

HB0029S01 compared with HB0029

~~{deleted text}~~ shows text that was in HB0029 but was deleted in HB0029S01.

inserted text shows text that was not in HB0029 but was inserted into HB0029S01.

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Representative James A. Dunnigan proposes the following substitute bill:

INSURANCE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

~~{Committee Note:~~

~~_____The Business and Labor Interim Committee recommended this bill.~~

~~}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;

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- ▶ 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 Act;
- ▶ requires a person who wants to reinstate a voluntarily surrendered license to comply with continuing education requirements;
- ~~{~~ → ~~modifies special requirements for bail bond producers and bail bond enforcement agents;~~
- ‡ ▶ addresses special requirements for variable contracts lines of authority;
- ▶ addresses disbursements from certain trust accounts;
- ▶ modifies language regarding trust obligation for certain money;
- ▶ addresses payments of claims by administrator;
- ▶ addresses commissioner's administrative actions;
- ▶ grants rulemaking authority to the commissioner regarding model regulations related to determining hazardous financial condition of an insurer;
- ▶ changes dates related to coverage under a pool policy;
- ▶ addresses education requirements related to bail bond licensing;
- ▶ addresses filing of forms by bail bond surety companies and surety insurers;
- ▶ deletes definition of basic benefit plan;
- ▶ addresses health benefit plan choices;
- ▶ grants immunity related to good faith communications between insurers or employees of insurers;
- ▶ increases assessments paid by insurers to fund costs and expenses incurred by the Department of Insurance in the administration, investigation, and enforcement of provisions related to insurance fraud;
- ▶ addresses reporting by the board of directors of the Utah Defined Contribution Risk

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Adjuster; and

- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

31A-22-625, as last amended by Laws of Utah 2011, Chapters 240, 284, 297, 366, and
400

31A-22-629, as last amended by Laws of Utah 2007, Chapter 307

31A-22-635, as last amended by Laws of Utah 2011, Chapter 400

31A-23a-101, as renumbered and amended by Laws of Utah 2003, Chapter 298

31A-23a-102, as last amended by Laws of Utah 2011, Chapter 284

31A-23a-103, as renumbered and amended by Laws of Utah 2003, Chapter 298

31A-23a-104, as last amended by Laws of Utah 2011, Chapter 337

31A-23a-105, as last amended by Laws of Utah 2011, Chapter 337

31A-23a-106, as last amended by Laws of Utah 2011, Chapter 284

31A-23a-107, as renumbered and amended by Laws of Utah 2003, Chapter 298

31A-23a-108, as last amended by Laws of Utah 2005, Chapters 185 and 219

31A-23a-109, as last amended by Laws of Utah 2008, Chapter 3

31A-23a-111, as last amended by Laws of Utah 2011, Chapter 284

31A-23a-113, as last amended by Laws of Utah 2009, Chapter 349

31A-23a-115.5, as enacted by Laws of Utah 2011, Chapter 400

31A-23a-203, as last amended by Laws of Utah 2011, Chapter 284

~~{ 31A-23a-205, as renumbered and amended by Laws of Utah 2003, Chapter 298~~

‡ **31A-23a-206**, as renumbered and amended by Laws of Utah 2003, Chapter 298

31A-23a-301, as enacted by Laws of Utah 2003, Chapter 298

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31A-23a-302, as last amended by Laws of Utah 2009, Chapter 349

31A-23a-402.5, as enacted by Laws of Utah 2011, Chapter 62

31A-23a-406, as last amended by Laws of Utah 2011, Chapter 284

31A-23a-409, as last amended by Laws of Utah 2011, Chapter 342

31A-23a-412, as last amended by Laws of Utah 2011, Chapter 284

31A-23a-504, as last amended by Laws of Utah 2011, Chapter 62

31A-25-203, as last amended by Laws of Utah 2009, Chapter 349

31A-25-306, as enacted by Laws of Utah 1985, Chapter 242

31A-26-203, as last amended by Laws of Utah 2009, Chapter 349

31A-27-503, as renumbered and amended by Laws of Utah 2007, Chapter 309

31A-27a-101, as enacted by Laws of Utah 2007, Chapter 309

31A-27a-104, as last amended by Laws of Utah 2009, Chapter 355

31A-29-112, as last amended by Laws of Utah 2004, Chapter 2

31A-30-103, as last amended by Laws of Utah 2011, Chapters 284 and 400

31A-30-109, as last amended by Laws of Utah 2009, Chapter 12

31A-30-112, as last amended by Laws of Utah 2011, Chapter 284

31A-31-105, as last amended by Laws of Utah 2008, Chapter 150

31A-31-108, as last amended by Laws of Utah 2011, Chapter 284

31A-35-401.5, as enacted by Laws of Utah 2011, Chapter 179

31A-35-607, as last amended by Laws of Utah 2000, Chapter 259

31A-41-301, as enacted by Laws of Utah 2008, Chapter 220

31A-42-203, as enacted by Laws of Utah 2009, Chapter 12

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

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

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

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

(i) a medical condition including:

(A) a medical care expense; or

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- (B) the risk of disability;
- (ii) accident; or
- (iii) sickness.
- (b) "Accident and health insurance":
 - (i) includes a contract with disability contingencies including:
 - (A) an income replacement contract;
 - (B) a health care contract;
 - (C) an expense reimbursement contract;
 - (D) a credit accident and health contract;
 - (E) a continuing care contract; and
 - (F) a long-term care contract; and
 - (ii) may provide:
 - (A) hospital coverage;
 - (B) surgical coverage;
 - (C) medical coverage;
 - (D) loss of income coverage;
 - (E) prescription drug coverage;
 - (F) dental coverage; or
 - (G) vision coverage.
- (c) "Accident and health insurance" does not include workers' compensation insurance.
- (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) "Administrator" is defined in Subsection [~~(161)~~] (162).
- (4) "Adult" means an individual who has attained the age of at least 18 years.
- (5) "Affiliate" means a person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of individuals manage the corporations.
- (6) "Agency" means:
 - (a) a person other than an individual, including a sole proprietorship by which an individual does business under an assumed name; and
 - (b) an insurance organization licensed or required to be licensed under Section

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31A-23a-301, 31A-25-207, or 31A-26-209.

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

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

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

(10) "Application" means a document:

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

and

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

whether to:

(A) insure the risk under:

(I) the coverage as originally offered; or

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

(B) decline to insure the risk; or

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

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

(a) the original articles;

(b) a special law;

(c) a charter;

(d) an amendment;

(e) restated articles;

(f) articles of merger or consolidation;

(g) a trust instrument;

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

and

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

(12) "Bail bond insurance" means a guarantee that a person will attend court when required, up to and including surrender of the person in execution of a sentence imposed under

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Subsection 77-20-7(1), as a condition to the release of that person from confinement.

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

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

(a) without individual underwriting or application; and

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

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

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

(a) that is open to the public;

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

(c) at which the public may appear in person to obtain services.

(17) "Business entity" means:

(a) a corporation;

(b) an association;

(c) a partnership;

(d) a limited liability company;

(e) a limited liability partnership; or

(f) another legal entity.

(18) "Business of insurance" is defined in Subsection [~~(87)~~] (88).

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

(a) Section 31A-7-201;

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

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

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

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

(21) "Captive insurance company" means:

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- (a) an insurer:
 - (i) owned by another organization; and
 - (ii) whose exclusive purpose is to insure risks of the parent organization and an affiliated company; or
- (b) in the case of a group or association, an insurer:
 - (i) owned by the insureds; and
 - (ii) whose exclusive purpose is to insure risks of:
 - (A) a member organization;
 - (B) a group member; or
 - (C) an affiliate of:
 - (I) a member organization; or
 - (II) a group member.
- (22) "Casualty insurance" means liability insurance.
- (23) "Certificate" means evidence of insurance given to:
 - (a) an insured under a group insurance policy; or
 - (b) a third party.
- (24) "Certificate of authority" is included within the term "license."
- (25) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of a benefit according to the terms of an insurance policy.
- (26) "Claims-made coverage" means an insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.
- (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.
 - (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent supervisory official of another jurisdiction.
- (28) (a) "Continuing care insurance" means insurance that:
 - (i) provides board and lodging;
 - (ii) provides one or more of the following:
 - (A) a personal service;
 - (B) a nursing service;

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(C) a medical service; or

(D) any other health-related service; and

(iii) provides the coverage described in this Subsection (28)(a) under an agreement effective:

(A) for the life of the insured; or

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

(b) Insurance is continuing care insurance regardless of whether or not the board and lodging are provided at the same location as a service described in Subsection (28)(a)(ii).

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

(i) by contract;

(ii) by common management;

(iii) through the ownership of voting securities; or

(iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

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

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

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

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

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

(32) "Controlling producer" means a producer who directly or indirectly controls an insurer.

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

(i) a corporation doing business:

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(A) as:

(I) an insurance producer;

(II) a surplus lines producer;

~~[(III)] (III)~~ a limited line producer;

~~[(IV)] (IV)~~ a consultant;

~~[(V)] (V)~~ a managing general agent;

~~[(VI)] (VI)~~ a reinsurance intermediary;

~~[(VII)] (VII)~~ a third party administrator; or

~~[(VIII)] (VIII)~~ an adjuster; and

(B) under:

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

(II) Chapter 25, Third Party Administrators; or

(III) Chapter 26, Insurance Adjusters; or

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

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

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

(34) (a) "Creditable coverage" has the same meaning as provided in federal regulations adopted pursuant to the Health Insurance Portability and Accountability Act.

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

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

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

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

(35) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor has a disability.

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

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

(b) "Credit insurance" includes:

- (i) credit accident and health insurance;
- (ii) credit life insurance;
- (iii) credit property insurance;
- (iv) credit unemployment insurance;
- (v) guaranteed automobile protection insurance;
- (vi) involuntary unemployment insurance;
- (vii) mortgage accident and health insurance;
- (viii) mortgage guaranty insurance; and
- (ix) mortgage life insurance.

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

(38) "Credit property insurance" means insurance:

- (a) offered in connection with an extension of credit; and
- (b) that protects the property until the debt is paid.

(39) "Credit unemployment insurance" means insurance:

- (a) offered in connection with an extension of credit; and
- (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
 - (i) specific loan; or
 - (ii) credit transaction.

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

- (a) matured;
- (b) unmatured;
- (c) liquidated;
- (d) unliquidated;
- (e) secured;
- (f) unsecured;
- (g) absolute;
- (h) fixed; or
- (i) contingent.

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

- (i) provided by the private insurance market; or
 - (ii) subsidized by the Federal Crop Insurance Corporation.
- (b) "Crop insurance" includes multi-peril crop insurance.

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

- (i) for the customer service representative's:
 - (A) producer; ~~[or]~~
 - (B) surplus lines producer; or
 - ~~[(B)]~~ (C) consultant employer; and
- (ii) to the customer service representative's employer's:
 - (A) customer;
 - (B) client; or
 - (C) organization.

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

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

- (a) imposed by:
 - (i) statute;
 - (ii) rule; or
 - (iii) order; and
- (b) by which a required filing or payment must be received by the department.

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

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

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

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

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

(a) perform the duties of:

(i) that individual's occupation; or

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

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

(i) eating;

(ii) toileting;

(iii) transferring;

(iv) bathing; or

(v) dressing.

~~[(48)]~~ (49) "Disability income insurance" is defined in Subsection ~~[(78)]~~ (79).

~~[(49)]~~ (50) "Domestic insurer" means an insurer organized under the laws of this state.

~~[(50)]~~ (51) "Domiciliary state" means the state in which an insurer:

(a) is incorporated;

(b) is organized; or

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

~~[(51)]~~ (52) (a) "Eligible employee" means:

(i) an employee who:

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

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

(ii) a person described in Subsection ~~[(51)]~~ (52)(b).

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

(i) a sole proprietor;

(ii) a partner in a partnership; or

(iii) an independent contractor.

(c) "Eligible employee" does not include, unless eligible under Subsection ~~[(51)]~~

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(52)(b):

- (i) an individual who works on a temporary or substitute basis for a small employer;
- (ii) an employer's spouse; or
- (iii) a dependent of an employer.

~~[(52)]~~ (53) "Employee" means an individual employed by an employer.

~~[(53)]~~ (54) "Employee benefits" means one or more benefits or services provided to:

- (a) an employee; or
- (b) a dependent of an employee.

~~[(54)]~~ (55) (a) "Employee welfare fund" means a fund:

- (i) established or maintained, whether directly or through a trustee, by:
 - (A) one or more employers;
 - (B) one or more labor organizations; or
 - (C) a combination of employers and labor organizations; and
- (ii) that provides employee benefits paid or contracted to be paid, other than income

from investments of the fund:

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

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

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

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

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

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

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

(ii) a settlement or closing involving:

- (A) a mobile home;
- (B) a grazing right;
- (C) a water right; or

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(D) other personal property authorized by the commissioner.

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

(i) real estate settlement; or

(ii) real estate closing.

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

(a) an insurance producer with:

(i) a title insurance line of authority; and

(ii) an escrow subline of authority; or

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

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

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

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

(a) a specific physical condition;

(b) a specific medical procedure;

(c) a specific disease or disorder; or

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

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

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

(b) written:

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

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

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

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

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

(ii) received by the department within the time period provided in applicable statute,

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rule, or filing order; and

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

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

(B) rule.

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

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

(a) a policy;

(b) a rate;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application;

(h) a report;

(i) a certificate;

(j) an endorsement;

(k) an actuarial certification;

(l) a licensee annual statement;

(m) a licensee renewal application;

(n) an advertisement; or

(o) an outline of coverage.

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

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

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

(i) a policy;

(ii) a certificate;

(iii) an application;

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(iv) an outline of coverage; or

(v) an endorsement.

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

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

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

(a) the general lines of insurance in Subsection ~~[(70)]~~ (71);

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

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

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

(iii) title marketing representative only;

(c) surplus lines;

(d) workers' compensation; and

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

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

(a) accident and health;

(b) casualty;

(c) life;

(d) personal lines;

(e) property; and

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

~~[(71)]~~ (72) "Group health plan" means an employee welfare benefit plan to the extent that the plan provides medical care:

(a) (i) to an employee; or

(ii) to a dependent of an employee; and

(b) (i) directly;

(ii) through insurance reimbursement; or

(iii) through another method.

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~~[(72)]~~ (73) (a) "Group insurance policy" means a policy covering a group of persons that is issued:

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

in:

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

dependent.

~~[(73)]~~ (74) "Guaranteed automobile protection insurance" means insurance offered in connection with an extension of credit that pays the difference in amount between the insurance settlement and the balance of the loan if the insured automobile is a total loss.

~~[(74)]~~ (75) (a) Except as provided in Subsection ~~[(74)]~~ (75)(b), "health benefit plan" means a policy or certificate that:

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

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

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

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

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

- (a) a professional service;
- (b) a personal service;
- (c) a facility;
- (d) equipment;
- (e) a device;
- (f) supplies; or
- (g) medicine.

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

providing:

- (i) a health care benefit; or
- (ii) payment of an incurred health care expense.
- (b) "Health care insurance" or "health insurance" does not include accident and health

insurance providing a benefit for:

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

another type of policy.

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

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

~~(79)~~ (80) "Indemnity" means the payment of an amount to offset all or part of an

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insured loss.

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

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

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

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

- (a) property in transit on or over land;
- (b) property in transit over water by means other than boat or ship;
- (c) bailee liability;
- (d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and
- (e) personal and commercial property floaters.

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

- (a) an insurer is unable to pay its debts or meet its obligations as the debts and obligations mature;
- (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(8)(c); or
- (c) an insurer is determined to be hazardous under this title.

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

- (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or
 - (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.
- (b) "Insurance" includes:
- (i) a risk distributing arrangement providing for compensation or replacement for damages or loss through the provision of a service or a benefit in kind;
 - (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and
 - (iii) a plan in which the risk does not rest upon the person who makes an arrangement, but with a class of persons who have agreed to share the risk.

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

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

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

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

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

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

(c) providing an annuity:

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

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

and (3);

(d) providing the characteristic services of a motor club as outlined in Subsection ~~[(115)]~~ (116);

(e) providing another person with insurance;

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

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

(i) solicitation;

(ii) negotiation preliminary to execution;

(iii) execution of a contract of title insurance;

(iv) insuring; and

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

(h) transacting or proposing a life settlement; and

(i) doing, or proposing to do, any business in substance equivalent to Subsections ~~[(87)]~~ (88)(a) through (h) in a manner designed to evade this title.

~~[(88)]~~ (89) "Insurance consultant" or "consultant" means a person who:

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(a) advises another person about insurance needs and coverages;

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

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

~~[(89)]~~ (90) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

~~[(90)]~~ (91) (a) "Insurance producer" or "producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(b) (i) "Producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that insurer.

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

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

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

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

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

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

(i) a policyholder;

(ii) a subscriber;

(iii) a member; and

(iv) a beneficiary.

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

(i) applies only to this title; and

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

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

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- (i) a fraternal benefit society;
- (ii) an issuer of a gift annuity other than an annuity specified in Subsections 31A-22-1305(2) and (3);
- (iii) a motor club;
- (iv) an employee welfare plan; and
- (v) a person purporting or intending to do an insurance business as a principal on that person's own account.

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

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

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

- (a) offered in connection with an extension of credit; and
- (b) that provides indemnity if the debtor is involuntarily unemployed for payments coming due on a:

- (i) specific loan; or
- (ii) credit transaction.

~~[(95)]~~ (96) "Large employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

- (a) employed an average of at least 51 eligible employees on each business day during the preceding calendar year; and
- (b) employs at least two employees on the first day of the plan year.

~~[(96)]~~ (97) "Late enrollee," with respect to an employer health benefit plan, means an individual whose enrollment is a late enrollment.

~~[(97)]~~ (98) "Late enrollment," with respect to an employer health benefit plan, means enrollment of an individual other than:

- (a) on the earliest date on which coverage can become effective for the individual under the terms of the plan; or
- (b) through special enrollment.

~~[(98)]~~ (99) (a) Except for a retainer contract or legal assistance described in Section 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a specified legal expense.

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

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

~~[(99)]~~ (100) (a) "Liability insurance" means insurance against liability:

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

(A) Subsection ~~[(109)]~~ (110) for medical malpractice insurance;

(B) Subsection ~~[(136)]~~ (137) for professional liability insurance; and

(C) Subsection ~~[(170)]~~ (171) for workers' compensation insurance;

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

(A) Subsection ~~[(109)]~~ (110) for medical malpractice insurance;

(B) Subsection ~~[(136)]~~ (137) for professional liability insurance; and

(C) Subsection ~~[(170)]~~ (171) for workers' compensation insurance;

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

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

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

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

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

(b) "Liability insurance" includes:

(i) vehicle liability insurance;

(ii) residential dwelling liability insurance; and

(iii) making inspection of, and issuing a certificate of inspection upon, an elevator, boiler, machinery, or apparatus of any kind when done in connection with insurance on the elevator, boiler, machinery, or apparatus.

~~[(100)]~~ (101) (a) "License" means authorization issued by the commissioner to engage

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in an activity that is part of or related to the insurance business.

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

~~(101)~~ (102) (a) "Life insurance" means:

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

(b) The business of life insurance includes:

- (i) granting a death benefit;
- (ii) granting an annuity benefit;
- (iii) granting an endowment benefit;
- (iv) granting an additional benefit in the event of death by accident;
- (v) granting an additional benefit to safeguard the policy against lapse; and
- (vi) providing an optional method of settlement of proceeds.

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

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

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

- (a) credit life;
- (b) credit accident and health;
- (c) credit property;
- (d) credit unemployment;
- (e) involuntary unemployment;
- (f) mortgage life;
- (g) mortgage guaranty;
- (h) mortgage accident and health;
- (i) guaranteed automobile protection; and
- (j) another form of insurance offered in connection with an extension of credit that:
 - (i) is limited to partially or wholly extinguishing the credit obligation; and
 - (ii) the commissioner determines by rule should be designated as a form of limited line credit insurance.

~~(104)~~ (105) "Limited line credit insurance producer" means a person who sells,

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solicits, or negotiates one or more forms of limited line credit insurance coverage to an individual through a master, corporate, group, or individual policy.

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

- (a) bail bond;
- (b) limited line credit insurance;
- (c) legal expense insurance;
- (d) motor club insurance;
- (e) car rental related insurance;
- (f) travel insurance;
- (g) crop insurance;
- (h) self-service storage insurance;
- (i) guaranteed asset protection waiver; and
- (j) another form of limited insurance that the commissioner determines by rule should

be designated a form of limited line insurance.

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

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

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

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

- (i) in a setting other than an acute care unit of a hospital;
- (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - (A) expenses incurred;
 - (B) indemnity;
 - (C) prepayment; or
 - (D) another method;
- (iii) for one or more necessary or medically necessary services that are:
 - (A) diagnostic;
 - (B) preventative;
 - (C) therapeutic;

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- (D) rehabilitative;
- (E) maintenance; or
- (F) personal care; and
- (iv) that may be issued by:
 - (A) an insurer;
 - (B) a fraternal benefit society;
 - (C) (I) a nonprofit health hospital; and
 - (II) a medical service corporation;
 - (D) a prepaid health plan;
 - (E) a health maintenance organization; or
 - (F) an entity similar to the entities described in Subsections [~~(108)~~] (109)(a)(iv)(A)

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

- (b) "Long-term care insurance" includes:
 - (i) any of the following that provide directly or supplement long-term care insurance:
 - (A) a group or individual annuity or rider; or
 - (B) a life insurance policy or rider;
 - (ii) a policy or rider that provides for payment of benefits on the basis of:
 - (A) cognitive impairment; or
 - (B) functional capacity; or
 - (iii) a qualified long-term care insurance contract.
- (c) "Long-term care insurance" does not include:
 - (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
 - (ii) basic hospital expense coverage;
 - (iii) basic medical/surgical expense coverage;
 - (iv) hospital confinement indemnity coverage;
 - (v) major medical expense coverage;
 - (vi) income replacement or related asset-protection coverage;
 - (vii) accident only coverage;
 - (viii) coverage for a specified:
 - (A) disease; or

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- (B) accident;
- (ix) limited benefit health coverage; or
- (x) a life insurance policy that accelerates the death benefit to provide the option of a

lump sum payment:

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

- (I) benefits; or
- (II) eligibility; and

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

- (I) terminal illness;
- (II) medical conditions requiring extraordinary medical intervention; or
- (III) permanent institutional confinement.

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

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

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

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

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

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

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

- (a) licensed under:
 - (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
 - (ii) Chapter 11, Motor Clubs; or
 - (iii) Chapter 14, Foreign Insurers; and
- (b) that promises for an advance consideration to provide for a stated period of time

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one or more:

- (i) legal services under Subsection 31A-11-102(1)(b);
- (ii) bail services under Subsection 31A-11-102(1)(c); or
- (iii) (A) trip reimbursement;
- (B) towing services;
- (C) emergency road services;
- (D) stolen automobile services;
- (E) a combination of the services listed in Subsections [~~(115)~~] (116)(b)(iii)(A) through

(D); or

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

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

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

(a) that is issued by an insurer; and

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

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

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

(a) ships or hulls of ships;

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

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

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

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

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

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

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

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

(b) receives:

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

(ii) another government health benefit.

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

(a) an individual;

(b) a partnership;

(c) a corporation;

(d) an incorporated or unincorporated association;

(e) a joint stock company;

(f) a trust;

(g) a limited liability company;

(h) a reciprocal;

(i) a syndicate; or

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

~~[(125)]~~ (126) "Personal lines insurance" means property and casualty insurance coverage sold for primarily noncommercial purposes to:

(a) an individual; or

(b) a family.

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

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

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

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

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

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

- (i) the year used to determine deductibles or limits;
- (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

or

(iii) the employer's taxable year if:

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

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

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

(c) in a case not described in Subsection [~~(127)~~] (128)(a) or (b), the calendar year.

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

(i) purports to be an enforceable contract; and

(ii) memorializes in writing some or all of the terms of an insurance contract.

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

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

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

(iii) a corporation licensed under:

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

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

(c) "Policy" does not include:

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

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

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

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

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

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

(a) means a condition that was present before the effective date of coverage, whether or

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not medical advice, diagnosis, care, or treatment was recommended or received before that day;
and

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

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

(b) "Premium" includes, however designated:

- (i) an assessment;
- (ii) a membership fee;
- (iii) a required contribution; or
- (iv) monetary consideration.

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

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

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

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

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

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

- (i) from all hazards or causes; and
- (ii) against loss consequential upon the loss or damage including vehicle

comprehensive and vehicle physical damage coverages.

(b) "Property insurance" does not include:

- (i) inland marine insurance; and
- (ii) ocean marine insurance.

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

- (a) an individual or group insurance contract that meets the requirements of Section

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7702B(b), Internal Revenue Code; or

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

(i) (A) by rider; or

(B) as a part of the contract; and

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

Code.

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

(a) is:

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

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

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

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

(i) the commissioner by rule; or

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

Commissioners.

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

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

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

(A) a single number; or

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

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

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

~~[(141)]~~ (142) (a) Except as provided in Subsection ~~[(141)]~~ (142)(b), "rate service

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organization" means a person who assists an insurer in rate making or filing by:

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

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

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

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

- (a) a manual of rates;
- (b) a classification;
- (c) a rate-related underwriting rule; and
- (d) a rating formula that describes steps, policies, and procedures for determining

initial and renewal policy premiums.

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

(a) the date delivered to and stamped received by the department, if delivered in person;

- (b) the post mark date, if delivered by mail;
- (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- (d) the received date recorded on an item delivered, if delivered by:

- (i) facsimile;
- (ii) email; or
- (iii) another electronic method; or

(e) a date specified in:

- (i) a statute;
- (ii) a rule; or
- (iii) an order.

~~[(144)]~~ (145) "Reciprocal" or "interinsurance exchange" means an unincorporated association of persons:

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

on each other.

~~[(145)]~~ (146) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

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

~~[(146)]~~ (147) "Reinsurer" means a person licensed in this state as an insurer with the authority to assume reinsurance.

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

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

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

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

- (a) an insurance policy; or
- (b) an insurance certificate.

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

- (i) note;
- (ii) stock;
- (iii) bond;
- (iv) debenture;
- (v) evidence of indebtedness;
- (vi) certificate of interest or participation in a profit-sharing agreement;
- (vii) collateral-trust certificate;
- (viii) preorganization certificate or subscription;

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- (ix) transferable share;
 - (x) investment contract;
 - (xi) voting trust certificate;
 - (xii) certificate of deposit for a security;
 - (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;
 - (xiv) commodity contract or commodity option;
 - (xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections [~~(150)~~] (151)(a)(i) through (xiv); or
 - (xvi) another interest or instrument commonly known as a security.
- (b) "Security" does not include:
- (i) any of the following under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period:
 - (A) insurance;
 - (B) an endowment policy; or
 - (C) an annuity contract; or
 - (ii) a burial certificate or burial contract.
- [~~(151)~~] (152) "Secondary medical condition" means a complication related to an exclusion from coverage in accident and health insurance.
- [~~(152)~~] (153) (a) "Self-insurance" means an arrangement under which a person provides for spreading its own risks by a systematic plan.
- (b) Except as provided in this Subsection [~~(152)~~] (153), "self-insurance" does not include an arrangement under which a number of persons spread their risks among themselves.
- (c) "Self-insurance" includes:
- (i) an arrangement by which a governmental entity undertakes to indemnify an employee for liability arising out of the employee's employment; and
 - (ii) an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk that is related to the relationship or employment.
- (d) "Self-insurance" does not include an arrangement with an independent contractor.

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~~[(153)]~~ (154) "Sell" means to exchange a contract of insurance:

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

~~[(154)]~~ (155) "Short-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designed to provide coverage that is similar to long-term care insurance, but that provides coverage for less than 12 consecutive months for each covered person.

~~[(155)]~~ (156) "Significant break in coverage" means a period of 63 consecutive days during each of which an individual does not have creditable coverage.

~~[(156)]~~ (157) "Small employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

- (a) employed an average of at least two employees but not more than 50 eligible employees on each business day during the preceding calendar year; and
- (b) employs at least two employees on the first day of the plan year.

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

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

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

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

- (a) a guarantee against loss or damage resulting from the failure of a principal to pay or perform the principal's obligations to a creditor or other obligee;
- (b) bail bond insurance; and
- (c) fidelity insurance.

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

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

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

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

(c) "Excess surplus" means:

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

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

(I) 2.5; and

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

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

(I) 3.0; and

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

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

(A) 1.5; and

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

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

(a) a union on behalf of its members;

(b) a person administering a:

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

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- (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
- (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- (c) an employer on behalf of the employer's employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;
- (d) an insurer licensed under the following, but only for a line of insurance for which the insurer holds a license in this state:

- (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
- (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- (iv) Chapter 9, Insurance Fraternal; or
- (v) Chapter 14, Foreign Insurers; or
- (e) a person:

- (i) licensed or exempt from licensing under:

(A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries; or

- (B) Chapter 26, Insurance Adjusters; and

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(166)]~~ (167) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

~~[(167)]~~ (168) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(137)]~~ (138).

~~[(168)]~~ (169) "Voting security" means a security with voting rights, and includes a security convertible into a security with a voting right associated with the security.

~~[(169)]~~ (170) "Waiting period" for a health benefit plan means the period that must pass before coverage for an individual, who is otherwise eligible to enroll under the terms of the health benefit plan, can become effective.

~~[(170)]~~ (171) "Workers' compensation insurance" means:

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

(i) a compensable accidental injury; and

(ii) occupational disease disability;

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

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

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

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

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

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

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

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

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

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

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

(a) enforcing the commissioner's order;

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

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

(c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each

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day the failure to comply continues after the filing of the complaint until judgment is rendered.

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

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

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

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

(b) the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures, as prescribed in Subsection (2)(c), until the person complies.

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

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

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

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

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

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

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

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

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

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

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

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

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(i) intentionally violates:

(A) an insurance statute of this state; or

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

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

(A) an insurance statute of this state; or

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

(iii) intentionally aids any person in violating:

(A) an insurance statute of this state; or

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

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

(i) \$10,000 if a corporation; or

(ii) \$5,000 if a person other than a corporation.

(c) If the person is an individual, the person may, in addition, be imprisoned for up to one year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Notwithstanding the other provisions of this chapter, to the extent provided in this part, the commissioner shall administer and enforce the provisions in this title related to:

- (a) title insurance; and
- (b) escrow conducted by a title licensee or title insurer.

(2) The commission shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to Subsection (3), make rules for the administration of the provisions in this title related to title insurance including rules related to:

(i) rating standards and rating methods for a title licensee, as provided in Section 31A-19a-209;

(ii) the licensing for a title licensee, including the licensing requirements of [~~Sections 31A-23a-203 and~~] Section 31A-23a-204;

(iii) continuing education requirements of Section 31A-23a-202;

(iv) examination procedures, after consultation with the commissioner and the commissioner's test administrator when required by Section 31A-23a-204; and

(v) standards of conduct for a title licensee;

(b) concur in the issuance and renewal of a license in accordance with Section 31A-23a-105 or 31A-26-203;

(c) in accordance with Section 31A-3-103, establish, with the concurrence of the commissioner, the fees imposed by this title on a title licensee;

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(d) in accordance with Section 31A-23a-415 determine, after consulting with the commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

(e) conduct an administrative hearing not delegated by the commission to an administrative law judge related to the:

(i) licensing of an applicant;

(ii) conduct of a title licensee; or

(iii) approval of a continuing education program required by Section 31A-23a-202;

(f) with the concurrence of the commissioner, approve a continuing education program required by Section 31A-23a-202;

(g) with the concurrence of the commissioner, impose a penalty:

(i) under this title related to:

(A) title insurance; or

(B) escrow conducted by a title licensee;

(ii) after investigation by the commissioner in accordance with Part 3, Procedures and Enforcement; and

(iii) that is enforced by the commissioner;

(h) advise the commissioner on the administration and enforcement of any matter affecting the title insurance industry;

(i) advise the commissioner on matters affecting the commissioner's budget related to title insurance; and

(j) perform other duties as provided in this title.

(3) The commission may make a rule under this title only if at the time the commission files its proposed rule and rule analysis with the Division of Administrative Rules in accordance with Section 63G-3-301, the commission provides the Real Estate Commission that same information.

(4) (a) The commissioner shall annually report the information described in Subsection (4)(b) in writing to:

(i) the commission; and

(ii) the Business and Labor Interim Committee.

(b) The information required to be reported under this Subsection (4):

(i) may not identify a person; and

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(ii) shall include:

(A) the number of complaints the commissioner receives with regard to transactions involving title insurance or a title licensee during the calendar year immediately preceding the report;

(B) the type of complaints described in Subsection (4)(b)(ii)(A); and

(C) for each complaint described in Subsection (4)(b)(ii)(A):

(I) any action taken by the commissioner with regard to the complaint; and

(II) the time-period beginning the day on which a complaint is made and ending the day on which the commissioner determines it will take no further action with regard to the complaint.

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

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

(1) As used in this section:

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

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

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

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

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

(A) episodic limits;

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(B) inpatient or outpatient service limits; or

(C) maximum out-of-pocket limits.

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

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

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

(A) a marital or family problem;

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

(C) a conduct disorder;

(D) a chronic adjustment disorder;

(E) a psychosexual disorder;

(F) a chronic organic brain syndrome;

(G) a personality disorder;

(H) a specific developmental disorder or learning disability; or

(I) an intellectual disability.

(e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer that it insures or seeks to insure a choice between:

(i) (A) catastrophic mental health coverage; or

(B) federally qualified mental health coverage as described in Subsection (3); and

(ii) 50/50 mental health coverage.

(b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:

(i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels that exceed the minimum requirements of this section; or

(ii) coverage that excludes benefits for mental health conditions.

(c) A small employer may, at its option, regardless of the employer's previous coverage for mental health conditions, choose either:

(i) coverage offered under Subsection (2)(a)(i);

(ii) 50/50 mental health coverage; or

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(iii) coverage offered under Subsection (2)(b).

(d) An insurer is exempt from the 30% index rating restriction in Section 31A-30-106.1 and, for the first year only that the employer chooses coverage that meets or exceeds catastrophic mental health coverage [~~is chosen~~], the 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) An insurer shall offer a large employer mental health and substance use disorder benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec. 300gg-26, and federal regulations adopted pursuant to that act.

(4) (a) An insurer may provide catastrophic mental health coverage to a small employer through a managed care organization or system in a manner consistent with Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the insurance policy uses a managed care organization or system for the treatment of physical health conditions.

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

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

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

unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

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

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a mental health condition shall be rendered:

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

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(ii) in a health care facility:

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

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

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

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

(5) The commissioner may prohibit an insurance policy that provides mental health coverage in a manner that is inconsistent with this section.

(6) The commissioner shall:

(a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to ensure compliance with this section; and

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

(i) no mental health coverage;

(ii) 50/50 mental health coverage;

(iii) catastrophic mental health coverage; and

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

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

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

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

(1) As used in this section:

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

(A) denial of a benefit;

(B) reduction of a benefit;

(C) termination of a benefit; or

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

(ii) "Adverse benefit determination" includes:

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

(B) [~~with respect to individual or group health plans, and income replacement or~~

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~~disability income policies, a]~~ denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of a utilization review; ~~and] or~~

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

- (I) experimental;
- (II) investigational; or
- (III) not medically necessary or appropriate.

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

- (i) is a voluntary option for the resolution of an adverse benefit determination;
- (ii) is conducted at the discretion of the claimant;
- (iii) is conducted by an independent review organization designated by the insurer;
- (iv) renders an independent and impartial decision on an adverse benefit determination

submitted by an insured; and

(v) may not require the insured to pay a fee for requesting the independent review.

(c) "Independent review organization" means a person, subject to Subsection (6), who conducts an independent external review of adverse determinations.

(d) "Insured" is as defined in Section 31A-1-301 and includes a person who is authorized to act on the insured's behalf.

(e) "Insurer" is as defined in Section 31A-1-301 and includes:

- (i) a health maintenance organization; and
- (ii) a third party administrator that offers, sells, manages, or administers a health

insurance policy or health maintenance organization contract that is subject to this title.

(f) "Internal review" means the process an insurer uses to review an insured's adverse benefit determination before the adverse benefit determination is submitted for independent review.

(2) This section applies generally to health insurance policies, health maintenance organization contracts, and income replacement or disability income policies.

(3) (a) An insured may submit an adverse benefit determination to the insurer.

(b) The insurer shall conduct an internal review of the insured's adverse benefit determination.

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(c) An insured who disagrees with the results of an internal review may submit the adverse benefit determination for an independent review if the adverse benefit determination involves:

- (i) payment of a claim regarding medical necessity; or
- (ii) denial of a claim regarding medical necessity.

(4) The commissioner shall adopt rules that establish minimum standards for:

- (a) internal reviews;
- (b) independent reviews to ensure independence and impartiality;
- (c) the types of adverse benefit determinations that may be submitted to an independent

review; and

(d) the timing of the review process, including an expedited review when medically necessary.

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

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

(b) permitting an insurer to charge an insured for the internal review of an adverse benefit determination;

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

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

(i) an adverse decision resulting from an independent review, except that if the insurer is the party seeking legal redress, the insurer shall pay for the reasonable attorney fees of the insured related to the action and court costs; or

(ii) an adverse benefit determination or other claim that is not eligible for submission to independent review.

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

- (i) the insurer;
- (ii) the health plan;
- (iii) the health plan's fiduciary;
- (iv) the employer; or

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

(b) An independent review organization may not have a material professional, familial, or financial conflict of interest with:

(i) the health plan;

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

(iii) the enrollee;

(iv) the enrollee's health care provider;

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

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

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

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

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

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

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

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

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

(b) The uniform application form:

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

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

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

(i) information that identifies the employee;

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

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

(3) Notwithstanding the requirements of Subsection (2)(a), the uniform application and uniform waiver of coverage forms may, if the combination or modification is approved by the

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commissioner, be combined or modified to facilitate a more efficient and consumer friendly experience for:

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

(b) insurers using electronic applications.

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

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

(i) accept and process an electronic submission of the uniform application or uniform waiver from the Health Insurance Exchange using the electronic standards adopted pursuant to Section 63M-1-2506;

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

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

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

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

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

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

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

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

(c) wellness programs and incentives;

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

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

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

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

(8) (a) The commissioner may request information from an insurer under Section 31A-22-613.5 to verify the data submitted to the [~~Insurance Department~~] department and to the Health Insurance Exchange.

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

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

31A-23a-101. Purposes.

The purposes of this chapter include:

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

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

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

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

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

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

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

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31A-23a-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

(a) maintains the insurance producer's principal:

(i) place of residence; or

(ii) place of business; and

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

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

(a) a risk retention group as defined in:

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

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

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

(b) a residual market pool;

(c) a joint underwriting authority or association; and

(d) a captive insurer.

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

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

(i) manages all or part of the insurance business of an insurer, including the

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management of a separate division, department, or underwriting office;

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

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

(A) with or without the authority;

(B) separately or together with an affiliate; and

(C) directly or indirectly; and

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

(B) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (6)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

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

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

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

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

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

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(7) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning a substantive benefit, term, or condition of the contract if the person engaged in that act:

(a) sells insurance; or

(b) obtains insurance from insurers for purchasers.

(8) "Reinsurance intermediary" means:

(a) a reinsurance intermediary-broker; or

(b) a reinsurance intermediary-manager.

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(9) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(10) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (10)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

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

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

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

(B) is under common control with the reinsurer;

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

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

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

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

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

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

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

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

(13) "Solicit" means:

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- (a) attempting to sell insurance;
 - (b) asking or urging a person to apply for:
 - (i) a particular kind of insurance; and
 - (ii) insurance from a particular insurance company;
 - (c) advertising insurance, including advertising for the purpose of obtaining leads for the sale of insurance; or
 - (d) holding oneself out as being in the insurance business.
- (14) "Terminate" means:
- (a) the cancellation of the relationship between:
 - (i) an individual licensee or agency licensee and a particular insurer; or
 - (ii) an individual licensee and a particular agency licensee; or
 - (b) the termination of:
 - (i) an individual licensee's or agency licensee's authority to transact insurance on behalf of a particular insurance company; or
 - (ii) an individual licensee's authority to transact insurance on behalf of a particular agency licensee.
- (15) "Title marketing representative" means a person who:
- (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:
 - (i) title insurance; or
 - (ii) escrow services; and
 - (b) does not have a search or escrow license as provided in Section 31A-23a-106.
- (16) "Uniform application" means the version of the National Association of Insurance Commissioners' uniform application for resident and nonresident producer licensing at the time the application is filed.
- (17) "Uniform business entity application" means the version of the National Association of Insurance Commissioners' uniform business entity application for resident and nonresident business entities at the time the application is filed.

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

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

- (1) (a) Unless exempted from the licensing requirement under Section 31A-23a-201 or 31A-23a-207, a person may not perform, offer to perform, or advertise any service as a

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producer, surplus lines producer, limited line producer, [~~customer service representative,~~] consultant, managing general agent, or reinsurance intermediary in Utah, without a valid individual or agency license issued under this chapter.

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

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

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

(3) An insurance contract is not invalid as a result of a violation of this section.

Section 10. Section **31A-23a-104** is amended to read:

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

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

(a) producer;

(b) surplus lines producer;

~~[(b)]~~ (c) limited line producer;

~~[(c)]~~ ~~[(d)]~~ ~~customer service representative,~~]

~~[(d)]~~ ~~[(e)]~~ consultant;

~~[(e)]~~ ~~[(f)]~~ managing general agent; or

~~[(f)]~~ ~~[(g)]~~ reinsurance intermediary.

(2) (a) Subject to Subsection (2)(b), to obtain or renew an individual license, an individual shall:

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

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

(A) is denied; or

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

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

(i) information about the applicant's identity;

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- (ii) the applicant's Social Security number;
 - (iii) the applicant's personal history, experience, education, and business record;
 - (iv) whether the applicant is 18 years of age or older;
 - (v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23a-105 or 31A-23a-111;
 - (vi) if the application is for a resident individual producer license, certification that the applicant complies with Section 31A-23a-203.5; and
 - (vii) any other information the commissioner reasonably requires.
- (3) The commissioner may require a document reasonably necessary to verify the information contained in an application filed under this section.

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

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

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

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

(A) is denied; or

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

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

(i) information about the applicant's identity;

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

(iii) the designated responsible licensed producer;

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

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

(vi) any other information the commissioner reasonably requires.

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

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

(1) (a) The commissioner shall issue or renew a license to a person described in

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Subsection (1)(b) to act as:

- (i) a producer;
- (ii) a surplus lines producer;
- ~~[(ii)]~~ (iii) a limited line producer;
- ~~[(iii)]~~ ~~{(iv)}~~ ~~a customer service representative;~~
- ~~{(iv)}~~ ~~{(v)}~~ a consultant;
- ~~{(v)}~~ ~~{(vi)}~~ a managing general agent; or
- ~~{(vi)}~~ ~~{(vii)}~~ a reinsurance intermediary.

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

- (i) satisfies the application requirements under Section 31A-23a-104;
- (ii) satisfies the character requirements under Section 31A-23a-107;
- (iii) satisfies any applicable continuing education requirements under Section 31A-23a-202;
- (iv) satisfies any applicable examination requirements under Section 31A-23a-108;
- (v) satisfies any applicable training period requirements under Section 31A-23a-203;
- (vi) if an applicant for a resident individual producer license, certifies that, to the extent applicable, the applicant:
 - (A) is in compliance with Section 31A-23a-203.5; and
 - (B) will maintain compliance with Section 31A-23a-203.5 during the period for which the license is issued or renewed;
- (vii) has not committed an act that is a ground for denial, suspension, or revocation as provided in Section 31A-23a-111;
- (viii) if a nonresident:
 - (A) complies with Section 31A-23a-109; and
 - (B) holds an active similar license in that person's state of residence;
- (ix) if an applicant for a title insurance producer license, satisfies the requirements of ~~[Sections 31A-23a-203 and]~~ Section 31A-23a-204;
- (x) if an applicant for a license to act as a life settlement provider or life settlement producer, satisfies the requirements of Section 31A-23a-117; and

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(xi) pays the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for a pending:

(A) individual or agency producer license;

(B) surplus lines producer license;

~~[(B)]~~ (C) limited line producer license;

~~[(C)]~~ ~~[(D)]~~ customer service representative license;]

~~[(D)]~~ ~~[(E)]~~ consultant license;

~~[(E)]~~ ~~[(F)]~~ managing general agent license; or

~~[(F)]~~ ~~[(G)]~~ reinsurance intermediary license; or

(ii) a licensed:

(A) individual or agency producer;

(B) surplus lines producer;

~~[(B)]~~ (C) limited line producer;

~~[(C)]~~ ~~[(D)]~~ customer service representative;]

~~[(D)]~~ ~~[(E)]~~ consultant;

~~[(E)]~~ ~~[(F)]~~ managing general agent; or

~~[(F)]~~ ~~[(G)]~~ reinsurance intermediary.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) an administrative action taken against the person, including a denial of a new or renewal license application:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) a criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person files the application for an individual or agency license; and

(B) for an action or prosecution that occurs on or after the day on which the person

files the application:

(I) for an administrative action, within 30 days of the final disposition of the administrative action; or

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(II) for a criminal prosecution, within 30 days of the initial appearance before a court;
and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3) (a) The department may require a person applying for a license or for consent to engage in the business of insurance to submit to a criminal background check as a condition of receiving a license or consent.

(b) A person, if required to submit to a criminal background check under Subsection (3)(a), shall:

(i) submit a fingerprint card in a form acceptable to the department; and

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(c) For a person who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(d) Information obtained by the department from the review of criminal history records received under this Subsection (3) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-23a-107 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-23a-107; and

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

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

(i) pay to the Department of Public Safety the costs incurred by the Department of

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Public Safety in providing the department criminal background information under Subsection (3)(c)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(c)(ii); and

(iii) charge the person applying for a license or for consent to engage in the business of insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

(4) To become a resident licensee in accordance with Section 31A-23a-104 and this section, a person licensed as one of the following in another state who moves to this state shall apply within 90 days of establishing legal residence in this state:

(a) insurance producer;

(b) surplus lines producer;

~~[(b)] (c)~~ limited line producer;

~~[(c)] (d)~~ customer service representative;]

~~[(d)] (e)~~ consultant;

~~[(e)] (f)~~ managing general agent; or

~~[(f)] (g)~~ reinsurance intermediary.

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

(i) fails to satisfy the requirements as set forth in this section; or

(ii) commits an act that is grounds for denial, suspension, or revocation as set forth in Section 31A-23a-111.

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

(i) producer;

(ii) surplus lines producer;

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

~~[(iii)] (iv)~~ customer service representative;]

~~[(iv)] (v)~~ consultant;

~~[(v)] (vi)~~ managing general agent; or

~~[(vi)] (vii)~~ reinsurance intermediary.

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(6) Notwithstanding the other provisions of this section, the commissioner may:

(a) issue a license to an applicant for a license for a title insurance line of authority only with the concurrence of the Title and Escrow Commission; and

(b) renew a license for a title insurance line of authority only with the concurrence of the Title and Escrow Commission.

Section 12. Section **31A-23a-106** is amended to read:

31A-23a-106. License types.

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

(b) A license type and a line of authority pertaining to a license type describe the type of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license type is intended to describe the matters to be considered under any education, examination, and training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and 31A-23a-203.

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

(i) life insurance, including a nonvariable contract;

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

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

(iv) property insurance;

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

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

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

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

(C) title marketing representative only; and

(vii) personal lines insurance[; ~~and~~].

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

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

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

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

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

- (i) limited line credit insurance;
- (ii) travel insurance;
- (iii) motor club insurance;
- (iv) car rental related insurance;
- (v) legal expense insurance;
- (vi) crop insurance;
- (vii) self-service storage insurance;
- (viii) bail bond producer; and
- (ix) guaranteed asset protection waiver.

~~[(c)]~~ ~~[(d)]~~ A customer service representative license type includes the following lines of authority, if held by the customer service representative's ~~{licensed producer, surplus lines producer, or consultant employer [producer]:~~

~~_____} employer producer:]~~

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

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

~~[(iii) property insurance;]~~

~~[(iv) casualty insurance, including a surety or other bond; { and}]~~

~~[(v) personal lines insurance {[]; and} {}]~~

~~[(vi) surplus lines, if the employer producer has the property or casualty or both lines of authority.]~~

~~{}(d){}(e)}~~ A consultant license type includes the following lines of authority:

- (i) life insurance, including a nonvariable contract;
- (ii) variable contracts, including variable life and annuity, if the consultant has the life

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insurance line of authority;

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

(iv) property insurance;

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

(vi) personal lines insurance.

~~{}(e){}~~ ~~{}(f){}~~ A managing general agent license type includes the following lines of authority:

(i) life insurance, including a nonvariable contract;

(ii) variable contracts, including variable life and annuity, if the managing general agent has the life insurance line of authority;

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

(iv) property insurance;

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

(vi) personal lines insurance.

~~{}(f){}~~ ~~{}(g){}~~ A reinsurance intermediary license type includes the following lines of authority:

(i) life insurance, including a nonvariable contract;

(ii) variable contracts, including variable life and annuity, if the reinsurance intermediary has the life insurance line of authority;

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

(iv) property insurance;

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

(vi) personal lines insurance.

~~{}(g){}~~ ~~{}(h){}~~ A person who holds a license under Subsection (2)(a) ~~[], {}(d), {}(e),~~ ~~{} or {}(f), or (g)]~~ has the qualifications necessary to act as a holder of a license under

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~~Subsections (2)(b) and~~ Subsection (2)(c) and (d), except that the person may not act under Subsection (2)(~~b~~)(c)(viii) or (ix).

(3) (a) The commissioner may by rule recognize other producer, surplus lines producer, limited line producer, ~~customer service representative,~~ consultant, managing general agent, or reinsurance intermediary lines of authority as to kinds of insurance not listed under Subsections (2)(a) through ~~(f)(g)~~.

(b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and Escrow Commission may by rule, with the concurrence of the commissioner and subject to Section 31A-2-404, recognize other categories for a title insurance producer line of authority not listed under Subsection (2)(a)(vi).

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

~~(a) licensure as a registered agent or broker by the Financial Industry Regulatory Authority; and~~

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

(a) for a producer,

~~(i) licensure by the Financial Industry Regulatory Authority as a:~~

~~(A) registered securities broker-dealer; or~~

~~(B) securities agent; and~~

(i) for a securities broker-dealer agent, with a current registration with a securities broker-dealer; and

(b) for a consultant:

~~(i) registration with the Securities and Exchange Commission or licensure by the Utah Division of Securities as a:~~

~~(A) securities investment advisor; or~~

~~(B) securities investment advisor representative; and~~

~~(ii) for a securities advisor; or~~

(ii) investment advisor representative, with a current association with a securities an investment advisor.

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

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

31A-23a-107. Character requirements.

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

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

(2) (a) if a natural person, the applicant is competent and trustworthy; or~~;~~

(b) if the applicant is an agency~~;~~~~at~~;

(i) the partners, directors, or principal officers or persons having comparable powers are trustworthy~~;~~; and

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

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

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

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

31A-23a-108. Examination requirements.

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

(i) licenses under ~~[Subsections]~~ Subsection 31A-23a-106(2)~~(b)~~~~(c)~~ ~~and~~ ~~(c)~~ ~~(d)~~;

or

(ii) other limited line license lines of authority recognized by the commissioner or the Title and Escrow Commission by rule as provided in Subsection 31A-23a-106(3).

(b) The examination described in Subsection (1)(a):

(i) shall reasonably relate to the line of authority for which it is prescribed; and

(ii) may be administered by the commissioner or as otherwise specified by rule.

(2) The commissioner shall waive the requirement of an examination for a nonresident applicant who:

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- (a) applies for an insurance producer license in this state;
- (b) has been licensed for the same line of authority in another state; and
- (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant applies for an insurance producer license in this state; or
 - (ii) if the application is received within 90 days of the cancellation of the applicant's previous license:
 - (A) the prior state certifies that at the time of cancellation, the applicant was in good standing in that state; or
 - (B) the state's producer database records maintained by the National Association of Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or subsidiaries, indicates that the producer is or was licensed in good standing for the line of authority requested.
- (3) A nonresident producer licensee who moves to this state and applies for a resident license within 90 days of establishing legal residence in this state shall be exempt from any line of authority examination that the producer was authorized on the producer's nonresident producer license, except where the commissioner determines otherwise by rule.
- (4) This section's requirement may only be applied to applicants who are natural persons.

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

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

- (1) (a) If a nonresident license applicant has a valid producer, surplus lines producer, limited line producer, [~~customer service representative,~~] consultant, managing general agent, or reinsurance intermediary license from the nonresident license applicant's home state and the conditions of Subsection (1)(b) are met, the commissioner shall:
 - (i) waive [aH] the license requirements for a license under this chapter; and
 - (ii) issue the nonresident license applicant a nonresident license.
- (b) Subsection (1)(a) applies if:
 - (i) the nonresident license applicant:
 - (A) is licensed as a resident in the nonresident license applicant's home state at the time the nonresident license applicant applies for a nonresident producer, surplus lines producer, limited line producer, [~~customer service representative,~~] consultant, managing general agent, or

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reinsurance intermediary license;

(B) has submitted the proper request for licensure;

(C) has submitted to the commissioner:

(I) the application for licensure that the nonresident license applicant submitted to the applicant's home state; or

(II) a completed uniform application; and

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

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

(2) A nonresident applicant applying under Subsection (1) shall in addition to complying with all license requirements for a license under this chapter execute, in a form acceptable to the commissioner, an agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter related to the applicant's insurance activities in this state, on the basis of:

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

(b) service authorized:

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

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

(3) The commissioner may verify a producer's licensing status through the producer database maintained by:

(a) the National Association of Insurance Commissioners; or

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

(4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state solely on the fact that the person does not reside in this state.

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

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

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

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

(b) surrendered to the commissioner and accepted by the commissioner in lieu of

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administrative action;

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

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

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

Minors;

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

(e) voluntarily surrendered.

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

(a) a lapsed license; or

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

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

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act.

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

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

or

(b) the supporting license type:

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

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of

administrative action;

~~[(iii) the licensee dies or is adjudicated incompetent as defined under:]~~

~~[(A) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or]~~

~~[(B) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and~~

~~Minors;]~~

~~[(iv) lapsed]~~ (iii) lapses under Section 31A-23a-113; or

~~[(v) (iv) is voluntarily surrendered[-]; or~~

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

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

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

Minors.

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

(i) revoke:

(A) a license; or

(B) a line of authority;

(ii) suspend for a specified period of 12 months or less:

(A) a license; or

(B) a line of authority;

(iii) limit in whole or in part:

(A) a license; or

(B) a line of authority; or

(iv) deny a license application.

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

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

(ii) violates:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

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(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

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

(viii) has an officer who refuses to:

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

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

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

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

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

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

(xii) improperly withholds, misappropriates, or converts money or properties received in the course of doing insurance business;

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

(A) insurance contract;

(B) application for insurance; or

(C) life settlement;

(xiv) is convicted of a felony;

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

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

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

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

(xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

(xviii) forges another's name to:

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- (A) an application for insurance; or
 - (B) a document related to an insurance transaction;
 - (xix) improperly uses notes or another reference material to complete an examination for an insurance license;
 - (xx) knowingly accepts insurance business from an individual who is not licensed;
 - (xxi) fails to comply with an administrative or court order imposing a child support obligation;
 - (xxii) fails to:
 - (A) pay state income tax; or
 - (B) comply with an administrative or court order directing payment of state income tax;
 - (xxiii) violates or permits others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 [~~and 1034~~] and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or
 - (xxiv) engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public.
- (c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.
- (d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:
- (i) the individual;
 - (ii) the agency, if the agency:
 - (A) is reckless or negligent in its supervision of the individual; or
 - (B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or
 - (iii) (A) the individual; and
 - (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- (6) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:
- (a) the licensee's license is:

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- (i) revoked;
- (ii) suspended;
- (iii) limited;
- (iv) surrendered in lieu of administrative action;
- (v) lapsed; or
- (vi) voluntarily surrendered; and

(b) the licensee:

- (i) continues to act as a licensee; or
- (ii) violates the terms of the license limitation.

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

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

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

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

- (i) fraud;
- (ii) deceit;
- (iii) misrepresentation; or
- (iv) a violation of an insurance law or rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) military service;

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

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

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

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

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

(I) an examination requirement;

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

(III) continuing education requirements; or

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

(2) If a license issued under this chapter is voluntarily surrendered, the license or line of authority may be reinstated:

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

(b) no later than one year after the day on which the license is voluntarily surrendered.

(3) A voluntarily surrendered license that is reinstated during the license period set forth in Subsection (2) may not be reinstated until the person who voluntarily surrendered the

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license complies with any applicable continuing education requirements for the period during which the license was voluntarily surrendered.

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

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

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

(1) may not maintain an office independent of the customer service representative's licensed producer, surplus lines producer, or consultant employer for the purpose of conducting insurance activities;

(2) except as provided in Subsection (3), may not sell, solicit, negotiate, or bind coverage; and

(3) may provide a customer a quote on behalf of the customer service representative's licensed producer, surplus lines producer, or consultant employer.

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

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

(1) A producer is eligible to [~~add the surplus lines of authority to the person's producer's license~~] become a surplus lines producer only if the producer:

(a) has passed the applicable surplus lines producer examination;

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

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

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

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

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

(ii) after completing the training required by Subsection (3)(a)(i), completes a

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minimum of three hours of long-term care training during each subsequent two-year licensing period.

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

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

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

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

Section 20. Section ~~{31A-23a-205}~~31A-23a-206 is amended to read:

~~{~~ ~~31A-23a-205. Special requirements for bail bond producers and bail bond enforcement agents:~~

~~—— (1) As used in this section[, "bail]:~~

~~—— (a) "Bail bond producer" [and "bail] is as defined in Section 31A-35-102.~~

~~—— (b) "Bail enforcement agent" [have the same definitions as in Section 31A-35-102] is as defined in Section 53-11-102.~~

~~—— (2) A bail bond producer may not operate in this state without:~~

~~—— (a) an appointment from [one or more] an authorized bail bond surety [insurers or] insurer and a designation from a licensed bail bond [surety companies.] agency, if the bail bond producer submits bail bond business through an agency using a surety insurer; or~~

~~—— (b) designation from a licensed bail bond agency, if the bail bond producer submits bail bond business through an agency using real property or personal property or letter of credit backing.~~

~~—— (3) A bail bond enforcement agent may [not] only operate in this state [without an appointment from one or more] through a licensed bail bond [producers] agency.~~

~~——~~ Section 21. Section ~~31A-23a-206~~ is amended to read:

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

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

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

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~~[(a)] (i) ~~{securities}~~ broker-dealer; or~~

~~[(b)] (ii) ~~{securities}~~ broker-dealer agent[-]; and~~

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

~~(i) ~~{securities}~~ investment adviser; or~~

~~(ii) investment ~~{adviser; or~~~~

~~(ii) ~~securities investment adviser}~~ adviser representative.~~

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

Section ~~{22}~~21. Section **31A-23a-301** is amended to read:

31A-23a-301. Agency license.

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

(1) a producer;

(2) a surplus lines producer;

~~[(2)] (3) a limited line producer;~~

~~[(3)] (4) a consultant;~~

~~[(4)] (5) a managing general agent; or~~

~~[(5)] (6) a reinsurance intermediary.~~

Section ~~{23}~~22. Section **31A-23a-302** is amended to read:

31A-23a-302. Agency designations.

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

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

(a) a new designation; and

(b) a terminated designation.

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

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

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or

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

(A) a court;

(B) a government body; or

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

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

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

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

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

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

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

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

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

(i) the individual;

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(ii) the agency, if the agency:

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

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

(iii) (A) the individual; and

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

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

31A-23a-402.5. Inducements.

(1) (a) Except as provided in Subsection (2), a licensee under this title, or an officer or employee of a licensee, may not induce a person to enter into, continue, or terminate an insurance contract by offering a benefit that is not:

(i) specified in the insurance contract; or

(ii) directly related to the insurance contract.

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

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

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

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

(a) reducing premiums because of expense savings;

(b) providing to a policyholder or insured one or more incentives, as defined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to participate in a program or activity designed to reduce claims or claim expenses; or

(c) receiving premiums under an installment payment plan.

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

(a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not conditioned on the purchase of a particular insurance product;

(b) extending credit on a premium to the insured:

(i) without interest, for no more than 90 days from the effective date of the insurance

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contract;

(ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid balance after the time period described in Subsection (4)(b)(i); and

(iii) except that an installment or payroll deduction payment of premiums on an insurance contract issued under an insurer's mass marketing program is not considered an extension of credit for purposes of this Subsection (4)(b);

(c) preparing or conducting a survey that:

(i) is directly related to an accident and health insurance policy purchased from the licensee; or

(ii) is used by the licensee to assess the benefit needs and preferences of insureds, employers, or employees directly related to an insurance product sold by the licensee;

(d) providing limited human resource services that are directly related to an insurance product sold by the licensee, including:

(i) answering questions directly related to:

(A) an employee benefit offering or administration, if the insurance product purchased from the licensee is accident and health insurance or health insurance; and

(B) employment practices liability, if the insurance product offered by or purchased from the licensee is property or casualty insurance; and

(ii) providing limited human resource compliance training and education directly pertaining to an insurance product purchased from the licensee;

(e) providing the following types of information or guidance:

(i) providing guidance directly related to compliance with federal and state laws for an insurance product purchased from the licensee;

(ii) providing a workshop or seminar addressing an insurance issue that is directly related to an insurance product purchased from the licensee; or

(iii) providing information regarding:

(A) employee benefit issues;

(B) directly related insurance regulatory and legislative updates; or

(C) similar education about an insurance product sold by the licensee and how the insurance product interacts with tax law;

(f) preparing or providing a form that is directly related to an insurance product

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purchased from, or offered by, the licensee;

(g) preparing or providing documents directly related to a premium only cafeteria plan within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but not providing ongoing administration of a flexible spending account;

(h) providing enrollment and billing assistance, including:

(i) providing benefit statements or new hire insurance benefits packages; and

(ii) providing technology services such as an electronic enrollment platform or application system;

(i) communicating coverages in writing and in consultation with the insured and employees;

(j) providing employee communication materials and notifications directly related to an insurance product purchased from a licensee;

(k) providing claims management and resolution to the extent permitted under the licensee's license;

(l) providing underwriting or actuarial analysis or services;

(m) negotiating with an insurer regarding the placement and pricing of an insurance product;

(n) recommending placement and coverage options;

(o) providing a health fair or providing assistance or advice on establishing or operating a wellness program, but not providing any payment for or direct operation of the wellness program;

(p) providing COBRA and Utah mini-COBRA administration, consultations, and other services directly related to an insurance product purchased from the licensee;

(q) assisting with a summary plan description;

(r) providing information necessary for the preparation of documents directly related to the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as amended;

(s) providing information or services directly related to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services directly related to health care access, portability, and renewability when offered in connection with accident and health insurance sold by a licensee;

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- (t) sending proof of coverage to a third party with a legitimate interest in coverage;
 - (u) providing information in a form approved by the commissioner and directly related to determining whether an insurance product sold by the licensee meets the requirements of a third party contract that requires or references insurance coverage;
 - (v) facilitating risk management services directly related to the insurance product sold or offered for sale by the licensee, including:
 - (i) risk management;
 - (ii) claims and loss control services; and
 - (iii) risk assessment consulting;
 - (w) otherwise providing services that are legitimately part of servicing an insurance product purchased from a licensee; and
 - (x) providing other directly related services approved by the department.
- (5) An inducement prohibited under Subsection (1) includes a licensee, or an officer or employee of a licensee:
- (a) (i) providing a premium or commission rebate;
 - (ii) paying the salary of an employee of a person who purchases an insurance product from the licensee; or
 - (iii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, paying the salary for an onsite staff member to perform an act prohibited under Subsection (5)(b)(xii); or
 - (b) engaging in one or more of the following unless a fee is paid in accordance with Subsection (7):
 - (i) performing background checks of prospective employees;
 - (ii) providing legal services by a person licensed to practice law;
 - (iii) performing drug testing that is directly related to an insurance product purchased from the licensee;
 - (iv) preparing employer or employee handbooks, except that a licensee may:
 - (A) provide information for a medical benefit section of an employee handbook;
 - (B) provide information for the section of an employee handbook directly related to an employment practices liability insurance product purchased from the licensee; or
 - (C) prepare or print an employee benefit enrollment guide;

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(v) providing job descriptions, postings, and applications for a person that purchases an employment practices liability insurance product from the licensee;

(vi) providing payroll services;

(vii) providing performance reviews or performance review training;

(viii) providing union advice;

(ix) providing accounting services;

(x) providing data analysis information technology programs, except as provided in Subsection (4)(h)(ii);

(xi) providing administration of health reimbursement accounts or health savings accounts; or

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

(A) performing background checks of prospective employees;

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

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

(D) preparing employer or employee handbooks;

(E) providing job descriptions postings, and applications;

(F) providing payroll services;

(G) providing performance reviews or performance review training;

(H) providing union advice;

(I) providing accounting services;

(J) providing discrimination testing; or

(K) providing data analysis information technology programs.

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

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

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value of the item.

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

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

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

(a) the title insurance producer is licensed with:

(i) the title line of authority; and

(ii) the escrow subline of authority;

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

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

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

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

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

(i) is deposited:

(A) in a federally insured financial institution; and

(B) in a trust account that is separate from all other trust account money that is not related to real estate transactions;

(ii) is the property of the one or more persons entitled to the money under the provisions of the escrow; and

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

(e) earnings on money held in escrow may be paid out of the escrow account to any person in accordance with the conditions of the escrow;

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

(i) construction money; or

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

(g) the title insurance producer shall maintain a physical office in Utah staffed by a person with an escrow subline of authority who processes the escrow.

(2) Notwithstanding Subsection (1), a title insurance producer may engage in the escrow business if:

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(a) the escrow involves:

(i) a mobile home;

(ii) a grazing right;

(iii) a water right; or

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

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

(3) Money held in escrow:

(a) is not subject to any debts of the title insurance producer;

(b) may only be used to fulfill the terms of the individual escrow under which the money is accepted; and

(c) may not be used until the conditions of the escrow are met.

(4) Assets or property other than escrow money received by a title insurance producer in accordance with an escrow shall be maintained in a manner that will:

(a) reasonably preserve and protect the asset or property from loss, theft, or damages;

and

(b) otherwise comply with the general duties and responsibilities of a fiduciary or bailee.

(5) (a) A check from the trust account described in Subsection (1)(d) may not be drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account from which money is to be disbursed contains a sufficient credit balance consisting of collected and cleared money at the time the check is drawn, executed, or dated, or money is otherwise disbursed.

(b) As used in this Subsection (5), money is considered to be "collected and cleared," and may be disbursed as follows:

(i) cash may be disbursed on the same day the cash is deposited;

(ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

(iii) the proceeds of one or more of the following financial instruments may be disbursed on the same day the financial instruments are deposited if received from a single party to the real estate transaction and if the aggregate of the financial instruments for the real estate transaction is less than \$10,000:

(A) a cashier's check, certified check, or official check that is drawn on an existing

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account at a federally insured financial institution;

(B) a check drawn on the trust account of a principal broker or associate broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the title producer has reasonable and prudent grounds to believe sufficient money will be available from the trust account on which the check is drawn at the time of disbursement of proceeds from the title producer's escrow account;

(C) a personal check not to exceed \$500 per closing; or

(D) a check drawn on the escrow account of another title producer, if the title producer in the escrow transaction has reasonable and prudent grounds to believe that sufficient money will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of money from the escrow account of the title producer in the escrow transaction[~~;~~ ~~or~~].

~~[(E) a check issued by a farm credit service authorized under the Farm Credit Act of 1971, 12 U.S.C. Sec. 2001 et seq., as amended.]~~

(c) ~~[Money received from a financial instrument described in Subsection (5)(b)(iii)(B) or (C)]~~ A check or deposit not described in Subsection (5)(b) may be disbursed:

(i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.

(6) A title insurance producer shall maintain a record of a receipt or disbursement of escrow money.

(7) A title insurance producer shall comply with:

(a) Section 31A-23a-409;

(b) Title 46, Chapter 1, Notaries Public Reform Act; and

(c) any rules adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows.

(8) If a title insurance producer conducts a search for real estate located in the state, the title insurance producer shall conduct a minimum mandatory search, as defined by rule made by the Title and Escrow Commission, subject to Section 31A-2-404.

Section 25. Section **31A-23a-409** is amended to read:

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31A-23a-409. Trust obligation for money collected.

(1) (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to, received by, or collected by a licensee for forwarding to insurers or to insureds.

(b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust funds with:

(A) the licensee's own money; or

(B) money held in any other capacity.

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

(A) amounts necessary to pay bank charges; and

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

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

(d) (i) Unless money is sent to the appropriate payee by the close of the next business day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2).

(ii) Money deposited under this Subsection (1)(d) shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.

(2) Money required to be deposited under Subsection (1) shall be deposited:

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

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

(ii) has federal deposit insurance; and

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

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

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

(4) A trust account into which money is deposited may be interest bearing. The

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

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

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

(7) A nonresident licensee:

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

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

Section 26. Section **31A-23a-412** is amended to read:

31A-23a-412. Place of business and residence address -- Records.

(1) (a) A licensee under this chapter shall register and maintain with the commissioner:

(i) the address and telephone numbers of the licensee's principal place of business; and

(ii) a valid business email address at which the commissioner may contact the licensee.

(b) If a licensee is an individual, in addition to complying with Subsection (1)(a) the individual shall register and maintain with the commissioner the individual's residence address and telephone number.

(c) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:

(i) an address;

(ii) a telephone number; or

(iii) a business email address.

(2) (a) Except as provided under Subsection (3), a licensee under this chapter shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.

(b) The books and records described in Subsection (2)(a) shall:

(i) be in an organized form;

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(ii) be available to the commissioner for inspection upon reasonable notice; and

(iii) include all of the following:

(A) if the licensee is a producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary:

(I) a record of each insurance contract procured by or issued through the licensee, with the names of insurers and insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;

(II) the names of any other producers, surplus lines producers, limited line producers, consultants, managing general agents, or reinsurance intermediaries from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid; and

(III) a record of the consumer complaints forwarded to the licensee by an insurance regulator;

(B) if the licensee is a consultant, a record of each agreement outlining the work performed and the fee for the work; and

(C) any additional information which:

(I) is customary for a similar business; or

(II) may reasonably be required by the commissioner by rule.

(3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by on-line computer terminals located at the registered address.

(4) A licensee who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5).

(5) (a) The books and records maintained under Subsection (2) or Section 31A-23a-413 shall be available for the inspection of the commissioner during ~~at~~ the business hours for a period of time after the date of the transaction as specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.

(b) Discarding books and records after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

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Section 27. Section 31A-23a-504 is amended to read:

31A-23a-504. Sharing commissions.

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

- (i) a producer;
- (ii) a limited line producer;
- ~~[(iii)]~~ a customer service representative;
- ~~[(iv)]~~ (iii) a consultant;
- ~~[(v)]~~ (iv) a managing general agent; or
- ~~[(vi)]~~ (v) a reinsurance intermediary.

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

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

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

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

(3) This section does not prohibit:

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

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

- (i) the person is not licensed to sell insurance;
- (ii) the person does not sell or provide opinions or advice on the product; and

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(iii) the compensation does not depend on whether the referral results in a purchase or sale; or

(c) the payment or assignment of a commission, service fee, brokerage, or other valuable consideration to an agency or a person who does not sell, solicit, or negotiate insurance in this state, unless the payment would constitute an inducement or commission rebate under Section 31A-23a-402 or 31A-23a-402.5.

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

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

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

(5) This section does not apply to a bail bond producer or bail enforcement agent as defined in Section 31A-35-102.

Section ~~{27}~~28. Section **31A-25-203** is amended to read:

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

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

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

(d) if a nonresident, complies with Section 31A-25-206; and

(e) pays the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

- (i) an applicant for a third party administrator's license; or
- (ii) a licensed third party administrator.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

- (i) an administrative action taken against the person, including a denial of a new or

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renewal license application:

- (A) in another jurisdiction; or
- (B) by another regulatory agency in this state; and
- (ii) a criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person applies for a third party administrator's license; and

(B) if an action or prosecution occurs on or after the day on which the person applies

for a third party administrator license:

(I) for an administrative action, within 30 days of the final disposition of the administrative action; or

(II) for a criminal prosecution, within 30 days of the initial appearance before a court; and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3) (a) The department may require a person applying for a license or for consent to engage in the business of insurance to submit to a criminal background check as a condition of receiving a license or consent.

(b) A person, if required to submit to a criminal background check under Subsection (3)(a), shall:

(i) submit a fingerprint card in a form acceptable to the department; and

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(c) For a person who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request concerning a person applying for a third party administrator's license:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

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(d) Information obtained by the department from the review of criminal history records received under this Subsection (3) shall be used by the department for the purposes of:

- (i) determining if a person satisfies the character requirements under Section 31A-25-204 for issuance or renewal of a license;
- (ii) determining if a person has failed to maintain the character requirements under Section 31A-25-204; and
- (iii) preventing a person who violates the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~] Sec. 1033 [~~and 1034~~], from engaging in the business of insurance in the state.

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

- (i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(c)(i);
- (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(c)(ii); and
- (iii) charge the person applying for a license or for consent to engage in the business of insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

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

- (a) fails to satisfy the requirements of this section; or
- (b) commits an act that is a ground for denial, suspension, or revocation provided in Section 31A-25-208.

Section ~~{28}~~29. Section **31A-25-306** is amended to read:

31A-25-306. Payments by administrator.

~~[All claims paid by the]~~ An administrator shall pay a claim from ~~[funds]~~ money collected on behalf of the insurer ~~[shall be paid]~~ on drafts or checks as authorized by the insurer.

Section ~~{29}~~30. Section **31A-26-203** is amended to read:

31A-26-203. Adjuster's license required.

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(1) The commissioner shall issue a license to act as an independent adjuster or public adjuster to a person who, as to the license classification applied for under Section 31A-26-204:

(a) satisfies the character requirements under Section 31A-26-205;

(b) satisfies the applicable continuing education requirements under Section 31A-26-206;

(c) satisfies the applicable examination requirements under Section 31A-26-207;

(d) has not committed an act that is a ground for denial, suspension, or revocation provided for in Section 31A-26-213;

(e) if a nonresident, complies with Section 31A-26-208; and

(f) pays the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for:

(A) an independent adjuster's license; or

(B) a public adjuster's license;

(ii) a licensed independent adjuster; or

(iii) a licensed public adjuster.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) an administrative action taken against the person, including a denial of a new or renewal license application:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) a criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person applies for an adjustor's license; and

(B) if an action or prosecution occurs on or after the day on which the person applies for an adjustor's license:

(I) for an administrative action, within 30 days of the final disposition of the administrative action; or

(II) for a criminal prosecution, within 30 days of the initial appearance before a court;
and

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(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3) (a) The department may require a person applying for a license or for consent to engage in the business of insurance to submit to a criminal background check as a condition of receiving a license or consent.

(b) A person, if required to submit to a criminal background check under Subsection (3)(a), shall:

(i) submit a fingerprint card in a form acceptable to the department; and

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(c) For a person who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request concerning a person applying for an independent or public adjuster's license:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(d) Information obtained by the department from the review of criminal history records received under this Subsection (3) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-26-205 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-26-205; and

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

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

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection

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(3)(c)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(c)(ii); and

(iii) charge the person applying for a license or for consent to engage in the business of insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

(4) The commissioner may deny a license application to act as an independent adjuster or public adjuster to a person who, as to the license classification applied for under Section 31A-26-204:

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

(b) commits an act that is a ground for denial, suspension, or revocation provided for in Section 31A-26-213.

(5) Notwithstanding the other provisions of this section, the commissioner may:

(a) issue a license to an applicant for a license for a title insurance classification only with the concurrence of the Title and Escrow Commission; or

(b) renew a license for a title insurance classification only with the concurrence of the Title and Escrow Commission.

Section ~~{30}~~31. Section **31A-27-503** is amended to read:

31A-27-503. Commissioner's administrative actions.

(1) (a) The commissioner may take an action described in Subsection (1)(b) whenever the commissioner has reasonable cause to believe, and determines after a hearing that an insurer:

(i) has committed or engaged in an act, practice, or transaction that would subject the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

(ii) is committing or engaging in an act, practice, or transaction that would subject the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

(iii) is about to commit or engage in an act, practice, or transaction that would subject the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

~~or~~

(iv) is in or is about to be in a condition that would subject the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act~~[-];~~ or

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(v) is in hazardous financial condition or potentially hazardous financial condition, as defined by rule made under Subsection 31A-27a-101(3)(c).

(b) If the conditions of Subsection (1)(a) are met, the commissioner may make and serve upon the insurer and any other persons whose action or forbearance from action is reasonably necessary, those orders, other than a seizure order under Section 31A-27a-201, that are reasonably necessary to correct, eliminate, or remedy the act, practice, transaction, or condition described in Subsection (1)(a).

(c) The commissioner may issue an order for the insurer to submit to supervision by a supervisor appointed by the commissioner until the act, practice, transaction, or condition that is the ground for the order has been halted or corrected.

(2) (a) The commissioner may make and serve an order issued under Subsection (1) without notice and before a hearing if:

(i) the conditions of Subsection (1) are satisfied; and

(ii) it appears to the commissioner that irreparable harm to the property or business of the insurer or to the interests of its policyholders, creditors, or the public may occur unless the commissioner issues, with immediate effect, the order.

(b) The commissioner shall serve the insurer with an order described in this Subsection (2) and a notice of agency action, containing a statement of the reasons why irreparable harm is threatened unless the order is issued with immediate effect.

(3) (a) If the commissioner issues an order for supervision of an insurer under Subsection (1) or (2), the commissioner shall:

(i) notify the insurer that the insurer is under the supervision of the commissioner; and

(ii) explain the reasons for that supervision.

(b) During the period of supervision, the commissioner may prohibit the insurer from doing any of the following, without the prior approval of the commissioner or a supervisor appointed by the commissioner:

(i) transferring any of its assets or its business in force;

(ii) withdrawing funds from any of its bank accounts;

(iii) lending any of its funds;

(iv) investing any of its funds;

(v) transferring any of its property;

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(vi) incurring any debt, obligation, or liability other than in the ordinary and usual course of business; or

(vii) entering into any new reinsurance contract or treaty.

(4) (a) If the commissioner issues a summary order before a hearing under Subsection (2), the insurer may waive the commissioner's hearing and apply for immediate judicial relief by any remedy afforded by law, without first exhausting the insurer's administrative remedies.

(b) If the insurer has a hearing before the commissioner, the insurer and any person whose interests are substantially affected are entitled to judicial review of any order issued by the commissioner.

Section ~~{31}~~32. Section **31A-27a-101** is amended to read:

31A-27a-101. Title -- Construction -- Commissioner's powers.

(1) This chapter is known as the "Insurer Receivership Act."

(2) The proceedings authorized by this chapter may be applied to:

(a) all insurers and reinsurers:

(i) who are doing, or have done, an insurance business in this state; and

(ii) against whom claims arising from that business may exist;

(b) all insurers who have the appearance of or claim they do an insurance business in this state;

(c) all insurers who have insureds resident in this state; and

(d) all other persons organized or in the process of organizing to do an insurance business as an insurer in this state.

(3) This chapter shall be liberally construed to protect the interests of insureds, claimants, creditors, and the public generally through:

(a) early detection of any potentially hazardous condition in an insurer;

(b) prompt application of appropriate corrective measures;

(c) the commissioner making rules pertaining to Subsections (3)(a) and (b):

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

(ii) that are similar to those set forth in the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition of the National Association of Insurance Commissioners;

~~(c)~~ (d) improved methods for conserving and rehabilitating insurers;

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~~[(d)]~~ (e) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

~~[(e)]~~ (f) apportionment of any unavoidable loss in accordance with the statutory priorities set out in this chapter;

~~[(f)]~~ (g) lessening the problems of interstate receivership by:

(i) facilitating cooperation among states in delinquency proceedings; and

(ii) extending the scope of personal jurisdiction over debtors of the insurer outside this state;

~~[(g)]~~ (h) regulation of the business of insurance by the impact of the law relating to delinquency procedures and by substantive rules; and

~~[(h)]~~ (i) providing for a comprehensive scheme for the receivership of insurance companies and those subject to this chapter as part of the regulation of the business of insurance in this state.

(4) A proceeding in the case of insurer insolvency and delinquency are integral aspects of the business of insurance and are of vital public interest and concern.

(5) This chapter does not limit the powers granted the commissioner by other provisions of law.

(6) ~~[A#]~~ The powers and authority of a receiver under this chapter are:

(a) cumulative; and

(b) in addition to any power or authority available to a receiver under a law other than this chapter.

Section 33. Section 31A-27a-104 is amended to read:

31A-27a-104. Persons covered.

(1) This chapter applies to:

(a) an insurer who:

(i) is doing, or has done, an insurance business in this state; and

(ii) against whom a claim arising from that business may exist;

(b) a person subject to examination by the commissioner;

(c) an insurer who purports to do an insurance business in this state;

(d) an insurer who has an insured who is resident in this state; and

(e) in addition to Subsections (1)(a) through (d), a person doing business as follows:

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- (i) under Chapter 6a, Service Contracts;
- (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;
- (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;
- (iv) under Chapter 9, Insurance Fraternal;
- (v) under Chapter 11, Motor Clubs;
- (vi) under Chapter 13, Employee Welfare Funds and Plans;
- (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention

Groups;

- (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;
- (ix) under Chapter 37, Captive Insurance Companies Act;
- (x) a title insurance company;
- (xi) a prepaid health care delivery plan; and
- (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or doing insurance business, or in the process of organizing with the intent to do insurance business in this state.

(2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply to a person licensed by the insurance commissioner as one or more of the following in this state unless the person engages in the business of insurance as an insurer:

- (a) an insurance agency;
- (b) an insurance producer;
- (c) a limited line producer;
- ~~[(d)]~~ a customer service representative;
- ~~[(e)]~~ (d) an insurance consultant;
- ~~[(f)]~~ (e) a managing general agent;
- ~~[(g)]~~ (f) reinsurance intermediary;
- ~~[(h)]~~ (g) a title insurance producer;
- ~~[(i)]~~ (h) a third party administrator;
- ~~[(j)]~~ (i) an insurance adjuster;
- ~~[(k)]~~ (j) a life settlement provider; or
- ~~[(l)]~~ (k) a life settlement producer.

Section ~~{32}~~34. Section **31A-29-112** is amended to read:

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31A-29-112. Medicaid recipients.

(1) If authorized by federal statutes or rules, an individual receiving Medicaid benefits may continue to receive those benefits while satisfying the preexisting condition requirements established by Section 31A-29-113 and the terms of the pool policy issued under this chapter.

(2) If allowed by federal statute, federal regulation, state statute, or rule, the Department of Health shall allocate premiums paid to the pool by an individual receiving Medicaid benefits to that individual's spenddown for purposes of the Medicaid program.

(3) (a) If an individual continues to receive Medicaid benefits after the requirements for a preexisting condition are satisfied, the pool administrator may not issue a pool policy or allow that individual to receive any benefit from the pool.

(b) If an individual continues to receive Medicaid benefits when the requirements for a preexisting condition are satisfied, the pool administrator shall give any premiums collected by it during the preexisting conditions period to the Medicaid program.

(4) (a) If an enrollee becomes eligible to receive Medicaid benefits, the enrollee's coverage by the pool terminates as of the effective date of Medicaid coverage.

(b) The pool administrator shall:

(i) include a provision in the pool policy requiring an enrollee to provide written notice to the pool administration if the enrollee becomes covered by Medicaid; and

(ii) terminate an enrollee's coverage by the pool as of the effective date of the enrollee's Medicaid coverage when the pool administrator becomes aware that the enrollee is covered by Medicaid.

(5) If an individual terminates coverage under Medicaid and applies for coverage under a pool policy within [~~45~~] 62 days after terminating the coverage, the individual may begin coverage under a pool policy as of the date that Medicaid coverage terminated, if an individual meets the other eligibility requirements of the chapter and pays the required premium.

(6) Notwithstanding Subsections 31A-29-111(1)(b)(i) and (2)(b)(i), an individual is eligible for coverage by the pool if the requirements of Section 31A-29-111 are met and if:

(a) the individual's eligibility for Medicaid requires a spenddown, as defined by rule, that exceeds the premium for a pool policy; or

(b) the individual is eligible for the Primary Care Network program administered by the Department of Health.

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Section ~~{33}~~35. Section **31A-30-103** is amended to read:

31A-30-103. Definitions.

As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual approved by the commissioner that a covered carrier is in compliance with Sections 31A-30-106 and 31A-30-106.1, based upon the examination of the covered carrier, including review of the appropriate records and of the actuarial assumptions and methods used by the covered carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the covered carrier to covered insureds with similar case characteristics for health benefit plans with the same or similar coverage.

~~[(4) "Basic benefit plan" or "basic coverage" means a health benefit plan that:]~~

~~[(a) until January 1, 2012:]~~

~~[(i) is a federally qualified high deductible health plan;]~~

~~[(ii) has a deductible that has the lowest deductible that qualifies as a federally qualified high deductible health plan as adjusted by federal law; and]~~

~~[(iii) does not exceed an annual out-of-pocket maximum equal to three times the amount of the deductible; and]~~

~~[(b) on or after January 1, 2012, is actuarially equivalent to the NetCare plan with the highest actuarial value, as provided in Section 31A-22-724.]~~

~~[(5)]~~ (4) "Carrier" means any person or entity that provides health insurance in this state including:

- (a) an insurance company;
- (b) a prepaid hospital or medical care plan;
- (c) a health maintenance organization;
- (d) a multiple employer welfare arrangement; and

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(e) any other person or entity providing a health insurance plan under this title.

~~[(6)]~~ (5) (a) Except as provided in Subsection ~~[(6)]~~ (5)(b), "case characteristics" means demographic or other objective characteristics of a covered insured that are considered by the carrier in determining premium rates for the covered insured.

(b) "Case characteristics" do not include:

- (i) duration of coverage since the policy was issued;
- (ii) claim experience; and
- (iii) health status.

~~[(7)]~~ (6) "Class of business" means all or a separate grouping of covered insureds that is permitted by the commissioner in accordance with Section 31A-30-105.

~~[(8)]~~ (7) "Conversion policy" means a policy providing coverage under the conversion provisions required in Chapter 22, Part 7, Group Accident and Health Insurance.

~~[(9)]~~ (8) "Covered carrier" means any individual carrier or small employer carrier subject to this chapter.

~~[(10)]~~ (9) "Covered individual" means any individual who is covered under a health benefit plan subject to this chapter.

~~[(11)]~~ (10) "Covered insureds" means small employers and individuals who are issued a health benefit plan that is subject to this chapter.

~~[(12)]~~ (11) "Dependent" means an individual to the extent that the individual is defined to be a dependent by:

- (a) the health benefit plan covering the covered individual; and
- (b) Chapter 22, Part 6, Accident and Health Insurance.

~~[(13)]~~ (12) "Established geographic service area" means a geographical area approved by the commissioner within which the carrier is authorized to provide coverage.

~~[(14)]~~ (13) "Index rate" means, for each class of business as to a rating period for covered insureds with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

~~[(15)]~~ (14) "Individual carrier" means a carrier that provides coverage on an individual basis through a health benefit plan regardless of whether:

- (a) coverage is offered through:
 - (i) an association;

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- (ii) a trust;
 - (iii) a discretionary group; or
 - (iv) other similar groups; or
- (b) the policy or contract is situated out-of-state.

~~[(16)]~~ (15) "Individual conversion policy" means a conversion policy issued to:

- (a) an individual; or
- (b) an individual with a family.

~~[(17)]~~ (16) "Individual coverage count" means the number of natural persons covered under a carrier's health benefit products that are individual policies.

~~[(18)]~~ (17) "Individual enrollment cap" means the percentage set by the commissioner in accordance with Section 31A-30-110.

~~[(19)]~~ (18) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or that could have been charged or offered, by the carrier to covered insureds with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

~~[(20)]~~ (19) "Premium" means money paid by covered insureds and covered individuals as a condition of receiving coverage from a covered carrier, including any fees or other contributions associated with the health benefit plan.

~~[(21)]~~ (20) (a) "Rating period" means the calendar period for which premium rates established by a covered carrier are assumed to be in effect, as determined by the carrier.

- (b) A covered carrier may not have:
 - (i) more than one rating period in any calendar month; and
 - (ii) no more than 12 rating periods in any calendar year.

~~[(22)]~~ (21) "Resident" means an individual who has resided in this state for at least 12 consecutive months immediately preceding the date of application.

~~[(23)]~~ (22) "Short-term limited duration insurance" means a health benefit product that:

- (a) is not renewable; and
- (b) has an expiration date specified in the contract that is less than 364 days after the date the plan became effective.

~~[(24)]~~ (23) "Small employer carrier" means a carrier that provides health benefit plans covering eligible employees of one or more small employers in this state, regardless of

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whether:

- (a) coverage is offered through:
 - (i) an association;
 - (ii) a trust;
 - (iii) a discretionary group; or
 - (iv) other similar grouping; or
- (b) the policy or contract is situated out-of-state.

~~[(25)]~~ (24) "Uninsurable" means an individual who:

- (a) is eligible for the Comprehensive Health Insurance Pool coverage under the underwriting criteria established in Subsection 31A-29-111(5); or
- (b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and
 - (ii) has a condition of health that does not meet consistently applied underwriting criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(g) and (h) for which coverage the applicant is applying.

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

- (a) "CI" means the carrier's individual coverage count as of December 31 of the preceding year; and
- (b) "UC" means the number of uninsurable individuals who were issued an individual policy on or after July 1, 1997.

Section ~~{34}~~36. Section **31A-30-109** is amended to read:

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

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

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

(b) may offer a choice of coverage that:

- (i) costs less than or equal to the plan described in Subsection (1)(a)~~[(ii)]~~; and
- (ii) excludes some or all of the mandates described in Subsection 31A-22-724(3)~~{~~

~~(2) }[-]; and~~

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(c) shall make an offer described in Subsection (1)(a) and (b) when requested by an individual who is applying for coverage.

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

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

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

(i) costs less than or equal to the coverage in Subsection (2)(a); and

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

and

(c) shall make an offer described in Subsection (1)(a) and (b) when requested by a small employer group who is applying for coverage.

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

Section ~~{35}~~37. Section **31A-30-112** is amended to read:

31A-30-112. Employee participation levels.

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

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

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

Section ~~{36}~~38. Section **31A-31-105** is amended to read:

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31A-31-105. Immunity.

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

(i) cooperates with an agency described in Subsection (1)(b);

(ii) furnishes evidence to an agency described in Subsection (1)(b);

(iii) provides information regarding a suspected fraudulent insurance act to an agency described in Subsection (1)(b);

(iv) receives information regarding a suspected fraudulent insurance act from an agency described in Subsection (1)(b); or

(v) submits a required report to the department under Section 31A-31-110.

(b) An agency referred to in Subsection (1)(a) is one or more of the following:

(i) the department or a division of the department;

(ii) a federal, state, or government agency established to detect and prevent insurance fraud;

(iii) a nonprofit organization established to detect and prevent insurance fraud; or

(iv) an agent, employee, or designee of an agency listed in this Subsection (1)(b).

(2) An insurer, or person employed by an insurer, is immune from civil action, civil penalty, or damages when in good faith the insurer or person employed by an insurer provides or shares information with another insurer or insurer's employee in a good faith effort to discover or prevent a fraudulent insurance act or other criminal conduct.

~~[(2)]~~ (3) A person, insurer, or authorized agency is immune from civil action, civil penalty, or damages if that person, insurer, or authorized agency complies in good faith with a court order to provide evidence or testimony requested by an agency described in Subsection (1)(b).

~~[(3)]~~ (4) This section does not abrogate or modify a common law or statutory right, privilege, or immunity enjoyed by a person.

~~[(4)]~~ (5) Notwithstanding any other provision in this section, a person, insurer, or service provider is not immune from civil action, civil penalty or damages under this section if that person commits the fraudulent insurance act that is the subject of the information.

Section 39. Section 31A-31-108 is amended to read:

31A-31-108. Assessment of insurers.

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(1) For purposes of this section:

(a) The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define:

(i) "annuity consideration";

(ii) "membership fees";

(iii) "other fees";

(iv) "deposit-type contract funds"; and

(v) "other considerations in Utah."

(b) "Insurance fraud provisions" means:

(i) this chapter;

(ii) Section 31A-2-110; and

(iii) Section 76-6-521.

~~(b)~~ (c) "Utah consideration" means:

(i) the total premiums written for Utah risks;

(ii) annuity consideration;

(iii) membership fees collected by the insurer;

(iv) other fees collected by the insurer;

(v) deposit-type contract funds; and

(vi) other considerations in Utah.

~~(c)~~ (d) "Utah risks" means insurance coverage on the lives, health, or against the liability of persons residing in Utah, or on property located in Utah, other than property temporarily in transit through Utah.

(2) To implement ~~[this chapter, Section 34A-2-110, and Section 76-6-521]~~ insurance fraud provisions, the commissioner may assess ~~[each]~~ an admitted insurer and ~~[each]~~ a nonadmitted insurer transacting insurance under Chapter 15, Parts 1, Unauthorized Insurers and Surplus Lines, and 2, Risk Retention Groups Act, an annual fee as follows:

(a) ~~[\$150]~~ \$200 for an insurer~~[-,if]~~ for which the sum of the Utah consideration ~~[for that insurer]~~ is less than or equal to \$1,000,000;

(b) ~~[\$400]~~ \$450 for an insurer~~[-,if]~~ for which the sum of the Utah consideration ~~[for that insurer]~~ is greater than \$1,000,000 but is less than or equal to \$2,500,000;

(c) ~~[\$700]~~ \$800 for an insurer~~[-,if]~~ for which the sum of the Utah consideration ~~[for~~

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~~that insurer~~ is greater than \$2,500,000 but is less than or equal to \$5,000,000;

(d) ~~[\$1,350]~~ \$1,600 for an insurer~~[-if]~~ for which the sum of the Utah consideration ~~[for that insurer]~~ is greater than \$5,000,000 but less than or equal to \$10,000,000;

(e) ~~[\$5,150]~~ \$6,100 for an insurer~~[-if]~~ for which the sum of the Utah consideration ~~[for that insurer]~~ is greater than \$10,000,000 but less than \$50,000,000; and

(f) ~~[\$12,350]~~ \$15,000 for an insurer~~[-if]~~ for which the sum of the Utah consideration ~~[for that insurer]~~ equals or exceeds \$50,000,000.

(3) Money received by the state under this section shall be deposited into the Insurance Fraud Investigation Restricted Account created in Subsection (4).

(4) (a) There is created in the General Fund a restricted account known as the "Insurance Fraud Investigation Restricted Account."

(b) The Insurance Fraud Investigation Restricted Account shall consist of the money received by the commissioner under this section and Section 31A-31-109.

(c) The commissioner shall administer the Insurance Fraud Investigation Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Insurance Fraud Investigation Restricted Account to pay for a cost or expense incurred by the commissioner in the administration, investigation, and enforcement of ~~[this chapter, Section 34A-2-110, and Section 76-6-521]~~ insurance fraud provisions.

Section 40. Section 31A-35-401.5 is amended to read:

31A-35-401.5. Additional licensure requirements for a bail bond surety company.

(1) A person applying for licensure as a bail bond surety or agency for the first time shall, in addition to the requirements of Section 31A-35-401, provide proof that at least one principal of the bail bond surety or agency will have a minimum of 2,000 hours of experience working as an employee of a bail bond surety company as a licensed bail bond agent.

(2) The applicant shall provide proof of the experience claimed under Subsection (1), including providing:

(a) the exact details of the character and nature of the experience on a form provided by the department;

(b) a statement by each employer verifying the number of hours the applicant worked for the employer; and

(c) (i) federal income reporting forms that account for the wages for hours claimed or

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documented approval of the claimed hours by the insurance commissioner; and

(ii) the total of 2,000 hours may be proved in part by federal income reporting forms and in part by approval by the insurance commissioner.

(3) The burden of proving the hours of experience as required in this section is upon the applicant.

~~[(4) An individual who is applying for licensure under this chapter for the first time shall have completed a training program of not less than four hours that is approved by the commissioner and includes:]~~

~~[(a) definition of a bail bond, jail procedures regarding bail bonds, court procedures regarding bail bonds, liability of a bail bond, the taking of collateral, returning collateral, trust account separation of funds, fee structure, the 10 percent rule, agent liability, the prohibition on soliciting on county or state property, and the delivery of a bail bond;]~~

~~[(b) state laws and administrative rules regarding the operation of a bail bond business;]~~

~~[(c) the rights of an accused person; and]~~

~~[(d) the ethical requirements of a bail bond business.]~~

~~[(5) (a) On and after January 1, 2012, an applicant for renewal of a license under this chapter shall have completed during the prior year two hours of continuing education.]~~

~~[(b) The insurance commissioner shall implement the continuing education requirement under this Subsection (5) pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~

Section 41. Section 31A-35-607 is amended to read:

31A-35-607. Filing of forms -- {Department}Commissioner maintains files.

(1) (a) In accordance with Section 31A-21-201, [each] only a bail bond surety company that meets the financial capacity requirements through the use of a letter of credit, personal property, or real property, or a surety insurer shall file with the commissioner a [sample] copy of each form the bail bond surety company or surety insurer uses in the [bail bond surety's] bail bond surety business.

(b) A surety insurer filing shall comply with the following:

(i) a form shall be identified by a unique form number;

(ii) the surety insurer shall file a form on behalf of each bail bond surety company

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appointed to write on behalf of the surety insurer;

(iii) once a filing is filed with the commissioner, it is the responsibility of the surety insurer to verify that the bail bond surety company and its producers are using the correct form;

(iv) a bail bond surety company and its producers are prohibited from using a form that has not been filed by the surety insurer; and

(v) a bail bond surety company and its producers are prohibited from making changes to a form that is filed by the surety insurer.

(c) A bail bond surety company filing, for a bail bond surety company that meets the financial capacity requirements through the use of a letter of credit, personal property, or real estate, shall comply with the following:

(i) a form shall be identified by a unique form number;

(ii) once a filing is filed with the commissioner, it is the responsibility of the bail bond surety company to verify that its producers are using the correct form;

(iii) a bail bond producer is prohibited from using a form that has not been filed by the bail bond surety company; and

(iv) a bail bond producer is prohibited from making changes to a form that is filed by the bail bond surety company.

~~(2) A form described in Subsection (1) shall be filed~~

~~(a) } 30 days before the form;~~

~~(a) [before the form] is first used by the bail bond surety company or surety insurer;~~

and

~~(b) [if the form] is changed after it is filed under Subsection (2)(a).~~

~~(3) (a) The [department] commissioner shall maintain and make available for public inspection a file regarding each bail bond surety company and each surety insurer.~~

~~(b) [The forms] A bail bond surety company and surety insurer shall maintain a form required to be filed under this section [shall be maintained in the submitting bail bond surety's file] in the office of the bail bond surety company or surety insurer.~~

Section ~~{37}~~42. Section **31A-41-301** is amended to read:

31A-41-301. Procedure for making a claim against the fund.

(1) (a) To bring a claim against the fund a person shall notify the department within 30 business days of the day on which the person files an action against a title insurance licensee

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alleging the following related to a title insurance transaction:

- (i) fraud;
 - (ii) misrepresentation; or
 - (iii) deceit.
- (b) The notification required by Subsection (1)(a) shall be:
- (i) in writing; and
 - (ii) signed by the person who provides the notice.

(c) Within 30 days of the day on which the department receives a notice under Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).

(2) (a) Subject to the other provisions in this section, a person who provides the notice required under Subsection (1) may maintain a claim against the fund if:

(i) in an action described in Subsection (1), the person obtains a final judgment in a court of competent jurisdiction in this state against a title insurance licensee;

(ii) all proceedings including appeals related to the final judgment described in Subsection (2)(a)(i) are at an end; and

(iii) the person files a verified petition in the court where the judgment is entered for an order directing payment from the fund for the uncollected actual damages included in the judgment and unpaid.

(b) A court may not direct the payment from the fund of:

- (i) punitive damages;
- (ii) attorney fees;
- (iii) interest; or
- (iv) court costs.

(c) Regardless of the number of claimants or parcels of real estate involved in a single real estate transaction, the liability of the fund may not exceed:

- (i) \$15,000 for a single real estate transaction; or
- (ii) \$50,000 for all transactions of a title insurance license.

(d) A person shall:

- (i) serve the verified petition required by Subsection (2)(a) on the department; and
- (ii) file an affidavit of service with the court.

(3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days

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after the day on which the department is served.

(b) The person who files the petition may recover from the fund only if the person shows all of the following:

(i) the person is not a spouse of the judgment debtor or the personal representative of the spouse;

(ii) the person complied with this chapter;

(iii) the person has obtained a final judgment in accordance with this section indicating the amount of the judgment awarded;

(iv) the amount still owing on the judgment at the date of the petition;

(v) ~~(A)~~ the person has had a writ of execution issued under the judgment, and the officer executing the writ has returned showing that:

(A) no property subject to execution in satisfaction of the judgment could be found; or

(B) ~~[that]~~ the amount realized upon the execution levied against the property of the judgment debtor is insufficient to satisfy the ~~[judgement]~~ judgment;

(vi) the person has made reasonable searches and inquiries to ascertain whether the judgment debtor has any interest in property, real or personal, that may satisfy the judgment; and

(vii) the person has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.

(4) If the person described in Subsection (3) satisfies the court that it is not practicable for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through (vii), the court may waive those requirements.

(5) (a) A judgment that is the basis for a claim against the fund may not have been discharged in bankruptcy.

(b) If a bankruptcy proceeding is still open or is commenced during the pendency of the claim, the person bringing a claim against the fund shall obtain an order from the bankruptcy court declaring the judgement and debt to be nondischargeable.

Section ~~{38}~~43. Section **31A-42-203** is amended to read:

31A-42-203. Powers and duties of board.

(1) The board shall have the power to:

(a) enter into contracts to carry out the provisions and purposes of this chapter,

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including, with the approval of the commissioner, contracts with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking legal action necessary to implement and enforce the plan for risk adjustment adopted pursuant to this chapter; and

(c) establish appropriate rate adjustments, underwriting policies, and other actuarial functions appropriate to the operation of the defined contribution arrangement market in accordance with Section 31A-42-202.

(2) (a) The board shall prepare and submit an annual report no later than July 1, each year to the department for inclusion in the department's annual market report, which shall include:

(i) the expenses of administration of the risk adjuster for the defined contribution arrangement market;

(ii) a description of the types of policies sold in the defined contribution arrangement market;

(iii) the number of insured lives in the defined contribution arrangement market; and

(iv) the number of insured lives in health benefit plans that do not include state mandates.

(b) The budget for operation of the risk adjuster is subject to the approval of the board.

(c) The administrative budget of the board and the commissioner under this chapter shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is subject to review and approval by the Legislature.

~~[(3) The board shall report to the Health Reform Task Force and to the Legislative Management Committee prior to October 1, 2009 and again prior to October 1, 2010 regarding:]~~

~~[(a) the board's progress in developing the plan required by this chapter; and]~~

~~[(b) the board's progress in:]~~

~~[(i) expanding choice of plans in the defined contribution market; and]~~

~~[(ii) expanding access to the defined contribution market in the Internet portal for large employer groups.]~~

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Legislative Review Note

~~_____ as of 11-17-11 10:26 AM~~

~~_____ Office of Legislative Research and General Counsel}~~