 deductible that is either:

2849 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

2850 or

2851 (II) a deductible that is higher than the lowest deductible permitted for a federally
2852 qualified high deductible health plan, but includes an employer contribution to a health savings
2853 account in a dollar amount at least equal to the dollar amount difference between the lowest
2854 deductible permitted for a federally qualified high deductible plan and the deductible for the
2855 employer offered federally qualified high deductible plan;

2856 (B) an out-of-pocket maximum that does not exceed three times the amount of the
2857 annual deductible; and

2858 (C) under which the employer pays 75% of the premium for the employee and the
2859 dependents of the employee who work or reside in the state.

2860 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

2861 (2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:

2862 (a) subject to Subsection (3), enter into contracts for any work or professional services
2863 which the division or the State Building Board may do or have done; and

2864 (b) as a condition of any contract for architectural or engineering services, prohibit the
2865 architect or engineer from retaining a sales or agent engineer for the necessary design work.

2866 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all design
2867 or construction contracts entered into by the division or the State Building Board on or after
2868 July 1, 2009, and:

2869 (i) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or
2870 greater; and

2871 (ii) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

2872 (b) This Subsection (3) does not apply:

2873 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

2874 (ii) if the contract is a sole source contract;

2875 (iii) if the contract is an emergency procurement; or

2876 (iv) to a change order as defined in Section [~~63G-6-102~~] 63G-6-103, or a modification
2877 to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

2878 (c) A person who intentionally uses change orders or contract modifications to

2879 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

2880 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
2881 the contractor has and will maintain an offer of qualified health insurance coverage for the
2882 contractor's employees and the employees' dependents.

2883 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
2884 shall demonstrate to the director that the subcontractor has and will maintain an offer of
2885 qualified health insurance coverage for the subcontractor's employees and the employees'
2886 dependents.

2887 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)
2888 during the duration of the contract is subject to penalties in accordance with administrative
2889 rules adopted by the division under Subsection (3)(f).

2890 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
2891 requirements of Subsection (3)(d)(ii).

2892 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)
2893 during the duration of the contract is subject to penalties in accordance with administrative
2894 rules adopted by the division under Subsection (3)(f).

2895 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
2896 requirements of Subsection (3)(d)(i).

2897 (f) The division shall adopt administrative rules:

2898 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2899 (ii) in coordination with:

2900 (A) the Department of Environmental Quality in accordance with Section 19-1-206;

2901 (B) the Department of Natural Resources in accordance with Section 79-2-404;

2902 (C) a public transit district in accordance with Section 17B-2a-818.5;

2903 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

2904 (E) the Department of Transportation in accordance with Section 72-6-107.5; and

2905 (F) the Legislature's Administrative Rules Review Committee; and

2906 (iii) which establish:

2907 (A) the requirements and procedures a contractor must follow to demonstrate to the
2908 director compliance with this Subsection (3) which shall include:

2909 (I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i)

2910 or (ii) more than twice in any 12-month period; and

2911 (II) that the actuarially equivalent determination required in Subsection (1) is met by
2912 the contractor if the contractor provides the department or division with a written statement of
2913 actuarial equivalency from either:

2914 (Aa) the [~~Utah Insurance Department~~] Department of Commerce under Title 31A,
2915 Insurance Code, which may delegate this function to the Division of Insurance;

2916 (Bb) an actuary selected by the contractor or the contractor's insurer; or

2917 (Cc) an underwriter who is responsible for developing the employer group's premium
2918 rates;

2919 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
2920 violates the provisions of this Subsection (3), which may include:

2921 (I) a three-month suspension of the contractor or subcontractor from entering into
2922 future contracts with the state upon the first violation;

2923 (II) a six-month suspension of the contractor or subcontractor from entering into future
2924 contracts with the state upon the second violation;

2925 (III) an action for debarment of the contractor or subcontractor in accordance with
2926 Section 63G-6-804 upon the third or subsequent violation; and

2927 (IV) monetary penalties which may not exceed 50% of the amount necessary to
2928 purchase qualified health insurance coverage for an employee and the dependents of an
2929 employee of the contractor or subcontractor who was not offered qualified health insurance
2930 coverage during the duration of the contract; and

2931 (C) a website on which the department shall post the benchmark for the qualified
2932 health insurance coverage identified in Subsection (1)(e)(i).

2933 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
2934 subcontractor who intentionally violates the provisions of this section shall be liable to the
2935 employee for health care costs that would have been covered by qualified health insurance
2936 coverage.

2937 (ii) An employer has an affirmative defense to a cause of action under Subsection
2938 (3)(g)(i) if:

2939 (A) the employer relied in good faith on a written statement of actuarial equivalency
2940 provided by:

- 2941 (I) an actuary; or
- 2942 (II) an underwriter who is responsible for developing the employer group's premium
- 2943 rates; or
- 2944 (B) the department determines that compliance with this section is not required under
- 2945 the provisions of Subsection (3)(b).
- 2946 (iii) An employee has a private right of action only against the employee's employer to
- 2947 enforce the provisions of this Subsection (3)(g).
- 2948 (h) Any penalties imposed and collected under this section shall be deposited into the
- 2949 Medicaid Restricted Account created by Section 26-18-402.
- 2950 (i) The failure of a contractor or subcontractor to provide qualified health insurance
- 2951 coverage as required by this section:
- 2952 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
- 2953 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
- 2954 Legal and Contractual Remedies; and
- 2955 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
- 2956 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
- 2957 or construction.
- 2958 (4) The judgment of the director as to the responsibility and qualifications of a bidder
- 2959 is conclusive, except in case of fraud or bad faith.
- 2960 (5) The division shall make all payments to the contractor for completed work in
- 2961 accordance with the contract and pay the interest specified in the contract on any payments that
- 2962 are late.
- 2963 (6) If any payment on a contract with a private contractor to do work for the division or
- 2964 the State Building Board is retained or withheld, it shall be retained or withheld and released as
- 2965 provided in Section 13-8-5.
- 2966 Section 33. Section **63C-6-101** is amended to read:
- 2967 **63C-6-101. Creation of commission -- Membership -- Appointment -- Vacancies.**
- 2968 (1) There is created the Utah Seismic Safety Commission consisting of 15 members,
- 2969 designated as follows:
- 2970 (a) the director of the Division of Homeland Security or ~~[his]~~ the director's designee;
- 2971 (b) the director of the Utah Geological Survey or ~~[his]~~ the director's designee;

- 2972 (c) the director of the University of Utah Seismograph Stations or ~~[his]~~ the director's
2973 designee;
- 2974 (d) the executive director of the Utah League of Cities and Towns or ~~[his]~~ the
2975 executive director's designee;
- 2976 (e) a representative from the Structural Engineers Association of Utah biannually
2977 selected by its membership;
- 2978 (f) the director of the Division of Facilities Construction and Management or ~~[his]~~ the
2979 director's designee;
- 2980 (g) the executive director of the Department of Transportation or ~~[his]~~ the executive
2981 director's designee;
- 2982 (h) the State Planning Coordinator or ~~[his]~~ the State Planning Coordinator's designee;
- 2983 (i) a representative from the American Institute of Architects, Utah Section;
- 2984 (j) a representative from the American Society of Civil Engineers, Utah Section;
- 2985 (k) a member of the House of Representatives appointed biannually by the speaker of
2986 the House;
- 2987 (l) a member of the Senate appointed biannually by the president of the Senate;
- 2988 (m) the ~~[commissioner of the Department of Insurance or his]~~ executive director of the
2989 Department of Commerce, or the executive director's designee;
- 2990 (n) a representative from the Association of Contingency Planners, Utah Chapter,
2991 biannually selected by its membership; and
- 2992 (o) a representative from the American Public Works Association, Utah Chapter,
2993 biannually selected by its membership.
- 2994 (2) The commission shall annually select one of its members to serve as chair of the
2995 commission.
- 2996 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
2997 appointed for the unexpired term.
- 2998 Section 34. Section **63C-9-403** is amended to read:
- 2999 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**
- 3000 (1) For purposes of this section:
- 3001 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3002 34A-2-104 who:

- 3003 (i) works at least 30 hours per calendar week; and
- 3004 (ii) meets employer eligibility waiting requirements for health care insurance which
- 3005 may not exceed the first of the calendar month following 90 days from the date of hire.
- 3006 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
- 3007 (c) "Qualified health insurance coverage" means at the time the contract is entered into
- 3008 or renewed:
 - 3009 (i) a health benefit plan and employer contribution level with a combined actuarial
 - 3010 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
 - 3011 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
 - 3012 a contribution level of 50% of the premium for the employee and the dependents of the
 - 3013 employee who reside or work in the state, in which:
 - 3014 (A) the employer pays at least 50% of the premium for the employee and the
 - 3015 dependents of the employee who reside or work in the state; and
 - 3016 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
 - 3017 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket
 - 3018 maximum based on income levels:
 - 3019 (Aa) the deductible is \$750 per individual and \$2,250 per family; and
 - 3020 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;
 - 3021 (II) dental coverage is not required; and
 - 3022 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
 - 3023 apply; or
 - 3024 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
 - 3025 deductible that is either:
 - 3026 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
 - 3027 or
 - 3028 (II) a deductible that is higher than the lowest deductible permitted for a federally
 - 3029 qualified high deductible health plan, but includes an employer contribution to a health savings
 - 3030 account in a dollar amount at least equal to the dollar amount difference between the lowest
 - 3031 deductible permitted for a federally qualified high deductible plan and the deductible for the
 - 3032 employer offered federally qualified high deductible plan;
 - 3033 (B) an out-of-pocket maximum that does not exceed three times the amount of the

3034 annual deductible; and

3035 (C) under which the employer pays 75% of the premium for the employee and the
3036 dependents of the employee who work or reside in the state.

3037 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

3038 (2) (a) Except as provided in Subsection (3), this section applies to a design or
3039 construction contract entered into by the board or on behalf of the board on or after July 1,
3040 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

3041 (b) (i) A prime contractor is subject to this section if the prime contract is in the
3042 amount of \$1,500,000 or greater.

3043 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
3044 \$750,000 or greater.

3045 (3) This section does not apply if:

3046 (a) the application of this section jeopardizes the receipt of federal funds;

3047 (b) the contract is a sole source contract; or

3048 (c) the contract is an emergency procurement.

3049 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-102~~]
3050 63G-6-103, or a modification to a contract, when the contract does not meet the initial
3051 threshold required by Subsection (2).

3052 (b) A person who intentionally uses change orders or contract modifications to
3053 circumvent the requirements of Subsection (2) is guilty of an infraction.

3054 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
3055 director that the contractor has and will maintain an offer of qualified health insurance
3056 coverage for the contractor's employees and the employees' dependents during the duration of
3057 the contract.

3058 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
3059 shall demonstrate to the executive director that the subcontractor has and will maintain an offer
3060 of qualified health insurance coverage for the subcontractor's employees and the employees'
3061 dependents during the duration of the contract.

3062 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
3063 the duration of the contract is subject to penalties in accordance with administrative rules
3064 adopted by the division under Subsection (6).

3065 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
3066 requirements of Subsection (5)(b).

3067 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
3068 the duration of the contract is subject to penalties in accordance with administrative rules
3069 adopted by the department under Subsection (6).

3070 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
3071 requirements of Subsection (5)(a).

3072 (6) The department shall adopt administrative rules:

3073 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3074 (b) in coordination with:

3075 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

3076 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

3077 (iii) the State Building Board in accordance with Section 63A-5-205;

3078 (iv) a public transit district in accordance with Section 17B-2a-818.5;

3079 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

3080 (vi) the Legislature's Administrative Rules Review Committee; and

3081 (c) which establish:

3082 (i) the requirements and procedures a contractor must follow to demonstrate to the
3083 executive director compliance with this section which shall include:

3084 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

3085 (b) more than twice in any 12-month period; and

3086 (B) that the actuarially equivalent determination required in Subsection (1) is met by
3087 the contractor if the contractor provides the department or division with a written statement of
3088 actuarial equivalency from either:

3089 (I) the [~~Utah Insurance Department~~] Department of Commerce under Title 31A,
3090 Insurance Code, which may delegate this function to the Division of Insurance;

3091 (II) an actuary selected by the contractor or the contractor's insurer; or

3092 (III) an underwriter who is responsible for developing the employer group's premium
3093 rates;

3094 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3095 violates the provisions of this section, which may include:

3096 (A) a three-month suspension of the contractor or subcontractor from entering into
3097 future contracts with the state upon the first violation;

3098 (B) a six-month suspension of the contractor or subcontractor from entering into future
3099 contracts with the state upon the second violation;

3100 (C) an action for debarment of the contractor or subcontractor in accordance with
3101 Section 63G-6-804 upon the third or subsequent violation; and

3102 (D) monetary penalties which may not exceed 50% of the amount necessary to
3103 purchase qualified health insurance coverage for employees and dependents of employees of
3104 the contractor or subcontractor who were not offered qualified health insurance coverage
3105 during the duration of the contract; and

3106 (iii) a website on which the department shall post the benchmark for the qualified
3107 health insurance coverage identified in Subsection (1)(c)(i).

3108 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
3109 subcontractor who intentionally violates the provisions of this section shall be liable to the
3110 employee for health care costs that would have been covered by qualified health insurance
3111 coverage.

3112 (ii) An employer has an affirmative defense to a cause of action under Subsection
3113 (7)(a)(i) if:

3114 (A) the employer relied in good faith on a written statement of actuarial equivalency
3115 provided by:

3116 (I) an actuary; or

3117 (II) an underwriter who is responsible for developing the employer group's premium
3118 rates; or

3119 (B) the department determines that compliance with this section is not required under
3120 the provisions of Subsection (3) or (4).

3121 (b) An employee has a private right of action only against the employee's employer to
3122 enforce the provisions of this Subsection (7).

3123 (8) Any penalties imposed and collected under this section shall be deposited into the
3124 Medicaid Restricted Account created in Section 26-18-402.

3125 (9) The failure of a contractor or subcontractor to provide qualified health insurance
3126 coverage as required by this section:

3127 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
3128 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
3129 Legal and Contractual Remedies; and

3130 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
3131 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
3132 or construction.

3133 Section 35. Section **63G-2-302** is amended to read:

3134 **63G-2-302. Private records.**

3135 (1) The following records are private:

3136 (a) records concerning an individual's eligibility for unemployment insurance benefits,
3137 social services, welfare benefits, or the determination of benefit levels;

3138 (b) records containing data on individuals describing medical history, diagnosis,
3139 condition, treatment, evaluation, or similar medical data;

3140 (c) records of publicly funded libraries that when examined alone or with other records
3141 identify a patron;

3142 (d) records received by or generated by or for:

3143 (i) the Independent Legislative Ethics Commission, except for:

3144 (A) the commission's summary data report that is required under legislative rule; and

3145 (B) any other document that is classified as public under legislative rule; or

3146 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
3147 unless the record is classified as public under legislative rule;

3148 (e) records received or generated for a Senate confirmation committee concerning
3149 character, professional competence, or physical or mental health of an individual:

3150 (i) if prior to the meeting, the chair of the committee determines release of the records:

3151 (A) reasonably could be expected to interfere with the investigation undertaken by the
3152 committee; or

3153 (B) would create a danger of depriving a person of a right to a fair proceeding or
3154 impartial hearing; and

3155 (ii) after the meeting, if the meeting was closed to the public;

3156 (f) employment records concerning a current or former employee of, or applicant for
3157 employment with, a governmental entity that would disclose that individual's home address,

3158 home telephone number, Social Security number, insurance coverage, marital status, or payroll
3159 deductions;

3160 (g) records or parts of records under Section 63G-2-303 that a current or former
3161 employee identifies as private according to the requirements of that section;

3162 (h) that part of a record indicating a person's Social Security number or federal
3163 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
3164 31A-26-202, 58-1-301, 61-1-4, or 61-2f-203;

3165 (i) that part of a voter registration record identifying a voter's driver license or
3166 identification card number, Social Security number, or last four digits of the Social Security
3167 number;

3168 (j) a record that:

3169 (i) contains information about an individual;

3170 (ii) is voluntarily provided by the individual; and

3171 (iii) goes into an electronic database that:

3172 (A) is designated by and administered under the authority of the Chief Information
3173 Officer; and

3174 (B) acts as a repository of information about the individual that can be electronically
3175 retrieved and used to facilitate the individual's online interaction with a state agency;

3176 (k) information provided to the [~~Commissioner of Insurance~~] Department of
3177 Commerce under Title 31A, Insurance Code, which may delegate this function to the Division
3178 of Insurance, under:

3179 (i) Subsection 31A-23a-115(2)(a);

3180 (ii) Subsection 31A-23a-302(3); or

3181 (iii) Subsection 31A-26-210(3);

3182 (l) information obtained through a criminal background check under Title 11, Chapter
3183 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

3184 (m) information provided by an offender that is:

3185 (i) required by the registration requirements of Section 77-27-21.5; and

3186 (ii) not required to be made available to the public under Subsection 77-27-21.5(27);

3187 and

3188 (n) a statement and any supporting documentation filed with the attorney general in

3189 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
3190 homeland security.

3191 (2) The following records are private if properly classified by a governmental entity:

3192 (a) records concerning a current or former employee of, or applicant for employment
3193 with a governmental entity, including performance evaluations and personal status information
3194 such as race, religion, or disabilities, but not including records that are public under Subsection
3195 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

3196 (b) records describing an individual's finances, except that the following are public:

3197 (i) records described in Subsection 63G-2-301(2);

3198 (ii) information provided to the governmental entity for the purpose of complying with
3199 a financial assurance requirement; or

3200 (iii) records that must be disclosed in accordance with another statute;

3201 (c) records of independent state agencies if the disclosure of those records would
3202 conflict with the fiduciary obligations of the agency;

3203 (d) other records containing data on individuals the disclosure of which constitutes a
3204 clearly unwarranted invasion of personal privacy;

3205 (e) records provided by the United States or by a government entity outside the state
3206 that are given with the requirement that the records be managed as private records, if the
3207 providing entity states in writing that the record would not be subject to public disclosure if
3208 retained by it; and

3209 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
3210 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
3211 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

3212 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
3213 records, statements, history, diagnosis, condition, treatment, and evaluation.

3214 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
3215 doctors, or affiliated entities are not private records or controlled records under Section
3216 63G-2-304 when the records are sought:

3217 (i) in connection with any legal or administrative proceeding in which the patient's
3218 physical, mental, or emotional condition is an element of any claim or defense; or

3219 (ii) after a patient's death, in any legal or administrative proceeding in which any party

3220 relies upon the condition as an element of the claim or defense.

3221 (c) Medical records are subject to production in a legal or administrative proceeding
3222 according to state or federal statutes or rules of procedure and evidence as if the medical
3223 records were in the possession of a nongovernmental medical care provider.

3224 Section 36. Section **63J-1-201** is amended to read:

3225 **63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation --**
3226 **Appropriations based on current tax laws and not to exceed estimated revenues.**

3227 (1) The governor shall deliver, not later than 30 days before the date the Legislature
3228 convenes in the annual general session, a confidential draft copy of the governor's proposed
3229 budget recommendations to the Office of the Legislative Fiscal Analyst.

3230 (2) (a) The governor shall, within the first three days of the annual general session of
3231 the Legislature, submit to the presiding officer of each house of the Legislature:

3232 (i) a proposed budget for the ensuing fiscal year;

3233 (ii) a schedule for all of the proposed appropriations of the budget, with each
3234 appropriation clearly itemized and classified;

3235 (iii) the statement described in Subsection (2)(c); and

3236 (iv) as applicable, a document showing proposed expenditures and estimated revenues
3237 that are based on changes in state tax laws or rates.

3238 (b) The proposed budget shall include:

3239 (i) a projection of estimated revenues and expenditures for the next fiscal year;

3240 (ii) the source of all direct, indirect, and in-kind matching funds for all federal grants or
3241 assistance programs included in the budget;

3242 (iii) a complete plan of proposed expenditures and estimated revenues for the next
3243 fiscal year that is based upon the current fiscal year state tax laws and rates;

3244 (iv) an itemized estimate of the proposed appropriations for:

3245 (A) the Legislative Department as certified to the governor by the president of the
3246 Senate and the speaker of the House;

3247 (B) the Executive Department;

3248 (C) the Judicial Department as certified to the governor by the state court
3249 administrator;

3250 (D) payment and discharge of the principal and interest of the indebtedness of the state;

3251 (E) the salaries payable by the state under the Utah Constitution or under law for the
3252 lease agreements planned for the next fiscal year;

3253 (F) other purposes that are set forth in the Utah Constitution or under law; and

3254 (G) all other appropriations;

3255 (v) for each line item, the average annual dollar amount of staff funding associated
3256 with all positions that were vacant during the last fiscal year; and

3257 (vi) deficits or anticipated deficits.

3258 (c) The budget shall be accompanied by a statement showing:

3259 (i) the revenues and expenditures for the last fiscal year;

3260 (ii) the current assets, liabilities, and reserves, surplus or deficit, and the debts and
3261 funds of the state;

3262 (iii) an estimate of the state's financial condition as of the beginning and the end of the
3263 period covered by the budget;

3264 (iv) a complete analysis of lease with an option to purchase arrangements entered into
3265 by state agencies;

3266 (v) the recommendations for each state agency for new full-time employees for the
3267 next fiscal year, which shall also be provided to the State Building Board as required by
3268 Subsection 63A-5-103(2);

3269 (vi) any explanation that the governor may desire to make as to the important features
3270 of the budget and any suggestion as to methods for the reduction of expenditures or increase of
3271 the state's revenue; and

3272 (vii) information detailing certain fee increases as required by Section 63J-1-504.

3273 (3) (a) (i) For the purpose of preparing and reporting the proposed budget, the governor
3274 shall require the proper state officials, including all public and higher education officials, all
3275 heads of executive and administrative departments and state institutions, bureaus, boards,
3276 commissions, and agencies expending or supervising the expenditure of the state money, and
3277 all institutions applying for state money and appropriations, to provide itemized estimates of
3278 revenues and expenditures.

3279 (ii) The governor may also require other information under these guidelines and at
3280 times as the governor may direct, which may include a requirement for program productivity
3281 and performance measures, where appropriate, with emphasis on outcome indicators.

3282 (b) The governor may require representatives of public and higher education, state
3283 departments and institutions, and other institutions or individuals applying for state
3284 appropriations to attend budget meetings.

3285 (c) (i) (A) In submitting the budgets for the Departments of Health and Human
3286 Services and the Office of the Attorney General, the governor shall consider a separate
3287 recommendation in the governor's budget for funds to be contracted to:

3288 (I) local mental health authorities under Section 62A-15-110;

3289 (II) local substance abuse authorities under Section 62A-15-110;

3290 (III) area agencies under Section 62A-3-104.2;

3291 (IV) programs administered directly by and for operation of the Divisions of Substance
3292 Abuse and Mental Health and Aging and Adult Services;

3293 (V) local health departments under Title 26A, Chapter 1, Local Health Departments;

3294 and

3295 (VI) counties for the operation of Children's Justice Centers under Section 67-5b-102.

3296 (B) In the governor's budget recommendations under Subsections (3)(c)(i)(A)(I), (II),
3297 and (III), the governor shall consider an amount sufficient to grant local health departments,
3298 local mental health authorities, local substance abuse authorities, and area agencies the same
3299 percentage increase for wages and benefits that the governor includes in the governor's budget
3300 for persons employed by the state.

3301 (C) If the governor does not include in the governor's budget an amount sufficient to
3302 grant the increase described in Subsection (3)(c)(i)(B), the governor shall include a message to
3303 the Legislature regarding the governor's reason for not including that amount.

3304 (ii) (A) In submitting the budget for the Department of Agriculture, the governor shall
3305 consider an amount sufficient to grant local conservation districts and Utah Association of
3306 Conservation District employees the same percentage increase for wages and benefits that the
3307 governor includes in the governor's budget for persons employed by the state.

3308 (B) If the governor does not include in the governor's budget an amount sufficient to
3309 grant the increase described in Subsection (3)(c)(ii)(A), the governor shall include a message to
3310 the Legislature regarding the governor's reason for not including that amount.

3311 (iii) (A) In submitting the budget for the Utah State Office of Rehabilitation and the
3312 Division of Services for People with Disabilities, the Division of Child and Family Services,

3313 and the Division of Juvenile Justice Services within the Department of Human Services, the
3314 governor shall consider an amount sufficient to grant employees of corporations that provide
3315 direct services under contract with those divisions, the same percentage increase for
3316 cost-of-living that the governor includes in the governor's budget for persons employed by the
3317 state.

3318 (B) If the governor does not include in the governor's budget an amount sufficient to
3319 grant the increase described in Subsection (3)(c)(iii)(A), the governor shall include a message
3320 to the Legislature regarding the governor's reason for not including that amount.

3321 (iv) (A) The Families, Agencies, and Communities Together Council may propose a
3322 budget recommendation to the governor for collaborative service delivery systems operated
3323 under Section 63M-9-402, as provided under Subsection 63M-9-201(4)(e).

3324 (B) The Legislature may, through a specific program schedule, designate funds
3325 appropriated for collaborative service delivery systems operated under Section 63M-9-402.

3326 (v) The governor shall include in the governor's budget the state's portion of the budget
3327 for the Utah Communications Agency Network established in Title 63C, Chapter 7, Utah
3328 Communications Agency Network Act.

3329 (vi) (A) The governor shall include a separate recommendation in the governor's
3330 budget for funds to maintain the operation and administration of the Utah Comprehensive
3331 Health Insurance Pool.

3332 (B) In making the recommendation, the governor may consider:

3333 (I) actuarial analysis of growth or decline in enrollment projected over a period of at
3334 least three years;

3335 (II) actuarial analysis of the medical and pharmacy claims costs projected over a period
3336 of at least three years;

3337 (III) the annual Medical Care Consumer Price Index;

3338 (IV) the annual base budget for the pool established by the Commerce and Revenue
3339 Appropriations Subcommittee for each fiscal year;

3340 (V) the growth or decline in insurance premium taxes and fees collected by the State
3341 Tax Commission and the ~~[Insurance Department]~~ Department of Commerce acting under Title
3342 31A, Insurance Code, which may delegate this function to the Division of Insurance; and

3343 (VI) the availability of surplus General Fund revenue under Section 63J-1-312 and

3344 Subsection 59-14-204(5)(b).

3345 (d) (i) The governor may revise all estimates, except those relating to the Legislative
3346 Department, the Judicial Department, and those providing for the payment of principal and
3347 interest to the state debt and for the salaries and expenditures specified by the Utah
3348 Constitution or under the laws of the state.

3349 (ii) The estimate for the Legislative Department, as certified by the presiding officers
3350 of both houses, shall be included in the budget without revision by the governor.

3351 (iii) The estimate for the Judicial Department, as certified by the state court
3352 administrator, shall also be included in the budget without revision, but the governor may make
3353 separate recommendations on the estimate.

3354 (e) The total appropriations requested for expenditures authorized by the budget may
3355 not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing
3356 fiscal year.

3357 (4) In considering the factors in Subsections (3)(c)(vi)(B)(I), (II), and (III) and
3358 Subsections (5)(b)(ii)(A), (B), and (C), the governor and the Legislature may consider the
3359 actuarial data and projections prepared for the board of the Utah Comprehensive Health
3360 Insurance Pool as it develops its financial statements and projections for each fiscal year.

3361 (5) (a) In adopting a budget for each fiscal year, the Legislature shall consider an
3362 amount sufficient to grant local health departments, local mental health authorities, local
3363 substance abuse authorities, area agencies on aging, conservation districts, and Utah
3364 Association of Conservation District employees the same percentage increase for wages and
3365 benefits that is included in the budget for persons employed by the state.

3366 (b) (i) In adopting a budget each year for the Utah Comprehensive Health Insurance
3367 Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each
3368 fiscal year.

3369 (ii) When making a determination under Subsection (5)(b)(i), the Legislature shall
3370 consider factors it determines are appropriate, which may include:

3371 (A) actuarial analysis of growth or decline in enrollment projected over a period of at
3372 least three years;

3373 (B) actuarial analysis of the medical and pharmacy claims costs projected over a period
3374 of at least three years;

3375 (C) the annual Medical Care Consumer Price Index;
3376 (D) the annual base budget for the pool established by the Commerce and Revenue
3377 Appropriations Subcommittee for each fiscal year;
3378 (E) the growth or decline in insurance premium taxes and fees collected by the tax
3379 commission and the ~~[insurance department]~~ Department of Commerce acting under Title 31A,
3380 Insurance Code, which may delegate this function to the Division of Insurance, from the
3381 previous fiscal year; and

3382 (F) the availability of surplus General Fund revenue under Section 63J-1-312 and
3383 Subsection 59-14-204(5)(b).

3384 (iii) The funds appropriated by the Legislature to fund the Utah Comprehensive Health
3385 Insurance Pool as determined under Subsection (5)(b)(i):

3386 (A) shall be deposited into the fund established by Section 31A-29-120; and

3387 (B) are restricted and are to be used to maintain the operation, administration, and
3388 management of the Utah Comprehensive Health Insurance Pool created by Section
3389 31A-29-104.

3390 (6) If any item of the budget as enacted is held invalid upon any ground, the invalidity
3391 does not affect the budget itself or any other item in it.

3392 Section 37. Section **63K-1-102** is amended to read:

3393 **63K-1-102. Definitions.**

3394 (1) (a) "Absent" means:

3395 (i) not physically present or not able to be communicated with for 48 hours; or

3396 (ii) for local government officers, as defined by local ordinances.

3397 (b) "Absent" does not include a person who can be communicated with via telephone,
3398 radio, or telecommunications.

3399 (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action
3400 against the United States of America or this state.

3401 (3) "Department" means the Department of Administrative Services, the Department of
3402 Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of
3403 Commerce, the Department of Community and Culture, the Department of Corrections, the
3404 Department of Environmental Quality, the Department of Financial Institutions, the
3405 Department of Health, the Department of Human Resource Management, the Department of

3406 Workforce Services, the Labor Commission, the National Guard, [~~the Department of~~
3407 ~~Insurance;~~] the Department of Natural Resources, the Department of Public Safety, the Public
3408 Service Commission, the Department of Human Services, the State Tax Commission, the
3409 Department of Technology Services, the Department of Transportation, any other major
3410 administrative subdivisions of state government, the State Board of Education, the State Board
3411 of Regents, the Utah Housing Corporation, the Workers' Compensation Fund, the State
3412 Retirement Board, and each institution of higher education within the system of higher
3413 education.

3414 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,
3415 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
3416 natural phenomenon, or technological hazard.

3417 (5) "Division" means the Division of Homeland Security established in Title 53,
3418 Chapter 2, Part 1, Homeland Security Act.

3419 (6) "Emergency interim successor" means a person designated by this chapter to
3420 exercise the powers and discharge the duties of an office when the person legally exercising the
3421 powers and duties of the office is unavailable.

3422 (7) "Executive director" means the person with ultimate responsibility for managing
3423 and overseeing the operations of each department, however denominated.

3424 (8) "Internal disturbance" means a riot, prison break, terrorism, or strike.

3425 (9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide,
3426 avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

3427 (10) (a) "Office" includes all state and local offices, the powers and duties of which are
3428 defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

3429 (b) "Office" does not include the office of governor or the legislative or judicial offices.

3430 (11) "Place of governance" means the physical location where the powers of an office
3431 are being exercised.

3432 (12) "Political subdivision" includes counties, cities, towns, townships, districts,
3433 authorities, and other public corporations and entities whether organized and existing under
3434 charter or general law.

3435 (13) "Political subdivision officer" means a person holding an office in a political
3436 subdivision.

3437 (14) "State officer" means the attorney general, the state treasurer, the state auditor, and
3438 the executive director of each department.

3439 (15) "Technological hazard" means any hazardous materials accident, mine accident,
3440 train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

3441 (16) "Unavailable" means:

3442 (a) absent from the place of governance during a disaster that seriously disrupts normal
3443 governmental operations, whether or not that absence or inability would give rise to a vacancy
3444 under existing constitutional or statutory provisions; or

3445 (b) as otherwise defined by local ordinance.

3446 Section 38. Section **63M-1-2503** is amended to read:

3447 **63M-1-2503. Duties related to health system reform.**

3448 The Governor's Office of Economic Development shall coordinate the efforts of the
3449 Office of Consumer Health Services, the Department of Health, the [~~Insurance Department~~]
3450 Department of Commerce, which may delegate this function to the Division of Insurance, and
3451 the Department of Workforce Services to assist the Legislature with developing the state's
3452 strategic plan for health system reform described in Section 63M-1-2505.

3453 Section 39. Section **63M-1-2504** is amended to read:

3454 **63M-1-2504. Creation of Office of Consumer Health Services -- Duties.**

3455 (1) There is created within the Governor's Office of Economic Development the Office
3456 of Consumer Health Services.

3457 (2) The office shall:

3458 (a) in cooperation with the [~~Insurance Department~~] Department of Commerce, which
3459 may delegate this function to the Division of Insurance, the Department of Health, and the
3460 Department of Workforce Services, and in accordance with the electronic standards developed
3461 under Sections 31A-22-635 and 63M-1-2506, create a Health Insurance Exchange that:

3462 (i) is capable of providing access to private and government health insurance websites
3463 and their electronic application forms and submission procedures;

3464 (ii) provides a consumer comparison of and enrollment in a health benefit plan posted
3465 on the Health Insurance Exchange by an insurer for the:

3466 (A) small employer group market;

3467 (B) the individual market; and

3468 (C) the defined contribution arrangement market; and
3469 (iii) includes information and a link to enrollment in premium assistance programs and
3470 other government assistance programs;

3471 (b) facilitate a private sector method for the collection of health insurance premium
3472 payments made for a single policy by multiple payers, including the policyholder, one or more
3473 employers of one or more individuals covered by the policy, government programs, and others
3474 by educating employers and insurers about collection services available through private
3475 vendors, including financial institutions;

3476 (c) assist employers with a free or low cost method for establishing mechanisms for the
3477 purchase of health insurance by employees using pre-tax dollars;

3478 (d) periodically convene health care providers, payers, and consumers to monitor the
3479 progress being made regarding demonstration projects for health care delivery and payment
3480 reform;

3481 (e) establish a list on the Health Insurance Exchange of insurance producers who, in
3482 accordance with Section 31A-30-209, are appointed producers for the defined contribution
3483 arrangement market on the Health Insurance Exchange; and

3484 (f) report to the Business and Labor Interim Committee and the Health System Reform
3485 Task Force prior to November 1, 2010, and prior to the Legislative interim day in November of
3486 each year thereafter regarding:

3487 (i) the operations of the Health Insurance Exchange required by this chapter; and

3488 (ii) the progress of the demonstration projects for health care payment and delivery
3489 reform.

3490 (3) The office:

3491 (a) may not:

3492 (i) regulate health insurers, health insurance plans, or health insurance producers;

3493 (ii) adopt administrative rules, except as provided in Section 63M-1-2506; or

3494 (iii) act as an appeals entity for resolving disputes between a health insurer and an
3495 insured; and

3496 (b) may establish and collect a fee in accordance with Section 63J-1-504 for the
3497 transaction cost of:

3498 (i) processing an application for a health benefit plan from the Internet portal to an

3499 insurer; and

3500 (ii) accepting, processing, and submitting multiple premium payment sources.

3501 Section 40. Section **63M-1-2506** is amended to read:

3502 **63M-1-2506. Health benefit plan information on Health Insurance Exchange --**
3503 **Insurer transparency.**

3504 (1) (a) The office shall adopt administrative rules in accordance with Title 63G,
3505 Chapter 3, Utah Administrative Rulemaking Act, that:

3506 (i) establish uniform electronic standards for:

3507 (A) a health insurer to use when:

3508 (I) transmitting information to:

3509 (Aa) the [~~Insurance Department~~] Department of Commerce under Title 31A, Insurance
3510 Code, which may delegate this function to the Division of Insurance, under Subsection

3511 31A-22-613.5(2)(a)(ii); and

3512 (Bb) the Health Insurance Exchange as required by this section;

3513 (II) receiving information from the Health Insurance Exchange; and

3514 (III) receiving or transmitting the universal health application to or from the Health
3515 Insurance Exchange;

3516 (B) facilitating the transmission and receipt of premium payments from multiple
3517 sources in the defined contribution arrangement market; and

3518 (C) the use of the uniform health insurance application required by Section
3519 31A-22-635 on the Health Insurance Exchange;

3520 (ii) designate the level of detail that would be helpful for a concise consumer
3521 comparison of the items described in Subsections (4) and (5) on the Health Insurance
3522 Exchange;

3523 (iii) assist the risk adjuster board created under Title 31A, Chapter 42, Defined
3524 Contribution Risk Adjuster Act, and carriers participating in the defined contribution market on
3525 the Health Insurance Exchange with the determination of when an employer is eligible to
3526 participate in the Health Insurance Exchange under Title 31A, Chapter 30, Part 2, Defined
3527 Contribution Arrangements; and

3528 (iv) create an advisory board to advise the exchange concerning the operation of the
3529 exchange and transparency issues with the following members:

- 3530 (A) two health producers who are registered with the Health Insurance Exchange;
- 3531 (B) two consumers;
- 3532 (C) one representative from a large insurer who participates on the exchange;
- 3533 (D) one representative from a small insurer who participates on the exchange;
- 3534 (E) one representative from the ~~[Insurance Department]~~ Department of Commerce,
- 3535 which may delegate this function to the Division of Insurance; and
- 3536 (F) one representative from the Department of Health.
- 3537 (b) The office shall post or facilitate the posting of:
- 3538 (i) the information required by this section on the Health Insurance Exchange created
- 3539 by this part; and
- 3540 (ii) links to websites that provide cost and quality information from the Department of
- 3541 Health Data Committee or neutral entities with a broad base of support from the provider and
- 3542 payer communities.
- 3543 (2) A health insurer shall use the uniform electronic standards when transmitting
- 3544 information to the Health Insurance Exchange or receiving information from the Health
- 3545 Insurance Exchange.
- 3546 (3) (a) (i) An insurer who participates in the defined contribution arrangement market
- 3547 under Title 31A, Chapter 30, Part 2, Defined Contribution Arrangements, shall post all plans
- 3548 offered in the defined contribution arrangement market on the Health Insurance Exchange and
- 3549 shall comply with the provisions of this section.
- 3550 (ii) Beginning January 1, 2013, an insurer who offers a health benefit plan to a small
- 3551 employer group in the state shall:
- 3552 (A) post the health benefit plans in which the insurer is enrolling new groups on the
- 3553 Health Insurance Exchange; and
- 3554 (B) comply with the provisions of this section.
- 3555 (b) An insurer who offers individual health benefit plans under Title 31A, Chapter 30,
- 3556 Part 1, Individual and Small Employer Group:
- 3557 (i) shall post on the Health Insurance Exchange the basic benefit plan required by
- 3558 Section 31A-22-613.5; and
- 3559 (ii) may publish on the Health Insurance Exchange any other health benefit plans that it
- 3560 offers in the individual market.

- 3561 (c) An insurer who posts a health benefit plan on the Health Insurance Exchange:
3562 (i) shall comply with the provisions of this section for every health benefit plan it posts
3563 on the Health Insurance Exchange; and
3564 (ii) may not offer products on the Health Insurance Exchange that are not health benefit
3565 plans.
- 3566 (4) A health insurer shall provide the Health Insurance Exchange with the following
3567 information for each health benefit plan submitted to the Health Insurance Exchange:
3568 (a) plan design, benefits, and options offered by the health benefit plan including state
3569 mandates the plan does not cover;
3570 (b) provider networks;
3571 (c) wellness programs and incentives; and
3572 (d) descriptions of prescription drug benefits, exclusions, or limitations.
- 3573 (5) (a) An insurer offering any health benefit plan in the state shall submit the
3574 information described in Subsection (5)(b) to the ~~[Insurance Department]~~ Department of
3575 Commerce in the electronic format required by Subsection (1).
- 3576 (b) An insurer who offers a health benefit plan in the state shall submit to the Health
3577 Insurance Exchange the following operational measures:
3578 (i) the percentage of claims paid by the insurer within 30 days of the date a claim is
3579 submitted to the insurer for the prior year; and
3580 (ii) for all health benefit plans offered by the insurer in the state, the claims denial and
3581 insurer transparency information developed in accordance with Subsection 31A-22-613.5(5).
- 3582 (c) The ~~[Insurance Department]~~ Department of Commerce shall forward to the Health
3583 Insurance Exchange the information submitted by an insurer in accordance with this section
3584 and Section 31A-22-613.5.
- 3585 (6) The ~~[Insurance Department]~~ Department of Commerce shall post on the Health
3586 Insurance Exchange the ~~[Insurance Department's]~~ Department of Commerce's solvency rating
3587 for each insurer who posts a health benefit plan on the Health Insurance Exchange. The
3588 solvency rating for each carrier shall be based on methodology established by the ~~[Insurance~~
3589 ~~Department]~~ Department of Commerce by administrative rule and shall be updated each
3590 calendar year.
- 3591 (7) The commissioner may request information from an insurer under Section

3592 31A-22-613.5 to verify the data submitted to the [~~Insurance Department~~] Department of
3593 Commerce and to the Health Insurance Exchange under this section.

3594 (8) A health insurer shall accept and process an application for a health benefit plan
3595 from the Health Insurance Exchange in accordance with this section and Section 31A-22-635.

3596 Section 41. Section **67-19-6.7** is amended to read:

3597 **67-19-6.7. Overtime policies for state employees.**

3598 (1) As used in this section:

3599 (a) "Accrued overtime hours" means:

3600 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end
3601 of the fiscal year, have not been paid and have not been taken as time off by the nonexempt
3602 state employee who accrued them; and

3603 (ii) for exempt employees, overtime hours earned during an overtime year.

3604 (b) "Appointed official" means:

3605 (i) each department executive director and deputy director, each division director, and
3606 each member of a board or commission; and

3607 (ii) any other person employed by a department who is appointed by, or whose
3608 appointment is required by law to be approved by, the governor and who:

3609 (A) is paid a salary by the state; and

3610 (B) who exercises managerial, policy-making, or advisory responsibility.

3611 (c) "Department" means the Department of Administrative Services, the Department of
3612 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage
3613 Control, [~~the Insurance Department,~~] the Public Service Commission, the Labor Commission,
3614 the Department of Agriculture and Food, the Department of Human Services, the State Board
3615 of Education, the Department of Natural Resources, the Department of Technology Services,
3616 the Department of Transportation, the Department of Commerce, the Department of Workforce
3617 Services, the State Tax Commission, the Department of Community and Culture, the
3618 Department of Health, the National Guard, the Department of Environmental Quality, the
3619 Department of Public Safety, the Department of Human Resource Management, the
3620 Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the
3621 Office of the Attorney General, merit employees in the Office of the State Treasurer, merit
3622 employees in the Office of the State Auditor, Department of Veterans' Affairs, and the Board of

3623 Pardons and Parole.

3624 (d) "Elected official" means any person who is an employee of the state because the
3625 person was elected by the registered voters of Utah to a position in state government.

3626 (e) "Exempt employee" means a state employee who is exempt as defined by the Fair
3627 Labor Standards Act of 1978, 29 U.S.C. [Section] Sec. 201 et seq.

3628 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. [Section] Sec. 201
3629 et seq.

3630 (g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards
3631 Act of 1978, 29 U.S.C. [Section] Sec. 201 et seq., by which a nonexempt employee elects the
3632 form of compensation the nonexempt employee will receive for overtime.

3633 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by
3634 the Department of Human Resource Management applying FLSA requirements.

3635 (i) "Overtime" means actual time worked in excess of the employee's defined work
3636 period.

3637 (j) "Overtime year" means the year determined by a department under Subsection
3638 (4)(b) at the end of which an exempt employee's accrued overtime lapses.

3639 (k) "State employee" means every person employed by a department who is not:

3640 (i) an appointed official;

3641 (ii) an elected official;

3642 (iii) a member of a board or commission who is paid only on a per diem or travel
3643 expenses basis; or

3644 (iv) employed on a contractual basis at the State Office of Education.

3645 (l) "Uniform annual date" means the date when an exempt employee's accrued
3646 overtime lapses.

3647 (m) "Work period" means:

3648 (i) for all nonexempt employees, except law enforcement and hospital employees, a
3649 consecutive seven day 24 hour work period of 40 hours;

3650 (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and

3651 (iii) for nonexempt law enforcement and hospital employees, the period established by
3652 each department by rule for those employees according to the requirements of the Fair Labor
3653 Standards Act of 1978, 29 U.S.C. [Section] Sec. 201 et seq.

3654 (2) Each department shall compensate each state employee who works overtime by
3655 complying with the requirements of this section.

3656 (3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each
3657 nonexempt employee.

3658 (b) In the FLSA agreement, the nonexempt employee shall elect either to be
3659 compensated for overtime by:

3660 (i) taking time off work at the rate of one and one-half hour off for each overtime hour
3661 worked; or

3662 (ii) being paid for the overtime worked at the rate of one and one-half times the rate per
3663 hour that the state employee receives for nonovertime work.

3664 (c) Any nonexempt employee who elects to take time off under this Subsection (3)
3665 shall be paid for any overtime worked in excess of the cap established by the Department of
3666 Human Resource Management.

3667 (d) Before working any overtime, each nonexempt employee shall obtain authorization
3668 to work overtime from the employee's immediate supervisor.

3669 (e) Each department shall:

3670 (i) for employees who elect to be compensated with time off for overtime, allow
3671 overtime earned during a fiscal year to be accumulated; and

3672 (ii) for employees who elect to be paid for overtime worked, pay them for overtime
3673 worked in the paycheck for the pay period in which the employee worked the overtime.

3674 (f) If the department pays a nonexempt employee for overtime, the department shall
3675 charge that payment to the department's budget.

3676 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued
3677 overtime hours for nonexempt employees and charge that total against the appropriate fund or
3678 subfund.

3679 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall
3680 compensate exempt employees who work overtime by granting them time off at the rate of one
3681 hour off for each hour of overtime worked.

3682 (ii) The executive director of the Department of Human Resource Management may
3683 grant limited exceptions to this requirement, where work circumstances dictate, by authorizing
3684 a department to pay employees for overtime worked at the rate per hour that the employee

3685 receives for nonovertime work, if the department has funds available.

3686 (b) (i) Each department shall:

3687 (A) establish in its written human resource policies a uniform annual date for each
3688 division that is at the end of any pay period; and

3689 (B) communicate the uniform annual date to its employees.

3690 (ii) If any department fails to establish a uniform annual date as required by this
3691 Subsection (4), the executive director of the Department of Human Resource Management, in
3692 conjunction with the director of the Division of Finance, shall establish the date for that
3693 department.

3694 (c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a
3695 benefit, and is not a vested right.

3696 (ii) A court may not construe the overtime for exempt employees authorized by this
3697 Subsection (4) as an entitlement, a benefit, or as a vested right.

3698 (d) At the end of the overtime year, upon transfer to another department at any time,
3699 and upon termination, retirement, or other situations where the employee will not return to
3700 work before the end of the overtime year:

3701 (i) any of an exempt employee's overtime that is more than the maximum established
3702 by the Department of Human Resource Management rule lapses; and

3703 (ii) unless authorized by the executive director of the Department of Human Resource
3704 Management under Subsection (4)(a)(ii), a department may not compensate the exempt
3705 employee for that lapsed overtime by paying the employee for the overtime or by granting the
3706 employee time off for the lapsed overtime.

3707 (e) Before working any overtime, each exempt employee shall obtain authorization to
3708 work overtime from the exempt employee's immediate supervisor.

3709 (f) If the department pays an exempt employee for overtime under authorization from
3710 the executive director of the Department of Human Resource Management, the department
3711 shall charge that payment to the department's budget in the pay period earned.

3712 (5) The Department of Human Resource Management shall:

3713 (a) ensure that the provisions of the FLSA and this section are implemented throughout
3714 state government;

3715 (b) determine, for each state employee, whether that employee is exempt, nonexempt,

3716 law enforcement, or has some other status under the FLSA;
3717 (c) in coordination with modifications to the systems operated by the Division of
3718 Finance, make rules:
3719 (i) establishing procedures for recording overtime worked that comply with FLSA
3720 requirements;
3721 (ii) establishing requirements governing overtime worked while traveling and
3722 procedures for recording that overtime that comply with FLSA requirements;
3723 (iii) establishing requirements governing overtime worked if the employee is "on call"
3724 and procedures for recording that overtime that comply with FLSA requirements;
3725 (iv) establishing requirements governing overtime worked while an employee is being
3726 trained and procedures for recording that overtime that comply with FLSA requirements;
3727 (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt
3728 employee may accrue before a department is required to pay the employee for the overtime
3729 worked;
3730 (vi) subject to the FLSA, establishing the maximum number of overtime hours for an
3731 exempt employee that do not lapse; and
3732 (vii) establishing procedures for adjudicating appeals of any FLSA determinations
3733 made by the Department of Human Resource Management as required by this section;
3734 (d) monitor departments for compliance with the FLSA; and
3735 (e) recommend to the Legislature and the governor any statutory changes necessary
3736 because of federal government action.
3737 (6) In coordination with the procedures for recording overtime worked established in
3738 rule by the Department of Human Resource Management, the Division of Finance shall modify
3739 its payroll and human resource systems to accommodate those procedures.
3740 (a) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,
3741 Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who
3742 is aggrieved by the FLSA designation made by the Department of Human Resource
3743 Management as required by this section may appeal that determination to the executive director
3744 of the Department of Human Resource Management by following the procedures and
3745 requirements established in Department of Human Resource Management rule.
3746 (b) Upon receipt of an appeal under this section, the executive director shall notify the

3747 executive director of the employee's department that the appeal has been filed.

3748 (c) If the employee is aggrieved by the decision of the executive director of the
3749 Department of Human Resource Management, the employee shall appeal that determination to
3750 the Department of Labor, Wage and Hour Division, according to the procedures and
3751 requirements of federal law.

3752 Section 42. Section **67-19c-101** is amended to read:

3753 **67-19c-101. Department award program.**

3754 (1) As used in this section:

3755 (a) "Department" means the Department of Administrative Services, the Department of
3756 Agriculture and Food, the Department of Alcoholic Beverage Control, the Department of
3757 Commerce, the Department of Community and Culture, the Department of Corrections, the
3758 Department of Workforce Services, the Department of Environmental Quality, the Department
3759 of Financial Institutions, the Department of Health, the Department of Human Resource
3760 Management, the Department of Human Services, [~~the Insurance Department,~~] the National
3761 Guard, the Department of Natural Resources, the Department of Public Safety, the Public
3762 Service Commission, the Labor Commission, the State Board of Education, the State Board of
3763 Regents, the State Tax Commission, the Department of Technology Services, and the
3764 Department of Transportation.

3765 (b) "Department head" means the individual or body of individuals in whom the
3766 ultimate legal authority of the department is vested by law.

3767 (2) There is created a department awards program to award an outstanding employee in
3768 each department of state government.

3769 (3) (a) By April 1 of each year, each department head shall solicit nominations for
3770 outstanding employee of the year for [his] the department head's department from the
3771 employees in his department.

3772 (b) By July 1 of each year, the department head shall:

3773 (i) select a person from the department to receive the outstanding employee of the year
3774 award using the criteria established in Subsection (3)(c); and

3775 (ii) announce the recipient of the award to [his] the department head's employees.

3776 (c) Department heads shall make the award to a person who demonstrates:

3777 (i) extraordinary competence in performing [his] the person's function;

3778 (ii) creativity in identifying problems and devising workable, cost-effective solutions to
3779 them;

3780 (iii) excellent relationships with the public and other employees;

3781 (iv) a commitment to serving the public as the client; and

3782 (v) a commitment to economy and efficiency in government.

3783 (4) (a) The Department of Human Resource Management shall divide any
3784 appropriation for outstanding department employee awards that it receives from the Legislature
3785 equally among the departments.

3786 (b) If the department receives money from the Department of Human Resource
3787 Management or if the department budget allows, the department head shall provide the
3788 employee with a bonus, a plaque, or some other suitable acknowledgement of the award.

3789 (5) (a) The department head may name the award after an exemplary present or former
3790 employee of the department.

3791 (b) A department head may not name the award for ~~himself~~ the department head or
3792 for any relative as defined in Section 52-3-1.

3793 (c) Any awards or award programs existing in any department as of May 3, 1993, shall
3794 be modified to conform to the requirements of this section.

3795 Section 43. Section **67-22-2** is amended to read:

3796 **67-22-2. Compensation -- Other state officers.**

3797 (1) As used in this section:

3798 (a) "Appointed executive" means the:

3799 (i) Commissioner of the Department of Agriculture and Food;

3800 [~~(ii) Commissioner of the Insurance Department;~~]

3801 [~~(iii)~~] (ii) Commissioner of the Labor Commission;

3802 [~~(iv)~~] (iii) Director, Alcoholic Beverage Control Commission;

3803 [~~(v)~~] (iv) Commissioner of the Department of Financial Institutions;

3804 [~~(vi)~~] (v) Executive Director, Department of Commerce;

3805 [~~(vii)~~] (vi) Executive Director, Commission on Criminal and Juvenile Justice;

3806 [~~(viii)~~] (vii) Adjutant General;

3807 [~~(ix)~~] (viii) Executive Director, Department of Community and Culture;

3808 [~~(x)~~] (ix) Executive Director, Department of Corrections;

- 3809 [~~(xi)~~] (x) Commissioner, Department of Public Safety;
- 3810 [~~(xii)~~] (xi) Executive Director, Department of Natural Resources;
- 3811 [~~(xiii)~~] (xii) Director, Governor's Office of Planning and Budget;
- 3812 [~~(xiv)~~] (xiii) Executive Director, Department of Administrative Services;
- 3813 [~~(xv)~~] (xiv) Executive Director, Department of Human Resource Management;
- 3814 [~~(xvi)~~] (xv) Executive Director, Department of Environmental Quality;
- 3815 [~~(xvii)~~] (xvi) Director, Governor's Office of Economic Development;
- 3816 [~~(xviii)~~] (xvii) Executive Director, Utah Science Technology and Research Governing
- 3817 Authority;
- 3818 [~~(xix)~~] (xviii) Executive Director, Department of Workforce Services;
- 3819 [~~(xx)~~] (xix) Executive Director, Department of Health, Nonphysician;
- 3820 [~~(xxi)~~] (xx) Executive Director, Department of Human Services;
- 3821 [~~(xxii)~~] (xxi) Executive Director, Department of Transportation;
- 3822 [~~(xxiii)~~] (xxii) Executive Director, Department of Technology Services; and
- 3823 [~~(xxiv)~~] (xxiii) Executive Director, Department of Veterans Affairs.
- 3824 (b) "Board or commission executive" means:
- 3825 (i) Members, Board of Pardons and Parole;
- 3826 (ii) Chair, State Tax Commission;
- 3827 (iii) Commissioners, State Tax Commission;
- 3828 (iv) Executive Director, State Tax Commission;
- 3829 (v) Chair, Public Service Commission; and
- 3830 (vi) Commissioners, Public Service Commission.
- 3831 (c) "Deputy" means the person who acts as the appointed executive's second in
- 3832 command as determined by the Department of Human Resource Management.
- 3833 (2) (a) The executive director of the Department of Human Resource Management
- 3834 shall:
- 3835 (i) before October 31 of each year, recommend to the governor a compensation plan for
- 3836 the appointed executives and the board or commission executives; and
- 3837 (ii) base those recommendations on market salary studies conducted by the Department
- 3838 of Human Resource Management.
- 3839 (b) (i) The Department of Human Resource Management shall determine the salary

3840 range for the appointed executives by:

3841 (A) identifying the salary range assigned to the appointed executive's deputy;

3842 (B) designating the lowest minimum salary from those deputies' salary ranges as the
3843 minimum salary for the appointed executives' salary range; and

3844 (C) designating 105% of the highest maximum salary range from those deputies' salary
3845 ranges as the maximum salary for the appointed executives' salary range.

3846 (ii) If the deputy is a medical doctor, the Department of Human Resource Management
3847 may not consider that deputy's salary range in designating the salary range for appointed
3848 executives.

3849 (c) In establishing the salary ranges for board or commission executives, the
3850 Department of Human Resource Management shall set the maximum salary in the salary range
3851 for each of those positions at 90% of the salary for district judges as established in the annual
3852 appropriation act under Section 67-8-2.

3853 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), the governor shall establish a
3854 specific salary for each appointed executive within the range established under Subsection
3855 (2)(b).

3856 (ii) If the executive director of the Department of Health is a physician, the governor
3857 shall establish a salary within the highest physician salary range established by the Department
3858 of Human Resource Management.

3859 (iii) The governor may provide salary increases for appointed executives within the
3860 range established by Subsection (2)(b) and identified in Subsection (3)(a)(ii).

3861 (b) The governor shall apply the same overtime regulations applicable to other FLSA
3862 exempt positions.

3863 (c) The governor may develop standards and criteria for reviewing the appointed
3864 executives.

3865 (4) Salaries for other Schedule A employees, as defined in Section 67-19-15, that are
3866 not provided for in this chapter, or in Title 67, Chapter 8, Utah Elected Official and Judicial
3867 Salary Act, shall be established as provided in Section 67-19-15.

3868 (5) (a) The Legislature fixes benefits for the appointed executives and the board or
3869 commission executives as follows:

3870 (i) the option of participating in a state retirement system established by Title 49, Utah

3871 State Retirement and Insurance Benefit Act, or in a deferred compensation plan administered
3872 by the State Retirement Office in accordance with the Internal Revenue Code and its
3873 accompanying rules and regulations;

- 3874 (ii) health insurance;
- 3875 (iii) dental insurance;
- 3876 (iv) basic life insurance;
- 3877 (v) unemployment compensation;
- 3878 (vi) workers' compensation;
- 3879 (vii) required employer contribution to Social Security;
- 3880 (viii) long-term disability income insurance;
- 3881 (ix) the same additional state-paid life insurance available to other noncareer service
3882 employees;
- 3883 (x) the same severance pay available to other noncareer service employees;
- 3884 (xi) the same leave, holidays, and allowances granted to Schedule B state employees as
3885 follows:
 - 3886 (A) sick leave;
 - 3887 (B) converted sick leave if accrued prior to January 1, 2014;
 - 3888 (C) educational allowances;
 - 3889 (D) holidays; and
 - 3890 (E) annual leave except that annual leave shall be accrued at the maximum rate
3891 provided to Schedule B state employees;
 - 3892 (xii) the option to convert accumulated sick leave to cash or insurance benefits as
3893 provided by law or rule upon resignation or retirement according to the same criteria and
3894 procedures applied to Schedule B state employees;
 - 3895 (xiii) the option to purchase additional life insurance at group insurance rates according
3896 to the same criteria and procedures applied to Schedule B state employees; and
 - 3897 (xiv) professional memberships if being a member of the professional organization is a
3898 requirement of the position.
- 3899 (b) Each department shall pay the cost of additional state-paid life insurance for its
3900 executive director from its existing budget.
- 3901 (6) The Legislature fixes the following additional benefits:

- 3902 (a) for the executive director of the State Tax Commission a vehicle for official and
3903 personal use;
- 3904 (b) for the executive director of the Department of Transportation a vehicle for official
3905 and personal use;
- 3906 (c) for the executive director of the Department of Natural Resources a vehicle for
3907 commute and official use;
- 3908 (d) for the Commissioner of Public Safety:
- 3909 (i) an accidental death insurance policy if POST certified; and
3910 (ii) a public safety vehicle for official and personal use;
- 3911 (e) for the executive director of the Department of Corrections:
- 3912 (i) an accidental death insurance policy if POST certified; and
3913 (ii) a public safety vehicle for official and personal use;
- 3914 (f) for the Adjutant General a vehicle for official and personal use; and
3915 (g) for each member of the Board of Pardons and Parole a vehicle for commute and
3916 official use.

3917 Section 44. Section **70C-6-105** is amended to read:

3918 **70C-6-105. Maximum charge by creditor for insurance.**

3919 If a creditor contracts for or receives a separate charge for insurance, the amount
3920 charged the debtor for the insurance may not exceed the premium to be charged by the insurer,
3921 without deduction for commissions, as computed at the time the charge to the debtor is
3922 determined, conforming to any rate filings required by law and made by the insurer with the
3923 ~~[commissioner of insurance]~~ Department of Commerce under Title 31A, Insurance Code,
3924 which may delegate this function to the Division of Insurance.

3925 Section 45. Section **70C-6-106** is amended to read:

3926 **70C-6-106. Refund or credit required -- Amount.**

3927 (1) A debtor or ~~[his]~~ the debtor's estate is entitled to any rebate or refund due from an
3928 insurer and to any unearned part of a separate charge for insurance previously paid by the
3929 debtor, resulting from the prepayment of a consumer credit debt, except when all refunds and
3930 credits due to the debtor under this title amount to less than \$5.

3931 (2) A creditor shall promptly make or cause to be made an appropriate refund or credit
3932 to the debtor with respect to any separate charge made to him for insurance if:

3933 (a) the insurance is not provided or is provided for a shorter term than that for which
3934 the charge to a debtor for insurance was computed; or

3935 (b) the insurance terminates prior to the end of the term for which it was written
3936 because of prepayment in full or otherwise.

3937 (3) All refunds or credit required by this section shall be computed according to a
3938 method prescribed or approved by the [~~Insurance Department~~] Department of Commerce under
3939 Title 31A, Insurance Code, which may delegate this function to the Division of Insurance, or
3940 formula filed by the insurer with the [~~Insurance Department~~] Department of Commerce at least
3941 30 days before any debtor's right to a refund or credit becomes determinable, unless the method
3942 or formula is employed after the [~~Insurance Department~~] Department of Commerce notifies the
3943 insurer that the method or formula has been disapproved.

3944 (4) Except as provided in Subsection (1), a creditor is not obligated to account to a
3945 debtor for any portion of a separate charge for insurance when:

3946 (a) the insurance is terminated by performance of the insurer's obligation;

3947 (b) the creditor pays or accounts for premiums to the insurer in amounts and at times
3948 determined by the agreement between them; or

3949 (c) the creditor receives directly or indirectly under any policy of insurance a gain or
3950 advantage not prohibited by law.

3951 Section 46. Section **70C-6-203** is amended to read:

3952 **70C-6-203. Filing and approval of rates and forms.**

3953 (1) A creditor may use a form or a schedule of premium rates or charges concerning
3954 consumer credit insurance only if the form or schedule has been on file with the [~~Insurance~~
3955 ~~Department~~] Department of Commerce under Title 31A, Insurance Code, which may delegate
3956 this function to the Division of Insurance, for at least 30 days and has not been disapproved by
3957 the [~~Insurance Department~~] Department of Commerce or has been specifically approved by the
3958 [~~Insurance Department~~] Department of Commerce at any time after filing.

3959 (2) Except as provided in Subsection (3), all policies, certificates of insurance, notices
3960 of proposed insurance, applications for insurance, endorsements and riders relating to
3961 consumer credit insurance delivered or issued for delivery in this state, and the schedules of
3962 premium rates or charges pertaining to them, shall be filed by the insurer with the [~~Insurance~~
3963 ~~Department~~] Department of Commerce. Within 30 days after the filing of any form or

3964 schedule, the [~~Insurance Department~~] Department of Commerce shall disapprove it if the
3965 premium rates or charges are unreasonable in relation to the benefits provided under the form,
3966 or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or
3967 encourages misrepresentation, or are contrary to any provisions of this title, or Title 31A,
3968 Chapter 22, Part 8, Credit Life and Accident and Health Insurance, or of any rule adopted under
3969 that act or this title.

3970 (3) If a group policy has been delivered in another state, the forms to be filed by the
3971 insurer with the [~~Insurance Department~~] Department of Commerce are the group certificates
3972 and notices of proposed insurance. The [~~Insurance Department~~] Department of Commerce
3973 shall approve those certificates and notices if:

3974 (a) they provide the information that would be required if the group policy were
3975 delivered in this state; and

3976 (b) the applicable premium rates or charges do not exceed those established by the
3977 [~~Insurance Department's~~] rules of the Department of Commerce under Title 31A, Insurance
3978 Code.

3979 Section 47. Section **72-6-107.5** is amended to read:

3980 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
3981 **insurance coverage.**

3982 (1) For purposes of this section:

3983 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3984 34A-2-104 who:

3985 (i) works at least 30 hours per calendar week; and

3986 (ii) meets employer eligibility waiting requirements for health care insurance which
3987 may not exceed the first day of the calendar month following 90 days from the date of hire.

3988 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

3989 (c) "Qualified health insurance coverage" means at the time the contract is entered into
3990 or renewed:

3991 (i) a health benefit plan and employer contribution level with a combined actuarial
3992 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
3993 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
3994 a contribution level of 50% of the premium for the employee and the dependents of the

3995 employee who reside or work in the state, in which:

3996 (A) the employer pays at least 50% of the premium for the employee and the
3997 dependents of the employee who reside or work in the state; and

3998 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

3999 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket
4000 maximum based on income levels:

4001 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

4002 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

4003 (II) dental coverage is not required; and

4004 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
4005 apply; or

4006 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
4007 deductible that is either:

4008 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

4009 or

4010 (II) a deductible that is higher than the lowest deductible permitted for a federally
4011 qualified high deductible health plan, but includes an employer contribution to a health savings
4012 account in a dollar amount at least equal to the dollar amount difference between the lowest
4013 deductible permitted for a federally qualified high deductible plan and the deductible for the
4014 employer offered federally qualified high deductible plan;

4015 (B) an out-of-pocket maximum that does not exceed three times the amount of the
4016 annual deductible; and

4017 (C) under which the employer pays 75% of the premium for the employee and the
4018 dependents of the employee who work or reside in the state.

4019 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

4020 (2) (a) Except as provided in Subsection (3), this section applies to contracts entered
4021 into by the department on or after July 1, 2009, for construction or design of highways and to a
4022 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

4023 (b) (i) A prime contractor is subject to this section if the prime contract is in the
4024 amount of \$1,500,000 or greater.

4025 (ii) A subcontractor is subject to this section if a subcontract is in the amount of

4026 \$750,000 or greater.

4027 (3) This section does not apply if:

4028 (a) the application of this section jeopardizes the receipt of federal funds;

4029 (b) the contract is a sole source contract; or

4030 (c) the contract is an emergency procurement.

4031 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-102~~]

4032 63G-6-103, or a modification to a contract, when the contract does not meet the initial

4033 threshold required by Subsection (2).

4034 (b) A person who intentionally uses change orders or contract modifications to
4035 circumvent the requirements of Subsection (2) is guilty of an infraction.

4036 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
4037 the contractor has and will maintain an offer of qualified health insurance coverage for the
4038 contractor's employees and the employees' dependents during the duration of the contract.

4039 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
4040 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
4041 health insurance coverage for the subcontractor's employees and the employees' dependents
4042 during the duration of the contract.

4043 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
4044 the duration of the contract is subject to penalties in accordance with administrative rules
4045 adopted by the department under Subsection (6).

4046 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
4047 requirements of Subsection (5)(b).

4048 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
4049 the duration of the contract is subject to penalties in accordance with administrative rules
4050 adopted by the department under Subsection (6).

4051 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
4052 requirements of Subsection (5)(a).

4053 (6) The department shall adopt administrative rules:

4054 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

4055 (b) in coordination with:

4056 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

- 4057 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 4058 (iii) the State Building Board in accordance with Section 63A-5-205;
- 4059 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 4060 (v) a public transit district in accordance with Section 17B-2a-818.5; and
- 4061 (vi) the Legislature's Administrative Rules Review Committee; and
- 4062 (c) which establish:
 - 4063 (i) the requirements and procedures a contractor must follow to demonstrate to the
 - 4064 department compliance with this section which shall include:
 - 4065 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
 - 4066 (b) more than twice in any 12-month period; and
 - 4067 (B) that the actuarially equivalent determination required in Subsection (1) is met by
 - 4068 the contractor if the contractor provides the department or division with a written statement of
 - 4069 actuarial equivalency from either:
 - 4070 (I) the ~~[Utah Insurance Department]~~ Department of Commerce under Title 31A,
 - 4071 Insurance Code, which may delegate this function to the Division of Insurance;
 - 4072 (II) an actuary selected by the contractor or the contractor's insurer; or
 - 4073 (III) an underwriter who is responsible for developing the employer group's premium
 - 4074 rates;
 - 4075 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
 - 4076 violates the provisions of this section, which may include:
 - 4077 (A) a three-month suspension of the contractor or subcontractor from entering into
 - 4078 future contracts with the state upon the first violation;
 - 4079 (B) a six-month suspension of the contractor or subcontractor from entering into future
 - 4080 contracts with the state upon the second violation;
 - 4081 (C) an action for debarment of the contractor or subcontractor in accordance with
 - 4082 Section 63G-6-804 upon the third or subsequent violation; and
 - 4083 (D) monetary penalties which may not exceed 50% of the amount necessary to
 - 4084 purchase qualified health insurance coverage for an employee and a dependent of the employee
 - 4085 of the contractor or subcontractor who was not offered qualified health insurance coverage
 - 4086 during the duration of the contract; and
 - 4087 (iii) a website on which the department shall post the benchmark for the qualified

4088 health insurance coverage identified in Subsection (1)(c)(i).

4089 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
4090 subcontractor who intentionally violates the provisions of this section shall be liable to the
4091 employee for health care costs that would have been covered by qualified health insurance
4092 coverage.

4093 (ii) An employer has an affirmative defense to a cause of action under Subsection
4094 (7)(a)(i) if:

4095 (A) the employer relied in good faith on a written statement of actuarial equivalency
4096 provided by:

4097 (I) an actuary; or

4098 (II) an underwriter who is responsible for developing the employer group's premium
4099 rates; or

4100 (B) the department determines that compliance with this section is not required under
4101 the provisions of Subsection (3) or (4).

4102 (b) An employee has a private right of action only against the employee's employer to
4103 enforce the provisions of this Subsection (7).

4104 (8) Any penalties imposed and collected under this section shall be deposited into the
4105 Medicaid Restricted Account created in Section 26-18-402.

4106 (9) The failure of a contractor or subcontractor to provide qualified health insurance
4107 coverage as required by this section:

4108 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
4109 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
4110 Legal and Contractual Remedies; and

4111 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
4112 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
4113 or construction.

4114 Section 48. Section **76-6-521** is amended to read:

4115 **76-6-521. Fraudulent insurance act.**

4116 (1) A person commits a fraudulent insurance act if that person with intent to defraud:

4117 (a) presents or causes to be presented any oral or written statement or representation
4118 knowing that the statement or representation contains false or fraudulent information

4119 concerning any fact material to an application for the issuance or renewal of an insurance
4120 policy, certificate, or contract;

4121 (b) presents, or causes to be presented, any oral or written statement or representation:

4122 (i) (A) as part of or in support of a claim for payment or other benefit pursuant to an
4123 insurance policy, certificate, or contract; or

4124 (B) in connection with any civil claim asserted for recovery of damages for personal or
4125 bodily injuries or property damage; and

4126 (ii) knowing that the statement or representation contains false or fraudulent
4127 information concerning any fact or thing material to the claim;

4128 (c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance act;

4129 (d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees
4130 for professional services, or anything of value by means of false or fraudulent pretenses,
4131 representations, promises, or material omissions;

4132 (e) knowingly employs, uses, or acts as a runner, as defined in Section 31A-31-102, for
4133 the purpose of committing a fraudulent insurance act;

4134 (f) knowingly assists, abets, solicits, or conspires with another to commit a fraudulent
4135 insurance act; or

4136 (g) knowingly supplies false or fraudulent material information in any document or
4137 statement required by the [~~Department of Insurance~~] Department of Commerce under Title
4138 31A, Insurance Code, which may delegate this function to the Division of Insurance.

4139 (2) (a) A violation of Subsection (1)(a) is a class B misdemeanor.

4140 (b) A violation of Subsections (1)(b) through (1)(g) is punishable as in the manner
4141 prescribed by Section 76-10-1801 for communication fraud for property of like value.

4142 (3) A corporation or association is guilty of the offense of insurance fraud under the
4143 same conditions as those set forth in Section 76-2-204.

4144 (4) The determination of the degree of any offense under Subsections (1)(b) through
4145 (1)(g) shall be measured by the total value of all property, money, or other things obtained or
4146 sought to be obtained by the fraudulent insurance act or acts described in Subsections (1)(b)
4147 through (1)(g).

4148 Section 49. Section **76-10-915** is amended to read:

4149 **76-10-915. Exempt activities.**

4150 (1) This act may not be construed to prohibit:

4151 (a) the activities of any public utility to the extent that those activities are subject to
4152 regulation by the public service commission, the state or federal department of transportation,
4153 the federal energy regulatory commission, the federal communications commission, the
4154 interstate commerce commission, or successor agencies;

4155 (b) the activities of any insurer, insurance producer, independent insurance adjuster, or
4156 rating organization including, but not limited to, making or participating in joint underwriting
4157 or reinsurance arrangements, to the extent that those activities are subject to regulation by the
4158 ~~[commissioner of insurance]~~ Department of Commerce under Title 31A, Insurance Code,
4159 which may delegate this function to the Division of Insurance;

4160 (c) the activities of securities dealers, issuers, or agents, to the extent that those
4161 activities are subject to regulation under the laws of either this state or the United States;

4162 (d) the activities of any state or national banking institution, to the extent that the
4163 activities are regulated or supervised by state government officers or agencies under the
4164 banking laws of this state or by federal government officers or agencies under the banking laws
4165 of the United States;

4166 (e) the activities of any state or federal savings and loan association to the extent that
4167 those activities are regulated or supervised by state government officers or agencies under the
4168 banking laws of this state or federal government officers or agencies under the banking laws of
4169 the United States;

4170 (f) the activities of a political subdivision to the extent authorized or directed by state
4171 law, consistent with the state action doctrine of federal antitrust law; or

4172 (g) the activities of an emergency medical service provider licensed under Title 26,
4173 Chapter 8a, Utah Emergency Medical Services System Act, to the extent that those activities
4174 are regulated by state government officers or agencies under that act.

4175 (2) (a) The labor of a human being is not a commodity or article of commerce.

4176 (b) Nothing contained in the antitrust laws shall be construed to forbid the existence
4177 and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of
4178 mutual help and not having capital stock or conducted for profit, or to forbid or restrain
4179 individual members of these organizations from lawfully carrying out their legitimate objects;
4180 nor may these organizations or membership in them be held to be illegal combinations or

4181 conspiracies in restraint of trade under the antitrust laws.

4182 (3) (a) As used in this section, an entity is also a municipality if the entity was formed
4183 under Title 11, Chapter 13, Interlocal Cooperation Act, prior to January 1, 1981, and the entity
4184 is:

- 4185 (i) a project entity as defined in Section 11-13-103;
- 4186 (ii) an electric interlocal entity as defined in Section 11-13-103; or
- 4187 (iii) an energy services interlocal entity as defined in Section 11-13-103.

4188 (b) The activities of the entities under Subsection (3)(a) are authorized or directed by
4189 state law.

4190 Section 50. Section **77-20-5** is amended to read:

4191 **77-20-5. Qualifications of sureties -- Justification -- Requirements of**
4192 **undertaking.**

4193 (1) The sureties on written undertakings shall be real or personal property holders
4194 within the state. The qualifications and bonding limits of bail bond sureties who are engaged
4195 in the for-profit, commercial business of posting property bonds shall be established by the Bail
4196 Bond Surety Oversight Board and rules adopted by the ~~[insurance commissioner]~~ Department
4197 of Commerce under Title 31A, Insurance Code, which may delegate this function to the
4198 Division of Insurance. All other sureties shall collectively have a net worth of at least twice the
4199 amount of the undertaking, exclusive of property exempt from execution.

4200 (2) Each surety shall justify by affidavit upon the undertaking and each may be further
4201 examined upon oath by the magistrate or by the prosecuting attorney in the presence of a
4202 magistrate, in respect to ~~[his]~~ the surety's property and net worth.

4203 (3) The undertaking shall, in addition to other requirements, provide that each surety
4204 submits ~~[himself]~~ the surety to the jurisdiction of the court and irrevocably appoints the clerk of
4205 the court as ~~[his]~~ the surety's agent upon whom any papers affecting ~~[his]~~ the surety's liability
4206 on the undertaking may be served, and that ~~[his]~~ the surety's liability may be enforced on
4207 motion and upon such notice as the court may require without the necessity of an independent
4208 action.

4209 Section 51. Section **78B-3-403** is amended to read:

4210 **78B-3-403. Definitions.**

4211 As used in this part:

- 4212 (1) "Audiologist" means a person licensed to practice audiology under Title 58,
4213 Chapter 41, Speech-language Pathology and Audiology Licensing Act.
- 4214 (2) "Certified social worker" means a person licensed to practice as a certified social
4215 worker under Section 58-60-205.
- 4216 (3) "Chiropractic physician" means a person licensed to practice chiropractic under
4217 Title 58, Chapter 73, Chiropractic Physician Practice Act.
- 4218 (4) "Clinical social worker" means a person licensed to practice as a clinical social
4219 worker under Section 58-60-205.
- 4220 (5) "Commissioner" means the [~~commissioner of insurance as provided in Section~~
4221 ~~31A-2-102~~] Department of Commerce under Title 31A, Insurance Code, which may delegate
4222 this function to the Division of Insurance.
- 4223 (6) "Dental hygienist" means a person licensed to engage in the practice of dental
4224 hygiene as defined in Section 58-69-102.
- 4225 (7) "Dentist" means a person licensed to engage in the practice of dentistry as defined
4226 in Section 58-69-102.
- 4227 (8) "Division" means the Division of Occupational and Professional Licensing created
4228 in Section 58-1-103.
- 4229 (9) "Future damages" includes a judgment creditor's damages for future medical
4230 treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and
4231 suffering.
- 4232 (10) "Health care" means any act or treatment performed or furnished, or which should
4233 have been performed or furnished, by any health care provider for, to, or on behalf of a patient
4234 during the patient's medical care, treatment, or confinement.
- 4235 (11) "Health care facility" means general acute hospitals, specialty hospitals, home
4236 health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers,
4237 ambulatory surgical facilities, small health care facilities, health care facilities owned or
4238 operated by health maintenance organizations, and end stage renal disease facilities.
- 4239 (12) "Health care provider" includes any person, partnership, association, corporation,
4240 or other facility or institution who causes to be rendered or who renders health care or
4241 professional services as a hospital, health care facility, physician, registered nurse, licensed
4242 practical nurse, nurse-midwife, licensed Direct-entry midwife, dentist, dental hygienist,

4243 optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist
4244 assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician,
4245 osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language
4246 pathologist, clinical social worker, certified social worker, social service worker, marriage and
4247 family counselor, practitioner of obstetrics, or others rendering similar care and services
4248 relating to or arising out of the health needs of persons or groups of persons and officers,
4249 employees, or agents of any of the above acting in the course and scope of their employment.

4250 (13) "Hospital" means a public or private institution licensed under Title 26, Chapter
4251 21, Health Care Facility Licensing and Inspection Act.

4252 (14) "Licensed Direct-entry midwife" means a person licensed under the Direct-entry
4253 Midwife Act to engage in the practice of direct-entry midwifery as defined in Section
4254 58-77-102.

4255 (15) "Licensed practical nurse" means a person licensed to practice as a licensed
4256 practical nurse as provided in Section 58-31b-301.

4257 (16) "Malpractice action against a health care provider" means any action against a
4258 health care provider, whether in contract, tort, breach of warranty, wrongful death, or
4259 otherwise, based upon alleged personal injuries relating to or arising out of health care rendered
4260 or which should have been rendered by the health care provider.

4261 (17) "Marriage and family therapist" means a person licensed to practice as a marriage
4262 therapist or family therapist under Sections 58-60-305 and 58-60-405.

4263 (18) "Naturopathic physician" means a person licensed to engage in the practice of
4264 naturopathic medicine as defined in Section 58-71-102.

4265 (19) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife
4266 under Section 58-44a-301.

4267 (20) "Optometrist" means a person licensed to practice optometry under Title 58,
4268 Chapter 16a, Utah Optometry Practice Act.

4269 (21) "Osteopathic physician" means a person licensed to practice osteopathy under
4270 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

4271 (22) "Patient" means a person who is under the care of a health care provider, under a
4272 contract, express or implied.

4273 (23) "Periodic payments" means the payment of money or delivery of other property to

4274 a judgment creditor at intervals ordered by the court.

4275 (24) "Pharmacist" means a person licensed to practice pharmacy as provided in Section
4276 58-17b-301.

4277 (25) "Physical therapist" means a person licensed to practice physical therapy under
4278 Title 58, Chapter 24b, Physical Therapy Practice Act.

4279 (26) "Physical therapist assistant" means a person licensed to practice physical therapy,
4280 within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical
4281 Therapy Practice Act.

4282 (27) "Physician" means a person licensed to practice medicine and surgery under Title
4283 58, Chapter 67, Utah Medical Practice Act.

4284 (28) "Podiatric physician" means a person licensed to practice podiatry under Title 58,
4285 Chapter 5a, Podiatric Physician Licensing Act.

4286 (29) "Practitioner of obstetrics" means a person licensed to practice as a physician in
4287 this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68,
4288 Utah Osteopathic Medical Practice Act.

4289 (30) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist
4290 Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.

4291 (31) "Registered nurse" means a person licensed to practice professional nursing as
4292 provided in Section 58-31b-301.

4293 (32) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother,
4294 child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term
4295 includes relationships that are created as a result of adoption.

4296 (33) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact,
4297 person designated to make decisions on behalf of a patient under a medical power of attorney,
4298 or other legal agent of the patient.

4299 (34) "Social service worker" means a person licensed to practice as a social service
4300 worker under Section 58-60-205.

4301 (35) "Speech-language pathologist" means a person licensed to practice
4302 speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and
4303 Audiology Licensing Act.

4304 (36) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or

4305 omission proximately causing injury or damage to another.

4306 (37) "Unanticipated outcome" means the outcome of a medical treatment or procedure
4307 that differs from an expected result.

4308 Section 52. Section **78B-3-413** is amended to read:

4309 **78B-3-413. Professional liability insurance coverage for providers -- Joint**
4310 **underwriting authority.**

4311 (1) The [~~commissioner~~] Department of Commerce under Title 31A, Insurance Code,
4312 which may delegate this function to the Division of Insurance, may, after a public hearing, find
4313 that professional liability insurance coverage for health care providers is not readily available in
4314 the voluntary market in a specific part of this state, and that the public interest requires that
4315 action be taken.

4316 (2) The [~~commissioner~~] Department of Commerce may promulgate rules and
4317 implement plans to provide insurance coverage through all insurers issuing professional
4318 liability policies and individual and group accident and sickness policies providing medical,
4319 surgical or hospital expense coverage on either a prepaid or an expense incurred basis,
4320 including personal injury protection and medical expense coverage issued incidental to liability
4321 insurance policies.

4322 Section 53. Section **79-2-404** is amended to read:

4323 **79-2-404. Contracting powers of department -- Health insurance coverage.**

4324 (1) For purposes of this section:

4325 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
4326 34A-2-104 who:

4327 (i) works at least 30 hours per calendar week; and

4328 (ii) meets employer eligibility waiting requirements for health care insurance which
4329 may not exceed the first day of the calendar month following 90 days from the date of hire.

4330 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

4331 (c) "Qualified health insurance coverage" means at the time the contract is entered into
4332 or renewed:

4333 (i) a health benefit plan and employer contribution level with a combined actuarial
4334 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
4335 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and

4336 a contribution level of 50% of the premium for the employee and the dependents of the
4337 employee who reside or work in the state, in which:

4338 (A) the employer pays at least 50% of the premium for the employee and the
4339 dependents of the employee who reside or work in the state; and

4340 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

4341 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket
4342 maximum based on income levels:

4343 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

4344 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

4345 (II) dental coverage is not required; and

4346 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
4347 apply; or

4348 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
4349 deductible that is either:

4350 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
4351 or

4352 (II) a deductible that is higher than the lowest deductible permitted for a federally
4353 qualified high deductible health plan, but includes an employer contribution to a health savings
4354 account in a dollar amount at least equal to the dollar amount difference between the lowest
4355 deductible permitted for a federally qualified high deductible plan and the deductible for the
4356 employer offered federally qualified high deductible plan;

4357 (B) an out-of-pocket maximum that does not exceed three times the amount of the
4358 annual deductible; and

4359 (C) under which the employer pays 75% of the premium for the employee and the
4360 dependents of the employee who work or reside in the state.

4361 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

4362 (2) (a) Except as provided in Subsection (3), this section applies a design or
4363 construction contract entered into by, or delegated to, the department or a division, board, or
4364 council of the department on or after July 1, 2009, and to a prime contractor or to a
4365 subcontractor in accordance with Subsection (2)(b).

4366 (b) (i) A prime contractor is subject to this section if the prime contract is in the

4367 amount of \$1,500,000 or greater.

4368 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
4369 \$750,000 or greater.

4370 (3) This section does not apply to contracts entered into by the department or a
4371 division, board, or council of the department if:

4372 (a) the application of this section jeopardizes the receipt of federal funds;

4373 (b) the contract or agreement is between:

4374 (i) the department or a division, board, or council of the department; and

4375 (ii) (A) another agency of the state;

4376 (B) the federal government;

4377 (C) another state;

4378 (D) an interstate agency;

4379 (E) a political subdivision of this state; or

4380 (F) a political subdivision of another state; or

4381 (c) the contract or agreement is:

4382 (i) for the purpose of disbursing grants or loans authorized by statute;

4383 (ii) a sole source contract; or

4384 (iii) an emergency procurement.

4385 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-102~~
4386 63G-6-103], or a modification to a contract, when the contract does not meet the initial
4387 threshold required by Subsection (2).

4388 (b) A person who intentionally uses change orders or contract modifications to
4389 circumvent the requirements of Subsection (2) is guilty of an infraction.

4390 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
4391 that the contractor has and will maintain an offer of qualified health insurance coverage for the
4392 contractor's employees and the employees' dependents during the duration of the contract.

4393 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
4394 shall demonstrate to the department that the subcontractor has and will maintain an offer of
4395 qualified health insurance coverage for the subcontractor's employees and the employees'
4396 dependents during the duration of the contract.

4397 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during

4398 the duration of the contract is subject to penalties in accordance with administrative rules
4399 adopted by the department under Subsection (6).

4400 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
4401 requirements of Subsection (5)(b).

4402 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
4403 the duration of the contract is subject to penalties in accordance with administrative rules
4404 adopted by the department under Subsection (6).

4405 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
4406 requirements of Subsection (5)(a).

4407 (6) The department shall adopt administrative rules:

4408 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

4409 (b) in coordination with:

4410 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

4411 (ii) a public transit district in accordance with Section 17B-2a-818.5;

4412 (iii) the State Building Board in accordance with Section 63A-5-205;

4413 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

4414 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

4415 (vi) the Legislature's Administrative Rules Review Committee; and

4416 (c) which establish:

4417 (i) the requirements and procedures a contractor must follow to demonstrate

4418 compliance with this section to the department which shall include:

4419 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

4420 (b) more than twice in any 12-month period; and

4421 (B) that the actuarially equivalent determination required in Subsection (1) is met by
4422 the contractor if the contractor provides the department or division with a written statement of
4423 actuarial equivalency from either:

4424 (I) the ~~Utah Insurance Department~~ Department of Commerce under Title 31A,
4425 Insurance Code, which may delegate this function to the Division of Insurance;

4426 (II) an actuary selected by the contractor or the contractor's insurer; or

4427 (III) an underwriter who is responsible for developing the employer group's premium
4428 rates;

4429 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
4430 violates the provisions of this section, which may include:

4431 (A) a three-month suspension of the contractor or subcontractor from entering into
4432 future contracts with the state upon the first violation;

4433 (B) a six-month suspension of the contractor or subcontractor from entering into future
4434 contracts with the state upon the second violation;

4435 (C) an action for debarment of the contractor or subcontractor in accordance with
4436 Section 63G-6-804 upon the third or subsequent violation; and

4437 (D) monetary penalties which may not exceed 50% of the amount necessary to
4438 purchase qualified health insurance coverage for an employee and a dependent of an employee
4439 of the contractor or subcontractor who was not offered qualified health insurance coverage
4440 during the duration of the contract; and

4441 (iii) a website on which the department shall post the benchmark for the qualified
4442 health insurance coverage identified in Subsection (1)(c)(i).

4443 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
4444 subcontractor who intentionally violates the provisions of this section shall be liable to the
4445 employee for health care costs that would have been covered by qualified health insurance
4446 coverage.

4447 (ii) An employer has an affirmative defense to a cause of action under Subsection
4448 (7)(a)(i) if:

4449 (A) the employer relied in good faith on a written statement of actuarial equivalency
4450 provided by:

4451 (I) an actuary; or

4452 (II) an underwriter who is responsible for developing the employer group's premium
4453 rates; or

4454 (B) the department determines that compliance with this section is not required under
4455 the provisions of Subsection (3) or (4).

4456 (b) An employee has a private right of action only against the employee's employer to
4457 enforce the provisions of this Subsection (7).

4458 (8) Any penalties imposed and collected under this section shall be deposited into the
4459 Medicaid Restricted Account created in Section 26-18-402.

4460 (9) The failure of a contractor or subcontractor to provide qualified health insurance
4461 coverage as required by this section:

4462 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
4463 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
4464 Legal and Contractual Remedies; and

4465 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
4466 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
4467 or construction.

4468 Section 54. **Repealer.**

4469 This bill repeals:

4470 Section **31A-2-102, Appointment, general powers, and duties of commissioner --**
4471 **Vacancy -- Compensation of commissioner.**

4472 Section **31A-2-103, Commissioner's appointees.**

4473 Section **31A-2-105, Constitutional oath.**

4474 Section 55. **Effective date.**

4475 Section 31A-2a-103, enacted in this bill, takes effect on May 10, 2011, the remainder of
4476 the bill takes effect on July 1, 2011.

4477 Section 56. **Revisor instructions.**

4478 It is the intent of the Legislature that, in preparing the Utah Code database for
4479 publication, the Office of Legislative Research and General Counsel shall replace the reference
4480 in Section 31A-2a-103 from "this bill" to the bill's designated chapter and section number in
4481 the Laws of Utah.

Legislative Review Note
as of 2-11-11 3:47 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 291

SHORT TITLE: Consolidation of Insurance Department into the Department of Commerce

SPONSOR: Harper, W.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.