

Senator Curtis S. Bramble proposes the following substitute bill:

INSURANCE LAW AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ amends the definition provisions;
- ▶ clarifies the provision related to coordination with other states;
- ▶ addresses rules related to title and escrow examinations;
- ▶ modifies the provision related to the Title and Escrow Commission and its members;
- ▶ modifies the cap on appropriations from the Captive Insurance Restricted Account, effective July 1, 2015;
- ▶ enacts provisions related to closing or settlement protections;
- ▶ modifies language regarding restrictions on foreign title insurers;
- ▶ amends provisions related to company action level events;
- ▶ enacts a provision regarding producer's duties related to replacement of life insurance;
- ▶ addresses death pending conversion of group life insurance policy;
- ▶ modifies preferred provider contract provisions;



- 26 ▶ amends provisions related to health benefit plan offerings;
- 27 ▶ addresses car rental related insurance;
- 28 ▶ amends provisions related to inducements;
- 29 ▶ creates the concept of a "qualifying licensee" for purposes of title and escrow
- 30 licenses;
- 31 ▶ clarifies terminology of individual and agency title insurance producers;
- 32 ▶ modifies the requirement that a title insurance producer conduct a minimum
- 33 mandatory search to be a requirement of a reasonable search;
- 34 ▶ establishes who shall conduct an escrow as provided in statute;
- 35 ▶ clarifies reference to a title insurance agency's reserve account;
- 36 ▶ addresses Utah mini-COBRA benefits for employer group coverage;
- 37 ▶ addresses sharing of commissions;
- 38 ▶ addresses powers of the board related to the Utah Comprehensive Health Insurance
- 39 Pool Act;
- 40 ▶ addresses money deposited into the Insurance Fraud Investigation Restricted
- 41 Account and the Insurance Fraud Victim Restitution Account;
- 42 ▶ amends lifetime maximum for covered benefits from the Comprehensive Health
- 43 Insurance Pool;
- 44 ▶ creates the Insurance Fraud Victim Restitution Account;
- 45 ▶ repeals provisions related to alternative coverage and Utah NetCare Plan; and
- 46 ▶ makes technical and conforming amendments.

47 Money Appropriated in this Bill:

48 None

49 Other Special Clauses:

50 This bill has an effective date.

51 Utah Code Sections Affected:

52 AMENDS:

53 **31A-1-301**, as last amended by Laws of Utah 2012, Chapters 151 and 253

54 **31A-2-201.2**, as enacted by Laws of Utah 2010, Chapter 68

55 **31A-2-217**, as last amended by Laws of Utah 2008, Chapter 382

56 **31A-2-402**, as last amended by Laws of Utah 2011, Chapter 289

- 57 **31A-2-403**, as last amended by Laws of Utah 2010, Chapters 10 and 286
- 58 **31A-2-404**, as last amended by Laws of Utah 2012, Chapter 253
- 59 **31A-3-304 (Effective 07/01/13)**, as last amended by Laws of Utah 2011, Chapter 284
- 60 **31A-8-301**, as last amended by Laws of Utah 2005, Chapter 123
- 61 **31A-14-211**, as last amended by Laws of Utah 2011, Chapter 284
- 62 **31A-17-603**, as last amended by Laws of Utah 2001, Chapter 116
- 63 **31A-19a-209**, as last amended by Laws of Utah 2007, Chapter 325
- 64 **31A-20-110**, as last amended by Laws of Utah 2003, Chapter 298
- 65 **31A-21-503**, as last amended by Laws of Utah 2007, Chapter 307
- 66 **31A-22-519**, as enacted by Laws of Utah 1985, Chapter 242
- 67 **31A-22-612**, as last amended by Laws of Utah 2004, Chapter 108
- 68 **31A-22-617**, as last amended by Laws of Utah 2009, Chapter 12
- 69 **31A-22-618.5**, as last amended by Laws of Utah 2011, Chapters 284 and 297
- 70 **31A-22-722**, as last amended by Laws of Utah 2010, Chapter 10
- 71 **31A-23a-102**, as last amended by Laws of Utah 2012, Chapter 253
- 72 **31A-23a-105**, as last amended by Laws of Utah 2012, Chapter 253
- 73 **31A-23a-106**, as last amended by Laws of Utah 2012, Chapters 151 and 253
- 74 **31A-23a-202**, as last amended by Laws of Utah 2011, Chapter 284
- 75 **31A-23a-203.5**, as enacted by Laws of Utah 2011, Chapter 337
- 76 **31A-23a-204**, as last amended by Laws of Utah 2011, Chapters 284 and 342
- 77 **31A-23a-402**, as last amended by Laws of Utah 2011, Second Special Session, Chapter
- 78 5
- 79 **31A-23a-402.5**, as last amended by Laws of Utah 2012, Chapters 253 and 279
- 80 **31A-23a-406**, as last amended by Laws of Utah 2012, Chapter 253
- 81 **31A-23a-407**, as renumbered and amended by Laws of Utah 2003, Chapter 298
- 82 **31A-23a-413**, as renumbered and amended by Laws of Utah 2003, Chapter 298
- 83 **31A-23a-415**, as last amended by Laws of Utah 2011, Chapter 284
- 84 **31A-23a-503**, as last amended by Laws of Utah 2005, Chapter 185
- 85 **31A-23a-504**, as last amended by Laws of Utah 2012, Chapter 253
- 86 **31A-27a-104**, as last amended by Laws of Utah 2012, Chapter 253
- 87 **31A-29-106**, as last amended by Laws of Utah 2011, Chapter 284

- 88 **31A-29-113**, as last amended by Laws of Utah 2007, Chapter 40
- 89 **31A-30-115**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 5
- 90 **31A-30-208**, as last amended by Laws of Utah 2011, Chapter 400
- 91 **31A-31-108**, as last amended by Laws of Utah 2012, Chapter 253
- 92 **31A-41-102**, as enacted by Laws of Utah 2008, Chapter 220
- 93 **31A-41-201**, as enacted by Laws of Utah 2008, Chapter 220
- 94 **31A-41-202**, as enacted by Laws of Utah 2008, Chapter 220
- 95 **49-20-410**, as last amended by Laws of Utah 2012, Chapter 406

96 ENACTS:

- 97 **31A-4-117**, Utah Code Annotated 1953
- 98 **31A-22-429**, Utah Code Annotated 1953
- 99 **31A-23a-118**, Utah Code Annotated 1953
- 100 **31A-23a-406.5**, Utah Code Annotated 1953
- 101 **31A-31-108.5**, Utah Code Annotated 1953

102 REPEALS:

- 103 **31A-22-723**, as last amended by Laws of Utah 2011, Chapters 284 and 297
- 104 **31A-22-724**, as last amended by Laws of Utah 2011, Chapter 400
- 105 **31A-30-109**, as last amended by Laws of Utah 2012, Chapter 253
- 106 **31A-30-202.5**, as last amended by Laws of Utah 2011, Second Special Session, Chapter
- 107 5
- 108 **31A-30-205**, as last amended by Laws of Utah 2011, Chapter 400



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

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

112 **31A-1-301. Definitions.**

113 As used in this title, unless otherwise specified:

- 114 (1) (a) "Accident and health insurance" means insurance to provide protection against
- 115 economic losses resulting from:
- 116 (i) a medical condition including:
- 117 (A) a medical care expense; or
- 118 (B) the risk of disability;

- 119 (ii) accident; or
- 120 (iii) sickness.
- 121 (b) "Accident and health insurance":
- 122 (i) includes a contract with disability contingencies including:
- 123 (A) an income replacement contract;
- 124 (B) a health care contract;
- 125 (C) an expense reimbursement contract;
- 126 (D) a credit accident and health contract;
- 127 (E) a continuing care contract; and
- 128 (F) a long-term care contract; and
- 129 (ii) may provide:
- 130 (A) hospital coverage;
- 131 (B) surgical coverage;
- 132 (C) medical coverage;
- 133 (D) loss of income coverage;
- 134 (E) prescription drug coverage;
- 135 (F) dental coverage; or
- 136 (G) vision coverage.
- 137 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 138 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 139 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 140 (3) "Administrator" is defined in Subsection [~~(162)~~] (163).
- 141 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 142 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 143 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 144 ownership, if substantially the same group of individuals manage the corporations.
- 145 (6) "Agency" means:
- 146 (a) a person other than an individual, including a sole proprietorship by which an
- 147 individual does business under an assumed name; and
- 148 (b) an insurance organization licensed or required to be licensed under Section
- 149 31A-23a-301, 31A-25-207, or 31A-26-209.

- 150 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 151 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 152 (9) "Annuity" means an agreement to make periodical payments for a period certain or
153 over the lifetime of one or more individuals if the making or continuance of all or some of the
154 series of the payments, or the amount of the payment, is dependent upon the continuance of
155 human life.
- 156 (10) "Application" means a document:
- 157 (a) (i) completed by an applicant to provide information about the risk to be insured;
158 and
159 (ii) that contains information that is used by the insurer to evaluate risk and decide
160 whether to:
- 161 (A) insure the risk under:
- 162 (I) the coverage as originally offered; or
163 (II) a modification of the coverage as originally offered; or
164 (B) decline to insure the risk; or
- 165 (b) used by the insurer to gather information from the applicant before issuance of an
166 annuity contract.
- 167 (11) "Articles" or "articles of incorporation" means:
- 168 (a) the original articles;
169 (b) a special law;
170 (c) a charter;
171 (d) an amendment;
172 (e) restated articles;
173 (f) articles of merger or consolidation;
174 (g) a trust instrument;
175 (h) another constitutive document for a trust or other entity that is not a corporation;
176 and
177 (i) an amendment to an item listed in Subsections (11)(a) through (h).
- 178 (12) "Bail bond insurance" means a guarantee that a person will attend court when
179 required, up to and including surrender of the person in execution of a sentence imposed under
180 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

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

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

184 (a) without individual underwriting or application; and

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

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

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

189 (a) that is open to the public;

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

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

192 (17) "Business entity" means:

193 (a) a corporation;

194 (b) an association;

195 (c) a partnership;

196 (d) a limited liability company;

197 (e) a limited liability partnership; or

198 (f) another legal entity.

199 (18) "Business of insurance" is defined in Subsection (88).

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

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

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

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

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

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

210 (21) "Captive insurance company" means:

211 (a) an insurer:

- 212 (i) owned by another organization; and
- 213 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 214 affiliated company; or
- 215 (b) in the case of a group or association, an insurer:
- 216 (i) owned by the insureds; and
- 217 (ii) whose exclusive purpose is to insure risks of:
- 218 (A) a member organization;
- 219 (B) a group member; or
- 220 (C) an affiliate of:
- 221 (I) a member organization; or
- 222 (II) a group member.
- 223 (22) "Casualty insurance" means liability insurance.
- 224 (23) "Certificate" means evidence of insurance given to:
- 225 (a) an insured under a group insurance policy; or
- 226 (b) a third party.
- 227 (24) "Certificate of authority" is included within the term "license."
- 228 (25) "Claim," unless the context otherwise requires, means a request or demand on an
- 229 insurer for payment of a benefit according to the terms of an insurance policy.
- 230 (26) "Claims-made coverage" means an insurance contract or provision limiting
- 231 coverage under a policy insuring against legal liability to claims that are first made against the
- 232 insured while the policy is in force.
- 233 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 234 commissioner.
- 235 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
- 236 supervisory official of another jurisdiction.
- 237 (28) (a) "Continuing care insurance" means insurance that:
- 238 (i) provides board and lodging;
- 239 (ii) provides one or more of the following:
- 240 (A) a personal service;
- 241 (B) a nursing service;
- 242 (C) a medical service; or

243 (D) any other health-related service; and
244 (iii) provides the coverage described in this Subsection (28)(a) under an agreement
245 effective:

- 246 (A) for the life of the insured; or
- 247 (B) for a period in excess of one year.

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

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

- 253 (i) by contract;
- 254 (ii) by common management;
- 255 (iii) through the ownership of voting securities; or
- 256 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

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

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

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

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

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

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

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

- 272 (i) a corporation doing business:

273 (A) as:

- 274 (I) an insurance producer;
- 275 (II) a surplus lines producer;
- 276 (III) a limited line producer;
- 277 (IV) a consultant;
- 278 (V) a managing general agent;
- 279 (VI) a reinsurance intermediary;
- 280 (VII) a third party administrator; or
- 281 (VIII) an adjuster; and
- 282 (B) under:
- 283 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 284 Reinsurance Intermediaries;
- 285 (II) Chapter 25, Third Party Administrators; or
- 286 (III) Chapter 26, Insurance Adjusters; or
- 287 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 288 Holding Companies.
- 289 (b) "Stock corporation" means a stock insurance corporation.
- 290 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 291 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations
- 292 adopted pursuant to the Health Insurance Portability and Accountability Act.
- 293 (b) "Creditable coverage" includes coverage that is offered through a public health plan
- 294 such as:
- 295 (i) the Primary Care Network Program under a Medicaid primary care network
- 296 demonstration waiver obtained subject to Section 26-18-3;
- 297 (ii) the Children's Health Insurance Program under Section 26-40-106; or
- 298 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
- 299 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
- 300 (35) "Credit accident and health insurance" means insurance on a debtor to provide
- 301 indemnity for payments coming due on a specific loan or other credit transaction while the
- 302 debtor has a disability.
- 303 (36) (a) "Credit insurance" means insurance offered in connection with an extension of
- 304 credit that is limited to partially or wholly extinguishing that credit obligation.

- 305 (b) "Credit insurance" includes:
- 306 (i) credit accident and health insurance;
- 307 (ii) credit life insurance;
- 308 (iii) credit property insurance;
- 309 (iv) credit unemployment insurance;
- 310 (v) guaranteed automobile protection insurance;
- 311 (vi) involuntary unemployment insurance;
- 312 (vii) mortgage accident and health insurance;
- 313 (viii) mortgage guaranty insurance; and
- 314 (ix) mortgage life insurance.
- 315 (37) "Credit life insurance" means insurance on the life of a debtor in connection with
- 316 an extension of credit that pays a person if the debtor dies.
- 317 (38) "Credit property insurance" means insurance:
- 318 (a) offered in connection with an extension of credit; and
- 319 (b) that protects the property until the debt is paid.
- 320 (39) "Credit unemployment insurance" means insurance:
- 321 (a) offered in connection with an extension of credit; and
- 322 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
- 323 (i) specific loan; or
- 324 (ii) credit transaction.
- 325 (40) "Creditor" means a person, including an insured, having a claim, whether:
- 326 (a) matured;
- 327 (b) unmatured;
- 328 (c) liquidated;
- 329 (d) unliquidated;
- 330 (e) secured;
- 331 (f) unsecured;
- 332 (g) absolute;
- 333 (h) fixed; or
- 334 (i) contingent.
- 335 (41) (a) "Crop insurance" means insurance providing protection against damage to

336 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
337 disease, or other yield-reducing conditions or perils that is:

- 338 (i) provided by the private insurance market; or
- 339 (ii) subsidized by the Federal Crop Insurance Corporation.

340 (b) "Crop insurance" includes multiperil crop insurance.

341 (42) (a) "Customer service representative" means a person that provides an insurance
342 service and insurance product information:

- 343 (i) for the customer service representative's:
 - 344 (A) producer;
 - 345 (B) surplus lines producer; or
 - 346 (C) consultant employer; and
- 347 (ii) to the customer service representative's employer's:

- 348 (A) customer;
- 349 (B) client; or
- 350 (C) organization.

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

353 (43) "Deadline" means a final date or time:

- 354 (a) imposed by:
 - 355 (i) statute;
 - 356 (ii) rule; or
 - 357 (iii) order; and

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

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

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

366 (46) "Department" means the Insurance Department.

- 367 (47) "Director" means a member of the board of directors of a corporation.
- 368 (48) "Disability" means a physiological or psychological condition that partially or
369 totally limits an individual's ability to:
- 370 (a) perform the duties of:
- 371 (i) that individual's occupation; or
- 372 (ii) any occupation for which the individual is reasonably suited by education, training,
373 or experience; or
- 374 (b) perform two or more of the following basic activities of daily living:
- 375 (i) eating;
- 376 (ii) toileting;
- 377 (iii) transferring;
- 378 (iv) bathing; or
- 379 (v) dressing.
- 380 (49) "Disability income insurance" is defined in Subsection (79).
- 381 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 382 (51) "Domiciliary state" means the state in which an insurer:
- 383 (a) is incorporated;
- 384 (b) is organized; or
- 385 (c) in the case of an alien insurer, enters into the United States.
- 386 (52) (a) "Eligible employee" means:
- 387 (i) an employee who:
- 388 (A) works on a full-time basis; and
- 389 (B) has a normal work week of 30 or more hours; or
- 390 (ii) a person described in Subsection (52)(b).
- 391 (b) "Eligible employee" includes, if the individual is included under a health benefit
392 plan of a small employer:
- 393 (i) a sole proprietor;
- 394 (ii) a partner in a partnership; or
- 395 (iii) an independent contractor.
- 396 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
- 397 (i) an individual who works on a temporary or substitute basis for a small employer;

- 398 (ii) an employer's spouse; or
- 399 (iii) a dependent of an employer.
- 400 (53) "Employee" means an individual employed by an employer.
- 401 (54) "Employee benefits" means one or more benefits or services provided to:
- 402 (a) an employee; or
- 403 (b) a dependent of an employee.
- 404 (55) (a) "Employee welfare fund" means a fund:
- 405 (i) established or maintained, whether directly or through a trustee, by:
- 406 (A) one or more employers;
- 407 (B) one or more labor organizations; or
- 408 (C) a combination of employers and labor organizations; and
- 409 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 410 from investments of the fund:
- 411 (A) by or on behalf of an employer doing business in this state; or
- 412 (B) for the benefit of a person employed in this state.
- 413 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 414 revenues.
- 415 (56) "Endorsement" means a written agreement attached to a policy or certificate to
- 416 modify the policy or certificate coverage.
- 417 (57) "Enrollment date," with respect to a health benefit plan, means:
- 418 (a) the first day of coverage; or
- 419 (b) if there is a waiting period, the first day of the waiting period.
- 420 (58) (a) "Escrow" means:
- 421 [~~(i) a real estate settlement or real estate closing conducted by a third party pursuant to~~
- 422 ~~the requirements of a written agreement between the parties in a real estate transaction; or]~~
- 423 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
- 424 when a person not a party to the transaction, and neither having nor acquiring an interest in the
- 425 title, performs, in accordance with the written instructions or terms of the written agreement
- 426 between the parties to the transaction, any of the following actions:
- 427 (A) the explanation, holding, or creation of a document; or
- 428 (B) the receipt, deposit, and disbursement of money;

429 (ii) a settlement or closing involving:

430 (A) a mobile home;

431 (B) a grazing right;

432 (C) a water right; or

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

434 [~~(b) "Escrow" includes the act of conducting a:~~]

435 [~~(i) real estate settlement; or~~]

436 [~~(ii) real estate closing.~~]

437 (b) "Escrow" does not include:

438 (i) the following notarial acts performed by a notary within the state:

439 (A) an acknowledgment;

440 (B) a copy certification;

441 (C) jurat; and

442 (D) an oath or affirmation;

443 (ii) the receipt or delivery of a document; or

444 (iii) the receipt of money for delivery to the escrow agent.

445 (59) "Escrow agent" means~~[-(a)]~~ an agency title insurance producer [~~with:~~] meeting

446 the requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through

447 an individual title insurance producer licensed with an escrow subline of authority.

448 [~~(i) a title insurance line of authority; and~~]

449 [~~(ii) an escrow subline of authority; or~~]

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

451 (60) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
452 excluded.

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

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

457 (a) a specific physical condition;

458 (b) a specific medical procedure;

459 (c) a specific disease or disorder; or

- 460 (d) a specific prescription drug or class of prescription drugs.
- 461 (62) "Expense reimbursement insurance" means insurance:
 - 462 (a) written to provide a payment for an expense relating to hospital confinement
 - 463 resulting from illness or injury; and
 - 464 (b) written:
 - 465 (i) as a daily limit for a specific number of days in a hospital; and
 - 466 (ii) to have a one or two day waiting period following a hospitalization.
- 467 (63) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
- 468 a position of public or private trust.
- 469 (64) (a) "Filed" means that a filing is:
 - 470 (i) submitted to the department as required by and in accordance with applicable
 - 471 statute, rule, or filing order;
 - 472 (ii) received by the department within the time period provided in applicable statute,
 - 473 rule, or filing order; and
 - 474 (iii) accompanied by the appropriate fee in accordance with:
 - 475 (A) Section 31A-3-103; or
 - 476 (B) rule.
- 477 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 478 submitted in accordance with Subsection (64)(a).
- 479 (65) "Filing," when used as a noun, means an item required to be filed with the
- 480 department including:
 - 481 (a) a policy;
 - 482 (b) a rate;
 - 483 (c) a form;
 - 484 (d) a document;
 - 485 (e) a plan;
 - 486 (f) a manual;
 - 487 (g) an application;
 - 488 (h) a report;
 - 489 (i) a certificate;
 - 490 (j) an endorsement;

491 (k) an actuarial certification;

492 (l) a licensee annual statement;

493 (m) a licensee renewal application;

494 (n) an advertisement; or

495 (o) an outline of coverage.

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

498 (67) "Foreign insurer" means an insurer domiciled outside of this state, including an
499 alien insurer.

500 (68) (a) "Form" means one of the following prepared for general use:

501 (i) a policy;

502 (ii) a certificate;

503 (iii) an application;

504 (iv) an outline of coverage; or

505 (v) an endorsement.

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

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

511 (70) "General lines of authority" include:

512 (a) the general lines of insurance in Subsection (71);

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

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

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

516 (iii) title marketing representative only;

517 (c) surplus lines;

518 (d) workers' compensation; and

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

521 (71) "General lines of insurance" include:

- 522 (a) accident and health;
- 523 (b) casualty;
- 524 (c) life;
- 525 (d) personal lines;
- 526 (e) property; and
- 527 (f) variable contracts, including variable life and annuity.

528 (72) "Group health plan" means an employee welfare benefit plan to the extent that the
529 plan provides medical care:

- 530 (a) (i) to an employee; or
- 531 (ii) to a dependent of an employee; and
- 532 (b) (i) directly;
- 533 (ii) through insurance reimbursement; or
- 534 (iii) through another method.

535 (73) (a) "Group insurance policy" means a policy covering a group of persons that is
536 issued:

- 537 (i) to a policyholder on behalf of the group; and
- 538 (ii) for the benefit of a member of the group who is selected under a procedure defined
539 in:
- 540 (A) the policy; or
- 541 (B) an agreement that is collateral to the policy.

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

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

547 (75) (a) Except as provided in Subsection (75)(b), "health benefit plan" means a policy
548 or certificate that:

- 549 (i) provides health care insurance;
- 550 (ii) provides major medical expense insurance; or
- 551 (iii) is offered as a substitute for hospital or medical expense insurance, such as:
552 (A) a hospital confinement indemnity; or

- 553 (B) a limited benefit plan.
- 554 (b) "Health benefit plan" does not include a policy or certificate that:
- 555 (i) provides benefits solely for:
- 556 (A) accident;
- 557 (B) dental;
- 558 (C) income replacement;
- 559 (D) long-term care;
- 560 (E) a Medicare supplement;
- 561 (F) a specified disease;
- 562 (G) vision; or
- 563 (H) a short-term limited duration; or
- 564 (ii) is offered and marketed as supplemental health insurance.
- 565 (76) "Health care" means any of the following intended for use in the diagnosis,
- 566 treatment, mitigation, or prevention of a human ailment or impairment:
- 567 (a) a professional service;
- 568 (b) a personal service;
- 569 (c) a facility;
- 570 (d) equipment;
- 571 (e) a device;
- 572 (f) supplies; or
- 573 (g) medicine.
- 574 (77) (a) "Health care insurance" or "health insurance" means insurance providing:
- 575 (i) a health care benefit; or
- 576 (ii) payment of an incurred health care expense.
- 577 (b) "Health care insurance" or "health insurance" does not include accident and health
- 578 insurance providing a benefit for:
- 579 (i) replacement of income;
- 580 (ii) short-term accident;
- 581 (iii) fixed indemnity;
- 582 (iv) credit accident and health;
- 583 (v) supplements to liability;

- 584 (vi) workers' compensation;
- 585 (vii) automobile medical payment;
- 586 (viii) no-fault automobile;
- 587 (ix) equivalent self-insurance; or
- 588 (x) a type of accident and health insurance coverage that is a part of or attached to
- 589 another type of policy.

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

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

594 (80) "Indemnity" means the payment of an amount to offset all or part of an insured
595 loss.

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

598 (82) "Independently procured insurance" means insurance procured under Section
599 31A-15-104.

600 (83) "Individual" means a natural person.

601 (84) "Inland marine insurance" includes insurance covering:

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

608 (85) "Insolvency" means that:

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

614 (86) (a) "Insurance" means:

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

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

619 (b) "Insurance" includes:

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

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

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

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

629 (88) "Insurance business" or "business of insurance" includes:

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

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

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

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

637 (c) providing an annuity:

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

639 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
640 and (3);

641 (d) providing the characteristic services of a motor club as outlined in Subsection
642 (116);

643 (e) providing another person with insurance;

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

- 646 (g) transacting or proposing to transact any phase of title insurance, including:
647 (i) solicitation;
648 (ii) negotiation preliminary to execution;
649 (iii) execution of a contract of title insurance;
650 (iv) insuring; and
651 (v) transacting matters subsequent to the execution of the contract and arising out of
652 the contract, including reinsurance;
- 653 (h) transacting or proposing a life settlement; and
654 (i) doing, or proposing to do, any business in substance equivalent to Subsections
655 (88)(a) through (h) in a manner designed to evade this title.
- 656 (89) "Insurance consultant" or "consultant" means a person who:
657 (a) advises another person about insurance needs and coverages;
658 (b) is compensated by the person advised on a basis not directly related to the insurance
659 placed; and
660 (c) except as provided in Section 31A-23a-501, is not compensated directly or
661 indirectly by an insurer or producer for advice given.
- 662 (90) "Insurance holding company system" means a group of two or more affiliated
663 persons, at least one of whom is an insurer.
- 664 (91) (a) "Insurance producer" or "producer" means a person licensed or required to be
665 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 666 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
667 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
668 insurer.
- 669 (ii) "Producer for the insurer" may be referred to as an "agent."
670 (c) (i) "Producer for the insured" means a producer who:
671 (A) is compensated directly and only by an insurance customer or an insured; and
672 (B) receives no compensation directly or indirectly from an insurer for selling,
673 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
674 insured.
- 675 (ii) "Producer for the insured" may be referred to as a "broker."
676 (92) (a) "Insured" means a person to whom or for whose benefit an insurer makes a

677 promise in an insurance policy and includes:

678 (i) a policyholder;

679 (ii) a subscriber;

680 (iii) a member; and

681 (iv) a beneficiary.

682 (b) The definition in Subsection (92)(a):

683 (i) applies only to this title; and

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

685 certificate.

686 (93) (a) "Insurer" means a person doing an insurance business as a principal including:

687 (i) a fraternal benefit society;

688 (ii) an issuer of a gift annuity other than an annuity specified in Subsections

689 31A-22-1305(2) and (3);

690 (iii) a motor club;

691 (iv) an employee welfare plan; and

692 (v) a person purporting or intending to do an insurance business as a principal on that

693 person's own account.

694 (b) "Insurer" does not include a governmental entity to the extent the governmental

695 entity is engaged in an activity described in Section 31A-12-107.

696 (94) "Interinsurance exchange" is defined in Subsection [~~(145)~~] (146).

697 (95) "Involuntary unemployment insurance" means insurance:

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

699 (b) that provides indemnity if the debtor is involuntarily unemployed for payments

700 coming due on a:

701 (i) specific loan; or

702 (ii) credit transaction.

703 (96) "Large employer," in connection with a health benefit plan, means an employer

704 who, with respect to a calendar year and to a plan year:

705 (a) employed an average of at least 51 eligible employees on each business day during

706 the preceding calendar year; and

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

708 (97) "Late enrollee," with respect to an employer health benefit plan, means an
709 individual whose enrollment is a late enrollment.

710 (98) "Late enrollment," with respect to an employer health benefit plan, means
711 enrollment of an individual other than:

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

714 (b) through special enrollment.

715 (99) (a) Except for a retainer contract or legal assistance described in Section
716 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
717 specified legal expense.

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

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

722 (100) (a) "Liability insurance" means insurance against liability:

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

725 (A) Subsection (110) for medical malpractice insurance;

726 (B) Subsection [~~(137)~~] (138) for professional liability insurance; and

727 (C) Subsection [~~(171)~~] (172) for workers' compensation insurance;

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

732 (A) Subsection (110) for medical malpractice insurance;

733 (B) Subsection [~~(137)~~] (138) for professional liability insurance; and

734 (C) Subsection [~~(171)~~] (172) for workers' compensation insurance;

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

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

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

739 (B) water entering through a leak or opening in a building; or
740 (v) for other loss or damage properly the subject of insurance not within another kind
741 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

742 (b) "Liability insurance" includes:

743 (i) vehicle liability insurance;

744 (ii) residential dwelling liability insurance; and

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

748 (101) (a) "License" means authorization issued by the commissioner to engage in an
749 activity that is part of or related to the insurance business.

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

751 (102) (a) "Life insurance" means:

752 (i) insurance on a human life; and

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

754 (b) The business of life insurance includes:

755 (i) granting a death benefit;

756 (ii) granting an annuity benefit;

757 (iii) granting an endowment benefit;

758 (iv) granting an additional benefit in the event of death by accident;

759 (v) granting an additional benefit to safeguard the policy against lapse; and

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

761 (103) "Limited license" means a license that:

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

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

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

765 (a) credit life;

766 (b) credit accident and health;

767 (c) credit property;

768 (d) credit unemployment;

769 (e) involuntary unemployment;

- 770 (f) mortgage life;
- 771 (g) mortgage guaranty;
- 772 (h) mortgage accident and health;
- 773 (i) guaranteed automobile protection; and
- 774 (j) another form of insurance offered in connection with an extension of credit that:
 - 775 (i) is limited to partially or wholly extinguishing the credit obligation; and
 - 776 (ii) the commissioner determines by rule should be designated as a form of limited line
 - 777 credit insurance.

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

781 (106) "Limited line insurance" includes:

- 782 (a) bail bond;
- 783 (b) limited line credit insurance;
- 784 (c) legal expense insurance;
- 785 (d) motor club insurance;
- 786 (e) car rental related insurance;
- 787 (f) travel insurance;
- 788 (g) crop insurance;
- 789 (h) self-service storage insurance;
- 790 (i) guaranteed asset protection waiver;
- 791 (j) portable electronics insurance; and
- 792 (k) another form of limited insurance that the commissioner determines by rule should
793 be designated a form of limited line insurance.

794 (107) "Limited lines authority" includes:

- 795 (a) the lines of insurance listed in Subsection (106); and
- 796 (b) a customer service representative.

797 (108) "Limited lines producer" means a person who sells, solicits, or negotiates limited
798 lines insurance.

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

- 801 (i) in a setting other than an acute care unit of a hospital;
- 802 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 803 (A) expenses incurred;
 - 804 (B) indemnity;
 - 805 (C) prepayment; or
 - 806 (D) another method;
- 807 (iii) for one or more necessary or medically necessary services that are:
 - 808 (A) diagnostic;
 - 809 (B) preventative;
 - 810 (C) therapeutic;
 - 811 (D) rehabilitative;
 - 812 (E) maintenance; or
 - 813 (F) personal care; and
- 814 (iv) that may be issued by:
 - 815 (A) an insurer;
 - 816 (B) a fraternal benefit society;
 - 817 (C) (I) a nonprofit health hospital; and
 - 818 (II) a medical service corporation;
 - 819 (D) a prepaid health plan;
 - 820 (E) a health maintenance organization; or
 - 821 (F) an entity similar to the entities described in Subsections (109)(a)(iv)(A) through (E)
- 822 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 823 (b) "Long-term care insurance" includes:
 - 824 (i) any of the following that provide directly or supplement long-term care insurance:
 - 825 (A) a group or individual annuity or rider; or
 - 826 (B) a life insurance policy or rider;
 - 827 (ii) a policy or rider that provides for payment of benefits on the basis of:
 - 828 (A) cognitive impairment; or
 - 829 (B) functional capacity; or
 - 830 (iii) a qualified long-term care insurance contract.
- 831 (c) "Long-term care insurance" does not include:

- 832 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 833 (ii) basic hospital expense coverage;
- 834 (iii) basic medical/surgical expense coverage;
- 835 (iv) hospital confinement indemnity coverage;
- 836 (v) major medical expense coverage;
- 837 (vi) income replacement or related asset-protection coverage;
- 838 (vii) accident only coverage;
- 839 (viii) coverage for a specified:
- 840 (A) disease; or
- 841 (B) accident;
- 842 (ix) limited benefit health coverage; or
- 843 (x) a life insurance policy that accelerates the death benefit to provide the option of a

844 lump sum payment:

- 845 (A) if the following are not conditioned on the receipt of long-term care:
- 846 (I) benefits; or
- 847 (II) eligibility; and
- 848 (B) the coverage is for one or more the following qualifying events:
- 849 (I) terminal illness;
- 850 (II) medical conditions requiring extraordinary medical intervention; or
- 851 (III) permanent institutional confinement.

852 (110) "Medical malpractice insurance" means insurance against legal liability incident
853 to the practice and provision of a medical service other than the practice and provision of a
854 dental service.

855 (111) "Member" means a person having membership rights in an insurance
856 corporation.

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

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

862 (114) "Mortgage guaranty insurance" means surety insurance under which a mortgagee

863 or other creditor is indemnified against losses caused by the default of a debtor.

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

866 (116) "Motor club" means a person:

867 (a) licensed under:

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

869 (ii) Chapter 11, Motor Clubs; or

870 (iii) Chapter 14, Foreign Insurers; and

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

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

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

875 (iii) (A) trip reimbursement;

876 (B) towing services;

877 (C) emergency road services;

878 (D) stolen automobile services;

879 (E) a combination of the services listed in Subsections (116)(b)(iii)(A) through (D); or

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

881 (117) "Mutual" means a mutual insurance corporation.

882 (118) "Network plan" means health care insurance:

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

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

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

889 (120) "Ocean marine insurance" means insurance against loss of or damage to:

890 (a) ships or hulls of ships;

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

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

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

899 (121) "Order" means an order of the commissioner.

900 (122) "Outline of coverage" means a summary that explains an accident and health
901 insurance policy.

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

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

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

909 (b) receives:

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

912 (ii) another government health benefit.

913 (125) "Person" includes:

914 (a) an individual;

915 (b) a partnership;

916 (c) a corporation;

917 (d) an incorporated or unincorporated association;

918 (e) a joint stock company;

919 (f) a trust;

920 (g) a limited liability company;

921 (h) a reciprocal;

922 (i) a syndicate; or

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

924 (126) "Personal lines insurance" means property and casualty insurance coverage sold

925 for primarily noncommercial purposes to:

926 (a) an individual; or

927 (b) a family.

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

929 (128) "Plan year" means:

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

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

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

933 (b) if the plan document or summary plan description does not designate a plan year or

934 there is no plan document or summary plan description:

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

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

937 or

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

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

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

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

942 (c) in a case not described in Subsection (128)(a) or (b), the calendar year.

943 (129) (a) "Policy" means a document, including an attached endorsement or application

944 that:

945 (i) purports to be an enforceable contract; and

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

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

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

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

950 (iii) a corporation licensed under:

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

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

953 (c) "Policy" does not include:

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

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

956 (130) "Policyholder" means a person who controls a policy, binder, or oral contract by
957 ownership, premium payment, or otherwise.

958 (131) "Policy illustration" means a presentation or depiction that includes
959 nonguaranteed elements of a policy of life insurance over a period of years.

960 (132) "Policy summary" means a synopsis describing the elements of a life insurance
961 policy.

962 (133) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.
963 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and
964 related federal regulations and guidance.

965 [~~(133)~~] (134) "Preexisting condition," with respect to a health benefit plan:

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

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

971 [~~(134)~~] (135) (a) "Premium" means the monetary consideration for an insurance policy.

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

973 (i) an assessment;

974 (ii) a membership fee;

975 (iii) a required contribution; or

976 (iv) monetary consideration.

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

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

981 [~~(135)~~] (136) "Principal officers" for a corporation means the officers designated under
982 Subsection 31A-5-203(3).

983 [~~(136)~~] (137) "Proceeding" includes an action or special statutory proceeding.

984 [~~(137)~~] (138) "Professional liability insurance" means insurance against legal liability
985 incident to the practice of a profession and provision of a professional service.

986 [~~(138)~~] (139) (a) Except as provided in Subsection [~~(138)~~] (139)(b), "property

987 insurance" means insurance against loss or damage to real or personal property of every kind
988 and any interest in that property:

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

991 comprehensive and vehicle physical damage coverages.

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

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

995 ~~[(139)]~~ (140) "Qualified long-term care insurance contract" or "federally tax qualified
996 long-term care insurance contract" means:

997 (a) an individual or group insurance contract that meets the requirements of Section
998 7702B(b), Internal Revenue Code; or

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

- 1000 (i) (A) by rider; or
- 1001 (B) as a part of the contract; and
- 1002 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1003 Code.

1004 ~~[(140)]~~ (141) "Qualified United States financial institution" means an institution that:

1005 (a) is:

- 1006 (i) organized under the laws of the United States or any state; or
- 1007 (ii) in the case of a United States office of a foreign banking organization, licensed
1008 under the laws of the United States or any state;

1009 (b) is regulated, supervised, and examined by a United States federal or state authority
1010 having regulatory authority over a bank or trust company; and

1011 (c) meets the standards of financial condition and standing that are considered
1012 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1013 will be acceptable to the commissioner as determined by:

- 1014 (i) the commissioner by rule; or
- 1015 (ii) the Securities Valuation Office of the National Association of Insurance

1016 Commissioners.

1017 ~~[(141)]~~ (142) (a) "Rate" means:

- 1018 (i) the cost of a given unit of insurance; or
- 1019 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
- 1020 expressed as:
- 1021 (A) a single number; or
- 1022 (B) a pure premium rate, adjusted before the application of individual risk variations
- 1023 based on loss or expense considerations to account for the treatment of:
- 1024 (I) expenses;
- 1025 (II) profit; and
- 1026 (III) individual insurer variation in loss experience.
- 1027 (b) "Rate" does not include a minimum premium.
- 1028 [~~(142)~~] (143) (a) Except as provided in Subsection [~~(142)~~] (143)(b), "rate service
- 1029 organization" means a person who assists an insurer in rate making or filing by:
- 1030 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1031 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1032 (iii) advising about rate questions, except as an attorney giving legal advice.
- 1033 (b) "Rate service organization" does not mean:
- 1034 (i) an employee of an insurer;
- 1035 (ii) a single insurer or group of insurers under common control;
- 1036 (iii) a joint underwriting group; or
- 1037 (iv) an individual serving as an actuarial or legal consultant.
- 1038 [~~(143)~~] (144) "Rating manual" means any of the following used to determine initial and
- 1039 renewal policy premiums:
- 1040 (a) a manual of rates;
- 1041 (b) a classification;
- 1042 (c) a rate-related underwriting rule; and
- 1043 (d) a rating formula that describes steps, policies, and procedures for determining
- 1044 initial and renewal policy premiums.
- 1045 [~~(144)~~] (145) "Received by the department" means:
- 1046 (a) the date delivered to and stamped received by the department, if delivered in
- 1047 person;
- 1048 (b) the post mark date, if delivered by mail;

1049 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;

1050 (d) the received date recorded on an item delivered, if delivered by:

1051 (i) facsimile;

1052 (ii) email; or

1053 (iii) another electronic method; or

1054 (e) a date specified in:

1055 (i) a statute;

1056 (ii) a rule; or

1057 (iii) an order.

1058 [~~(145)~~] (146) "Reciprocal" or "interinsurance exchange" means an unincorporated
1059 association of persons:

1060 (a) operating through an attorney-in-fact common to all of the persons; and

1061 (b) exchanging insurance contracts with one another that provide insurance coverage
1062 on each other.

1063 [~~(146)~~] (147) "Reinsurance" means an insurance transaction where an insurer, for
1064 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1065 reinsurance transactions, this title sometimes refers to:

1066 (a) the insurer transferring the risk as the "ceding insurer"; and

1067 (b) the insurer assuming the risk as the:

1068 (i) "assuming insurer"; or

1069 (ii) "assuming reinsurer."

1070 [~~(147)~~] (148) "Reinsurer" means a person licensed in this state as an insurer with the
1071 authority to assume reinsurance.

1072 [~~(148)~~] (149) "Residential dwelling liability insurance" means insurance against
1073 liability resulting from or incident to the ownership, maintenance, or use of a residential
1074 dwelling that is a detached single family residence or multifamily residence up to four units.

1075 [~~(149)~~] (150) (a) "Retrocession" means reinsurance with another insurer of a liability
1076 assumed under a reinsurance contract.

1077 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1078 liability assumed under a reinsurance contract.

1079 [~~(150)~~] (151) "Rider" means an endorsement to:

- 1080 (a) an insurance policy; or
1081 (b) an insurance certificate.
1082 [~~(151)~~] (152) (a) "Security" means a:
1083 (i) note;
1084 (ii) stock;
1085 (iii) bond;
1086 (iv) debenture;
1087 (v) evidence of indebtedness;
1088 (vi) certificate of interest or participation in a profit-sharing agreement;
1089 (vii) collateral-trust certificate;
1090 (viii) preorganization certificate or subscription;
1091 (ix) transferable share;
1092 (x) investment contract;
1093 (xi) voting trust certificate;
1094 (xii) certificate of deposit for a security;
1095 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
1096 payments out of production under such a title or lease;
1097 (xiv) commodity contract or commodity option;
1098 (xv) certificate of interest or participation in, temporary or interim certificate for,
1099 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
1100 in Subsections [~~(151)~~] (152)(a)(i) through (xiv); or
1101 (xvi) another interest or instrument commonly known as a security.
1102 (b) "Security" does not include:
1103 (i) any of the following under which an insurance company promises to pay money in a
1104 specific lump sum or periodically for life or some other specified period:
1105 (A) insurance;
1106 (B) an endowment policy; or
1107 (C) an annuity contract; or
1108 (ii) a burial certificate or burial contract.
1109 [~~(152)~~] (153) "Secondary medical condition" means a complication related to an
1110 exclusion from coverage in accident and health insurance.

1111 [~~(153)~~] (154) (a) "Self-insurance" means an arrangement under which a person
1112 provides for spreading its own risks by a systematic plan.

1113 (b) Except as provided in this Subsection [~~(153)~~] (154), "self-insurance" does not
1114 include an arrangement under which a number of persons spread their risks among themselves.

1115 (c) "Self-insurance" includes:

1116 (i) an arrangement by which a governmental entity undertakes to indemnify an
1117 employee for liability arising out of the employee's employment; and

1118 (ii) an arrangement by which a person with a managed program of self-insurance and
1119 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1120 employees for liability or risk that is related to the relationship or employment.

1121 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1122 [~~(154)~~] (155) "Sell" means to exchange a contract of insurance:

1123 (a) by any means;

1124 (b) for money or its equivalent; and

1125 (c) on behalf of an insurance company.

1126 [~~(155)~~] (156) "Short-term care insurance" means an insurance policy or rider
1127 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
1128 insurance, but that provides coverage for less than 12 consecutive months for each covered
1129 person.

1130 [~~(156)~~] (157) "Significant break in coverage" means a period of 63 consecutive days
1131 during each of which an individual does not have creditable coverage.

1132 [~~(157)~~] (158) "Small employer," in connection with a health benefit plan, means an
1133 employer who, with respect to a calendar year and to a plan year:

1134 (a) employed an average of at least two employees but not more than 50 eligible
1135 employees on each business day during the preceding calendar year; and

1136 (b) employs at least two employees on the first day of the plan year.

1137 [~~(158)~~] (159) "Special enrollment period," in connection with a health benefit plan, has
1138 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1139 Portability and Accountability Act.

1140 [~~(159)~~] (160) (a) "Subsidiary" of a person means an affiliate controlled by that person
1141 either directly or indirectly through one or more affiliates or intermediaries.

1142 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1143 shares are owned by that person either alone or with its affiliates, except for the minimum
1144 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1145 others.

1146 [~~160~~] (161) Subject to Subsection (86)(b), "surety insurance" includes:

1147 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1148 perform the principal's obligations to a creditor or other obligee;

1149 (b) bail bond insurance; and

1150 (c) fidelity insurance.

1151 [~~161~~] (162) (a) "Surplus" means the excess of assets over the sum of paid-in capital
1152 and liabilities.

1153 (b) (i) "Permanent surplus" means the surplus of [~~a mutual~~] an insurer or organization
1154 that is designated by the insurer or organization as permanent.

1155 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and [~~31A-14-209~~]
1156 31A-14-205 require that [~~mutuals~~] insurers or organizations doing business in this state
1157 maintain specified minimum levels of permanent surplus.

1158 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1159 same as the minimum required capital requirement that applies to stock insurers.

1160 (c) "Excess surplus" means:

1161 (i) for a life insurer, accident and health insurer, health organization, or property and
1162 casualty insurer as defined in Section 31A-17-601, the lesser of:

1163 (A) that amount of an insurer's or health organization's total adjusted capital that
1164 exceeds the product of:

1165 (I) 2.5; and

1166 (II) the sum of the insurer's or health organization's minimum capital or permanent
1167 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1168 (B) that amount of an insurer's or health organization's total adjusted capital that
1169 exceeds the product of:

1170 (I) 3.0; and

1171 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1172 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer

- 1173 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:
- 1174 (A) 1.5; and
- 1175 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
- 1176 [~~(162)~~] (163) "Third party administrator" or "administrator" means a person who
- 1177 collects charges or premiums from, or who, for consideration, adjusts or settles claims of
- 1178 residents of the state in connection with insurance coverage, annuities, or service insurance
- 1179 coverage, except:
- 1180 (a) a union on behalf of its members;
- 1181 (b) a person administering a:
- 1182 (i) pension plan subject to the federal Employee Retirement Income Security Act of
- 1183 1974;
- 1184 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
- 1185 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1186 (c) an employer on behalf of the employer's employees or the employees of one or
- 1187 more of the subsidiary or affiliated corporations of the employer;
- 1188 (d) an insurer licensed under the following, but only for a line of insurance for which
- 1189 the insurer holds a license in this state:
- 1190 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 1191 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
- 1192 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1193 (iv) Chapter 9, Insurance Fraternal; or
- 1194 (v) Chapter 14, Foreign Insurers;
- 1195 (e) a person:
- 1196 (i) licensed or exempt from licensing under:
- 1197 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 1198 Reinsurance Intermediaries; or
- 1199 (B) Chapter 26, Insurance Adjusters; and
- 1200 (ii) whose activities are limited to those authorized under the license the person holds
- 1201 or for which the person is exempt; or
- 1202 (f) an institution, bank, or financial institution:
- 1203 (i) that is:

1204 (A) an institution whose deposits and accounts are to any extent insured by a federal
1205 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
1206 Credit Union Administration; or

1207 (B) a bank or other financial institution that is subject to supervision or examination by
1208 a federal or state banking authority; and

1209 (ii) that does not adjust claims without a third party administrator license.

1210 [~~(163)~~] (164) "Title insurance" means the insuring, guaranteeing, or indemnifying of an
1211 owner of real or personal property or the holder of liens or encumbrances on that property, or
1212 others interested in the property against loss or damage suffered by reason of liens or
1213 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
1214 or unenforceability of any liens or encumbrances on the property.

1215 [~~(164)~~] (165) "Total adjusted capital" means the sum of an insurer's or health
1216 organization's statutory capital and surplus as determined in accordance with:

1217 (a) the statutory accounting applicable to the annual financial statements required to be
1218 filed under Section 31A-4-113; and

1219 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1220 Section 31A-17-601.

1221 [~~(165)~~] (166) (a) "Trustee" means "director" when referring to the board of directors of
1222 a corporation.

1223 (b) "Trustee," when used in reference to an employee welfare fund, means an
1224 individual, firm, association, organization, joint stock company, or corporation, whether acting
1225 individually or jointly and whether designated by that name or any other, that is charged with
1226 or has the overall management of an employee welfare fund.

1227 [~~(166)~~] (167) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted
1228 insurer" means an insurer:

1229 (i) not holding a valid certificate of authority to do an insurance business in this state;
1230 or

1231 (ii) transacting business not authorized by a valid certificate.

1232 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1233 (i) holding a valid certificate of authority to do an insurance business in this state; and

1234 (ii) transacting business as authorized by a valid certificate.

1235 [~~(167)~~] (168) "Underwrite" means the authority to accept or reject risk on behalf of the
1236 insurer.

1237 [~~(168)~~] (169) "Vehicle liability insurance" means insurance against liability resulting
1238 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a
1239 vehicle comprehensive or vehicle physical damage coverage under Subsection [~~(138)~~] (139).

1240 [~~(169)~~] (170) "Voting security" means a security with voting rights, and includes a
1241 security convertible into a security with a voting right associated with the security.

1242 [~~(170)~~] (171) "Waiting period" for a health benefit plan means the period that must
1243 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of
1244 the health benefit plan, can become effective.

1245 [~~(171)~~] (172) "Workers' compensation insurance" means:

1246 (a) insurance for indemnification of an employer against liability for compensation
1247 based on:

1248 (i) a compensable accidental injury; and

1249 (ii) occupational disease disability;

1250 (b) employer's liability insurance incidental to workers' compensation insurance and
1251 written in connection with workers' compensation insurance; and

1252 (c) insurance assuring to a person entitled to workers' compensation benefits the
1253 compensation provided by law.

1254 Section 2. Section **31A-2-201.2** is amended to read:

1255 **31A-2-201.2. Evaluation of health insurance market.**

1256 (1) Each year the commissioner shall:

1257 (a) conduct an evaluation of the state's health insurance market;

1258 (b) report the findings of the evaluation to the Health and Human Services Interim
1259 Committee before October 1 of each year; and

1260 (c) publish the findings of the evaluation on the department website.

1261 (2) The evaluation required by this section shall:

1262 (a) analyze the effectiveness of the insurance regulations and statutes in promoting a
1263 healthy, competitive health insurance market that meets the needs of the state, and includes an
1264 analysis of:

1265 (i) the availability and marketing of individual and group products;

1266 (ii) rate changes;
1267 (iii) coverage and demographic changes;
1268 (iv) benefit trends;
1269 (v) market share changes; and
1270 (vi) accessibility;
1271 (b) assess complaint ratios and trends within the health insurance market, which
1272 assessment shall include complaint data from the Office of Consumer Health Assistance within
1273 the department;
1274 (c) contain recommendations for action to improve the overall effectiveness of the
1275 health insurance market, administrative rules, and statutes; and
1276 (d) include claims loss ratio data for each health insurance company doing business in
1277 the state.
1278 (3) When preparing the evaluation required by this section, the commissioner shall
1279 include a report of:
1280 (a) the types of health benefit plans sold in the Health Insurance Exchange created in
1281 Section 63M-1-2504;
1282 (b) the number of insurers participating in the defined contribution arrangement health
1283 benefit plans in the Health Insurance Exchange; and
1284 (c) the number of employers and covered lives in the defined contribution arrangement
1285 market in the Health Insurance Exchange[; ~~and~~].
1286 [~~(d) the number of lives covered by health benefit plans that do not include state~~
1287 ~~mandates as permitted by Subsection 31A-30-109(2).]~~
1288 (4) When preparing the evaluation and report required by this section, the
1289 commissioner may seek the input of insurers, employers, insured persons, providers, and others
1290 with an interest in the health insurance market.
1291 (5) The commissioner may adopt administrative rules for the purpose of collecting the
1292 data required by this section, taking into account the business confidentiality of the insurers.
1293 (6) Records submitted to the commissioner under this section shall be maintained by
1294 the commissioner as protected records under Title 63G, Chapter 2, Government Records
1295 Access and Management Act.
1296 Section 3. Section **31A-2-217** is amended to read:

1297 **31A-2-217. Coordination with other states.**

1298 (1) (a) Subject to Subsection (1)(b), the commissioner, by rule, may adopt one or more
1299 agreements with [~~another~~] a state governmental regulatory agency, within and outside of this
1300 state, or with the National Association of Insurance Commissioners to address state regulatory
1301 issues limited to:

- 1302 (i) licensing of insurance companies;
1303 (ii) licensing of agents;
1304 (iii) regulation of premium rates and policy forms; and
1305 (iv) regulation of insurer insolvency and insurance receiverships.

1306 (b) An agreement described in Subsection (1)(a), may authorize the commissioner to
1307 modify a requirement of this title if the commissioner determines that the requirements under
1308 the agreement provide protections similar to or greater than the requirements under this title.

1309 (2) (a) The commissioner may negotiate an interstate compact that addresses issuing
1310 certificates of authority, if the commissioner determines that:

- 1311 (i) each state participating in the compact has requirements for issuing certificates of
1312 authority that provide protections similar to or greater than the requirements of this title; or
1313 (ii) the interstate compact contains requirements for issuing certificates of authority
1314 that provide protections similar to or greater than the requirements of this title.

1315 (b) If an interstate compact described in Subsection (2)(a) is adopted by the
1316 Legislature, the commissioner may issue certificates of authority to insurers in accordance with
1317 the terms of the interstate compact.

1318 (3) If any provision of this title conflicts with a provision of the annual statement
1319 instructions or the National Association of Insurance Commissioners Accounting Practices and
1320 Procedures Manual, the commissioner may, by rule, resolve the conflict in favor of the annual
1321 statement instructions or the National Association of Insurance Commissioners Accounting
1322 Practices and Procedures Manual.

1323 (4) The commissioner may, by rule, accept the information prescribed by the National
1324 Association of Insurance Commissioners instead of the documents required to be filed with an
1325 application for a certificate of authority under:

- 1326 (a) Section 31A-4-103, 31A-5-204, 31A-8-205, or 31A-14-201; or
1327 (b) rules made by the commissioner.

1328 (5) Before November 30, 2001, the commissioner shall report to the Business and
1329 Labor Interim Committee regarding the status of:

1330 (a) any agreements entered into under Subsection (1);

1331 (b) any interstate compact entered into under Subsection (2); and

1332 (c) any rule made under Subsections (3) and (4).

1333 (6) This section shall be repealed in accordance with Section 63I-1-231.

1334 Section 4. Section **31A-2-402** is amended to read:

1335 **31A-2-402. Definitions.**

1336 As used in this part:

1337 (1) "Commission" means the Title and Escrow Commission created in Section
1338 31A-2-403.

1339 (2) "Concurrence" means the entities given a concurring role must jointly agree for the
1340 action to be taken.

1341 (3) "Dual licensed title licensee" means a title licensee who holds:

1342 (a) [a] an individual title insurance producer license as a title licensee; and

1343 (b) a license or certificate under:

1344 (i) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

1345 (ii) Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or

1346 (iii) Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

1347 (4) "Real Estate Commission" means the Real Estate Commission created in Section
1348 61-2f-103.

1349 (5) "Title licensee" means a person licensed under this title as:

1350 (a) an agency title insurance producer with a title insurance line of authority;

1351 (b) [a] an individual title insurance producer with:

1352 (i) a general title insurance line of authority; or

1353 (ii) a specific category of authority for title insurance; or

1354 (c) a title insurance adjuster.

1355 Section 5. Section **31A-2-403** is amended to read:

1356 **31A-2-403. Title and Escrow Commission created.**

1357 (1) (a) Subject to Subsection (1)(b), there is created within the department the Title and
1358 Escrow Commission that is comprised of five members appointed by the governor with the

1359 consent of the Senate as follows beginning July 1, 2013:

1360 ~~[(i) four members shall each:]~~

1361 (i) two members shall be an employee of a title insurer;

1362 (ii) two members shall:

1363 (A) be an employee of a Utah agency title insurance producer;

1364 ~~[(A)]~~ (B) be or have been licensed under the title insurance line of authority;

1365 ~~[(B)]~~ (C) as of the day on which the member is appointed, be or have been licensed

1366 with the search or escrow subline of authority for at least five years; and

1367 ~~[(C)]~~ (D) as of the day on which the member is appointed, not be from the same county

1368 as another member appointed under this Subsection (1)(a)~~[(i)]~~(ii); and

1369 ~~[(i)]~~ (iii) one member shall be a member of the general public from any county in the
1370 state.

1371 (b) No more than one commission member may be appointed from a single company
1372 or an affiliate or subsidiary of the company.

1373 (2) (a) Subject to Subsection (2)(c), a commission member shall file with the
1374 commissioner a disclosure of any position of employment or ownership interest that the
1375 commission member has with respect to a person that is subject to the jurisdiction of the
1376 commissioner.

1377 (b) The disclosure statement required by this Subsection (2) shall be:

1378 (i) filed by no later than the day on which the person begins that person's appointment;
1379 and

1380 (ii) amended when a significant change occurs in any matter required to be disclosed
1381 under this Subsection (2).

1382 (c) A commission member is not required to disclose an ownership interest that the
1383 commission member has if the ownership interest is in a publicly traded company or held as
1384 part of a mutual fund, trust, or similar investment.

1385 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
1386 members expire, the governor shall appoint each new commission member to a four-year term
1387 ending on June 30.

1388 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
1389 time of appointment, adjust the length of terms to ensure that the terms of the commission

1390 members are staggered so that approximately half of the [~~commission is~~] members appointed
1391 under Subsection (1)(a)(i) and half of the members appointed under Subsection (1)(a)(ii) are
1392 appointed every two years.

1393 (c) A commission member may not serve more than one consecutive term.

1394 (d) When a vacancy occurs in the membership for any reason, the governor, with the
1395 consent of the Senate, shall appoint a replacement for the unexpired term.

1396 (e) Notwithstanding the other provisions of this Subsection (3), a commission member
1397 serves until a successor is appointed by the governor with the consent of the Senate.

1398 (4) A commission member may not receive compensation or benefits for the
1399 commission member's service, but may receive per diem and travel expenses in accordance
1400 with:

1401 (a) Section 63A-3-106;

1402 (b) Section 63A-3-107; and

1403 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1404 63A-3-107.

1405 (5) Members of the commission shall annually select one commission member to serve
1406 as chair.

1407 (6) (a) The commission shall meet at least monthly. Notwithstanding Section
1408 52-4-207, a commission member shall physically attend a regularly scheduled monthly meeting
1409 of the commission and may not attend through electronic means. A commission member may
1410 attend subcommittee meetings, emergency meetings, or other not regularly scheduled meetings
1411 electronically in accordance with Section 52-4-207.

1412 (b) The commissioner may call additional meetings:

1413 (i) at the commissioner's discretion;

1414 (ii) upon the request of the chair of the commission; or

1415 (iii) upon the written request of three or more commission members.

1416 (c) (i) Three commission members constitute a quorum for the transaction of business.

1417 (ii) The action of a majority of the commission members when a quorum is present is
1418 the action of the commission.

1419 (7) The commissioner shall staff the commission.

1420 Section 6. Section **31A-2-404** is amended to read:

1421 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

1422 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this
1423 part, the commissioner shall administer and enforce the provisions in this title related to:

1424 (a) title insurance; and

1425 (b) escrow conducted by a title licensee or title insurer.

1426 (2) The commission shall:

1427 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
1428 subject to Subsection [~~(3)~~] (4), make rules for the administration of the provisions in this title
1429 related to title insurance including rules related to:

1430 (i) rating standards and rating methods for a title licensee, as provided in Section
1431 31A-19a-209;

1432 (ii) the licensing for a title licensee, including the licensing requirements of Section
1433 31A-23a-204;

1434 (iii) continuing education requirements of Section 31A-23a-202; and

1435 [~~(iv) examination procedures, after consultation with the commissioner and the
1436 commissioner's test administrator when required by Section 31A-23a-204; and]~~

1437 [~~(v)~~] (iv) standards of conduct for a title licensee;

1438 (b) concur in the issuance and renewal of a license in accordance with Section
1439 31A-23a-105 or 31A-26-203;

1440 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the
1441 commissioner, the fees imposed by this title on a title licensee;

1442 (d) in accordance with Section 31A-23a-415 determine, after consulting with the
1443 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

1444 (e) conduct an administrative hearing not delegated by the commission to an
1445 administrative law judge related to the:

1446 (i) licensing of an applicant;

1447 (ii) conduct of a title licensee; or

1448 (iii) approval of a continuing education program required by Section 31A-23a-202;

1449 (f) with the concurrence of the commissioner, approve a continuing education program
1450 required by Section 31A-23a-202;

1451 (g) with the concurrence of the commissioner, impose a penalty:

- 1452 (i) under this title related to:
- 1453 (A) title insurance; or
- 1454 (B) escrow conducted by a title licensee;
- 1455 (ii) after investigation by the commissioner in accordance with Part 3, Procedures and
- 1456 Enforcement; and
- 1457 (iii) that is enforced by the commissioner;
- 1458 (h) advise the commissioner on the administration and enforcement of any matter
- 1459 affecting the title insurance industry;
- 1460 (i) advise the commissioner on matters affecting the commissioner's budget related to
- 1461 title insurance; and
- 1462 (j) perform other duties as provided in this title.
- 1463 (3) The commission may make rules establishing an examination for a license that will
- 1464 satisfy Section 31A-23a-204:
- 1465 (a) after consultation with the commissioner and the commissioner's test administrator;
- 1466 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 1467 (c) subject to Subsection (4).
- 1468 [~~3~~] (4) The commission may make a rule under this title only if at the time the
- 1469 commission files its proposed rule and rule analysis with the Division of Administrative Rules
- 1470 in accordance with Section 63G-3-301, the commission provides the Real Estate Commission
- 1471 that same information.
- 1472 [~~4~~] (5) (a) The commissioner shall annually report the information described in
- 1473 Subsection [~~4~~] (5)(b) in writing to:
- 1474 (i) the commission; and
- 1475 (ii) the Business and Labor Interim Committee.
- 1476 (b) The information required to be reported under this Subsection [~~4~~] (5):
- 1477 (i) may not identify a person; and
- 1478 (ii) shall include:
- 1479 (A) the number of complaints the commissioner receives with regard to transactions
- 1480 involving title insurance or a title licensee during the calendar year immediately proceeding the
- 1481 report;
- 1482 (B) the type of complaints described in Subsection [~~4~~] (5)(b)(ii)(A); and

1483 (C) for each complaint described in Subsection [~~(4)~~] (5)(b)(ii)(A):
1484 (I) any action taken by the commissioner with regard to the complaint; and
1485 (II) the time-period beginning the day on which a complaint is made and ending the
1486 day on which the commissioner determines it will take no further action with regard to the
1487 complaint.

1488 (6) The commission may not impose a penalty in a manner inconsistent with
1489 Subsection (2)(g) or make a rule that conflicts with Subsection (2)(g).

1490 Section 7. Section **31A-3-304 (Effective 07/01/13)** is amended to read:

1491 **31A-3-304 (Effective 07/01/13). Annual fees -- Other taxes or fees prohibited --**
1492 **Captive Insurance Restricted Account.**

1493 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
1494 to obtain or renew a certificate of authority.

1495 (b) The commissioner shall:

1496 (i) determine the annual fee pursuant to Section 31A-3-103; and

1497 (ii) consider whether the annual fee is competitive with fees imposed by other states on
1498 captive insurance companies.

1499 (2) A captive insurance company that fails to pay the fee required by this section is
1500 subject to the relevant sanctions of this title.

1501 (3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter
1502 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under
1503 the laws of this state that may be levied or assessed on a captive insurance company:

1504 (i) a fee under this section;

1505 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and

1506 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company
1507 Act.

1508 (b) The state or a county, city, or town within the state may not levy or collect an
1509 occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii)
1510 against a captive insurance company.

1511 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115
1512 against a captive insurance company.

1513 (d) A captive insurance company is subject to real and personal property taxes.

1514 (4) A captive insurance company shall pay the fee imposed by this section to the
1515 commissioner by June 20 of each year.

1516 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be
1517 deposited into the Captive Insurance Restricted Account.

1518 (b) There is created in the General Fund a restricted account known as the "Captive
1519 Insurance Restricted Account."

1520 (c) The Captive Insurance Restricted Account shall consist of the fees described in
1521 Subsection (3)(a).

1522 (d) The commissioner shall administer the Captive Insurance Restricted Account.
1523 Subject to appropriations by the Legislature, the commissioner shall use the money deposited
1524 into the Captive Insurance Restricted Account to:

1525 (i) administer and enforce:

1526 (A) Chapter 37, Captive Insurance Companies Act; and

1527 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1528 (ii) promote the captive insurance industry in Utah.

1529 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
1530 except that at the end of each fiscal year, money received by the commissioner in excess of
1531 [~~\$950,000~~] \$1,250,000 shall be treated as free revenue in the General Fund.

1532 Section 85. Section **31A-4-117** is enacted to read:

1533 **31A-4-117. Closing or settlement protection.**

1534 (1) A title insurer may issue closing or settlement protection in the form of a closing
1535 protection letter filed with the department to a person who is a party to a transaction in which a
1536 title insurance policy is issued.

1537 (2) Closing or settlement protection may indemnify a person who is a party to a
1538 transaction referred to in Subsection (1) against loss that the title insurer approves for the
1539 closing or settlement protection, under the terms and conditions of the closing protection letter
1540 issued by the title insurer, because of one or more of the following acts of a title insurance
1541 policy issuing individual title insurance producer or agency title insurance producer or other
1542 settlement service provider:

1543 (a) theft or misappropriation of settlement funds in connection with a transaction in
1544 which one or more title insurance policies are issued by or on behalf of the title insurer issuing

1545 the closing or settlement protection, but only to the extent that the theft or misappropriation
 1546 relates to the status of the title to that interest in land or to the validity, enforceability, and
 1547 priority of the lien of the mortgage on that interest in land; or

1548 (b) failure to comply with the written closing instructions when agreed to by the
 1549 settlement agent, title agent, or employee of the title insurer, but only to the extent that the
 1550 failure to follow the written closing instructions relates to the status of the title to that interest
 1551 in land or the validity, enforceability, and priority of the lien of the mortgage on that interest in
 1552 land.

1553 (3) A title insurer may not make the fee charged by a title insurer for each party
 1554 receiving closing or settlement protection coverage subject to any agreement requiring a
 1555 division of fees or premiums collected on behalf of the title insurer. The fee charged for a
 1556 closing or settlement coverage protection letter will be filed by the title insurer with the
 1557 department 30 days before use.

1558 (4) A title insurer may not provide any other protection that purports to contractually
 1559 indemnify against improper acts or omissions of a person who is a party to a transaction
 1560 referred to in Subsection (1) with regard to settlement or closing services.

1561 Section 9. Section **31A-8-301** is amended to read:

1562 **31A-8-301. Requirements for doing business in state.**

1563 (1) Only a corporation incorporated and licensed under Part 2, Domestic
 1564 Organizations, may do business in this state as an organization.

1565 (2) To do business in this state as an organization, a foreign [~~corporations~~] corporation
 1566 doing a similar business in other states shall incorporate a subsidiary and license [if] it under
 1567 Part 2, Domestic Organizations, for its Utah business. Except as to Chapter 16, Insurance
 1568 Holding Companies, the laws applicable to a domestic [~~organizations~~] organization apply only
 1569 to the domestic organization and not to its foreign parent corporation.

1570 Section 10. Section **31A-14-211** is amended to read:

1571 **31A-14-211. Restrictions on foreign title insurers.**

1572 (1) An authorized foreign title insurer may [~~not~~] only insure property in this state
 1573 [~~except~~]:

1574 (a) through [~~a~~] an agency title insurance producer who is a resident in Utah; or

1575 (b) [~~through~~] if the authorized foreign title insurer has a bona fide office in Utah:

- 1576 (i) that is under the direction and control of the authorized foreign title insurer;
- 1577 (ii) for which the authorized foreign title insurer pays the expenses, including
- 1578 compensation of the employees of the bona fide office;
- 1579 (iii) at which a person may request information about title services related to a real
- 1580 estate transaction for which the person is a party;
- 1581 (iv) at which a person may deliver written communications to the authorized foreign
- 1582 title insurer as required by the real estate transaction for which the person is a party; and
- 1583 (v) at which a person may deliver escrow money related to a real estate transaction for
- 1584 which the person is a party.

1585 (2) This section does not apply to reinsurance.

1586 Section 11. Section **31A-17-603** is amended to read:

1587 **31A-17-603. Company action level event.**

1588 (1) "Company action level event" means any of the following events:

1589 (a) the filing of an RBC report by an insurer or health organization that indicates that:

1590 (i) the insurer's or health organization's total adjusted capital is greater than or equal to

1591 its regulatory action level RBC but less than its company action level RBC; [or]

1592 (ii) if a life or accident and health insurer, the insurer has:

1593 (A) total adjusted capital that is greater than or equal to its company action level RBC

1594 but less than the product of its authorized control level RBC and [2.5] 3.0; and

1595 [~~(B) a negative trend, determined in accordance with the "trend test calculation"~~

1596 ~~included in the RBC instructions;~~]

1597 (B) triggers the trend test determined in accordance with the trend test calculation

1598 included in the life or fraternal RBC instructions; or

1599 (iii) if a property and casualty insurer, the insurer has:

1600 (A) total adjusted capital that is greater than or equal to its company action level RBC,

1601 but less than the product of its authorized control level RBC and 3.0; and

1602 (B) triggers the trend test determined in accordance with the trend test calculation

1603 included in the property and casualty RBC instructions;

1604 (b) the notification by the commissioner to the insurer or health organization of an

1605 adjusted RBC report that indicates an event in Subsection (1)(a), provided the insurer or health

1606 organization does not challenge the adjusted RBC report under Section 31A-17-607; or

1607 (c) if, pursuant to Section 31A-17-607, an insurer or health organization challenges an
1608 adjusted RBC report that indicates the event in Subsection (1)(a), the notification by the
1609 commissioner to the insurer or health organization that after a hearing the commissioner rejects
1610 the insurer's or health organization's challenge.

1611 (2) (a) In the event of a company action level event, the insurer or health organization
1612 shall prepare and submit to the commissioner an RBC plan that shall:

1613 (i) identify the conditions that contribute to the company action level event;

1614 (ii) contain proposals of corrective actions that the insurer or health organization
1615 intends to take and that are expected to result in the elimination of the company action level
1616 event;

1617 (iii) provide projections of the insurer's or health organization's financial results in the
1618 current year and at least the four succeeding years, both in the absence of proposed corrective
1619 actions and giving effect to the proposed corrective actions, including projections of:

1620 (A) statutory operating income;

1621 (B) net income;

1622 (C) capital;

1623 (D) surplus; and

1624 (E) RBC levels;

1625 (iv) identify the key assumptions impacting the insurer's or health organization's
1626 projections and the sensitivity of the projections to the assumptions; and

1627 (v) identify the quality of, and problems associated with, the insurer's or health
1628 organization's business, including its assets, anticipated business growth and associated surplus
1629 strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each
1630 case.

1631 (b) For purposes of Subsection (2)(a)(iii), the projections for both new and renewal
1632 business may include separate projections for each major line of business and separately
1633 identify each significant income, expense, and benefit component.

1634 (3) The RBC plan shall be submitted:

1635 (a) within 45 days of the company action level event; or

1636 (b) if the insurer or health organization challenges an adjusted RBC report pursuant to
1637 Section 31A-17-607, within 45 days after notification to the insurer or health organization that

1638 after a hearing the commissioner rejects the insurer's or health organization's challenge.

1639 (4) (a) Within 60 days after the submission by an insurer or health organization of an
1640 RBC plan to the commissioner, the commissioner shall notify the insurer or health organization
1641 whether the RBC plan:

- 1642 (i) shall be implemented; or
- 1643 (ii) is unsatisfactory.

1644 (b) If the commissioner determines the RBC plan is unsatisfactory, the notification to
1645 the insurer or health organization shall set forth the reasons for the determination, and may
1646 propose revisions that will render the RBC plan satisfactory. Upon notification from the
1647 commissioner, the insurer or health organization shall:

1648 (i) prepare a revised RBC plan that incorporates any revision proposed by the
1649 commissioner; and

1650 (ii) submit the revised RBC plan to the commissioner:

1651 (A) within 45 days after the notification from the commissioner; or

1652 (B) if the insurer challenges the notification from the commissioner under Section
1653 31A-17-607, within 45 days after a notification to the insurer or health organization that after a
1654 hearing the commissioner rejects the insurer's or health organization's challenge.

1655 (5) In the event of a notification by the commissioner to an insurer or health
1656 organization that the insurer's or health organization's RBC plan or revised RBC plan is
1657 unsatisfactory, the commissioner may specify in the notification that the notification constitutes
1658 a regulatory action level event subject to the insurer's or health organization's right to a hearing
1659 under Section 31A-17-607.

1660 (6) Every domestic insurer or health organization that files an RBC plan or revised
1661 RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with
1662 the insurance commissioner in any state in which the insurer or health organization is
1663 authorized to do business if:

1664 (a) the state has an RBC provision substantially similar to Subsection 31A-17-608(1);
1665 and

1666 (b) the insurance commissioner of that state notifies the insurer or health organization
1667 of its request for the filing in writing, in which case the insurer or health organization shall file
1668 a copy of the RBC plan or revised RBC plan in that state no later than the later of:

1669 (i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan
1670 with that state; or

1671 (ii) the date on which the RBC plan or revised RBC plan is filed under Subsections (3)
1672 and (4).

1673 Section 12. Section **31A-19a-209** is amended to read:

1674 **31A-19a-209. Special provisions for title insurance.**

1675 (1) (a) (i) The Title and Escrow Commission shall adopt rules subject to Section
1676 31A-2-404, establishing rate standards and rating methods for [~~title agencies and producers~~]
1677 individual title insurance producers and agency title insurance producers.

1678 (ii) The commissioner shall determine compliance with rate standards and rating
1679 methods for title insurance insurers[~~, agencies, and producers~~], individual title insurance
1680 producers, and agency title insurance producers.

1681 (b) In addition to the considerations in determining compliance with rate standards and
1682 rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title
1683 insurers, the commissioner and the Title and Escrow Commission shall consider the costs and
1684 expenses incurred by title insurance insurers[~~, agencies, and producers~~], individual title
1685 insurance producers, and agency title insurance producers peculiar to the business of title
1686 insurance including:

1687 (i) the maintenance of title plants; and

1688 (ii) the searching and examining of public records to determine insurability of title to
1689 real redevelopment property.

1690 (2) (a) Every title insurance insurer[~~;~~] or agency[~~, and~~] title insurance producer, and
1691 every individual title insurance producer who is not designated by an agency title insurance
1692 producer, shall file with the commissioner:

1693 (i) a schedule of the escrow charges that the title insurance insurer[~~, agency, or~~],
1694 individual title insurance producer, or agency title insurance producer proposes to use in this
1695 state for services performed in connection with the issuance of policies of title insurance; and

1696 (ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).

1697 (b) Except for a schedule filed by a title insurance insurer under this Subsection (2), a
1698 schedule filed under this Subsection (2) is subject to review by the Title and Escrow
1699 Commission.

1700 (c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes
1701 effect on the day on which the schedule of escrow charges is filed.

1702 (ii) Any changes to the schedule of the escrow charges required to be filed by
1703 Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow
1704 charges except that the effective date may not be less than 30 calendar days after the day on
1705 which the change to the schedule of escrow charges is filed.

1706 (3) A title insurance insurer~~[, agency, or producer]~~, individual title insurance producer,
1707 or agency title insurance producer may not file or use any rate or other charge relating to the
1708 business of title insurance, including rates or charges filed for escrow that would cause the title
1709 insurance company~~[, agency, or producer]~~, individual title insurance producer, or agency title
1710 insurance producer to:

1711 (a) operate at less than the cost of doing:

1712 (i) the insurance business; or

1713 (ii) the escrow business; or

1714 (b) fail to adequately underwrite a title insurance policy.

1715 (4) (a) All or any of the schedule of rates or schedule of charges, including the schedule
1716 of escrow charges, may be changed or amended at any time, subject to the limitations in this
1717 Subsection (4).

1718 (b) Each change or amendment shall:

1719 (i) be filed with the commissioner, subject to review by the Title and Escrow
1720 Commission; and

1721 (ii) state the effective date of the change or amendment, which may not be less than 30
1722 calendar days after the day on which the change or amendment is filed.

1723 (c) Any change or amendment remains in force for a period of at least 90 calendar days
1724 from the change or amendment's effective date.

1725 (5) While the schedule of rates and schedule of charges are effective, a copy of each
1726 shall be:

1727 (a) retained in each of the offices of:

1728 (i) the title insurance insurer in this state;

1729 (ii) the title insurance insurer's individual title insurance producers or agency title
1730 insurance producers in this state; and

1731 (b) upon request, furnished to the public.

1732 (6) Except in accordance with the schedules of rates and charges filed with the
1733 commissioner, a title insurance insurer~~[, agency, or producer]~~, individual title insurance
1734 producer, or agency title insurance producer may not make or impose any premium or other
1735 charge:

1736 (a) in connection with the issuance of a policy of title insurance; or

1737 (b) for escrow services performed in connection with the issuance of a policy of title
1738 insurance.

1739 Section 13. Section **31A-20-110** is amended to read:

1740 **31A-20-110. Underwriting rules for title insurance.**

1741 (1) ~~[No]~~ A title insurance policy may not be written until the title insurer or its
1742 individual title insurance producer or agency title insurance producer has conducted a
1743 reasonable search and examination of the title and has made a determination of insurability of
1744 title under sound underwriting principles. Evidence of this search and reasonable
1745 determination shall be retained in the files of the title insurer or its individual title insurance
1746 producer or agency title insurance producer for not less than 15 years after the policy has been
1747 issued, either in its original form or as recorded by any process which can accurately and
1748 reliably reproduce the original. This section does not apply to a company assuming liability
1749 through a contract of reinsurance, or to a company acting as coinsurer, if another coinsuring
1750 company has complied with this section.

1751 (2) ~~[No]~~ A title insurance policy may not be issued except by a title [~~insurance~~
1752 ~~company or by a~~] insurer, an individual title insurance producer who is appointed by an insurer,
1753 or agency title insurance producer licensed under Section 31A-23a-105.

1754 (3) This section is enforceable only by the commissioner. It does not create, eliminate,
1755 or modify any private cause of action or remedy.

1756 Section 14. Section **31A-21-503** is amended to read:

1757 **31A-21-503. Discrimination based on domestic violence or child abuse**
1758 **prohibited.**

1759 (1) Except as provided in Subsection (2), an insurer of life or accident and health
1760 insurance may not consider whether an insured or applicant is the subject of domestic abuse as
1761 a factor to:

- 1762 (a) refuse to insure the applicant;
- 1763 (b) refuse to continue to insure the insured;
- 1764 (c) refuse to renew or reissue a policy to insure the insured or applicant;
- 1765 (d) limit the amount, extent, or kind of coverage available to the insured or applicant;
- 1766 (e) charge a different rate for coverage to the insured or applicant;
- 1767 (f) exclude or limit benefits or coverage under an insurance policy or contract for
- 1768 losses incurred;
- 1769 (g) deny a claim; or
- 1770 (h) terminate coverage or fail to provide conversion privileges in violation of
- 1771 ~~[Sections]~~ Section 31A-22-612 ~~[and 31A-22-723]~~ under a group accident and health policy for
- 1772 the insured because the coverage was issued in the name of the perpetrator of the domestic
- 1773 violence or abuse.

1774 (2) (a) Notwithstanding Subsection (1), an insurer may underwrite on the basis of the

1775 physical or mental condition of an insured or applicant if the underwriting is on the basis of a

1776 determination that there is a correlation between the medical or mental condition and a material

1777 increase in insurance risk.

1778 (b) For purposes of Subsection (2)(a), the fact that an insured or applicant is a subject

1779 of domestic abuse is not a mental or physical condition.

1780 (c) The determination required by Subsection (2)(a) shall be made in conformance with

1781 sound actuarial principles.

1782 (d) Within 30 days after receiving an oral or written request from an insured or

1783 applicant, an insurer shall disclose in writing:

- 1784 (i) the basis of an action permitted under Subsection (2)(a); and
- 1785 (ii) if the policy has been issued or modified, the extent the action taken will impact the
- 1786 amount, extent, or kind of coverage or benefits available to the insured.

1787 Section 15. Section ~~31A-22-429~~ is enacted to read:

1788 **31A-22-429. Producer's duties related to replacement of life insurance or annuity.**

1789 (1) In connection with or as part of each application for life insurance or annuities, the

1790 applicant shall complete and the producer shall submit to the insurer the statements required by

1791 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as

1792 to:

1793 (a) whether the applicant has existing policies or contracts; and

1794 (b) whether the proposed life insurance or annuity will replace, discontinue, or change
1795 an existing policy or contract.

1796 (2) If an applicant for life insurance or an annuity answers "yes" to the question
1797 regarding replacement, discontinuance, or change of an existing policy or contract referred to in
1798 Subsection (1), the producer shall present to the applicant, not later than at the time of taking
1799 the application, the notice regarding replacements in the form adopted by the commissioner by
1800 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, or
1801 other substantially similar document filed with the commissioner.

1802 (3) (a) The notice described in Subsection (2) shall:

1803 (i) list each existing policy or contract contemplated to be replaced, properly identified
1804 by name of insurer, the insured or annuitant, and policy or contract number if available; and

1805 (ii) include a statement as to whether each policy or contract will be replaced or
1806 whether a policy will be used as a source of financing for the new policy or contract.

1807 (b) If a policy or contract number has not been issued by the existing insurer,
1808 alternative identification, such as an application or receipt number, shall be listed.

1809 (4) In connection with a replacement transaction, the producer shall leave with the
1810 applicant by no later than at the time of policy or contract delivery the original or a copy of all
1811 printed sales material. With respect to electronically presented sales material, it shall be
1812 provided to the policy or contract holder in printed form no later than at the time of policy or
1813 contract delivery.

1814 (5) Except as provided in rule made by the commissioner in accordance with Title
1815 63G, Chapter 3, Utah Administrative Rulemaking Act, in connection with a replacement
1816 transaction, the producer shall submit to the insurer to which an application for a policy or
1817 contract is presented:

1818 (a) a copy of each document required by this section;

1819 (b) a statement identifying any preprinted or electronically presented company
1820 approved sales materials used; and

1821 (c) copies of any individualized sales materials, including any illustrations related to
1822 the specific policy or contract purchased.

1823 Section 16. Section **31A-22-519** is amended to read:

1824 **31A-22-519. Death pending conversion.**

1825 If a person insured under a group life insurance policy, or the insured dependent of that
1826 person, dies during the period of eligibility for conversion under Section 31A-22-517 or
1827 31A-22-518 and before the individual policy becomes effective, the amount of life insurance to
1828 which ~~he~~ the insured would have been entitled to have issued under the individual policy is
1829 payable as a claim under the group policy, whether or not application for the individual policy
1830 or the payment of the first premium has been made.

1831 Section 17. Section **31A-22-612** is amended to read:

1832 **31A-22-612. Conversion privileges for insured former spouse.**

1833 (1) An accident and health insurance policy, which in addition to covering the insured
1834 also provides coverage to the spouse of the insured, may not contain a provision for
1835 termination of coverage of a spouse covered under the policy, except by entry of a valid decree
1836 of divorce or annulment between the parties.

1837 (2) Every policy which contains this type of provision shall provide that upon the entry
1838 of the divorce decree the spouse is entitled to have issued an individual policy of accident and
1839 health insurance without evidence of insurability, upon application to the company and
1840 payment of the appropriate premium. The policy shall provide the coverage being issued
1841 which is most nearly similar to the terminated coverage. Probationary or waiting periods in the
1842 policy are considered satisfied to the extent the coverage was in force under the prior policy.

1843 (3) When the insurer receives actual notice that the coverage of a spouse is to be
1844 terminated because of a divorce or annulment, the insurer shall promptly provide the spouse
1845 written notification of the right to obtain individual coverage as provided in Subsection (2), the
1846 premium amounts required, and the manner, place, and time in which premiums may be paid.
1847 The premium is determined in accordance with the insurer's table of premium rates applicable
1848 to the age and class of risk of the persons to be covered and to the type and amount of coverage
1849 provided. If the spouse applies and tenders the first monthly premium to the insurer within 30
1850 days after receiving the notice provided by this subsection, the spouse shall receive individual
1851 coverage that commences immediately upon termination of coverage under the insured's
1852 policy.

1853 (4) This section does not apply to accident and health insurance policies~~[-(a)]~~ offered
1854 on a group blanket basis~~[-or]~~.

1855 ~~[(b) that comply with Section 31A-22-723.]~~

1856 Section 18. Section **31A-22-617** is amended to read:

1857 **31A-22-617. Preferred provider contract provisions.**

1858 Health insurance policies may provide for insureds to receive services or
1859 reimbursement under the policies in accordance with preferred health care provider contracts as
1860 follows:

1861 (1) Subject to restrictions under this section, any insurer or third party administrator
1862 may enter into contracts with health care providers as defined in Section 78B-3-403 under
1863 which the health care providers agree to supply services, at prices specified in the contracts, to
1864 persons insured by an insurer.

1865 (a) (i) A health care provider contract may require the health care provider to accept the
1866 specified payment as payment in full, relinquishing the right to collect additional amounts from
1867 the insured person.

1868 (ii) In any dispute involving a provider's claim for reimbursement, the same shall be
1869 determined in accordance with applicable law, the provider contract, the subscriber contract,
1870 and the insurer's written payment policies in effect at the time services were rendered.

1871 (iii) If the parties are unable to resolve their dispute, the matter shall be subject to
1872 binding arbitration by a jointly selected arbitrator. Each party is to bear its own expense except
1873 the cost of the jointly selected arbitrator shall be equally shared. This Subsection (1)(a)(iii)
1874 does not apply to the claim of a general acute hospital to the extent it is inconsistent with the
1875 hospital's provider agreement.

1876 (iv) An organization may not penalize a provider solely for pursuing a claims dispute
1877 or otherwise demanding payment for a sum believed owing.

1878 (v) If an insurer permits another entity with which it does not share common ownership
1879 or control to use or otherwise lease one or more of the organization's networks of participating
1880 providers, the organization shall ensure, at a minimum, that the entity pays participating
1881 providers in accordance with the same fee schedule and general payment policies as the
1882 organization would for that network.

1883 (b) The insurance contract may reward the insured for selection of preferred health care
1884 providers by:

1885 (i) reducing premium rates;

- 1886 (ii) reducing deductibles;
- 1887 (iii) coinsurance;
- 1888 (iv) other copayments; or
- 1889 (v) any other reasonable manner.
- 1890 (c) If the insurer is a managed care organization, as defined in Subsection
- 1891 31A-27a-403(1)(f):
- 1892 (i) the insurance contract and the health care provider contract shall provide that in the
- 1893 event the managed care organization becomes insolvent, the rehabilitator or liquidator may:
- 1894 (A) require the health care provider to continue to provide health care services under
- 1895 the contract until the earlier of:
- 1896 (I) 90 days after the date of the filing of a petition for rehabilitation or the petition for
- 1897 liquidation; or
- 1898 (II) the date the term of the contract ends; and
- 1899 (B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to
- 1900 receive from the managed care organization during the time period described in Subsection
- 1901 (1)(c)(i)(A);
- 1902 (ii) the provider is required to:
- 1903 (A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and
- 1904 (B) relinquish the right to collect additional amounts from the insolvent managed care
- 1905 organization's enrollee, as defined in Subsection 31A-27a-403(1)(b);
- 1906 (iii) if the contract between the health care provider and the managed care organization
- 1907 has not been reduced to writing, or the contract fails to contain the language required by
- 1908 Subsection (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:
- 1909 (A) sums owed by the insolvent managed care organization; or
- 1910 (B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);
- 1911 (iv) the following may not bill or maintain any action at law against an enrollee to
- 1912 collect sums owed by the insolvent managed care organization or the amount of the regular fee
- 1913 reduction authorized under Subsection (1)(c)(i)(B):
- 1914 (A) a provider;
- 1915 (B) an agent;
- 1916 (C) a trustee; or

1917 (D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and

1918 (v) notwithstanding Subsection (1)(c)(i):

1919 (A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's
1920 regular fee set forth in the contract; and

1921 (B) the enrollee shall continue to pay the copayments, deductibles, and other payments
1922 for services received from the provider that the enrollee was required to pay before the filing
1923 of:

1924 (I) a petition for rehabilitation; or

1925 (II) a petition for liquidation.

1926 (2) (a) Subject to Subsections (2)(b) through (2)(~~f~~)(e), an insurer using preferred
1927 health care provider contracts [~~shall pay for the services of health care providers not under the~~
1928 ~~contract, unless the illnesses or injuries treated by the health care provider are not within the~~
1929 ~~scope of the insurance contract. As used in this section, "class of health care providers" means~~
1930 ~~all health care providers licensed or licensed and certified by the state within the same~~
1931 ~~professional, trade, occupational, or facility licensure or licensure and certification category~~
1932 ~~established pursuant to Titles 26, Utah Health Code and 58, Occupations and Professions] is
1933 subject to the reimbursement requirements in Section 31A-8-501 on or after January 1, 2014.~~

1934 [~~(b) (i) Until July 1, 2012, when the insured receives services from a health care~~
1935 ~~provider not under contract, the insurer shall reimburse the insured for at least 75% of the~~
1936 ~~average amount paid by the insurer for comparable services of preferred health care providers~~
1937 ~~who are members of the same class of health care providers.]~~

1938 [~~(ii) Notwithstanding Subsection (2)(b)(i), an insurer may offer a health plan that~~
1939 ~~complies with the provisions of Subsection 31A-22-618.5(3).]~~

1940 [~~(iii) The commissioner may adopt a rule dealing with the determination of what~~
1941 ~~constitutes 75% of the average amount paid by the insurer under Subsection (2)(b)(i) for~~
1942 ~~comparable services of preferred health care providers who are members of the same class of~~
1943 ~~health care providers.]~~

1944 [~~(e)~~] (b) When reimbursing for services of health care providers not under contract, the
1945 insurer may make direct payment to the insured.

1946 [~~(d) Notwithstanding Subsection (2)(b), an]~~

1947 (c) An insurer using preferred health care provider contracts may impose a deductible

1948 on coverage of health care providers not under contract.

1949 ~~[(e)]~~ (d) When selecting health care providers with whom to contract under Subsection
1950 (1), an insurer may not unfairly discriminate between classes of health care providers, but may
1951 discriminate within a class of health care providers, subject to Subsection (7).

1952 ~~[(f)]~~ (e) For purposes of this section, unfair discrimination between classes of health
1953 care providers ~~[shall include]~~ includes:

1954 (i) refusal to contract with class members in reasonable proportion to the number of
1955 insureds covered by the insurer and the expected demand for services from class members; and

1956 (ii) refusal to cover procedures for one class of providers that are:

1957 (A) commonly ~~[utilized]~~ used by members of the class of health care providers for the
1958 treatment of illnesses, injuries, or conditions;

1959 (B) otherwise covered by the insurer; and

1960 (C) within the scope of practice of the class of health care providers.

1961 (3) Before the insured consents to the insurance contract, the insurer shall fully disclose
1962 to the insured that it has entered into preferred health care provider contracts. The insurer shall
1963 provide sufficient detail on the preferred health care provider contracts to permit the insured to
1964 agree to the terms of the insurance contract. The insurer shall provide at least the following
1965 information:

1966 (a) a list of the health care providers under contract, and if requested their business
1967 locations and specialties;

1968 (b) a description of the insured benefits, including any deductibles, coinsurance, or
1969 other copayments;

1970 (c) a description of the quality assurance program required under Subsection (4); and

1971 (d) a description of the adverse benefit determination procedures required under
1972 Subsection (5).

1973 (4) (a) An insurer using preferred health care provider contracts shall maintain a quality
1974 assurance program for assuring that the care provided by the health care providers under
1975 contract meets prevailing standards in the state.

1976 (b) The commissioner in consultation with the executive director of the Department of
1977 Health may designate qualified persons to perform an audit of the quality assurance program.

1978 The auditors shall have full access to all records of the organization and its health care

1979 providers, including medical records of individual patients.

1980 (c) The information contained in the medical records of individual patients shall
1981 remain confidential. All information, interviews, reports, statements, memoranda, or other data
1982 furnished for purposes of the audit and any findings or conclusions of the auditors are
1983 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal
1984 proceeding except hearings before the commissioner concerning alleged violations of this
1985 section.

1986 (5) An insurer using preferred health care provider contracts shall provide a reasonable
1987 procedure for resolving complaints and adverse benefit determinations initiated by the insureds
1988 and health care providers.

1989 (6) An insurer may not contract with a health care provider for treatment of illness or
1990 injury unless the health care provider is licensed to perform that treatment.

1991 (7) (a) A health care provider or insurer may not discriminate against a preferred health
1992 care provider for agreeing to a contract under Subsection (1).

1993 (b) Any health care provider licensed to treat any illness or injury within the scope of
1994 the health care provider's practice, who is willing and able to meet the terms and conditions
1995 established by the insurer for designation as a preferred health care provider, shall be able to
1996 apply for and receive the designation as a preferred health care provider. Contract terms and
1997 conditions may include reasonable limitations on the number of designated preferred health
1998 care providers based upon substantial objective and economic grounds, or expected use of
1999 particular services based upon prior provider-patient profiles.

2000 (8) Upon the written request of a provider excluded from a provider contract, the
2001 commissioner may hold a hearing to determine if the insurer's exclusion of the provider is
2002 based on the criteria set forth in Subsection (7)(b).

2003 (9) ~~[Insurers]~~ Except as provided in Subsection 31A-22-618.5(3)(a), insurers are
2004 subject to [the provisions of] Sections 31A-22-613.5, 31A-22-614.5, and 31A-22-618.

2005 (10) Nothing in this section is to be construed as to require an insurer to offer a certain
2006 benefit or service as part of a health benefit plan.

2007 (11) This section does not apply to catastrophic mental health coverage provided in
2008 accordance with Section 31A-22-625.

2009 Section 19. Section **31A-22-618.5** is amended to read:

2010 **31A-22-618.5. Health benefit plan offerings.**

2011 (1) The purpose of this section is to increase the range of health benefit plans available
2012 in the small group, small employer group, large group, and individual insurance markets.

2013 (2) A health maintenance organization that is subject to Chapter 8, Health Maintenance
2014 Organizations and Limited Health Plans:

2015 (a) shall offer to potential purchasers at least one health benefit plan that is subject to
2016 the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans;
2017 and

2018 (b) may offer to a potential purchaser one or more health benefit plans that:

2019 (i) are not subject to one or more of the following:

2020 (A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

2021 (B) the limitation on point of service products in Subsections 31A-8-408(3) through

2022 (6);

2023 (C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in
2024 Section 31A-8-101; or

2025 (D) coverage mandates enacted after January 1, 2009 that are not required by federal
2026 law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate
2027 enacted after January 1, 2009; and

2028 (ii) when offering a health plan under this section, provide coverage for an emergency
2029 medical condition as required by Section 31A-22-627 as follows:

2030 (A) within the organization's service area, covered services shall include health care
2031 services from nonaffiliated providers when medically necessary to stabilize an emergency
2032 medical condition; and

2033 (B) outside the organization's service area, covered services shall include medically
2034 necessary health care services for the treatment of an emergency medical condition that are
2035 immediately required while the enrollee is outside the geographic limits of the organization's
2036 service area.

2037 (3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health
2038 Maintenance Organizations and Limited Health Plans:

2039 [~~(a) notwithstanding Subsection 31A-22-617(2), may offer a health benefit plan that~~
2040 ~~groups providers into the following reimbursement levels:]~~

2041 ~~[(i) tier one contracted providers;]~~
 2042 ~~[(ii) tier two contracted providers who the insurer shall reimburse at least 75% of tier~~
 2043 ~~one providers; and]~~
 2044 ~~[(iii) one or more tiers of non-contracted providers;]~~
 2045 ~~[(b)]~~ (a) notwithstanding Subsection 31A-22-617(9), may offer a health benefit plan
 2046 that is not subject to Section 31A-22-618;
 2047 ~~[(c) beginning July 1, 2012, may offer health benefit plans that:]~~
 2048 ~~[(i) are not subject to Subsection 31A-22-617(2); and]~~
 2049 ~~[(ii) are subject to the reimbursement requirements in Section 31A-8-501;]~~
 2050 ~~[(d)]~~ (b) when offering a health plan under this Subsection (3), shall provide coverage
 2051 of emergency care services as required by Section 31A-22-627 ~~[by providing coverage at a~~
 2052 ~~reimbursement level of at least 75% of the health benefit plan's highest contracted provider~~
 2053 ~~category]; and~~
 2054 ~~[(e) are]~~ (c) is not subject to coverage mandates enacted after January 1, 2009 that are
 2055 not required by federal law, provided that an insurer offers one plan that covers a mandate
 2056 enacted after January 1, 2009.
 2057 (4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under
 2058 Subsection (2)(b).
 2059 (5) (a) Any difference in price between a health benefit plan offered under Subsections
 2060 (2)(a) and (b) shall be based on actuarially sound data.
 2061 (b) Any difference in price between a health benefit plan offered under ~~[Subsections]~~
 2062 Subsection (3)(a) ~~[and (b)]~~ shall be based on actuarially sound data.
 2063 (6) Nothing in this section limits the number of health benefit plans that an insurer may
 2064 offer.
 2065 Section 20. Section ~~31A-22-722~~ is amended to read:
 2066 **31A-22-722. Utah mini-COBRA benefits for employer group coverage.**
 2067 (1) An insured may extend the employee's coverage under the current employer's group
 2068 policy for a period of 12 months, except as provided in Subsections (2) and 31A-22-722.5(4).
 2069 The right to extend coverage includes:
 2070 (a) voluntary termination;
 2071 (b) involuntary termination;

2072 (c) retirement;
2073 (d) death;
2074 (e) divorce or legal separation;
2075 (f) loss of dependent status;
2076 (g) sabbatical;
2077 (h) a disability;
2078 (i) leave of absence; or
2079 (j) reduction of hours.
2080 (2) (a) Notwithstanding Subsection (1), an employee may not extend coverage under
2081 the current employer's group insurance policy if the employee:
2082 (i) fails to pay premiums or contributions in accordance with the terms of the insurance
2083 policy;
2084 (ii) acquires other group coverage covering all preexisting conditions including
2085 maternity, if the coverage exists;
2086 (iii) performs an act or practice that constitutes fraud in connection with the coverage;
2087 (iv) makes an intentional misrepresentation of material fact under the terms of the
2088 coverage;
2089 (v) is terminated from employment for gross misconduct;
2090 (vi) is not continuously covered under the current employer's group policy for a period
2091 of three months immediately before the termination of the insurance policy due to an event set
2092 forth in Subsection (1);
2093 (vii) is eligible for an extension of coverage required by federal law;
2094 (viii) establishes residence outside of this state;
2095 (ix) moves out of the insurer's service area;
2096 (x) is eligible for similar coverage under another group insurance policy; or
2097 (xi) has the employee's coverage terminated because the employer's coverage is
2098 terminated, except as provided in Subsection (8)[~~; or~~].
2099 [~~(xii) elects alternative coverage under Section 31A-22-724.~~]
2100 (b) The right to extend coverage under Subsection (1) applies to spouse or dependent
2101 coverage, including a surviving spouse or dependents whose coverage under the insurance
2102 policy terminates by reason of the death of the employee or member.

2103 (3) (a) The employer shall notify the following in writing of the right to extend group
2104 coverage and the payment amounts required for extension of coverage, including the manner,
2105 place, and time in which the payments shall be made:

2106 (i) a terminated insured;

2107 (ii) an ex-spouse of an insured; or

2108 (iii) if Subsection (2)(b) applies:

2109 (A) a surviving spouse; and

2110 (B) the guardian of surviving dependents, if different from a surviving spouse.

2111 (b) The notification required in Subsection (3)(a) shall be sent first class mail within 30
2112 days after the termination date of the group coverage to:

2113 (i) the terminated insured's home address as shown on the records of the employer;

2114 (ii) the address of the surviving spouse, if different from the insured's address and if
2115 shown on the records of the employer;

2116 (iii) the guardian of any dependents address, if different from the insured's address, and
2117 if shown on the records of the employer; and

2118 (iv) the address of the ex-spouse, if shown on the records of the employer.

2119 (4) The insurer shall provide the employee, spouse, or any eligible dependent the
2120 opportunity to extend the group coverage at the payment amount stated in Subsection (5) if:

2121 (a) the employer policyholder does not provide the terminated insured the written
2122 notification required by Subsection (3)(a); and

2123 (b) the employee or other individual eligible for extension contacts the insurer within
2124 60 days of coverage termination.

2125 (5) A premium amount for extended group coverage may not exceed 102% of the
2126 group rate in effect for a group member, including an employer's contribution, if any, for a
2127 group insurance policy.

2128 (6) Except as provided in this Subsection (6), coverage extends without interruption for
2129 12 months and may not terminate if the terminated insured or, with respect to a minor, the
2130 parent or guardian of the terminated insured:

2131 (a) elects to extend group coverage within 60 days of losing group coverage; and

2132 (b) tenders the amount required to the employer or insurer.

2133 (7) The insured's coverage may be terminated before 12 months if the terminated

2134 insured:

2135 (a) establishes residence outside of this state;

2136 (b) moves out of the insurer's service area;

2137 (c) fails to pay premiums or contributions in accordance with the terms of the insurance

2138 policy, including any timeliness requirements;

2139 (d) performs an act or practice that constitutes fraud in connection with the coverage;

2140 (e) makes an intentional misrepresentation of material fact under the terms of the

2141 coverage;

2142 (f) becomes eligible for similar coverage under another group insurance policy; or

2143 (g) has the coverage terminated because the employer's coverage is terminated, except

2144 as provided in Subsection (8).

2145 (8) If the current employer coverage is terminated and the employer replaces coverage

2146 with similar coverage under another group insurance policy, without interruption, the

2147 terminated insured, spouse, or the surviving spouse and guardian of dependents if Subsection

2148 (2)(b) applies, may obtain extension of coverage under the replacement group insurance policy:

2149 (a) for the balance of the period the terminated insured would have extended coverage

2150 under the replaced group insurance policy; and

2151 (b) if the terminated insured is otherwise eligible for extension of coverage.

2152 [~~(9)(a) Within 30 days of the insured's exhaustion of extension of coverage, the~~

2153 employer shall provide the terminated insured and the ex-spouse, or, in the case of the death of

2154 the insured, the surviving spouse, or guardian of any dependents, written notification of the

2155 right to an individual conversion policy under Section 31A-22-723.]

2156 [~~(b) The notification required by Subsection (9)(a):~~

2157 [~~(i) shall be sent first class mail to:~~

2158 [~~(A) the insured's last-known address as shown on the records of the employer;~~

2159 [~~(B) the address of the surviving spouse, if different from the insured's address, and if~~

2160 shown on the records of the employer;]

2161 [~~(C) the guardian of any dependents last known address as shown on the records of the~~

2162 employer, if different from the address of the surviving spouse; and]

2163 [~~(D) the address of the ex-spouse as shown on the records of the employer, if~~

2164 applicable; and]

2165 ~~[(ii) shall contain the name, address, and telephone number of the insurer that will~~
2166 ~~provide the conversion coverage.]~~

2167 Section 21. Section **31A-23a-102** is amended to read:

2168 **31A-23a-102. Definitions.**

2169 As used in this chapter:

2170 (1) "Bail bond producer" is as defined in Section 31A-35-102.

2171 ~~[(2) "Escrow" means a license subline of authority in conjunction with the title~~
2172 ~~insurance line of authority that allows a person to conduct escrow as defined in Section~~
2173 ~~31A-1-301.]~~

2174 ~~[(3)]~~ (2) "Home state" means a state or territory of the United States or the District of
2175 Columbia in which an insurance producer:

2176 (a) maintains the insurance producer's principal:

2177 (i) place of residence; or

2178 (ii) place of business; and

2179 (b) is licensed to act as an insurance producer.

2180 ~~[(4)]~~ (3) "Insurer" is as defined in Section 31A-1-301, except that the following
2181 persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

2182 (a) a risk retention group as defined in:

2183 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

2184 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

2185 (iii) Chapter 15, Part 2, Risk Retention Groups Act;

2186 (b) a residual market pool;

2187 (c) a joint underwriting authority or association; and

2188 (d) a captive insurer.

2189 ~~[(5)]~~ (4) "License" is defined in Section 31A-1-301.

2190 ~~[(6)]~~ (5) (a) "Managing general agent" means a person that:

2191 (i) manages all or part of the insurance business of an insurer, including the
2192 management of a separate division, department, or underwriting office;

2193 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
2194 manager, or other similar term;

2195 (iii) produces and underwrites an amount of gross direct written premium equal to, or

2196 more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer
2197 in any one quarter or year:

2198 (A) with or without the authority;

2199 (B) separately or together with an affiliate; and

2200 (C) directly or indirectly; and

2201 (iv) (A) adjusts or pays claims in excess of an amount determined by the

2202 commissioner; or

2203 (B) negotiates reinsurance on behalf of the insurer.

2204 (b) Notwithstanding Subsection [~~(6)~~] (5)(a), the following persons may not be
2205 considered as managing general agent for the purposes of this chapter:

2206 (i) an employee of the insurer;

2207 (ii) a United States manager of the United States branch of an alien insurer;

2208 (iii) an underwriting manager that, pursuant to contract:

2209 (A) manages all the insurance operations of the insurer;

2210 (B) is under common control with the insurer;

2211 (C) is subject to Chapter 16, Insurance Holding Companies; and

2212 (D) is not compensated based on the volume of premiums written; and

2213 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal

2214 insurer or inter-insurance exchange under powers of attorney.

2215 [~~(7)~~] (6) "Negotiate" means the act of conferring directly with or offering advice

2216 directly to a purchaser or prospective purchaser of a particular contract of insurance concerning

2217 a substantive benefit, term, or condition of the contract if the person engaged in that act:

2218 (a) sells insurance; or

2219 (b) obtains insurance from insurers for purchasers.

2220 [~~(8)~~] (7) "Reinsurance intermediary" means:

2221 (a) a reinsurance intermediary-broker; or

2222 (b) a reinsurance intermediary-manager.

2223 [~~(9)~~] (8) "Reinsurance intermediary-broker" means a person other than an officer or

2224 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or

2225 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority

2226 or power to bind reinsurance on behalf of the insurer.

- 2227 [~~(10)~~] (9) (a) "Reinsurance intermediary-manager" means a person who:
- 2228 (i) has authority to bind or who manages all or part of the assumed reinsurance
- 2229 business of a reinsurer, including the management of a separate division, department, or
- 2230 underwriting office; and
- 2231 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
- 2232 intermediary-manager, manager, or other similar term.
- 2233 (b) Notwithstanding Subsection [~~(10)~~] (9)(a), the following persons may not be
- 2234 considered reinsurance intermediary-managers for the purpose of this chapter with respect to
- 2235 the reinsurer:
- 2236 (i) an employee of the reinsurer;
- 2237 (ii) a United States manager of the United States branch of an alien reinsurer;
- 2238 (iii) an underwriting manager that, pursuant to contract:
- 2239 (A) manages all the reinsurance operations of the reinsurer;
- 2240 (B) is under common control with the reinsurer;
- 2241 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 2242 (D) is not compensated based on the volume of premiums written; and
- 2243 (iv) the manager of a group, association, pool, or organization of insurers that:
- 2244 (A) engage in joint underwriting or joint reinsurance; and
- 2245 (B) are subject to examination by the insurance commissioner of the state in which the
- 2246 manager's principal business office is located.
- 2247 [~~(11)~~] (10) "Search" means a license subline of authority in conjunction with the title
- 2248 insurance line of authority that allows a person to issue title insurance commitments or policies
- 2249 on behalf of a title insurer.
- 2250 [~~(12)~~] (11) "Sell" means to exchange a contract of insurance:
- 2251 (a) by any means;
- 2252 (b) for money or its equivalent; and
- 2253 (c) on behalf of an insurance company.
- 2254 [~~(13)~~] (12) "Solicit" means:
- 2255 (a) attempting to sell insurance;
- 2256 (b) asking or urging a person to apply for:
- 2257 (i) a particular kind of insurance; and

- 2258 (ii) insurance from a particular insurance company;
- 2259 (c) advertising insurance, including advertising for the purpose of obtaining leads for
2260 the sale of insurance; or
- 2261 (d) holding oneself out as being in the insurance business.
- 2262 [~~(14)~~] (13) "Terminate" means:
- 2263 (a) the cancellation of the relationship between:
- 2264 (i) an individual licensee or agency licensee and a particular insurer; or
- 2265 (ii) an individual licensee and a particular agency licensee; or
- 2266 (b) the termination of:
- 2267 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf
2268 of a particular insurance company; or
- 2269 (ii) an individual licensee's authority to transact insurance on behalf of a particular
2270 agency licensee.
- 2271 [~~(15)~~] (14) "Title marketing representative" means a person who:
- 2272 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:
- 2273 (i) title insurance; or
- 2274 (ii) escrow services; and
- 2275 (b) does not have a search or escrow license as provided in Section 31A-23a-106.
- 2276 [~~(16)~~] (15) "Uniform application" means the version of the National Association of
2277 Insurance Commissioners' uniform application for resident and nonresident producer licensing
2278 at the time the application is filed.
- 2279 [~~(17)~~] (16) "Uniform business entity application" means the version of the National
2280 Association of Insurance Commissioners' uniform business entity application for resident and
2281 nonresident business entities at the time the application is filed.
- 2282 Section 22. Section **31A-23a-105** is amended to read:
- 2283 **31A-23a-105. General requirements for individual and agency license issuance**
2284 **and renewal.**
- 2285 (1) (a) The commissioner shall issue or renew a license to a person described in
2286 Subsection (1)(b) to act as:
- 2287 (i) a producer;
- 2288 (ii) a surplus lines producer;

- 2289 (iii) a limited line producer;
- 2290 (iv) a consultant;
- 2291 (v) a managing general agent; or
- 2292 (vi) a reinsurance intermediary.
- 2293 (b) The commissioner shall issue or renew a license under Subsection (1)(a) to a
- 2294 person who, as to the license type and line of authority classification applied for under Section
- 2295 31A-23a-106:
- 2296 (i) satisfies the application requirements under Section 31A-23a-104;
- 2297 (ii) satisfies the character requirements under Section 31A-23a-107;
- 2298 (iii) satisfies any applicable continuing education requirements under Section
- 2299 31A-23a-202;
- 2300 (iv) satisfies any applicable examination requirements under Section 31A-23a-108;
- 2301 (v) satisfies any applicable training period requirements under Section 31A-23a-203;
- 2302 (vi) if an applicant for a resident individual producer license, certifies that, to the extent
- 2303 applicable, the applicant:
- 2304 (A) is in compliance with Section 31A-23a-203.5; and
- 2305 (B) will maintain compliance with Section 31A-23a-203.5 during the period for which
- 2306 the license is issued or renewed;
- 2307 (vii) has not committed an act that is a ground for denial, suspension, or revocation as
- 2308 provided in Section 31A-23a-111;
- 2309 (viii) if a nonresident:
- 2310 (A) complies with Section 31A-23a-109; and
- 2311 (B) holds an active similar license in that person's state of residence;
- 2312 (ix) if an applicant for ~~[a]~~ an individual title insurance producer or agency title
- 2313 insurance producer license, satisfies the requirements of Section 31A-23a-204;
- 2314 (x) if an applicant for a license to act as a life settlement provider or life settlement
- 2315 producer, satisfies the requirements of Section 31A-23a-117; and
- 2316 (xi) pays the applicable fees under Section 31A-3-103.
- 2317 (2) (a) This Subsection (2) applies to the following persons:
- 2318 (i) an applicant for a pending:
- 2319 (A) individual or agency producer license;

- 2320 (B) surplus lines producer license;
- 2321 (C) limited line producer license;
- 2322 (D) consultant license;
- 2323 (E) managing general agent license; or
- 2324 (F) reinsurance intermediary license; or
- 2325 (ii) a licensed:
- 2326 (A) individual or agency producer;
- 2327 (B) surplus lines producer;
- 2328 (C) limited line producer;
- 2329 (D) consultant;
- 2330 (E) managing general agent; or
- 2331 (F) reinsurance intermediary.
- 2332 (b) A person described in Subsection (2)(a) shall report to the commissioner:
- 2333 (i) an administrative action taken against the person, including a denial of a new or
- 2334 renewal license application:
- 2335 (A) in another jurisdiction; or
- 2336 (B) by another regulatory agency in this state; and
- 2337 (ii) a criminal prosecution taken against the person in any jurisdiction.
- 2338 (c) The report required by Subsection (2)(b) shall:
- 2339 (i) be filed:
- 2340 (A) at the time the person files the application for an individual or agency license; and
- 2341 (B) for an action or prosecution that occurs on or after the day on which the person
- 2342 files the application:
- 2343 (I) for an administrative action, within 30 days of the final disposition of the
- 2344 administrative action; or
- 2345 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
- 2346 and
- 2347 (ii) include a copy of the complaint or other relevant legal documents related to the
- 2348 action or prosecution described in Subsection (2)(b).
- 2349 (3) (a) The department may require a person applying for a license or for consent to
- 2350 engage in the business of insurance to submit to a criminal background check as a condition of

2351 receiving a license or consent.

2352 (b) A person, if required to submit to a criminal background check under Subsection

2353 (3)(a), shall:

2354 (i) submit a fingerprint card in a form acceptable to the department; and

2355 (ii) consent to a fingerprint background check by:

2356 (A) the Utah Bureau of Criminal Identification; and

2357 (B) the Federal Bureau of Investigation.

2358 (c) For a person who submits a fingerprint card and consents to a fingerprint

2359 background check under Subsection (3)(b), the department may request:

2360 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part

2361 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

2362 (ii) complete Federal Bureau of Investigation criminal background checks through the

2363 national criminal history system.

2364 (d) Information obtained by the department from the review of criminal history records

2365 received under this Subsection (3) shall be used by the department for the purposes of:

2366 (i) determining if a person satisfies the character requirements under Section

2367 31A-23a-107 for issuance or renewal of a license;

2368 (ii) determining if a person has failed to maintain the character requirements under

2369 Section 31A-23a-107; and

2370 (iii) preventing a person who violates the federal Violent Crime Control and Law

2371 Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from engaging in the business of insurance in

2372 the state.

2373 (e) If the department requests the criminal background information, the department

2374 shall:

2375 (i) pay to the Department of Public Safety the costs incurred by the Department of

2376 Public Safety in providing the department criminal background information under Subsection

2377 (3)(c)(i);

2378 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau

2379 of Investigation in providing the department criminal background information under

2380 Subsection (3)(c)(ii); and

2381 (iii) charge the person applying for a license or for consent to engage in the business of

2382 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

2383 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this
2384 section, a person licensed as one of the following in another state who moves to this state shall
2385 apply within 90 days of establishing legal residence in this state:

- 2386 (a) insurance producer;
- 2387 (b) surplus lines producer;
- 2388 (c) limited line producer;
- 2389 (d) consultant;
- 2390 (e) managing general agent; or
- 2391 (f) reinsurance intermediary.

2392 (5) (a) The commissioner may deny a license application for a license listed in
2393 Subsection (5)(b) if the person applying for the license, as to the license type and line of
2394 authority classification applied for under Section 31A-23a-106:

- 2395 (i) fails to satisfy the requirements as set forth in this section; or
- 2396 (ii) commits an act that is grounds for denial, suspension, or revocation as set forth in
2397 Section 31A-23a-111.

2398 (b) This Subsection (5) applies to the following licenses:

- 2399 (i) producer;
- 2400 (ii) surplus lines producer;
- 2401 (iii) limited line producer;
- 2402 (iv) consultant;
- 2403 (v) managing general agent; or
- 2404 (vi) reinsurance intermediary.

2405 (6) Notwithstanding the other provisions of this section, the commissioner may:

2406 (a) issue a license to an applicant for a license for a title insurance line of authority only
2407 with the concurrence of the Title and Escrow Commission; and

2408 (b) renew a license for a title insurance line of authority only with the concurrence of
2409 the Title and Escrow Commission.

2410 Section 23. Section **31A-23a-106** is amended to read:

2411 **31A-23a-106. License types.**

2412 (1) (a) A resident or nonresident license issued under this chapter shall be issued under

2413 the license types described under Subsection (2).

2414 (b) A license type and a line of authority pertaining to a license type describe the type
2415 of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license
2416 type is intended to describe the matters to be considered under any education, examination, and
2417 training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and
2418 31A-23a-203.

2419 (2) (a) A producer license type includes the following lines of authority:

2420 (i) life insurance, including a nonvariable contract;

2421 (ii) variable contracts, including variable life and annuity, if the producer has the life
2422 insurance line of authority;

2423 (iii) accident and health insurance, including a contract issued to a policyholder under
2424 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
2425 Organizations and Limited Health Plans;

2426 (iv) property insurance;

2427 (v) casualty insurance, including a surety or other bond;

2428 (vi) title insurance under one or more of the following categories:

2429 (A) search, including authority to act as a title marketing representative;

2430 (B) escrow, including authority to act as a title marketing representative; and

2431 (C) title marketing representative only; and

2432 (vii) personal lines insurance.

2433 (b) A surplus lines producer license type includes the following lines of authority:

2434 (i) property insurance, if the person holds an underlying producer license with the
2435 property line of insurance; and

2436 (ii) casualty insurance, if the person holds an underlying producer license with the
2437 casualty line of authority.

2438 (c) A limited line producer license type includes the following limited lines of
2439 authority:

2440 (i) limited line credit insurance;

2441 (ii) travel insurance;

2442 (iii) motor club insurance;

2443 (iv) car rental related insurance;

- 2444 (v) legal expense insurance;
- 2445 (vi) crop insurance;
- 2446 (vii) self-service storage insurance;
- 2447 (viii) bail bond producer;
- 2448 (ix) guaranteed asset protection waiver; and
- 2449 (x) portable electronics insurance.
- 2450 (d) A consultant license type includes the following lines of authority:
- 2451 (i) life insurance, including a nonvariable contract;
- 2452 (ii) variable contracts, including variable life and annuity, if the consultant has the life
- 2453 insurance line of authority;
- 2454 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2455 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2456 Organizations and Limited Health Plans;
- 2457 (iv) property insurance;
- 2458 (v) casualty insurance, including a surety or other bond; and
- 2459 (vi) personal lines insurance.
- 2460 (e) A managing general agent license type includes the following lines of authority:
- 2461 (i) life insurance, including a nonvariable contract;
- 2462 (ii) variable contracts, including variable life and annuity, if the managing general
- 2463 agent has the life insurance line of authority;
- 2464 (iii) accident and health insurance, including a contract issued to a policyholder under
- 2465 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 2466 Organizations and Limited Health Plans;
- 2467 (iv) property insurance;
- 2468 (v) casualty insurance, including a surety or other bond; and
- 2469 (vi) personal lines insurance.
- 2470 (f) A reinsurance intermediary license type includes the following lines of authority:
- 2471 (i) life insurance, including a nonvariable contract;
- 2472 (ii) variable contracts, including variable life and annuity, if the reinsurance
- 2473 intermediary has the life insurance line of authority;
- 2474 (iii) accident and health insurance, including a contract issued to a policyholder under

2475 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
2476 Organizations and Limited Health Plans;

2477 (iv) property insurance;

2478 (v) casualty insurance, including a surety or other bond; and

2479 (vi) personal lines insurance.

2480 (g) A person who holds a license under Subsection (2)(a) has the qualifications

2481 necessary to act as a holder of a license under Subsection (2)(c), except that the person may not
2482 act under Subsection (2)(c)(viii) or (ix).

2483 (3) (a) The commissioner may by rule recognize other producer, surplus lines producer,
2484 limited line producer, consultant, managing general agent, or reinsurance intermediary lines of
2485 authority as to kinds of insurance not listed under Subsections (2)(a) through (f).

2486 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and
2487 Escrow Commission may by rule, with the concurrence of the commissioner and subject to
2488 Section 31A-2-404, recognize other categories for [a] an individual title insurance producer or
2489 agency title insurance producer line of authority not listed under Subsection (2)(a)(vi).

2490 (4) The variable contracts line of authority requires:

2491 (a) for a producer, licensure by the Financial Industry Regulatory Authority as a:

2492 (i) registered broker-dealer; or

2493 (ii) broker-dealer agent, with a current registration with a broker-dealer; and

2494 (b) for a consultant, registration with the Securities and Exchange Commission or
2495 licensure by the Utah Division of Securities as an:

2496 (i) investment adviser; or

2497 (ii) investment adviser representative, with a current association with an investment
2498 adviser.

2499 (5) A surplus lines producer is a producer who has a surplus lines license.

2500 Section 24. Section **31A-23a-118** is enacted to read:

2501 **31A-23a-118. Car rental related licensing requirements.**

2502 (1) Subject to Section 31A-23a-103, a person is required to hold a limited line
2503 producer license with a car rental related insurance limited line of authority to sell or offer car
2504 rental related insurance coverage under a car rental related insurance policy.

2505 (2) A car rental related insurance limited line license issued pursuant to 31A-23a-103

2506 and 31A-23a-106 authorizes an employee or authorized representative of the licensee to sell or
2507 offer coverage under a car rental related insurance policy to a customer at each location at
2508 which the licensee engages in car rental related insurance transactions.

2509 (3) An agency holding a car rental related insurance limited line license shall:

2510 (a) be appointed by an insurer underwriting a car rental related insurance policy that the
2511 agency sells or offers; and

2512 (b) have a designated responsible licensed individual at each location at which the
2513 agency is soliciting, selling, or offering car rental related insurance.

2514 (4) An agency holding a car rental related insurance limited line license may employ a
2515 nonlicensed individual employed as a counter sales representative in soliciting, selling, or
2516 offering car rental related insurance. The nonlicensed individual shall be:

2517 (a) trained and supervised in the sale of car rental related insurance products; and

2518 (b) responsible to a licensed individual designated by the agency at each location where
2519 a car rental related insurance product is sold.

2520 Section 25. Section **31A-23a-202** is amended to read:

2521 **31A-23a-202. Continuing education requirements.**

2522 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing
2523 education requirements for a producer and a consultant.

2524 (2) (a) The commissioner may not state a continuing education requirement in terms of
2525 formal education.

2526 (b) The commissioner may state a continuing education requirement in terms of hours
2527 of insurance-related instruction received.

2528 (c) Insurance-related formal education may be a substitute, in whole or in part, for the
2529 hours required under Subsection (2)(b).

2530 (3) (a) The commissioner shall impose continuing education requirements in
2531 accordance with a two-year licensing period in which the licensee meets the requirements of
2532 this Subsection (3).

2533 (b) (i) Except as provided in this section, the continuing education requirements shall
2534 require:

2535 (A) that a licensee complete 24 credit hours of continuing education for every two-year
2536 licensing period;

2537 (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses;
2538 and

2539 (C) that the licensee complete at least half of the required hours through classroom
2540 hours of insurance-related instruction.

2541 (ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be
2542 obtained through:

2543 (A) classroom attendance;

2544 (B) home study;

2545 (C) watching a video recording;

2546 (D) experience credit; or

2547 (E) another method provided by rule.

2548 (iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), [a] an individual title
2549 insurance producer is required to complete 12 credit hours of continuing education for every
2550 two-year licensing period, with 3 of the credit hours being ethics courses unless the individual
2551 title insurance producer is licensed in this state as [a] an individual title insurance producer for
2552 20 or more consecutive years.

2553 (B) If [a] an individual title insurance producer is licensed in this state as [a] an
2554 individual title insurance producer for 20 or more consecutive years, the individual title
2555 insurance producer is required to complete 6 credit hours of continuing education for every
2556 two-year licensing period, with 3 of the credit hours being ethics courses.

2557 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), [a] an individual title insurance
2558 producer is considered to have met the continuing education requirements imposed under
2559 Subsection (3)(b)(iii)(A) or (B) if the individual title insurance producer:

2560 (I) is an active member in good standing with the Utah State Bar;

2561 (II) is in compliance with the continuing education requirements of the Utah State Bar;

2562 and

2563 (III) if requested by the department, provides the department evidence that the
2564 individual title insurance producer complied with the continuing education requirements of the
2565 Utah State Bar.

2566 (c) A licensee may obtain continuing education hours at any time during the two-year
2567 licensing period.

2568 (d) (i) A licensee is exempt from continuing education requirements under this section
2569 if:

2570 (A) the licensee was first licensed before April 1, 1978;

2571 (B) the license does not have a continuous lapse for a period of more than one year,
2572 except for a license for which the licensee has had an exemption approved before May 11,
2573 2011;

2574 (C) the licensee requests an exemption from the department; and

2575 (D) the department approves the exemption.

2576 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is
2577 not required to apply again for the exemption.

2578 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2579 commissioner shall, by rule:

2580 (i) publish a list of insurance professional designations whose continuing education
2581 requirements can be used to meet the requirements for continuing education under Subsection
2582 (3)(b);

2583 (ii) authorize a continuing education provider or a state or national professional
2584 producer or consultant association to:

2585 (A) offer a qualified program for a license type or line of authority on a geographically
2586 accessible basis; and

2587 (B) collect a reasonable fee for funding and administration of a continuing education
2588 program, subject to the review and approval of the commissioner; and

2589 (iii) provide that membership by a producer or consultant in a state or national
2590 professional producer or consultant association is considered a substitute for the equivalent of
2591 two hours for each year during which the producer or consultant is a member of the
2592 professional association, except that the commissioner may not give more than two hours of
2593 continuing education credit in a year regardless of the number of professional associations of
2594 which the producer or consultant is a member.

2595 (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a
2596 professional producer or consultant association program may be less for an association
2597 member, on the basis of the member's affiliation expense, but shall preserve the right of a
2598 nonmember to attend without affiliation.

2599 (4) The commissioner shall approve a continuing education provider or continuing
2600 education course that satisfies the requirements of this section.

2601 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2602 commissioner shall by rule set the processes and procedures for continuing education provider
2603 registration and course approval.

2604 (6) The requirements of this section apply only to a producer or consultant who is an
2605 individual.

2606 (7) A nonresident producer or consultant is considered to have satisfied this state's
2607 continuing education requirements if the nonresident producer or consultant satisfies the
2608 nonresident producer's or consultant's home state's continuing education requirements for a
2609 licensed insurance producer or consultant.

2610 (8) A producer or consultant subject to this section shall keep documentation of
2611 completing the continuing education requirements of this section for two years after the end of
2612 the two-year licensing period to which the continuing education applies.

2613 Section 26. Section **31A-23a-203.5** is amended to read:

2614 **31A-23a-203.5. Errors and omissions coverage requirements.**

2615 (1) In accordance with this section, a resident individual producer shall ensure that the
2616 resident individual producer is covered:

2617 (a) for the legal liability of the resident individual producer as the result of an
2618 erroneous act or failure to act in the resident individual producer's capacity as a producer; and

2619 (b) at all times during the term of the resident individual producer's license.

2620 (2) The coverage required by Subsection (1) shall consist of:

2621 (a) a policy naming the resident individual producer;

2622 (b) a policy naming the agency that designates the resident individual producer in
2623 accordance with this chapter; or

2624 (c) a written agreement by an insurer or group of affiliated insurers, on behalf of a
2625 resident individual producer who is or will become an exclusive agent of the insurer or group
2626 of affiliated insurers, under which the insurer or group of affiliated insurers agrees to assume
2627 responsibility, to the benefit of an aggrieved person, for legal liability of the resident individual
2628 producer as the result of an erroneous act or failure to act in the resident individual producer's
2629 capacity as a producer for the insurer or group of affiliated insurers.

2630 (3) The commissioner may, by rule made in accordance with Title 63G, Chapter 3,
2631 Utah Administrative Rulemaking Act, provide for:

2632 (a) the terms and conditions of the coverage required under Subsection (1); and

2633 (b) if the coverage required by Subsection (1) is terminated during a resident individual
2634 producer's license term, requirements to:

2635 (i) provide notice; and

2636 (ii) replace the coverage.

2637 (4) ~~[A]~~ An individual title insurance producer is considered to be in compliance with
2638 this section ~~[if the]~~ when:

2639 (a) the individual title insurance producer is not designated by an agency title producer
2640 and maintains [a] the individual title insurance producer's own bond, policy, or other financial
2641 protection in accordance with Subsection 31A-23a-204(2)~~[-];~~ or

2642 (b) the individual title insurance producer is designated by an agency title insurance
2643 producer that maintains a bond, policy, or other financial protection in accordance with
2644 Subsection 31A-23a-204(2).

2645 (5) Notwithstanding the other provisions of this section, a resident individual producer
2646 is exempt from the requirement to maintain coverage as provided in this section during a
2647 period in which the resident individual producer is not either:

2648 (a) appointed by an insurer under this title; or

2649 (b) designated by an agency under this title.

2650 (6) A limited lines producer is exempt from this section.

2651 Section 27. Section **31A-23a-204** is amended to read:

2652 **31A-23a-204. Special requirements for title insurance producers and agencies.**

2653 ~~[A]~~ An individual title insurance producer or agency title insurance producer~~;~~
2654 ~~including an agency;~~ shall be licensed in accordance with this chapter, with the additional
2655 requirements listed in this section.

2656 (1) (a) A person that receives a new license under this title as ~~[a]~~ an agency title
2657 insurance ~~[agency;]~~ producer shall at the time of licensure be owned or managed by at least one
2658 individual who is licensed for at least three of the five years immediately preceding the date on
2659 which the agency title insurance ~~[agency]~~ producer applies for a license with both:

2660 (i) a search line of authority; and

2661 (ii) an escrow line of authority.

2662 (b) ~~[A]~~ An agency title insurance [agency] producer subject to Subsection (1)(a) may
2663 comply with Subsection (1)(a) by having the agency title insurance [agency] producer owned or
2664 managed by:

2665 (i) one or more individuals who are licensed with the search line of authority for the
2666 time period provided in Subsection (1)(a); and

2667 (ii) one or more individuals who are licensed with the escrow line of authority for the
2668 time period provided in Subsection (1)(a).

2669 (c) A person licensed as ~~[a]~~ an agency title insurance [agency] producer shall at all
2670 times during the term of licensure be owned or managed by at least one individual who is
2671 licensed for at least three years within the preceding five-year period with both:

2672 (i) a search line of authority; and

2673 (ii) an escrow line of authority.

2674 (d) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
2675 exempt an attorney with real estate experience from the experience requirements in Subsection
2676 (1)(a).

2677 (e) An individual who satisfies the requirements of this Subsection (1) is known as a
2678 "qualifying licensee." At any given time, an individual may be a qualifying licensee for not
2679 more than two agency title insurance producers.

2680 (2) (a) ~~[A]~~ An individual title insurance producer or agency title insurance [agency or]
2681 producer appointed by an insurer shall maintain:

2682 (i) a fidelity bond;

2683 (ii) a professional liability insurance policy; or

2684 (iii) a financial protection:

2685 (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

2686 (B) that the commissioner considers adequate.

2687 (b) The bond, insurance, or financial protection required by this Subsection (2):

2688 (i) shall be supplied under a contract approved by the commissioner to provide
2689 protection against the improper performance of any service in conjunction with the issuance of
2690 a contract or policy of title insurance; and

2691 (ii) be in a face amount no less than \$50,000.

2692 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
2693 exempt individual title insurance producer or agency title insurance producers from the
2694 requirements of this Subsection (2) upon a finding that, and only so long as, the required policy
2695 or bond is generally unavailable at reasonable rates.

2696 (3) [~~A~~] An individual title insurance producer or agency title insurance [~~agency or~~]
2697 producer appointed by an insurer may maintain a reserve fund to the extent money was
2698 deposited before July 1, 2008, and not withdrawn to the income of the individual title insurance
2699 producer or agency title insurance producer.

2700 (4) An examination for licensure shall include questions regarding the search and
2701 examination of title to real property.

2702 (5) [~~A~~] An individual title insurance producer may not perform the functions of escrow
2703 unless the individual title insurance producer has been examined on the fiduciary duties and
2704 procedures involved in those functions.

2705 (6) The Title and Escrow Commission [~~shall~~] may adopt rules, subject to Section
2706 31A-2-404, after consulting with the [~~department~~] commissioner and the [~~department's~~]
2707 commissioner's test administrator, establishing an examination for a license that will satisfy
2708 this section.

2709 (7) A license may be issued to [~~a~~] an individual title insurance producer or agency title
2710 insurance producer who has qualified:

2711 (a) to perform only searches and examinations of title as specified in Subsection (4);

2712 (b) to handle only escrow arrangements as specified in Subsection (5); or

2713 (c) to act as a title marketing representative.

2714 (8) (a) A person licensed to practice law in Utah is exempt from the requirements of
2715 Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

2716 (b) In determining the number of policies issued by a person licensed to practice law in
2717 Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a
2718 policy to more than one party to the same closing, the person is considered to have issued only
2719 one policy.

2720 (9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or
2721 not, shall maintain a trust account separate from a law firm trust account for all title and real
2722 estate escrow transactions.

2723 Section 28. Section **31A-23a-402** is amended to read:

2724 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**
2725 **discrimination -- Coercion or intimidation -- Restriction on choice.**

2726 (1) (a) (i) Any of the following may not make or cause to be made any communication
2727 that contains false or misleading information, relating to an insurance product or contract, any
2728 insurer, or any licensee under this title, including information that is false or misleading
2729 because it is incomplete:

2730 (A) a person who is or should be licensed under this title;

2731 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

2732 (C) a person whose primary interest is as a competitor of a person licensed under this
2733 title; and

2734 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

2735 (ii) As used in this Subsection (1), "false or misleading information" includes:

2736 (A) assuring the nonobligatory payment of future dividends or refunds of unused
2737 premiums in any specific or approximate amounts, but reporting fully and accurately past
2738 experience is not false or misleading information; and

2739 (B) with intent to deceive a person examining it:

2740 (I) filing a report;

2741 (II) making a false entry in a record; or

2742 (III) wilfully refraining from making a proper entry in a record.

2743 (iii) A licensee under this title may not:

2744 (A) use any business name, slogan, emblem, or related device that is misleading or
2745 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
2746 already in business; or

2747 (B) use any advertisement or other insurance promotional material that would cause a
2748 reasonable person to mistakenly believe that a state or federal government agency, including
2749 the Health Insurance Exchange, also called the "Utah Health Exchange," created in Section
2750 63M-1-2504, the Comprehensive Health Insurance Pool created in Chapter 29, Comprehensive
2751 Health Insurance Pool Act, and the Children's Health Insurance Program created in Title 26,
2752 Chapter 40, Utah Children's Health Insurance Act:

2753 (I) is responsible for the insurance sales activities of the person;

2754 (II) stands behind the credit of the person;

2755 (III) guarantees any returns on insurance products of or sold by the person; or

2756 (IV) is a source of payment of any insurance obligation of or sold by the person.

2757 (iv) A person who is not an insurer may not assume or use any name that deceptively

2758 implies or suggests that person is an insurer.

2759 (v) A person other than persons licensed as health maintenance organizations under

2760 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to

2761 itself.

2762 (b) A licensee's violation creates a rebuttable presumption that the violation was also

2763 committed by the insurer if:

2764 (i) the licensee under this title distributes cards or documents, exhibits a sign, or

2765 publishes an advertisement that violates Subsection (1)(a), with reference to a particular

2766 insurer:

2767 (A) that the licensee represents; or

2768 (B) for whom the licensee processes claims; and

2769 (ii) the cards, documents, signs, or advertisements are supplied or approved by that

2770 insurer.

2771 (2) (a) A title insurer [~~or~~], individual title insurance producer, or agency title insurance

2772 producer or any officer or employee of [either] the title insurer, individual title insurance

2773 producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or

2774 give, directly or indirectly, as an inducement to obtaining any title insurance business:

2775 (i) any rebate, reduction, or abatement of any rate or charge made incident to the

2776 issuance of the title insurance;

2777 (ii) any special favor or advantage not generally available to others; [~~or~~]

2778 (iii) any money or other consideration, except if approved under Section 31A-2-405; or

2779 (iv) material inducement.

2780 (b) "Charge made incident to the issuance of the title insurance" includes escrow

2781 charges, and any other services that are prescribed in rule by the Title and Escrow Commission

2782 after consultation with the commissioner and subject to Section 31A-2-404.

2783 (c) An insured or any other person connected, directly or indirectly, with the

2784 transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to

2785 in Subsection (2)(a), including:

2786 (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices
2787 and Licensing Act;

2788 (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices
2789 Act;

2790 (iii) a builder;

2791 (iv) an attorney; or

2792 (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

2793 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
2794 different premiums or by offering different terms of coverage, except on the basis of
2795 classifications related to the nature and the degree of the risk covered or the expenses involved.

2796 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
2797 insured under a group, blanket, or franchise policy, and the terms of those policies are not
2798 unfairly discriminatory merely because they are more favorable than in similar individual
2799 policies.

2800 (4) (a) This Subsection (4) applies to:

2801 (i) a person who is or should be licensed under this title;

2802 (ii) an employee of that licensee or person who should be licensed;

2803 (iii) a person whose primary interest is as a competitor of a person licensed under this
2804 title; and

2805 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

2806 (b) A person described in Subsection (4)(a) may not commit or enter into any
2807 agreement to participate in any act of boycott, coercion, or intimidation that:

2808 (i) tends to produce:

2809 (A) an unreasonable restraint of the business of insurance; or

2810 (B) a monopoly in that business; or

2811 (ii) results in an applicant purchasing or replacing an insurance contract.

2812 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
2813 insurer or licensee under this chapter, another person who is required to pay for insurance as a
2814 condition for the conclusion of a contract or other transaction or for the exercise of any right
2815 under a contract.

2816 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
2817 coverage selected on reasonable grounds.

2818 (b) The form of corporate organization of an insurer authorized to do business in this
2819 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
2820 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
2821 declining an application for insurance.

2822 (6) A person may not make any charge other than insurance premiums and premium
2823 financing charges for the protection of property or of a security interest in property, as a
2824 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
2825 the lending of money on the security of an interest in the property.

2826 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
2827 agency to the principal on demand.

2828 (b) A licensee whose license is suspended, limited, or revoked under Section
2829 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
2830 commissioner on demand.

2831 (8) (a) A person may not engage in an unfair method of competition or any other unfair
2832 or deceptive act or practice in the business of insurance, as defined by the commissioner by
2833 rule, after a finding that the method of competition, the act, or the practice:

- 2834 (i) is misleading;
- 2835 (ii) is deceptive;
- 2836 (iii) is unfairly discriminatory;
- 2837 (iv) provides an unfair inducement; or
- 2838 (v) unreasonably restrains competition.

2839 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
2840 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an
2841 unfair method of competition or unfair or deceptive act or practice after a finding that the
2842 method of competition, the act, or the practice:

- 2843 (i) is misleading;
- 2844 (ii) is deceptive;
- 2845 (iii) is unfairly discriminatory;
- 2846 (iv) provides an unfair inducement; or

2847 (v) unreasonably restrains competition.

2848 Section 29. Section **31A-23a-402.5** is amended to read:

2849 **31A-23a-402.5. Inducements.**

2850 (1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee
2851 under this title, or an officer or employee of a licensee, may not induce a person to enter into,
2852 continue, or terminate an insurance contract by offering a benefit that is not:

2853 (i) specified in the insurance contract; or

2854 (ii) directly related to the insurance contract.

2855 (b) An insurer may not make or knowingly allow an agreement of insurance that is not
2856 clearly expressed in the insurance contract to be issued or renewed.

2857 (c) A licensee under this title may not absorb the tax under Section 31A-3-301.

2858 (2) This section does not apply to a title insurer, [~~a title~~] an individual title insurance
2859 producer, or agency title insurance producer, or an officer or employee of a title insurer [~~or~~
2860 title], an individual title insurance producer, or an agency title insurance producer.

2861 (3) Items not prohibited by Subsection (1) include an insurer:

2862 (a) reducing premiums because of expense savings;

2863 (b) providing to a policyholder or insured one or more incentives, as defined by the
2864 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
2865 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim
2866 expenses, including:

2867 (i) a premium discount offered to a small or large employer group based on a wellness
2868 program if:

2869 (A) the premium discount for the employer group does not exceed 20% of the group
2870 premium; and

2871 (B) the premium discount based on the wellness program is offered uniformly by the
2872 insurer to all employer groups in the large or small group market;

2873 (ii) a premium discount offered to employees of a small or large employer group in an
2874 amount that does not exceed federal limits on wellness program incentives; or

2875 (iii) a combination of premium discounts offered to the employer group and the
2876 employees of an employer group, based on a wellness program, if:

2877 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);

2878 and

2879 (B) the premium discounts for the employees of an employer group comply with
2880 Subsection (3)(b)(ii); or

2881 (c) receiving premiums under an installment payment plan.

2882 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other
2883 licensee, or an officer or employee of a licensee, either directly or through a third party:

2884 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
2885 conditioned on a quote or the purchase of a particular insurance product;

2886 (b) extending credit on a premium to the insured:

2887 (i) without interest, for no more than 90 days from the effective date of the insurance
2888 contract;

2889 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
2890 balance after the time period described in Subsection (4)(b)(i); and

2891 (iii) except that an installment or payroll deduction payment of premiums on an
2892 insurance contract issued under an insurer's mass marketing program is not considered an
2893 extension of credit for purposes of this Subsection (4)(b);

2894 (c) preparing or conducting a survey that:

2895 (i) is directly related to an accident and health insurance policy purchased from the
2896 licensee; or

2897 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,
2898 employers, or employees directly related to an insurance product sold by the licensee;

2899 (d) providing limited human resource services that are directly related to an insurance
2900 product sold by the licensee, including:

2901 (i) answering questions directly related to:

2902 (A) an employee benefit offering or administration, if the insurance product purchased
2903 from the licensee is accident and health insurance or health insurance; and

2904 (B) employment practices liability, if the insurance product offered by or purchased
2905 from the licensee is property or casualty insurance; and

2906 (ii) providing limited human resource compliance training and education directly
2907 pertaining to an insurance product purchased from the licensee;

2908 (e) providing the following types of information or guidance:

- 2909 (i) providing guidance directly related to compliance with federal and state laws for an
2910 insurance product purchased from the licensee;
- 2911 (ii) providing a workshop or seminar addressing an insurance issue that is directly
2912 related to an insurance product purchased from the licensee; or
- 2913 (iii) providing information regarding:
- 2914 (A) employee benefit issues;
- 2915 (B) directly related insurance regulatory and legislative updates; or
- 2916 (C) similar education about an insurance product sold by the licensee and how the
2917 insurance product interacts with tax law;
- 2918 (f) preparing or providing a form that is directly related to an insurance product
2919 purchased from, or offered by, the licensee;
- 2920 (g) preparing or providing documents directly related to a premium only cafeteria plan
2921 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but
2922 not providing ongoing administration of a flexible spending account;
- 2923 (h) providing enrollment and billing assistance, including:
- 2924 (i) providing benefit statements or new hire insurance benefits packages; and
- 2925 (ii) providing technology services such as an electronic enrollment platform or
2926 application system;
- 2927 (i) communicating coverages in writing and in consultation with the insured and
2928 employees;
- 2929 (j) providing employee communication materials and notifications directly related to an
2930 insurance product purchased from a licensee;
- 2931 (k) providing claims management and resolution to the extent permitted under the
2932 licensee's license;
- 2933 (l) providing underwriting or actuarial analysis or services;
- 2934 (m) negotiating with an insurer regarding the placement and pricing of an insurance
2935 product;
- 2936 (n) recommending placement and coverage options;
- 2937 (o) providing a health fair or providing assistance or advice on establishing or
2938 operating a wellness program, but not providing any payment for or direct operation of the
2939 wellness program;

2940 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other
2941 services directly related to an insurance product purchased from the licensee;

2942 (q) assisting with a summary plan description;

2943 (r) providing information necessary for the preparation of documents directly related to
2944 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as
2945 amended;

2946 (s) providing information or services directly related to the Health Insurance Portability
2947 and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services
2948 directly related to health care access, portability, and renewability when offered in connection
2949 with accident and health insurance sold by a licensee;

2950 (t) sending proof of coverage to a third party with a legitimate interest in coverage;

2951 (u) providing information in a form approved by the commissioner and directly related
2952 to determining whether an insurance product sold by the licensee meets the requirements of a
2953 third party contract that requires or references insurance coverage;

2954 (v) facilitating risk management services directly related to ~~the~~ property and casualty
2955 insurance ~~[product]~~ products sold or offered for sale by the licensee, including:

2956 (i) risk management;

2957 (ii) claims and loss control services; ~~and~~

2958 (iii) risk assessment consulting~~;~~, including analysis of:

2959 (A) employer's job descriptions; or

2960 (B) employer's safety procedures or manuals; and

2961 (iv) providing information and training on best practices;

2962 (w) otherwise providing services that are legitimately part of servicing an insurance
2963 product purchased from a licensee; and

2964 (x) providing other directly related services approved by the department.

2965 (5) An inducement prohibited under Subsection (1) includes a producer, consultant, or
2966 other licensee, or an officer or employee of a licensee:

2967 (a) (i) providing a premium or commission rebate;

2968 (ii) paying the salary of an employee of a person who purchases an insurance product
2969 from the licensee; or

2970 (iii) if the licensee is an insurer, or a third party administrator who contracts with an

2971 insurer, paying the salary for an onsite staff member to perform an act prohibited under
2972 Subsection (5)(b)(xii); or
2973 (b) engaging in one or more of the following unless a fee is paid in accordance with
2974 Subsection ~~(7)~~ (8):
2975 (i) performing background checks of prospective employees;
2976 (ii) providing legal services by a person licensed to practice law;
2977 (iii) performing drug testing that is directly related to an insurance product purchased
2978 from the licensee;
2979 (iv) preparing employer or employee handbooks, except that a licensee may:
2980 (A) provide information for a medical benefit section of an employee handbook;
2981 (B) provide information for the section of an employee handbook directly related to an
2982 employment practices liability insurance product purchased from the licensee; or
2983 (C) prepare or print an employee benefit enrollment guide;
2984 (v) providing job descriptions, postings, and applications for a person ~~[that purchases~~
2985 ~~an employment practices liability insurance product from the licensee];~~
2986 (vi) providing payroll services;
2987 (vii) providing performance reviews or performance review training;
2988 (viii) providing union advice;
2989 (ix) providing accounting services;
2990 (x) providing data analysis information technology programs, except as provided in
2991 Subsection (4)(h)(ii);
2992 (xi) providing administration of health reimbursement accounts or health savings
2993 accounts; or
2994 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
2995 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
2996 the following prohibited benefits:
2997 (A) performing background checks of prospective employees;
2998 (B) providing legal services by a person licensed to practice law;
2999 (C) performing drug testing that is directly related to an insurance product purchased
3000 from the insurer;
3001 (D) preparing employer or employee handbooks;

- 3002 (E) providing job descriptions postings, and applications;
- 3003 (F) providing payroll services;
- 3004 (G) providing performance reviews or performance review training;
- 3005 (H) providing union advice;
- 3006 (I) providing accounting services;
- 3007 (J) providing discrimination testing; or
- 3008 (K) providing data analysis information technology programs.

3009 (6) A producer, consultant, or other licensee or an officer or employee of a licensee
3010 shall itemize and bill separately from any other insurance product or service offered or
3011 provided under Subsection (5)(b).

3012 [~~(6)~~] (7) (a) A de minimis gift or meal not to exceed \$25 for each individual receiving
3013 the gift or meal is presumed to be a social courtesy not conditioned on [~~the~~] a quote or purchase
3014 of a particular insurance product for purposes of Subsection (4)(a).

3015 (b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10
3016 may be conditioned on receipt of a quote of a particular insurance product if the de minimis gift
3017 or meal is provided by the insurer and not by a producer or consultant.

3018 [~~(7)~~] (8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee
3019 is paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with
3020 Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal
3021 or exceed the fair market value of the item.

3022 Section 30. Section **31A-23a-406** is amended to read:

3023 **31A-23a-406. Title insurance producer's business.**

3024 (1) [~~A~~] An individual title insurance producer or agency title insurance producer may
3025 do escrow involving real property transactions if all of the following exist:

3026 (a) the individual title insurance producer or agency title insurance producer is licensed
3027 with:

3028 (i) the title line of authority; and

3029 (ii) the escrow subline of authority;

3030 (b) the individual title insurance producer or agency title insurance producer is
3031 appointed by a title insurer authorized to do business in the state;

3032 (c) the individual title insurance producer or agency title insurance producer issues one

3033 or more of the following as part of the transaction:

3034 (i) an owner's policy of title insurance; or

3035 (ii) a lender's policy of title insurance;

3036 (d) money deposited with the individual title insurance producer or agency title

3037 insurance producer in connection with any escrow:

3038 (i) is deposited:

3039 (A) in a federally insured financial institution; and

3040 (B) in a trust account that is separate from all other trust account money that is not

3041 related to real estate transactions;

3042 (ii) is the property of the one or more persons entitled to the money under the

3043 provisions of the escrow; and

3044 (iii) is segregated escrow by escrow in the records of the individual title insurance

3045 producer or agency title insurance producer;

3046 (e) earnings on money held in escrow may be paid out of the escrow account to any

3047 person in accordance with the conditions of the escrow;

3048 (f) the escrow does not require the individual title insurance producer or agency title

3049 insurance producer to hold:

3050 (i) construction money; or

3051 (ii) money held for exchange under Section 1031, Internal Revenue Code; and

3052 (g) the individual title insurance producer or agency title insurance producer shall

3053 maintain a physical office in Utah staffed by a person with an escrow subline of authority who

3054 processes the escrow.

3055 (2) Notwithstanding Subsection (1), [~~a~~] an individual title insurance producer or

3056 agency title insurance producer may engage in the escrow business if:

3057 (a) the escrow involves:

3058 (i) a mobile home;

3059 (ii) a grazing right;

3060 (iii) a water right; or

3061 (iv) other personal property authorized by the commissioner; and

3062 (b) the individual title insurance producer or agency title insurance producer complies

3063 with this section except for Subsection (1)(c).

3064 (3) Money held in escrow:

3065 (a) is not subject to any debts of the individual title insurance producer or agency title
3066 insurance producer;

3067 (b) may only be used to fulfill the terms of the individual escrow under which the
3068 money is accepted; and

3069 (c) may not be used until the conditions of the escrow are met.

3070 (4) Assets or property other than escrow money received by [a] an individual title
3071 insurance producer or agency title insurance producer in accordance with an escrow shall be
3072 maintained in a manner that will:

3073 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;
3074 and

3075 (b) otherwise comply with the general duties and responsibilities of a fiduciary or
3076 bailee.

3077 (5) (a) A check from the trust account described in Subsection (1)(d) may not be
3078 drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account
3079 from which money is to be disbursed contains a sufficient credit balance consisting of collected
3080 and cleared money at the time the check is drawn, executed, or dated, or money is otherwise
3081 disbursed.

3082 (b) As used in this Subsection (5), money is considered to be "collected and cleared,"
3083 and may be disbursed as follows:

3084 (i) cash may be disbursed on the same day the cash is deposited;

3085 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

3086 (iii) the proceeds of one or more of the following financial instruments may be
3087 disbursed on the same day the financial instruments are deposited if received from a single
3088 party to the real estate transaction and if the aggregate of the financial instruments for the real
3089 estate transaction is less than \$10,000:

3090 (A) a cashier's check, certified check, or official check that is drawn on an existing
3091 account at a federally insured financial institution;

3092 (B) a check drawn on the trust account of a principal broker or associate broker
3093 licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the individual
3094 title insurance producer or agency title insurance producer has reasonable and prudent grounds

3095 to believe sufficient money will be available from the trust account on which the check is
3096 drawn at the time of disbursement of proceeds from the individual title insurance producer or
3097 agency title insurance producer's escrow account;

3098 (C) a personal check not to exceed \$500 per closing; or

3099 (D) a check drawn on the escrow account of another individual title insurance producer
3100 or agency title insurance producer, if the individual title insurance producer or agency title
3101 insurance producer in the escrow transaction has reasonable and prudent grounds to believe
3102 that sufficient money will be available for withdrawal from the account upon which the check
3103 is drawn at the time of disbursement of money from the escrow account of the individual title
3104 insurance producer or agency title insurance producer in the escrow transaction.

3105 (c) A check or deposit not described in Subsection (5)(b) may be disbursed:

3106 (i) within the time limits provided under the Expedited Funds Availability Act, 12
3107 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

3108 (ii) upon notification from the financial institution to which the money has been
3109 deposited that final settlement has occurred on the deposited financial instrument.

3110 (6) [A] An individual title insurance producer or agency title insurance producer shall
3111 maintain a record of a receipt or disbursement of escrow money.

3112 (7) [A] An individual title insurance producer or agency title insurance producer shall
3113 comply with:

3114 (a) Section 31A-23a-409;

3115 (b) Title 46, Chapter 1, Notaries Public Reform Act; and

3116 (c) any rules adopted by the Title and Escrow Commission, subject to Section
3117 31A-2-404, that govern escrows.

3118 (8) If [a] an individual title insurance producer or agency title insurance producer
3119 conducts a search for real estate located in the state, the individual title insurance producer or
3120 agency title insurance producer shall conduct a [~~minimum mandatory search, as defined by rule~~
3121 ~~made by the Title and Escrow Commission, subject to Section 31A-2-404~~] reasonable search of
3122 the public records.

3123 Section 31. Section ~~31A-23a-406.5~~ is enacted to read:

3124 **31A-23a-406.5. Conduct of escrow.**

3125 (1) Only an escrow agent or a title insurer in compliance with Subsection

3126 31A-4-107(1)(a) and Section 31A-14-211 shall conduct escrow.

3127 (2) Subsection (1) does not apply to:

3128 (a) a person defined as an escrow agent in Section 7-22-101; or

3129 (b) a person licensed to practice law in Utah, if that person meets the requirements of

3130 Section 31A-23a-204.

3131 Section 32. Section **31A-23a-407** is amended to read:

3132 **31A-23a-407. Liability of title insurers for acts of title insurance producers.**

3133 Any title company, represented by one or more individual title insurance producers
3134 appointed by an insurer or agency title insurance producers, is directly and primarily liable to
3135 others dealing with the individual title insurance producers or agency title insurance producers
3136 for the receipt and disbursement of funds deposited in escrows with the individual title
3137 insurance producers appointed by an insurer or agency title insurance producers in all those
3138 transactions where a commitment or binder for or policy or contract of title insurance of that
3139 title [~~insurance company~~] insurer has been ordered, or a preliminary report of the title
3140 [~~insurance company~~] insurer has been issued or distributed. This liability does not modify,
3141 mitigate, impair, or affect the contractual obligations between the individual title insurance
3142 producers or agency title insurance producers and the title [~~insurance company~~] insurer.

3143 Section 33. Section **31A-23a-413** is amended to read:

3144 **31A-23a-413. Title insurance producer's annual report.**

3145 [~~Every~~] An agency title insurance producer and an individual title insurance producer
3146 who has not been designated by an agency title insurance producer shall annually file with the
3147 commissioner, by a date and in a form the commissioner specifies by rule, a verified statement
3148 of the agency title insurance producer's or individual title insurance producer's financial
3149 condition, transactions, and affairs as of the end of the preceding calendar year.

3150 Section 34. Section **31A-23a-415** is amended to read:

3151 **31A-23a-415. Assessment on agency title insurance producers or title insurers --**
3152 **Account created.**

3153 (1) For purposes of this section:

3154 (a) "Premium" is as defined in Subsection 59-9-101(3).

3155 (b) "Title insurer" means a person:

3156 (i) making any contract or policy of title insurance as:

- 3157 (A) insurer;
- 3158 (B) guarantor; or
- 3159 (C) surety;
- 3160 (ii) proposing to make any contract or policy of title insurance as:
- 3161 (A) insurer;
- 3162 (B) guarantor; or
- 3163 (C) surety; or
- 3164 (iii) transacting or proposing to transact any phase of title insurance, including:
- 3165 (A) soliciting;
- 3166 (B) negotiating preliminary to execution;
- 3167 (C) executing of a contract of title insurance;
- 3168 (D) insuring; and
- 3169 (E) transacting matters subsequent to the execution of the contract and arising out of
- 3170 the contract.

3171 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
3172 personal property located in Utah, an owner of real or personal property, the holders of liens or
3173 encumbrances on that property, or others interested in the property against loss or damage
3174 suffered by reason of:

3175 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
3176 property; or

3177 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

3178 (2) (a) The commissioner may assess each title insurer, each individual title insurance
3179 producer, who is not designated by an agency title insurance producer, and each agency title
3180 insurance [agency] producer an annual assessment:

3181 (i) determined by the Title and Escrow Commission:

3182 (A) after consultation with the commissioner; and

3183 (B) in accordance with this Subsection (2); and

3184 (ii) to be used for the purposes described in Subsection (3).

3185 (b) ~~[A]~~ An agency title insurance [agency] producer and individual title insurance

3186 producer who is not designated by an agency title insurance producer shall be assessed up to:

3187 (i) \$250 for the first office in each county in which the agency title insurance [agency]

3188 producer or individual title insurance producer maintains an office; and

3189 (ii) \$150 for each additional office the agency title insurance [~~agency~~] producer or
3190 individual title insurance producer maintains in the county described in Subsection (2)(b)(i).

3191 (c) A title insurer shall be assessed up to:

3192 (i) \$250 for the first office in each county in which the title insurer maintains an office;

3193 (ii) \$150 for each additional office the title insurer maintains in the county described in
3194 Subsection (2)(c)(i); and

3195 (iii) an amount calculated by:

3196 (A) aggregating the assessments imposed on:

3197 (I) agency title insurance [~~agencies~~] producers and individual title insurance producers
3198 under Subsection (2)(b); and

3199 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

3200 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total
3201 costs and expenses determined under Subsection (2)(d); and

3202 (C) multiplying:

3203 (I) the amount calculated under Subsection (2)(c)(iii)(B); and

3204 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
3205 of the title insurer.

3206 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title
3207 and Escrow Commission by rule shall establish the amount of costs and expenses described
3208 under Subsection (3) that will be covered by the assessment, except the costs or expenses to be
3209 covered by the assessment may not exceed \$80,000 annually.

3210 (3) (a) Money received by the state under this section shall be deposited into the Title
3211 Licensee Enforcement Restricted Account.

3212 (b) There is created in the General Fund a restricted account known as the "Title
3213 Licensee Enforcement Restricted Account."

3214 (c) The Title Licensee Enforcement Restricted Account shall consist of the money
3215 received by the state under this section.

3216 (d) The commissioner shall administer the Title Licensee Enforcement Restricted
3217 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
3218 deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or

3219 expense incurred by the department in the administration, investigation, and enforcement of
 3220 this part and Part 5, Compensation of Producers and Consultants, related to:

3221 (i) the marketing of title insurance; and

3222 (ii) audits of ~~[agencies]~~ agency title insurance producers.

3223 (e) An appropriation from the Title Licensee Enforcement Restricted Account is
 3224 nonlapsing.

3225 (4) The assessment imposed by this section shall be in addition to any premium
 3226 assessment imposed under Subsection 59-9-101(3).

3227 Section 35. Section **31A-23a-503** is amended to read:

3228 **31A-23a-503. Controlled business in title insurance.**

3229 (1) As used in this section:

3230 (a) "Associate" means any:

3231 (i) business organized for profit in which a person who refers title business is a
 3232 director, officer, partner, or employee;

3233 (ii) spouse or relative within the second degree by blood or marriage of a person who
 3234 refers title business, who is a natural person;

3235 (iii) employee of a person who refers title business; or

3236 (iv) person with whom a person who refers title business or any associate of that title
 3237 insurer, individual title insurance producer, or agency title insurance producer has any
 3238 agreement, arrangement, or understanding, or pursues any course of conduct, designed to avoid
 3239 the provisions of this chapter.

3240 (b) "Controlled business" means that portion of the title insurance business of a title
 3241 insurer [~~or~~], individual title insurance producer, or agency title insurance producer in this state
 3242 that is referred to it by all those producers of title business who have a financial interest in the
 3243 title insurer [~~or~~], individual title insurance producer, or agency title insurance producer and by
 3244 all associates of those producers. Business is referred if there is influence over the selection of
 3245 the person with whom the business is placed.

3246 (c) "A person who refers title business" includes any person engaged in this state in a
 3247 business of:

3248 (i) buying or selling interests in real property;

3249 (ii) making loans secured by interests in real property; or

3250 (iii) acting as a representative or employee of a person who buys or sells any interest in
3251 real property or who lends or borrows money with interest as security, other than acting as a
3252 licensed title insurer [or], individual title insurance producer, or agency title insurance producer
3253 doing the business of title insurance.

3254 (d) "Financial interest" means any legal or beneficial interest that together with other
3255 interests entitles the holder to more than 1% of the net profits or net worth of the business in
3256 which the interest is held.

3257 (2) A title insurer [or], individual title insurance producer, or agency title insurance
3258 producer or person having a financial interest in a title insurer [or], individual title insurance
3259 producer, or agency title insurance producer may not knowingly be a party to or knowingly
3260 permit to continue in any arrangement in which the title insurer, individual title insurance
3261 producer or agency title insurance producer, or person knows or has reason to believe that any
3262 person who refers title business has or will have, directly or indirectly, a financial interest in the
3263 title insurer [or], individual title insurance producer, or agency title insurance producer, if it
3264 reasonably appears that a substantial factor in the person who refers title business owning or
3265 acquiring the financial interest is the expected realization of financial profit or gain derived in
3266 whole or in part from controlled business.

3267 (3) A title insurer may not appoint or knowingly continue its authorization of any
3268 individual title insurance producer or agency title insurance producer in which the company
3269 knows or has reason to believe that any person who refers title business has or will have,
3270 directly or indirectly, a financial interest, if it reasonably appears that a substantial factor in the
3271 person who refers title business owning or acquiring the financial interest is the person's
3272 expected realization of financial profit or gain derived in whole or part from controlled
3273 business.

3274 (4) (a) If for any calendar quarter, the gross operating revenues of a title insurer [or],
3275 individual title insurance producer, or agency title insurance producer derived from all sources
3276 of controlled business in this state amount to more than 1/3 of its gross operating revenues
3277 from all other sources of its business of title insurance in this state, it is presumed that the
3278 expected realization of financial profit or gain derived in whole or in part from controlled
3279 business was a substantial factor in the ownership of financial interest in the title insurer [or],
3280 individual title insurance producer, or agency title insurance producer.

3281 (b) The title insurer [~~or~~], individual title insurance producer, or agency title insurance
3282 producer has the burden of overcoming the presumption described in Subsection (4)(a).

3283 (c) This Subsection (4) does not authorize any controlled business if a violation of the
3284 standards set forth in Subsection (2) or (3) exists.

3285 (5) A title insurer [~~or~~], individual title insurance producer, or agency title insurance
3286 producer may not accept any order for the business of title insurance that it knows or has reason
3287 to believe constitutes controlled business, unless it records and maintains in its permanent
3288 records on forms prescribed by the commissioner the facts relating to the transactions.

3289 (6) An applicant for qualification as a title insurer [~~or~~], individual title insurance
3290 producer, or agency title insurance producer may not be granted a license if it reasonably
3291 appears that the expected realization of financial profit or gain to be derived in whole or in part
3292 from controlled business is or will be a substantial factor in the applicant's plan of operation or
3293 in the ownership or acquisition of financial interests in the applicant by any person who refers
3294 title business.

3295 (7) Each title insurer [~~and~~], individual title insurance producer, and agency title
3296 insurance producer shall maintain permanent records relating to its controlled business on
3297 forms prescribed by the commissioner.

3298 (8) (a) Each title insurer and agency title insurance producer shall file annually with the
3299 commissioner, on forms prescribed by the commissioner, reports setting forth:

3300 (i) the names and addresses of any persons owning a financial interest in the title
3301 insurer or agency title insurance producer as of the last day of the calendar year, who are
3302 known or reasonably believed by the title insurer or agency title insurance producer to be a
3303 person who refers title business; and

3304 (ii) a summary compiled from the title insurer's or agency title insurance producer's
3305 records of the controlled business, sufficient to inform the commissioner and the Title and
3306 Escrow Commission as to the proportion of the title insurer's or agency title insurance
3307 producer's gross operating revenues attributable to controlled business during the preceding
3308 calendar year.

3309 (b) The reports shall be filed with the reports required under Section 31A-23a-413 and
3310 shall contain the certification of an officer of the title insurer or agency title insurance producer
3311 that the information contained in them is true to the best of the officer's knowledge,

3312 information, and belief. Upon filing, the reports are public records.

3313 (c) A report filed pursuant to Subsection (8)(a) is subject to review by the Title and
3314 Escrow Commission.

3315 (9) An attorney who is also a licensed individual title insurance producer and who
3316 issues as producer a policy of title insurance to a client on behalf of whom the attorney is also
3317 acting as an attorney and who, in so doing, acts consistently with the applicable ethical
3318 standards of the Utah State Bar pertaining to the billing and receipt of legal fees and the receipt
3319 of a commission on a policy of title insurance is not, without more, considered to be engaged in
3320 controlled business.

3321 Section 36. Section **31A-23a-504** is amended to read:

3322 **31A-23a-504. Sharing commissions.**

3323 (1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter
3324 or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the
3325 licensee knows that the person is licensed under this chapter as to the particular type of
3326 insurance to act in Utah as:

- 3327 (i) a producer;
- 3328 (ii) a limited line producer;
- 3329 (iii) a consultant;
- 3330 (iv) a managing general agent; or
- 3331 (v) a reinsurance intermediary.

3332 (b) A person may only accept commission compensation or other compensation as a
3333 person described in Subsections (1)(a)(i) through (v) that is directly or indirectly the result of
3334 an insurance transaction if that person is licensed under this chapter to act as described in
3335 Subsection (1)(a).

3336 (2) (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive
3337 a commission or other compensation that is directly or indirectly the result of an insurance
3338 transaction.

3339 (b) A consultant may share a consultant fee or other compensation received for
3340 consulting services performed within Utah only:

- 3341 (i) with another consultant licensed under this chapter; and
- 3342 (ii) to the extent that the other consultant contributed to the services performed.

3343 (3) This section does not prohibit:
3344 (a) the payment of renewal commissions to former licensees under this chapter, former
3345 Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency
3346 sales agreement;
3347 (b) compensation paid to or received by a person for referral of a potential customer
3348 that seeks to purchase or obtain an opinion or advice on an insurance product if:
3349 (i) the person is not licensed to sell insurance;
3350 (ii) the person does not sell or provide opinions or advice on the product; and
3351 (iii) the compensation does not depend on whether the referral results in a purchase or
3352 sale; or
3353 (c) the payment or assignment of a commission, service fee, brokerage, or other
3354 valuable consideration to an agency or a person who does not sell, solicit, or negotiate
3355 insurance in this state, unless the payment would constitute an inducement or commission
3356 rebate under Section 31A-23a-402 or 31A-23a-402.5.
3357 (4) (a) In selling a policy of title insurance, sharing of commissions under Subsection
3358 (1) may not occur if it will result in:
3359 (i) an unlawful rebate;
3360 (ii) compensation in connection with controlled business; or
3361 (iii) payment of a forwarding fee or finder's fee.
3362 (b) A person may share compensation for the issuance of a title insurance policy only
3363 to the extent that the person contributed to the search and examination of the title or other
3364 services connected with the title insurance policy.
3365 (5) This section does not apply to a bail bond producer or bail enforcement agent as
3366 defined in Section 31A-35-102[-] and as described in Subsection 31A-23a-106(2)(c); or
3367 (b) a nonlicensed individual employee or authorized representative of a licensed
3368 limited line producer who holds one or more of the following limited lines of authority as
3369 described in Subsection 31A-23a-106(2)(c):
3370 (i) car rental related insurance;
3371 (ii) self-service storage insurance; or
3372 (iii) portable electronics insurance.
3373 Section 37. Section **31A-27a-104** is amended to read:

3374 **31A-27a-104. Persons covered.**

3375 (1) This chapter applies to:

3376 (a) an insurer who:

3377 (i) is doing, or has done, an insurance business in this state; and

3378 (ii) against whom a claim arising from that business may exist;

3379 (b) a person subject to examination by the commissioner;

3380 (c) an insurer who purports to do an insurance business in this state;

3381 (d) an insurer who has an insured who is resident in this state; and

3382 (e) in addition to Subsections (1)(a) through (d), a person doing business as follows:

3383 (i) under Chapter 6a, Service Contracts;

3384 (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;

3385 (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;

3386 (iv) under Chapter 9, Insurance Fraternal;

3387 (v) under Chapter 11, Motor Clubs;

3388 (vi) under Chapter 13, Employee Welfare Funds and Plans;

3389 (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention

3390 Groups;

3391 (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;

3392 (ix) under Chapter 37, Captive Insurance Companies Act;

3393 (x) a title insurance company;

3394 (xi) a prepaid health care delivery plan; and

3395 (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or

3396 doing insurance business, or in the process of organizing with the intent to do insurance

3397 business in this state.

3398 (2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply

3399 to a person licensed by the insurance commissioner as one or more of the following in this state

3400 unless the person engages in the business of insurance as an insurer:

3401 (a) an insurance agency;

3402 (b) an insurance producer;

3403 (c) a limited line producer;

3404 (d) an insurance consultant;

- 3405 (e) a managing general agent;
- 3406 (f) reinsurance intermediary;
- 3407 (g) [a] an individual title insurance producer or agency title insurance producer;
- 3408 (h) a third party administrator;
- 3409 (i) an insurance adjustor;
- 3410 (j) a life settlement provider; or
- 3411 (k) a life settlement producer.

3412 Section 38. Section **31A-29-106** is amended to read:

3413 **31A-29-106. Powers of board.**

3414 (1) The board shall have the general powers and authority granted under the laws of
3415 this state to insurance companies licensed to transact health care insurance business. In
3416 addition, the board shall have the specific authority to:

- 3417 (a) enter into contracts to carry out the provisions and purposes of this chapter,
3418 including, with the approval of the commissioner, contracts with:
 - 3419 (i) similar pools of other states for the joint performance of common administrative
3420 functions; or
 - 3421 (ii) persons or other organizations for the performance of administrative functions;
- 3422 (b) sue or be sued, including taking such legal action necessary to avoid the payment of
3423 improper claims against the pool or the coverage provided through the pool;
- 3424 (c) establish appropriate rates, rate schedules, rate adjustments, expense allowances,
3425 agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the
3426 operation of the pool;
- 3427 (d) issue policies of insurance in accordance with the requirements of this chapter;
- 3428 (e) retain an executive director and appropriate legal, actuarial, and other personnel as
3429 necessary to provide technical assistance in the operations of the pool;
- 3430 (f) establish rules, conditions, and procedures for reinsuring risks under this chapter;
- 3431 (g) cause the pool to have an annual audit of its operations by the state auditor;
- 3432 (h) coordinate with the Department of Health in seeking to obtain from the Centers for
3433 Medicare and Medicaid Services, or other appropriate office or agency of government, all
3434 appropriate waivers, authority, and permission needed to coordinate the coverage available
3435 from the pool with coverage available under Medicaid, either before or after Medicaid

3436 coverage, or as a conversion option upon completion of Medicaid eligibility, without the
3437 necessity for requalification by the enrollee;

3438 (i) provide for and employ cost containment measures and requirements including
3439 preadmission certification, concurrent inpatient review, and individual case management for
3440 the purpose of making the pool more cost-effective;

3441 (j) offer pool coverage through contracts with health maintenance organizations,
3442 preferred provider organizations, and other managed care systems that will manage costs while
3443 maintaining quality care;

3444 (k) establish annual limits on benefits payable under the pool to or on behalf of any
3445 enrollee;

3446 (l) exclude from coverage under the pool specific benefits, medical conditions, and
3447 procedures for the purpose of protecting the financial viability of the pool;

3448 (m) administer the Pool Fund;

3449 (n) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
3450 Rulemaking Act, to implement this chapter; [~~and~~]

3451 (o) adopt, trademark, and copyright a trade name for the pool for use in marketing and
3452 publicizing the pool and its products[-]; and

3453 (p) transition health care coverage for all individuals covered under the pool as part of
3454 the conversion to health insurance coverage, regardless of preexisting conditions, under
3455 PPACA.

3456 (2) (a) The board shall prepare and submit an annual report to the Legislature which
3457 shall include:

3458 (i) the net premiums anticipated;

3459 (ii) actuarial projections of payments required of the pool;

3460 (iii) the expenses of administration; and

3461 (iv) the anticipated reserves or losses of the pool.

3462 (b) The budget for operation of the pool is subject to the approval of the board.

3463 (c) The administrative budget of the board and the commissioner under this chapter
3464 shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is
3465 subject to review and approval by the Legislature.

3466 (3) (a) The board shall on or before September 1, 2004, require the plan administrator

3467 or an independent actuarial consultant retained by the plan administrator to redetermine the
3468 reasonable equivalent of the criteria for uninsurability required under Subsection
3469 31A-30-106(1)(h) that is used by the board to determine eligibility for coverage in the pool.

3470 (b) The board shall redetermine the criteria established in Subsection (3)(a) at least
3471 every five years thereafter.

3472 Section 39. Section **31A-29-113** is amended to read:

3473 **31A-29-113. Benefits -- Additional types of pool insurance -- Preexisting**
3474 **conditions -- Waiver -- Maximum benefits.**

3475 (1) (a) The pool policy shall pay for eligible medical expenses rendered or furnished
3476 for the diagnoses or treatment of illness or injury that:

3477 (i) exceed the deductible and copayment amounts applicable under Section
3478 31A-29-114; and

3479 (ii) are not otherwise limited or excluded.

3480 (b) Eligible medical expenses are the allowed charges established by the board for the
3481 health care services and items rendered during times for which benefits are extended under the
3482 pool policy.

3483 (2) The coverage to be issued by the pool, its schedule of benefits, exclusions, and
3484 other limitations shall be established by the board.

3485 (3) The commissioner shall approve the benefit package developed by the board to
3486 ensure its compliance with this chapter.

3487 (4) The pool shall offer at least one benefit plan through a managed care program as
3488 authorized under Section 31A-29-106.

3489 (5) This chapter may not be construed to prohibit the pool from issuing additional types
3490 of pool policies with different types of benefits which in the opinion of the board may be of
3491 benefit to the citizens of Utah.

3492 (6) (a) The board shall design and require an administrator to employ cost containment
3493 measures and requirements including preadmission certification and concurrent inpatient
3494 review for the purpose of making the pool more cost effective.

3495 (b) Sections 31A-22-617 and 31A-22-618 do not apply to coverage issued under this
3496 chapter.

3497 (7) (a) A pool policy may contain provisions under which coverage for a preexisting

3498 condition is excluded if:

3499 (i) the exclusion relates to a condition, regardless of the cause of the condition, for
3500 which medical advice, diagnosis, care, or treatment was recommended or received, from an
3501 individual licensed or similarly authorized to provide such services under state law and
3502 operating within the scope of practice authorized by state law, within the six-month period
3503 ending on the effective date of plan coverage; and

3504 (ii) except as provided in Subsection (8), the exclusion extends for a period no longer
3505 than the six-month period following the effective date of plan coverage for a given individual.

3506 (b) Subsection (7)(a) does not apply to a HIPAA eligible individual.

3507 (8) (a) A pool policy may contain provisions under which coverage for a preexisting
3508 pregnancy is excluded during a ten-month period following the effective date of plan coverage
3509 for a given individual.

3510 (b) Subsection (8)(a) does not apply to a HIPAA eligible individual.

3511 (9) (a) The pool will waive the preexisting condition exclusion described in
3512 Subsections (7)(a) and (8)(a) for an individual that is changing health coverage to the pool, to
3513 the extent to which similar exclusions have been satisfied under any prior health insurance
3514 coverage if the individual applies not later than 63 days following the date of involuntary
3515 termination, other than for nonpayment of premiums, from health coverage.

3516 (b) If this Subsection (9) applies, coverage in the pool shall be effective from the date
3517 on which the prior coverage was terminated.

3518 (10) Covered benefits available from the pool may not exceed a [~~\$1,500,000~~]
3519 \$1,800,000 lifetime maximum, which includes a per enrollee calendar year maximum
3520 established by the board.

3521 Section 40. Section **31A-30-115** is amended to read:

3522 **31A-30-115. Actuarial review of health benefit plans.**

3523 (1) (a) The department shall conduct an actuarial review of rates submitted by small
3524 employer carriers:

3525 (i) prior to the publication of the premium rates on the Health Insurance Exchange;

3526 (ii) except as permitted by Subsection 31A-30-207(2), to determine if the carrier is
3527 using the same rating and underwriting practices in both the defined contribution arrangement
3528 market in the Health Insurance Exchange and the defined benefit market offered outside the

3529 Health Insurance Exchange[, in compliance with Subsection 31A-30-202.5(1)(b)];
3530 (iii) to verify the validity of the rates, underwriting and risk factors, and premiums of
3531 plans both in and outside of the Health Insurance Exchange;
3532 (iv) to verify that insurers are pricing similar health benefit plans and groups the same
3533 in and out of the exchange, except as permitted by Subsection 31A-30-207(2); and
3534 (v) as the department determines is necessary to oversee market conduct.
3535 (b) The actuarial review by the department shall be funded from a fee:
3536 (i) established by the department in accordance with Section 63J-1-504; and
3537 (ii) paid by all small employer carriers participating in the defined contribution
3538 arrangement market and small employer carriers offering health benefit plans under Part 1,
3539 Individual and Small Employer Group.
3540 (c) The department shall:
3541 (i) report aggregate data from the actuarial review to the risk adjuster board created in
3542 Section 31A-42-201; and
3543 (ii) contact carriers, if the department determines it is appropriate, to:
3544 (A) inform a carrier of the department's findings regarding the rates of a particular
3545 carrier; and
3546 (B) request a carrier to recalculate or verify base rates, rating factors, and premiums.
3547 (d) A carrier shall comply with the department's request under Subsection (1)(c)(ii).
3548 (2) (a) There is created in the General Fund a restricted account known as the "Health
3549 Insurance Actuarial Review Restricted Account."
3550 (b) The Health Insurance Actuarial Review Restricted Account shall consist of money
3551 received by the commissioner under this section.
3552 (c) The commissioner shall administer the Health Insurance Actuarial Review
3553 Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use
3554 money deposited into the Health Insurance Actuarial Review Restricted Account to pay for the
3555 actuarial review conducted by the department under this section.
3556 Section 41. Section **31A-30-208** is amended to read:
3557 **31A-30-208. Enrollment for defined contribution arrangements.**
3558 (1) An insurer offering a health benefit plan in the defined contribution arrangement
3559 market:

- 3560 (a) shall allow an employer to enroll in a small employer defined contribution
3561 arrangement plan;
- 3562 (b) may not impose a surcharge under Section 31A-30-106.7 for a small employer
3563 group selecting a defined contribution arrangement health benefit plan on or before January 1,
3564 2012; and
- 3565 (c) shall otherwise comply with the requirements of this part, Chapter 42, Defined
3566 Contribution Risk Adjuster Act, and Title 63M, Chapter 1, Part 25, Health System Reform Act.
- 3567 (2) (a) [~~Except as provided in Subsection 31A-30-202.5(2), in~~] In accordance with
3568 Subsection (2)(b), on January 1 of each year, an insurer may enter or exit the defined
3569 contribution arrangement market.
- 3570 (b) An insurer may offer new or modify existing products in the defined contribution
3571 arrangement market:
- 3572 (i) on January 1 of each year;
- 3573 (ii) when required by changes in other law; and
- 3574 (iii) at other times as established by the risk adjuster board created in Section
3575 31A-42-201.
- 3576 (c) (i) An insurer shall give the department, the Health Insurance Exchange, and the
3577 risk adjuster board 90 days' advance written notice of any event described in Subsection (2)(a)
3578 or (b).
- 3579 (ii) When an insurer elects to participate in the defined contribution arrangement
3580 market, the insurer shall participate in the defined contribution arrangement market for no less
3581 than two years.
- 3582 Section 42. Section **31A-31-108** is amended to read:
- 3583 **31A-31-108. Assessment of insurers.**
- 3584 (1) For purposes of this section:
- 3585 (a) The commissioner shall by rule made in accordance with Title 63G, Chapter 3,
3586 Utah Administrative Rulemaking Act, define:
- 3587 (i) "annuity consideration";
- 3588 (ii) "membership fees";
- 3589 (iii) "other fees";
- 3590 (iv) "deposit-type contract funds"; and

- 3591 (v) "other considerations in Utah."
3592 (b) "Insurance fraud provisions" means:
3593 (i) this chapter;
3594 (ii) Section 34A-2-110; and
3595 (iii) Section 76-6-521.
3596 (c) "Utah consideration" means:
3597 (i) the total premiums written for Utah risks;
3598 (ii) annuity consideration;
3599 (iii) membership fees collected by the insurer;
3600 (iv) other fees collected by the insurer;
3601 (v) deposit-type contract funds; and
3602 (vi) other considerations in Utah.
3603 (d) "Utah risks" means insurance coverage on the lives, health, or against the liability
3604 of persons residing in Utah, or on property located in Utah, other than property temporarily in
3605 transit through Utah.
3606 (2) To implement insurance fraud provisions, the commissioner may assess an
3607 admitted insurer and a nonadmitted insurer transacting insurance under Chapter 15, Parts 1,
3608 Unauthorized Insurers and Surplus Lines, and 2, Risk Retention Groups Act, an annual fee as
3609 follows:
3610 (a) \$200 for an insurer for which the sum of the Utah consideration is less than or equal
3611 to \$1,000,000;
3612 (b) \$450 for an insurer for which the sum of the Utah consideration is greater than
3613 \$1,000,000 but is less than or equal to \$2,500,000;
3614 (c) \$800 for an insurer for which the sum of the Utah consideration is greater than
3615 \$2,500,000 but is less than or equal to \$5,000,000;
3616 (d) \$1,600 for an insurer for which the sum of the Utah consideration is greater than
3617 \$5,000,000 but less than or equal to \$10,000,000;
3618 (e) \$6,100 for an insurer for which the sum of the Utah consideration is greater than
3619 \$10,000,000 but less than \$50,000,000; and
3620 (f) \$15,000 for an insurer for which the sum of the Utah consideration equals or
3621 exceeds \$50,000,000.

3622 (3) Money received by the state under this section shall be deposited into the Insurance
3623 Fraud Investigation Restricted Account created in Subsection (4).

3624 (4) (a) There is created in the General Fund a restricted account known as the
3625 "Insurance Fraud Investigation Restricted Account."

3626 (b) The Insurance Fraud Investigation Restricted Account shall consist of the money
3627 received by the commissioner under this section and [~~Section 31A-31-109.~~] Subsections
3628 31A-31-109(1)(a)(ii), (1)(b), (2)(b)(i), (2)(c), and (3)(a). Money ordered paid under
3629 Subsections 31A-31-109(1)(a)(i) and (2)(a) shall be deposited in the Insurance Fraud Victim
3630 Restitution Fund pursuant to Section 31A-31-108.5.

3631 (c) The commissioner shall administer the Insurance Fraud Investigation Restricted
3632 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
3633 deposited into the Insurance Fraud Investigation Restricted Account to pay for a cost or
3634 expense incurred by the commissioner in the administration, investigation, and enforcement of
3635 insurance fraud provisions.

3636 Section 43. Section **31A-31-108.5** is enacted to read:

3637 **31A-31-108.5. Insurance Fraud Victim Restitution Fund.**

3638 (1) There is created a restricted special revenue fund known as the "Insurance Fraud
3639 Victim Restitution Fund."

3640 (2) The Insurance Fraud Victim Restitution Fund shall consist of money ordered paid
3641 under Subsections 31A-31-109(1)(a)(i) and (2)(a).

3642 (3) The commissioner shall administer the Insurance Fraud Victim Restitution Fund for
3643 the sole benefit of insurance fraud victims.

3644 Section 44. Section **31A-41-102** is amended to read:

3645 **31A-41-102. Definitions.**

3646 As used in this chapter:

3647 (1) "Commission" means the Title and Escrow Commission created in Section
3648 31A-2-403.

3649 (2) "Fund" means the Title Insurance Recovery, Education, and Research Fund created
3650 in Section 31A-41-201.

3651 (3) "Title insurance licensee" means:

3652 (a) [a] an agency title insurance [agency] producer; or

3653 (b) [a] an individual title insurance producer.

3654 Section 45. Section **31A-41-201** is amended to read:

3655 **31A-41-201. Creation of Title Insurance Recovery, Education, and Research**
3656 **Fund.**

3657 (1) There is created a restricted special revenue fund to be known as the "Title
3658 Insurance Recovery, Education, and Research Fund."

3659 (2) The fund shall consist of:

3660 (a) assessments on individual title insurance producers and agency title insurance
3661 producers made under this chapter;

3662 (b) amounts collected under Section 31A-41-305; and

3663 (c) interest earned on the fund.

3664 (3) Interest on fund money shall be deposited into the fund.

3665 (4) The department shall administer the fund.

3666 Section 46. Section **31A-41-202** is amended to read:

3667 **31A-41-202. Assessments.**

3668 (1) Beginning January 1, 2009, [a] an agency title insurance [~~agency~~] producer licensed
3669 under this title shall pay an annual assessment determined by the commission by rule made in
3670 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the
3671 annual assessment:

3672 (a) may not exceed \$1,000; and

3673 (b) shall be determined on the basis of title insurance premium volume.

3674 (2) Beginning January 1, 2009, an individual who applies for a license or renewal of a
3675 license as [a] an individual title insurance producer, shall pay in addition to any other fee
3676 required by this title, an assessment not to exceed \$20, as determined by the commission by
3677 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
3678 except that if the individual holds more than one license, the total of all assessments under this
3679 Subsection (2) may not exceed \$20 in a fiscal year.

3680 (3) (a) To be licensed as [a] an agency title insurance [~~agency~~] producer on or after July
3681 1, 2008, a person shall pay to the department an assessment of \$1,000 before the day on which
3682 the person is licensed as a title insurance agency.

3683 (b) (i) By no later than July 15, 2008, the department shall assess on [a] an agency title

3684 insurance ~~[agency]~~ producer licensed as of June 30, 2008, an amount equal to the greater of:

3685 (A) \$1,000; or

3686 (B) subject to Subsection (3)(b)(ii), 2% of the balance as of December 31, 2007, in the

3687 agency title insurance ~~[agency's]~~ producer's reserve account ~~[required under]~~ described in

3688 Subsection 31A-23a-204(3).

3689 (ii) The department may assess on ~~[a]~~ an agency title insurance ~~[agency]~~ producer an
3690 amount less than 2% of the balance described in Subsection (3)(b)(i)(B) if:

3691 (A) before issuing the assessments under this Subsection (3)(b) the department

3692 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

3693 (B) the amount assessed on the agency title insurance ~~[agency]~~ producer is not less than
3694 \$1,000; and

3695 (C) the department reduces the assessment in a proportionate amount for agency title
3696 insurance ~~[agencies]~~ producers assessed on the basis of the 2% of the balance described in
3697 Subsection (3)(b)(i)(B).

3698 (iii) ~~[A]~~ An agency title insurance ~~[agency]~~ producer assessed under this Subsection
3699 (3)(b) shall pay the assessment by no later than August 1, 2008.

3700 (4) The department may not assess a title insurance licensee an assessment for
3701 purposes of the fund if that assessment is not expressly provided for in this section.

3702 Section 47. Section **49-20-410** is amended to read:

3703 **49-20-410. High deductible health plan -- Health savings account --**

3704 **Contributions.**

3705 (1) (a) In addition to other employee benefit plans offered under Subsection
3706 49-20-201(1), the office shall offer at least one federally qualified high deductible health plan
3707 with a health savings account as an optional health plan.

3708 (b) The provisions and limitations of the plan shall be:

3709 (i) determined by the office in accordance with federal requirements and limitations;
3710 and

3711 (ii) designed to promote appropriate health care utilization by consumers, including
3712 preventive health care services.

3713 (c) A state employee hired on or after July 1, 2011, who is offered a plan under
3714 Subsection 49-20-202(1)(a), shall be enrolled in a federally qualified high deductible health

3715 plan unless the employee chooses a different health benefit plan during the employee's open
3716 enrollment period.

3717 (2) The office shall:

3718 (a) administer the high deductible health plan in coordination with a health savings
3719 account for medical expenses for each covered individual in the high deductible health plan;

3720 (b) offer to all employees training regarding all health plans offered to employees;

3721 (c) prepare online training as an option for the training required by Subsections (2)(b)
3722 and (4);

3723 (d) ensure the training offered under Subsections (2)(b) and (c) includes information on
3724 changing coverages to the high deductible plan with a health savings account, including
3725 coordination of benefits with other insurances, restrictions on other insurance coverages, and
3726 general tax implications; and

3727 (e) coordinate annual open enrollment with the Department of Human Resource
3728 Management to give state employees the opportunity to affirmatively select preferences from
3729 among insurance coverage options.

3730 (3) (a) Contributions to the health savings account may be made by the employer.

3731 (b) The amount of the employer contributions under Subsection (3)(a) shall be
3732 determined annually by the office, after consultation with the Department of Human Resource
3733 Management and the Governor's Office of Planning and Budget so that the annual employer
3734 contribution amount reflects the difference in the actuarial value between the program's health
3735 maintenance organization coverage and the federally qualified high deductible health plan
3736 coverage, after taking into account any difference in employee premium contribution.

3737 (c) The office shall distribute the annual amount determined under Subsection (3)(b) to
3738 employees in two equal amounts with a pay date in January and a pay date in July of each plan
3739 year.

3740 (d) An employee may also make contributions to the health savings account.

3741 ~~[(4) The program shall offer a state employee and the employee's eligible dependents
3742 the option to continue coverage under the employee's high deductible health plan in place of a
3743 conversion policy under Section 31A-22-723 if:]~~

3744 ~~[(a) the employee was covered by the state employee's high deductible health plan for
3745 at least the four years before the date of termination of employment;]~~

3746 ~~[(b) the employee or the employee's eligible dependents have exhausted federal~~
3747 ~~COBRA coverage with the same or similar state employee's high deductible health plan; and]~~

3748 ~~[(c) the employee pays the premium group rate determined by the office for the~~
3749 ~~coverage.]~~

3750 ~~[(5)]~~ (4) (a) An employer participating in a plan offered under Subsection
3751 49-20-202(1)(a) shall require each employee to complete training on the health plan options
3752 available to the employee.

3753 (b) The training required by Subsection ~~[(5)]~~ (4)(a):

3754 (i) shall include materials prepared by the office under Subsection (2);

3755 (ii) may be completed online; and

3756 (iii) shall be completed:

3757 (A) before the end of the 2012 open enrollment period for current enrollees in the
3758 program; and

3759 (B) for employees hired on or after July 1, 2011, before the employee's selection of a
3760 plan in the program.

3761 Section 48. **Repealer.**

3762 This bill repeals:

3763 Section 31A-22-723, **Conversion from group coverage.**

3764 Section 31A-22-724, **Offer of alternative coverage -- Utah NetCare Plan.**

3765 Section 31A-30-109, **Health benefit plan choices.**

3766 Section 31A-30-202.5, **Insurer participation in defined contribution arrangement**
3767 **market.**

3768 Section 31A-30-205, **Health benefit plans offered in the defined contribution**
3769 **market.**

3770 Section 49. **Effective date.**

3771 (1) If approved by two-thirds of all the members elected to each house, Section
3772 31A-4-117 takes effect upon approval by the governor, or the day following the constitutional
3773 time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in
3774 the case of a veto, the date of veto override.

3775 (2) Except as provided in Subsections (1), (3) and (4), this bill takes effect on May 14,
3776 2013.

- 3777 (3) The actions affecting the following sections take effect on January 1, 2014:
3778 (a) Section 31A-2-201.2;
3779 (b) Section 31A-21-503;
3780 (c) Section 31A-22-612;
3781 (d) Section 31A-22-722;
3782 (e) Section 31A-22-723;
3783 (f) Section 31A-22-724;
3784 (g) Section 31A-30-109;
3785 (h) Section 31A-30-115;
3786 (i) Section 31A-30-202.5;
3787 (j) Section 31A-30-205;
3788 (k) Section 31A-30-208; and
3789 (l) Section 49-20-410.
3790 (4) The actions affecting Section 31A-3-304 (Effective 07/01/13) take effect on July 1,
3791 2015.