

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

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 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



26 Act;

27 ▶ requires a person who wants to reinstate a voluntarily surrendered license to comply
28 with continuing education requirements;

29 ▶ addresses special requirements for variable contracts lines of authority;

30 ▶ addresses disbursements from certain trust accounts;

31 ▶ modifies language regarding trust obligation for certain money;

32 ▶ addresses payments of claims by administrator;

33 ▶ addresses commissioner's administrative actions;

34 ▶ grants rulemaking authority to the commissioner regarding model regulations
35 related to determining hazardous financial condition of an insurer;

36 ▶ changes dates related to coverage under a pool policy;

37 ▶ addresses education requirements related to bail bond licensing;

38 ▶ addresses filing of forms by bail bond surety companies and surety insurers;

39 ▶ deletes definition of basic benefit plan;

40 ▶ addresses health benefit plan choices;

41 ▶ grants immunity related to good faith communications between insurers or
42 employees of insurers;

43 ▶ increases assessments paid by insurers to fund costs and expenses incurred by the
44 Department of Insurance in the administration, investigation, and enforcement of
45 provisions related to insurance fraud;

46 ▶ addresses reporting by the board of directors of the Utah Defined Contribution Risk
47 Adjuster; and

48 ▶ makes technical and conforming amendments.

49 **Money Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 None

53 **Utah Code Sections Affected:**

54 AMENDS:

55 **31A-1-301**, as last amended by Laws of Utah 2011, Chapters 284 and 366

56 **31A-2-308**, as last amended by Laws of Utah 2009, Chapter 347

- 57 **31A-2-404**, as last amended by Laws of Utah 2010, Chapter 10
- 58 **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

- 88 **31A-27a-104**, as last amended by Laws of Utah 2009, Chapter 355
- 89 **31A-29-112**, as last amended by Laws of Utah 2004, Chapter 2
- 90 **31A-30-103**, as last amended by Laws of Utah 2011, Chapters 284 and 400
- 91 **31A-30-109**, as last amended by Laws of Utah 2009, Chapter 12
- 92 **31A-30-112**, as last amended by Laws of Utah 2011, Chapter 284
- 93 **31A-31-105**, as last amended by Laws of Utah 2008, Chapter 150
- 94 **31A-31-108**, as last amended by Laws of Utah 2011, Chapter 284
- 95 **31A-35-401.5**, as enacted by Laws of Utah 2011, Chapter 179
- 96 **31A-35-607**, as last amended by Laws of Utah 2000, Chapter 259
- 97 **31A-41-301**, as enacted by Laws of Utah 2008, Chapter 220
- 98 **31A-42-203**, as enacted by Laws of Utah 2009, Chapter 12

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

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

102 **31A-1-301. Definitions.**

103 As used in this title, unless otherwise specified:

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

106 (i) a medical condition including:

107 (A) a medical care expense; or

108 (B) the risk of disability;

109 (ii) accident; or

110 (iii) sickness.

111 (b) "Accident and health insurance":

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

113 (A) an income replacement contract;

114 (B) a health care contract;

115 (C) an expense reimbursement contract;

116 (D) a credit accident and health contract;

117 (E) a continuing care contract; and

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

- 119 (ii) may provide:
- 120 (A) hospital coverage;
- 121 (B) surgical coverage;
- 122 (C) medical coverage;
- 123 (D) loss of income coverage;
- 124 (E) prescription drug coverage;
- 125 (F) dental coverage; or
- 126 (G) vision coverage.
- 127 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 128 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 129 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 130 (3) "Administrator" is defined in Subsection [~~(161)~~] (162).
- 131 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 132 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 133 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 134 ownership, if substantially the same group of individuals manage the corporations.
- 135 (6) "Agency" means:
- 136 (a) a person other than an individual, including a sole proprietorship by which an
- 137 individual does business under an assumed name; and
- 138 (b) an insurance organization licensed or required to be licensed under Section
- 139 31A-23a-301, 31A-25-207, or 31A-26-209.
- 140 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 141 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 142 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 143 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 144 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 145 human life.
- 146 (10) "Application" means a document:
- 147 (a) (i) completed by an applicant to provide information about the risk to be insured;
- 148 and
- 149 (ii) that contains information that is used by the insurer to evaluate risk and decide

150 whether to:

151 (A) insure the risk under:

152 (I) the coverage as originally offered; or

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

154 (B) decline to insure the risk; or

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

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

158 (a) the original articles;

159 (b) a special law;

160 (c) a charter;

161 (d) an amendment;

162 (e) restated articles;

163 (f) articles of merger or consolidation;

164 (g) a trust instrument;

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

166 and

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

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

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

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

174 (a) without individual underwriting or application; and

175 (b) that is determined by definition without designating each person covered.

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

178 (16) "Bona fide office" means a physical office in this state:

179 (a) that is open to the public;

180 (b) that is staffed during regular business hours on regular business days; and

- 181 (c) at which the public may appear in person to obtain services.
- 182 (17) "Business entity" means:
- 183 (a) a corporation;
- 184 (b) an association;
- 185 (c) a partnership;
- 186 (d) a limited liability company;
- 187 (e) a limited liability partnership; or
- 188 (f) another legal entity.
- 189 (18) "Business of insurance" is defined in Subsection [~~(87)~~] (88).
- 190 (19) "Business plan" means the information required to be supplied to the
- 191 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
- 192 when these subsections apply by reference under:
- 193 (a) Section 31A-7-201;
- 194 (b) Section 31A-8-205; or
- 195 (c) Subsection 31A-9-205(2).
- 196 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
- 197 corporation's affairs, however designated.
- 198 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
- 199 corporation.
- 200 (21) "Captive insurance company" means:
- 201 (a) an insurer:
- 202 (i) owned by another organization; and
- 203 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 204 affiliated company; or
- 205 (b) in the case of a group or association, an insurer:
- 206 (i) owned by the insureds; and
- 207 (ii) whose exclusive purpose is to insure risks of:
- 208 (A) a member organization;
- 209 (B) a group member; or
- 210 (C) an affiliate of:
- 211 (I) a member organization; or

- 212 (II) a group member.
- 213 (22) "Casualty insurance" means liability insurance.
- 214 (23) "Certificate" means evidence of insurance given to:
- 215 (a) an insured under a group insurance policy; or
- 216 (b) a third party.
- 217 (24) "Certificate of authority" is included within the term "license."
- 218 (25) "Claim," unless the context otherwise requires, means a request or demand on an
- 219 insurer for payment of a benefit according to the terms of an insurance policy.
- 220 (26) "Claims-made coverage" means an insurance contract or provision limiting
- 221 coverage under a policy insuring against legal liability to claims that are first made against the
- 222 insured while the policy is in force.
- 223 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 224 commissioner.
- 225 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
- 226 supervisory official of another jurisdiction.
- 227 (28) (a) "Continuing care insurance" means insurance that:
- 228 (i) provides board and lodging;
- 229 (ii) provides one or more of the following:
- 230 (A) a personal service;
- 231 (B) a nursing service;
- 232 (C) a medical service; or
- 233 (D) any other health-related service; and
- 234 (iii) provides the coverage described in this Subsection (28)(a) under an agreement
- 235 effective:
- 236 (A) for the life of the insured; or
- 237 (B) for a period in excess of one year.
- 238 (b) Insurance is continuing care insurance regardless of whether or not the board and
- 239 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).
- 240 (29) (a) "Control," "controlling," "controlled," or "under common control" means the
- 241 direct or indirect possession of the power to direct or cause the direction of the management
- 242 and policies of a person. This control may be:

- 243 (i) by contract;
- 244 (ii) by common management;
- 245 (iii) through the ownership of voting securities; or
- 246 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).
- 247 (b) There is no presumption that an individual holding an official position with another
- 248 person controls that person solely by reason of the position.
- 249 (c) A person having a contract or arrangement giving control is considered to have
- 250 control despite the illegality or invalidity of the contract or arrangement.
- 251 (d) There is a rebuttable presumption of control in a person who directly or indirectly
- 252 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
- 253 voting securities of another person.
- 254 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly
- 255 controlled by a producer.
- 256 (31) "Controlling person" means a person that directly or indirectly has the power to
- 257 direct or cause to be directed, the management, control, or activities of a reinsurance
- 258 intermediary.
- 259 (32) "Controlling producer" means a producer who directly or indirectly controls an
- 260 insurer.
- 261 (33) (a) "Corporation" means an insurance corporation, except when referring to:
- 262 (i) a corporation doing business:
- 263 (A) as:
- 264 (I) an insurance producer;
- 265 (II) a surplus lines producer;
- 266 [~~(III)~~] (III) a limited line producer;
- 267 [~~(IV)~~] (IV) a consultant;
- 268 [~~(V)~~] (V) a managing general agent;
- 269 [~~(VI)~~] (VI) a reinsurance intermediary;
- 270 [~~(VII)~~] (VII) a third party administrator; or
- 271 [~~(VIII)~~] (VIII) an adjuster; and
- 272 (B) under:
- 273 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

274 Reinsurance Intermediaries;

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

276 (III) Chapter 26, Insurance Adjusters; or

277 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance

278 Holding Companies.

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

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

281 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations

282 adopted pursuant to the Health Insurance Portability and Accountability Act.

283 (b) "Creditable coverage" includes coverage that is offered through a public health plan

284 such as:

285 (i) the Primary Care Network Program under a Medicaid primary care network

286 demonstration waiver obtained subject to Section 26-18-3;

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

288 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.

289 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

290 (35) "Credit accident and health insurance" means insurance on a debtor to provide

291 indemnity for payments coming due on a specific loan or other credit transaction while the

292 debtor has a disability.

293 (36) (a) "Credit insurance" means insurance offered in connection with an extension of

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

295 (b) "Credit insurance" includes:

296 (i) credit accident and health insurance;

297 (ii) credit life insurance;

298 (iii) credit property insurance;

299 (iv) credit unemployment insurance;

300 (v) guaranteed automobile protection insurance;

301 (vi) involuntary unemployment insurance;

302 (vii) mortgage accident and health insurance;

303 (viii) mortgage guaranty insurance; and

304 (ix) mortgage life insurance.

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

307 (38) "Credit property insurance" means insurance:

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

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

310 (39) "Credit unemployment insurance" means insurance:

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

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

313 (i) specific loan; or

314 (ii) credit transaction.

315 (40) "Creditor" means a person, including an insured, having a claim, whether:

316 (a) matured;

317 (b) unmatured;

318 (c) liquidated;

319 (d) unliquidated;

320 (e) secured;

321 (f) unsecured;

322 (g) absolute;

323 (h) fixed; or

324 (i) contingent.

325 (41) (a) "Crop insurance" means insurance providing protection against damage to
326 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
327 disease or other yield-reducing conditions or perils that is:

328 (i) provided by the private insurance market; or

329 (ii) subsidized by the Federal Crop Insurance Corporation.

330 (b) "Crop insurance" includes multi-peril crop insurance.

331 [~~41~~] (42) (a) "Customer service representative" means a person that provides an
332 insurance service and insurance product information:

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

334 (A) producer; [~~or~~]

335 (B) surplus lines producer; or

336 [~~(B)~~] (C) consultant employer; and

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

338 (A) customer;

339 (B) client; or

340 (C) organization.

341 (b) A customer service representative may only operate within the scope of authority of
342 the customer service representative's producer, surplus lines producer, or consultant employer.

343 [~~(42)~~] (43) "Deadline" means a final date or time:

344 (a) imposed by:

345 (i) statute;

346 (ii) rule; or

347 (iii) order; and

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

349 [~~(43)~~] (44) "Deemer clause" means a provision under this title under which upon the
350 occurrence of a condition precedent, the commissioner is considered to have taken a specific
351 action. If the statute so provides, a condition precedent may be the commissioner's failure to
352 take a specific action.

353 [~~(44)~~] (45) "Degree of relationship" means the number of steps between two persons
354 determined by counting the generations separating one person from a common ancestor and
355 then counting the generations to the other person.

356 [~~(45)~~] (46) "Department" means the Insurance Department.

357 [~~(46)~~] (47) "Director" means a member of the board of directors of a corporation.

358 [~~(47)~~] (48) "Disability" means a physiological or psychological condition that partially
359 or totally limits an individual's ability to:

360 (a) perform the duties of:

361 (i) that individual's occupation; or

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

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

365 (i) eating;

366 (ii) toileting;

- 367 (iii) transferring;
- 368 (iv) bathing; or
- 369 (v) dressing.
- 370 [~~(48)~~] (49) "Disability income insurance" is defined in Subsection [~~(78)~~] (79).
- 371 [~~(49)~~] (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 372 [~~(50)~~] (51) "Domiciliary state" means the state in which an insurer:
- 373 (a) is incorporated;
- 374 (b) is organized; or
- 375 (c) in the case of an alien insurer, enters into the United States.
- 376 [~~(51)~~] (52) (a) "Eligible employee" means:
- 377 (i) an employee who:
- 378 (A) works on a full-time basis; and
- 379 (B) has a normal work week of 30 or more hours; or
- 380 (ii) a person described in Subsection [~~(51)~~] (52)(b).
- 381 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 382 plan of a small employer:
- 383 (i) a sole proprietor;
- 384 (ii) a partner in a partnership; or
- 385 (iii) an independent contractor.
- 386 (c) "Eligible employee" does not include, unless eligible under Subsection [~~(51)~~]
- 387 (52)(b):
- 388 (i) an individual who works on a temporary or substitute basis for a small employer;
- 389 (ii) an employer's spouse; or
- 390 (iii) a dependent of an employer.
- 391 [~~(52)~~] (53) "Employee" means an individual employed by an employer.
- 392 [~~(53)~~] (54) "Employee benefits" means one or more benefits or services provided to:
- 393 (a) an employee; or
- 394 (b) a dependent of an employee.
- 395 [~~(54)~~] (55) (a) "Employee welfare fund" means a fund:
- 396 (i) established or maintained, whether directly or through a trustee, by:
- 397 (A) one or more employers;

398 (B) one or more labor organizations; or
399 (C) a combination of employers and labor organizations; and
400 (ii) that provides employee benefits paid or contracted to be paid, other than income
401 from investments of the fund:

402 (A) by or on behalf of an employer doing business in this state; or
403 (B) for the benefit of a person employed in this state.

404 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
405 revenues.

406 [~~55~~] (56) "Endorsement" means a written agreement attached to a policy or certificate
407 to modify the policy or certificate coverage.

408 [~~56~~] (57) "Enrollment date," with respect to a health benefit plan, means:

409 (a) the first day of coverage; or
410 (b) if there is a waiting period, the first day of the waiting period.

411 [~~57~~] (58) (a) "Escrow" means:

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

414 (ii) a settlement or closing involving:

415 (A) a mobile home;
416 (B) a grazing right;
417 (C) a water right; or
418 (D) other personal property authorized by the commissioner.

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

420 (i) real estate settlement; or
421 (ii) real estate closing.

422 [~~58~~] (59) "Escrow agent" means:

423 (a) an insurance producer with:
424 (i) a title insurance line of authority; and
425 (ii) an escrow subline of authority; or
426 (b) a person defined as an escrow agent in Section 7-22-101.

427 [~~59~~] (60) (a) "Excludes" is not exhaustive and does not mean that another thing is not
428 also excluded.

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

431 ~~[(60)]~~ (61) "Exclusion" means for the purposes of accident and health insurance that an
432 insurer does not provide insurance coverage, for whatever reason, for one of the following:

433 (a) a specific physical condition;

434 (b) a specific medical procedure;

435 (c) a specific disease or disorder; or

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

437 ~~[(61)]~~ (62) "Expense reimbursement insurance" means insurance:

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

440 (b) written:

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

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

443 ~~[(62)]~~ (63) "Fidelity insurance" means insurance guaranteeing the fidelity of a person
444 holding a position of public or private trust.

445 ~~[(63)]~~ (64) (a) "Filed" means that a filing is:

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

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

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

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

452 (B) rule.

453 (b) "Filed" does not include a filing that is rejected by the department because it is not
454 submitted in accordance with Subsection ~~[(63)]~~ (64)(a).

455 ~~[(64)]~~ (65) "Filing," when used as a noun, means an item required to be filed with the
456 department including:

457 (a) a policy;

458 (b) a rate;

459 (c) a form;

- 460 (d) a document;
- 461 (e) a plan;
- 462 (f) a manual;
- 463 (g) an application;
- 464 (h) a report;
- 465 (i) a certificate;
- 466 (j) an endorsement;
- 467 (k) an actuarial certification;
- 468 (l) a licensee annual statement;
- 469 (m) a licensee renewal application;
- 470 (n) an advertisement; or
- 471 (o) an outline of coverage.

472 [~~(65)~~] (66) "First party insurance" means an insurance policy or contract in which the
473 insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

474 [~~(66)~~] (67) "Foreign insurer" means an insurer domiciled outside of this state, including
475 an alien insurer.

476 [~~(67)~~] (68) (a) "Form" means one of the following prepared for general use:

- 477 (i) a policy;
- 478 (ii) a certificate;
- 479 (iii) an application;
- 480 (iv) an outline of coverage; or
- 481 (v) an endorsement.

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

484 [~~(68)~~] (69) "Franchise insurance" means an individual insurance policy provided
485 through a mass marketing arrangement involving a defined class of persons related in some
486 way other than through the purchase of insurance.

487 [~~(69)~~] (70) "General lines of authority" include:

- 488 (a) the general lines of insurance in Subsection [~~(70)~~] (71);
- 489 (b) title insurance under one of the following sublines of authority:
 - 490 (i) search, including authority to act as a title marketing representative;

- 491 (ii) escrow, including authority to act as a title marketing representative; and
- 492 (iii) title marketing representative only;
- 493 (c) surplus lines;
- 494 (d) workers' compensation; and
- 495 (e) any other line of insurance that the commissioner considers necessary to recognize
- 496 in the public interest.

497 [~~(70)~~] (71) "General lines of insurance" include:

- 498 (a) accident and health;
- 499 (b) casualty;
- 500 (c) life;
- 501 (d) personal lines;
- 502 (e) property; and
- 503 (f) variable contracts, including variable life and annuity.

504 [~~(71)~~] (72) "Group health plan" means an employee welfare benefit plan to the extent

505 that the plan provides medical care:

- 506 (a) (i) to an employee; or
- 507 (ii) to a dependent of an employee; and
- 508 (b) (i) directly;
- 509 (ii) through insurance reimbursement; or
- 510 (iii) through another method.

511 [~~(72)~~] (73) (a) "Group insurance policy" means a policy covering a group of persons

512 that is issued:

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

515 in:

- 516 (A) the policy; or
- 517 (B) an agreement that is collateral to the policy.
- 518 (b) A group insurance policy may include a member of the policyholder's family or a
- 519 dependent.

520 [~~(73)~~] (74) "Guaranteed automobile protection insurance" means insurance offered in

521 connection with an extension of credit that pays the difference in amount between the

522 insurance settlement and the balance of the loan if the insured automobile is a total loss.

523 [~~(74)~~] (75) (a) Except as provided in Subsection [~~(74)~~] (75)(b), "health benefit plan"

524 means a policy or certificate that:

525 (i) provides health care insurance;

526 (ii) provides major medical expense insurance; or

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

528 (A) a hospital confinement indemnity; or

529 (B) a limited benefit plan.

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

531 (i) provides benefits solely for:

532 (A) accident;

533 (B) dental;

534 (C) income replacement;

535 (D) long-term care;

536 (E) a Medicare supplement;

537 (F) a specified disease;

538 (G) vision; or

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

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

541 [~~(75)~~] (76) "Health care" means any of the following intended for use in the diagnosis,

542 treatment, mitigation, or prevention of a human ailment or impairment:

543 (a) a professional service;

544 (b) a personal service;

545 (c) a facility;

546 (d) equipment;

547 (e) a device;

548 (f) supplies; or

549 (g) medicine.

550 [~~(76)~~] (77) (a) "Health care insurance" or "health insurance" means insurance

551 providing:

552 (i) a health care benefit; or

- 553 (ii) payment of an incurred health care expense.
- 554 (b) "Health care insurance" or "health insurance" does not include accident and health
- 555 insurance providing a benefit for:
 - 556 (i) replacement of income;
 - 557 (ii) short-term accident;
 - 558 (iii) fixed indemnity;
 - 559 (iv) credit accident and health;
 - 560 (v) supplements to liability;
 - 561 (vi) workers' compensation;
 - 562 (vii) automobile medical payment;
 - 563 (viii) no-fault automobile;
 - 564 (ix) equivalent self-insurance; or
 - 565 (x) a type of accident and health insurance coverage that is a part of or attached to
 - 566 another type of policy.

567 [~~77~~] (78) "Health Insurance Portability and Accountability Act" means the Health
568 Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as
569 amended.

570 [~~78~~] (79) "Income replacement insurance" or "disability income insurance" means
571 insurance written to provide payments to replace income lost from accident or sickness.

572 [~~79~~] (80) "Indemnity" means the payment of an amount to offset all or part of an
573 insured loss.

574 [~~80~~] (81) "Independent adjuster" means an insurance adjuster required to be licensed
575 under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

576 [~~81~~] (82) "Independently procured insurance" means insurance procured under
577 Section 31A-15-104.

578 [~~82~~] (83) "Individual" means a natural person.

579 [~~83~~] (84) "Inland marine insurance" includes insurance covering:

- 580 (a) property in transit on or over land;
- 581 (b) property in transit over water by means other than boat or ship;
- 582 (c) bailee liability;
- 583 (d) fixed transportation property such as bridges, electric transmission systems, radio

584 and television transmission towers and tunnels; and

585 (e) personal and commercial property floaters.

586 [~~84~~] (85) "Insolvency" means that:

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

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

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

592 [~~85~~] (86) (a) "Insurance" means:

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

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

597 (b) "Insurance" includes:

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

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

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

604 [~~86~~] (87) "Insurance adjuster" means a person who directs the investigation,
605 negotiation, or settlement of a claim under an insurance policy other than life insurance or an
606 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

607 [~~87~~] (88) "Insurance business" or "business of insurance" includes:

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

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

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

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

- 615 (c) providing an annuity:
- 616 (i) including an annuity issued in return for a gift; and
- 617 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
- 618 and (3);
- 619 (d) providing the characteristic services of a motor club as outlined in Subsection
- 620 ~~[(115)]~~ (116);
- 621 (e) providing another person with insurance;
- 622 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 623 or surety, a contract or policy of title insurance;
- 624 (g) transacting or proposing to transact any phase of title insurance, including:
- 625 (i) solicitation;
- 626 (ii) negotiation preliminary to execution;
- 627 (iii) execution of a contract of title insurance;
- 628 (iv) insuring; and
- 629 (v) transacting matters subsequent to the execution of the contract and arising out of
- 630 the contract, including reinsurance;
- 631 (h) transacting or proposing a life settlement; and
- 632 (i) doing, or proposing to do, any business in substance equivalent to Subsections
- 633 ~~[(87)]~~ (88)(a) through (h) in a manner designed to evade this title.
- 634 ~~[(88)]~~ (89) "Insurance consultant" or "consultant" means a person who:
- 635 (a) advises another person about insurance needs and coverages;
- 636 (b) is compensated by the person advised on a basis not directly related to the insurance
- 637 placed; and
- 638 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 639 indirectly by an insurer or producer for advice given.
- 640 ~~[(89)]~~ (90) "Insurance holding company system" means a group of two or more
- 641 affiliated persons, at least one of whom is an insurer.
- 642 ~~[(90)]~~ (91) (a) "Insurance producer" or "producer" means a person licensed or required
- 643 to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 644 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
- 645 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that

646 insurer.

647 (ii) "Producer for the insurer" may be referred to as an "agent."

648 (c) (i) "Producer for the insured" means a producer who:

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

650 (B) receives no compensation directly or indirectly from an insurer for selling,

651 soliciting, or negotiating an insurance product of that insurer to an insurance customer or

652 insured.

653 (ii) "Producer for the insured" may be referred to as a "broker."

654 [~~(91)~~] (92) (a) "Insured" means a person to whom or for whose benefit an insurer
655 makes a promise in an insurance policy and includes:

656 (i) a policyholder;

657 (ii) a subscriber;

658 (iii) a member; and

659 (iv) a beneficiary.

660 (b) The definition in Subsection [~~(91)~~] (92)(a):

661 (i) applies only to this title; and

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

664 [~~(92)~~] (93) (a) "Insurer" means a person doing an insurance business as a principal
665 including:

666 (i) a fraternal benefit society;

667 (ii) an issuer of a gift annuity other than an annuity specified in Subsections
668 31A-22-1305(2) and (3);

669 (iii) a motor club;

670 (iv) an employee welfare plan; and

671 (v) a person purporting or intending to do an insurance business as a principal on that
672 person's own account.

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

675 [~~(93)~~] (94) "Interinsurance exchange" is defined in Subsection [~~(144)~~] (145).

676 [~~(94)~~] (95) "Involuntary unemployment insurance" means insurance:

- 677 (a) offered in connection with an extension of credit; and
- 678 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
- 679 coming due on a:
 - 680 (i) specific loan; or
 - 681 (ii) credit transaction.
- 682 [~~95~~] (96) "Large employer," in connection with a health benefit plan, means an
- 683 employer who, with respect to a calendar year and to a plan year:
 - 684 (a) employed an average of at least 51 eligible employees on each business day during
 - 685 the preceding calendar year; and
 - 686 (b) employs at least two employees on the first day of the plan year.
- 687 [~~96~~] (97) "Late enrollee," with respect to an employer health benefit plan, means an
- 688 individual whose enrollment is a late enrollment.
- 689 [~~97~~] (98) "Late enrollment," with respect to an employer health benefit plan, means
- 690 enrollment of an individual other than:
 - 691 (a) on the earliest date on which coverage can become effective for the individual
 - 692 under the terms of the plan; or
 - 693 (b) through special enrollment.
- 694 [~~98~~] (99) (a) Except for a retainer contract or legal assistance described in Section
- 695 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
- 696 specified legal expense.
 - 697 (b) "Legal expense insurance" includes an arrangement that creates a reasonable
 - 698 expectation of an enforceable right.
 - 699 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
 - 700 legal services incidental to other insurance coverage.
- 701 [~~99~~] (100) (a) "Liability insurance" means insurance against liability:
 - 702 (i) for death, injury, or disability of a human being, or for damage to property,
 - 703 exclusive of the coverages under:
 - 704 (A) Subsection [~~109~~] (110) for medical malpractice insurance;
 - 705 (B) Subsection [~~136~~] (137) for professional liability insurance; and
 - 706 (C) Subsection [~~170~~] (171) for workers' compensation insurance;
 - 707 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the

708 insured who is injured, irrespective of legal liability of the insured, when issued with or
709 supplemental to insurance against legal liability for the death, injury, or disability of a human
710 being, exclusive of the coverages under:

- 711 (A) Subsection [~~(109)~~] (110) for medical malpractice insurance;
- 712 (B) Subsection [~~(136)~~] (137) for professional liability insurance; and
- 713 (C) Subsection [~~(170)~~] (171) for workers' compensation insurance;
- 714 (iii) for loss or damage to property resulting from an accident to or explosion of a
715 boiler, pipe, pressure container, machinery, or apparatus;
- 716 (iv) for loss or damage to property caused by:
- 717 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
- 718 (B) water entering through a leak or opening in a building; or
- 719 (v) for other loss or damage properly the subject of insurance not within another kind
720 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

721 (b) "Liability insurance" includes:

- 722 (i) vehicle liability insurance;
- 723 (ii) residential dwelling liability insurance; and
- 724 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
725 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
726 elevator, boiler, machinery, or apparatus.

727 [~~(100)~~] (101) (a) "License" means authorization issued by the commissioner to engage
728 in an activity that is part of or related to the insurance business.

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

730 [~~(101)~~] (102) (a) "Life insurance" means:

- 731 (i) insurance on a human life; and
- 732 (ii) insurance pertaining to or connected with human life.

733 (b) The business of life insurance includes:

- 734 (i) granting a death benefit;
- 735 (ii) granting an annuity benefit;
- 736 (iii) granting an endowment benefit;
- 737 (iv) granting an additional benefit in the event of death by accident;
- 738 (v) granting an additional benefit to safeguard the policy against lapse; and

739 (vi) providing an optional method of settlement of proceeds.

740 [~~(102)~~] (103) "Limited license" means a license that:

741 (a) is issued for a specific product of insurance; and

742 (b) limits an individual or agency to transact only for that product or insurance.

743 [~~(103)~~] (104) "Limited line credit insurance" includes the following forms of
744 insurance:

745 (a) credit life;

746 (b) credit accident and health;

747 (c) credit property;

748 (d) credit unemployment;

749 (e) involuntary unemployment;

750 (f) mortgage life;

751 (g) mortgage guaranty;

752 (h) mortgage accident and health;

753 (i) guaranteed automobile protection; and

754 (j) another form of insurance offered in connection with an extension of credit that:

755 (i) is limited to partially or wholly extinguishing the credit obligation; and

756 (ii) the commissioner determines by rule should be designated as a form of limited line
757 credit insurance.

758 [~~(104)~~] (105) "Limited line credit insurance producer" means a person who sells,
759 solicits, or negotiates one or more forms of limited line credit insurance coverage to an
760 individual through a master, corporate, group, or individual policy.

761 [~~(105)~~] (106) "Limited line insurance" includes:

762 (a) bail bond;

763 (b) limited line credit insurance;

764 (c) legal expense insurance;

765 (d) motor club insurance;

766 (e) car rental related insurance;

767 (f) travel insurance;

768 (g) crop insurance;

769 (h) self-service storage insurance;

770 (i) guaranteed asset protection waiver; and
771 (j) another form of limited insurance that the commissioner determines by rule should
772 be designated a form of limited line insurance.

773 [~~(106)~~] (107) "Limited lines authority" includes:

- 774 (a) the lines of insurance listed in Subsection [~~(105)~~] (106); and
- 775 (b) a customer service representative.

776 [~~(107)~~] (108) "Limited lines producer" means a person who sells, solicits, or negotiates
777 limited lines insurance.

778 [~~(108)~~] (109) (a) "Long-term care insurance" means an insurance policy or rider
779 advertised, marketed, offered, or designated to provide coverage:

- 780 (i) in a setting other than an acute care unit of a hospital;
- 781 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 782 (A) expenses incurred;
 - 783 (B) indemnity;
 - 784 (C) prepayment; or
 - 785 (D) another method;
- 786 (iii) for one or more necessary or medically necessary services that are:
 - 787 (A) diagnostic;
 - 788 (B) preventative;
 - 789 (C) therapeutic;
 - 790 (D) rehabilitative;
 - 791 (E) maintenance; or
 - 792 (F) personal care; and
- 793 (iv) that may be issued by:
 - 794 (A) an insurer;
 - 795 (B) a fraternal benefit society;
 - 796 (C) (I) a nonprofit health hospital; and
 - 797 (II) a medical service corporation;
 - 798 (D) a prepaid health plan;
 - 799 (E) a health maintenance organization; or
 - 800 (F) an entity similar to the entities described in Subsections [~~(108)~~] (109)(a)(iv)(A)

801 through (E) to the extent that the entity is otherwise authorized to issue life or health care
802 insurance.

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

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

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

806 (B) a life insurance policy or rider;

807 (ii) a policy or rider that provides for payment of benefits on the basis of:

808 (A) cognitive impairment; or

809 (B) functional capacity; or

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

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

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

813 (ii) basic hospital expense coverage;

814 (iii) basic medical/surgical expense coverage;

815 (iv) hospital confinement indemnity coverage;

816 (v) major medical expense coverage;

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

818 (vii) accident only coverage;

819 (viii) coverage for a specified:

820 (A) disease; or

821 (B) accident;

822 (ix) limited benefit health coverage; or

823 (x) a life insurance policy that accelerates the death benefit to provide the option of a

824 lump sum payment:

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

826 (I) benefits; or

827 (II) eligibility; and

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

829 (I) terminal illness;

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

831 (III) permanent institutional confinement.

832 [~~(109)~~] (110) "Medical malpractice insurance" means insurance against legal liability
833 incident to the practice and provision of a medical service other than the practice and provision
834 of a dental service.

835 [~~(110)~~] (111) "Member" means a person having membership rights in an insurance
836 corporation.

837 [~~(111)~~] (112) "Minimum capital" or "minimum required capital" means the capital that
838 must be constantly maintained by a stock insurance corporation as required by statute.

839 [~~(112)~~] (113) "Mortgage accident and health insurance" means insurance offered in
840 connection with an extension of credit that provides indemnity for payments coming due on a
841 mortgage while the debtor has a disability.

842 [~~(113)~~] (114) "Mortgage guaranty insurance" means surety insurance under which a
843 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

844 [~~(114)~~] (115) "Mortgage life insurance" means insurance on the life of a debtor in
845 connection with an extension of credit that pays if the debtor dies.

846 [~~(115)~~] (116) "Motor club" means a person:

847 (a) licensed under:

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

849 (ii) Chapter 11, Motor Clubs; or

850 (iii) Chapter 14, Foreign Insurers; and

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

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

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

855 (iii) (A) trip reimbursement;

856 (B) towing services;

857 (C) emergency road services;

858 (D) stolen automobile services;

859 (E) a combination of the services listed in Subsections [~~(115)~~] (116)(b)(iii)(A) through

860 (D); or

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

862 [~~(116)~~] (117) "Mutual" means a mutual insurance corporation.

863 [~~(117)~~] (118) "Network plan" means health care insurance:

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

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

868 [~~(118)~~] (119) "Nonparticipating" means a plan of insurance under which the insured is
869 not entitled to receive a dividend representing a share of the surplus of the insurer.

870 [~~(119)~~] (120) "Ocean marine insurance" means insurance against loss of or damage to:

871 (a) ships or hulls of ships;

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

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

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

880 [~~(120)~~] (121) "Order" means an order of the commissioner.

881 [~~(121)~~] (122) "Outline of coverage" means a summary that explains an accident and
882 health insurance policy.

883 [~~(122)~~] (123) "Participating" means a plan of insurance under which the insured is
884 entitled to receive a dividend representing a share of the surplus of the insurer.

885 [~~(123)~~] (124) "Participation," as used in a health benefit plan, means a requirement
886 relating to the minimum percentage of eligible employees that must be enrolled in relation to
887 the total number of eligible employees of an employer reduced by each eligible employee who
888 voluntarily declines coverage under the plan because the employee:

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

890 (b) receives:

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

893 (ii) another government health benefit.

894 [~~(124)~~] (125) "Person" includes:

- 895 (a) an individual;
- 896 (b) a partnership;
- 897 (c) a corporation;
- 898 (d) an incorporated or unincorporated association;
- 899 (e) a joint stock company;
- 900 (f) a trust;
- 901 (g) a limited liability company;
- 902 (h) a reciprocal;
- 903 (i) a syndicate; or
- 904 (j) another similar entity or combination of entities acting in concert.

905 [~~(125)~~] (126) "Personal lines insurance" means property and casualty insurance

906 coverage sold for primarily noncommercial purposes to:

- 907 (a) an individual; or
- 908 (b) a family.

909 [~~(126)~~] (127) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

910 [~~(127)~~] (128) "Plan year" means:

- 911 (a) the year that is designated as the plan year in:
 - 912 (i) the plan document of a group health plan; or
 - 913 (ii) a summary plan description of a group health plan;
- 914 (b) if the plan document or summary plan description does not designate a plan year or
- 915 there is no plan document or summary plan description:
 - 916 (i) the year used to determine deductibles or limits;
 - 917 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

918 or

- 919 (iii) the employer's taxable year if:
 - 920 (A) the plan does not impose deductibles or limits on a yearly basis; and
 - 921 (B) (I) the plan is not insured; or
 - 922 (II) the insurance policy is not renewed on an annual basis; or
- 923 (c) in a case not described in Subsection [~~(127)~~] (128)(a) or (b), the calendar year.

924 [~~(128)~~] (129) (a) "Policy" means a document, including an attached endorsement or

925 application that:

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

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

929 (i) a motor club under Chapter 11, Motor Clubs;

930 (ii) a service contract provided under Chapter 6a, Service Contracts; and

931 (iii) a corporation licensed under:

932 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

933 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

934 (c) "Policy" does not include:

935 (i) a certificate under a group insurance contract; or

936 (ii) a document that does not purport to have legal effect.

937 ~~[(129)]~~ (130) "Policyholder" means a person who controls a policy, binder, or oral
938 contract by ownership, premium payment, or otherwise.

939 ~~[(130)]~~ (131) "Policy illustration" means a presentation or depiction that includes
940 nonguaranteed elements of a policy of life insurance over a period of years.

941 ~~[(131)]~~ (132) "Policy summary" means a synopsis describing the elements of a life
942 insurance policy.

943 ~~[(132)]~~ (133) "Preexisting condition," with respect to a health benefit plan:

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

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

949 ~~[(133)]~~ (134) (a) "Premium" means the monetary consideration for an insurance policy.

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

951 (i) an assessment;

952 (ii) a membership fee;

953 (iii) a required contribution; or

954 (iv) monetary consideration.

955 (c) (i) "Premium" does not include consideration paid to a third party administrator for

956 the third party administrator's services.

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

959 [~~(134)~~] (135) "Principal officers" for a corporation means the officers designated under
960 Subsection 31A-5-203(3).

961 [~~(135)~~] (136) "Proceeding" includes an action or special statutory proceeding.

962 [~~(136)~~] (137) "Professional liability insurance" means insurance against legal liability
963 incident to the practice of a profession and provision of a professional service.

964 [~~(137)~~] (138) (a) Except as provided in Subsection [~~(137)~~] (138)(b), "property
965 insurance" means insurance against loss or damage to real or personal property of every kind
966 and any interest in that property:

967 (i) from all hazards or causes; and

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

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

971 (i) inland marine insurance; and

972 (ii) ocean marine insurance.

973 [~~(138)~~] (139) "Qualified long-term care insurance contract" or "federally tax qualified
974 long-term care insurance contract" means:

975 (a) an individual or group insurance contract that meets the requirements of Section
976 7702B(b), Internal Revenue Code; or

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

978 (i) (A) by rider; or

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

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

982 [~~(139)~~] (140) "Qualified United States financial institution" means an institution that:

983 (a) is:

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

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

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

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

992 (i) the commissioner by rule; or

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

994 Commissioners.

995 [~~140~~] (141) (a) "Rate" means:

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

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

999 (A) a single number; or

1000 (B) a pure premium rate, adjusted before the application of individual risk variations
1001 based on loss or expense considerations to account for the treatment of:

1002 (I) expenses;

1003 (II) profit; and

1004 (III) individual insurer variation in loss experience.

1005 (b) "Rate" does not include a minimum premium.

1006 [~~141~~] (142) (a) Except as provided in Subsection [~~141~~] (142)(b), "rate service
1007 organization" means a person who assists an insurer in rate making or filing by:

1008 (i) collecting, compiling, and furnishing loss or expense statistics;

1009 (ii) recommending, making, or filing rates or supplementary rate information; or

1010 (iii) advising about rate questions, except as an attorney giving legal advice.

1011 (b) "Rate service organization" does not mean:

1012 (i) an employee of an insurer;

1013 (ii) a single insurer or group of insurers under common control;

1014 (iii) a joint underwriting group; or

1015 (iv) an individual serving as an actuarial or legal consultant.

1016 [~~142~~] (143) "Rating manual" means any of the following used to determine initial and
1017 renewal policy premiums:

- 1018 (a) a manual of rates;
- 1019 (b) a classification;
- 1020 (c) a rate-related underwriting rule; and
- 1021 (d) a rating formula that describes steps, policies, and procedures for determining
- 1022 initial and renewal policy premiums.

1023 [~~(143)~~] (144) "Received by the department" means:

- 1024 (a) the date delivered to and stamped received by the department, if delivered in
- 1025 person;
- 1026 (b) the post mark date, if delivered by mail;
- 1027 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1028 (d) the received date recorded on an item delivered, if delivered by:
- 1029 (i) facsimile;
- 1030 (ii) email; or
- 1031 (iii) another electronic method; or
- 1032 (e) a date specified in:
- 1033 (i) a statute;
- 1034 (ii) a rule; or
- 1035 (iii) an order.

1036 [~~(144)~~] (145) "Reciprocal" or "interinsurance exchange" means an unincorporated

1037 association of persons:

- 1038 (a) operating through an attorney-in-fact common to all of the persons; and
- 1039 (b) exchanging insurance contracts with one another that provide insurance coverage
- 1040 on each other.

1041 [~~(145)~~] (146) "Reinsurance" means an insurance transaction where an insurer, for

1042 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to

1043 reinsurance transactions, this title sometimes refers to:

- 1044 (a) the insurer transferring the risk as the "ceding insurer"; and
- 1045 (b) the insurer assuming the risk as the:
- 1046 (i) "assuming insurer"; or
- 1047 (ii) "assuming reinsurer."

1048 [~~(146)~~] (147) "Reinsurer" means a person licensed in this state as an insurer with the

1049 authority to assume reinsurance.

1050 ~~[(147)]~~ (148) "Residential dwelling liability insurance" means insurance against
1051 liability resulting from or incident to the ownership, maintenance, or use of a residential
1052 dwelling that is a detached single family residence or multifamily residence up to four units.

1053 ~~[(148)]~~ (149) (a) "Retrocession" means reinsurance with another insurer of a liability
1054 assumed under a reinsurance contract.

1055 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1056 liability assumed under a reinsurance contract.

1057 ~~[(149)]~~ (150) "Rider" means an endorsement to:

1058 (a) an insurance policy; or

1059 (b) an insurance certificate.

1060 ~~[(150)]~~ (151) (a) "Security" means a:

1061 (i) note;

1062 (ii) stock;

1063 (iii) bond;

1064 (iv) debenture;

1065 (v) evidence of indebtedness;

1066 (vi) certificate of interest or participation in a profit-sharing agreement;

1067 (vii) collateral-trust certificate;

1068 (viii) preorganization certificate or subscription;

1069 (ix) transferable share;

1070 (x) investment contract;

1071 (xi) voting trust certificate;

1072 (xii) certificate of deposit for a security;

1073 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
1074 payments out of production under such a title or lease;

1075 (xiv) commodity contract or commodity option;

1076 (xv) certificate of interest or participation in, temporary or interim certificate for,
1077 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
1078 in Subsections ~~[(150)]~~ (151)(a)(i) through (xiv); or

1079 (xvi) another interest or instrument commonly known as a security.

- 1080 (b) "Security" does not include:
- 1081 (i) any of the following under which an insurance company promises to pay money in a
- 1082 specific lump sum or periodically for life or some other specified period:
- 1083 (A) insurance;
- 1084 (B) an endowment policy; or
- 1085 (C) an annuity contract; or
- 1086 (ii) a burial certificate or burial contract.
- 1087 [~~(151)~~] (152) "Secondary medical condition" means a complication related to an
- 1088 exclusion from coverage in accident and health insurance.
- 1089 [~~(152)~~] (153) (a) "Self-insurance" means an arrangement under which a person
- 1090 provides for spreading its own risks by a systematic plan.
- 1091 (b) Except as provided in this Subsection [~~(152)~~] (153), "self-insurance" does not
- 1092 include an arrangement under which a number of persons spread their risks among themselves.
- 1093 (c) "Self-insurance" includes:
- 1094 (i) an arrangement by which a governmental entity undertakes to indemnify an
- 1095 employee for liability arising out of the employee's employment; and
- 1096 (ii) an arrangement by which a person with a managed program of self-insurance and
- 1097 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
- 1098 employees for liability or risk that is related to the relationship or employment.
- 1099 (d) "Self-insurance" does not include an arrangement with an independent contractor.
- 1100 [~~(153)~~] (154) "Sell" means to exchange a contract of insurance:
- 1101 (a) by any means;
- 1102 (b) for money or its equivalent; and
- 1103 (c) on behalf of an insurance company.
- 1104 [~~(154)~~] (155) "Short-term care insurance" means an insurance policy or rider
- 1105 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
- 1106 insurance, but that provides coverage for less than 12 consecutive months for each covered
- 1107 person.
- 1108 [~~(155)~~] (156) "Significant break in coverage" means a period of 63 consecutive days
- 1109 during each of which an individual does not have creditable coverage.
- 1110 [~~(156)~~] (157) "Small employer," in connection with a health benefit plan, means an

1111 employer who, with respect to a calendar year and to a plan year:

1112 (a) employed an average of at least two employees but not more than 50 eligible
1113 employees on each business day during the preceding calendar year; and

1114 (b) employs at least two employees on the first day of the plan year.

1115 ~~[(157)]~~ (158) "Special enrollment period," in connection with a health benefit plan, has
1116 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1117 Portability and Accountability Act.

1118 ~~[(158)]~~ (159) (a) "Subsidiary" of a person means an affiliate controlled by that person
1119 either directly or indirectly through one or more affiliates or intermediaries.

1120 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1121 shares are owned by that person either alone or with its affiliates, except for the minimum
1122 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1123 others.

1124 ~~[(159)]~~ (160) Subject to Subsection ~~[(85)]~~ (86)(b), "surety insurance" includes:

1125 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1126 perform the principal's obligations to a creditor or other obligee;

1127 (b) bail bond insurance; and

1128 (c) fidelity insurance.

1129 ~~[(160)]~~ (161) (a) "Surplus" means the excess of assets over the sum of paid-in capital
1130 and liabilities.

1131 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by
1132 the insurer as permanent.

1133 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require
1134 that mutuals doing business in this state maintain specified minimum levels of permanent
1135 surplus.

1136 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1137 same as the minimum required capital requirement that applies to stock insurers.

1138 (c) "Excess surplus" means:

1139 (i) for a life insurer, accident and health insurer, health organization, or property and
1140 casualty insurer as defined in Section 31A-17-601, the lesser of:

1141 (A) that amount of an insurer's or health organization's total adjusted capital that

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.

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

1204 (ii) transacting business as authorized by a valid certificate.

1205 [(+66)] (167) "Underwrite" means the authority to accept or reject risk on behalf of the
1206 insurer.

1207 [(+67)] (168) "Vehicle liability insurance" means insurance against liability resulting
1208 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a
1209 vehicle comprehensive or vehicle physical damage coverage under Subsection [(+37)] (138).

1210 [(+68)] (169) "Voting security" means a security with voting rights, and includes a
1211 security convertible into a security with a voting right associated with the security.

1212 [(+69)] (170) "Waiting period" for a health benefit plan means the period that must
1213 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of
1214 the health benefit plan, can become effective.

1215 [(+70)] (171) "Workers' compensation insurance" means:

1216 (a) insurance for indemnification of an employer against liability for compensation
1217 based on:

1218 (i) a compensable accidental injury; and

1219 (ii) occupational disease disability;

1220 (b) employer's liability insurance incidental to workers' compensation insurance and
1221 written in connection with workers' compensation insurance; and

1222 (c) insurance assuring to a person entitled to workers' compensation benefits the
1223 compensation provided by law.

1224 Section 2. Section 31A-2-308 is amended to read:

1225 **31A-2-308. Enforcement penalties and procedures.**

1226 (1) (a) A person who violates any insurance statute or rule or any order issued under
1227 Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from
1228 the violation, in addition to any other forfeiture or penalty imposed.

1229 (b) (i) The commissioner may order an individual producer, surplus line producer,
1230 limited line producer, [~~customer service representative~~], managing general agent, reinsurance
1231 intermediary, adjuster, or insurance consultant who violates an insurance statute or rule to
1232 forfeit to the state not more than \$2,500 for each violation.

1233 (ii) The commissioner may order any other person who violates an insurance statute or
1234 rule to forfeit to the state not more than \$5,000 for each violation.

1235 (c) (i) The commissioner may order an individual producer, surplus line producer,
1236 limited line producer, [~~customer service representative~~,] managing general agent, reinsurance
1237 intermediary, adjuster, or insurance consultant who violates an order issued under Subsection
1238 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the
1239 violation continues is a separate violation.

1240 (ii) The commissioner may order any other person who violates an order issued under
1241 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each
1242 day the violation continues is a separate violation.

1243 (d) The commissioner may accept or compromise any forfeiture under this Subsection
1244 (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only
1245 the attorney general may compromise the forfeiture.

1246 (2) When a person fails to comply with an order issued under Subsection
1247 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of
1248 competent jurisdiction or obtain a court order or judgment:

1249 (a) enforcing the commissioner's order;

1250 (b) (i) directing compliance with the commissioner's order and restraining further
1251 violation of the order; and

1252 (ii) subjecting the person ordered to the procedures and sanctions available to the court
1253 for punishing contempt if the failure to comply continues; or

1254 (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each
1255 day the failure to comply continues after the filing of the complaint until judgment is rendered.

1256 (3) (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2),
1257 except that the commissioner may file a complaint seeking a court-ordered forfeiture under
1258 Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's
1259 intention to proceed under Subsection (2)(c).

1260 (b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a
1261 notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

1262 (4) If, after a court order is issued under Subsection (2), the person fails to comply with
1263 the commissioner's order or judgment:

1264 (a) the commissioner may certify the fact of the failure to the court by affidavit; and

1265 (b) the court may, after a hearing following at least five days written notice to the

1266 parties subject to the order or judgment, amend the order or judgment to add the forfeiture or
1267 forfeitures, as prescribed in Subsection (2)(c), until the person complies.

1268 (5) (a) The proceeds of ~~all~~ the forfeitures under this section, including collection
1269 expenses, shall be paid into the General Fund.

1270 (b) The expenses of collection shall be credited to the department's budget.

1271 (c) The attorney general's budget shall be credited to the extent the department
1272 reimburses the attorney general's office for its collection expenses under this section.

1273 (6) (a) Forfeitures and judgments under this section bear interest at the rate charged by
1274 the United States Internal Revenue Service for past due taxes on the:

1275 (i) date of entry of the commissioner's order under Subsection (1); or

1276 (ii) date of judgment under Subsection (2).

1277 (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the
1278 forfeiture and accrued interest are fully paid.

1279 (7) A forfeiture may not be imposed under Subsection (2)(c) if:

1280 (a) at the time the forfeiture action is commenced, the person was in compliance with
1281 the commissioner's order; or

1282 (b) the violation of the order occurred during the order's suspension.

1283 (8) The commissioner may seek an injunction as an alternative to issuing an order
1284 under Subsection 31A-2-201(4).

1285 (9) (a) A person is guilty of a class B misdemeanor if that person:

1286 (i) intentionally violates:

1287 (A) an insurance statute of this state; or

1288 (B) an order issued under Subsection 31A-2-201(4);

1289 (ii) intentionally permits a person over whom that person has authority to violate:

1290 (A) an insurance statute of this state; or

1291 (B) an order issued under Subsection 31A-2-201(4); or

1292 (iii) intentionally aids any person in violating:

1293 (A) an insurance statute of this state; or

1294 (B) an order issued under Subsection 31A-2-201(4).

1295 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may
1296 be fined not more than:

1297 (i) \$10,000 if a corporation; or
1298 (ii) \$5,000 if a person other than a corporation.
1299 (c) If the person is an individual, the person may, in addition, be imprisoned for up to
1300 one year.

1301 (d) As used in this Subsection (9), "intentionally" has the same meaning as under
1302 Subsection 76-2-103(1).

1303 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,
1304 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this
1305 Subsection (10).

1306 (b) When the value of the property, money, or other things obtained or sought to be
1307 obtained in violation of Subsection (10)(a):

1308 (i) is less than \$5,000, a person is guilty of a third degree felony; or

1309 (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

1310 (11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend,
1311 place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

1312 (i) when a licensee of the department, other than a domestic insurer:

1313 (A) persistently or substantially violates the insurance law; or

1314 (B) violates an order of the commissioner under Subsection 31A-2-201(4);

1315 (ii) if there are grounds for delinquency proceedings against the licensee under Section
1316 31A-27a-207; or

1317 (iii) if the licensee's methods and practices in the conduct of the licensee's business
1318 endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate
1319 interests of the licensee's customers and the public.

1320 (b) Additional license termination or probation provisions for licensees other than
1321 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112,
1322 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

1323 (12) The enforcement penalties and procedures set forth in this section are not
1324 exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to
1325 applicable law.

1326 Section 3. Section **31A-2-404** is amended to read:

1327 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

- 1328 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this
1329 part, the commissioner shall administer and enforce the provisions in this title related to:
- 1330 (a) title insurance; and
1331 (b) escrow conducted by a title licensee or title insurer.
- 1332 (2) The commission shall:
- 1333 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
1334 subject to Subsection (3), make rules for the administration of the provisions in this title related
1335 to title insurance including rules related to:
- 1336 (i) rating standards and rating methods for a title licensee, as provided in Section
1337 31A-19a-209;
- 1338 (ii) the licensing for a title licensee, including the licensing requirements of [~~Sections~~
1339 ~~31A-23a-203 and~~] Section 31A-23a-204;
- 1340 (iii) continuing education requirements of Section 31A-23a-202;
- 1341 (iv) examination procedures, after consultation with the commissioner and the
1342 commissioner's test administrator when required by Section 31A-23a-204; and
- 1343 (v) standards of conduct for a title licensee;
- 1344 (b) concur in the issuance and renewal of a license in accordance with Section
1345 31A-23a-105 or 31A-26-203;
- 1346 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the
1347 commissioner, the fees imposed by this title on a title licensee;
- 1348 (d) in accordance with Section 31A-23a-415 determine, after consulting with the
1349 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;
- 1350 (e) conduct an administrative hearing not delegated by the commission to an
1351 administrative law judge related to the:
- 1352 (i) licensing of an applicant;
1353 (ii) conduct of a title licensee; or
1354 (iii) approval of a continuing education program required by Section 31A-23a-202;
- 1355 (f) with the concurrence of the commissioner, approve a continuing education program
1356 required by Section 31A-23a-202;
- 1357 (g) with the concurrence of the commissioner, impose a penalty:
1358 (i) under this title related to:

- 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 proceeding 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.
1389 Section 4. Section **31A-22-625** is amended to read:

1390 **31A-22-625. Catastrophic coverage of mental health conditions.**

1391 (1) As used in this section:

1392 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan
1393 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or
1394 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden
1395 on an insured for the evaluation and treatment of a mental health condition than for the
1396 evaluation and treatment of a physical health condition.

1397 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing
1398 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum
1399 out-of-pocket limit.

1400 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket
1401 limit for physical health conditions and another maximum out-of-pocket limit for mental health
1402 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit
1403 for mental health conditions may not exceed the out-of-pocket limit for physical health
1404 conditions.

1405 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that
1406 pays for at least 50% of covered services for the diagnosis and treatment of mental health
1407 conditions.

1408 (ii) "50/50 mental health coverage" may include a restriction on:

1409 (A) episodic limits;

1410 (B) inpatient or outpatient service limits; or

1411 (C) maximum out-of-pocket limits.

1412 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

1413 (d) (i) "Mental health condition" means a condition or disorder involving mental illness
1414 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as
1415 periodically revised.

1416 (ii) "Mental health condition" does not include the following when diagnosed as the
1417 primary or substantial reason or need for treatment:

1418 (A) a marital or family problem;

1419 (B) a social, occupational, religious, or other social maladjustment;

1420 (C) a conduct disorder;

- 1421 (D) a chronic adjustment disorder;
- 1422 (E) a psychosexual disorder;
- 1423 (F) a chronic organic brain syndrome;
- 1424 (G) a personality disorder;
- 1425 (H) a specific developmental disorder or learning disability; or
- 1426 (I) an intellectual disability.
- 1427 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.
- 1428 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer
- 1429 that it insures or seeks to insure a choice between:
- 1430 (i) (A) catastrophic mental health coverage; or
- 1431 (B) federally qualified mental health coverage as described in Subsection (3); and
- 1432 (ii) 50/50 mental health coverage.
- 1433 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:
- 1434 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
- 1435 that exceed the minimum requirements of this section; or
- 1436 (ii) coverage that excludes benefits for mental health conditions.
- 1437 (c) A small employer may, at its option, regardless of the employer's previous coverage
- 1438 for mental health conditions, choose either:
- 1439 (i) coverage offered under Subsection (2)(a)(i);
- 1440 (ii) 50/50 mental health coverage; or
- 1441 (iii) coverage offered under Subsection (2)(b).
- 1442 (d) An insurer is exempt from the 30% index rating restriction in Section
- 1443 31A-30-106.1 and, for the first year only that the employer chooses coverage that meets or
- 1444 exceeds catastrophic mental health coverage [~~is chosen~~], the 15% annual adjustment restriction
- 1445 in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who
- 1446 chooses coverage that meets or exceeds catastrophic mental health coverage.
- 1447 (3) An insurer shall offer a large employer mental health and substance use disorder
- 1448 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.
- 1449 300gg-26, and federal regulations adopted pursuant to that act.
- 1450 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer
- 1451 through a managed care organization or system in a manner consistent with Chapter 8, Health

1452 Maintenance Organizations and Limited Health Plans, regardless of whether the insurance
1453 policy uses a managed care organization or system for the treatment of physical health
1454 conditions.

1455 (b) (i) Notwithstanding any other provision of this title, an insurer may:

1456 (A) establish a closed panel of providers for catastrophic mental health coverage; and

1457 (B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider

1458 unless:

1459 (I) the insured is referred to a nonpanel provider with the prior authorization of the

1460 insurer; and

1461 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment

1462 guidelines.

1463 (ii) If an insured receives services from a nonpanel provider in the manner permitted by

1464 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the

1465 average amount paid by the insurer for comparable services of panel providers under a

1466 noncapitated arrangement who are members of the same class of health care providers.

1467 (iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a

1468 referral to a nonpanel provider.

1469 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a

1470 mental health condition shall be rendered:

1471 (i) by a mental health therapist as defined in Section 58-60-102; or

1472 (ii) in a health care facility:

1473 (A) licensed or otherwise authorized to provide mental health services pursuant to:

1474 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

1475 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

1476 (B) that provides a program for the treatment of a mental health condition pursuant to a

1477 written plan.

1478 (5) The commissioner may prohibit an insurance policy that provides mental health

1479 coverage in a manner that is inconsistent with this section.

1480 (6) The commissioner shall:

1481 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative

1482 Rulemaking Act, as necessary to ensure compliance with this section; and

1483 (b) provide general figures on the percentage of insurance policies that include:

1484 (i) no mental health coverage;

1485 (ii) 50/50 mental health coverage;

1486 (iii) catastrophic mental health coverage; and

1487 (iv) coverage that exceeds the minimum requirements of this section.

1488 (7) This section may not be construed as discouraging or otherwise preventing an
1489 insurer from providing mental health coverage in connection with an individual insurance
1490 policy.

1491 Section 5. Section **31A-22-629** is amended to read:

1492 **31A-22-629. Adverse benefit determination review process.**

1493 (1) As used in this section:

1494 (a) (i) "Adverse benefit determination" means the:

1495 (A) denial of a benefit;

1496 (B) reduction of a benefit;

1497 (C) termination of a benefit; or

1498 (D) failure to provide or make payment, in whole or in part, for a benefit.

1499 (ii) "Adverse benefit determination" includes:

1500 (A) denial, reduction, termination, or failure to provide or make payment that is based
1501 on a determination of an insured's or a beneficiary's eligibility to participate in a plan;

1502 (B) [~~with respect to individual or group health plans, and income replacement or~~
1503 ~~disability income policies, a~~] denial, reduction, or termination of, or a failure to provide or
1504 make payment, in whole or in part, for, a benefit resulting from the application of a utilization
1505 review; [~~and~~] or

1506 (C) failure to cover an item or service for which benefits are otherwise provided
1507 because it is determined to be:

1508 (I) experimental;

1509 (II) investigational; or

1510 (III) not medically necessary or appropriate.

1511 (b) "Independent review" means a process that:

1512 (i) is a voluntary option for the resolution of an adverse benefit determination;

1513 (ii) is conducted at the discretion of the claimant;

- 1514 (iii) is conducted by an independent review organization designated by the insurer;
- 1515 (iv) renders an independent and impartial decision on an adverse benefit determination
1516 submitted by an insured; and
- 1517 (v) may not require the insured to pay a fee for requesting the independent review.
- 1518 (c) "Independent review organization" means a person, subject to Subsection (6), who
1519 conducts an independent external review of adverse determinations.
- 1520 (d) "Insured" is as defined in Section 31A-1-301 and includes a person who is
1521 authorized to act on the insured's behalf.
- 1522 (e) "Insurer" is as defined in Section 31A-1-301 and includes:
- 1523 (i) a health maintenance organization; and
- 1524 (ii) a third party administrator that offers, sells, manages, or administers a health
1525 insurance policy or health maintenance organization contract that is subject to this title.
- 1526 (f) "Internal review" means the process an insurer uses to review an insured's adverse
1527 benefit determination before the adverse benefit determination is submitted for independent
1528 review.
- 1529 (2) This section applies generally to health insurance policies, health maintenance
1530 organization contracts, and income replacement or disability income policies.
- 1531 (3) (a) An insured may submit an adverse benefit determination to the insurer.
- 1532 (b) The insurer shall conduct an internal review of the insured's adverse benefit
1533 determination.
- 1534 (c) An insured who disagrees with the results of an internal review may submit the
1535 adverse benefit determination for an independent review if the adverse benefit determination
1536 involves:
- 1537 (i) payment of a claim regarding medical necessity; or
- 1538 (ii) denial of a claim regarding medical necessity.
- 1539 (4) The commissioner shall adopt rules that establish minimum standards for:
- 1540 (a) internal reviews;
- 1541 (b) independent reviews to ensure independence and impartiality;
- 1542 (c) the types of adverse benefit determinations that may be submitted to an independent
1543 review; and
- 1544 (d) the timing of the review process, including an expedited review when medically

1545 necessary.

1546 (5) Nothing in this section may be construed as:

1547 (a) expanding, extending, or modifying the terms of a policy or contract with respect to

1548 benefits or coverage;

1549 (b) permitting an insurer to charge an insured for the internal review of an adverse

1550 benefit determination;

1551 (c) restricting the use of arbitration in connection with or subsequent to an independent

1552 review; or

1553 (d) altering the legal rights of any party to seek court or other redress in connection

1554 with:

1555 (i) an adverse decision resulting from an independent review, except that if the insurer

1556 is the party seeking legal redress, the insurer shall pay for the reasonable attorney fees of the

1557 insured related to the action and court costs; or

1558 (ii) an adverse benefit determination or other claim that is not eligible for submission

1559 to independent review.

1560 (6) (a) An independent review organization in relation to the insurer may not be:

1561 (i) the insurer;

1562 (ii) the health plan;

1563 (iii) the health plan's fiduciary;

1564 (iv) the employer; or

1565 (v) an employee or agent of any one listed in Subsections (6)(a)(i) through (iv).

1566 (b) An independent review organization may not have a material professional, familial,

1567 or financial conflict of interest with:

1568 (i) the health plan;

1569 (ii) an officer, director, or management employee of the health plan;

1570 (iii) the enrollee;

1571 (iv) the enrollee's health care provider;

1572 (v) the health care provider's medical group or independent practice association;

1573 (vi) a health care facility where service would be provided; or

1574 (vii) the developer or manufacturer of the service that would be provided.

1575 Section 6. Section **31A-22-635** is amended to read:

1576 **31A-22-635. Uniform application -- Uniform waiver of coverage -- Information**
1577 **on Health Insurance Exchange.**

1578 (1) For purposes of this section, "insurer":

1579 (a) is defined in Subsection 31A-22-634(1); and

1580 (b) includes the state employee's risk pool under Section 49-20-202.

1581 (2) (a) Insurers offering a health benefit plan to an individual or small employer shall
1582 use a uniform application form.

1583 (b) The uniform application form:

1584 (i) except for cancer and transplants, may not include questions about an applicant's
1585 health history prior to the previous five years; and

1586 (ii) shall be shortened and simplified in accordance with rules adopted by the
1587 commissioner.

1588 (c) Insurers offering a health benefit plan to a small employer shall use a uniform
1589 waiver of coverage form, which may not include health status related questions other than
1590 pregnancy, and is limited to:

1591 (i) information that identifies the employee;

1592 (ii) proof of the employee's insurance coverage; and

1593 (iii) a statement that the employee declines coverage with a particular employer group.

1594 (3) Notwithstanding the requirements of Subsection (2)(a), the uniform application and
1595 uniform waiver of coverage forms may, if the combination or modification is approved by the
1596 commissioner, be combined or modified to facilitate a more efficient and consumer friendly
1597 experience for:

1598 (a) enrollees using the Health Insurance Exchange [if the modification is approved by
1599 the commissioner.]; or

1600 (b) insurers using electronic applications.

1601 (4) The uniform application form, and uniform waiver form, shall be adopted and
1602 approved by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
1603 Rulemaking Act.

1604 (5) (a) An insurer who offers a health benefit plan in either the group or individual
1605 market on the Health Insurance Exchange created in Section 63M-1-2504, shall:

1606 (i) accept and process an electronic submission of the uniform application or uniform

1607 waiver from the Health Insurance Exchange using the electronic standards adopted pursuant to
1608 Section 63M-1-2506;

1609 (ii) if requested, provide the applicant with a copy of the completed application either
1610 by mail or electronically;

1611 (iii) post all health benefit plans offered by the insurer in the defined contribution
1612 arrangement market on the Health Insurance Exchange; and

1613 (iv) post the information required by Subsection (6) on the Health Insurance Exchange
1614 for every health benefit plan the insurer offers on the Health Insurance Exchange.

1615 (b) Except as provided in Subsection (5)(c), an insurer who posts health benefit plans
1616 on the Health Insurance Exchange may not directly or indirectly offer products on the Health
1617 Insurance Exchange that are not health benefit plans.

1618 (c) Notwithstanding Subsection (5)(b), an insurer may offer a health savings account
1619 on the Health Insurance Exchange.

1620 (6) An insurer shall provide the commissioner and the Health Insurance Exchange with
1621 the following information for each health benefit plan submitted to the Health Insurance
1622 Exchange, in the electronic format required by Subsection 63M-1-2506(1):

1623 (a) plan design, benefits, and options offered by the health benefit plan including state
1624 mandates the plan does not cover;

1625 (b) information and Internet address to online provider networks;

1626 (c) wellness programs and incentives;

1627 (d) descriptions of prescription drug benefits, exclusions, or limitations;

1628 (e) the percentage of claims paid by the insurer within 30 days of the date a claim is
1629 submitted to the insurer for the prior year; and

1630 (f) the claims denial and insurer transparency information developed in accordance
1631 with Subsection 31A-22-613.5(4).

1632 (7) The [~~Insurance Department~~] department shall post on the Health Insurance
1633 Exchange the [~~Insurance Department's~~] department's solvency rating for each insurer who posts
1634 a health benefit plan on the Health Insurance Exchange. The solvency rating for each insurer
1635 shall be based on methodology established by the [~~Insurance Department~~] department by
1636 administrative rule and shall be updated each calendar year.

1637 (8) (a) The commissioner may request information from an insurer under Section

1638 31A-22-613.5 to verify the data submitted to the [~~Insurance Department~~] department and to the
1639 Health Insurance Exchange.

1640 (b) The commissioner shall regulate any fees charged by insurers to an enrollee for a
1641 uniform application form or electronic submission of the application forms.

1642 Section 7. Section **31A-23a-101** is amended to read:

1643 **31A-23a-101. Purposes.**

1644 The purposes of this chapter include:

1645 (1) promoting the professional competence of insurance producers, surplus lines
1646 producers, limited line producers, [~~customer service representatives;~~] consultants, managing
1647 general agents, and reinsurance intermediaries;

1648 (2) providing maximum freedom of marketing methods for insurance, consistent with
1649 the interests of the Utah public;

1650 (3) preserving and encouraging competition at the consumer level;

1651 (4) regulating insurance marketing practices in conformity with the general purposes of
1652 this title;

1653 (5) governing the qualifications and procedures for the licensing of insurance
1654 producers, surplus lines producers, limited line producers, [~~customer service representatives;~~]
1655 consultants, managing general agents, and reinsurance intermediaries; and

1656 (6) promoting uniform licensing requirements between the several states.

1657 Section 8. Section **31A-23a-102** is amended to read:

1658 **31A-23a-102. Definitions.**

1659 As used in this chapter:

1660 (1) "Bail bond producer" [~~means a person who:~~] is as defined in Section 31A-35-102.

1661 [~~(a) is appointed by:~~]

1662 [~~(i) a surety insurer that issues bail bonds; or]~~

1663 [~~(ii) a bail bond surety company licensed under Chapter 35, Bail Bond Act;]~~

1664 [~~(b) is designated to execute or countersign undertakings of bail in connection with a~~
1665 ~~judicial proceeding; and]~~

1666 [~~(c) receives or is promised money or other things of value for engaging in an act~~
1667 ~~described in Subsection (1)(b).]~~

1668 (2) "Escrow" means a license subline of authority in conjunction with the title

1669 insurance line of authority that allows a person to conduct escrow as defined in Section
1670 31A-1-301.

1671 (3) "Home state" means a state or territory of the United States or the District of
1672 Columbia in which an insurance producer:

1673 (a) maintains the insurance producer's principal:

1674 (i) place of residence; or

1675 (ii) place of business; and

1676 (b) is licensed to act as an insurance producer.

1677 (4) "Insurer" is as defined in Section 31A-1-301, except that the following persons or
1678 similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

1679 (a) a risk retention group as defined in:

1680 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

1681 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

1682 (iii) Chapter 15, Part 2, Risk Retention Groups Act;

1683 (b) a residual market pool;

1684 (c) a joint underwriting authority or association; and

1685 (d) a captive insurer.

1686 (5) "License" is defined in Section 31A-1-301.

1687 (6) (a) "Managing general agent" means a person that:

1688 (i) manages all or part of the insurance business of an insurer, including the
1689 management of a separate division, department, or underwriting office;

1690 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
1691 manager, or other similar term;

1692 (iii) produces and underwrites an amount of gross direct written premium equal to, or
1693 more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer
1694 in any one quarter or year:

1695 (A) with or without the authority;

1696 (B) separately or together with an affiliate; and

1697 (C) directly or indirectly; and

1698 (iv) (A) adjusts or pays claims in excess of an amount determined by the
1699 commissioner; or

- 1700 (B) negotiates reinsurance on behalf of the insurer.
- 1701 (b) Notwithstanding Subsection (6)(a), the following persons may not be considered as
- 1702 managing general agent for the purposes of this chapter:
- 1703 (i) an employee of the insurer;
- 1704 (ii) a United States manager of the United States branch of an alien insurer;
- 1705 (iii) an underwriting manager that, pursuant to contract:
- 1706 (A) manages all the insurance operations of the insurer;
- 1707 (B) is under common control with the insurer;
- 1708 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 1709 (D) is not compensated based on the volume of premiums written; and
- 1710 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
- 1711 insurer or inter-insurance exchange under powers of attorney.
- 1712 (7) "Negotiate" means the act of conferring directly with or offering advice directly to a
- 1713 purchaser or prospective purchaser of a particular contract of insurance concerning a
- 1714 substantive benefit, term, or condition of the contract if the person engaged in that act:
- 1715 (a) sells insurance; or
- 1716 (b) obtains insurance from insurers for purchasers.
- 1717 (8) "Reinsurance intermediary" means:
- 1718 (a) a reinsurance intermediary-broker; or
- 1719 (b) a reinsurance intermediary-manager.
- 1720 (9) "Reinsurance intermediary-broker" means a person other than an officer or
- 1721 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
- 1722 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
- 1723 or power to bind reinsurance on behalf of the insurer.
- 1724 (10) (a) "Reinsurance intermediary-manager" means a person who:
- 1725 (i) has authority to bind or who manages all or part of the assumed reinsurance
- 1726 business of a reinsurer, including the management of a separate division, department, or
- 1727 underwriting office; and
- 1728 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
- 1729 intermediary-manager, manager, or other similar term.
- 1730 (b) Notwithstanding Subsection (10)(a), the following persons may not be considered

1731 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

1732 (i) an employee of the reinsurer;

1733 (ii) a United States manager of the United States branch of an alien reinsurer;

1734 (iii) an underwriting manager that, pursuant to contract:

1735 (A) manages all the reinsurance operations of the reinsurer;

1736 (B) is under common control with the reinsurer;

1737 (C) is subject to Chapter 16, Insurance Holding Companies; and

1738 (D) is not compensated based on the volume of premiums written; and

1739 (iv) the manager of a group, association, pool, or organization of insurers that:

1740 (A) engage in joint underwriting or joint reinsurance; and

1741 (B) are subject to examination by the insurance commissioner of the state in which the

1742 manager's principal business office is located.

1743 (11) "Search" means a license subline of authority in conjunction with the title

1744 insurance line of authority that allows a person to issue title insurance commitments or policies

1745 on behalf of a title insurer.

1746 (12) "Sell" means to exchange a contract of insurance:

1747 (a) by any means;

1748 (b) for money or its equivalent; and

1749 (c) on behalf of an insurance company.

1750 (13) "Solicit" means:

1751 (a) attempting to sell insurance;

1752 (b) asking or urging a person to apply for:

1753 (i) a particular kind of insurance; and

1754 (ii) insurance from a particular insurance company;

1755 (c) advertising insurance, including advertising for the purpose of obtaining leads for

1756 the sale of insurance; or

1757 (d) holding oneself out as being in the insurance business.

1758 (14) "Terminate" means:

1759 (a) the cancellation of the relationship between:

1760 (i) an individual licensee or agency licensee and a particular insurer; or

1761 (ii) an individual licensee and a particular agency licensee; or

1762 (b) the termination of:
1763 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf
1764 of a particular insurance company; or

1765 (ii) an individual licensee's authority to transact insurance on behalf of a particular
1766 agency licensee.

1767 (15) "Title marketing representative" means a person who:

1768 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

1769 (i) title insurance; or

1770 (ii) escrow services; and

1771 (b) does not have a search or escrow license as provided in Section 31A-23a-106.

1772 (16) "Uniform application" means the version of the National Association of Insurance
1773 Commissioners' uniform application for resident and nonresident producer licensing at the time
1774 the application is filed.

1775 (17) "Uniform business entity application" means the version of the National
1776 Association of Insurance Commissioners' uniform business entity application for resident and
1777 nonresident business entities at the time the application is filed.

1778 Section 9. Section **31A-23a-103** is amended to read:

1779 **31A-23a-103. Requirement of license.**

1780 (1) (a) Unless exempted from the licensing requirement under Section 31A-23a-201 or
1781 31A-23a-207, a person may not perform, offer to perform, or advertise any service as a
1782 producer, surplus lines producer, limited line producer, [~~customer service representative,~~
1783 consultant, managing general agent, or reinsurance intermediary in Utah, without a valid
1784 individual or agency license issued under this chapter.

1785 (b) A valid license includes at least one license type and one line of authority
1786 pertaining to that license type.

1787 (c) A person may not utilize the services of another as a producer, surplus lines
1788 producer, limited line producer, [~~customer service representative,~~] consultant, managing
1789 general agent, or reinsurance intermediary if that person knows or should know that the other
1790 does not have a license as required by law.

1791 (2) This part may not be construed to require an insurer to obtain an insurance producer
1792 license.

- 1793 (3) An insurance contract is not invalid as a result of a violation of this section.
- 1794 Section 10. Section **31A-23a-104** is amended to read:
- 1795 **31A-23a-104. Application for individual license -- Application for agency license.**
- 1796 (1) This section applies to an initial or renewal license as a:
- 1797 (a) producer;
- 1798 (b) surplus lines producer;
- 1799 [~~(b)~~] (c) limited line producer;
- 1800 [~~(c) customer service representative;~~]
- 1801 (d) consultant;
- 1802 (e) managing general agent; or
- 1803 (f) reinsurance intermediary.
- 1804 (2) (a) Subject to Subsection (2)(b), to obtain or renew an individual license, an
- 1805 individual shall:
- 1806 (i) file an application for an initial or renewal individual license with the commissioner
- 1807 on forms and in a manner the commissioner prescribes; and
- 1808 (ii) pay a license fee that is not refunded if the application:
- 1809 (A) is denied; or
- 1810 (B) is incomplete when filed and is never completed by the applicant.
- 1811 (b) An application described in this Subsection (2) shall provide:
- 1812 (i) information about the applicant's identity;
- 1813 (ii) the applicant's Social Security number;
- 1814 (iii) the applicant's personal history, experience, education, and business record;
- 1815 (iv) whether the applicant is 18 years of age or older;
- 1816 (v) whether the applicant has committed an act that is a ground for denial, suspension,
- 1817 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111;
- 1818 (vi) if the application is for a resident individual producer license, certification that the
- 1819 applicant complies with Section 31A-23a-203.5; and
- 1820 (vii) any other information the commissioner reasonably requires.
- 1821 (3) The commissioner may require a document reasonably necessary to verify the
- 1822 information contained in an application filed under this section.
- 1823 (4) An applicant's Social Security number contained in an application filed under this

1824 section is a private record under Section 63G-2-302.

1825 (5) (a) Subject to Subsection (5)(b), to obtain or renew an agency license, a person
1826 shall:

1827 (i) file an application for an initial or renewal agency license with the commissioner on
1828 forms and in a manner the commissioner prescribes; and

1829 (ii) pay a license fee that is not refunded if the application:

1830 (A) is denied; or

1831 (B) is incomplete when filed and is never completed by the applicant.

1832 (b) An application described in Subsection (5)(a) shall provide:

1833 (i) information about the applicant's identity;

1834 (ii) the applicant's federal employer identification number;

1835 (iii) the designated responsible licensed producer;

1836 (iv) the identity of ~~all~~ the owners, partners, officers, and directors;

1837 (v) whether the applicant has committed an act that is a ground for denial, suspension,
1838 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

1839 (vi) any other information the commissioner reasonably requires.

1840 Section 11. Section **31A-23a-105** is amended to read:

1841 **31A-23a-105. General requirements for individual and agency license issuance**
1842 **and renewal.**

1843 (1) (a) The commissioner shall issue or renew a license to a person described in
1844 Subsection (1)(b) to act as:

1845 (i) a producer;

1846 (ii) a surplus lines producer;

1847 ~~[(ii)]~~ (iii) a limited line producer;

1848 ~~[(iii) a customer service representative;]~~

1849 (iv) a consultant;

1850 (v) a managing general agent; or

1851 (vi) a reinsurance intermediary.

1852 (b) The commissioner shall issue or renew a license under Subsection (1)(a) to a
1853 person who, as to the license type and line of authority classification applied for under Section
1854 31A-23a-106:

- 1855 (i) satisfies the application requirements under Section 31A-23a-104;
- 1856 (ii) satisfies the character requirements under Section 31A-23a-107;
- 1857 (iii) satisfies any applicable continuing education requirements under Section
- 1858 31A-23a-202;
- 1859 (iv) satisfies any applicable examination requirements under Section 31A-23a-108;
- 1860 (v) satisfies any applicable training period requirements under Section 31A-23a-203;
- 1861 (vi) if an applicant for a resident individual producer license, certifies that, to the extent
- 1862 applicable, the applicant:
- 1863 (A) is in compliance with Section 31A-23a-203.5; and
- 1864 (B) will maintain compliance with Section 31A-23a-203.5 during the period for which
- 1865 the license is issued or renewed;
- 1866 (vii) has not committed an act that is a ground for denial, suspension, or revocation as
- 1867 provided in Section 31A-23a-111;
- 1868 (viii) if a nonresident:
- 1869 (A) complies with Section 31A-23a-109; and
- 1870 (B) holds an active similar license in that person's state of residence;
- 1871 (ix) if an applicant for a title insurance producer license, satisfies the requirements of
- 1872 [~~Sections 31A-23a-203 and~~] Section 31A-23a-204;
- 1873 (x) if an applicant for a license to act as a life settlement provider or life settlement
- 1874 producer, satisfies the requirements of Section 31A-23a-117; and
- 1875 (xi) pays the applicable fees under Section 31A-3-103.
- 1876 (2) (a) This Subsection (2) applies to the following persons:
- 1877 (i) an applicant for a pending:
- 1878 (A) individual or agency producer license;
- 1879 (B) surplus lines producer license;
- 1880 [~~(B)~~] (C) limited line producer license;
- 1881 [~~(C) customer service representative license;~~]
- 1882 (D) consultant license;
- 1883 (E) managing general agent license; or
- 1884 (F) reinsurance intermediary license; or
- 1885 (ii) a licensed:

- 1886 (A) individual or agency producer;
- 1887 (B) surplus lines producer;
- 1888 [~~(B)~~] (C) limited line producer;
- 1889 [~~(C)~~ customer service representative;]
- 1890 (D) consultant;
- 1891 (E) managing general agent; or
- 1892 (F) reinsurance intermediary.
- 1893 (b) A person described in Subsection (2)(a) shall report to the commissioner:
- 1894 (i) an administrative action taken against the person, including a denial of a new or
- 1895 renewal license application:
- 1896 (A) in another jurisdiction; or
- 1897 (B) by another regulatory agency in this state; and
- 1898 (ii) a criminal prosecution taken against the person in any jurisdiction.
- 1899 (c) The report required by Subsection (2)(b) shall:
- 1900 (i) be filed:
- 1901 (A) at the time the person files the application for an individual or agency license; and
- 1902 (B) for an action or prosecution that occurs on or after the day on which the person
- 1903 files the application:
- 1904 (I) for an administrative action, within 30 days of the final disposition of the
- 1905 administrative action; or
- 1906 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
- 1907 and
- 1908 (ii) include a copy of the complaint or other relevant legal documents related to the
- 1909 action or prosecution described in Subsection (2)(b).
- 1910 (3) (a) The department may require a person applying for a license or for consent to
- 1911 engage in the business of insurance to submit to a criminal background check as a condition of
- 1912 receiving a license or consent.
- 1913 (b) A person, if required to submit to a criminal background check under Subsection
- 1914 (3)(a), shall:
- 1915 (i) submit a fingerprint card in a form acceptable to the department; and
- 1916 (ii) consent to a fingerprint background check by:

- 1917 (A) the Utah Bureau of Criminal Identification; and
1918 (B) the Federal Bureau of Investigation.
1919 (c) For a person who submits a fingerprint card and consents to a fingerprint
1920 background check under Subsection (3)(b), the department may request:
1921 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
1922 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
1923 (ii) complete Federal Bureau of Investigation criminal background checks through the
1924 national criminal history system.
1925 (d) Information obtained by the department from the review of criminal history records
1926 received under this Subsection (3) shall be used by the department for the purposes of:
1927 (i) determining if a person satisfies the character requirements under Section
1928 31A-23a-107 for issuance or renewal of a license;
1929 (ii) determining if a person has failed to maintain the character requirements under
1930 Section 31A-23a-107; and
1931 (iii) preventing a person who violates the federal Violent Crime Control and Law
1932 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 [~~and 1034~~], from engaging in the business of
1933 insurance in the state.
1934 (e) If the department requests the criminal background information, the department
1935 shall:
1936 (i) pay to the Department of Public Safety the costs incurred by the Department of
1937 Public Safety in providing the department criminal background information under Subsection
1938 (3)(c)(i);
1939 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
1940 of Investigation in providing the department criminal background information under
1941 Subsection (3)(c)(ii); and
1942 (iii) charge the person applying for a license or for consent to engage in the business of
1943 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).
1944 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this
1945 section, a person licensed as one of the following in another state who moves to this state shall
1946 apply within 90 days of establishing legal residence in this state:
1947 (a) insurance producer;

1948 (b) surplus lines producer;
1949 [~~(b)~~] (c) limited line producer;
1950 [~~(c)~~ customer service representative;]
1951 (d) consultant;
1952 (e) managing general agent; or
1953 (f) reinsurance intermediary.
1954 (5) (a) The commissioner may deny a license application for a license listed in
1955 Subsection (5)(b) if the person applying for the license, as to the license type and line of
1956 authority classification applied for under Section 31A-23a-106:
1957 (i) fails to satisfy the requirements as set forth in this section; or
1958 (ii) commits an act that is grounds for denial, suspension, or revocation as set forth in
1959 Section 31A-23a-111.
1960 (b) This Subsection (5) applies to the following licenses:
1961 (i) producer;
1962 (ii) surplus lines producer;
1963 [~~(ii)~~] (iii) limited line producer;
1964 [~~(iii)~~ customer service representative;]
1965 (iv) consultant;
1966 (v) managing general agent; or
1967 (vi) reinsurance intermediary.
1968 (6) Notwithstanding the other provisions of this section, the commissioner may:
1969 (a) issue a license to an applicant for a license for a title insurance line of authority only
1970 with the concurrence of the Title and Escrow Commission; and
1971 (b) renew a license for a title insurance line of authority only with the concurrence of
1972 the Title and Escrow Commission.
1973 Section 12. Section **31A-23a-106** is amended to read:
1974 **31A-23a-106. License types.**
1975 (1) (a) A resident or nonresident license issued under this chapter shall be issued under
1976 the license types described under Subsection (2).
1977 (b) A license type and a line of authority pertaining to a license type describe the type
1978 of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license

1979 type is intended to describe the matters to be considered under any education, examination, and
 1980 training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and
 1981 31A-23a-203.

1982 (2) (a) A producer license type includes the following lines of authority:

1983 (i) life insurance, including a nonvariable contract;

1984 (ii) variable contracts, including variable life and annuity, if the producer has the life
 1985 insurance line of authority;

1986 (iii) accident and health insurance, including a contract issued to a policyholder under
 1987 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
 1988 Organizations and Limited Health Plans;

1989 (iv) property insurance;

1990 (v) casualty insurance, including a surety or other bond;

1991 (vi) title insurance under one or more of the following categories:

1992 (A) search, including authority to act as a title marketing representative;

1993 (B) escrow, including authority to act as a title marketing representative; and

1994 (C) title marketing representative only; and

1995 (vii) personal lines insurance~~[-and]~~.

1996 [~~viii~~] surplus lines, if the producer has the property or casualty or both lines of
 1997 authority.]

1998 (b) A surplus lines producer license type includes the following lines of authority:

1999 (i) property insurance, if the person holds an underlying producer license with the
 2000 property line of insurance; and

2001 (ii) casualty insurance, if the person holds an underlying producer license with the
 2002 casualty line of authority.

2003 [~~b~~] (c) A limited line producer license type includes the following limited lines of
 2004 authority:

2005 (i) limited line credit insurance;

2006 (ii) travel insurance;

2007 (iii) motor club insurance;

2008 (iv) car rental related insurance;

2009 (v) legal expense insurance;

- 2010 (vi) crop insurance;
- 2011 (vii) self-service storage insurance;
- 2012 (viii) bail bond producer; and
- 2013 (ix) guaranteed asset protection waiver.
- 2014 ~~[(c) A customer service representative license type includes the following lines of~~
- 2015 ~~authority, if held by the customer service representative's employer producer:]~~
- 2016 ~~[(i) life insurance, including a nonvariable contract;]~~
- 2017 ~~[(ii) accident and health insurance, including a contract issued to a policyholder under~~
- 2018 ~~Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance~~
- 2019 ~~Organizations and Limited Health Plans;]~~
- 2020 ~~[(iii) property insurance;]~~
- 2021 ~~[(iv) casualty insurance, including a surety or other bond;]~~
- 2022 ~~[(v) personal lines insurance; and]~~
- 2023 ~~[(vi) surplus lines, if the employer producer has the property or casualty or both lines of~~
- 2024 ~~authority.]~~
- 2025 (d) A consultant license type includes the following lines of authority:
- 2026 (i) life insurance, including a nonvariable contract;
- 2027 (ii) variable contracts, including variable life and annuity, if the consultant has the life
- 2028 insurance line of authority;
- 2029 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2030 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2031 Organizations and Limited Health Plans;
- 2032 (iv) property insurance;
- 2033 (v) casualty insurance, including a surety or other bond; and
- 2034 (vi) personal lines insurance.
- 2035 (e) A managing general agent license type includes the following lines of authority:
- 2036 (i) life insurance, including a nonvariable contract;
- 2037 (ii) variable contracts, including variable life and annuity, if the managing general
- 2038 agent has the life insurance line of authority;
- 2039 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2040 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

2041 Organizations and Limited Health Plans;

2042 (iv) property insurance;

2043 (v) casualty insurance, including a surety or other bond; and

2044 (vi) personal lines insurance.

2045 (f) A reinsurance intermediary license type includes the following lines of authority:

2046 (i) life insurance, including a nonvariable contract;

2047 (ii) variable contracts, including variable life and annuity, if the reinsurance

2048 intermediary has the life insurance line of authority;

2049 (iii) accident and health insurance, including a contract issued to a policyholder under

2050 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

2051 Organizations and Limited Health Plans;

2052 (iv) property insurance;

2053 (v) casualty insurance, including a surety or other bond; and

2054 (vi) personal lines insurance.

2055 (g) A person who holds a license under Subsection (2)(a)[~~-, (d), (e), or (f)~~] has the

2056 qualifications necessary to act as a holder of a license under [~~Subsections (2)(b) and~~

2057 Subsection (2)(c)], except that the person may not act under Subsection (2)[~~(b)~~](c)(viii) or (ix).

2058 (3) (a) The commissioner may by rule recognize other producer, surplus lines producer,

2059 limited line producer, [~~customer service representative,~~] consultant, managing general agent, or

2060 reinsurance intermediary lines of authority as to kinds of insurance not listed under Subsections

2061 (2)(a) through (f).

2062 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and

2063 Escrow Commission may by rule, with the concurrence of the commissioner and subject to

2064 Section 31A-2-404, recognize other categories for a title insurance producer line of authority

2065 not listed under Subsection (2)(a)(vi).

2066 (4) The variable contracts[~~-, including variable life and annuity~~] line of authority

2067 requires:

2068 [~~(a) licensure as a registered agent or broker by the Financial Industry Regulatory~~

2069 Authority, and]

2070 [~~(b) current registration with a securities broker-dealer.~~]

2071 (a) for a producer, licensure by the Financial Industry Regulatory Authority as a:

2072 (i) registered broker-dealer; or
2073 (ii) broker-dealer agent, with a current registration with a broker-dealer; and
2074 (b) for a consultant, registration with the Securities and Exchange Commission or
2075 licensure by the Utah Division of Securities as an:

2076 (i) investment adviser; or
2077 (ii) investment adviser representative, with a current association with an investment
2078 adviser.

2079 (5) A surplus lines producer is a producer who has a surplus lines [~~line of authority~~]
2080 license.

2081 Section 13. Section **31A-23a-107** is amended to read:

2082 **31A-23a-107. Character requirements.**

2083 [~~Each~~] An applicant for a license under this chapter shall show to the commissioner
2084 that:

2085 (1) the applicant has the intent in good faith, to engage in the type of business that the
2086 license applied for would permit;

2087 (2) (a) if a natural person, the applicant is competent and trustworthy; or[:]

2088 (b) if the applicant is an agency[~~, aH~~];

2089 (i) the partners, directors, or principal officers or persons having comparable powers
2090 are trustworthy[:]; and

2091 (ii) that it will transact business in such a way that [~~aH~~] the acts that may only be
2092 performed by a licensed producer, surplus lines producer, limited line producer[~~, customer~~
2093 ~~service representative~~;] consultant, managing general agent, or reinsurance intermediary are
2094 performed exclusively by natural persons who are licensed under this chapter to transact that
2095 type of business and designated on the agency's license;

2096 (3) the applicant intends to comply with Section 31A-23a-502; and

2097 (4) if a natural person, the applicant is at least 18 years of age.

2098 Section 14. Section **31A-23a-108** is amended to read:

2099 **31A-23a-108. Examination requirements.**

2100 (1) (a) The commissioner may require applicants for any particular license type under
2101 Section 31A-23a-106 to pass a line of authority examination as a requirement for a license,
2102 except that an examination may not be required of applicants for:

- 2103 (i) licenses under ~~[Subsections]~~ Subsection 31A-23a-106(2)~~(b)~~~~(c)~~ ~~[and (e)]~~; or
 2104 (ii) other limited line license lines of authority recognized by the commissioner or the
 2105 Title and Escrow Commission by rule as provided in Subsection 31A-23a-106(3).
- 2106 (b) The examination described in Subsection (1)(a):
 2107 (i) shall reasonably relate to the line of authority for which it is prescribed; and
 2108 (ii) may be administered by the commissioner or as otherwise specified by rule.
- 2109 (2) The commissioner shall waive the requirement of an examination for a nonresident
 2110 applicant who:
 2111 (a) applies for an insurance producer license in this state;
 2112 (b) has been licensed for the same line of authority in another state; and
 2113 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant
 2114 applies for an insurance producer license in this state; or
 2115 (ii) if the application is received within 90 days of the cancellation of the applicant's
 2116 previous license:
 2117 (A) the prior state certifies that at the time of cancellation, the applicant was in good
 2118 standing in that state; or
 2119 (B) the state's producer database records maintained by the National Association of
 2120 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or
 2121 subsidiaries, indicates that the producer is or was licensed in good standing for the line of
 2122 authority requested.
- 2123 (3) A nonresident producer licensee who moves to this state and applies for a resident
 2124 license within 90 days of establishing legal residence in this state shall be exempt from any line
 2125 of authority examination that the producer was authorized on the producer's nonresident
 2126 producer license, except where the commissioner determines otherwise by rule.
- 2127 (4) This section's requirement may only be applied to applicants who are natural
 2128 persons.

2129 Section 15. Section **31A-23a-109** is amended to read:

2130 **31A-23a-109. Nonresident jurisdictional agreement.**

- 2131 (1) (a) If a nonresident license applicant has a valid producer, surplus lines producer,
 2132 limited line producer, ~~[customer service representative]~~, consultant, managing general agent, or
 2133 reinsurance intermediary license from the nonresident license applicant's home state and the

2134 conditions of Subsection (1)(b) are met, the commissioner shall:

2135 (i) waive ~~an~~ the license requirements for a license under this chapter; and

2136 (ii) issue the nonresident license applicant a nonresident license.

2137 (b) Subsection (1)(a) applies if:

2138 (i) the nonresident license applicant:

2139 (A) is licensed as a resident in the nonresident license applicant's home state at the time

2140 the nonresident license applicant applies for a nonresident producer, surplus lines producer,

2141 limited line producer, ~~customer service representative,~~ consultant, managing general agent, or

2142 reinsurance intermediary license;

2143 (B) has submitted the proper request for licensure;

2144 (C) has submitted to the commissioner:

2145 (I) the application for licensure that the nonresident license applicant submitted to the

2146 applicant's home state; or

2147 (II) a completed uniform application; and

2148 (D) has paid the applicable fees under Section 31A-3-103; and

2149 (ii) the nonresident license applicant's license in the applicant's home state is in good

2150 standing.

2151 (2) A nonresident applicant applying under Subsection (1) shall in addition to

2152 complying with all license requirements for a license under this chapter execute, in a form

2153 acceptable to the commissioner, an agreement to be subject to the jurisdiction of the Utah

2154 commissioner and courts on any matter related to the applicant's insurance activities in this

2155 state, on the basis of:

2156 (a) service of process under Sections 31A-2-309 and 31A-2-310; or

2157 (b) service authorized:

2158 (i) in the Utah Rules of Civil Procedure; or

2159 (ii) under Section 78B-3-206.

2160 (3) The commissioner may verify a producer's licensing status through the producer

2161 database maintained by:

2162 (a) the National Association of Insurance Commissioners; or

2163 (b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

2164 (4) The commissioner may not assess a greater fee for an insurance license or related

2165 service to a person not residing in this state solely on the fact that the person does not reside in
2166 this state.

2167 Section 16. Section **31A-23a-111** is amended to read:

2168 **31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
2169 **terminating a license -- Rulemaking for renewal or reinstatement.**

2170 (1) A license type issued under this chapter remains in force until:

2171 (a) revoked or suspended under Subsection (5);

2172 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2173 administrative action;

2174 (c) the licensee dies or is adjudicated incompetent as defined under:

2175 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2176 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2177 Minors;

2178 (d) lapsed under Section 31A-23a-113; or

2179 (e) voluntarily surrendered.

2180 (2) The following may be reinstated within one year after the day on which the license
2181 is no longer in force:

2182 (a) a lapsed license; or

2183 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
2184 not be reinstated after the license period in which the license is voluntarily surrendered.

2185 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
2186 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2187 department from pursuing additional disciplinary or other action authorized under:

2188 (a) this title; or

2189 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2190 Administrative Rulemaking Act.

2191 (4) A line of authority issued under this chapter remains in force until:

2192 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

2193 or

2194 (b) the supporting license type:

2195 (i) is revoked or suspended under Subsection (5);

2196 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
2197 administrative action;

2198 [~~(iii) the licensee dies or is adjudicated incompetent as defined under:~~
2199 [~~(A) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or]~~
2200 [~~(B) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and~~
2201 ~~Minors;]~~

2202 [~~(iv) lapsed]~~ (iii) lapses under Section 31A-23a-113; or
2203 [~~(v)~~] (iv) is voluntarily surrendered[-]; or

2204 (c) the licensee dies or is adjudicated incompetent as defined under:
2205 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
2206 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2207 Minors.

2208 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an
2209 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2210 commissioner may:

2211 (i) revoke:
2212 (A) a license; or
2213 (B) a line of authority;

2214 (ii) suspend for a specified period of 12 months or less:
2215 (A) a license; or
2216 (B) a line of authority;

2217 (iii) limit in whole or in part:
2218 (A) a license; or
2219 (B) a line of authority; or
2220 (iv) deny a license application.

2221 (b) The commissioner may take an action described in Subsection (5)(a) if the
2222 commissioner finds that the licensee:

2223 (i) is unqualified for a license or line of authority under Section 31A-23a-104,
2224 31A-23a-105, or 31A-23a-107;

2225 (ii) violates:
2226 (A) an insurance statute;

- 2227 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 2228 (C) an order that is valid under Subsection 31A-2-201(4);
- 2229 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 2230 delinquency proceedings in any state;
- 2231 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 2232 days after the day on which the judgment became final;
- 2233 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 2234 admitted insurers;
- 2235 (vi) is affiliated with and under the same general management or interlocking
- 2236 directorate or ownership as another insurance producer that transacts business in this state
- 2237 without a license;
- 2238 (vii) refuses:
- 2239 (A) to be examined; or
- 2240 (B) to produce its accounts, records, and files for examination;
- 2241 (viii) has an officer who refuses to:
- 2242 (A) give information with respect to the insurance producer's affairs; or
- 2243 (B) perform any other legal obligation as to an examination;
- 2244 (ix) provides information in the license application that is:
- 2245 (A) incorrect;
- 2246 (B) misleading;
- 2247 (C) incomplete; or
- 2248 (D) materially untrue;
- 2249 (x) violates an insurance law, valid rule, or valid order of another state's insurance
- 2250 department;
- 2251 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
- 2252 (xii) improperly withholds, misappropriates, or converts money or properties received
- 2253 in the course of doing insurance business;
- 2254 (xiii) intentionally misrepresents the terms of an actual or proposed:
- 2255 (A) insurance contract;
- 2256 (B) application for insurance; or
- 2257 (C) life settlement;

- 2258 (xiv) is convicted of a felony;
- 2259 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
- 2260 (xvi) in the conduct of business in this state or elsewhere:
 - 2261 (A) uses fraudulent, coercive, or dishonest practices; or
 - 2262 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
- 2263 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in
- 2264 another state, province, district, or territory;
- 2265 (xviii) forges another's name to:
 - 2266 (A) an application for insurance; or
 - 2267 (B) a document related to an insurance transaction;
- 2268 (xix) improperly uses notes or another reference material to complete an examination
- 2269 for an insurance license;
- 2270 (xx) knowingly accepts insurance business from an individual who is not licensed;
- 2271 (xxi) fails to comply with an administrative or court order imposing a child support
- 2272 obligation;
- 2273 (xxii) fails to:
 - 2274 (A) pay state income tax; or
 - 2275 (B) comply with an administrative or court order directing payment of state income
 - 2276 tax;
- 2277 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law
- 2278 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 [~~and 1034~~] and therefore under 18 U.S.C. Sec.
- 2279 1033 is prohibited from engaging in the business of insurance; or
- 2280 (xxiv) engages in a method or practice in the conduct of business that endangers the
- 2281 legitimate interests of customers and the public.
- 2282 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 2283 and any individual designated under the license are considered to be the holders of the license.
- 2284 (d) If an individual designated under the agency license commits an act or fails to
- 2285 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
- 2286 the commissioner may suspend, revoke, or limit the license of:
 - 2287 (i) the individual;
 - 2288 (ii) the agency, if the agency:

2289 (A) is reckless or negligent in its supervision of the individual; or
2290 (B) knowingly participates in the act or failure to act that is the ground for suspending,
2291 revoking, or limiting the license; or
2292 (iii) (A) the individual; and
2293 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
2294 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
2295 without a license if:
2296 (a) the licensee's license is:
2297 (i) revoked;
2298 (ii) suspended;
2299 (iii) limited;
2300 (iv) surrendered in lieu of administrative action;
2301 (v) lapsed; or
2302 (vi) voluntarily surrendered; and
2303 (b) the licensee:
2304 (i) continues to act as a licensee; or
2305 (ii) violates the terms of the license limitation.
2306 (7) A licensee under this chapter shall immediately report to the commissioner:
2307 (a) a revocation, suspension, or limitation of the person's license in another state, the
2308 District of Columbia, or a territory of the United States;
2309 (b) the imposition of a disciplinary sanction imposed on that person by another state,
2310 the District of Columbia, or a territory of the United States; or
2311 (c) a judgment or injunction entered against that person on the basis of conduct
2312 involving:
2313 (i) fraud;
2314 (ii) deceit;
2315 (iii) misrepresentation; or
2316 (iv) a violation of an insurance law or rule.
2317 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
2318 license in lieu of administrative action may specify a time, not to exceed five years, within
2319 which the former licensee may not apply for a new license.

2320 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
2321 former licensee may not apply for a new license for five years from the day on which the order
2322 or agreement is made without the express approval by the commissioner.

2323 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2324 a license issued under this part if so ordered by a court.

2325 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
2326 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2327 Section 17. Section **31A-23a-113** is amended to read:

2328 **31A-23a-113. License lapse and voluntary surrender.**

2329 (1) (a) A license issued under this chapter shall lapse if the licensee fails to:

2330 (i) pay when due a fee under Section 31A-3-103;

2331 (ii) complete continuing education requirements under Section 31A-23a-202 before
2332 submitting the license renewal application;

2333 (iii) submit a completed renewal application as required by Section 31A-23a-104;

2334 (iv) submit additional documentation required to complete the licensing process as
2335 related to a specific license type or line of authority; or

2336 (v) maintain an active license in a resident state if the licensee is a nonresident
2337 licensee.

2338 (b) (i) A licensee whose license lapses due to the following may request an action
2339 described in Subsection (1)(b)(ii):

2340 (A) military service;

2341 (B) voluntary service for a period of time designated by the person for whom the
2342 licensee provides voluntary service; or

2343 (C) some other extenuating circumstances, such as long-term medical disability.

2344 (ii) A licensee described in Subsection (1)(b)(i) may request:

2345 (A) reinstatement of the license no later than one year after the day on which the
2346 license lapses; and

2347 (B) waiver of any of the following imposed for failure to comply with renewal
2348 procedures:

2349 (I) an examination requirement;

2350 (II) reinstatement fees set under Section 31A-3-103;

- 2351 (III) continuing education requirements; or
2352 (IV) other sanction imposed for failure to comply with renewal procedures.
2353 (2) If a license issued under this chapter is voluntarily surrendered, the license or line
2354 of authority may be reinstated:
2355 (a) during the license period in which the license is voluntarily surrendered; and
2356 (b) no later than one year after the day on which the license is voluntarily surrendered.
2357 (3) A voluntarily surrendered license that is reinstated during the license period set
2358 forth in Subsection (2) may not be reinstated until the person who voluntarily surrendered the
2359 license complies with any applicable continuing education requirements for the period during
2360 which the license was voluntarily surrendered.

2361 Section 18. Section **31A-23a-115.5** is amended to read:

2362 **31A-23a-115.5. Use of customer service representative.**

2363 A producer, surplus lines producer, or consultant who employs a customer service
2364 representative [licensed under this chapter] is responsible for the duties performed by the
2365 customer service representative. A customer service representative:

- 2366 (1) may not maintain an office independent of the customer service representative's
2367 licensed producer, surplus lines producer, or consultant employer for the purpose of conducting
2368 insurance activities;
2369 (2) except as provided in Subsection (3), may not sell, solicit, negotiate, or bind
2370 coverage; and
2371 (3) may provide a customer a quote on behalf of the customer service representative's
2372 licensed producer, surplus lines producer, or consultant employer.

2373 Section 19. Section **31A-23a-203** is amended to read:

2374 **31A-23a-203. Training period requirements.**

- 2375 (1) A producer is eligible to [~~add the surplus lines of authority to the person's~~
2376 ~~producer's license~~] become a surplus lines producer only if the producer:
2377 (a) has passed the applicable surplus lines producer examination;
2378 (b) has been a producer with property and casualty lines of authority for at least three
2379 years during the four years immediately preceding the date of application; and
2380 (c) has paid the applicable fee under Section 31A-3-103.
2381 (2) A person is eligible to become a consultant only if the person has acted in a

2382 capacity that would provide the person with preparation to act as an insurance consultant for a
2383 period aggregating not less than three years during the four years immediately preceding the
2384 date of application.

2385 (3) (a) A resident producer with an accident and health line of authority may only sell
2386 long-term care insurance if the producer:

2387 (i) initially completes a minimum of three hours of long-term care training before
2388 selling long-term care coverage; and

2389 (ii) after completing the training required by Subsection (3)(a)(i), completes a
2390 minimum of three hours of long-term care training during each subsequent two-year licensing
2391 period.

2392 (b) A course taken to satisfy a long-term care training requirement may be used toward
2393 satisfying a producer continuing education requirement.

2394 (c) Long-term care training is not a continuing education requirement to renew a
2395 producer license.

2396 (d) An insurer that issues long-term care insurance shall demonstrate to the
2397 commissioner, upon request, that a producer who is appointed by the insurer and who sells
2398 long-term care insurance coverage is in compliance with this Subsection (3).

2399 (4) The training periods required under this section apply only to an individual
2400 applying for a license under this chapter.

2401 Section 20. Section **31A-23a-206** is amended to read:

2402 **31A-23a-206. Special requirements for variable contracts line of authority.**

2403 (1) Before applying for a variable contracts line of authority[;]:

2404 (a) a producer [or consultant] shall be licensed under Section 61-1-3 as a:

2405 ~~[(a)]~~ (i) broker-dealer; or

2406 ~~[(b)]~~ (ii) broker-dealer agent[-]; and

2407 (b) a consultant shall be licensed under Section 61-1-3 as an:

2408 (i) investment adviser; or

2409 (ii) investment adviser representative.

2410 (2) A producer's or consultant's variable contracts line of authority is revoked on the day
2411 the producer's or consultant's securities related license under Section 61-1-3 is no longer valid.

2412 Section 21. Section **31A-23a-301** is amended to read:

2413 **31A-23a-301. Agency license.**

2414 An insurance organization shall be licensed as an agency if the insurance organization
2415 acts as:

- 2416 (1) a producer;
- 2417 (2) a surplus lines producer;
- 2418 [~~(2)~~] (3) a limited line producer;
- 2419 [~~(3)~~] (4) a consultant;
- 2420 [~~(4)~~] (5) a managing general agent; or
- 2421 [~~(5)~~] (6) a reinsurance intermediary.

2422 Section 22. Section **31A-23a-302** is amended to read:

2423 **31A-23a-302. Agency designations.**

2424 (1) An agency shall designate an individual that has an individual producer, surplus
2425 lines producer, limited line producer, [~~customer service representative,~~] consultant, managing
2426 general agent, or reinsurance intermediary license to act on the agency's behalf in order for the
2427 licensee to do business for the agency in this state.

2428 (2) An agency shall report to the commissioner, at intervals and in the form the
2429 commissioner establishes by rule:

- 2430 (a) a new designation; and
- 2431 (b) a terminated designation.

2432 (3) (a) An agency licensed under this chapter shall report to the commissioner the
2433 cause of termination of a designation if:

2434 (i) the reason for termination is a reason described in Subsection 31A-23a-111(5)(b);

2435 or

2436 (ii) the agency has knowledge that the individual licensee is found to have engaged in
2437 an activity described in Subsection 31A-23a-111(5)(b) by:

- 2438 (A) a court;
- 2439 (B) a government body; or
- 2440 (C) a self-regulatory organization, which the commissioner may define by rule made in
2441 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2442 (b) The information provided the commissioner under Subsection (3)(a) is a private
2443 record under Title 63G, Chapter 2, Government Records Access and Management Act.

2444 (c) An agency is immune from civil action, civil penalty, or damages if the agency
2445 complies in good faith with this Subsection (3) in reporting to the commissioner the cause of
2446 termination of a designation.

2447 (d) Notwithstanding any other provision in this section, an agency is not immune from
2448 an action or resulting penalty imposed on the reporting agency as a result of proceedings
2449 brought by or on behalf of the department if the action is based on evidence other than the
2450 report submitted in compliance with this Subsection (3).

2451 (4) An agency licensed under this chapter may act in a capacity for which it is licensed
2452 only through an individual who is licensed under this chapter to act in the same capacity.

2453 (5) An agency licensed under this chapter shall designate and report to the
2454 commissioner in accordance with any rule made by the commissioner the name of the
2455 designated responsible licensed individual who has authority to act on behalf of the agency in
2456 [aH] the matters pertaining to compliance with this title and orders of the commissioner.

2457 (6) If an agency designates a licensee in reports submitted under Subsection (2) or (5),
2458 there is a rebuttable presumption that the designated licensee acts on behalf of the agency.

2459 (7) (a) When a license is held by an agency, both the agency itself and any individual
2460 designated under the agency license shall be considered to be the holder of the agency license
2461 for purposes of this section.

2462 (b) If an individual designated under the agency license commits an act or fails to
2463 perform a duty that is a ground for suspending, revoking, or limiting the agency license, the
2464 commissioner may suspend, revoke, or limit the license of:

2465 (i) the individual;

2466 (ii) the agency, if the agency:

2467 (A) is reckless or negligent in its supervision of the individual; or

2468 (B) knowingly participates in the act or failure to act that is the ground for suspending,
2469 revoking, or limiting the license; or

2470 (iii) (A) the individual; and

2471 (B) the agency if the agency meets the requirements of Subsection (7)(b)(ii).

2472 Section 23. Section ~~31A-23a-402.5~~ is amended to read:

2473 **31A-23a-402.5. Inducements.**

2474 (1) (a) Except as provided in Subsection (2), a licensee under this title, or an officer or

2475 employee of a licensee, may not induce a person to enter into, continue, or terminate an
2476 insurance contract by offering a benefit that is not:

- 2477 (i) specified in the insurance contract; or
- 2478 (ii) directly related to the insurance contract.

2479 (b) An insurer may not make or knowingly allow an agreement of insurance that is not
2480 clearly expressed in the insurance contract to be issued or renewed.

2481 (c) A licensee under this title may not absorb the tax under Section 31A-3-301.

2482 (2) This section does not apply to a title insurer, a title producer, or an officer or
2483 employee of a title insurer or title producer.

2484 (3) Items not prohibited by Subsection (1) include an insurer:

- 2485 (a) reducing premiums because of expense savings;
- 2486 (b) providing to a policyholder or insured one or more incentives, as defined by the
2487 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
2488 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim
2489 expenses; or
- 2490 (c) receiving premiums under an installment payment plan.

2491 (4) Items not prohibited by Subsection (1) include a licensee, or an officer or employee
2492 of a licensee, either directly or through a third party:

- 2493 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
2494 conditioned on the purchase of a particular insurance product;
- 2495 (b) extending credit on a premium to the insured:
 - 2496 (i) without interest, for no more than 90 days from the effective date of the insurance
2497 contract;
 - 2498 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
2499 balance after the time period described in Subsection (4)(b)(i); and
 - 2500 (iii) except that an installment or payroll deduction payment of premiums on an
2501 insurance contract issued under an insurer's mass marketing program is not considered an
2502 extension of credit for purposes of this Subsection (4)(b);
- 2503 (c) preparing or conducting a survey that:
 - 2504 (i) is directly related to an accident and health insurance policy purchased from the
2505 licensee; or

- 2506 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,
2507 employers, or employees directly related to an insurance product sold by the licensee;
- 2508 (d) providing limited human resource services that are directly related to an insurance
2509 product sold by the licensee, including:
- 2510 (i) answering questions directly related to:
- 2511 (A) an employee benefit offering or administration, if the insurance product purchased
2512 from the licensee is accident and health insurance or health insurance; and
- 2513 (B) employment practices liability, if the insurance product offered by or purchased
2514 from the licensee is property or casualty insurance; and
- 2515 (ii) providing limited human resource compliance training and education directly
2516 pertaining to an insurance product purchased from the licensee;
- 2517 (e) providing the following types of information or guidance:
- 2518 (i) providing guidance directly related to compliance with federal and state laws for an
2519 insurance product purchased from the licensee;
- 2520 (ii) providing a workshop or seminar addressing an insurance issue that is directly
2521 related to an insurance product purchased from the licensee; or
- 2522 (iii) providing information regarding:
- 2523 (A) employee benefit issues;
- 2524 (B) directly related insurance regulatory and legislative updates; or
- 2525 (C) similar education about an insurance product sold by the licensee and how the
2526 insurance product interacts with tax law;
- 2527 (f) preparing or providing a form that is directly related to an insurance product
2528 purchased from, or offered by, the licensee;
- 2529 (g) preparing or providing documents directly related to a premium only cafeteria plan
2530 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but
2531 not providing ongoing administration of a flexible spending account;
- 2532 (h) providing enrollment and billing assistance, including:
- 2533 (i) providing benefit statements or new hire insurance benefits packages; and
- 2534 (ii) providing technology services such as an electronic enrollment platform or
2535 application system;
- 2536 (i) communicating coverages in writing and in consultation with the insured and

- 2537 employees;
- 2538 (j) providing employee communication materials and notifications directly related to an
2539 insurance product purchased from a licensee;
- 2540 (k) providing claims management and resolution to the extent permitted under the
2541 licensee's license;
- 2542 (l) providing underwriting or actuarial analysis or services;
- 2543 (m) negotiating with an insurer regarding the placement and pricing of an insurance
2544 product;
- 2545 (n) recommending placement and coverage options;
- 2546 (o) providing a health fair or providing assistance or advice on establishing or
2547 operating a wellness program, but not providing any payment for or direct operation of the
2548 wellness program;
- 2549 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other
2550 services directly related to an insurance product purchased from the licensee;
- 2551 (q) assisting with a summary plan description;
- 2552 (r) providing information necessary for the preparation of documents directly related to
2553 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as
2554 amended;
- 2555 (s) providing information or services directly related to the Health Insurance Portability
2556 and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services
2557 directly related to health care access, portability, and renewability when offered in connection
2558 with accident and health insurance sold by a licensee;
- 2559 (t) sending proof of coverage to a third party with a legitimate interest in coverage;
- 2560 (u) providing information in a form approved by the commissioner and directly related
2561 to determining whether an insurance product sold by the licensee meets the requirements of a
2562 third party contract that requires or references insurance coverage;
- 2563 (v) facilitating risk management services directly related to the insurance product sold
2564 or offered for sale by the licensee, including:
- 2565 (i) risk management;
- 2566 (ii) claims and loss control services; and
- 2567 (iii) risk assessment consulting;

- 2568 (w) otherwise providing services that are legitimately part of servicing an insurance
2569 product purchased from a licensee; and
- 2570 (x) providing other directly related services approved by the department.
- 2571 (5) An inducement prohibited under Subsection (1) includes a licensee, or an officer or
2572 employee of a licensee:
- 2573 (a) (i) providing a premium or commission rebate;
- 2574 (ii) paying the salary of an employee of a person who purchases an insurance product
2575 from the licensee; or
- 2576 (iii) if the licensee is an insurer, or a third party administrator who contracts with an
2577 insurer, paying the salary for an onsite staff member to perform an act prohibited under
2578 Subsection (5)(b)(xii); or
- 2579 (b) engaging in one or more of the following unless a fee is paid in accordance with
2580 Subsection (7):
- 2581 (i) performing background checks of prospective employees;
- 2582 (ii) providing legal services by a person licensed to practice law;
- 2583 (iii) performing drug testing that is directly related to an insurance product purchased
2584 from the licensee;
- 2585 (iv) preparing employer or employee handbooks, except that a licensee may:
- 2586 (A) provide information for a medical benefit section of an employee handbook;
- 2587 (B) provide information for the section of an employee handbook directly related to an
2588 employment practices liability insurance product purchased from the licensee; or
- 2589 (C) prepare or print an employee benefit enrollment guide;
- 2590 (v) providing job descriptions, postings, and applications for a person that purchases an
2591 employment practices liability insurance product from the licensee;
- 2592 (vi) providing payroll services;
- 2593 (vii) providing performance reviews or performance review training;
- 2594 (viii) providing union advice;
- 2595 (ix) providing accounting services;
- 2596 (x) providing data analysis information technology programs, except as provided in
2597 Subsection (4)(h)(ii);
- 2598 (xi) providing administration of health reimbursement accounts or health savings

2599 accounts; or

2600 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
2601 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
2602 the following prohibited benefits:

2603 (A) performing background checks of prospective employees;

2604 (B) providing legal services by a person licensed to practice law;

2605 (C) performing drug testing that is directly related to an insurance product purchased
2606 from the insurer;

2607 (D) preparing employer or employee handbooks;

2608 (E) providing job descriptions postings, and applications;

2609 (F) providing payroll services;

2610 (G) providing performance reviews or performance review training;

2611 (H) providing union advice;

2612 (I) providing accounting services;

2613 (J) providing discrimination testing; or

2614 (K) providing data analysis information technology programs.

2615 (6) A de minimis gift or meal not to exceed \$25 for each individual receiving the gift
2616 or meal is presumed to be a social courtesy not conditioned on the purchase of a particular
2617 insurance product for purposes of Subsection (4)(a).

2618 (7) If as provided under Subsection (5)(b) a licensee is paid a fee to provide an item
2619 listed in Subsection (5)(b), the licensee shall comply with Subsection 31A-23a-501(2) in
2620 charging the fee, except that the fee paid for the item shall equal or exceed the fair market
2621 value of the item.

2622 Section 24. Section **31A-23a-406** is amended to read:

2623 **31A-23a-406. Title insurance producer's business.**

2624 (1) A title insurance producer may do escrow involving real property transactions if all
2625 of the following exist:

2626 (a) the title insurance producer is licensed with:

2627 (i) the title line of authority; and

2628 (ii) the escrow subline of authority;

2629 (b) the title insurance producer is appointed by a title insurer authorized to do business

2630 in the state;

2631 (c) the title insurance producer issues one or more of the following as part of the

2632 transaction:

2633 (i) an owner's policy of title insurance; or

2634 (ii) a lender's policy of title insurance;

2635 (d) money deposited with the title insurance producer in connection with any escrow:

2636 (i) is deposited:

2637 (A) in a federally insured financial institution; and

2638 (B) in a trust account that is separate from all other trust account money that is not

2639 related to real estate transactions;

2640 (ii) is the property of the one or more persons entitled to the money under the

2641 provisions of the escrow; and

2642 (iii) is segregated escrow by escrow in the records of the title insurance producer;

2643 (e) earnings on money held in escrow may be paid out of the escrow account to any

2644 person in accordance with the conditions of the escrow;

2645 (f) the escrow does not require the title insurance producer to hold:

2646 (i) construction money; or

2647 (ii) money held for exchange under Section 1031, Internal Revenue Code; and

2648 (g) the title insurance producer shall maintain a physical office in Utah staffed by a

2649 person with an escrow subline of authority who processes the escrow.

2650 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the

2651 escrow business if:

2652 (a) the escrow involves:

2653 (i) a mobile home;

2654 (ii) a grazing right;

2655 (iii) a water right; or

2656 (iv) other personal property authorized by the commissioner; and

2657 (b) the title insurance producer complies with this section except for Subsection (1)(c).

2658 (3) Money held in escrow:

2659 (a) is not subject to any debts of the title insurance producer;

2660 (b) may only be used to fulfill the terms of the individual escrow under which the

2661 money is accepted; and

2662 (c) may not be used until the conditions of the escrow are met.

2663 (4) Assets or property other than escrow money received by a title insurance producer
2664 in accordance with an escrow shall be maintained in a manner that will:

2665 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;
2666 and

2667 (b) otherwise comply with the general duties and responsibilities of a fiduciary or
2668 bailee.

2669 (5) (a) A check from the trust account described in Subsection (1)(d) may not be
2670 drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account
2671 from which money is to be disbursed contains a sufficient credit balance consisting of collected
2672 and cleared money at the time the check is drawn, executed, or dated, or money is otherwise
2673 disbursed.

2674 (b) As used in this Subsection (5), money is considered to be "collected and cleared,"
2675 and may be disbursed as follows:

2676 (i) cash may be disbursed on the same day the cash is deposited;

2677 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

2678 (iii) the proceeds of one or more of the following financial instruments may be
2679 disbursed on the same day the financial instruments are deposited if received from a single
2680 party to the real estate transaction and if the aggregate of the financial instruments for the real
2681 estate transaction is less than \$10,000:

2682 (A) a cashier's check, certified check, or official check that is drawn on an existing
2683 account at a federally insured financial institution;

2684 (B) a check drawn on the trust account of a principal broker or associate broker
2685 licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the title
2686 producer has reasonable and prudent grounds to believe sufficient money will be available
2687 from the trust account on which the check is drawn at the time of disbursement of proceeds
2688 from the title producer's escrow account;

2689 (C) a personal check not to exceed \$500 per closing; or

2690 (D) a check drawn on the escrow account of another title producer, if the title producer
2691 in the escrow transaction has reasonable and prudent grounds to believe that sufficient money

2692 will be available for withdrawal from the account upon which the check is drawn at the time of
2693 disbursement of money from the escrow account of the title producer in the escrow
2694 transaction[; or].

2695 ~~[(E) a check issued by a farm credit service authorized under the Farm Credit Act of~~
2696 ~~1971, 12 U.S.C. Sec. 2001 et seq., as amended.]~~

2697 (c) ~~[Money received from a financial instrument described in Subsection (5)(b)(iii)(B)~~
2698 ~~or (E)] A check or deposit not described in Subsection (5)(b) may be disbursed:~~

2699 (i) within the time limits provided under the Expedited Funds Availability Act, 12
2700 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

2701 (ii) upon notification from the financial institution to which the money has been
2702 deposited that final settlement has occurred on the deposited financial instrument.

2703 (6) A title insurance producer shall maintain a record of a receipt or disbursement of
2704 escrow money.

2705 (7) A title insurance producer shall comply with:

2706 (a) Section 31A-23a-409;

2707 (b) Title 46, Chapter 1, Notaries Public Reform Act; and

2708 (c) any rules adopted by the Title and Escrow Commission, subject to Section
2709 31A-2-404, that govern escrows.

2710 (8) If a title insurance producer conducts a search for real estate located in the state, the
2711 title insurance producer shall conduct a minimum mandatory search, as defined by rule made
2712 by the Title and Escrow Commission, subject to Section 31A-2-404.

2713 Section 25. Section **31A-23a-409** is amended to read:

2714 **31A-23a-409. Trust obligation for money collected.**

2715 (1) (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to,
2716 received by, or collected by a licensee for forwarding to insurers or to insureds.

2717 (b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust
2718 funds with:

2719 (A) the licensee's own money; or

2720 (B) money held in any other capacity.

2721 (ii) This Subsection (1)(b) does not apply to:

2722 (A) amounts necessary to pay bank charges; and

2723 (B) money paid by insureds and belonging in part to the licensee as a fee or
2724 commission.

2725 (c) Except as provided under Subsection (4), a licensee owes to insureds and insurers
2726 the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds
2727 through the licensee.

2728 (d) (i) Unless money is sent to the appropriate payee by the close of the next business
2729 day after their receipt, the licensee shall deposit them in an account authorized under
2730 Subsection (2).

2731 (ii) Money deposited under this Subsection (1)(d) shall remain in an account
2732 authorized under Subsection (2) until sent to the appropriate payee.

2733 (2) Money required to be deposited under Subsection (1) shall be deposited:

2734 (a) in a federally insured trust account in a depository institution, as defined in Section
2735 7-1-103, which:

2736 (i) has an office in this state, if the licensee depositing the money is a resident licensee;

2737 (ii) has federal deposit insurance; and

2738 (iii) is authorized by its primary regulator to engage in the trust business, as defined by
2739 Section 7-5-1, in this state; or

2740 (b) in some other account, approved by the commissioner by rule or order, providing
2741 safety comparable to federally insured trust accounts.

2742 (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the
2743 amount of the federal insurance on the accounts.

2744 (4) A trust account into which money is deposited may be interest bearing. The
2745 interest accrued on the account may be paid to the licensee, so long as the licensee otherwise
2746 complies with this section and with the contract with the insurer.

2747 (5) A depository institution or other organization holding trust funds under this section
2748 may not offset or impound trust account funds against debts and obligations incurred by the
2749 licensee.

2750 (6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any
2751 portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft
2752 under Title 76, Chapter 6, Part 4, Theft. Section 76-6-412 applies in determining the
2753 classification of the offense. Sanctions under Section 31A-2-308 also apply.

2754 (7) A nonresident licensee:

2755 (a) shall comply with Subsection (1)(a) by complying with the trust account
2756 requirements of the nonresident licensee's home state; and

2757 (b) is not required to comply with the other provisions of this section.

2758 Section 26. Section **31A-23a-412** is amended to read:

2759 **31A-23a-412. Place of business and residence address -- Records.**

2760 (1) (a) A licensee under this chapter shall register and maintain with the commissioner:

2761 (i) the address and telephone numbers of the licensee's principal place of business; and

2762 (ii) a valid business email address at which the commissioner may contact the licensee.

2763 (b) If a licensee is an individual, in addition to complying with Subsection (1)(a) the
2764 individual shall register and maintain with the commissioner the individual's residence address
2765 and telephone number.

2766 (c) A licensee shall notify the commissioner within 30 days of a change of any of the
2767 following required to be registered with the commissioner under this section:

2768 (i) an address;

2769 (ii) a telephone number; or

2770 (iii) a business email address.

2771 (2) (a) Except as provided under Subsection (3), a licensee under this chapter shall
2772 keep at the principal place of business address registered under Subsection (1), separate and
2773 distinct books and records of the transactions consummated under the Utah license.

2774 (b) The books and records described in Subsection (2)(a) shall:

2775 (i) be in an organized form;

2776 (ii) be available to the commissioner for inspection upon reasonable notice; and

2777 (iii) include all of the following:

2778 (A) if the licensee is a producer, surplus lines producer, limited line producer,
2779 consultant, managing general agent, or reinsurance intermediary:

2780 (I) a record of each insurance contract procured by or issued through the licensee, with
2781 the names of insurers and insureds, the amount of premium and commissions or other
2782 compensation, and the subject of the insurance;

2783 (II) the names of any other producers, surplus lines producers, limited line producers,
2784 consultants, managing general agents, or reinsurance intermediaries from whom business is

2785 accepted, and of persons to whom commissions or allowances of any kind are promised or
2786 paid; and

2787 (III) a record of the consumer complaints forwarded to the licensee by an insurance
2788 regulator;

2789 (B) if the licensee is a consultant, a record of each agreement outlining the work
2790 performed and the fee for the work; and

2791 (C) any additional information which:

2792 (I) is customary for a similar business; or

2793 (II) may reasonably be required by the commissioner by rule.

2794 (3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can
2795 be obtained immediately from a central storage place or elsewhere by on-line computer
2796 terminals located at the registered address.

2797 (4) A licensee who represents only a single insurer satisfies Subsection (2) if the
2798 insurer maintains the books and records pursuant to Subsection (2) at a place satisfying
2799 Subsections (1) and (5).

2800 (5) (a) The books and records maintained under Subsection (2) or Section
2801 31A-23a-413 shall be available for the inspection of the commissioner during ~~at~~ the business
2802 hours for a period of time after the date of the transaction as specified by the commissioner by
2803 rule, but in no case for less than the current calendar year plus three years.

2804 (b) Discarding books and records after the applicable record retention period has
2805 expired does not place the licensee in violation of a later-adopted longer record retention
2806 period.

2807 Section 27. Section **31A-23a-504** is amended to read:

2808 **31A-23a-504. Sharing commissions.**

2809 (1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter
2810 or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the
2811 licensee knows that the person is licensed under this chapter as to the particular type of
2812 insurance to act in Utah as:

2813 (i) a producer;

2814 (ii) a limited line producer;

2815 [~~(iii) a customer service representative;~~]

2816 [~~(iv)~~] (iii) a consultant;

2817 [~~(v)~~] (iv) a managing general agent; or

2818 [~~(vi)~~] (v) a reinsurance intermediary.

2819 (b) A person may only accept commission compensation or other compensation as a
2820 person described in Subsections (1)(a)(i) through [~~(vi)~~] (v) that is directly or indirectly the
2821 result of an insurance transaction if that person is licensed under this chapter to act as described
2822 in Subsection (1)(a).

2823 (2) (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive
2824 a commission or other compensation that is directly or indirectly the result of an insurance
2825 transaction.

2826 (b) A consultant may share a consultant fee or other compensation received for
2827 consulting services performed within Utah only:

2828 (i) with another consultant licensed under this chapter; and

2829 (ii) to the extent that the other consultant contributed to the services performed.

2830 (3) This section does not prohibit:

2831 (a) the payment of renewal commissions to former licensees under this chapter, former
2832 Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency
2833 sales agreement;

2834 (b) compensation paid to or received by a person for referral of a potential customer
2835 that seeks to purchase or obtain an opinion or advice on an insurance product if:

2836 (i) the person is not licensed to sell insurance;

2837 (ii) the person does not sell or provide opinions or advice on the product; and

2838 (iii) the compensation does not depend on whether the referral results in a purchase or
2839 sale; or

2840 (c) the payment or assignment of a commission, service fee, brokerage, or other
2841 valuable consideration to an agency or a person who does not sell, solicit, or negotiate
2842 insurance in this state, unless the payment would constitute an inducement or commission
2843 rebate under Section 31A-23a-402 or 31A-23a-402.5.

2844 (4) (a) In selling a policy of title insurance, sharing of commissions under Subsection
2845 (1) may not occur if it will result in:

2846 (i) an unlawful rebate;

- 2847 (ii) compensation in connection with controlled business; or
- 2848 (iii) payment of a forwarding fee or finder's fee.

2849 (b) A person may share compensation for the issuance of a title insurance policy only
2850 to the extent that the person contributed to the search and examination of the title or other
2851 services connected with the title insurance policy.

2852 (5) This section does not apply to a bail bond producer or bail enforcement agent as
2853 defined in Section 31A-35-102.

2854 Section 28. Section **31A-25-203** is amended to read:

2855 **31A-25-203. General requirements for license issuance.**

2856 (1) The commissioner shall issue a license to act as a third party administrator to a
2857 person who:

- 2858 (a) satisfies the character requirements under Section 31A-25-204;
- 2859 (b) satisfies the financial responsibility requirement under Section 31A-25-205;
- 2860 (c) has not committed an act that is a ground for denial, suspension, or revocation
2861 provided in Section 31A-25-208;

2862 (d) if a nonresident, complies with Section 31A-25-206; and

2863 (e) pays the applicable fees under Section 31A-3-103.

2864 (2) (a) This Subsection (2) applies to the following persons:

- 2865 (i) an applicant for a third party administrator's license; or
- 2866 (ii) a licensed third party administrator.

2867 (b) A person described in Subsection (2)(a) shall report to the commissioner:

2868 (i) an administrative action taken against the person, including a denial of a new or
2869 renewal license application:

2870 (A) in another jurisdiction; or

2871 (B) by another regulatory agency in this state; and

2872 (ii) a criminal prosecution taken against the person in any jurisdiction.

2873 (c) The report required by Subsection (2)(b) shall:

2874 (i) be filed:

2875 (A) at the time the person applies for a third party administrator's license; and

2876 (B) if an action or prosecution occurs on or after the day on which the person applies
2877 for a third party administrator license:

2878 (I) for an administrative action, within 30 days of the final disposition of the
2879 administrative action; or
2880 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
2881 and
2882 (ii) include a copy of the complaint or other relevant legal documents related to the
2883 action or prosecution described in Subsection (2)(b).
2884 (3) (a) The department may require a person applying for a license or for consent to
2885 engage in the business of insurance to submit to a criminal background check as a condition of
2886 receiving a license or consent.
2887 (b) A person, if required to submit to a criminal background check under Subsection
2888 (3)(a), shall:
2889 (i) submit a fingerprint card in a form acceptable to the department; and
2890 (ii) consent to a fingerprint background check by:
2891 (A) the Utah Bureau of Criminal Identification; and
2892 (B) the Federal Bureau of Investigation.
2893 (c) For a person who submits a fingerprint card and consents to a fingerprint
2894 background check under Subsection (3)(b), the department may request concerning a person
2895 applying for a third party administrator's license:
2896 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
2897 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
2898 (ii) complete Federal Bureau of Investigation criminal background checks through the
2899 national criminal history system.
2900 (d) Information obtained by the department from the review of criminal history records
2901 received under this Subsection (3) shall be used by the department for the purposes of:
2902 (i) determining if a person satisfies the character requirements under Section
2903 31A-25-204 for issuance or renewal of a license;
2904 (ii) determining if a person has failed to maintain the character requirements under
2905 Section 31A-25-204; and
2906 (iii) preventing a person who violates the federal Violent Crime Control and Law
2907 Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~ Sec. 1033 [~~and 1034~~], from engaging in the
2908 business of insurance in the state.

2909 (e) If the department requests the criminal background information, the department
2910 shall:

2911 (i) pay to the Department of Public Safety the costs incurred by the Department of
2912 Public Safety in providing the department criminal background information under Subsection
2913 (3)(c)(i);

2914 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
2915 of Investigation in providing the department criminal background information under
2916 Subsection (3)(c)(ii); and

2917 (iii) charge the person applying for a license or for consent to engage in the business of
2918 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

2919 (4) The commissioner may deny a license application to act as a third party
2920 administrator to a person who:

2921 (a) fails to satisfy the requirements of this section; or

2922 (b) commits an act that is a ground for denial, suspension, or revocation provided in
2923 Section 31A-25-208.

2924 Section 29. Section **31A-25-306** is amended to read:

2925 **31A-25-306. Payments by administrator.**

2926 [~~All claims paid by the~~] An administrator shall pay a claim from [~~funds~~] money
2927 collected on behalf of the insurer [~~shall be paid~~] on drafts or checks as authorized by the
2928 insurer.

2929 Section 30. Section **31A-26-203** is amended to read:

2930 **31A-26-203. Adjuster's license required.**

2931 (1) The commissioner shall issue a license to act as an independent adjuster or public
2932 adjuster to a person who, as to the license classification applied for under Section 31A-26-204:

2933 (a) satisfies the character requirements under Section 31A-26-205;

2934 (b) satisfies the applicable continuing education requirements under Section
2935 31A-26-206;

2936 (c) satisfies the applicable examination requirements under Section 31A-26-207;

2937 (d) has not committed an act that is a ground for denial, suspension, or revocation
2938 provided for in Section 31A-26-213;

2939 (e) if a nonresident, complies with Section 31A-26-208; and

- 2940 (f) pays the applicable fees under Section 31A-3-103.
- 2941 (2) (a) This Subsection (2) applies to the following persons:
- 2942 (i) an applicant for:
- 2943 (A) an independent adjuster's license; or
- 2944 (B) a public adjuster's license;
- 2945 (ii) a licensed independent adjuster; or
- 2946 (iii) a licensed public adjuster.
- 2947 (b) A person described in Subsection (2)(a) shall report to the commissioner:
- 2948 (i) an administrative action taken against the person, including a denial of a new or
- 2949 renewal license application:
- 2950 (A) in another jurisdiction; or
- 2951 (B) by another regulatory agency in this state; and
- 2952 (ii) a criminal prosecution taken against the person in any jurisdiction.
- 2953 (c) The report required by Subsection (2)(b) shall:
- 2954 (i) be filed:
- 2955 (A) at the time the person applies for an adjustor's license; and
- 2956 (B) if an action or prosecution occurs on or after the day on which the person applies
- 2957 for an adjustor's license:
- 2958 (I) for an administrative action, within 30 days of the final disposition of the
- 2959 administrative action; or
- 2960 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
- 2961 and
- 2962 (ii) include a copy of the complaint or other relevant legal documents related to the
- 2963 action or prosecution described in Subsection (2)(b).
- 2964 (3) (a) The department may require a person applying for a license or for consent to
- 2965 engage in the business of insurance to submit to a criminal background check as a condition of
- 2966 receiving a license or consent.
- 2967 (b) A person, if required to submit to a criminal background check under Subsection
- 2968 (3)(a), shall:
- 2969 (i) submit a fingerprint card in a form acceptable to the department; and
- 2970 (ii) consent to a fingerprint background check by:

2971 (A) the Utah Bureau of Criminal Identification; and
2972 (B) the Federal Bureau of Investigation.
2973 (c) For a person who submits a fingerprint card and consents to a fingerprint
2974 background check under Subsection (3)(b), the department may request concerning a person
2975 applying for an independent or public adjuster's license:
2976 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
2977 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
2978 (ii) complete Federal Bureau of Investigation criminal background checks through the
2979 national criminal history system.
2980 (d) Information obtained by the department from the review of criminal history records
2981 received under this Subsection (3) shall be used by the department for the purposes of:
2982 (i) determining if a person satisfies the character requirements under Section
2983 31A-26-205 for issuance or renewal of a license;
2984 (ii) determining if a person has failed to maintain the character requirements under
2985 Section 31A-26-205; and
2986 (iii) preventing a person who violates the federal Violent Crime Control and Law
2987 Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~ Sec. 1033 [~~and 1034~~], from engaging in the
2988 business of insurance in the state.
2989 (e) If the department requests the criminal background information, the department
2990 shall:
2991 (i) pay to the Department of Public Safety the costs incurred by the Department of
2992 Public Safety in providing the department criminal background information under Subsection
2993 (3)(c)(i);
2994 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
2995 of Investigation in providing the department criminal background information under
2996 Subsection (3)(c)(ii); and
2997 (iii) charge the person applying for a license or for consent to engage in the business of
2998 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).
2999 (4) The commissioner may deny a license application to act as an independent adjuster
3000 or public adjuster to a person who, as to the license classification applied for under Section
3001 31A-26-204:

3002 (a) fails to satisfy the requirements in this section; or
3003 (b) commits an act that is a ground for denial, suspension, or revocation provided for in
3004 Section 31A-26-213.

3005 (5) Notwithstanding the other provisions of this section, the commissioner may:

3006 (a) issue a license to an applicant for a license for a title insurance classification only
3007 with the concurrence of the Title and Escrow Commission; or

3008 (b) renew a license for a title insurance classification only with the concurrence of the
3009 Title and Escrow Commission.

3010 Section 31. Section **31A-27-503** is amended to read:

3011 **31A-27-503. Commissioner's administrative actions.**

3012 (1) (a) The commissioner may take an action described in Subsection (1)(b) whenever
3013 the commissioner has reasonable cause to believe, and determines after a hearing that an
3014 insurer:

3015 (i) has committed or engaged in an act, practice, or transaction that would subject the
3016 insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

3017 (ii) is committing or engaging in an act, practice, or transaction that would subject the
3018 insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

3019 (iii) is about to commit or engage in an act, practice, or transaction that would subject
3020 the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;
3021 [~~or~~]

3022 (iv) is in or is about to be in a condition that would subject the insurer to a formal
3023 delinquency proceeding under Chapter 27a, Insurer Receivership Act[~~;~~]; or

3024 (v) is in hazardous financial condition or potentially hazardous financial condition, as
3025 defined by rule made under Subsection 31A-27a-101(3)(c).

3026 (b) If the conditions of Subsection (1)(a) are met, the commissioner may make and
3027 serve upon the insurer and any other persons whose action or forbearance from action is
3028 reasonably necessary, those orders, other than a seizure order under Section 31A-27a-201, that
3029 are reasonably necessary to correct, eliminate, or remedy the act, practice, transaction, or
3030 condition described in Subsection (1)(a).

3031 (c) The commissioner may issue an order for the insurer to submit to supervision by a
3032 supervisor appointed by the commissioner until the act, practice, transaction, or condition that

3033 is the ground for the order has been halted or corrected.

3034 (2) (a) The commissioner may make and serve an order issued under Subsection (1)
3035 without notice and before a hearing if:

3036 (i) the conditions of Subsection (1) are satisfied; and

3037 (ii) it appears to the commissioner that irreparable harm to the property or business of
3038 the insurer or to the interests of its policyholders, creditors, or the public may occur unless the
3039 commissioner issues, with immediate effect, the order.

3040 (b) The commissioner shall serve the insurer with an order described in this Subsection
3041 (2) and a notice of agency action, containing a statement of the reasons why irreparable harm is
3042 threatened unless the order is issued with immediate effect.

3043 (3) (a) If the commissioner issues an order for supervision of an insurer under
3044 Subsection (1) or (2), the commissioner shall:

3045 (i) notify the insurer that the insurer is under the supervision of the commissioner; and
3046 (ii) explain the reasons for that supervision.

3047 (b) During the period of supervision, the commissioner may prohibit the insurer from
3048 doing any of the following, without the prior approval of the commissioner or a supervisor
3049 appointed by the commissioner:

3050 (i) transferring any of its assets or its business in force;

3051 (ii) withdrawing funds from any of its bank accounts;

3052 (iii) lending any of its funds;

3053 (iv) investing any of its funds;

3054 (v) transferring any of its property;

3055 (vi) incurring any debt, obligation, or liability other than in the ordinary and usual
3056 course of business; or

3057 (vii) entering into any new reinsurance contract or treaty.

3058 (4) (a) If the commissioner issues a summary order before a hearing under Subsection
3059 (2), the insurer may waive the commissioner's hearing and apply for immediate judicial relief
3060 by any remedy afforded by law, without first exhausting the insurer's administrative remedies.

3061 (b) If the insurer has a hearing before the commissioner, the insurer and any person
3062 whose interests are substantially affected are entitled to judicial review of any order issued by
3063 the commissioner.

3064 Section 32. Section **31A-27a-101** is amended to read:
3065 **31A-27a-101. Title -- Construction -- Commissioner's powers.**
3066 (1) This chapter is known as the "Insurer Receivership Act."
3067 (2) The proceedings authorized by this chapter may be applied to:
3068 (a) all insurers and reinsurers:
3069 (i) who are doing, or have done, an insurance business in this state; and
3070 (ii) against whom claims arising from that business may exist;
3071 (b) all insurers who have the appearance of or claim they do an insurance business in
3072 this state;
3073 (c) all insurers who have insureds resident in this state; and
3074 (d) all other persons organized or in the process of organizing to do an insurance
3075 business as an insurer in this state.
3076 (3) This chapter shall be liberally construed to protect the interests of insureds,
3077 claimants, creditors, and the public generally through:
3078 (a) early detection of any potentially hazardous condition in an insurer;
3079 (b) prompt application of appropriate corrective measures;
3080 (c) the commissioner making rules pertaining to Subsections (3)(a) and (b):
3081 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
3082 (ii) that are similar to those set forth in the Model Regulation to Define Standards and
3083 Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition of
3084 the National Association of Insurance Commissioners;
3085 [~~(c)~~] (d) improved methods for conserving and rehabilitating insurers;
3086 [~~(d)~~] (e) enhanced efficiency and economy of liquidation, through clarification of the
3087 law, to minimize legal uncertainty and litigation;
3088 [~~(e)~~] (f) apportionment of any unavoidable loss in accordance with the statutory
3089 priorities set out in this chapter;
3090 [~~(f)~~] (g) lessening the problems of interstate receivership by:
3091 (i) facilitating cooperation among states in delinquency proceedings; and
3092 (ii) extending the scope of personal jurisdiction over debtors of the insurer outside this
3093 state;
3094 [~~(g)~~] (h) regulation of the business of insurance by the impact of the law relating to

3095 delinquency procedures and by substantive rules; and

3096 [~~(h)~~] (i) providing for a comprehensive scheme for the receivership of insurance
3097 companies and those subject to this chapter as part of the regulation of the business of
3098 insurance in this state.

3099 (4) A proceeding in the case of insurer insolvency and delinquency are integral aspects
3100 of the business of insurance and are of vital public interest and concern.

3101 (5) This chapter does not limit the powers granted the commissioner by other
3102 provisions of law.

3103 (6) [~~AH~~] The powers and authority of a receiver under this chapter are:

3104 (a) cumulative; and

3105 (b) in addition to any power or authority available to a receiver under a law other than
3106 this chapter.

3107 Section 33. Section **31A-27a-104** is amended to read:

3108 **31A-27a-104. Persons covered.**

3109 (1) This chapter applies to:

3110 (a) an insurer who:

3111 (i) is doing, or has done, an insurance business in this state; and

3112 (ii) against whom a claim arising from that business may exist;

3113 (b) a person subject to examination by the commissioner;

3114 (c) an insurer who purports to do an insurance business in this state;

3115 (d) an insurer who has an insured who is resident in this state; and

3116 (e) in addition to Subsections (1)(a) through (d), a person doing business as follows:

3117 (i) under Chapter 6a, Service Contracts;

3118 (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;

3119 (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;

3120 (iv) under Chapter 9, Insurance Fraternal;

3121 (v) under Chapter 11, Motor Clubs;

3122 (vi) under Chapter 13, Employee Welfare Funds and Plans;

3123 (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention

3124 Groups;

3125 (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;

3126 (ix) under Chapter 37, Captive Insurance Companies Act;
3127 (x) a title insurance company;
3128 (xi) a prepaid health care delivery plan; and
3129 (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or
3130 doing insurance business, or in the process of organizing with the intent to do insurance
3131 business in this state.

3132 (2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply
3133 to a person licensed by the insurance commissioner as one or more of the following in this state
3134 unless the person engages in the business of insurance as an insurer:

- 3135 (a) an insurance agency;
- 3136 (b) an insurance producer;
- 3137 (c) a limited line producer;
- 3138 [~~(d)~~] a customer service representative;
- 3139 [~~(e)~~] (d) an insurance consultant;
- 3140 [~~(f)~~] (e) a managing general agent;
- 3141 [~~(g)~~] (f) reinsurance intermediary;
- 3142 [~~(h)~~] (g) a title insurance producer;
- 3143 [~~(i)~~] (h) a third party administrator;
- 3144 [~~(j)~~] (i) an insurance adjustor;
- 3145 [~~(k)~~] (j) a life settlement provider; or
- 3146 [~~(l)~~] (k) a life settlement producer.

3147 Section 34. Section **31A-29-112** is amended to read:

3148 **31A-29-112. Medicaid recipients.**

3149 (1) If authorized by federal statutes or rules, an individual receiving Medicaid benefits
3150 may continue to receive those benefits while satisfying the preexisting condition requirements
3151 established by Section 31A-29-113 and the terms of the pool policy issued under this chapter.

3152 (2) If allowed by federal statute, federal regulation, state statute, or rule, the
3153 Department of Health shall allocate premiums paid to the pool by an individual receiving
3154 Medicaid benefits to that individual's spenddown for purposes of the Medicaid program.

3155 (3) (a) If an individual continues to receive Medicaid benefits after the requirements for
3156 a preexisting condition are satisfied, the pool administrator may not issue a pool policy or

3157 allow that individual to receive any benefit from the pool.

3158 (b) If an individual continues to receive Medicaid benefits when the requirements for a
3159 preexisting condition are satisfied, the pool administrator shall give any premiums collected by
3160 it during the preexisting conditions period to the Medicaid program.

3161 (4) (a) If an enrollee becomes eligible to receive Medicaid benefits, the enrollee's
3162 coverage by the pool terminates as of the effective date of Medicaid coverage.

3163 (b) The pool administrator shall:

3164 (i) include a provision in the pool policy requiring an enrollee to provide written notice
3165 to the pool administration if the enrollee becomes covered by Medicaid; and

3166 (ii) terminate an enrollee's coverage by the pool as of the effective date of the enrollee's
3167 Medicaid coverage when the pool administrator becomes aware that the enrollee is covered by
3168 Medicaid.

3169 (5) If an individual terminates coverage under Medicaid and applies for coverage under
3170 a pool policy within ~~[45]~~ 62 days after terminating the coverage, the individual may begin
3171 coverage under a pool policy as of the date that Medicaid coverage terminated, if an individual
3172 meets the other eligibility requirements of the chapter and pays the required premium.

3173 (6) Notwithstanding Subsections 31A-29-111(1)(b)(i) and (2)(b)(i), an individual is
3174 eligible for coverage by the pool if the requirements of Section 31A-29-111 are met and if:

3175 (a) the individual's eligibility for Medicaid requires a spenddown, as defined by rule,
3176 that exceeds the premium for a pool policy; or

3177 (b) the individual is eligible for the Primary Care Network program administered by
3178 the Department of Health.

3179 Section 35. Section **31A-30-103** is amended to read:

3180 **31A-30-103. Definitions.**

3181 As used in this chapter:

3182 (1) "Actuarial certification" means a written statement by a member of the American
3183 Academy of Actuaries or other individual approved by the commissioner that a covered carrier
3184 is in compliance with Sections 31A-30-106 and 31A-30-106.1, based upon the examination of
3185 the covered carrier, including review of the appropriate records and of the actuarial
3186 assumptions and methods used by the covered carrier in establishing premium rates for
3187 applicable health benefit plans.

3188 (2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly
3189 through one or more intermediaries, controls or is controlled by, or is under common control
3190 with, a specified entity or person.

3191 (3) "Base premium rate" means, for each class of business as to a rating period, the
3192 lowest premium rate charged or that could have been charged under a rating system for that
3193 class of business by the covered carrier to covered insureds with similar case characteristics for
3194 health benefit plans with the same or similar coverage.

3195 [~~(4) "Basic benefit plan" or "basic coverage" means a health benefit plan that:~~]

3196 [~~(a) until January 1, 2012;~~]

3197 [~~(i) is a federally qualified high deductible health plan;~~]

3198 [~~(ii) has a deductible that has the lowest deductible that qualifies as a federally
3199 qualified high deductible health plan as adjusted by federal law; and]~~]

3200 [~~(iii) does not exceed an annual out-of-pocket maximum equal to three times the
3201 amount of the deductible; and]~~]

3202 [~~(b) on or after January 1, 2012, is actuarially equivalent to the NetCare plan with the
3203 highest actuarial value, as provided in Section 31A-22-724.]~~]

3204 [~~(5)~~] (4) "Carrier" means any person or entity that provides health insurance in this
3205 state including:

3206 (a) an insurance company;

3207 (b) a prepaid hospital or medical care plan;

3208 (c) a health maintenance organization;

3209 (d) a multiple employer welfare arrangement; and

3210 (e) any other person or entity providing a health insurance plan under this title.

3211 [~~(6)~~] (5) (a) Except as provided in Subsection [~~(6)~~] (5)(b), "case characteristics" means
3212 demographic or other objective characteristics of a covered insured that are considered by the
3213 carrier in determining premium rates for the covered insured.

3214 (b) "Case characteristics" do not include:

3215 (i) duration of coverage since the policy was issued;

3216 (ii) claim experience; and

3217 (iii) health status.

3218 [~~(7)~~] (6) "Class of business" means all or a separate grouping of covered insureds that

3219 is permitted by the commissioner in accordance with Section 31A-30-105.

3220 [~~(8)~~] (7) "Conversion policy" means a policy providing coverage under the conversion
3221 provisions required in Chapter 22, Part 7, Group Accident and Health Insurance.

3222 [~~(9)~~] (8) "Covered carrier" means any individual carrier or small employer carrier
3223 subject to this chapter.

3224 [~~(10)~~] (9) "Covered individual" means any individual who is covered under a health
3225 benefit plan subject to this chapter.

3226 [~~(11)~~] (10) "Covered insureds" means small employers and individuals who are issued
3227 a health benefit plan that is subject to this chapter.

3228 [~~(12)~~] (11) "Dependent" means an individual to the extent that the individual is defined
3229 to be a dependent by:

3230 (a) the health benefit plan covering the covered individual; and

3231 (b) Chapter 22, Part 6, Accident and Health Insurance.

3232 [~~(13)~~] (12) "Established geographic service area" means a geographical area approved
3233 by the commissioner within which the carrier is authorized to provide coverage.

3234 [~~(14)~~] (13) "Index rate" means, for each class of business as to a rating period for
3235 covered insureds with similar case characteristics, the arithmetic average of the applicable base
3236 premium rate and the corresponding highest premium rate.

3237 [~~(15)~~] (14) "Individual carrier" means a carrier that provides coverage on an individual
3238 basis through a health benefit plan regardless of whether:

3239 (a) coverage is offered through:

3240 (i) an association;

3241 (ii) a trust;

3242 (iii) a discretionary group; or

3243 (iv) other similar groups; or

3244 (b) the policy or contract is situated out-of-state.

3245 [~~(16)~~] (15) "Individual conversion policy" means a conversion policy issued to:

3246 (a) an individual; or

3247 (b) an individual with a family.

3248 [~~(17)~~] (16) "Individual coverage count" means the number of natural persons covered
3249 under a carrier's health benefit products that are individual policies.

3250 [~~(18)~~] (17) "Individual enrollment cap" means the percentage set by the commissioner
3251 in accordance with Section 31A-30-110.

3252 [~~(19)~~] (18) "New business premium rate" means, for each class of business as to a
3253 rating period, the lowest premium rate charged or offered, or that could have been charged or
3254 offered, by the carrier to covered insureds with similar case characteristics for newly issued
3255 health benefit plans with the same or similar coverage.

3256 [~~(20)~~] (19) "Premium" means money paid by covered insureds and covered individuals
3257 as a condition of receiving coverage from a covered carrier, including any fees or other
3258 contributions associated with the health benefit plan.

3259 [~~(21)~~] (20) (a) "Rating period" means the calendar period for which premium rates
3260 established by a covered carrier are assumed to be in effect, as determined by the carrier.

3261 (b) A covered carrier may not have:

3262 (i) more than one rating period in any calendar month; and

3263 (ii) no more than 12 rating periods in any calendar year.

3264 [~~(22)~~] (21) "Resident" means an individual who has resided in this state for at least 12
3265 consecutive months immediately preceding the date of application.

3266 [~~(23)~~] (22) "Short-term limited duration insurance" means a health benefit product that:

3267 (a) is not renewable; and

3268 (b) has an expiration date specified in the contract that is less than 364 days after the
3269 date the plan became effective.

3270 [~~(24)~~] (23) "Small employer carrier" means a carrier that provides health benefit plans
3271 covering eligible employees of one or more small employers in this state, regardless of
3272 whether:

3273 (a) coverage is offered through:

3274 (i) an association;

3275 (ii) a trust;

3276 (iii) a discretionary group; or

3277 (iv) other similar grouping; or

3278 (b) the policy or contract is situated out-of-state.

3279 [~~(25)~~] (24) "Uninsurable" means an individual who:

3280 (a) is eligible for the Comprehensive Health Insurance Pool coverage under the

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 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 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

- 3343 (v) submits a required report to the department under Section 31A-31-110.
- 3344 (b) An agency referred to in Subsection (1)(a) is one or more of the following:
- 3345 (i) the department or a division of the department;
- 3346 (ii) a federal, state, or government agency established to detect and prevent insurance
- 3347 fraud;
- 3348 (iii) a nonprofit organization established to detect and prevent insurance fraud; or
- 3349 (iv) an agent, employee, or designee of an agency listed in this Subsection (1)(b).

3350 (2) An insurer, or person employed by an insurer, is immune from civil action, civil
3351 penalty, or damages when in good faith the insurer or person employed by an insurer provides
3352 or shares information with another insurer or insurer's employee in a good faith effort to
3353 discover or prevent a fraudulent insurance act or other criminal conduct.

3354 [~~2~~] (3) A person, insurer, or authorized agency is immune from civil action, civil
3355 penalty, or damages if that person, insurer, or authorized agency complies in good faith with a
3356 court order to provide evidence or testimony requested by an agency described in Subsection
3357 (1)(b).

3358 [~~3~~] (4) This section does not abrogate or modify a common law or statutory right,
3359 privilege, or immunity enjoyed by a person.

3360 [~~4~~] (5) Notwithstanding any other provision in this section, a person, insurer, or
3361 service provider is not immune from civil action, civil penalty or damages under this section if
3362 that person commits the fraudulent insurance act that is the subject of the information.

3363 Section 39. Section **31A-31-108** is amended to read:

3364 **31A-31-108. Assessment of insurers.**

3365 (1) For purposes of this section:

3366 (a) The commissioner shall by rule made in accordance with Title 63G, Chapter 3,
3367 Utah Administrative Rulemaking Act, define:

- 3368 (i) "annuity consideration";
- 3369 (ii) "membership fees";
- 3370 (iii) "other fees";
- 3371 (iv) "deposit-type contract funds"; and
- 3372 (v) "other considerations in Utah."
- 3373 (b) "Insurance fraud provisions" means:

3374 (i) this chapter;

3375 (ii) Section 31A-2-110; 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 ~~[(e)]~~ (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).

3405 (4) (a) There is created in the General Fund a restricted account known as the
3406 "Insurance Fraud Investigation Restricted Account."

3407 (b) The Insurance Fraud Investigation Restricted Account shall consist of the money
3408 received by the commissioner under this section and Section 31A-31-109.

3409 (c) The commissioner shall administer the Insurance Fraud Investigation Restricted
3410 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
3411 deposited into the Insurance Fraud Investigation Restricted Account to pay for a cost or
3412 expense incurred by the commissioner in the administration, investigation, and enforcement of
3413 ~~[this chapter, Section 34A-2-110, and Section 76-6-521]~~ insurance fraud provisions.

3414 Section 40. Section ~~31A-35-401.5~~ is amended to read:

3415 **31A-35-401.5. Additional licensure requirements for a bail bond surety company.**

3416 (1) A person applying for licensure as a bail bond surety or agency for the first time
3417 shall, in addition to the requirements of Section 31A-35-401, provide proof that at least one
3418 principal of the bail bond surety or agency will have a minimum of 2,000 hours of experience
3419 working as an employee of a bail bond surety company as a licensed bail bond agent.

3420 (2) The applicant shall provide proof of the experience claimed under Subsection (1),
3421 including providing:

3422 (a) the exact details of the character and nature of the experience on a form provided by
3423 the department;

3424 (b) a statement by each employer verifying the number of hours the applicant worked
3425 for the employer; and

3426 (c) (i) federal income reporting forms that account for the wages for hours claimed or
3427 documented approval of the claimed hours by the insurance commissioner; and

3428 (ii) the total of 2,000 hours may be proved in part by federal income reporting forms
3429 and in part by approval by the insurance commissioner.

3430 (3) The burden of proving the hours of experience as required in this section is upon
3431 the applicant.

3432 ~~[(4) An individual who is applying for licensure under this chapter for the first time
3433 shall have completed a training program of not less than four hours that is approved by the
3434 commissioner and includes:]~~

3435 ~~[(a) definition of a bail bond, jail procedures regarding bail bonds, court procedures~~

3436 regarding bail bonds, liability of a bail bond, the taking of collateral, returning collateral, trust
3437 account separation of funds, fee structure, the 10 percent rule, agent liability, the prohibition on
3438 soliciting on county or state property, and the delivery of a bail bond;]

3439 [~~(b) state laws and administrative rules regarding the operation of a bail bond~~
3440 ~~business;~~]

3441 [~~(c) the rights of an accused person; and]~~

3442 [~~(d) the ethical requirements of a bail bond business.~~]

3443 [~~(5) (a) On and after January 1, 2012, an applicant for renewal of a license under this~~
3444 ~~chapter shall have completed during the prior year two hours of continuing education.~~]

3445 [~~(b) The insurance commissioner shall implement the continuing education~~
3446 ~~requirement under this Subsection (5) pursuant to Title 63G, Chapter 3, Utah Administrative~~
3447 ~~Rulemaking Act.~~]

3448 Section 41. Section **31A-35-607** is amended to read:

3449 **31A-35-607. Filing of forms -- Commissioner maintains files.**

3450 (1) (a) In accordance with Section 31A-21-201, ~~[each]~~ only a bail bond surety company
3451 that meets the financial capacity requirements through the use of a letter of credit, personal
3452 property, or real property, or a surety insurer shall file with the commissioner a ~~[sample]~~ copy
3453 of each form the bail bond surety company or surety insurer uses in the ~~[bail bond surety's]~~ bail
3454 bond surety business.

3455 (b) A surety insurer filing shall comply with the following:

3456 (i) a form shall be identified by a unique form number;

3457 (ii) the surety insurer shall file a form on behalf of each bail bond surety company
3458 appointed to write on behalf of the surety insurer;

3459 (iii) once a filing is filed with the commissioner, it is the responsibility of the surety
3460 insurer to verify that the bail bond surety company and its producers are using the correct form;

3461 (iv) a bail bond surety company and its producers are prohibited from using a form that
3462 has not been filed by the surety insurer; and

3463 (v) a bail bond surety company and its producers are prohibited from making changes
3464 to a form that is filed by the surety insurer.

3465 (c) A bail bond surety company filing, for a bail bond surety company that meets the
3466 financial capacity requirements through the use of a letter of credit, personal property, or real

3467 estate, shall comply with the following:

3468 (i) a form shall be identified by a unique form number;

3469 (ii) once a filing is filed with the commissioner, it is the responsibility of the bail bond
3470 surety company to verify that its producers are using the correct form;

3471 (iii) a bail bond producer is prohibited from using a form that has not been filed by the
3472 bail bond surety company; and

3473 (iv) a bail bond producer is prohibited from making changes to a form that is filed by
3474 the bail bond surety company.

3475 (2) A form described in Subsection (1) shall be filed 30 days before the form:

3476 (a) [~~before the form~~] is first used by the bail bond surety company or surety insurer;

3477 and

3478 (b) [~~if the form~~] is changed after it is filed under Subsection (2)(a).

3479 (3) (a) The [~~department~~] commissioner shall maintain and make available for public
3480 inspection a file regarding each bail bond surety company and each surety insurer.

3481 (b) [~~The forms~~] A bail bond surety company and surety insurer shall maintain a form
3482 required to be filed under this section [shall be maintained in the submitting bail bond surety's
3483 file] in the office of the bail bond surety company or surety insurer.

3484 Section 42. Section **31A-41-301** is amended to read:

3485 **31A-41-301. Procedure for making a claim against the fund.**

3486 (1) (a) To bring a claim against the fund a person shall notify the department within 30
3487 business days of the day on which the person files an action against a title insurance licensee
3488 alleging the following related to a title insurance transaction:

3489 (i) fraud;

3490 (ii) misrepresentation; or

3491 (iii) deceit.

3492 (b) The notification required by Subsection (1)(a) shall be:

3493 (i) in writing; and

3494 (ii) signed by the person who provides the notice.

3495 (c) Within 30 days of the day on which the department receives a notice under
3496 Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).

3497 (2) (a) Subject to the other provisions in this section, a person who provides the notice

3498 required under Subsection (1) may maintain a claim against the fund if:

3499 (i) in an action described in Subsection (1), the person obtains a final judgment in a
3500 court of competent jurisdiction in this state against a title insurance licensee;

3501 (ii) all proceedings including appeals related to the final judgment described in
3502 Subsection (2)(a)(i) are at an end; and

3503 (iii) the person files a verified petition in the court where the judgment is entered for an
3504 order directing payment from the fund for the uncollected actual damages included in the
3505 judgment and unpaid.

3506 (b) A court may not direct the payment from the fund of:

3507 (i) punitive damages;

3508 (ii) attorney fees;

3509 (iii) interest; or

3510 (iv) court costs.

3511 (c) Regardless of the number of claimants or parcels of real estate involved in a single
3512 real estate transaction, the liability of the fund may not exceed:

3513 (i) \$15,000 for a single real estate transaction; or

3514 (ii) \$50,000 for all transactions of a title insurance license.

3515 (d) A person shall:

3516 (i) serve the verified petition required by Subsection (2)(a) on the department; and

3517 (ii) file an affidavit of service with the court.

3518 (3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days
3519 after the day on which the department is served.

3520 (b) The person who files the petition may recover from the fund only if the person
3521 shows all of the following:

3522 (i) the person is not a spouse of the judgment debtor or the personal representative of
3523 the spouse;

3524 (ii) the person complied with this chapter;

3525 (iii) the person has obtained a final judgment in accordance with this section indicating
3526 the amount of the judgment awarded;

3527 (iv) the amount still owing on the judgment at the date of the petition;

3528 (v) [~~A~~] the person has had a writ of execution issued under the judgment, and the

3529 officer executing the writ has returned showing that:

3530 (A) no property subject to execution in satisfaction of the judgment could be found; or

3531 (B) ~~that~~ the amount realized upon the execution levied against the property of the
3532 judgment debtor is insufficient to satisfy the ~~[judgement]~~ judgment;

3533 (vi) the person has made reasonable searches and inquiries to ascertain whether the
3534 judgment debtor has any interest in property, real or personal, that may satisfy the judgment;
3535 and

3536 (vii) the person has exercised reasonable diligence to secure payment of the judgment
3537 from the assets of the judgment debtor.

3538 (4) If the person described in Subsection (3) satisfies the court that it is not practicable
3539 for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through
3540 (vii), the court may waive those requirements.

3541 (5) (a) A judgment that is the basis for a claim against the fund may not have been
3542 discharged in bankruptcy.

3543 (b) If a bankruptcy proceeding is still open or is commenced during the pendency of the
3544 claim, the person bringing a claim against the fund shall obtain an order from the bankruptcy
3545 court declaring the judgement and debt to be nondischargeable.

3546 Section 43. Section **31A-42-203** is amended to read:

3547 **31A-42-203. Powers and duties of board.**

3548 (1) The board shall have the power to:

3549 (a) enter into contracts to carry out the provisions and purposes of this chapter,
3550 including, with the approval of the commissioner, contracts with persons or other organizations
3551 for the performance of administrative functions;

3552 (b) sue or be sued, including taking legal action necessary to implement and enforce
3553 the plan for risk adjustment adopted pursuant to this chapter; and

3554 (c) establish appropriate rate adjustments, underwriting policies, and other actuarial
3555 functions appropriate to the operation of the defined contribution arrangement market in
3556 accordance with Section 31A-42-202.

3557 (2) (a) The board shall prepare and submit an annual report no later than July 1, each
3558 year to the department for inclusion in the department's annual market report, which shall
3559 include:

- 3560 (i) the expenses of administration of the risk adjuster for the defined contribution
3561 arrangement market;
- 3562 (ii) a description of the types of policies sold in the defined contribution arrangement
3563 market;
- 3564 (iii) the number of insured lives in the defined contribution arrangement market; and
3565 (iv) the number of insured lives in health benefit plans that do not include state
3566 mandates.
- 3567 (b) The budget for operation of the risk adjuster is subject to the approval of the board.
- 3568 (c) The administrative budget of the board and the commissioner under this chapter
3569 shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is
3570 subject to review and approval by the Legislature.
- 3571 ~~[(3) The board shall report to the Health Reform Task Force and to the Legislative
3572 Management Committee prior to October 1, 2009 and again prior to October 1, 2010
3573 regarding:]~~
- 3574 ~~[(a) the board's progress in developing the plan required by this chapter; and]~~
- 3575 ~~[(b) the board's progress in:]~~
- 3576 ~~[(i) expanding choice of plans in the defined contribution market; and]~~
- 3577 ~~[(ii) expanding access to the defined contribution market in the Internet portal for large
3578 employer groups.]~~