

**Representative James A. Dunnigan** proposes the following substitute bill:

**INSURANCE AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code to make various changes related to the regulation of insurance.

**Highlighted Provisions:**

This bill:

- ▶ modifies definition provisions;

**§→ ▶ addresses annual report to policyholders; ←§**

- ▶ addresses catastrophic coverage of mental health conditions;
- ▶ amends provisions related to adverse benefit determination review process;
- ▶ addresses when uniform waiver of coverage forms may be combined or modified;
- ▶ provides for the establishment of surplus lines producers;
- ▶ modifies provisions related to inducements;
- ▶ addresses the regulation of customer service representatives;
- ▶ modifies definitions related to insurance marketing and licensing;
- ▶ addresses sharing of commissions;
- ▶ addresses what constitutes administrative action taken against a person that is to be reported to the commissioner;
- ▶ clarifies when a line of authority no longer remains in force for a person;
- ▶ addresses references to the federal Violent Crime Control and Law Enforcement

**1st Sub. H.B. 29**



57 31A-2-404, as last amended by Laws of Utah 2010, Chapter 10  
58 **§→ 31A-7-302, as enacted by Laws of Utah 1985, Chapter 242 ←§**  
58a 31A-22-625, as last amended by Laws of Utah 2011, Chapters 240, 284, 297, 366, and  
59 400  
60 31A-22-629, as last amended by Laws of Utah 2007, Chapter 307  
61 31A-22-635, as last amended by Laws of Utah 2011, Chapter 400  
62 31A-23a-101, as renumbered and amended by Laws of Utah 2003, Chapter 298  
63 31A-23a-102, as last amended by Laws of Utah 2011, Chapter 284  
64 31A-23a-103, as renumbered and amended by Laws of Utah 2003, Chapter 298  
65 31A-23a-104, as last amended by Laws of Utah 2011, Chapter 337  
66 31A-23a-105, as last amended by Laws of Utah 2011, Chapter 337  
67 31A-23a-106, as last amended by Laws of Utah 2011, Chapter 284  
68 31A-23a-107, as renumbered and amended by Laws of Utah 2003, Chapter 298  
69 31A-23a-108, as last amended by Laws of Utah 2005, Chapters 185 and 219  
70 31A-23a-109, as last amended by Laws of Utah 2008, Chapter 3  
71 31A-23a-111, as last amended by Laws of Utah 2011, Chapter 284  
72 31A-23a-113, as last amended by Laws of Utah 2009, Chapter 349  
73 31A-23a-115.5, as enacted by Laws of Utah 2011, Chapter 400  
74 31A-23a-203, as last amended by Laws of Utah 2011, Chapter 284  
75 31A-23a-206, as renumbered and amended by Laws of Utah 2003, Chapter 298  
76 31A-23a-301, as enacted by Laws of Utah 2003, Chapter 298  
77 31A-23a-302, as last amended by Laws of Utah 2009, Chapter 349  
78 31A-23a-402.5, as enacted by Laws of Utah 2011, Chapter 62  
79 31A-23a-406, as last amended by Laws of Utah 2011, Chapter 284  
80 31A-23a-409, as last amended by Laws of Utah 2011, Chapter 342  
81 31A-23a-412, as last amended by Laws of Utah 2011, Chapter 284  
82 31A-23a-504, as last amended by Laws of Utah 2011, Chapter 62  
83 31A-25-203, as last amended by Laws of Utah 2009, Chapter 349  
84 31A-25-306, as enacted by Laws of Utah 1985, Chapter 242  
85 31A-26-203, as last amended by Laws of Utah 2009, Chapter 349  
86 31A-27-503, as renumbered and amended by Laws of Utah 2007, Chapter 309  
87 31A-27a-101, as enacted by Laws of Utah 2007, Chapter 309

1142 exceeds the product of:

1143 (I) 2.5; and

1144 (II) the sum of the insurer's or health organization's minimum capital or permanent  
1145 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1146 (B) that amount of an insurer's or health organization's total adjusted capital that  
1147 exceeds the product of:

1148 (I) 3.0; and

1149 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1150 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer  
1151 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1152 (A) 1.5; and

1153 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1154 [~~(161)~~] (162) "Third party administrator" or "administrator" means a person who  
1155 collects charges or premiums from, or who, for consideration, adjusts or settles claims of  
1156 residents of the state in connection with insurance coverage, annuities, or service insurance  
1157 coverage, except:

1158 (a) a union on behalf of its members;

1159 (b) a person administering a:

1160 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1161 1974;

1162 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1163 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1164 (c) an employer on behalf of the employer's employees or the employees of one or  
1165 more of the subsidiary or affiliated corporations of the employer;

1166 (d) an insurer licensed under the following, but only for a line of insurance for which  
1167 the insurer holds a license in this state:

1168 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1169 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

1170 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1171 (iv) Chapter 9, Insurance Fraternal; or

1172 (v) Chapter 14, Foreign Insurers; ~~↔~~ [or] ~~↔~~

1173 (e) a person:

1174 (i) licensed or exempt from licensing under:

1175 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

1176 Reinsurance Intermediaries; or

1177 (B) Chapter 26, Insurance Adjusters; and

1178 (ii) whose activities are limited to those authorized under the license the person holds

1179 or for which the person is exempt ~~H→ [-] ; or~~

1179a **(f) an institution, bank, or financial institution:**

1179b **(i) that is:**

1179c **(A) an institution whose deposits and accounts are to any extent insured by a federal**  
 1179d **deposit insurance agency, including the Federal Deposit Insurance Corporation or National**  
 1179e **Credit Union Administration; or**

1179f **(B) a bank or other financial institution that is subject to supervision or examination**  
 1179g **by a federal or state banking authority; and**

1179h **(ii) that does not adjust claims without a third party administrator license.** ←H

1180 [~~(162)~~] (163) "Title insurance" means the insuring, guaranteeing, or indemnifying of an  
 1181 owner of real or personal property or the holder of liens or encumbrances on that property, or  
 1182 others interested in the property against loss or damage suffered by reason of liens or  
 1183 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity  
 1184 or unenforceability of any liens or encumbrances on the property.

1185 [~~(163)~~] (164) "Total adjusted capital" means the sum of an insurer's or health  
 1186 organization's statutory capital and surplus as determined in accordance with:

1187 (a) the statutory accounting applicable to the annual financial statements required to be  
 1188 filed under Section 31A-4-113; and

1189 (b) another item provided by the RBC instructions, as RBC instructions is defined in  
 1190 Section 31A-17-601.

1191 [~~(164)~~] (165) (a) "Trustee" means "director" when referring to the board of directors of  
 1192 a corporation.

1193 (b) "Trustee," when used in reference to an employee welfare fund, means an  
 1194 individual, firm, association, organization, joint stock company, or corporation, whether acting  
 1195 individually or jointly and whether designated by that name or any other, that is charged with  
 1196 or has the overall management of an employee welfare fund.

1197 [~~(165)~~] (166) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted  
 1198 insurer" means an insurer:

1199 (i) not holding a valid certificate of authority to do an insurance business in this state;

1200 or

1201 (ii) transacting business not authorized by a valid certificate.

1202 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1203 (i) holding a valid certificate of authority to do an insurance business in this state; and

- 1359 (A) title insurance; or  
 1360 (B) escrow conducted by a title licensee;  
 1361 (ii) after investigation by the commissioner in accordance with Part 3, Procedures and  
 1362 Enforcement; and  
 1363 (iii) that is enforced by the commissioner;  
 1364 (h) advise the commissioner on the administration and enforcement of any matter  
 1365 affecting the title insurance industry;  
 1366 (i) advise the commissioner on matters affecting the commissioner's budget related to  
 1367 title insurance; and  
 1368 (j) perform other duties as provided in this title.  
 1369 (3) The commission may make a rule under this title only if at the time the commission  
 1370 files its proposed rule and rule analysis with the Division of Administrative Rules in  
 1371 accordance with Section 63G-3-301, the commission provides the Real Estate Commission that  
 1372 same information.  
 1373 (4) (a) The commissioner shall annually report the information described in Subsection  
 1374 (4)(b) in writing to:  
 1375 (i) the commission; and  
 1376 (ii) the Business and Labor Interim Committee.  
 1377 (b) The information required to be reported under this Subsection (4):  
 1378 (i) may not identify a person; and  
 1379 (ii) shall include:  
 1380 (A) the number of complaints the commissioner receives with regard to transactions  
 1381 involving title insurance or a title licensee during the calendar year immediately preceding the  
 1382 report;  
 1383 (B) the type of complaints described in Subsection (4)(b)(ii)(A); and  
 1384 (C) for each complaint described in Subsection (4)(b)(ii)(A):  
 1385 (I) any action taken by the commissioner with regard to the complaint; and  
 1386 (II) the time-period beginning the day on which a complaint is made and ending the  
 1387 day on which the commissioner determines it will take no further action with regard to the  
 1388 complaint.

1388a **§→ Section 4. Section 31A-7-302 is amended to read:**

1388b **31A-7-302. Annual report to policyholders.**

1388c **Every insurer organized or operating under this chapter shall send to each policyholder or**  
 1388d **electronically post on the insurer's public website an abbreviated annual report which contains basic**  
 1388e **financial and operating data, and information about important business and corporate**  
 1388f **developments.←§**

1389 Section **§→ [4] 5 ←§** . Section **31A-22-625** is amended to read:

3281 underwriting criteria established in Subsection 31A-29-111(5); or

3282 (b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

3283 (ii) has a condition of health that does not meet consistently applied underwriting

3284 criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(g)

3285 and (h) for which coverage the applicant is applying.

3286 ~~[(26)]~~ (25) "Uninsurable percentage" for a given calendar year equals UC/CI where, for  
3287 purposes of this formula:

3288 (a) "CI" means the carrier's individual coverage count as of December 31 of the  
3289 preceding year; and

3290 (b) "UC" means the number of uninsurable individuals who were issued an individual  
3291 policy on or after July 1, 1997.

3292 Section 36. Section **31A-30-109** is amended to read:

3293 **31A-30-109. Health benefit plan choices.**

3294 (1) An individual carrier who offers individual coverage pursuant to Section  
3295 31A-30-108:

3296 (a) shall offer in the individual market under this chapter ~~[(i) a choice of coverage that  
3297 is at least equal to or greater than basic coverage; and (ii) beginning January 1, 2010;]~~ the Utah  
3298 NetCare Plan with the highest actuarial value as described in Subsection 31A-22-724(2); ~~[and]~~

3299 (b) may offer a choice of coverage that:

3300 (i) costs less than or equal to the plan described in Subsection (1)(a) ~~[(ii)]~~; and

3301 (ii) excludes some or all of the mandates described in Subsection 31A-22-724(3) ~~[-];~~

3302 and

3303 (c) shall make an offer described in Subsection (1)(a) ~~§~~ → ~~[and (b)]~~ ← ~~§~~ when requested by

3303a an

3304 individual who is applying for coverage.

3305 (2) ~~[Beginning January 1, 2010, a]~~ A small employer group carrier who offers small  
3306 employer group coverage pursuant to Section 31A-30-108:

3307 (a) shall offer in the small employer group market under this part ~~[(i) a choice of  
3308 coverage that is at least equal to or greater than basic coverage; and (ii) coverage under]~~ the  
3309 Utah NetCare Plan with the highest actuarial value as described in Section 31A-22-724; ~~[and]~~

3310 (b) may offer in the small employer group market under this part, a choice of coverage  
3311 that:

3312 (i) costs less than or equal to the coverage in Subsection (2)(a); and  
 3313 (ii) excludes some or all of the mandates described in Subsection 31A-22-724(3)[-];  
 3314 and  
 3315 (c) shall make an offer described in Subsection (1)(a) ~~§~~ → [and (b)] ← ~~§~~ when requested by

3315a a  
 3316 small employer group who is applying for coverage.

3317 (3) Nothing in this section limits the number of health benefit plans an insurer may  
 3318 offer.

3319 Section 37. Section **31A-30-112** is amended to read:

3320 **31A-30-112. Employee participation levels.**

3321 (1) (a) Except as provided in Subsection (2) and Section 31A-30-206, a requirement  
 3322 used by a covered carrier in determining whether to provide coverage to a small employer,  
 3323 including a requirement for minimum participation of eligible employees and minimum  
 3324 employer contributions, shall be applied uniformly among all small employers with the same  
 3325 number of eligible employees applying for coverage or receiving coverage from the covered  
 3326 carrier.

3327 (b) In addition to applying Subsection 31A-1-301[~~(123)~~] (124), a covered carrier may  
 3328 require that a small employer have a minimum of two eligible employees to meet participation  
 3329 requirements.

3330 (2) A covered carrier may not increase a requirement for minimum employee  
 3331 participation or a requirement for minimum employer contribution applicable to a small  
 3332 employer at any time after the small employer is accepted for coverage.

3333 Section 38. Section **31A-31-105** is amended to read:

3334 **31A-31-105. Immunity.**

3335 (1) (a) A person, insurer, or authorized agency is immune from civil action, civil  
 3336 penalty, or damages when in good faith that person, insurer, or authorized agency:

- 3337 (i) cooperates with an agency described in Subsection (1)(b);
- 3338 (ii) furnishes evidence to an agency described in Subsection (1)(b);
- 3339 (iii) provides information regarding a suspected fraudulent insurance act to an agency  
 3340 described in Subsection (1)(b);
- 3341 (iv) receives information regarding a suspected fraudulent insurance act from an  
 3342 agency described in Subsection (1)(b); or

- 3374 (i) this chapter;
- 3375 (ii) Section ~~H~~→ ~~[31A-2-110]~~ 34A-2-110 ←~~H~~ ; and
- 3376 (iii) Section 76-6-521.
- 3377 ~~(b)~~ (c) "Utah consideration" means:
- 3378 (i) the total premiums written for Utah risks;
- 3379 (ii) annuity consideration;
- 3380 (iii) membership fees collected by the insurer;
- 3381 (iv) other fees collected by the insurer;
- 3382 (v) deposit-type contract funds; and
- 3383 (vi) other considerations in Utah.
- 3384 ~~(c)~~ (d) "Utah risks" means insurance coverage on the lives, health, or against the
- 3385 liability of persons residing in Utah, or on property located in Utah, other than property
- 3386 temporarily in transit through Utah.
- 3387 (2) To implement ~~[this chapter, Section 34A-2-110, and Section 76-6-521]~~ insurance
- 3388 fraud provisions, the commissioner may assess ~~[each]~~ an admitted insurer and ~~[each]~~ a
- 3389 nonadmitted insurer transacting insurance under Chapter 15, Parts 1, Unauthorized Insurers and
- 3390 Surplus Lines, and 2, Risk Retention Groups Act, an annual fee as follows:
- 3391 (a) ~~[\$150]~~ \$200 for an insurer~~[-,if]~~ for which the sum of the Utah consideration ~~[for~~
- 3392 ~~that insurer]~~ is less than or equal to \$1,000,000;
- 3393 (b) ~~[\$400]~~ \$450 for an insurer~~[-,if]~~ for which the sum of the Utah consideration ~~[for~~
- 3394 ~~that insurer]~~ is greater than \$1,000,000 but is less than or equal to \$2,500,000;
- 3395 (c) ~~[\$700]~~ \$800 for an insurer~~[-,if]~~ for which the sum of the Utah consideration ~~[for~~
- 3396 ~~that insurer]~~ is greater than \$2,500,000 but is less than or equal to \$5,000,000;
- 3397 (d) ~~[\$1,350]~~ \$1,600 for an insurer~~[-,if]~~ for which the sum of the Utah consideration ~~[for~~
- 3398 ~~that insurer]~~ is greater than \$5,000,000 but less than or equal to \$10,000,000;
- 3399 (e) ~~[\$5,150]~~ \$6,100 for an insurer~~[-,if]~~ for which the sum of the Utah consideration ~~[for~~
- 3400 ~~that insurer]~~ is greater than \$10,000,000 but less than \$50,000,000; and
- 3401 (f) ~~[\$12,350]~~ \$15,000 for an insurer~~[-,if]~~ for which the sum of the Utah consideration
- 3402 ~~[for that insurer]~~ equals or exceeds \$50,000,000.
- 3403 (3) Money received by the state under this section shall be deposited into the Insurance
- 3404 Fraud Investigation Restricted Account created in Subsection (4).