

Senator Curtis S. Bramble proposes the following substitute bill:

INSURANCE RELATED AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies Title 31A, Insurance Code, and other related provisions, to address the regulation of insurance.

Highlighted Provisions:

This bill:

- ▶ amends definition provisions;
- ▶ provides for insurance fraud investigators being designated as law enforcement officers;
- ▶ changes the date captive insurance companies are to pay a fee;
- ▶ addresses what constitutes a qualified insurer;
- ▶ modifies requirements for plan of orderly withdrawal from writing a line of insurance;
- ▶ addresses notice requirements related to a request for a hearing;
- ▶ modifies calculations related to interest payable on life insurance proceeds;
- ▶ addresses uninsured and underinsured motorist coverage;
- ▶ addresses preferred provider contract provisions;
- ▶ addresses coverage of mental health and substance use disorders;
- ▶ modifies requirements for the uniform application form and the uniform waiver of



- 26 coverage form;
- 27 ▶ amends language regarding the health benefit plan on the Health Insurance
- 28 Exchange;
- 29 ▶ amends language regarding open enrollment provisions;
- 30 ▶ modifies language regarding dental and vision policies being offered on the Health
- 31 Insurance Exchange;
- 32 ▶ clarifies language related to the designated responsible licensed individual;
- 33 ▶ clarifies references to the Violent Crime Control and Law Enforcement Act;
- 34 ▶ modifies references to state of residence to home state;
- 35 ▶ addresses requirements related to licensing when a person establishes legal
- 36 residence in the state;
- 37 ▶ changes requirements related to the commissioner placing a licensee on probation;
- 38 ▶ repeals language related to a voluntarily surrendered license that is reinstated upon
- 39 completion of continuing education requirements;
- 40 ▶ modifies certain exemptions from continuing education requirements;
- 41 ▶ clarifies training period requirements;
- 42 ▶ changes a navigator license term to one year;
- 43 ▶ provides for training periods for a navigator license;
- 44 ▶ modifies continuing education requirements for a navigator;
- 45 ▶ repeals the requirement that the commissioner publish a list of professional
- 46 designations whose continuing education requirements could be used for certain
- 47 circumstances related to navigators;
- 48 ▶ modifies provisions related to inducements;
- 49 ▶ addresses license compensation provisions;
- 50 ▶ makes navigator licensees subject to unfair marketing practice restrictions;
- 51 ▶ amends definitions specific to insurance adjusters' chapter;
- 52 ▶ exempts an applicant for the crop insurance license class from certain requirements;
- 53 ▶ modifies the definition of receiver;
- 54 ▶ addresses the provisions related to the receivership court's seizure order;
- 55 ▶ amends the purpose statement, definition, and applicability and scope provisions for
- 56 the Individual, Small Employer, and Group Health Insurance Act;

- 57 ▶ addresses the surcharge for groups changing carriers;
- 58 ▶ addresses eligibility for the small employer and individual market;
- 59 ▶ modifies the provisions related to appointment of insurance producers and the
- 60 Health Insurance Exchange;
- 61 ▶ modifies Health Insurance Exchange disclosure requirements;
- 62 ▶ requires a captive insurance company, rather than an association captive insurance
- 63 company or industrial insured group, to file a specified report;
- 64 ▶ corrects a reference to a covered employee;
- 65 ▶ changes reference to a multiple coordinated policy to a master policy;
- 66 ▶ includes reference to the defined contribution arrangement market into the Defined
- 67 Contribution Risk Adjuster Act;
- 68 ▶ modifies definitions in the Small Employer Stop-Loss Insurance Act;
- 69 ▶ addresses stop-loss insurance coverage standards, stop-loss restrictions, filing
- 70 requirements, and stop-loss insurance disclosure;
- 71 ▶ modifies commissioner's rulemaking authority under the Small Employer Stop-Loss
- 72 Insurance Act; and
- 73 ▶ makes technical and conforming amendments.

74 **Money Appropriated in this Bill:**

75 None

76 **Other Special Clauses:**

77 This bill provides an effective date.

78 This bill provides revisor instructions.

79 **Utah Code Sections Affected:**

80 AMENDS:

81 **31A-1-301**, as last amended by Laws of Utah 2013, Chapter 319

82 **31A-2-104**, as last amended by Laws of Utah 1999, Chapter 21

83 **31A-3-304 (Superseded 07/01/15)**, as last amended by Laws of Utah 2011, Chapter

84 284

85 **31A-3-304 (Effective 07/01/15)**, as last amended by Laws of Utah 2013, Chapter 319

86 **31A-4-102**, as last amended by Laws of Utah 2008, Chapter 345

87 **31A-4-115**, as last amended by Laws of Utah 2002, Chapter 308

- 88 [31A-8-402.3](#), as last amended by Laws of Utah 2004, Chapter 329
- 89 [31A-16-103](#), as last amended by Laws of Utah 2004, Chapter 2
- 90 [31A-17-607](#), as last amended by Laws of Utah 2001, Chapter 116
- 91 [31A-22-305](#), as last amended by Laws of Utah 2013, Chapter 460
- 92 [31A-22-305.3](#), as last amended by Laws of Utah 2013, Chapter 460
- 93 [31A-22-428](#), as enacted by Laws of Utah 2008, Chapter 345
- 94 [31A-22-617](#), as last amended by Laws of Utah 2013, Chapters 104 and 319
- 95 [31A-22-618.5](#), as last amended by Laws of Utah 2013, Chapter 319
- 96 [31A-22-625](#), as last amended by Laws of Utah 2012, Chapter 253
- 97 [31A-22-635](#), as last amended by Laws of Utah 2012, Chapters 253 and 279
- 98 [31A-22-721](#), as last amended by Laws of Utah 2011, Chapter 284
- 99 [31A-23a-102](#), as last amended by Laws of Utah 2013, Chapter 319
- 100 [31A-23a-104](#), as last amended by Laws of Utah 2012, Chapter 253
- 101 [31A-23a-105](#), as last amended by Laws of Utah 2013, Chapter 319
- 102 [31A-23a-108](#), as last amended by Laws of Utah 2012, Chapter 253
- 103 [31A-23a-112](#), as last amended by Laws of Utah 2008, Chapter 382
- 104 [31A-23a-113](#), as last amended by Laws of Utah 2012, Chapter 253
- 105 [31A-23a-202](#), as last amended by Laws of Utah 2013, Chapter 319
- 106 [31A-23a-203](#), as last amended by Laws of Utah 2012, Chapter 253
- 107 [31A-23a-402.5](#), as last amended by Laws of Utah 2013, Chapter 319
- 108 [31A-23a-501](#), as last amended by Laws of Utah 2013, Chapter 341
- 109 [31A-23b-102](#), as enacted by Laws of Utah 2013, Chapter 341
- 110 [31A-23b-202](#), as enacted by Laws of Utah 2013, Chapter 341
- 111 [31A-23b-205](#), as enacted by Laws of Utah 2013, Chapter 341
- 112 [31A-23b-206](#), as enacted by Laws of Utah 2013, Chapter 341
- 113 [31A-23b-301](#), as enacted by Laws of Utah 2013, Chapter 341
- 114 [31A-23b-402](#), as enacted by Laws of Utah 2013, Chapter 341
- 115 [31A-25-208](#), as last amended by Laws of Utah 2011, Chapter 284
- 116 [31A-25-209](#), as last amended by Laws of Utah 2008, Chapter 382
- 117 [31A-26-102](#), as last amended by Laws of Utah 2012, Chapter 151
- 118 [31A-26-206](#), as last amended by Laws of Utah 2011, Chapter 284

119 **31A-26-207**, as last amended by Laws of Utah 2001, Chapter 116
120 **31A-26-213**, as last amended by Laws of Utah 2011, Chapter 284
121 **31A-26-214**, as last amended by Laws of Utah 2008, Chapter 382
122 **31A-26-214.5**, as last amended by Laws of Utah 2009, Chapter 349
123 **31A-27a-102**, as last amended by Laws of Utah 2008, Chapter 382
124 **31A-27a-107**, as enacted by Laws of Utah 2007, Chapter 309
125 **31A-27a-201**, as enacted by Laws of Utah 2007, Chapter 309
126 **31A-27a-701**, as last amended by Laws of Utah 2011, Chapter 297
127 **31A-29-106**, as last amended by Laws of Utah 2013, Chapter 319
128 **31A-29-111**, as last amended by Laws of Utah 2012, Chapters 158 and 347
129 **31A-29-115**, as last amended by Laws of Utah 2004, Chapter 2
130 **31A-30-102**, as last amended by Laws of Utah 2009, Chapter 12
131 **31A-30-103**, as last amended by Laws of Utah 2013, Chapter 168
132 **31A-30-104**, as last amended by Laws of Utah 2013, Chapters 168 and 341
133 **31A-30-106**, as last amended by Laws of Utah 2011, Chapter 284
134 **31A-30-106.7**, as last amended by Laws of Utah 2008, Chapter 382
135 **31A-30-107**, as last amended by Laws of Utah 2009, Chapter 12
136 **31A-30-108**, as last amended by Laws of Utah 2011, Chapter 284
137 **31A-30-207**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 5
138 **31A-30-209**, as last amended by Laws of Utah 2011, Chapter 400
139 **31A-30-211**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 5
140 **31A-37-501**, as last amended by Laws of Utah 2008, Chapter 302
141 **31A-40-203**, as enacted by Laws of Utah 2008, Chapter 318
142 **31A-40-209**, as enacted by Laws of Utah 2008, Chapter 318
143 **31A-42-202**, as last amended by Laws of Utah 2011, Chapter 400
144 **31A-43-102**, as enacted by Laws of Utah 2013, Chapter 341
145 **31A-43-301**, as enacted by Laws of Utah 2013, Chapter 341
146 **31A-43-302**, as enacted by Laws of Utah 2013, Chapter 341
147 **31A-43-303**, as enacted by Laws of Utah 2013, Chapter 341
148 **31A-43-304**, as enacted by Laws of Utah 2013, Chapter 341
149 **53-13-103**, as last amended by Laws of Utah 2011, Chapter 58

150 REPEALS:

151 **31A-30-110**, as last amended by Laws of Utah 2011, Chapters 284 and 297

152 **31A-30-111**, as last amended by Laws of Utah 2002, Chapter 308

153 **Utah Code Sections Affected by Revisor Instructions:**

154 **31A-22-305**, as last amended by Laws of Utah 2013, Chapter 460

155 **31A-22-305.3**, as last amended by Laws of Utah 2013, Chapter 460



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

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

159 **31A-1-301. Definitions.**

160 As used in this title, unless otherwise specified:

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

163 (i) a medical condition including:

164 (A) a medical care expense; or

165 (B) the risk of disability;

166 (ii) accident; or

167 (iii) sickness.

168 (b) "Accident and health insurance":

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

170 (A) an income replacement contract;

171 (B) a health care contract;

172 (C) an expense reimbursement contract;

173 (D) a credit accident and health contract;

174 (E) a continuing care contract; and

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

176 (ii) may provide:

177 (A) hospital coverage;

178 (B) surgical coverage;

179 (C) medical coverage;

180 (D) loss of income coverage;

- 181 (E) prescription drug coverage;
- 182 (F) dental coverage; or
- 183 (G) vision coverage.
- 184 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 185 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 186 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 187 (3) "Administrator" is defined in Subsection [~~(163)~~] (164).
- 188 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 189 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 190 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 191 ownership, if substantially the same group of individuals manage the corporations.
- 192 (6) "Agency" means:
- 193 (a) a person other than an individual, including a sole proprietorship by which an
- 194 individual does business under an assumed name; and
- 195 (b) an insurance organization licensed or required to be licensed under Section
- 196 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).
- 197 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 198 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 199 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 200 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 201 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 202 human life.
- 203 (10) "Application" means a document:
- 204 (a) (i) completed by an applicant to provide information about the risk to be insured;
- 205 and
- 206 (ii) that contains information that is used by the insurer to evaluate risk and decide
- 207 whether to:
- 208 (A) insure the risk under:
- 209 (I) the coverage as originally offered; or
- 210 (II) a modification of the coverage as originally offered; or
- 211 (B) decline to insure the risk; or

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

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

215 (a) the original articles;

216 (b) a special law;

217 (c) a charter;

218 (d) an amendment;

219 (e) restated articles;

220 (f) articles of merger or consolidation;

221 (g) a trust instrument;

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

223 and

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

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

228 (13) "Binder" is defined in Section [31A-21-102](#).

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

231 (a) without individual underwriting or application; and

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

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

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

236 (a) that is open to the public;

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

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

239 (17) "Business entity" means:

240 (a) a corporation;

241 (b) an association;

242 (c) a partnership;

- 243 (d) a limited liability company;
- 244 (e) a limited liability partnership; or
- 245 (f) another legal entity.
- 246 (18) "Business of insurance" is defined in Subsection (88).
- 247 (19) "Business plan" means the information required to be supplied to the
- 248 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
- 249 when these subsections apply by reference under:
- 250 (a) Section 31A-7-201;
- 251 (b) Section 31A-8-205; or
- 252 (c) Subsection 31A-9-205(2).
- 253 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
- 254 corporation's affairs, however designated.
- 255 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
- 256 corporation.
- 257 (21) "Captive insurance company" means:
- 258 (a) an insurer:
- 259 (i) owned by another organization; and
- 260 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 261 affiliated company; or
- 262 (b) in the case of a group or association, an insurer:
- 263 (i) owned by the insureds; and
- 264 (ii) whose exclusive purpose is to insure risks of:
- 265 (A) a member organization;
- 266 (B) a group member; or
- 267 (C) an affiliate of:
- 268 (I) a member organization; or
- 269 (II) a group member.
- 270 (22) "Casualty insurance" means liability insurance.
- 271 (23) "Certificate" means evidence of insurance given to:
- 272 (a) an insured under a group insurance policy; or
- 273 (b) a third party.

- 274 (24) "Certificate of authority" is included within the term "license."
275 (25) "Claim," unless the context otherwise requires, means a request or demand on an
276 insurer for payment of a benefit according to the terms of an insurance policy.
277 (26) "Claims-made coverage" means an insurance contract or provision limiting
278 coverage under a policy insuring against legal liability to claims that are first made against the
279 insured while the policy is in force.
280 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
281 commissioner.
282 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
283 supervisory official of another jurisdiction.
284 (28) (a) "Continuing care insurance" means insurance that:
285 (i) provides board and lodging;
286 (ii) provides one or more of the following:
287 (A) a personal service;
288 (B) a nursing service;
289 (C) a medical service; or
290 (D) any other health-related service; and
291 (iii) provides the coverage described in this Subsection (28)(a) under an agreement
292 effective:
293 (A) for the life of the insured; or
294 (B) for a period in excess of one year.
295 (b) Insurance is continuing care insurance regardless of whether or not the board and
296 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).
297 (29) (a) "Control," "controlling," "controlled," or "under common control" means the
298 direct or indirect possession of the power to direct or cause the direction of the management
299 and policies of a person. This control may be:
300 (i) by contract;
301 (ii) by common management;
302 (iii) through the ownership of voting securities; or
303 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).
304 (b) There is no presumption that an individual holding an official position with another

305 person controls that person solely by reason of the position.

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

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

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

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

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

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

319 (i) a corporation doing business:

320 (A) as:

321 (I) an insurance producer;

322 (II) a surplus lines producer;

323 (III) a limited line producer;

324 (IV) a consultant;

325 (V) a managing general agent;

326 (VI) a reinsurance intermediary;

327 (VII) a third party administrator; or

328 (VIII) an adjuster; and

329 (B) under:

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

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

333 (III) Chapter 26, Insurance Adjusters; or

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

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

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

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

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

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

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

345 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
346 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

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

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

352 (b) "Credit insurance" includes:

353 (i) credit accident and health insurance;

354 (ii) credit life insurance;

355 (iii) credit property insurance;

356 (iv) credit unemployment insurance;

357 (v) guaranteed automobile protection insurance;

358 (vi) involuntary unemployment insurance;

359 (vii) mortgage accident and health insurance;

360 (viii) mortgage guaranty insurance; and

361 (ix) mortgage life insurance.

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

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

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

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

- 367 (39) "Credit unemployment insurance" means insurance:
368 (a) offered in connection with an extension of credit; and
369 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
370 (i) specific loan; or
371 (ii) credit transaction.
- 372 (40) "Creditor" means a person, including an insured, having a claim, whether:
373 (a) matured;
374 (b) unmatured;
375 (c) liquidated;
376 (d) unliquidated;
377 (e) secured;
378 (f) unsecured;
379 (g) absolute;
380 (h) fixed; or
381 (i) contingent.
- 382 (41) (a) "Crop insurance" means insurance providing protection against damage to
383 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
384 disease, or other yield-reducing conditions or perils that is:
385 (i) provided by the private insurance market; or
386 (ii) subsidized by the Federal Crop Insurance Corporation.
387 (b) "Crop insurance" includes multiperil crop insurance.
- 388 (42) (a) "Customer service representative" means a person that provides an insurance
389 service and insurance product information:
390 (i) for the customer service representative's:
391 (A) producer;
392 (B) surplus lines producer; or
393 (C) consultant employer; and
394 (ii) to the customer service representative's employer's:
395 (A) customer;
396 (B) client; or
397 (C) organization.

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

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

401 (a) imposed by:

402 (i) statute;

403 (ii) rule; or

404 (iii) order; and

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

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

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

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

414 (47) "Director" means a member of the board of directors of a corporation.

415 (48) "Disability" means a physiological or psychological condition that partially or
416 totally limits an individual's ability to:

417 (a) perform the duties of:

418 (i) that individual's occupation; or

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

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

422 (i) eating;

423 (ii) toileting;

424 (iii) transferring;

425 (iv) bathing; or

426 (v) dressing.

427 (49) "Disability income insurance" is defined in Subsection (79).

428 (50) "Domestic insurer" means an insurer organized under the laws of this state.

- 429 (51) "Domiciliary state" means the state in which an insurer:
- 430 (a) is incorporated;
- 431 (b) is organized; or
- 432 (c) in the case of an alien insurer, enters into the United States.
- 433 (52) (a) "Eligible employee" means:
- 434 (i) an employee who:
- 435 (A) works on a full-time basis; and
- 436 (B) has a normal work week of 30 or more hours; or
- 437 (ii) a person described in Subsection (52)(b).
- 438 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 439 plan of a small employer:
- 440 (i) a sole proprietor;
- 441 (ii) a partner in a partnership; or
- 442 (iii) an independent contractor.
- 443 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
- 444 (i) an individual who works on a temporary or substitute basis for a small employer;
- 445 (ii) an employer's spouse; or
- 446 (iii) a dependent of an employer.
- 447 (53) "Employee" means an individual employed by an employer.
- 448 (54) "Employee benefits" means one or more benefits or services provided to:
- 449 (a) an employee; or
- 450 (b) a dependent of an employee.
- 451 (55) (a) "Employee welfare fund" means a fund:
- 452 (i) established or maintained, whether directly or through a trustee, by:
- 453 (A) one or more employers;
- 454 (B) one or more labor organizations; or
- 455 (C) a combination of employers and labor organizations; and
- 456 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 457 from investments of the fund:
- 458 (A) by or on behalf of an employer doing business in this state; or
- 459 (B) for the benefit of a person employed in this state.

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

462 (56) "Endorsement" means a written agreement attached to a policy or certificate to
463 modify the policy or certificate coverage.

464 (57) "Enrollment date," with respect to a health benefit plan, means:

465 (a) the first day of coverage; or

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

467 (58) (a) "Escrow" means:

468 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
469 when a person not a party to the transaction, and neither having nor acquiring an interest in the
470 title, performs, in accordance with the written instructions or terms of the written agreement
471 between the parties to the transaction, any of the following actions:

472 (A) the explanation, holding, or creation of a document; or

473 (B) the receipt, deposit, and disbursement of money;

474 (ii) a settlement or closing involving:

475 (A) a mobile home;

476 (B) a grazing right;

477 (C) a water right; or

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

479 (b) "Escrow" does not include:

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

481 (A) an acknowledgment;

482 (B) a copy certification;

483 (C) jurat; and

484 (D) an oath or affirmation;

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

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

487 (59) "Escrow agent" means an agency title insurance producer meeting the
488 requirements of Sections [31A-4-107](#), [31A-14-211](#), and [31A-23a-204](#), who is acting through an
489 individual title insurance producer licensed with an escrow subline of authority.

490 (60) (a) "Excludes" is not exhaustive and does not mean that another thing is not also

491 excluded.

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

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

496 (a) a specific physical condition;

497 (b) a specific medical procedure;

498 (c) a specific disease or disorder; or

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

500 (62) "Expense reimbursement insurance" means insurance:

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

503 (b) written:

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

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

506 (63) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
507 a position of public or private trust.

508 (64) (a) "Filed" means that a filing is:

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

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

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

514 (A) Section [31A-3-103](#); or

515 (B) rule.

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

518 (65) "Filing," when used as a noun, means an item required to be filed with the
519 department including:

520 (a) a policy;

521 (b) a rate;

- 522 (c) a form;
 - 523 (d) a document;
 - 524 (e) a plan;
 - 525 (f) a manual;
 - 526 (g) an application;
 - 527 (h) a report;
 - 528 (i) a certificate;
 - 529 (j) an endorsement;
 - 530 (k) an actuarial certification;
 - 531 (l) a licensee annual statement;
 - 532 (m) a licensee renewal application;
 - 533 (n) an advertisement; or
 - 534 (o) an outline of coverage.
- 535 (66) "First party insurance" means an insurance policy or contract in which the insurer
536 agrees to pay a claim submitted to it by the insured for the insured's losses.
- 537 (67) "Foreign insurer" means an insurer domiciled outside of this state, including an
538 alien insurer.
- 539 (68) (a) "Form" means one of the following prepared for general use:
- 540 (i) a policy;
 - 541 (ii) a certificate;
 - 542 (iii) an application;
 - 543 (iv) an outline of coverage; or
 - 544 (v) an endorsement.
- 545 (b) "Form" does not include a document specially prepared for use in an individual
546 case.
- 547 (69) "Franchise insurance" means an individual insurance policy provided through a
548 mass marketing arrangement involving a defined class of persons related in some way other
549 than through the purchase of insurance.
- 550 (70) "General lines of authority" include:
- 551 (a) the general lines of insurance in Subsection (71);
 - 552 (b) title insurance under one of the following sublines of authority:

553 (i) search, including authority to act as a title marketing representative;
554 (ii) escrow, including authority to act as a title marketing representative; and
555 (iii) title marketing representative only;
556 (c) surplus lines;
557 (d) workers' compensation; and
558 (e) [~~any other~~] another line of insurance that the commissioner considers necessary to
559 recognize in the public interest.

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

- 561 (a) accident and health;
- 562 (b) casualty;
- 563 (c) life;
- 564 (d) personal lines;
- 565 (e) property; and
- 566 (f) variable contracts, including variable life and annuity.

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

- 569 (a) (i) to an employee; or
- 570 (ii) to a dependent of an employee; and
- 571 (b) (i) directly;
- 572 (ii) through insurance reimbursement; or
- 573 (iii) through another method.

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

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

- 579 (A) the policy; or
- 580 (B) an agreement that is collateral to the policy.

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

583 (74) "Guaranteed automobile protection insurance" means insurance offered in

584 connection with an extension of credit that pays the difference in amount between the
585 insurance settlement and the balance of the loan if the insured automobile is a total loss.

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

- 588 (i) provides health care insurance;
- 589 (ii) provides major medical expense insurance; or
- 590 (iii) is offered as a substitute for hospital or medical expense insurance, such as:

591 (A) a hospital confinement indemnity; or

592 (B) a limited benefit plan.

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

594 (i) provides benefits solely for:

595 (A) accident;

596 (B) dental;

597 (C) income replacement;

598 (D) long-term care;

599 (E) a Medicare supplement;

600 (F) a specified disease;

601 (G) vision; or

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

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

604 (76) "Health care" means any of the following intended for use in the diagnosis,
605 treatment, mitigation, or prevention of a human ailment or impairment:

606 (a) a professional service;

607 (b) a personal service;

608 (c) a facility;

609 (d) equipment;

610 (e) a device;

611 (f) supplies; or

612 (g) medicine.

613 (77) (a) "Health care insurance" or "health insurance" means insurance providing:

614 (i) a health care benefit; or

615 (ii) payment of an incurred health care expense.
616 (b) "Health care insurance" or "health insurance" does not include accident and health
617 insurance providing a benefit for:

- 618 (i) replacement of income;
- 619 (ii) short-term accident;
- 620 (iii) fixed indemnity;
- 621 (iv) credit accident and health;
- 622 (v) supplements to liability;
- 623 (vi) workers' compensation;
- 624 (vii) automobile medical payment;
- 625 (viii) no-fault automobile;
- 626 (ix) equivalent self-insurance; or
- 627 (x) a type of accident and health insurance coverage that is a part of or attached to
628 another type of policy.

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

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

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

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

637 (82) "Independently procured insurance" means insurance procured under Section
638 [31A-15-104](#).

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

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

- 641 (a) property in transit on or over land;
- 642 (b) property in transit over water by means other than boat or ship;
- 643 (c) bailee liability;
- 644 (d) fixed transportation property such as bridges, electric transmission systems, radio
645 and television transmission towers and tunnels; and

646 (e) personal and commercial property floaters.

647 (85) "Insolvency" means that:

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

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

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

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

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

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

658 (b) "Insurance" includes:

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

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

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

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

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

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

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

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

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

676 (c) providing an annuity:

- 677 (i) including an annuity issued in return for a gift; and
678 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
679 and (3);
680 (d) providing the characteristic services of a motor club as outlined in Subsection
681 (116);
682 (e) providing another person with insurance;
683 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
684 or surety, a contract or policy of title insurance;
685 (g) transacting or proposing to transact any phase of title insurance, including:
686 (i) solicitation;
687 (ii) negotiation preliminary to execution;
688 (iii) execution of a contract of title insurance;
689 (iv) insuring; and
690 (v) transacting matters subsequent to the execution of the contract and arising out of
691 the contract, including reinsurance;
692 (h) transacting or proposing a life settlement; and
693 (i) doing, or proposing to do, any business in substance equivalent to Subsections
694 (88)(a) through (h) in a manner designed to evade this title.
695 (89) "Insurance consultant" or "consultant" means a person who:
696 (a) advises another person about insurance needs and coverages;
697 (b) is compensated by the person advised on a basis not directly related to the insurance
698 placed; and
699 (c) except as provided in Section 31A-23a-501, is not compensated directly or
700 indirectly by an insurer or producer for advice given.
701 (90) "Insurance holding company system" means a group of two or more affiliated
702 persons, at least one of whom is an insurer.
703 (91) (a) "Insurance producer" or "producer" means a person licensed or required to be
704 licensed under the laws of this state to sell, solicit, or negotiate insurance.
705 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
706 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
707 insurer.

- 708 (ii) "Producer for the insurer" may be referred to as an "agent."
709 (c) (i) "Producer for the insured" means a producer who:
710 (A) is compensated directly and only by an insurance customer or an insured; and
711 (B) receives no compensation directly or indirectly from an insurer for selling,
712 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
713 insured.
- 714 (ii) "Producer for the insured" may be referred to as a "broker."
715 (92) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
716 promise in an insurance policy and includes:
717 (i) a policyholder;
718 (ii) a subscriber;
719 (iii) a member; and
720 (iv) a beneficiary.
- 721 (b) The definition in Subsection (92)(a):
722 (i) applies only to this title; and
723 (ii) does not define the meaning of this word as used in an insurance policy or
724 certificate.
- 725 (93) (a) "Insurer" means a person doing an insurance business as a principal including:
726 (i) a fraternal benefit society;
727 (ii) an issuer of a gift annuity other than an annuity specified in Subsections
728 [31A-22-1305](#)(2) and (3);
729 (iii) a motor club;
730 (iv) an employee welfare plan; and
731 (v) a person purporting or intending to do an insurance business as a principal on that
732 person's own account.
- 733 (b) "Insurer" does not include a governmental entity to the extent the governmental
734 entity is engaged in an activity described in Section [31A-12-107](#).
- 735 (94) "Interinsurance exchange" is defined in Subsection [~~(146)~~] (147).
736 (95) "Involuntary unemployment insurance" means insurance:
737 (a) offered in connection with an extension of credit; and
738 (b) that provides indemnity if the debtor is involuntarily unemployed for payments

739 coming due on a:

740 (i) specific loan; or

741 (ii) credit transaction.

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

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

744 (a) employed an average of at least 51 eligible employees on each business day during
745 the preceding calendar year; and

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

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

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

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

753 (b) through special enrollment.

754 (99) (a) Except for a retainer contract or legal assistance described in Section
755 [31A-1-103](#), "legal expense insurance" means insurance written to indemnify or pay for a
756 specified legal expense.

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

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

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

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

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

765 (B) Subsection (138) for professional liability insurance; and

766 (C) Subsection [~~(172)~~] (173) for workers' compensation insurance;

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

770 being, exclusive of the coverages under:

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

772 (B) Subsection (138) for professional liability insurance; and

773 (C) Subsection [~~(172)~~] (173) for workers' compensation insurance;

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

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

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

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

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

781 (b) "Liability insurance" includes:

782 (i) vehicle liability insurance;

783 (ii) residential dwelling liability insurance; and

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

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

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

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

791 (i) insurance on a human life; and

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

793 (b) The business of life insurance includes:

794 (i) granting a death benefit;

795 (ii) granting an annuity benefit;

796 (iii) granting an endowment benefit;

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

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

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

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

- 801 (a) is issued for a specific product of insurance; and
802 (b) limits an individual or agency to transact only for that product or insurance.
803 (104) "Limited line credit insurance" includes the following forms of insurance:
804 (a) credit life;
805 (b) credit accident and health;
806 (c) credit property;
807 (d) credit unemployment;
808 (e) involuntary unemployment;
809 (f) mortgage life;
810 (g) mortgage guaranty;
811 (h) mortgage accident and health;
812 (i) guaranteed automobile protection; and
813 (j) another form of insurance offered in connection with an extension of credit that:
814 (i) is limited to partially or wholly extinguishing the credit obligation; and
815 (ii) the commissioner determines by rule should be designated as a form of limited line
816 credit insurance.
- 817 (105) "Limited line credit insurance producer" means a person who sells, solicits, or
818 negotiates one or more forms of limited line credit insurance coverage to an individual through
819 a master, corporate, group, or individual policy.
- 820 (106) "Limited line insurance" includes:
821 (a) bail bond;
822 (b) limited line credit insurance;
823 (c) legal expense insurance;
824 (d) motor club insurance;
825 (e) car rental related insurance;
826 (f) travel insurance;
827 (g) crop insurance;
828 (h) self-service storage insurance;
829 (i) guaranteed asset protection waiver;
830 (j) portable electronics insurance; and
831 (k) another form of limited insurance that the commissioner determines by rule should

832 be designated a form of limited line insurance.

833 (107) "Limited lines authority" includes~~[-(a)]~~ the lines of insurance listed in

834 Subsection (106)~~[-and]~~.

835 ~~[(b) a customer service representative.]~~

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

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

840 (i) in a setting other than an acute care unit of a hospital;

841 (ii) for not less than 12 consecutive months for a covered person on the basis of:

842 (A) expenses incurred;

843 (B) indemnity;

844 (C) prepayment; or

845 (D) another method;

846 (iii) for one or more necessary or medically necessary services that are:

847 (A) diagnostic;

848 (B) preventative;

849 (C) therapeutic;

850 (D) rehabilitative;

851 (E) maintenance; or

852 (F) personal care; and

853 (iv) that may be issued by:

854 (A) an insurer;

855 (B) a fraternal benefit society;

856 (C) (I) a nonprofit health hospital; and

857 (II) a medical service corporation;

858 (D) a prepaid health plan;

859 (E) a health maintenance organization; or

860 (F) an entity similar to the entities described in Subsections (109)(a)(iv)(A) through (E)

861 to the extent that the entity is otherwise authorized to issue life or health care insurance.

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

- 863 (i) any of the following that provide directly or supplement long-term care insurance:
- 864 (A) a group or individual annuity or rider; or
- 865 (B) a life insurance policy or rider;
- 866 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 867 (A) cognitive impairment; or
- 868 (B) functional capacity; or
- 869 (iii) a qualified long-term care insurance contract.
- 870 (c) "Long-term care insurance" does not include:
- 871 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 872 (ii) basic hospital expense coverage;
- 873 (iii) basic medical/surgical expense coverage;
- 874 (iv) hospital confinement indemnity coverage;
- 875 (v) major medical expense coverage;
- 876 (vi) income replacement or related asset-protection coverage;
- 877 (vii) accident only coverage;
- 878 (viii) coverage for a specified:
- 879 (A) disease; or
- 880 (B) accident;
- 881 (ix) limited benefit health coverage; or
- 882 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 883 lump sum payment:
- 884 (A) if the following are not conditioned on the receipt of long-term care:
- 885 (I) benefits; or
- 886 (II) eligibility; and
- 887 (B) the coverage is for one or more the following qualifying events:
- 888 (I) terminal illness;
- 889 (II) medical conditions requiring extraordinary medical intervention; or
- 890 (III) permanent institutional confinement.
- 891 (110) "Medical malpractice insurance" means insurance against legal liability incident
- 892 to the practice and provision of a medical service other than the practice and provision of a
- 893 dental service.

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

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

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

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

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

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

906 (a) licensed under:

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

908 (ii) Chapter 11, Motor Clubs; or

909 (iii) Chapter 14, Foreign Insurers; and

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

912 (i) legal services under Subsection [31A-11-102\(1\)\(b\)](#);

913 (ii) bail services under Subsection [31A-11-102\(1\)\(c\)](#); or

914 (iii) (A) trip reimbursement;

915 (B) towing services;

916 (C) emergency road services;

917 (D) stolen automobile services;

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

919 (F) other services given in Subsections [31A-11-102\(1\)\(b\)](#) through (f).

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

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

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

923 (b) under which the financing and delivery of medical care is provided, in whole or in
924 part, through a defined set of providers under contract with the insurer, including the financing

925 and delivery of an item paid for as medical care.

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

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

929 (a) ships or hulls of ships;

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

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

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

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

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

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

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

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

948 (b) receives:

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

951 (ii) another government health benefit.

952 (125) "Person" includes:

953 (a) an individual;

954 (b) a partnership;

955 (c) a corporation;

- 956 (d) an incorporated or unincorporated association;
- 957 (e) a joint stock company;
- 958 (f) a trust;
- 959 (g) a limited liability company;
- 960 (h) a reciprocal;
- 961 (i) a syndicate; or
- 962 (j) another similar entity or combination of entities acting in concert.
- 963 (126) "Personal lines insurance" means property and casualty insurance coverage sold
- 964 for primarily noncommercial purposes to:
- 965 (a) an individual; or
- 966 (b) a family.
- 967 (127) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 968 (128) "Plan year" means:
- 969 (a) the year that is designated as the plan year in:
- 970 (i) the plan document of a group health plan; or
- 971 (ii) a summary plan description of a group health plan;
- 972 (b) if the plan document or summary plan description does not designate a plan year or
- 973 there is no plan document or summary plan description:
- 974 (i) the year used to determine deductibles or limits;
- 975 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 976 or
- 977 (iii) the employer's taxable year if:
- 978 (A) the plan does not impose deductibles or limits on a yearly basis; and
- 979 (B) (I) the plan is not insured; or
- 980 (II) the insurance policy is not renewed on an annual basis; or
- 981 (c) in a case not described in Subsection (128)(a) or (b), the calendar year.
- 982 (129) (a) "Policy" means a document, including an attached endorsement or application
- 983 that:
- 984 (i) purports to be an enforceable contract; and
- 985 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 986 (b) "Policy" includes a service contract issued by:

- 987 (i) a motor club under Chapter 11, Motor Clubs;
- 988 (ii) a service contract provided under Chapter 6a, Service Contracts; and
- 989 (iii) a corporation licensed under:
- 990 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 991 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
- 992 (c) "Policy" does not include:
- 993 (i) a certificate under a group insurance contract; or
- 994 (ii) a document that does not purport to have legal effect.
- 995 (130) "Policyholder" means a person who controls a policy, binder, or oral contract by
- 996 ownership, premium payment, or otherwise.
- 997 (131) "Policy illustration" means a presentation or depiction that includes
- 998 nonguaranteed elements of a policy of life insurance over a period of years.
- 999 (132) "Policy summary" means a synopsis describing the elements of a life insurance
- 1000 policy.
- 1001 (133) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.
- 1002 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and
- 1003 related federal regulations and guidance.
- 1004 (134) "Preexisting condition," with respect to a health benefit plan:
- 1005 (a) means a condition that was present before the effective date of coverage, whether or
- 1006 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
- 1007 and
- 1008 (b) does not include a condition indicated by genetic information unless an actual
- 1009 diagnosis of the condition by a physician has been made.
- 1010 (135) (a) "Premium" means the monetary consideration for an insurance policy.
- 1011 (b) "Premium" includes, however designated:
- 1012 (i) an assessment;
- 1013 (ii) a membership fee;
- 1014 (iii) a required contribution; or
- 1015 (iv) monetary consideration.
- 1016 (c) (i) "Premium" does not include consideration paid to a third party administrator for
- 1017 the third party administrator's services.

1018 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1019 insurance on the risks administered by the third party administrator.

1020 (136) "Principal officers" for a corporation means the officers designated under
1021 Subsection 31A-5-203(3).

1022 (137) "Proceeding" includes an action or special statutory proceeding.

1023 (138) "Professional liability insurance" means insurance against legal liability incident
1024 to the practice of a profession and provision of a professional service.

1025 (139) (a) Except as provided in Subsection (139)(b), "property insurance" means
1026 insurance against loss or damage to real or personal property of every kind and any interest in
1027 that property:

1028 (i) from all hazards or causes; and

1029 (ii) against loss consequential upon the loss or damage including vehicle
1030 comprehensive and vehicle physical damage coverages.

1031 (b) "Property insurance" does not include:

1032 (i) inland marine insurance; and

1033 (ii) ocean marine insurance.

1034 (140) "Qualified long-term care insurance contract" or "federally tax qualified
1035 long-term care insurance contract" means:

1036 (a) an individual or group insurance contract that meets the requirements of Section
1037 7702B(b), Internal Revenue Code; or

1038 (b) the portion of a life insurance contract that provides long-term care insurance:

1039 (i) (A) by rider; or

1040 (B) as a part of the contract; and

1041 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1042 Code.

1043 (141) "Qualified United States financial institution" means an institution that:

1044 (a) is:

1045 (i) organized under the laws of the United States or any state; or

1046 (ii) in the case of a United States office of a foreign banking organization, licensed
1047 under the laws of the United States or any state;

1048 (b) is regulated, supervised, and examined by a United States federal or state authority

1049 having regulatory authority over a bank or trust company; and

1050 (c) meets the standards of financial condition and standing that are considered
1051 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1052 will be acceptable to the commissioner as determined by:

1053 (i) the commissioner by rule; or

1054 (ii) the Securities Valuation Office of the National Association of Insurance

1055 Commissioners.

1056 (142) (a) "Rate" means:

1057 (i) the cost of a given unit of insurance; or

1058 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
1059 expressed as:

1060 (A) a single number; or

1061 (B) a pure premium rate, adjusted before the application of individual risk variations
1062 based on loss or expense considerations to account for the treatment of:

1063 (I) expenses;

1064 (II) profit; and

1065 (III) individual insurer variation in loss experience.

1066 (b) "Rate" does not include a minimum premium.

1067 (143) (a) Except as provided in Subsection (143)(b), "rate service organization" means
1068 a person who assists an insurer in rate making or filing by:

1069 (i) collecting, compiling, and furnishing loss or expense statistics;

1070 (ii) recommending, making, or filing rates or supplementary rate information; or

1071 (iii) advising about rate questions, except as an attorney giving legal advice.

1072 (b) "Rate service organization" does not mean:

1073 (i) an employee of an insurer;

1074 (ii) a single insurer or group of insurers under common control;

1075 (iii) a joint underwriting group; or

1076 (iv) an individual serving as an actuarial or legal consultant.

1077 (144) "Rating manual" means any of the following used to determine initial and
1078 renewal policy premiums:

1079 (a) a manual of rates;

- 1080 (b) a classification;
- 1081 (c) a rate-related underwriting rule; and
- 1082 (d) a rating formula that describes steps, policies, and procedures for determining
- 1083 initial and renewal policy premiums.
- 1084 (145) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,
- 1085 or give, directly or indirectly:
- 1086 (i) a refund of premium or portion of premium;
- 1087 (ii) a refund of commission or portion of commission;
- 1088 (iii) a refund of all or a portion of a consultant fee; or
- 1089 (iv) providing services or other benefits not specified in an insurance or annuity
- 1090 contract.
- 1091 (b) "Rebate" does not include:
- 1092 (i) a refund due to termination or changes in coverage;
- 1093 (ii) a refund due to overcharges made in error by the licensee; or
- 1094 (iii) savings or wellness benefits as provided in the contract by the licensee.
- 1095 [~~145~~] (146) "Received by the department" means:
- 1096 (a) the date delivered to and stamped received by the department, if delivered in
- 1097 person;
- 1098 (b) the post mark date, if delivered by mail;
- 1099 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1100 (d) the received date recorded on an item delivered, if delivered by:
- 1101 (i) facsimile;
- 1102 (ii) email; or
- 1103 (iii) another electronic method; or
- 1104 (e) a date specified in:
- 1105 (i) a statute;
- 1106 (ii) a rule; or
- 1107 (iii) an order.
- 1108 [~~146~~] (147) "Reciprocal" or "interinsurance exchange" means an unincorporated
- 1109 association of persons:
- 1110 (a) operating through an attorney-in-fact common to all of the persons; and

1111 (b) exchanging insurance contracts with one another that provide insurance coverage
1112 on each other.

1113 [~~(147)~~] (148) "Reinsurance" means an insurance transaction where an insurer, for
1114 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1115 reinsurance transactions, this title sometimes refers to:

1116 (a) the insurer transferring the risk as the "ceding insurer"; and

1117 (b) the insurer assuming the risk as the:

1118 (i) "assuming insurer"; or

1119 (ii) "assuming reinsurer."

1120 [~~(148)~~] (149) "Reinsurer" means a person licensed in this state as an insurer with the
1121 authority to assume reinsurance.

1122 [~~(149)~~] (150) "Residential dwelling liability insurance" means insurance against
1123 liability resulting from or incident to the ownership, maintenance, or use of a residential
1124 dwelling that is a detached single family residence or multifamily residence up to four units.

1125 [~~(150)~~] (151) (a) "Retrocession" means reinsurance with another insurer of a liability
1126 assumed under a reinsurance contract.

1127 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1128 liability assumed under a reinsurance contract.

1129 [~~(151)~~] (152) "Rider" means an endorsement to:

1130 (a) an insurance policy; or

1131 (b) an insurance certificate.

1132 [~~(152)~~] (153) (a) "Security" means a:

1133 (i) note;

1134 (ii) stock;

1135 (iii) bond;

1136 (iv) debenture;

1137 (v) evidence of indebtedness;

1138 (vi) certificate of interest or participation in a profit-sharing agreement;

1139 (vii) collateral-trust certificate;

1140 (viii) preorganization certificate or subscription;

1141 (ix) transferable share;

- 1142 (x) investment contract;
- 1143 (xi) voting trust certificate;
- 1144 (xii) certificate of deposit for a security;
- 1145 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1146 payments out of production under such a title or lease;
- 1147 (xiv) commodity contract or commodity option;
- 1148 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1149 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1150 in Subsections [~~(152)~~] (153)(a)(i) through (xiv); or
- 1151 (xvi) another interest or instrument commonly known as a security.
- 1152 (b) "Security" does not include:
- 1153 (i) any of the following under which an insurance company promises to pay money in a
- 1154 specific lump sum or periodically for life or some other specified period:
- 1155 (A) insurance;
- 1156 (B) an endowment policy; or
- 1157 (C) an annuity contract; or
- 1158 (ii) a burial certificate or burial contract.
- 1159 [~~(153)~~] (154) "Secondary medical condition" means a complication related to an
- 1160 exclusion from coverage in accident and health insurance.
- 1161 [~~(154)~~] (155) (a) "Self-insurance" means an arrangement under which a person
- 1162 provides for spreading its own risks by a systematic plan.
- 1163 (b) Except as provided in this Subsection [~~(154)~~] (155), "self-insurance" does not
- 1164 include an arrangement under which a number of persons spread their risks among themselves.
- 1165 (c) "Self-insurance" includes:
- 1166 (i) an arrangement by which a governmental entity undertakes to indemnify an
- 1167 employee for liability arising out of the employee's employment; and
- 1168 (ii) an arrangement by which a person with a managed program of self-insurance and
- 1169 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
- 1170 employees for liability or risk that is related to the relationship or employment.
- 1171 (d) "Self-insurance" does not include an arrangement with an independent contractor.
- 1172 [~~(155)~~] (156) "Sell" means to exchange a contract of insurance:

1173 (a) by any means;

1174 (b) for money or its equivalent; and

1175 (c) on behalf of an insurance company.

1176 [~~(156)~~] (157) "Short-term care insurance" means an insurance policy or rider
 1177 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
 1178 insurance, but that provides coverage for less than 12 consecutive months for each covered
 1179 person.

1180 [~~(157)~~] (158) "Significant break in coverage" means a period of 63 consecutive days
 1181 during each of which an individual does not have creditable coverage.

1182 [~~(158)~~] (159) "Small employer[;]" means, in connection with a health benefit plan[;
 1183 ~~means an employer who,~~] and with respect to a calendar year and to a plan year, an employer
 1184 who:

1185 (a) employed [~~an average of~~] at least [~~two employees~~] one employee but not more than
 1186 an average of 50 eligible employees on [~~each~~] business [~~day~~] days during the preceding
 1187 calendar year; and

1188 (b) employs at least [~~two employees~~] one employee on the first day of the plan year.

1189 [~~(159)~~] (160) "Special enrollment period," in connection with a health benefit plan, has
 1190 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance
 1191 Portability and Accountability Act.

1192 [~~(160)~~] (161) (a) "Subsidiary" of a person means an affiliate controlled by that person
 1193 either directly or indirectly through one or more affiliates or intermediaries.

1194 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
 1195 shares are owned by that person either alone or with its affiliates, except for the minimum
 1196 number of shares the law of the subsidiary's domicile requires to be owned by directors or
 1197 others.

1198 [~~(161)~~] (162) Subject to Subsection (86)(b), "surety insurance" includes:

1199 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
 1200 perform the principal's obligations to a creditor or other obligee;

1201 (b) bail bond insurance; and

1202 (c) fidelity insurance.

1203 [~~(162)~~] (163) (a) "Surplus" means the excess of assets over the sum of paid-in capital

1204 and liabilities.

1205 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1206 designated by the insurer or organization as permanent.

1207 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require
1208 that insurers or organizations doing business in this state maintain specified minimum levels of
1209 permanent surplus.

1210 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1211 same as the minimum required capital requirement that applies to stock insurers.

1212 (c) "Excess surplus" means:

1213 (i) for a life insurer, accident and health insurer, health organization, or property and
1214 casualty insurer as defined in Section 31A-17-601, the lesser of:

1215 (A) that amount of an insurer's or health organization's total adjusted capital that
1216 exceeds the product of:

1217 (I) 2.5; and

1218 (II) the sum of the insurer's or health organization's minimum capital or permanent
1219 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1220 (B) that amount of an insurer's or health organization's total adjusted capital that
1221 exceeds the product of:

1222 (I) 3.0; and

1223 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1224 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1225 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1226 (A) 1.5; and

1227 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1228 [(163)] (164) "Third party administrator" or "administrator" means a person who
1229 collects charges or premiums from, or who, for consideration, adjusts or settles claims of
1230 residents of the state in connection with insurance coverage, annuities, or service insurance
1231 coverage, except:

1232 (a) a union on behalf of its members;

1233 (b) a person administering a:

1234 (i) pension plan subject to the federal Employee Retirement Income Security Act of

1235 1974;

1236 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1237 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1238 (c) an employer on behalf of the employer's employees or the employees of one or

1239 more of the subsidiary or affiliated corporations of the employer;

1240 (d) an insurer licensed under the following, but only for a line of insurance for which

1241 the insurer holds a license in this state:

1242 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1243 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

1244 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1245 (iv) Chapter 9, Insurance Fraternal; or

1246 (v) Chapter 14, Foreign Insurers;

1247 (e) a person:

1248 (i) licensed or exempt from licensing under:

1249 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

1250 Reinsurance Intermediaries; or

1251 (B) Chapter 26, Insurance Adjusters; and

1252 (ii) whose activities are limited to those authorized under the license the person holds

1253 or for which the person is exempt; or

1254 (f) an institution, bank, or financial institution:

1255 (i) that is:

1256 (A) an institution whose deposits and accounts are to any extent insured by a federal

1257 deposit insurance agency, including the Federal Deposit Insurance Corporation or National

1258 Credit Union Administration; or

1259 (B) a bank or other financial institution that is subject to supervision or examination by

1260 a federal or state banking authority; and

1261 (ii) that does not adjust claims without a third party administrator license.

1262 ~~[(164)]~~ (165) "Title insurance" means the insuring, guaranteeing, or indemnifying of an

1263 owner of real or personal property or the holder of liens or encumbrances on that property, or

1264 others interested in the property against loss or damage suffered by reason of liens or

1265 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity

1266 or unenforceability of any liens or encumbrances on the property.

1267 ~~[(165)]~~ (166) "Total adjusted capital" means the sum of an insurer's or health
1268 organization's statutory capital and surplus as determined in accordance with:

1269 (a) the statutory accounting applicable to the annual financial statements required to be
1270 filed under Section 31A-4-113; and

1271 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1272 Section 31A-17-601.

1273 ~~[(166)]~~ (167) (a) "Trustee" means "director" when referring to the board of directors of
1274 a corporation.

1275 (b) "Trustee," when used in reference to an employee welfare fund, means an
1276 individual, firm, association, organization, joint stock company, or corporation, whether acting
1277 individually or jointly and whether designated by that name or any other, that is charged with
1278 or has the overall management of an employee welfare fund.

1279 ~~[(167)]~~ (168) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted
1280 insurer" means an insurer:

1281 (i) not holding a valid certificate of authority to do an insurance business in this state;

1282 or

1283 (ii) transacting business not authorized by a valid certificate.

1284 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1285 (i) holding a valid certificate of authority to do an insurance business in this state; and

1286 (ii) transacting business as authorized by a valid certificate.

1287 ~~[(168)]~~ (169) "Underwrite" means the authority to accept or reject risk on behalf of the
1288 insurer.

1289 ~~[(169)]~~ (170) "Vehicle liability insurance" means insurance against liability resulting
1290 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a
1291 vehicle comprehensive or vehicle physical damage coverage under Subsection (139).

1292 ~~[(170)]~~ (171) "Voting security" means a security with voting rights, and includes a
1293 security convertible into a security with a voting right associated with the security.

1294 ~~[(171)]~~ (172) "Waiting period" for a health benefit plan means the period that must
1295 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of
1296 the health benefit plan, can become effective.

1297 [(172)] (173) "Workers' compensation insurance" means:

1298 (a) insurance for indemnification of an employer against liability for compensation
1299 based on:

1300 (i) a compensable accidental injury; and

1301 (ii) occupational disease disability;

1302 (b) employer's liability insurance incidental to workers' compensation insurance and
1303 written in connection with workers' compensation insurance; and

1304 (c) insurance assuring to a person entitled to workers' compensation benefits the
1305 compensation provided by law.

1306 Section 2. Section **31A-2-104** is amended to read:

1307 **31A-2-104. Other employees -- Insurance fraud investigators.**

1308 (1) The department shall employ a chief examiner and such other professional,
1309 technical, and clerical employees as necessary to carry out the duties of the department.

1310 (2) An insurance fraud investigator employed pursuant to Subsection (1) may as
1311 approved by the commissioner:

1312 (a) be designated a ~~[special function]~~ law enforcement officer, as defined in Section
1313 ~~[53-13-105, by the commissioner, but is not]~~ 53-13-103; and

1314 (b) be eligible for retirement benefits under the Public Safety Employee's Retirement
1315 System.

1316 Section 3. Section **31A-3-304 (Superseded 07/01/15)** is amended to read:

1317 **31A-3-304 (Superseded 07/01/15). Annual fees -- Other taxes or fees prohibited --**
1318 **Captive Insurance Restricted Account.**

1319 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
1320 to obtain or renew a certificate of authority.

1321 (b) The commissioner shall:

1322 (i) determine the annual fee pursuant to Section 31A-3-103; and

1323 (ii) consider whether the annual fee is competitive with fees imposed by other states on
1324 captive insurance companies.

1325 (2) A captive insurance company that fails to pay the fee required by this section is
1326 subject to the relevant sanctions of this title.

1327 (3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter

1328 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under
1329 the laws of this state that may be levied or assessed on a captive insurance company:

1330 (i) a fee under this section;

1331 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and

1332 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company
1333 Act.

1334 (b) The state or a county, city, or town within the state may not levy or collect an
1335 occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii)
1336 against a captive insurance company.

1337 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115
1338 against a captive insurance company.

1339 (d) A captive insurance company is subject to real and personal property taxes.

1340 (4) A captive insurance company shall pay the fee imposed by this section to the
1341 commissioner by June [~~20~~] 1 of each year.

1342 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be
1343 deposited into the Captive Insurance Restricted Account.

1344 (b) There is created in the General Fund a restricted account known as the "Captive
1345 Insurance Restricted Account."

1346 (c) The Captive Insurance Restricted Account shall consist of the fees described in
1347 Subsection (3)(a).

1348 (d) The commissioner shall administer the Captive Insurance Restricted Account.

1349 Subject to appropriations by the Legislature, the commissioner shall use the money deposited
1350 into the Captive Insurance Restricted Account to:

1351 (i) administer and enforce:

1352 (A) Chapter 37, Captive Insurance Companies Act; and

1353 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1354 (ii) promote the captive insurance industry in Utah.

1355 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
1356 except that at the end of each fiscal year, money received by the commissioner in excess of
1357 \$950,000 shall be treated as free revenue in the General Fund.

1358 Section 4. Section 31A-3-304 (Effective 07/01/15) is amended to read:

1359 **31A-3-304 (Effective 07/01/15). Annual fees -- Other taxes or fees prohibited --**
1360 **Captive Insurance Restricted Account.**

1361 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
1362 to obtain or renew a certificate of authority.

1363 (b) The commissioner shall:

1364 (i) determine the annual fee pursuant to Section [31A-3-103](#); and

1365 (ii) consider whether the annual fee is competitive with fees imposed by other states on
1366 captive insurance companies.

1367 (2) A captive insurance company that fails to pay the fee required by this section is
1368 subject to the relevant sanctions of this title.

1369 (3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter
1370 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under
1371 the laws of this state that may be levied or assessed on a captive insurance company:

1372 (i) a fee under this section;

1373 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and

1374 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company
1375 Act.

1376 (b) The state or a county, city, or town within the state may not levy or collect an
1377 occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii)
1378 against a captive insurance company.

1379 (c) The state may not levy, assess, or collect a withdrawal fee under Section [31A-4-115](#)
1380 against a captive insurance company.

1381 (d) A captive insurance company is subject to real and personal property taxes.

1382 (4) A captive insurance company shall pay the fee imposed by this section to the
1383 commissioner by June [~~20~~] 1 of each year.

1384 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be
1385 deposited into the Captive Insurance Restricted Account.

1386 (b) There is created in the General Fund a restricted account known as the "Captive
1387 Insurance Restricted Account."

1388 (c) The Captive Insurance Restricted Account shall consist of the fees described in
1389 Subsection (3)(a).

1390 (d) The commissioner shall administer the Captive Insurance Restricted Account.
1391 Subject to appropriations by the Legislature, the commissioner shall use the money deposited
1392 into the Captive Insurance Restricted Account to:

1393 (i) administer and enforce:

1394 (A) Chapter 37, Captive Insurance Companies Act; and

1395 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1396 (ii) promote the captive insurance industry in Utah.

1397 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
1398 except that at the end of each fiscal year, money received by the commissioner in excess of
1399 \$1,250,000 shall be treated as free revenue in the General Fund.

1400 Section 5. Section 31A-4-102 is amended to read:

1401 **31A-4-102. Qualified insurers.**

1402 (1) A person may not conduct an insurance business in Utah in person, through an
1403 agent, through a broker, through the mail, or through another method of communication,
1404 except:

1405 (a) an insurer:

1406 (i) authorized to do business in Utah under [~~Chapter 5, 7, 8, 9, 10, 11, 13, or 14, and~~]:

1407 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1408 (B) Chapter 7, Nonprofit Health Service Insurance Corporations;

1409 (C) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1410 (D) Chapter 9, Insurance Fraternal;

1411 (E) Chapter 10, Annuities;

1412 (F) Chapter 11, Motor Clubs;

1413 (G) Chapter 13, Employee Welfare Funds and Plans;

1414 (H) Chapter 14, Foreign Insurers;

1415 (I) Chapter 37, Captive Insurance Companies Act; or

1416 (J) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1417 (ii) within the limits of its certificate of authority;

1418 (b) a joint underwriting group under Section 31A-2-214 or 31A-20-102;

1419 (c) an insurer doing business under Section 31A-15-103;

1420 (d) a person who submits to the commissioner a certificate from the United States

1421 Department of Labor, or such other evidence as satisfies the commissioner, that the laws of
1422 Utah are preempted with respect to specified activities of that person by Section 514 of the
1423 Employee Retirement Income Security Act of 1974 or other federal law; or

1424 (e) a person exempt from this title under Section 31A-1-103 or another applicable
1425 statute.

1426 (2) As used in this section, "insurer" includes a bail bond surety company, as defined in
1427 Section 31A-35-102.

1428 Section 6. Section 31A-4-115 is amended to read:

1429 **31A-4-115. Plan of orderly withdrawal.**

1430 (1) (a) When an insurer intends to withdraw from writing a line of insurance in this
1431 state or to reduce its total annual premium volume by 75% or more, the insurer shall file with
1432 the commissioner a plan of orderly withdrawal.

1433 (b) For purposes of this section, a discontinuance of a health benefit plan pursuant to
1434 one of the following provisions is a withdrawal from a line of insurance:

1435 (i) Subsection 31A-30-107(3)(e); or

1436 (ii) Subsection 31A-30-107.1(3)(e).

1437 (2) An insurer's plan of orderly withdrawal shall:

1438 (a) indicate the date the insurer intends to begin and complete its withdrawal plan; and

1439 (b) include provisions for:

1440 (i) meeting the insurer's contractual obligations;

1441 (ii) providing services to its Utah policyholders and claimants;

1442 (iii) meeting [any] applicable statutory obligations; and

1443 (iv) [(A)] the payment of a withdrawal fee of \$50,000 to the [Utah Comprehensive

1444 Health Insurance Pool if: (I) the insurer is an accident and health insurer; and (II) the insurer's

1445 line of business is not assumed or placed with another insurer approved by the commissioner;

1446 or (B) the payment of a withdrawal fee of \$50,000 to the department if: (I) the insurer is not

1447 an accident and health insurer; and (II)] department if the insurer's line of business is not

1448 assumed or placed with another insurer approved by the commissioner.

1449 (3) The commissioner shall approve a plan of orderly withdrawal if the plan of orderly
1450 withdrawal adequately demonstrates that the insurer will:

1451 (a) protect the interests of the people of the state;

- 1452 (b) meet the insurer's contractual obligations;
- 1453 (c) provide service to the insurer's Utah policyholders and claimants; and
- 1454 (d) meet ~~[any]~~ applicable statutory obligations.

1455 (4) Section 31A-2-302 governs the commissioner's approval or disapproval of a plan for
1456 orderly withdrawal.

1457 (5) The commissioner may require an insurer to increase the deposit maintained in
1458 accordance with Section 31A-4-105 or Section 31A-4-105.5 and place the deposit in trust in
1459 the name of the commissioner upon finding, after an adjudicative proceeding that:

1460 (a) there is reasonable cause to conclude that the interests of the people of the state are
1461 best served by such action; and

1462 (b) the insurer:

1463 (i) has filed a plan of orderly withdrawal; or

1464 (ii) intends to:

1465 (A) withdraw from writing a line of insurance in this state; or

1466 (B) reduce the insurer's total annual premium volume by 75% or more.

1467 (6) An insurer is subject to the civil penalties under Section 31A-2-308, if the insurer:

1468 (a) withdraws from writing insurance in this state without receiving the commissioner's
1469 approval of a plan of orderly withdrawal; or

1470 (b) reduces its total annual premium volume by 75% or more in any year without
1471 ~~[having submitted a plan or receiving the commissioner's approval]~~ receiving the
1472 commissioner's approval of a plan of orderly withdrawal.

1473 (7) An insurer that withdraws from writing all lines of insurance in this state may not
1474 resume writing insurance in this state for five years unless~~[(a)]~~ the commissioner finds that
1475 the prohibition should be waived because the waiver is:

1476 ~~[(i)]~~ (a) in the public interest to promote competition; or

1477 ~~[(ii)]~~ (b) to resolve inequity in the marketplace~~[-and]~~.

1478 ~~[(b) the insurer complies with Subsection 31A-30-108(5), if applicable.]~~

1479 (8) The commissioner shall adopt rules necessary to implement this section.

1480 Section 7. Section 31A-8-402.3 is amended to read:

1481 **31A-8-402.3. Discontinuance, nonrenewal, or changes to group health benefit**
1482 **plans.**

- 1483 (1) Except as otherwise provided in this section, a group health benefit plan for a plan
 1484 sponsor is renewable and continues in force:
- 1485 (a) with respect to all eligible employees and dependents; and
 1486 (b) at the option of the plan sponsor.
- 1487 (2) A health benefit plan for a plan sponsor may be discontinued or nonrenewed:
- 1488 (a) for a network plan, if~~[(t)]~~ there is no longer any enrollee under the group health
 1489 plan who lives, resides, or works in:
- 1490 ~~[(A)]~~ (i) the service area of the insurer; or
 1491 ~~[(B)]~~ (ii) the area for which the insurer is authorized to do business; ~~[and] or~~
 1492 ~~[(ii) in the case of the small employer market, the insurer applies the same criteria the~~
 1493 ~~insurer would apply in denying enrollment in the plan under Subsection 31A-30-108(7); or]~~
- 1494 (b) for coverage made available in the small or large employer market only through an
 1495 association, if:
- 1496 (i) the employer's membership in the association ceases; and
 1497 (ii) the coverage is terminated uniformly without regard to any health status-related
 1498 factor relating to any covered individual.
- 1499 (3) A health benefit plan for a plan sponsor may be discontinued if:
- 1500 (a) a condition described in Subsection (2) exists;
 1501 (b) the plan sponsor fails to pay premiums or contributions in accordance with the
 1502 terms of the contract;
 1503 (c) the plan sponsor:
- 1504 (i) performs an act or practice that constitutes fraud; or
 1505 (ii) makes an intentional misrepresentation of material fact under the terms of the
 1506 coverage;
- 1507 (d) the insurer:
- 1508 (i) elects to discontinue offering a particular health benefit product delivered or issued
 1509 for delivery in this state; and
- 1510 (ii) (A) provides notice of the discontinuation in writing:
 1511 (I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and
 1512 (II) at least 90 days before the date the coverage will be discontinued;
- 1513 (B) provides notice of the discontinuation in writing:

- 1514 (I) to the commissioner; and
- 1515 (II) at least three working days prior to the date the notice is sent to the affected plan
- 1516 sponsors, employees, and dependents of the plan sponsors or employees;
- 1517 (C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase:
- 1518 (I) all other health benefit products currently being offered by the insurer in the market;
- 1519 or
- 1520 (II) in the case of a large employer, any other health benefit product currently being
- 1521 offered in that market; and
- 1522 (D) in exercising the option to discontinue that product and in offering the option of
- 1523 coverage in this section, acts uniformly without regard to:
- 1524 (I) the claims experience of a plan sponsor;
- 1525 (II) any health status-related factor relating to any covered participant or beneficiary; or
- 1526 (III) any health status-related factor relating to any new participant or beneficiary who
- 1527 may become eligible for the coverage; or
- 1528 (e) the insurer:
- 1529 (i) elects to discontinue all of the insurer's health benefit plans in:
- 1530 (A) the small employer market;
- 1531 (B) the large employer market; or
- 1532 (C) both the small employer and large employer markets; and
- 1533 (ii) (A) provides notice of the discontinuation in writing:
- 1534 (I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and
- 1535 (II) at least 180 days before the date the coverage will be discontinued;
- 1536 (B) provides notice of the discontinuation in writing:
- 1537 (I) to the commissioner in each state in which an affected insured individual is known
- 1538 to reside; and
- 1539 (II) at least 30 working days prior to the date the notice is sent to the affected plan
- 1540 sponsors, employees, and the dependents of the plan sponsors or employees;
- 1541 (C) discontinues and nonrenews all plans issued or delivered for issuance in the
- 1542 market; and
- 1543 (D) provides a plan of orderly withdrawal as required by Section [31A-4-115](#).
- 1544 (4) A large employer health benefit plan may be discontinued or nonrenewed:

- 1545 (a) if a condition described in Subsection (2) exists; or
1546 (b) for noncompliance with the insurer's:
1547 (i) minimum participation requirements; or
1548 (ii) employer contribution requirements.
- 1549 (5) A small employer health benefit plan may be discontinued or nonrenewed:
1550 (a) if a condition described in Subsection (2) exists; or
1551 (b) for noncompliance with the insurer's employer contribution requirements.
- 1552 (6) A small employer health benefit plan may be nonrenewed:
1553 (a) if a condition described in Subsection (2) exists; or
1554 (b) for noncompliance with the insurer's minimum participation requirements.
- 1555 (7) (a) Except as provided in Subsection (7)(d), an eligible employee may be
1556 discontinued if after issuance of coverage the eligible employee:
1557 (i) engages in an act or practice in connection with the coverage that constitutes fraud;
1558 or
1559 (ii) makes an intentional misrepresentation of material fact in connection with the
1560 coverage.
- 1561 (b) An eligible employee that is discontinued under Subsection (7)(a) may reenroll:
1562 (i) 12 months after the date of discontinuance; and
1563 (ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies
1564 to reenroll.
- 1565 (c) At the time the eligible employee's coverage is discontinued under Subsection
1566 (7)(a), the insurer shall notify the eligible employee of the right to reenroll when coverage is
1567 discontinued.
- 1568 (d) An eligible employee may not be discontinued under this Subsection (7) because of
1569 a fraud or misrepresentation that relates to health status.
- 1570 (8) For purposes of this section, a reference to "plan sponsor" includes a reference to
1571 the employer:
1572 (a) with respect to coverage provided to an employer member of the association; and
1573 (b) if the health benefit plan is made available by an insurer in the employer market
1574 only through:
1575 (i) an association;

- 1576 (ii) a trust; or
- 1577 (iii) a discretionary group.
- 1578 (9) An insurer may modify a health benefit plan for a plan sponsor only:
- 1579 (a) at the time of coverage renewal; and
- 1580 (b) if the modification is effective uniformly among all plans with that product.
- 1581 Section 8. Section **31A-16-103** is amended to read:
- 1582 **31A-16-103. Acquisition of control of or merger with domestic insurer.**
- 1583 (1) (a) A person may not take the actions described in Subsections (1)(b) or (c) unless,
- 1584 at the time any offer, request, or invitation is made or any such agreement is entered into, or
- 1585 prior to the acquisition of securities if no offer or agreement is involved:
- 1586 (i) the person files with the commissioner a statement containing the information
- 1587 required by this section;
- 1588 (ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the
- 1589 insurer; and
- 1590 (iii) the commissioner approves the offer, request, invitation, agreement, or acquisition.
- 1591 (b) Unless the person complies with Subsection (1)(a), a person other than the issuer
- 1592 may not make a tender offer for, a request or invitation for tenders of, or enter into any
- 1593 agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise,
- 1594 any voting security of a domestic insurer if after the acquisition, the person would directly,
- 1595 indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.
- 1596 (c) Unless the person complies with Subsection (1)(a), a person may not enter into an
- 1597 agreement to merge with or otherwise to acquire control of:
- 1598 (i) a domestic insurer; or
- 1599 (ii) any person controlling a domestic insurer.
- 1600 (d) (i) For purposes of this section, a domestic insurer includes any person controlling a
- 1601 domestic insurer unless the person as determined by the commissioner is either directly or
- 1602 through its affiliates primarily engaged in business other than the business of insurance.
- 1603 (ii) The controlling person described in Subsection (1)(d)(i) shall file with the
- 1604 commissioner a preacquisition notification containing the information required in Subsection
- 1605 (2) 30 calendar days before the proposed effective date of the acquisition.
- 1606 (iii) For the purposes of this section, "person" does not include any securities broker

1607 that in the usual and customary brokers function holds less than 20% of:

1608 (A) the voting securities of an insurance company; or

1609 (B) any person that controls an insurance company.

1610 (iv) This section applies to all domestic insurers and other entities licensed under

1611 Chapters 5, 7, 8, 9, and 11.

1612 (e) (i) An agreement for acquisition of control or merger as contemplated by this

1613 Subsection (1) is not valid or enforceable unless the agreement:

1614 (A) is in writing; and

1615 (B) includes a provision that the agreement is subject to the approval of the

1616 commissioner upon the filing of any applicable statement required under this chapter.

1617 (ii) A written agreement for acquisition or control that includes the provision described

1618 in Subsection (1)(e)(i) satisfies the requirements of this Subsection (1).

1619 (2) The statement to be filed with the commissioner under Subsection (1) shall be

1620 made under oath or affirmation and shall contain the following information:

1621 (a) the name and address of the "acquiring party," which means each person by whom

1622 or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to

1623 be effected; and

1624 (i) if the person is an individual:

1625 (A) the person's principal occupation;

1626 (B) a listing of all offices and positions held by the person during the past five years;

1627 and

1628 (C) any conviction of crimes other than minor traffic violations during the past 10

1629 years; and

1630 (ii) if the person is not an individual:

1631 (A) a report of the nature of its business operations during:

1632 (I) the past five years; or

1633 (II) for any lesser period as the person and any of its predecessors has been in

1634 existence;

1635 (B) an informative description of the business intended to be done by the person and

1636 the person's subsidiaries;

1637 (C) a list of all individuals who are or who have been selected to become directors or

1638 executive officers of the person, or individuals who perform, or who will perform functions
1639 appropriate to such positions; and
1640 (D) for each individual described in Subsection (2)(a)(ii)(C), the information required
1641 by Subsection (2)(a)(i) for each individual;
1642 (b) (i) the source, nature, and amount of the consideration used or to be used in
1643 effecting the merger or acquisition of control;
1644 (ii) a description of any transaction in which funds were or are to be obtained for the
1645 purpose of effecting the merger or acquisition of control, including any pledge of:
1646 (A) the insurer's stock; or
1647 (B) the stock of any of the insurer's subsidiaries or controlling affiliates; and
1648 (iii) the identity of persons furnishing the consideration;
1649 (c) (i) fully audited financial information, or other financial information considered
1650 acceptable by the commissioner, of the earnings and financial condition of each acquiring party
1651 for:
1652 (A) the preceding five fiscal years of each acquiring party; or
1653 (B) any lesser period the acquiring party and any of its predecessors shall have been in
1654 existence; and
1655 (ii) unaudited information:
1656 (A) similar to the information described in Subsection (2)(c)(i); and
1657 (B) prepared within the 90 days prior to the filing of the statement;
1658 (d) any plans or proposals which each acquiring party may have to:
1659 (i) liquidate the insurer;
1660 (ii) sell its assets;
1661 (iii) merge or consolidate the insurer with any person; or
1662 (iv) make any other material change in the insurer's:
1663 (A) business;
1664 (B) corporate structure; or
1665 (C) management;
1666 (e) (i) the number of shares of any security referred to in Subsection (1) that each
1667 acquiring party proposes to acquire;
1668 (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in

1669 Subsection (1); and

1670 (iii) a statement as to the method by which the fairness of the proposal was arrived at;

1671 (f) the amount of each class of any security referred to in Subsection (1) that:

1672 (i) is beneficially owned; or

1673 (ii) concerning which there is a right to acquire beneficial ownership by each acquiring

1674 party;

1675 (g) a full description of any contract, arrangement, or understanding with respect to any

1676 security referred to in Subsection (1) in which any acquiring party is involved, including:

1677 (i) the transfer of any of the securities;

1678 (ii) joint ventures;

1679 (iii) loan or option arrangements;

1680 (iv) puts or calls;

1681 (v) guarantees of loans;

1682 (vi) guarantees against loss or guarantees of profits;

1683 (vii) division of losses or profits; or

1684 (viii) the giving or withholding of proxies;

1685 (h) a description of the purchase by any acquiring party of any security referred to in

1686 Subsection (1) during the 12 calendar months preceding the filing of the statement including:

1687 (i) the dates of purchase;

1688 (ii) the names of the purchasers; and

1689 (iii) the consideration paid or agreed to be paid for the purchase;

1690 (i) a description of:

1691 (i) any recommendations to purchase by any acquiring party any security referred to in

1692 Subsection (1) made during the 12 calendar months preceding the filing of the statement; or

1693 (ii) any recommendations made by anyone based upon interviews or at the suggestion

1694 of the acquiring party;

1695 (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange

1696 offers for, and agreements to acquire or exchange any securities referred to in Subsection (1);

1697 and

1698 (ii) if distributed, copies of additional soliciting material relating to the transactions

1699 described in Subsection (2)(j)(i);

1700 (k) (i) the term of any agreement, contract, or understanding made with, or proposed to
1701 be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for
1702 tender; and

1703 (ii) the amount of any fees, commissions, or other compensation to be paid to
1704 broker-dealers with regard to any agreement, contract, or understanding described in
1705 Subsection (2)(k)(i); and

1706 (l) any additional information the commissioner requires by rule, which the
1707 commissioner determines to be:

1708 (i) necessary or appropriate for the protection of policyholders of the insurer; or

1709 (ii) in the public interest.

1710 (3) The department may request:

1711 (a) (i) criminal background information maintained pursuant to Title 53, Chapter 10,
1712 Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

1713 (ii) complete Federal Bureau of Investigation criminal background checks through the
1714 national criminal history system.

1715 (b) Information obtained by the department from the review of criminal history records
1716 received under Subsection (3)(a) shall be used by the department for the purpose of:

1717 (i) verifying the information in Subsection (2)(a)(i);

1718 (ii) determining the integrity of persons who would control the operation of an insurer;
1719 and

1720 (iii) preventing persons who violate 18 U.S.C. [~~Sections~~] Sec. 1033 [~~and 1034~~] from
1721 engaging in the business of insurance in the state.

1722 (c) If the department requests the criminal background information, the department
1723 shall:

1724 (i) pay to the Department of Public Safety the costs incurred by the Department of
1725 Public Safety in providing the department criminal background information under Subsection
1726 (3)(a)(i);

1727 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
1728 of Investigation in providing the department criminal background information under
1729 Subsection (3)(a)(ii); and

1730 (iii) charge the person required to file the statement referred to in Subsection (1) a fee

1731 equal to the aggregate of Subsections (3)(c)(i) and (ii).

1732 (4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in
1733 the lender's ordinary course of business, the identity of the lender shall remain confidential, if
1734 the person filing the statement so requests.

1735 (b) (i) Under Subsection (2)(e), the commissioner may require a statement of the
1736 adjusted book value assigned by the acquiring party to each security in arriving at the terms of
1737 the offer.

1738 (ii) For purposes of this Subsection (4)(b), "adjusted book value" means each security's
1739 proportional interest in the capital and surplus of the insurer with adjustments that reflect:

1740 (A) market conditions;

1741 (B) business in force; and

1742 (C) other intangible assets or liabilities of the insurer.

1743 (c) The description required by Subsection (2)(g) shall identify the persons with whom
1744 the contracts, arrangements, or understandings have been entered into.

1745 (5) (a) If the person required to file the statement referred to in Subsection (1) is a
1746 partnership, limited partnership, syndicate, or other group, the commissioner may require that
1747 all the information called for by Subsections (2), (3), or (4) shall be given with respect to each:

1748 (i) partner of the partnership or limited partnership;

1749 (ii) member of the syndicate or group; and

1750 (iii) person who controls the partner or member.

1751 (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation,
1752 or if the person required to file the statement referred to in Subsection (1) is a corporation, the
1753 commissioner may require that the information called for by Subsection (2) shall be given with
1754 respect to:

1755 (i) the corporation;

1756 (ii) each officer and director of the corporation; and

1757 (iii) each person who is directly or indirectly the beneficial owner of more than 10% of
1758 the outstanding voting securities of the corporation.

1759 (6) If any material change occurs in the facts set forth in the statement filed with the
1760 commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth
1761 the change, together with copies of all documents and other material relevant to the change,

1762 shall be filed with the commissioner and sent to the insurer within two business days after the
1763 filing person learns of such change.

1764 (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection
1765 (1) is proposed to be made by means of a registration statement under the Securities Act of
1766 1933, or under circumstances requiring the disclosure of similar information under the
1767 Securities Exchange Act of 1934, or under a state law requiring similar registration or
1768 disclosure, a person required to file the statement referred to in Subsection (1) may use copies
1769 of any registration or disclosure documents in furnishing the information called for by the
1770 statement.

1771 (8) (a) The commissioner shall approve any merger or other acquisition of control
1772 referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, the
1773 commissioner finds that:

1774 (i) after the change of control, the domestic insurer referred to in Subsection (1) would
1775 not be able to satisfy the requirements for the issuance of a license to write the line or lines of
1776 insurance for which it is presently licensed;

1777 (ii) the effect of the merger or other acquisition of control would:

1778 (A) substantially lessen competition in insurance in this state; or

1779 (B) tend to create a monopoly in insurance;

1780 (iii) the financial condition of any acquiring party might:

1781 (A) jeopardize the financial stability of the insurer; or

1782 (B) prejudice the interest of:

1783 (I) its policyholders; or

1784 (II) any remaining securityholders who are unaffiliated with the acquiring party;

1785 (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in
1786 Subsection (1) are unfair and unreasonable to the securityholders of the insurer;

1787 (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its
1788 assets, or consolidate or merge it with any person, or to make any other material change in its
1789 business or corporate structure or management, are:

1790 (A) unfair and unreasonable to policyholders of the insurer; and

1791 (B) not in the public interest; or

1792 (vi) the competence, experience, and integrity of those persons who would control the

1793 operation of the insurer are such that it would not be in the interest of the policyholders of the
1794 insurer and the public to permit the merger or other acquisition of control.

1795 (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not
1796 be considered unfair if the adjusted book values under Subsection (2)(e):

1797 (i) are disclosed to the securityholders; and

1798 (ii) determined by the commissioner to be reasonable.

1799 (9) (a) The public hearing referred to in Subsection (8) shall be held within 30 days
1800 after the statement required by Subsection (1) is filed.

1801 (b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the
1802 person filing the statement.

1803 (ii) Affected parties may waive the notice required by this Subsection (9)(b).

1804 (iii) Not less than seven days notice of the public hearing shall be given by the person
1805 filing the statement to:

1806 (A) the insurer; and

1807 (B) any person designated by the commissioner.

1808 (c) The commissioner shall make a determination within 30 days after the conclusion
1809 of the hearing.

1810 (d) At the hearing, the person filing the statement, the insurer, any person to whom
1811 notice of hearing was sent, and any other person whose interest may be affected by the hearing
1812 may:

1813 (i) present evidence;

1814 (ii) examine and cross-examine witnesses; and

1815 (iii) offer oral and written arguments.

1816 (e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery
1817 proceedings in the same manner as is presently allowed in the district courts of this state.

1818 (ii) All discovery proceedings shall be concluded not later than three days before the
1819 commencement of the public hearing.

1820 (10) (a) The commissioner may retain technical experts to assist in reviewing all, or a
1821 portion of, information filed in connection with a proposed merger or other acquisition of
1822 control referred to in Subsection (1).

1823 (b) In determining whether any of the conditions in Subsection (8) exist, the

1824 commissioner may consider the findings of technical experts employed to review applicable
1825 filings.

1826 (c) (i) A technical expert employed under Subsection (10)(a) shall present to the
1827 commissioner a statement of all expenses incurred by the technical expert in conjunction with
1828 the technical expert's review of a proposed merger or other acquisition of control.

1829 (ii) At the commissioner's direction the acquiring person shall compensate the technical
1830 expert at customary rates for time and expenses:

1831 (A) necessarily incurred; and

1832 (B) approved by the commissioner.

1833 (iii) The acquiring person shall:

1834 (A) certify the consolidated account of all charges and expenses incurred for the review
1835 by technical experts;

1836 (B) retain a copy of the consolidated account described in Subsection (10)(c)(iii)(A);
1837 and

1838 (C) file with the department as a public record a copy of the consolidated account
1839 described in Subsection (10)(c)(iii)(A).

1840 (11) (a) (i) If a domestic insurer proposes to merge into another insurer, any
1841 securityholder electing to exercise a right of dissent may file with the insurer a written request
1842 for payment of the adjusted book value given in the statement required by Subsection (1) and
1843 approved under Subsection (8), in return for the surrender of the security holder's securities.

1844 (ii) The request described in Subsection (11)(a)(i) shall be filed not later than 10 days
1845 after the day of the securityholders' meeting where the corporate action is approved.

1846 (b) The dissenting securityholder is entitled to and the insurer is required to pay to the
1847 dissenting securityholder the specified value within 60 days of receipt of the dissenting security
1848 holder's security.

1849 (c) Persons electing under this Subsection (11) to receive cash for their securities waive
1850 the dissenting shareholder and appraisal rights otherwise applicable under Title 16, Chapter
1851 10a, Part 13, Dissenters' Rights.

1852 (d) (i) This Subsection (11) provides an elective procedure for dissenting
1853 securityholders to resolve their objections to the plan of merger.

1854 (ii) This section does not restrict the rights of dissenting securityholders under Title 16,

1855 Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this
1856 Subsection (11).

1857 (12) (a) All statements, amendments, or other material filed under Subsection (1), and
1858 all notices of public hearings held under Subsection (8), shall be mailed by the insurer to its
1859 securityholders within five business days after the insurer has received the statements,
1860 amendments, other material, or notices.

1861 (b) (i) Mailing expenses shall be paid by the person making the filing.

1862 (ii) As security for the payment of mailing expenses, that person shall file with the
1863 commissioner an acceptable bond or other deposit in an amount determined by the
1864 commissioner.

1865 (13) This section does not apply to any offer, request, invitation, agreement, or
1866 acquisition that the commissioner by order exempts from the requirements of this section as:

1867 (a) not having been made or entered into for the purpose of, and not having the effect
1868 of, changing or influencing the control of a domestic insurer; or

1869 (b) [~~as~~] otherwise not comprehended within the purposes of this section.

1870 (14) The following are violations of this section:

1871 (a) the failure to file any statement, amendment, or other material required to be filed
1872 pursuant to Subsections (1), (2), and (5); or

1873 (b) the effectuation, or any attempt to effectuate, an acquisition of control of or merger
1874 with a domestic insurer unless the commissioner has given the commissioner's approval to the
1875 acquisition or merger.

1876 (15) (a) The courts of this state are vested with jurisdiction over:

1877 (i) a person who:

1878 (A) files a statement with the commissioner under this section; and

1879 (B) is not resident, domiciled, or authorized to do business in this state; and

1880 (ii) overall actions involving persons described in Subsection (15)(a)(i) arising out of a
1881 violation of this section.

1882 (b) A person described in Subsection (15)(a) is considered to have performed acts
1883 equivalent to and constituting an appointment of the commissioner by that person, to be that
1884 person's lawful agent upon whom may be served all lawful process in any action, suit, or
1885 proceeding arising out of a violation of this section.

1886 (c) A copy of a lawful process described in Subsection (15)(b) shall be:
1887 (i) served on the commissioner; and
1888 (ii) transmitted by registered or certified mail by the commissioner to the person at that
1889 person's last-known address.

1890 Section 9. Section **31A-17-607** is amended to read:

1891 **31A-17-607. Hearings.**

1892 (1) (a) Following receipt of a notice described in Subsection (2), the insurer or health
1893 organization shall have the right to a confidential departmental hearing at which the insurer or
1894 health organization may challenge ~~[any]~~ a determination or action by the commissioner.

1895 (b) The insurer or health organization shall notify the commissioner of its request for a
1896 hearing within five days after the notification by the commissioner under ~~[Subsections~~
1897 ~~31A-17-604(1), (2), and (3)]~~ Subsection (2).

1898 (c) Upon receipt of the insurer's or health organization's request for a hearing, the
1899 commissioner shall set a date for the hearing, which date shall be no less than 10 nor more than
1900 30 days after the date of the insurer's or health organization's request.

1901 (2) An insurer or health organization has the right to a hearing under Subsection (1)
1902 after:

1903 (a) notification to an insurer or health organization by the commissioner of an adjusted
1904 RBC report;

1905 (b) notification to an insurer or health organization by the commissioner that:

1906 (i) the insurer's or health organization's RBC plan or revised RBC plan is
1907 unsatisfactory; and

1908 (ii) the notification constitutes a regulatory action level event with respect to the
1909 insurer or health organization;

1910 (c) notification to any insurer or health organization by the commissioner that the
1911 insurer or health organization has failed to adhere to its RBC plan or revised RBC plan and that
1912 the failure has substantial adverse effect on the ability of the insurer or health organization to
1913 eliminate the company action level event with respect to the insurer or health organization in
1914 accordance with its RBC plan or revised RBC plan; or

1915 (d) notification to an insurer or health organization by the commissioner of a corrective
1916 order with respect to the insurer or health organization.

1917 Section 10. Section 31A-22-305 is amended to read:

1918 **31A-22-305. Uninsured motorist coverage.**

1919 (1) As used in this section, "covered persons" includes:

1920 (a) the named insured;

1921 (b) for a claim arising on or after May 13, 2014, the named insured's dependent minor
1922 children;

1923 [~~(b)~~] (c) persons related to the named insured by blood, marriage, adoption, or
1924 guardianship, who are residents of the named insured's household, including those who usually
1925 make their home in the same household but temporarily live elsewhere;

1926 [~~(c)~~] (d) any person occupying or using a motor vehicle:

1927 (i) referred to in the policy; or

1928 (ii) owned by a self-insured; and

1929 [~~(d)~~] (e) any person who is entitled to recover damages against the owner or operator of
1930 the uninsured or underinsured motor vehicle because of bodily injury to or death of persons
1931 under Subsection (1)(a), (b), [~~(c)~~] (c), or (d).

1932 (2) As used in this section, "uninsured motor vehicle" includes:

1933 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered
1934 under a liability policy at the time of an injury-causing occurrence; or

1935 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
1936 31A-22-304; and

1937 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
1938 the deficiency;

1939 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
1940 by the motor vehicle operator;

1941 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
1942 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
1943 60 days; or

1944 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of
1945 the motor vehicle is declared insolvent by a court of competent jurisdiction; and

1946 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
1947 that the claim against the insolvent insurer is not paid by a guaranty association or fund.

1948 (3) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
1949 coverage for covered persons who are legally entitled to recover damages from owners or
1950 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

1951 (4) (a) For new policies written on or after January 1, 2001, the limits of uninsured
1952 motorist coverage shall be equal to the lesser of the limits of the named insured's motor vehicle
1953 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
1954 under the named insured's motor vehicle policy, unless a named insured rejects or purchases
1955 coverage in a lesser amount by signing an acknowledgment form that:

1956 (i) is filed with the department;

1957 (ii) is provided by the insurer;

1958 (iii) waives the higher coverage;

1959 (iv) need only state in this or similar language that uninsured motorist coverage
1960 provides benefits or protection to you and other covered persons for bodily injury resulting
1961 from an accident caused by the fault of another party where the other party has no liability
1962 insurance; and

1963 (v) discloses the additional premiums required to purchase uninsured motorist
1964 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
1965 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
1966 under the named insured's motor vehicle policy.

1967 (b) Any selection or rejection under this Subsection (4) continues for that issuer of the
1968 liability coverage until the insured requests, in writing, a change of uninsured motorist
1969 coverage from that liability insurer.

1970 (c) (i) Subsections (4)(a) and (b) apply retroactively to any claim arising on or after
1971 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for
1972 arbitration or filed a complaint in a court of competent jurisdiction.

1973 (ii) The Legislature finds that the retroactive application of Subsections (4)(a) and (b)
1974 clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

1975 (d) For purposes of this Subsection (4), "new policy" means:

1976 (i) any policy that is issued which does not include a renewal or reinstatement of an
1977 existing policy; or

1978 (ii) a change to an existing policy that results in:

- 1979 (A) a named insured being added to or deleted from the policy; or
- 1980 (B) a change in the limits of the named insured's motor vehicle liability coverage.
- 1981 (e) (i) As used in this Subsection (4)(e), "additional motor vehicle" means a change
- 1982 that increases the total number of vehicles insured by the policy, and does not include
- 1983 replacement, substitute, or temporary vehicles.
- 1984 (ii) The adding of an additional motor vehicle to an existing personal lines or
- 1985 commercial lines policy does not constitute a new policy for purposes of Subsection (4)(d).
- 1986 (iii) If an additional motor vehicle is added to a personal lines policy where uninsured
- 1987 motorist coverage has been rejected, or where uninsured motorist limits are lower than the
- 1988 named insured's motor vehicle liability limits, the insurer shall provide a notice to a named
- 1989 insured within 30 days that:
- 1990 (A) in the same manner as described in Subsection (4)(a)(iv), explains the purpose of
- 1991 uninsured motorist coverage; and
- 1992 (B) encourages the named insured to contact the insurance company or insurance
- 1993 producer for quotes as to the additional premiums required to purchase uninsured motorist
- 1994 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
- 1995 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
- 1996 under the named insured's motor vehicle policy.
- 1997 (f) A change in policy number resulting from any policy change not identified under
- 1998 Subsection (4)(d)(ii) does not constitute a new policy.
- 1999 (g) (i) Subsection (4)(d) applies retroactively to any claim arising on or after January 1,
- 2000 2001, for which, as of May 1, 2012, an insured has not made a written demand for arbitration
- 2001 or filed a complaint in a court of competent jurisdiction.
- 2002 (ii) The Legislature finds that the retroactive application of Subsection (4):
- 2003 (A) does not enlarge, eliminate, or destroy vested rights; and
- 2004 (B) clarifies legislative intent.
- 2005 (h) A self-insured, including a governmental entity, may elect to provide uninsured
- 2006 motorist coverage in an amount that is less than its maximum self-insured retention under
- 2007 Subsections (4)(a) and (5)(a) by issuing a declaratory memorandum or policy statement from
- 2008 the chief financial officer or chief risk officer that declares the:
- 2009 (i) self-insured entity's coverage level; and

2010 (ii) process for filing an uninsured motorist claim.

2011 (i) Uninsured motorist coverage may not be sold with limits that are less than the
2012 minimum bodily injury limits for motor vehicle liability policies under Section [31A-22-304](#).

2013 (j) The acknowledgment under Subsection (4)(a) continues for that issuer of the
2014 uninsured motorist coverage until the named insured requests, in writing, different uninsured
2015 motorist coverage from the insurer.

2016 (k) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
2017 policies existing on that date, the insurer shall disclose in the same medium as the premium
2018 renewal notice, an explanation of:

2019 (A) the purpose of uninsured motorist coverage in the same manner as described in
2020 Subsection (4)(a)(iv); and

2021 (B) a disclosure of the additional premiums required to purchase uninsured motorist
2022 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
2023 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
2024 under the named insured's motor vehicle policy.

2025 (ii) The disclosure required under Subsection (4)(k)(i) shall be sent to all named
2026 insureds that carry uninsured motorist coverage limits in an amount less than the named
2027 insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage
2028 limits available by the insurer under the named insured's motor vehicle policy.

2029 (l) For purposes of this Subsection (4), a notice or disclosure sent to a named insured in
2030 a household constitutes notice or disclosure to all insureds within the household.

2031 (5) (a) (i) Except as provided in Subsection (5)(b), the named insured may reject
2032 uninsured motorist coverage by an express writing to the insurer that provides liability
2033 coverage under Subsection [31A-22-302\(1\)\(a\)](#).

2034 (ii) This rejection shall be on a form provided by the insurer that includes a reasonable
2035 explanation of the purpose of uninsured motorist coverage.

2036 (iii) This rejection continues for that issuer of the liability coverage until the insured in
2037 writing requests uninsured motorist coverage from that liability insurer.

2038 (b) (i) All persons, including governmental entities, that are engaged in the business of,
2039 or that accept payment for, transporting natural persons by motor vehicle, and all school
2040 districts that provide transportation services for their students, shall provide coverage for all

2041 motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance,
2042 uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

2043 (ii) This coverage is secondary to any other insurance covering an injured covered
2044 person.

2045 (c) Uninsured motorist coverage:

2046 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'
2047 Compensation Act;

2048 (ii) may not be subrogated by the workers' compensation insurance carrier;

2049 (iii) may not be reduced by any benefits provided by workers' compensation insurance;

2050 (iv) may be reduced by health insurance subrogation only after the covered person has
2051 been made whole;

2052 (v) may not be collected for bodily injury or death sustained by a person:

2053 (A) while committing a violation of Section 41-1a-1314;

2054 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
2055 in violation of Section 41-1a-1314; or

2056 (C) while committing a felony; and

2057 (vi) notwithstanding Subsection (5)(c)(v), may be recovered:

2058 (A) for a person under 18 years of age who is injured within the scope of Subsection
2059 (5)(c)(v) but limited to medical and funeral expenses; or

2060 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
2061 within the course and scope of the law enforcement officer's duties.

2062 (d) As used in this Subsection (5), "motor vehicle" has the same meaning as under
2063 Section 41-1a-102.

2064 (6) When a covered person alleges that an uninsured motor vehicle under Subsection
2065 (2)(b) proximately caused an accident without touching the covered person or the motor
2066 vehicle occupied by the covered person, the covered person shall show the existence of the
2067 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered
2068 person's testimony.

2069 (7) (a) The limit of liability for uninsured motorist coverage for two or more motor
2070 vehicles may not be added together, combined, or stacked to determine the limit of insurance
2071 coverage available to an injured person for any one accident.

2072 (b) (i) Subsection (7)(a) applies to all persons except a covered person as defined under
2073 Subsection (8)(b)(ii).

2074 (ii) A covered person as defined under Subsection (8)(b)(ii) is entitled to the highest
2075 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered
2076 person is the named insured or an insured family member.

2077 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered
2078 person is occupying.

2079 (iv) Neither the primary nor the secondary coverage may be set off against the other.

2080 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary
2081 coverage, and the coverage elected by a person described under Subsections (1)(a) [~~and~~], (b),
2082 and (c) shall be secondary coverage.

2083 (8) (a) Uninsured motorist coverage under this section applies to bodily injury,
2084 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
2085 the motor vehicle is described in the policy under which a claim is made, or if the motor
2086 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.
2087 Except as provided in Subsection (7) or this Subsection (8), a covered person injured in a
2088 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
2089 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
2090 under which the person is a covered person.

2091 (b) Each of the following persons may also recover uninsured motorist benefits under
2092 any one other policy in which they are described as a "covered person" as defined in Subsection
2093 (1):

2094 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

2095 (ii) except as provided in Subsection (8)(c), a covered person injured while occupying
2096 or using a motor vehicle that is not owned, leased, or furnished:

2097 (A) to the covered person;

2098 (B) to the covered person's spouse; or

2099 (C) to the covered person's resident parent or resident sibling.

2100 (c) (i) A covered person may recover benefits from no more than two additional
2101 policies, one additional policy from each parent's household if the covered person is:

2102 (A) a dependent minor of parents who reside in separate households; and

2103 (B) injured while occupying or using a motor vehicle that is not owned, leased, or
2104 furnished:

2105 (I) to the covered person;

2106 (II) to the covered person's resident parent; or

2107 (III) to the covered person's resident sibling.

2108 (ii) Each parent's policy under this Subsection (8)(c) is liable only for the percentage of
2109 the damages that the limit of liability of each parent's policy of uninsured motorist coverage
2110 bears to the total of both parents' uninsured coverage applicable to the accident.

2111 (d) A covered person's recovery under any available policies may not exceed the full
2112 amount of damages.

2113 (e) A covered person in Subsection (8)(b) is not barred against making subsequent
2114 elections if recovery is unavailable under previous elections.

2115 (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a
2116 single incident of loss under more than one insurance policy.

2117 (ii) Except to the extent permitted by Subsection (7) and this Subsection (8),
2118 interpolicy stacking is prohibited for uninsured motorist coverage.

2119 (9) (a) When a claim is brought by a named insured or a person described in
2120 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the
2121 claimant may elect to resolve the claim:

2122 (i) by submitting the claim to binding arbitration; or

2123 (ii) through litigation.

2124 (b) Unless otherwise provided in the policy under which uninsured benefits are
2125 claimed, the election provided in Subsection (9)(a) is available to the claimant only, except that
2126 if the policy under which insured benefits are claimed provides that either an insured or the
2127 insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to
2128 arbitrate shall stay the litigation of the claim under Subsection (9)(a)(ii).

2129 (c) Once the claimant has elected to commence litigation under Subsection (9)(a)(ii),
2130 the claimant may not elect to resolve the claim through binding arbitration under this section
2131 without the written consent of the uninsured motorist carrier.

2132 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
2133 binding arbitration under Subsection (9)(a)(i) shall be resolved by a single arbitrator.

- 2134 (ii) All parties shall agree on the single arbitrator selected under Subsection (9)(d)(i).
- 2135 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
- 2136 (9)(d)(ii), the parties shall select a panel of three arbitrators.
- 2137 (e) If the parties select a panel of three arbitrators under Subsection (9)(d)(iii):
- 2138 (i) each side shall select one arbitrator; and
- 2139 (ii) the arbitrators appointed under Subsection (9)(e)(i) shall select one additional
- 2140 arbitrator to be included in the panel.
- 2141 (f) Unless otherwise agreed to in writing:
- 2142 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 2143 under Subsection (9)(d)(i); or
- 2144 (ii) if an arbitration panel is selected under Subsection (9)(d)(iii):
- 2145 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
- 2146 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 2147 under Subsection (9)(e)(ii).
- 2148 (g) Except as otherwise provided in this section or unless otherwise agreed to in
- 2149 writing by the parties, an arbitration proceeding conducted under this section shall be governed
- 2150 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- 2151 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
- 2152 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
- 2153 Subsections (10)(a) through (c) are satisfied.
- 2154 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure
- 2155 shall be determined based on the claimant's specific monetary amount in the written demand
- 2156 for payment of uninsured motorist coverage benefits as required in Subsection (10)(a)(i)(A).
- 2157 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to
- 2158 arbitration claims under this part.
- 2159 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.
- 2160 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
- 2161 shall constitute a final decision.
- 2162 (k) (i) Except as provided in Subsection (10), the amount of an arbitration award may
- 2163 not exceed the uninsured motorist policy limits of all applicable uninsured motorist policies,
- 2164 including applicable uninsured motorist umbrella policies.

2165 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all
2166 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount
2167 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist
2168 policies.

2169 (l) The arbitrator or arbitration panel may not decide the issues of coverage or
2170 extra-contractual damages, including:

2171 (i) whether the claimant is a covered person;

2172 (ii) whether the policy extends coverage to the loss; or

2173 (iii) any allegations or claims asserting consequential damages or bad faith liability.

2174 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
2175 class-representative basis.

2176 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,
2177 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
2178 and costs against the party that failed to bring, pursue, or defend the claim in good faith.

2179 (o) An arbitration award issued under this section shall be the final resolution of all
2180 claims not excluded by Subsection (9)(l) between the parties unless:

2181 (i) the award was procured by corruption, fraud, or other undue means;

2182 (ii) either party, within 20 days after service of the arbitration award:

2183 (A) files a complaint requesting a trial de novo in the district court; and

2184 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
2185 under Subsection (9)(o)(ii)(A).

2186 (p) (i) Upon filing a complaint for a trial de novo under Subsection (9)(o), the claim
2187 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules
2188 of Evidence in the district court.

2189 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
2190 request a jury trial with a complaint requesting a trial de novo under Subsection (9)(o)(ii)(A).

2191 (q) (i) If the claimant, as the moving party in a trial de novo requested under
2192 Subsection (9)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
2193 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

2194 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested
2195 under Subsection (9)(o), does not obtain a verdict that is at least 20% less than the arbitration

2196 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

2197 (iii) Except as provided in Subsection (9)(q)(iv), the costs under this Subsection (9)(q)
2198 shall include:

2199 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

2200 (B) the costs of expert witnesses and depositions.

2201 (iv) An award of costs under this Subsection (9)(q) may not exceed \$2,500 unless
2202 Subsection (10)(h)(iii) applies.

2203 (r) For purposes of determining whether a party's verdict is greater or less than the
2204 arbitration award under Subsection (9)(q), a court may not consider any recovery or other relief
2205 granted on a claim for damages if the claim for damages:

2206 (i) was not fully disclosed in writing prior to the arbitration proceeding; or

2207 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
2208 Procedure.

2209 (s) If a district court determines, upon a motion of the nonmoving party, that the
2210 moving party's use of the trial de novo process was filed in bad faith in accordance with
2211 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving
2212 party.

2213 (t) Nothing in this section is intended to limit any claim under any other portion of an
2214 applicable insurance policy.

2215 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (8), the
2216 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
2217 carriers.

2218 (10) (a) Within 30 days after a covered person elects to submit a claim for uninsured
2219 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
2220 the uninsured motorist carrier:

2221 (i) a written demand for payment of uninsured motorist coverage benefits, setting forth:

2222 (A) subject to Subsection (10)(l), the specific monetary amount of the demand,
2223 including a computation of the covered person's claimed past medical expenses, claimed past
2224 lost wages, and the other claimed past economic damages; and

2225 (B) the factual and legal basis and any supporting documentation for the demand;

2226 (ii) a written statement under oath disclosing:

2227 (A) (I) the names and last known addresses of all health care providers who have
2228 rendered health care services to the covered person that are material to the claims for which
2229 uninsured motorist benefits are sought for a period of five years preceding the date of the event
2230 giving rise to the claim for uninsured motorist benefits up to the time the election for
2231 arbitration or litigation has been exercised; and

2232 (II) [~~whether the covered person has seen other~~] the names and last known addresses of
2233 the health care providers who have rendered health care services to the covered person, which
2234 the covered person claims are immaterial to the claims for which uninsured motorist benefits
2235 are sought, for a period of five years preceding the date of the event giving rise to the claim for
2236 uninsured motorist benefits up to the time the election for arbitration or litigation has been
2237 exercised that have not been disclosed under Subsection (10)(a)(ii)(A)(I);

2238 (B) (I) the names and last known addresses of all health insurers or other entities to
2239 whom the covered person has submitted claims for health care services or benefits material to
2240 the claims for which uninsured motorist benefits are sought, for a period of five years
2241 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
2242 time the election for arbitration or litigation has been exercised; and

2243 (II) [~~whether the identity of any~~] the names and last known addresses of the health
2244 insurers or other entities to whom the covered person has submitted claims for health care
2245 services or benefits, which the covered person claims are immaterial to the claims for which
2246 uninsured motorist benefits are sought, for a period of five years preceding the date of the event
2247 giving rise to the claim for uninsured motorist benefits up to the time the election for
2248 arbitration or litigation have not been disclosed;

2249 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
2250 employers of the covered person for a period of five years preceding the date of the event
2251 giving rise to the claim for uninsured motorist benefits up to the time the election for
2252 arbitration or litigation has been exercised;

2253 (D) other documents to reasonably support the claims being asserted; and

2254 (E) all state and federal statutory lienholders including a statement as to whether the
2255 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
2256 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,
2257 or if the claim is subject to any other state or federal statutory liens; and

2258 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records
2259 and billings from the individuals or entities disclosed under Subsections (10)(a)(ii)(A)(I),
2260 (B)(I), and (C).

2261 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed
2262 health care providers or health care insurers under Subsection (10)(a)(ii) is reasonably
2263 necessary, the uninsured motorist carrier may:

2264 (A) make a request for the disclosure of the identity of the health care providers or
2265 health care insurers; and

2266 (B) make a request for authorizations to allow the uninsured motorist carrier to only
2267 obtain records and billings from the individuals or entities not disclosed.

2268 (ii) If the covered person does not provide the requested information within 10 days:

2269 (A) the covered person shall disclose, in writing, the legal or factual basis for the
2270 failure to disclose the health care providers or health care insurers; and

2271 (B) either the covered person or the uninsured motorist carrier may request the
2272 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be
2273 provided if the covered person has elected arbitration.

2274 (iii) The time periods imposed by Subsection (10)(c)(i) are tolled pending resolution of
2275 the dispute concerning the disclosure and production of records of the health care providers or
2276 health care insurers.

2277 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice
2278 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection
2279 (10)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and
2280 receipt of the items specified in Subsections (10)(a)(i) through (iii), to:

2281 (A) provide a written response to the written demand for payment provided for in
2282 Subsection (10)(a)(i);

2283 (B) except as provided in Subsection (10)(c)(i)(C), tender the amount, if any, of the
2284 uninsured motorist carrier's determination of the amount owed to the covered person; and

2285 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
2286 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
2287 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
2288 tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed

2289 to the covered person less:

2290 (I) if the amount of the state or federal statutory lien is established, the amount of the
2291 lien; or

2292 (II) if the amount of the state or federal statutory lien is not established, two times the
2293 amount of the medical expenses subject to the state or federal statutory lien until such time as
2294 the amount of the state or federal statutory lien is established.

2295 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (10)(c)(i)
2296 is the total amount of the uninsured motorist policy limits, the tendered amount shall be
2297 accepted by the covered person.

2298 (d) A covered person who receives a written response from an uninsured motorist
2299 carrier as provided for in Subsection (10)(c)(i), may:

2300 (i) elect to accept the amount tendered in Subsection (10)(c)(i) as payment in full of all
2301 uninsured motorist claims; or

2302 (ii) elect to:

2303 (A) accept the amount tendered in Subsection (10)(c)(i) as partial payment of all
2304 uninsured motorist claims; and

2305 (B) continue to litigate or arbitrate the remaining claim in accordance with the election
2306 made under Subsections (9)(a), (b), and (c).

2307 (e) If a covered person elects to accept the amount tendered under Subsection (10)(c)(i)
2308 as partial payment of all uninsured motorist claims, the final award obtained through
2309 arbitration, litigation, or later settlement shall be reduced by any payment made by the
2310 uninsured motorist carrier under Subsection (10)(c)(i).

2311 (f) In an arbitration proceeding on the remaining uninsured claims:

2312 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
2313 under Subsection (10)(c)(i) until after the arbitration award has been rendered; and

2314 (ii) the parties may not disclose the amount of the limits of uninsured motorist benefits
2315 provided by the policy.

2316 (g) If the final award obtained through arbitration or litigation is greater than the
2317 average of the covered person's initial written demand for payment provided for in Subsection
2318 (10)(a)(i) and the uninsured motorist carrier's initial written response provided for in
2319 Subsection (10)(c)(i), the uninsured motorist carrier shall pay:

2320 (i) the final award obtained through arbitration or litigation, except that if the award
2321 exceeds the policy limits of the subject uninsured motorist policy by more than \$15,000, the
2322 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

2323 (ii) any of the following applicable costs:

2324 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;

2325 (B) the arbitrator or arbitration panel's fee; and

2326 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
2327 evidence during arbitration or litigation.

2328 (h) (i) The covered person shall provide an affidavit of costs within five days of an
2329 arbitration award.

2330 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
2331 which the uninsured motorist carrier objects.

2332 (B) The objection shall be resolved by the arbitrator or arbitration panel.

2333 (iii) The award of costs by the arbitrator or arbitration panel under Subsection
2334 (10)(g)(ii) may not exceed \$5,000.

2335 (i) (i) A covered person shall disclose all material information, other than rebuttal
2336 evidence, within 30 days after a covered person elects to submit a claim for uninsured motorist
2337 coverage benefits to binding arbitration or files litigation as specified in Subsection (10)(a).

2338 (ii) If the information under Subsection (10)(i)(i) is not disclosed, the covered person
2339 may not recover costs or any amounts in excess of the policy under Subsection (10)(g).

2340 (j) This Subsection (10) does not limit any other cause of action that arose or may arise
2341 against the uninsured motorist carrier from the same dispute.

2342 (k) The provisions of this Subsection (10) only apply to motor vehicle accidents that
2343 occur on or after March 30, 2010.

2344 (l) (i) The written demand requirement in Subsection (10)(a)(i)(A) does not affect the
2345 covered person's requirement to provide a computation of any other economic damages
2346 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
2347 computation of any other economic damages claimed to conduct fact and expert discovery as
2348 to any additional damages claimed. The changes made by this bill to this Subsection (10)(l)
2349 and Subsection (10)(a)(i)(A) apply to a claim submitted to binding arbitration or through
2350 litigation on or after May 13, 2014.

2351 (ii) The changes made by this bill to Subsections (10)(a)(ii)(A)(II) and (B)(II) apply to
2352 any claim submitted to binding arbitration or through litigation on or after May 13, 2014.

2353 Section 11. Section **31A-22-305.3** is amended to read:

2354 **31A-22-305.3. Underinsured motorist coverage.**

2355 (1) As used in this section:

2356 (a) "Covered person" has the same meaning as defined in Section [31A-22-305](#).

2357 (b) (i) "Underinsured motor vehicle" includes a motor vehicle, the operation,
2358 maintenance, or use of which is covered under a liability policy at the time of an injury-causing
2359 occurrence, but which has insufficient liability coverage to compensate fully the injured party
2360 for all special and general damages.

2361 (ii) The term "underinsured motor vehicle" does not include:

2362 (A) a motor vehicle that is covered under the liability coverage of the same policy that
2363 also contains the underinsured motorist coverage;

2364 (B) an uninsured motor vehicle as defined in Subsection [31A-22-305\(2\)](#); or

2365 (C) a motor vehicle owned or leased by:

2366 (I) a named insured;

2367 (II) a named insured's spouse; or

2368 (III) a dependent of a named insured.

2369 (2) (a) Underinsured motorist coverage under Subsection [31A-22-302\(1\)\(c\)](#) provides
2370 coverage for a covered person who is legally entitled to recover damages from an owner or
2371 operator of an underinsured motor vehicle because of bodily injury, sickness, disease, or death.

2372 (b) A covered person occupying or using a motor vehicle owned, leased, or furnished
2373 to the covered person, the covered person's spouse, or covered person's resident relative may
2374 recover underinsured benefits only if the motor vehicle is:

2375 (i) described in the policy under which a claim is made; or

2376 (ii) a newly acquired or replacement motor vehicle covered under the terms of the
2377 policy.

2378 (3) (a) For new policies written on or after January 1, 2001, the limits of underinsured
2379 motorist coverage shall be equal to the lesser of the limits of the named insured's motor vehicle
2380 liability coverage or the maximum underinsured motorist coverage limits available by the
2381 insurer under the named insured's motor vehicle policy, unless a named insured rejects or

2382 purchases coverage in a lesser amount by signing an acknowledgment form that:

2383 (i) is filed with the department;

2384 (ii) is provided by the insurer;

2385 (iii) waives the higher coverage;

2386 (iv) need only state in this or similar language that underinsured motorist coverage
2387 provides benefits or protection to you and other covered persons for bodily injury resulting
2388 from an accident caused by the fault of another party where the other party has insufficient
2389 liability insurance; and

2390 (v) discloses the additional premiums required to purchase underinsured motorist
2391 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
2392 liability coverage or the maximum underinsured motorist coverage limits available by the
2393 insurer under the named insured's motor vehicle policy.

2394 (b) Any selection or rejection under Subsection (3)(a) continues for that issuer of the
2395 liability coverage until the insured requests, in writing, a change of underinsured motorist
2396 coverage from that liability insurer.

2397 (c) (i) Subsections (3)(a) and (b) apply retroactively to any claim arising on or after
2398 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for
2399 arbitration or filed a complaint in a court of competent jurisdiction.

2400 (ii) The Legislature finds that the retroactive application of Subsections (3)(a) and (b)
2401 clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

2402 (d) For purposes of this Subsection (3), "new policy" means:

2403 (i) any policy that is issued which does not include a renewal or reinstatement of an
2404 existing policy; or

2405 (ii) a change to an existing policy that results in:

2406 (A) a named insured being added to or deleted from the policy; or

2407 (B) a change in the limits of the named insured's motor vehicle liability coverage.

2408 (e) (i) As used in this Subsection (3)(e), "additional motor vehicle" means a change
2409 that increases the total number of vehicles insured by the policy, and does not include
2410 replacement, substitute, or temporary vehicles.

2411 (ii) The adding of an additional motor vehicle to an existing personal lines or
2412 commercial lines policy does not constitute a new policy for purposes of Subsection (3)(d).

2413 (iii) If an additional motor vehicle is added to a personal lines policy where
2414 underinsured motorist coverage has been rejected, or where underinsured motorist limits are
2415 lower than the named insured's motor vehicle liability limits, the insurer shall provide a notice
2416 to a named insured within 30 days that:

2417 (A) in the same manner described in Subsection (3)(a)(iv), explains the purpose of
2418 underinsured motorist coverage; and

2419 (B) encourages the named insured to contact the insurance company or insurance
2420 producer for quotes as to the additional premiums required to purchase underinsured motorist
2421 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
2422 liability coverage or the maximum underinsured motorist coverage limits available by the
2423 insurer under the named insured's motor vehicle policy.

2424 (f) A change in policy number resulting from any policy change not identified under
2425 Subsection (3)(d)(ii) does not constitute a new policy.

2426 (g) (i) Subsection (3)(d) applies retroactively to any claim arising on or after January 1,
2427 2001 for which, as of May 1, 2012, an insured has not made a written demand for arbitration or
2428 filed a complaint in a court of competent jurisdiction.

2429 (ii) The Legislature finds that the retroactive application of Subsection (3)(d):

2430 (A) does not enlarge, eliminate, or destroy vested rights; and

2431 (B) clarifies legislative intent.

2432 (h) A self-insured, including a governmental entity, may elect to provide underinsured
2433 motorist coverage in an amount that is less than its maximum self-insured retention under
2434 Subsections (3)(a) and (l) by issuing a declaratory memorandum or policy statement from the
2435 chief financial officer or chief risk officer that declares the:

2436 (i) self-insured entity's coverage level; and

2437 (ii) process for filing an underinsured motorist claim.

2438 (i) Underinsured motorist coverage may not be sold with limits that are less than:

2439 (i) \$10,000 for one person in any one accident; and

2440 (ii) at least \$20,000 for two or more persons in any one accident.

2441 (j) An acknowledgment under Subsection (3)(a) continues for that issuer of the
2442 underinsured motorist coverage until the named insured, in writing, requests different
2443 underinsured motorist coverage from the insurer.

2444 (k) (i) The named insured's underinsured motorist coverage, as described in Subsection
2445 (2), is secondary to the liability coverage of an owner or operator of an underinsured motor
2446 vehicle, as described in Subsection (1).

2447 (ii) Underinsured motorist coverage may not be set off against the liability coverage of
2448 the owner or operator of an underinsured motor vehicle, but shall be added to, combined with,
2449 or stacked upon the liability coverage of the owner or operator of the underinsured motor
2450 vehicle to determine the limit of coverage available to the injured person.

2451 (l) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
2452 policies existing on that date, the insurer shall disclose in the same medium as the premium
2453 renewal notice, an explanation of:

2454 (A) the purpose of underinsured motorist coverage in the same manner as described in
2455 Subsection (3)(a)(iv); and

2456 (B) a disclosure of the additional premiums required to purchase underinsured motorist
2457 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
2458 liability coverage or the maximum underinsured motorist coverage limits available by the
2459 insurer under the named insured's motor vehicle policy.

2460 (ii) The disclosure required under this Subsection (3)(l) shall be sent to all named
2461 insureds that carry underinsured motorist coverage limits in an amount less than the named
2462 insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage
2463 limits available by the insurer under the named insured's motor vehicle policy.

2464 (m) For purposes of this Subsection (3), a notice or disclosure sent to a named insured
2465 in a household constitutes notice or disclosure to all insureds within the household.

2466 (4) (a) (i) Except as provided in this Subsection (4), a covered person injured in a
2467 motor vehicle described in a policy that includes underinsured motorist benefits may not elect
2468 to collect underinsured motorist coverage benefits from another motor vehicle insurance policy.

2469 (ii) The limit of liability for underinsured motorist coverage for two or more motor
2470 vehicles may not be added together, combined, or stacked to determine the limit of insurance
2471 coverage available to an injured person for any one accident.

2472 (iii) Subsection (4)(a)(ii) applies to all persons except a covered person described
2473 under Subsections (4)(b)(i) and (ii).

2474 (b) (i) Except as provided in Subsection (4)(b)(ii), a covered person injured while

2475 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
2476 covered person, the covered person's spouse, or the covered person's resident parent or resident
2477 sibling, may also recover benefits under any one other policy under which the covered person is
2478 also a covered person.

2479 (ii) (A) A covered person may recover benefits from no more than two additional
2480 policies, one additional policy from each parent's household if the covered person is:

2481 (I) a dependent minor of parents who reside in separate households; and

2482 (II) injured while occupying or using a motor vehicle that is not owned, leased, or
2483 furnished to the covered person, the covered person's resident parent, or the covered person's
2484 resident sibling.

2485 (B) Each parent's policy under this Subsection (4)(b)(ii) is liable only for the
2486 percentage of the damages that the limit of liability of each parent's policy of underinsured
2487 motorist coverage bears to the total of both parents' underinsured coverage applicable to the
2488 accident.

2489 (iii) A covered person's recovery under any available policies may not exceed the full
2490 amount of damages.

2491 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is
2492 primary coverage, and the coverage elected by a person described under Subsections
2493 [31A-22-305\(1\)\(a\)](#) [~~and~~], (b), and (c) is secondary coverage.

2494 (v) The primary and the secondary coverage may not be set off against the other.

2495 (vi) A covered person as described under Subsection (4)(b)(i) is entitled to the highest
2496 limits of underinsured motorist coverage under only one additional policy per household
2497 applicable to that covered person as a named insured, spouse, or relative.

2498 (vii) A covered injured person is not barred against making subsequent elections if
2499 recovery is unavailable under previous elections.

2500 (viii) (A) As used in this section, "interpolicy stacking" means recovering benefits for a
2501 single incident of loss under more than one insurance policy.

2502 (B) Except to the extent permitted by this Subsection (4), interpolicy stacking is
2503 prohibited for underinsured motorist coverage.

2504 (c) Underinsured motorist coverage:

2505 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'

2506 Compensation Act;

2507 (ii) may not be subrogated by a workers' compensation insurance carrier;

2508 (iii) may not be reduced by benefits provided by workers' compensation insurance;

2509 (iv) may be reduced by health insurance subrogation only after the covered person is

2510 made whole;

2511 (v) may not be collected for bodily injury or death sustained by a person:

2512 (A) while committing a violation of Section 41-1a-1314;

2513 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated

2514 in violation of Section 41-1a-1314; or

2515 (C) while committing a felony; and

2516 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:

2517 (A) for a person under 18 years of age who is injured within the scope of Subsection

2518 (4)(c)(v), but is limited to medical and funeral expenses; or

2519 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured

2520 within the course and scope of the law enforcement officer's duties.

2521 (5) The inception of the loss under Subsection 31A-21-313(1) for underinsured

2522 motorist claims occurs upon the date of the last liability policy payment.

2523 (6) (a) Within five business days after notification that all liability insurers have

2524 tendered their liability policy limits, the underinsured carrier shall either:

2525 (i) waive any subrogation claim the underinsured carrier may have against the person

2526 liable for the injuries caused in the accident; or

2527 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

2528 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is

2529 considered to be waived by the underinsured carrier.

2530 (c) The notification under Subsection (6)(a) shall include:

2531 (i) the name, address, and phone number for all liability insurers;

2532 (ii) the liability insurers' liability policy limits; and

2533 (iii) the claim number associated with each liability insurer.

2534 (7) Except as otherwise provided in this section, a covered person may seek, subject to

2535 the terms and conditions of the policy, additional coverage under any policy:

2536 (a) that provides coverage for damages resulting from motor vehicle accidents; and

2537 (b) that is not required to conform to Section 31A-22-302.

2538 (8) (a) When a claim is brought by a named insured or a person described in

2539 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist

2540 carrier, the claimant may elect to resolve the claim:

2541 (i) by submitting the claim to binding arbitration; or

2542 (ii) through litigation.

2543 (b) Unless otherwise provided in the policy under which underinsured benefits are

2544 claimed, the election provided in Subsection (8)(a) is available to the claimant only, except that

2545 if the policy under which insured benefits are claimed provides that either an insured or the

2546 insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to

2547 arbitrate shall stay the litigation of the claim under Subsection (8)(a)(ii).

2548 (c) Once a claimant elects to commence litigation under Subsection (8)(a)(ii), the

2549 claimant may not elect to resolve the claim through binding arbitration under this section

2550 without the written consent of the underinsured motorist coverage carrier.

2551 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to

2552 binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.

2553 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).

2554 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection

2555 (8)(d)(ii), the parties shall select a panel of three arbitrators.

2556 (e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):

2557 (i) each side shall select one arbitrator; and

2558 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional

2559 arbitrator to be included in the panel.

2560 (f) Unless otherwise agreed to in writing:

2561 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected

2562 under Subsection (8)(d)(i); or

2563 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):

2564 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and

2565 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected

2566 under Subsection (8)(e)(ii).

2567 (g) Except as otherwise provided in this section or unless otherwise agreed to in

2568 writing by the parties, an arbitration proceeding conducted under this section is governed by
2569 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

2570 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
2571 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
2572 Subsections (9)(a) through (c) are satisfied.

2573 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure
2574 shall be determined based on the claimant's specific monetary amount in the written demand
2575 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).

2576 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to
2577 arbitration claims under this part.

2578 (i) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.

2579 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
2580 constitutes a final decision.

2581 (k) (i) Except as provided in Subsection (9), the amount of an arbitration award may
2582 not exceed the underinsured motorist policy limits of all applicable underinsured motorist
2583 policies, including applicable underinsured motorist umbrella policies.

2584 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
2585 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
2586 equal to the combined underinsured motorist policy limits of all applicable underinsured
2587 motorist policies.

2588 (l) The arbitrator or arbitration panel may not decide an issue of coverage or
2589 extra-contractual damages, including:

2590 (i) whether the claimant is a covered person;

2591 (ii) whether the policy extends coverage to the loss; or

2592 (iii) an allegation or claim asserting consequential damages or bad faith liability.

2593 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
2594 class-representative basis.

2595 (n) If the arbitrator or arbitration panel finds that the arbitration is not brought, pursued,
2596 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
2597 and costs against the party that failed to bring, pursue, or defend the arbitration in good faith.

2598 (o) An arbitration award issued under this section shall be the final resolution of all

2599 claims not excluded by Subsection (8)(l) between the parties unless:

2600 (i) the award is procured by corruption, fraud, or other undue means;

2601 (ii) either party, within 20 days after service of the arbitration award:

2602 (A) files a complaint requesting a trial de novo in the district court; and

2603 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
2604 under Subsection (8)(o)(ii)(A).

2605 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), a claim shall
2606 proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of
2607 Evidence in the district court.

2608 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
2609 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

2610 (q) (i) If the claimant, as the moving party in a trial de novo requested under
2611 Subsection (8)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
2612 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

2613 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo requested
2614 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration
2615 award, the underinsured motorist carrier is responsible for all of the nonmoving party's costs.

2616 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q)
2617 shall include:

2618 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

2619 (B) the costs of expert witnesses and depositions.

2620 (iv) An award of costs under this Subsection (8)(q) may not exceed \$2,500 unless
2621 Subsection (9)(h)(iii) applies.

2622 (r) For purposes of determining whether a party's verdict is greater or less than the
2623 arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief
2624 granted on a claim for damages if the claim for damages:

2625 (i) was not fully disclosed in writing prior to the arbitration proceeding; or

2626 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
2627 Procedure.

2628 (s) If a district court determines, upon a motion of the nonmoving party, that a moving
2629 party's use of the trial de novo process is filed in bad faith in accordance with Section

2630 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

2631 (t) Nothing in this section is intended to limit a claim under another portion of an
2632 applicable insurance policy.

2633 (u) If there are multiple underinsured motorist policies, as set forth in Subsection (4),
2634 the claimant may elect to arbitrate in one hearing the claims against all the underinsured
2635 motorist carriers.

2636 (9) (a) Within 30 days after a covered person elects to submit a claim for underinsured
2637 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
2638 the underinsured motorist carrier:

2639 (i) a written demand for payment of underinsured motorist coverage benefits, setting
2640 forth:

2641 (A) subject to Subsection (9)(l), the specific monetary amount of the demand,
2642 including a computation of the covered person's claimed past medical expenses, claimed past
2643 lost wages, and all other claimed past economic damages; and

2644 (B) the factual and legal basis and any supporting documentation for the demand;

2645 (ii) a written statement under oath disclosing:

2646 (A) (I) the names and last known addresses of all health care providers who have
2647 rendered health care services to the covered person that are material to the claims for which the
2648 underinsured motorist benefits are sought for a period of five years preceding the date of the
2649 event giving rise to the claim for underinsured motorist benefits up to the time the election for
2650 arbitration or litigation has been exercised; and

2651 (II) [~~whether the covered person has seen other~~] the names and last know addresses of
2652 the health care providers who have rendered health care services to the covered person, which
2653 the covered person claims are immaterial to the claims for which underinsured motorist
2654 benefits are sought, for a period of five years preceding the date of the event giving rise to the
2655 claim for underinsured motorist benefits up to the time the election for arbitration or litigation
2656 has been exercised that have not been disclosed under Subsection (9)(a)(ii)(A)(I);

2657 (B) (I) the names and last known addresses of all health insurers or other entities to
2658 whom the covered person has submitted claims for health care services or benefits material to
2659 the claims for which underinsured motorist benefits are sought, for a period of five years
2660 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to

2661 the time the election for arbitration or litigation has been exercised; and

2662 (II) [~~whether the identity of any~~] the names and last known addresses of the health
2663 insurers or other entities to whom the covered person has submitted claims for health care
2664 services or benefits, which the covered person claims are immaterial to the claims for which
2665 underinsured motorist benefits are sought, for a period of five years preceding the date of the
2666 event giving rise to the claim for underinsured motorist benefits up to the time the election for
2667 arbitration or litigation have not been disclosed;

2668 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
2669 employers of the covered person for a period of five years preceding the date of the event
2670 giving rise to the claim for underinsured motorist benefits up to the time the election for
2671 arbitration or litigation has been exercised;

2672 (D) other documents to reasonably support the claims being asserted; and

2673 (E) all state and federal statutory lienholders including a statement as to whether the
2674 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
2675 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,
2676 or if the claim is subject to any other state or federal statutory liens; and

2677 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain
2678 records and billings from the individuals or entities disclosed under Subsections
2679 (9)(a)(ii)(A)(I), (B)(I), and (C).

2680 (b) (i) If the underinsured motorist carrier determines that the disclosure of undisclosed
2681 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,
2682 the underinsured motorist carrier may:

2683 (A) make a request for the disclosure of the identity of the health care providers or
2684 health care insurers; and

2685 (B) make a request for authorizations to allow the underinsured motorist carrier to only
2686 obtain records and billings from the individuals or entities not disclosed.

2687 (ii) If the covered person does not provide the requested information within 10 days:

2688 (A) the covered person shall disclose, in writing, the legal or factual basis for the
2689 failure to disclose the health care providers or health care insurers; and

2690 (B) either the covered person or the underinsured motorist carrier may request the
2691 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be

2692 provided if the covered person has elected arbitration.

2693 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of
2694 the dispute concerning the disclosure and production of records of the health care providers or
2695 health care insurers.

2696 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a
2697 notice of filing litigation and the demand for payment of underinsured motorist benefits under
2698 Subsection (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the
2699 demand and receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

2700 (A) provide a written response to the written demand for payment provided for in
2701 Subsection (9)(a)(i);

2702 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the
2703 underinsured motorist carrier's determination of the amount owed to the covered person; and

2704 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
2705 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
2706 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
2707 tender the amount, if any, of the underinsured motorist carrier's determination of the amount
2708 owed to the covered person less:

2709 (I) if the amount of the state or federal statutory lien is established, the amount of the
2710 lien; or

2711 (II) if the amount of the state or federal statutory lien is not established, two times the
2712 amount of the medical expenses subject to the state or federal statutory lien until such time as
2713 the amount of the state or federal statutory lien is established.

2714 (ii) If the amount tendered by the underinsured motorist carrier under Subsection
2715 (9)(c)(i) is the total amount of the underinsured motorist policy limits, the tendered amount
2716 shall be accepted by the covered person.

2717 (d) A covered person who receives a written response from an underinsured motorist
2718 carrier as provided for in Subsection (9)(c)(i), may:

2719 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all
2720 underinsured motorist claims; or

2721 (ii) elect to:

2722 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all

2723 underinsured motorist claims; and

2724 (B) continue to litigate or arbitrate the remaining claim in accordance with the election
2725 made under Subsections (8)(a), (b), and (c).

2726 (e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i)
2727 as partial payment of all underinsured motorist claims, the final award obtained through
2728 arbitration, litigation, or later settlement shall be reduced by any payment made by the
2729 underinsured motorist carrier under Subsection (9)(c)(i).

2730 (f) In an arbitration proceeding on the remaining underinsured claims:

2731 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
2732 under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

2733 (ii) the parties may not disclose the amount of the limits of underinsured motorist
2734 benefits provided by the policy.

2735 (g) If the final award obtained through arbitration or litigation is greater than the
2736 average of the covered person's initial written demand for payment provided for in Subsection
2737 (9)(a)(i) and the underinsured motorist carrier's initial written response provided for in
2738 Subsection (9)(c)(i), the underinsured motorist carrier shall pay:

2739 (i) the final award obtained through arbitration or litigation, except that if the award
2740 exceeds the policy limits of the subject underinsured motorist policy by more than \$15,000, the
2741 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

2742 (ii) any of the following applicable costs:

2743 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;

2744 (B) the arbitrator or arbitration panel's fee; and

2745 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
2746 evidence during arbitration or litigation.

2747 (h) (i) The covered person shall provide an affidavit of costs within five days of an
2748 arbitration award.

2749 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
2750 which the underinsured motorist carrier objects.

2751 (B) The objection shall be resolved by the arbitrator or arbitration panel.

2752 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii)
2753 may not exceed \$5,000.

2754 (i) (i) A covered person shall disclose all material information, other than rebuttal
2755 evidence, within 30 days after a covered person elects to submit a claim for underinsured
2756 motorist coverage benefits to binding arbitration or files litigation as specified in Subsection
2757 (9)(a).

2758 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person
2759 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).

2760 (j) This Subsection (9) does not limit any other cause of action that arose or may arise
2761 against the underinsured motorist carrier from the same dispute.

2762 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
2763 occur on or after March 30, 2010.

2764 (l) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the
2765 covered person's requirement to provide a computation of any other economic damages
2766 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
2767 computation of any other economic damages claimed to conduct fact and expert discovery as to
2768 any additional damages claimed. The changes made by this bill to this Subsection (9)(l) and
2769 Subsection (9)(a)(i)(A) apply to a claim submitted to binding arbitration or through litigation
2770 on or after May 13, 2014.

2771 (ii) The changes made by this bill under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply
2772 to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.

2773 Section 12. Section ~~31A-22-428~~ is amended to read:

2774 **31A-22-428. Interest payable on life insurance proceeds.**

2775 (1) For a life insurance policy delivered or issued for delivery in this state on or after
2776 May 5, 2008, the insurer shall pay interest on the death proceeds payable upon the death of the
2777 insured.

2778 (2) (a) Except as provided in Subsection (4), for the period beginning on the date of
2779 death and ending the day before the day described in Subsection (3)(b), interest under
2780 Subsection (1) shall accrue at a rate no less than the greater of:

2781 (i) the rate applicable to policy funds left on deposit; ~~[or]~~ and

2782 (ii) ~~[if there is no rate described in Subsection (2)(a)(i), at]~~ the Two Year Treasury
2783 Constant Maturity Rate as published by the Federal Reserve.

2784 (b) If there is no rate applicable to policy funds on deposit as stated in Subsection

2785 (2)(a)(i), then the Two Year Treasury Constant Maturity Rates as published by the Federal
 2786 Reserve applies.

2787 ~~[(b)]~~ (c) The rate described in Subsection (2)(a) or (b) is the rate in effect on the day on
 2788 which the death occurs.

2789 ~~[(c)]~~ (d) Interest is payable until the day on which the claim is paid.

2790 (3) (a) Unless the claim is paid and except as provided in Subsection (4), beginning on
 2791 the day described in Subsection (3)(b) and ending the day on which the claim is paid, interest
 2792 shall accrue at the rate in Subsection (2) plus additional interest at the rate of 10% annually.

2793 (b) Interest accrues under Subsection (3)(a) beginning with the day that is 31 days from
 2794 the latest of:

2795 (i) the day on which the insurer receives proof of death;

2796 (ii) the day on which the insurer receives sufficient information to determine:

2797 (A) liability;

2798 (B) the extent of the liability; and

2799 (C) the appropriate payee legally entitled to the proceeds; and

2800 (iii) the day on which:

2801 (A) legal impediments to payment of proceeds that depend on the action of parties
 2802 other than the insurer are resolved; and

2803 (B) the insurer receives sufficient evidence of the resolution of the legal impediments
 2804 described in Subsection (3)(b)(iii)(A).

2805 (4) A court of competent jurisdiction may require payment of interest from the date of
 2806 death to the day on which a claim is paid at a rate equal to the sum of:

2807 (a) the rate specified in Subsection (2); and

2808 (b) the legal rate identified in Subsection 15-1-1(2).

2809 Section 13. Section **31A-22-617** is amended to read:

2810 **31A-22-617. Preferred provider contract provisions.**

2811 Health insurance policies may provide for insureds to receive services or
 2812 reimbursement under the policies in accordance with preferred health care provider contracts as
 2813 follows:

2814 (1) Subject to restrictions under this section, ~~[any]~~ an insurer or third party
 2815 administrator may enter into contracts with health care providers as defined in Section

2816 78B-3-403 under which the health care providers agree to supply services, at prices specified in
2817 the contracts, to persons insured by an insurer.

2818 (a) (i) A health care provider contract may require the health care provider to accept the
2819 specified payment in this Subsection (1) as payment in full, relinquishing the right to collect
2820 additional amounts from the insured person.

2821 (ii) In [any] a dispute involving a provider's claim for reimbursement, the same shall be
2822 determined in accordance with applicable law, the provider contract, the subscriber contract,
2823 and the insurer's written payment policies in effect at the time services were rendered.

2824 (iii) If the parties are unable to resolve their dispute, the matter shall be subject to
2825 binding arbitration by a jointly selected arbitrator. Each party is to bear its own expense except
2826 the cost of the jointly selected arbitrator shall be equally shared. This Subsection (1)(a)(iii)
2827 does not apply to the claim of a general acute hospital to the extent it is inconsistent with the
2828 hospital's provider agreement.

2829 (iv) An organization may not penalize a provider solely for pursuing a claims dispute
2830 or otherwise demanding payment for a sum believed owing.

2831 (v) If an insurer permits another entity with which it does not share common ownership
2832 or control to use or otherwise lease one or more of the organization's networks of participating
2833 providers, the organization shall ensure, at a minimum, that the entity pays participating
2834 providers in accordance with the same fee schedule and general payment policies as the
2835 organization would for that network.

2836 (b) The insurance contract may reward the insured for selection of preferred health care
2837 providers by:

2838 (i) reducing premium rates;

2839 (ii) reducing deductibles;

2840 (iii) coinsurance;

2841 (iv) other copayments; or

2842 (v) any other reasonable manner.

2843 (c) If the insurer is a managed care organization, as defined in Subsection

2844 31A-27a-403(1)(f):

2845 (i) the insurance contract and the health care provider contract shall provide that in the
2846 event the managed care organization becomes insolvent, the rehabilitator or liquidator may:

2847 (A) require the health care provider to continue to provide health care services under
2848 the contract until the earlier of:

2849 (I) 90 days after the date of the filing of a petition for rehabilitation or the petition for
2850 liquidation; or

2851 (II) the date the term of the contract ends; and

2852 (B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to
2853 receive from the managed care organization during the time period described in Subsection
2854 (1)(c)(i)(A);

2855 (ii) the provider is required to:

2856 (A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

2857 (B) relinquish the right to collect additional amounts from the insolvent managed care
2858 organization's enrollee, as defined in Subsection 31A-27a-403(1)(b);

2859 (iii) if the contract between the health care provider and the managed care organization
2860 has not been reduced to writing, or the contract fails to contain the ~~[language required by]~~
2861 requirements described in Subsection (1)(c)(i), the provider may not collect or attempt to
2862 collect from the enrollee:

2863 (A) sums owed by the insolvent managed care organization; or

2864 (B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);

2865 (iv) the following may not bill or maintain ~~[any]~~ an action at law against an enrollee to
2866 collect sums owed by the insolvent managed care organization or the amount of the regular fee
2867 reduction authorized under Subsection (1)(c)(i)(B):

2868 (A) a provider;

2869 (B) an agent;

2870 (C) a trustee; or

2871 (D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and

2872 (v) notwithstanding Subsection (1)(c)(i):

2873 (A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's
2874 regular fee set forth in the contract; and

2875 (B) the enrollee shall continue to pay the copayments, deductibles, and other payments
2876 for services received from the provider that the enrollee was required to pay before the filing
2877 of:

2878 (I) a petition for rehabilitation; or

2879 (II) a petition for liquidation.

2880 (2) (a) Subject to Subsections (2)(b) through (2)(e), an insurer using preferred health
2881 care provider contracts is subject to the reimbursement requirements in Section 31A-8-501 on
2882 or after January 1, 2014.

2883 (b) When reimbursing for services of health care providers not under contract, the
2884 insurer may make direct payment to the insured.

2885 (c) An insurer using preferred health care provider contracts may impose a deductible
2886 on coverage of health care providers not under contract.

2887 (d) When selecting health care providers with whom to contract under Subsection (1),
2888 an insurer may not unfairly discriminate between classes of health care providers, but may
2889 discriminate within a class of health care providers, subject to Subsection (7).

2890 (e) For purposes of this section, unfair discrimination between classes of health care
2891 providers includes:

2892 (i) refusal to contract with class members in reasonable proportion to the number of
2893 insureds covered by the insurer and the expected demand for services from class members; and

2894 (ii) refusal to cover procedures for one class of providers that are:

2895 (A) commonly used by members of the class of health care providers for the treatment
2896 of illnesses, injuries, or conditions;

2897 (B) otherwise covered by the insurer; and

2898 (C) within the scope of practice of the class of health care providers.

2899 (3) Before the insured consents to the insurance contract, the insurer shall fully disclose
2900 to the insured that it has entered into preferred health care provider contracts. The insurer shall
2901 provide sufficient detail on the preferred health care provider contracts to permit the insured to
2902 agree to the terms of the insurance contract. The insurer shall provide at least the following
2903 information:

2904 (a) a list of the health care providers under contract, and if requested their business
2905 locations and specialties;

2906 (b) a description of the insured benefits, including [any] deductibles, coinsurance, or
2907 other copayments;

2908 (c) a description of the quality assurance program required under Subsection (4); and

2909 (d) a description of the adverse benefit determination procedures required under
2910 Subsection (5).

2911 (4) (a) An insurer using preferred health care provider contracts shall maintain a quality
2912 assurance program for assuring that the care provided by the health care providers under
2913 contract meets prevailing standards in the state.

2914 (b) The commissioner in consultation with the executive director of the Department of
2915 Health may designate qualified persons to perform an audit of the quality assurance program.
2916 The auditors shall have full access to all records of the organization and its health care
2917 providers, including medical records of individual patients.

2918 (c) The information contained in the medical records of individual patients shall
2919 remain confidential. All information, interviews, reports, statements, memoranda, or other data
2920 furnished for purposes of the audit and any findings or conclusions of the auditors are
2921 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal
2922 proceeding except hearings before the commissioner concerning alleged violations of this
2923 section.

2924 (5) An insurer using preferred health care provider contracts shall provide a reasonable
2925 procedure for resolving complaints and adverse benefit determinations initiated by the insureds
2926 and health care providers.

2927 (6) An insurer may not contract with a health care provider for treatment of illness or
2928 injury unless the health care provider is licensed to perform that treatment.

2929 (7) (a) A health care provider or insurer may not discriminate against a preferred health
2930 care provider for agreeing to a contract under Subsection (1).

2931 (b) ~~[Any]~~ A health care provider licensed to treat ~~[any]~~ an illness or injury within the
2932 scope of the health care provider's practice, who is willing and able to meet the terms and
2933 conditions established by the insurer for designation as a preferred health care provider, shall
2934 be able to apply for and receive the designation as a preferred health care provider. Contract
2935 terms and conditions may include reasonable limitations on the number of designated preferred
2936 health care providers based upon substantial objective and economic grounds, or expected use
2937 of particular services based upon prior provider-patient profiles.

2938 (8) Upon the written request of a provider excluded from a provider contract, the
2939 commissioner may hold a hearing to determine if the insurer's exclusion of the provider is

2940 based on the criteria set forth in Subsection (7)(b).

2941 ~~[(9) Except as provided in Subsection 31A-22-618.5(3)(a), insurers are subject to~~
2942 ~~Sections 31A-22-613.5, 31A-22-614.5, and 31A-22-618.]~~

2943 ~~[(10)]~~ (9) Nothing in this section is to be construed as to require an insurer to offer a
2944 certain benefit or service as part of a health benefit plan.

2945 ~~[(11)]~~ (10) This section does not apply to catastrophic mental health coverage provided
2946 in accordance with Section 31A-22-625.

2947 ~~[(12)]~~ (11) Notwithstanding ~~[the provisions of]~~ Subsection (1), Subsection (7)(b), and
2948 Section 31A-22-618, an insurer or third party administrator is not required to, but may, enter
2949 into ~~[contracts]~~ a contract with a licensed athletic ~~[trainers]~~ trainer, licensed under Title 58,
2950 Chapter 40a, Athletic Trainer Licensing Act.

2951 Section 14. Section 31A-22-618.5 is amended to read:

2952 **31A-22-618.5. Health benefit plan offerings.**

2953 (1) The purpose of this section is to increase the range of health benefit plans available
2954 in the small group, small employer group, large group, and individual insurance markets.

2955 (2) A health maintenance organization that is subject to Chapter 8, Health Maintenance
2956 Organizations and Limited Health Plans:

2957 (a) shall offer to potential purchasers at least one health benefit plan that is subject to
2958 the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans;
2959 and

2960 (b) may offer to a potential purchaser one or more health benefit plans that:

2961 (i) are not subject to one or more of the following:

2962 (A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

2963 (B) the limitation on point of service products in Subsections 31A-8-408(3) through
2964 (6);

2965 (C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in
2966 Section 31A-8-101; or

2967 (D) coverage mandates enacted after January 1, 2009 that are not required by federal
2968 law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate
2969 enacted after January 1, 2009; and

2970 (ii) when offering a health plan under this section, provide coverage for an emergency

2971 medical condition as required by Section 31A-22-627 as follows:

2972 (A) within the organization's service area, covered services shall include health care
2973 services from nonaffiliated providers when medically necessary to stabilize an emergency
2974 medical condition; and

2975 (B) outside the organization's service area, covered services shall include medically
2976 necessary health care services for the treatment of an emergency medical condition that are
2977 immediately required while the enrollee is outside the geographic limits of the organization's
2978 service area.

2979 (3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health
2980 Maintenance Organizations and Limited Health Plans:

2981 (a) [~~notwithstanding Subsection 31A-22-617(9),~~] may offer a health benefit plan that is
2982 not subject to Section 31A-22-618;

2983 (b) when offering a health plan under this Subsection (3), shall provide coverage of
2984 emergency care services as required by Section 31A-22-627; and

2985 (c) is not subject to coverage mandates enacted after January 1, 2009 that are not
2986 required by federal law, provided that an insurer offers one plan that covers a mandate enacted
2987 after January 1, 2009.

2988 (4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under
2989 Subsection (2)(b).

2990 (5) (a) Any difference in price between a health benefit plan offered under Subsections
2991 (2)(a) and (b) shall be based on actuarially sound data.

2992 (b) Any difference in price between a health benefit plan offered under Subsection
2993 (3)(a) shall be based on actuarially sound data.

2994 (6) Nothing in this section limits the number of health benefit plans that an insurer may
2995 offer.

2996 Section 15. Section 31A-22-625 is amended to read:

2997 **31A-22-625. Catastrophic coverage of mental health conditions.**

2998 (1) As used in this section:

2999 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan
3000 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or
3001 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden

3002 on an insured for the evaluation and treatment of a mental health condition than for the
3003 evaluation and treatment of a physical health condition.

3004 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing
3005 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum
3006 out-of-pocket limit.

3007 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket
3008 limit for physical health conditions and another maximum out-of-pocket limit for mental health
3009 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit
3010 for mental health conditions may not exceed the out-of-pocket limit for physical health
3011 conditions.

3012 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that
3013 pays for at least 50% of covered services for the diagnosis and treatment of mental health
3014 conditions.

3015 (ii) "50/50 mental health coverage" may include a restriction on:

3016 (A) episodic limits;

3017 (B) inpatient or outpatient service limits; or

3018 (C) maximum out-of-pocket limits.

3019 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

3020 (d) (i) "Mental health condition" means a condition or disorder involving mental illness
3021 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as
3022 periodically revised.

3023 (ii) "Mental health condition" does not include the following when diagnosed as the
3024 primary or substantial reason or need for treatment:

3025 (A) a marital or family problem;

3026 (B) a social, occupational, religious, or other social maladjustment;

3027 (C) a conduct disorder;

3028 (D) a chronic adjustment disorder;

3029 (E) a psychosexual disorder;

3030 (F) a chronic organic brain syndrome;

3031 (G) a personality disorder;

3032 (H) a specific developmental disorder or learning disability; or

- 3033 (I) an intellectual disability.
- 3034 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.
- 3035 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer
3036 that it insures or seeks to insure a choice between:
- 3037 (i) (A) catastrophic mental health coverage; or
3038 (B) federally qualified mental health coverage as described in Subsection (3); and
3039 (ii) 50/50 mental health coverage.
- 3040 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:
- 3041 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
3042 that exceed the minimum requirements of this section; or
3043 (ii) coverage that excludes benefits for mental health conditions.
- 3044 (c) A small employer may, at its option, regardless of the employer's previous coverage
3045 for mental health conditions, choose either:
- 3046 (i) coverage offered under Subsection (2)(a)(i);
3047 (ii) 50/50 mental health coverage; or
3048 (iii) coverage offered under Subsection (2)(b).
- 3049 (d) An insurer is exempt from the 30% index rating restriction in Section
3050 [31A-30-106.1](#) and, for the first year only that the employer chooses coverage that meets or
3051 exceeds catastrophic mental health coverage, the 15% annual adjustment restriction in Section
3052 [31A-30-106.1](#), for ~~any~~ a small employer with 20 or less enrolled employees who chooses
3053 coverage that meets or exceeds catastrophic mental health coverage.
- 3054 (3) (a) An insurer shall offer a large employer mental health and substance use disorder
3055 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.
3056 300gg-26, and federal regulations adopted pursuant to that act.
- 3057 (b) An insurer shall provide in an individual or small employer health benefit plan,
3058 mental health and substance use disorder benefits in compliance with Sections 2705 and 2711
3059 of the Public Health Service Act, 42 U.S.C. Sec. 300gg-26, and federal regulations adopted
3060 pursuant to that act.
- 3061 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer
3062 through a managed care organization or system in a manner consistent with Chapter 8, Health
3063 Maintenance Organizations and Limited Health Plans, regardless of whether the insurance

3064 policy uses a managed care organization or system for the treatment of physical health
3065 conditions.

3066 (b) (i) Notwithstanding any other provision of this title, an insurer may:

3067 (A) establish a closed panel of providers for catastrophic mental health coverage; and

3068 (B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider

3069 unless:

3070 (I) the insured is referred to a nonpanel provider with the prior authorization of the
3071 insurer; and

3072 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment
3073 guidelines.

3074 (ii) If an insured receives services from a nonpanel provider in the manner permitted by
3075 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the
3076 average amount paid by the insurer for comparable services of panel providers under a
3077 noncapitated arrangement who are members of the same class of health care providers.

3078 (iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a
3079 referral to a nonpanel provider.

3080 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a
3081 mental health condition shall be rendered:

3082 (i) by a mental health therapist as defined in Section 58-60-102; or

3083 (ii) in a health care facility:

3084 (A) licensed or otherwise authorized to provide mental health services pursuant to:

3085 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

3086 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

3087 (B) that provides a program for the treatment of a mental health condition pursuant to a
3088 written plan.

3089 (5) The commissioner may prohibit an insurance policy that provides mental health
3090 coverage in a manner that is inconsistent with this section.

3091 (6) The commissioner [~~shall: (a)~~] may adopt rules, in accordance with Title 63G,
3092 Chapter 3, Utah Administrative Rulemaking Act, as necessary to ensure compliance with this
3093 section[; ~~and~~].

3094 [~~(b) provide general figures on the percentage of insurance policies that include:~~]

3095 ~~[(i) no mental health coverage;]~~
3096 ~~[(ii) 50/50 mental health coverage;]~~
3097 ~~[(iii) catastrophic mental health coverage; and]~~
3098 ~~[(iv) coverage that exceeds the minimum requirements of this section.]~~
3099 ~~[(7) This section may not be construed as discouraging or otherwise preventing an~~
3100 ~~insurer from providing mental health coverage in connection with an individual insurance~~
3101 ~~policy.]~~

3102 Section 16. Section 31A-22-635 is amended to read:

3103 **31A-22-635. Uniform application -- Uniform waiver of coverage -- Information**
3104 **on Health Insurance Exchange.**

3105 (1) For purposes of this section, "insurer":

3106 (a) is defined in Subsection 31A-22-634(1); and

3107 (b) includes the state employee's risk pool under Section 49-20-202.

3108 (2) (a) Insurers offering a health benefit plan to an individual or small employer shall
3109 use a uniform application form.

3110 (b) The uniform application form:

3111 (i) ~~[except for cancer and transplants,]~~ may not include questions about an applicant's
3112 health history ~~[prior to the previous five years];~~ and

3113 (ii) shall be shortened and simplified in accordance with rules adopted by the
3114 commissioner.

3115 (c) Insurers offering a health benefit plan to a small employer shall use a uniform
3116 waiver of coverage form, which may not include health status related questions ~~[other than~~
3117 ~~pregnancy]~~, and is limited to:

3118 (i) information that identifies the employee;

3119 (ii) proof of the employee's insurance coverage; and

3120 (iii) a statement that the employee declines coverage with a particular employer group.

3121 (3) Notwithstanding the requirements of Subsection (2)(a), the uniform application and
3122 uniform waiver of coverage forms may, if the combination or modification is approved by the
3123 commissioner, be combined or modified to facilitate a more efficient and consumer friendly
3124 experience for:

3125 (a) enrollees using the Health Insurance Exchange; or

3126 (b) insurers using electronic applications.

3127 (4) The uniform application form, and uniform waiver form, shall be adopted and
3128 approved by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
3129 Rulemaking Act.

3130 (5) (a) An insurer who offers a health benefit plan [~~in either the group or individual~~
3131 ~~market~~] on the Health Insurance Exchange created in Section 63M-1-2504, shall:

3132 (i) accept and process an electronic submission of the uniform application or uniform
3133 waiver from the Health Insurance Exchange using the electronic standards adopted pursuant to
3134 Section 63M-1-2506;

3135 (ii) if requested, provide the applicant with a copy of the completed application either
3136 by mail or electronically;

3137 (iii) post all health benefit plans offered by the insurer in the defined contribution
3138 arrangement market on the Health Insurance Exchange; and

3139 (iv) post the information required by Subsection (6) on the Health Insurance Exchange
3140 for every health benefit plan the insurer offers on the Health Insurance Exchange.

3141 (b) Except as provided in Subsection (5)(c), an insurer who posts health benefit plans
3142 on the Health Insurance Exchange may not directly or indirectly offer products on the Health
3143 Insurance Exchange that are not health benefit plans.

3144 (c) Notwithstanding Subsection (5)(b):

3145 (i) an insurer may offer a health savings account on the Health Insurance Exchange;
3146 [and]

3147 (ii) an insurer may offer dental [~~and vision~~] plans on the Health Insurance Exchange
3148 [~~if~~]; and

3149 [~~(A) the department determines, after study and consultation with the Health System
3150 Reform Task Force, that the department is able to establish standards for dental and vision
3151 policies offered on the Health Insurance Exchange, and the department determines whether a
3152 risk adjuster mechanism is necessary for a defined contribution vision and dental plan market
3153 on the Health Insurance Exchange; and]~~

3154 [(B) (iii) the department [~~in accordance with recommendations from the Health
3155 System Reform Task Force, adopts~~] may make administrative rules to regulate the offer of
3156 dental [~~and vision~~] plans on the Health Insurance Exchange.

3157 (6) An insurer shall provide the commissioner and the Health Insurance Exchange with
3158 the following information for each health benefit plan submitted to the Health Insurance
3159 Exchange, in the electronic format required by Subsection 63M-1-2506(1):

3160 (a) plan design, benefits, and options offered by the health benefit plan including state
3161 mandates the plan does not cover;

3162 (b) information and Internet address to online provider networks;

3163 (c) wellness programs and incentives;

3164 (d) descriptions of prescription drug benefits, exclusions, or limitations;

3165 (e) the percentage of claims paid by the insurer within 30 days of the date a claim is
3166 submitted to the insurer for the prior year; and

3167 (f) the claims denial and insurer transparency information developed in accordance
3168 with Subsection 31A-22-613.5(4).

3169 (7) The department shall post on the Health Insurance Exchange the department's
3170 solvency rating for each insurer who posts a health benefit plan on the Health Insurance
3171 Exchange. The solvency rating for each insurer shall be based on methodology established by
3172 the department by administrative rule and shall be updated each calendar year.

3173 (8) (a) The commissioner may request information from an insurer under Section
3174 31A-22-613.5 to verify the data submitted to the department and to the Health Insurance
3175 Exchange.

3176 (b) The commissioner shall regulate [~~any~~] the fees charged by insurers to an enrollee
3177 for a uniform application form or electronic submission of the application forms.

3178 Section 17. Section 31A-22-721 is amended to read:

3179 **31A-22-721. A health benefit plan for a plan sponsor -- Discontinuance and**
3180 **nonrenewal.**

3181 (1) Except as otherwise provided in this section, a health benefit plan for a plan
3182 sponsor is renewable and continues in force:

3183 (a) with respect to all eligible employees and dependents; and

3184 (b) at the option of the plan sponsor.

3185 (2) A health benefit plan for a plan sponsor may be discontinued or nonrenewed:

3186 (a) for a network plan, if [~~it~~] there is no longer any enrollee under the group health
3187 plan who lives, resides, or works in:

3188 ~~[(A)]~~ (i) the service area of the insurer; or
3189 ~~[(B)]~~ (ii) the area for which the insurer is authorized to do business; ~~[and] or~~
3190 ~~[(ii) in the case of the small employer market, the insurer applies the same criteria the~~
3191 ~~insurer would apply in denying enrollment in the plan under Subsection 31A-30-108(7), or]~~
3192 (b) for coverage made available in the small or large employer market only through an
3193 association, if:
3194 (i) the employer's membership in the association ceases; and
3195 (ii) the coverage is terminated uniformly without regard to any health status-related
3196 factor relating to any covered individual.
3197 (3) A health benefit plan for a plan sponsor may be discontinued if:
3198 (a) a condition described in Subsection (2) exists;
3199 (b) the plan sponsor fails to pay premiums or contributions in accordance with the
3200 terms of the contract;
3201 (c) the plan sponsor:
3202 (i) performs an act or practice that constitutes fraud; or
3203 (ii) makes an intentional misrepresentation of material fact under the terms of the
3204 coverage;
3205 (d) the insurer:
3206 (i) elects to discontinue offering a particular health benefit product delivered or issued
3207 for delivery in this state;
3208 (ii) (A) provides notice of the discontinuation in writing:
3209 (I) to each plan sponsor, employee, and dependent of a plan sponsor or employee; and
3210 (II) at least 90 days before the date the coverage will be discontinued;
3211 (B) provides notice of the discontinuation in writing:
3212 (I) to the commissioner; and
3213 (II) at least three working days prior to the date the notice is sent to the affected plan
3214 sponsors, employees, and dependents of plan sponsors or employees;
3215 (C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase any
3216 other health benefit products currently being offered:
3217 (I) by the insurer in the market; or
3218 (II) in the case of a large employer, any other health benefit plan currently being

3219 offered in that market; and

3220 (D) in exercising the option to discontinue that product and in offering the option of
3221 coverage in this section, the insurer acts uniformly without regard to:

3222 (I) the claims experience of a plan sponsor;

3223 (II) any health status-related factor relating to any covered participant or beneficiary; or

3224 (III) any health status-related factor relating to a new participant or beneficiary who
3225 may become eligible for coverage; or

3226 (e) the insurer:

3227 (i) elects to discontinue all of the insurer's health benefit plans:

3228 (A) in the small employer market; or

3229 (B) the large employer market; or

3230 (C) both the small and large employer markets; and

3231 (ii) (A) provides notice of the discontinuance in writing:

3232 (I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

3233 (II) at least 180 days before the date the coverage will be discontinued;

3234 (B) provides notice of the discontinuation in writing:

3235 (I) to the commissioner in each state in which an affected insured individual is known
3236 to reside; and

3237 (II) at least 30 business days prior to the date the notice is sent to the affected plan
3238 sponsors, employees, and dependents of a plan sponsor or employee;

3239 (C) discontinues and nonrenews all plans issued or delivered for issuance in the
3240 market; and

3241 (D) provides a plan of orderly withdrawal as required by Section [31A-4-115](#).

3242 (4) A large employer health benefit plan may be discontinued or nonrenewed:

3243 (a) if a condition described in Subsection (2) exists; or

3244 (b) for noncompliance with the insurer's:

3245 (i) minimum participation requirements; or

3246 (ii) employer contribution requirements.

3247 (5) A small employer health benefit plan may be discontinued or nonrenewed:

3248 (a) if a condition described in Subsection (2) exists; or

3249 (b) for noncompliance with the insurer's employer contribution requirements.

- 3250 (6) A small employer health benefit plan may be nonrenewed:
- 3251 (a) if a condition described in Subsection (2) exists; or
- 3252 (b) for noncompliance with the insurer's minimum participation requirements.
- 3253 (7) (a) Except as provided in Subsection (7)(d), an eligible employee may be
- 3254 discontinued if after issuance of coverage the eligible employee:
- 3255 (i) engages in an act or practice that constitutes fraud in connection with the coverage;
- 3256 or
- 3257 (ii) makes an intentional misrepresentation of material fact in connection with the
- 3258 coverage.
- 3259 (b) An eligible employee that is discontinued under Subsection (7)(a) may reenroll:
- 3260 (i) 12 months after the date of discontinuance; and
- 3261 (ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies
- 3262 to reenroll.
- 3263 (c) At the time the eligible employee's coverage is discontinued under Subsection
- 3264 (7)(a), the insurer shall notify the eligible employee of the right to reenroll when coverage is
- 3265 discontinued.
- 3266 (d) An eligible employee may not be discontinued under this Subsection (7) because of
- 3267 a fraud or misrepresentation that relates to health status.
- 3268 (8) (a) Except as provided in Subsection (8)(b), an insurer that elects to discontinue
- 3269 offering a health benefit plan under Subsection (3)(e) shall be prohibited from writing new
- 3270 business in such market in this state for a period of five years beginning on the date of
- 3271 discontinuation of the last coverage that is discontinued.
- 3272 (b) The commissioner may waive the prohibition under Subsection (8)(a) when the
- 3273 commissioner finds that waiver is in the public interest:
- 3274 (i) to promote competition; or
- 3275 (ii) to resolve inequity in the marketplace.
- 3276 (9) If an insurer is doing business in one established geographic service area of the
- 3277 state, this section applies only to the insurer's operations in that geographic service area.
- 3278 (10) An insurer may modify a health benefit plan for a plan sponsor only:
- 3279 (a) at the time of coverage renewal; and
- 3280 (b) if the modification is effective uniformly among all plans with a particular product

3281 or service.

3282 (11) For purposes of this section, a reference to "plan sponsor" includes a reference to
3283 the employer:

3284 (a) with respect to coverage provided to an employer member of the association; and

3285 (b) if the health benefit plan is made available by an insurer in the employer market
3286 only through:

3287 (i) an association;

3288 (ii) a trust; or

3289 (iii) a discretionary group.

3290 (12) (a) A small employer that, after purchasing a health benefit plan in the small group
3291 market, employs on average more than 50 eligible employees on each business day in a
3292 calendar year may continue to renew the health benefit plan purchased in the small group
3293 market.

3294 (b) A large employer that, after purchasing a health benefit plan in the large group
3295 market, employs on average less than 51 eligible employees on each business day in a calendar
3296 year may continue to renew the health benefit plan purchased in the large group market.

3297 (13) An insurer offering employer sponsored health benefit plans shall comply with the
3298 Health Insurance Portability and Accountability Act, 42 U.S.C. Sec. 300gg and 300gg-1.

3299 Section 18. Section **31A-23a-102** is amended to read:

3300 **31A-23a-102. Definitions.**

3301 As used in this chapter:

3302 (1) "Bail bond producer" is as defined in Section [31A-35-102](#).

3303 (2) "Home state" means a state or territory of the United States or the District of
3304 Columbia in which an insurance producer:

3305 (a) maintains the insurance producer's principal:

3306 (i) place of residence; or

3307 (ii) place of business; and

3308 (b) is licensed to act as an insurance producer.

3309 (3) "Insurer" is as defined in Section [31A-1-301](#), except that the following persons or
3310 similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

3311 (a) a risk retention group as defined in:

- 3312 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
- 3313 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
- 3314 (iii) Chapter 15, Part 2, Risk Retention Groups Act;
- 3315 (b) a residual market pool;
- 3316 (c) a joint underwriting authority or association; and
- 3317 (d) a captive insurer.
- 3318 (4) "License" is defined in Section [31A-1-301](#).
- 3319 (5) (a) "Managing general agent" means a person that:
- 3320 (i) manages all or part of the insurance business of an insurer, including the
- 3321 management of a separate division, department, or underwriting office;
- 3322 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
- 3323 manager, or other similar term;
- 3324 (iii) produces and underwrites an amount of gross direct written premium equal to, or
- 3325 more than, 5% of[;] the policyholder surplus as reported in the last annual statement of the
- 3326 insurer in any one quarter or year:
- 3327 (A) with or without the authority;
- 3328 (B) separately or together with an affiliate; and
- 3329 (C) directly or indirectly; and
- 3330 (iv) (A) adjusts or pays claims in excess of an amount determined by the
- 3331 commissioner; or
- 3332 (B) negotiates reinsurance on behalf of the insurer.
- 3333 (b) Notwithstanding Subsection (5)(a), the following persons may not be considered as
- 3334 managing general agent for the purposes of this chapter:
- 3335 (i) an employee of the insurer;
- 3336 (ii) a United States manager of the United States branch of an alien insurer;
- 3337 (iii) an underwriting manager that, pursuant to contract:
- 3338 (A) manages all the insurance operations of the insurer;
- 3339 (B) is under common control with the insurer;
- 3340 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 3341 (D) is not compensated based on the volume of premiums written; and
- 3342 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal

3343 insurer or inter-insurance exchange under powers of attorney.

3344 (6) "Negotiate" means the act of conferring directly with or offering advice directly to a
3345 purchaser or prospective purchaser of a particular contract of insurance concerning a
3346 substantive benefit, term, or condition of the contract if the person engaged in that act:

3347 (a) sells insurance; or

3348 (b) obtains insurance from insurers for purchasers.

3349 (7) "Reinsurance intermediary" means:

3350 (a) a reinsurance intermediary-broker; or

3351 (b) a reinsurance intermediary-manager.

3352 (8) "Reinsurance intermediary-broker" means a person other than an officer or
3353 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
3354 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
3355 or power to bind reinsurance on behalf of the insurer.

3356 (9) (a) "Reinsurance intermediary-manager" means a person who:

3357 (i) has authority to bind or who manages all or part of the assumed reinsurance
3358 business of a reinsurer, including the management of a separate division, department, or
3359 underwriting office; and

3360 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
3361 intermediary-manager, manager, or other similar term.

3362 (b) Notwithstanding Subsection (9)(a), the following persons may not be considered
3363 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

3364 (i) an employee of the reinsurer;

3365 (ii) a United States manager of the United States branch of an alien reinsurer;

3366 (iii) an underwriting manager that, pursuant to contract:

3367 (A) manages all the reinsurance operations of the reinsurer;

3368 (B) is under common control with the reinsurer;

3369 (C) is subject to Chapter 16, Insurance Holding Companies; and

3370 (D) is not compensated based on the volume of premiums written; and

3371 (iv) the manager of a group, association, pool, or organization of insurers that:

3372 (A) engage in joint underwriting or joint reinsurance; and

3373 (B) are subject to examination by the insurance commissioner of the state in which the

3374 manager's principal business office is located.

3375 (10) "Resident" is as defined by rule made by the commissioner in accordance with
3376 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3377 [~~(10)~~] (11) "Search" means a license subline of authority in conjunction with the title
3378 insurance line of authority that allows a person to issue title insurance commitments or policies
3379 on behalf of a title insurer.

3380 [~~(11)~~] (12) "Sell" means to exchange a contract of insurance:

- 3381 (a) by any means;
- 3382 (b) for money or its equivalent; and
- 3383 (c) on behalf of an insurance company.

3384 [~~(12)~~] (13) "Solicit" means:

- 3385 (a) attempting to sell insurance;
- 3386 (b) asking or urging a person to apply for:
 - 3387 (i) a particular kind of insurance; and
 - 3388 (ii) insurance from a particular insurance company;
- 3389 (c) advertising insurance, including advertising for the purpose of obtaining leads for
3390 the sale of insurance; or
- 3391 (d) holding oneself out as being in the insurance business.

3392 [~~(13)~~] (14) "Terminate" means:

- 3393 (a) the cancellation of the relationship between:
 - 3394 (i) an individual licensee or agency licensee and a particular insurer; or
 - 3395 (ii) an individual licensee and a particular agency licensee; or
- 3396 (b) the termination of:
 - 3397 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf
3398 of a particular insurance company; or
 - 3399 (ii) an individual licensee's authority to transact insurance on behalf of a particular
3400 agency licensee.

3401 [~~(14)~~] (15) "Title marketing representative" means a person who:

- 3402 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:
 - 3403 (i) title insurance; or
 - 3404 (ii) escrow services; and

3405 (b) does not have a search or escrow license as provided in Section 31A-23a-106.

3406 [(+5)] (16) "Uniform application" means the version of the National Association of
3407 Insurance Commissioners' uniform application for resident and nonresident producer licensing
3408 at the time the application is filed.

3409 [(+6)] (17) "Uniform business entity application" means the version of the National
3410 Association of Insurance Commissioners' uniform business entity application for resident and
3411 nonresident business entities at the time the application is filed.

3412 Section 19. Section 31A-23a-104 is amended to read:

3413 **31A-23a-104. Application for individual license -- Application for agency license.**

3414 (1) This section applies to an initial or renewal license as a:

3415 (a) producer;

3416 (b) surplus lines producer;

3417 (c) limited line producer;

3418 (d) consultant;

3419 (e) managing general agent; or

3420 (f) reinsurance intermediary.

3421 (2) (a) Subject to Subsection (2)(b), to obtain or renew an individual license, an
3422 individual shall:

3423 (i) file an application for an initial or renewal individual license with the commissioner
3424 on forms and in a manner the commissioner prescribes; and

3425 (ii) pay a license fee that is not refunded if the application:

3426 (A) is denied; or

3427 (B) is incomplete when filed and is never completed by the applicant.

3428 (b) An application described in this Subsection (2) shall provide:

3429 (i) information about the applicant's identity;

3430 (ii) the applicant's Social Security number;

3431 (iii) the applicant's personal history, experience, education, and business record;

3432 (iv) whether the applicant is 18 years of age or older;

3433 (v) whether the applicant has committed an act that is a ground for denial, suspension,
3434 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111;

3435 (vi) if the application is for a resident individual producer license, certification that the

3436 applicant complies with Section 31A-23a-203.5; and

3437 (vii) any other information the commissioner reasonably requires.

3438 (3) The commissioner may require a document reasonably necessary to verify the
3439 information contained in an application filed under this section.

3440 (4) An applicant's Social Security number contained in an application filed under this
3441 section is a private record under Section 63G-2-302.

3442 (5) (a) Subject to Subsection (5)(b), to obtain or renew an agency license, a person
3443 shall:

3444 (i) file an application for an initial or renewal agency license with the commissioner on
3445 forms and in a manner the commissioner prescribes; and

3446 (ii) pay a license fee that is not refunded if the application:

3447 (A) is denied; or

3448 (B) is incomplete when filed and is never completed by the applicant.

3449 (b) An application described in Subsection (5)(a) shall provide:

3450 (i) information about the applicant's identity;

3451 (ii) the applicant's federal employer identification number;

3452 (iii) the designated responsible licensed [~~producer~~] individual;

3453 (iv) the identity of the owners, partners, officers, and directors;

3454 (v) whether the applicant has committed an act that is a ground for denial, suspension,
3455 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

3456 (vi) any other information the commissioner reasonably requires.

3457 Section 20. Section 31A-23a-105 is amended to read:

3458 **31A-23a-105. General requirements for individual and agency license issuance**
3459 **and renewal.**

3460 (1) (a) The commissioner shall issue or renew a license to a person described in
3461 Subsection (1)(b) to act as:

3462 (i) a producer;

3463 (ii) a surplus lines producer;

3464 (iii) a limited line producer;

3465 (iv) a consultant;

3466 (v) a managing general agent; or

- 3467 (vi) a reinsurance intermediary.
- 3468 (b) The commissioner shall issue or renew a license under Subsection (1)(a) to a
3469 person who, as to the license type and line of authority classification applied for under Section
3470 31A-23a-106:
- 3471 (i) satisfies the application requirements under Section 31A-23a-104;
- 3472 (ii) satisfies the character requirements under Section 31A-23a-107;
- 3473 (iii) satisfies [~~any~~] applicable continuing education requirements under Section
3474 31A-23a-202;
- 3475 (iv) satisfies [~~any~~] applicable examination requirements under Section 31A-23a-108;
- 3476 (v) satisfies [~~any~~] applicable training period requirements under Section 31A-23a-203;
- 3477 (vi) if an applicant for a resident individual producer license, certifies that, to the extent
3478 applicable, the applicant:
- 3479 (A) is in compliance with Section 31A-23a-203.5; and
- 3480 (B) will maintain compliance with Section 31A-23a-203.5 during the period for which
3481 the license is issued or renewed;
- 3482 (vii) has not committed an act that is a ground for denial, suspension, or revocation as
3483 provided in Section 31A-23a-111;
- 3484 (viii) if a nonresident:
- 3485 (A) complies with Section 31A-23a-109; and
- 3486 (B) holds an active similar license in that person's home state [~~of residence~~];
- 3487 (ix) if an applicant for an individual title insurance producer or agency title insurance
3488 producer license, satisfies the requirements of Section 31A-23a-204;
- 3489 (x) if an applicant for a license to act as a life settlement provider or life settlement
3490 producer, satisfies the requirements of Section 31A-23a-117; and
- 3491 (xi) pays the applicable fees under Section 31A-3-103.
- 3492 (2) (a) This Subsection (2) applies to the following persons:
- 3493 (i) an applicant for a pending:
- 3494 (A) individual or agency producer license;
- 3495 (B) surplus lines producer license;
- 3496 (C) limited line producer license;
- 3497 (D) consultant license;

- 3498 (E) managing general agent license; or
- 3499 (F) reinsurance intermediary license; or
- 3500 (ii) a licensed:
- 3501 (A) individual or agency producer;
- 3502 (B) surplus lines producer;
- 3503 (C) limited line producer;
- 3504 (D) consultant;
- 3505 (E) managing general agent; or
- 3506 (F) reinsurance intermediary.
- 3507 (b) A person described in Subsection (2)(a) shall report to the commissioner:
- 3508 (i) an administrative action taken against the person, including a denial of a new or
- 3509 renewal license application:
- 3510 (A) in another jurisdiction; or
- 3511 (B) by another regulatory agency in this state; and
- 3512 (ii) a criminal prosecution taken against the person in any jurisdiction.
- 3513 (c) The report required by Subsection (2)(b) shall:
- 3514 (i) be filed:
- 3515 (A) at the time the person files the application for an individual or agency license; and
- 3516 (B) for an action or prosecution that occurs on or after the day on which the person
- 3517 files the application:
- 3518 (I) for an administrative action, within 30 days of the final disposition of the
- 3519 administrative action; or
- 3520 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
- 3521 and
- 3522 (ii) include a copy of the complaint or other relevant legal documents related to the
- 3523 action or prosecution described in Subsection (2)(b).
- 3524 (3) (a) The department may require a person applying for a license or for consent to
- 3525 engage in the business of insurance to submit to a criminal background check as a condition of
- 3526 receiving a license or consent.
- 3527 (b) A person, if required to submit to a criminal background check under Subsection
- 3528 (3)(a), shall:

- 3529 (i) submit a fingerprint card in a form acceptable to the department; and
3530 (ii) consent to a fingerprint background check by:
3531 (A) the Utah Bureau of Criminal Identification; and
3532 (B) the Federal Bureau of Investigation.
3533 (c) For a person who submits a fingerprint card and consents to a fingerprint
3534 background check under Subsection (3)(b), the department may request:
3535 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
3536 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
3537 (ii) complete Federal Bureau of Investigation criminal background checks through the
3538 national criminal history system.
3539 (d) Information obtained by the department from the review of criminal history records
3540 received under this Subsection (3) shall be used by the department for the purposes of:
3541 (i) determining if a person satisfies the character requirements under Section
3542 31A-23a-107 for issuance or renewal of a license;
3543 (ii) determining if a person has failed to maintain the character requirements under
3544 Section 31A-23a-107; and
3545 (iii) preventing a person who violates the federal Violent Crime Control and Law
3546 Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from engaging in the business of insurance in
3547 the state.
3548 (e) If the department requests the criminal background information, the department
3549 shall:
3550 (i) pay to the Department of Public Safety the costs incurred by the Department of
3551 Public Safety in providing the department criminal background information under Subsection
3552 (3)(c)(i);
3553 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
3554 of Investigation in providing the department criminal background information under
3555 Subsection (3)(c)(ii); and
3556 (iii) charge the person applying for a license or for consent to engage in the business of
3557 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).
3558 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this
3559 section, a person licensed as one of the following in another state who moves to this state shall

3560 apply within 90 days of establishing legal residence in this state:

- 3561 (a) insurance producer;
- 3562 (b) surplus lines producer;
- 3563 (c) limited line producer;
- 3564 (d) consultant;
- 3565 (e) managing general agent; or
- 3566 (f) reinsurance intermediary.

3567 (5) (a) The commissioner may deny a license application for a license listed in
3568 Subsection (5)(b) if the person applying for the license, as to the license type and line of
3569 authority classification applied for under Section 31A-23a-106:

- 3570 (i) fails to satisfy the requirements as set forth in this section; or
- 3571 (ii) commits an act that is grounds for denial, suspension, or revocation as set forth in
3572 Section 31A-23a-111.

3573 (b) This Subsection (5) applies to the following licenses:

- 3574 (i) producer;
- 3575 (ii) surplus lines producer;
- 3576 (iii) limited line producer;
- 3577 (iv) consultant;
- 3578 (v) managing general agent; or
- 3579 (vi) reinsurance intermediary.

3580 (6) Notwithstanding the other provisions of this section, the commissioner may:

- 3581 (a) issue a license to an applicant for a license for a title insurance line of authority only
3582 with the concurrence of the Title and Escrow Commission; and
- 3583 (b) renew a license for a title insurance line of authority only with the concurrence of
3584 the Title and Escrow Commission.

3585 Section 21. Section 31A-23a-108 is amended to read:

3586 **31A-23a-108. Examination requirements.**

3587 (1) (a) The commissioner may require [~~applicants~~] an applicant for [~~any~~] a particular
3588 license type under Section 31A-23a-106 to pass a line of authority examination as a
3589 requirement for a license, except that an examination may not be required of [~~applicants~~] an
3590 applicant for:

- 3591 (i) [~~licenses~~] a license under Subsection 31A-23a-106(2)(c); or
- 3592 (ii) [~~other~~] another limited line license [~~lines~~] line of authority recognized by the
- 3593 commissioner or the Title and Escrow Commission by rule as provided in Subsection
- 3594 31A-23a-106(3).
- 3595 (b) The examination described in Subsection (1)(a):
- 3596 (i) shall reasonably relate to the line of authority for which it is prescribed; and
- 3597 (ii) may be administered by the commissioner or as otherwise specified by rule.
- 3598 (2) The commissioner shall waive the requirement of an examination for a nonresident
- 3599 applicant who:
- 3600 (a) applies for an insurance producer license in this state within 90 days of establishing
- 3601 legal residence in this state;
- 3602 (b) has been licensed for the same line of authority in another state; and
- 3603 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant
- 3604 applies for an insurance producer license in this state; or
- 3605 (ii) if the application is received within 90 days of the cancellation of the applicant's
- 3606 previous license:
- 3607 (A) the prior state certifies that at the time of cancellation, the applicant was in good
- 3608 standing in that state; or
- 3609 (B) the state's producer database records maintained by the National Association of
- 3610 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or
- 3611 subsidiaries, indicates that the producer is or was licensed in good standing for the line of
- 3612 authority requested.
- 3613 [~~(3) A nonresident producer licensee who moves to this state and applies for a resident~~
- 3614 ~~license within 90 days of establishing legal residence in this state shall be exempt from any line~~
- 3615 ~~of authority examination that the producer was authorized on the producer's nonresident~~
- 3616 ~~producer license, except where the commissioner determines otherwise by rule.]~~
- 3617 [(4)] (3) This section's requirement may only be applied to [~~applicants who are natural~~
- 3618 ~~persons~~] an applicant who is a natural person.
- 3619 Section 22. Section 31A-23a-112 is amended to read:
- 3620 **31A-23a-112. Probation -- Grounds for revocation.**
- 3621 (1) The commissioner may place a licensee on probation for a period not to exceed 24

3622 months as follows:

3623 (a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative
3624 Procedures Act, for ~~[any]~~ circumstances that would justify a suspension under Section
3625 [31A-23a-111](#); or

3626 (b) at the issuance or renewal of a ~~[new]~~ license:

3627 (i) with an admitted violation under 18 U.S.C. ~~[Sections]~~ Sec. 1033 ~~[and 1034]~~; or

3628 (ii) with a response to background information questions on a new or renewal license
3629 application ~~[indicating that]~~ or information received from a background check conducted in
3630 connection with a new or renewal license application that indicates:

3631 (A) the person has been convicted of a crime, that is listed by rule made in accordance
3632 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for
3633 probation;

3634 (B) the person is currently charged with a crime, that is listed by rule made in
3635 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is
3636 grounds for probation regardless of whether adjudication is withheld;

3637 (C) the person has been involved in an administrative proceeding regarding ~~[any]~~ a
3638 professional or occupational license; or

3639 (D) ~~[any]~~ a business in which the person is or was an owner, partner, officer, or
3640 director has been involved in an administrative proceeding regarding ~~[any]~~ a professional or
3641 occupational license.

3642 (2) The commissioner may place a licensee on probation for a specified period no
3643 longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. ~~[Sections]~~
3644 Sec. 1033 ~~[and 1034]~~.

3645 (3) The probation order shall state the conditions for retention of the license, which
3646 shall be reasonable.

3647 (4) ~~[Any]~~ A violation of the probation is grounds for revocation pursuant to ~~[any]~~ a
3648 proceeding authorized under Title 63G, Chapter 4, Administrative Procedures Act.

3649 Section 23. Section **31A-23a-113** is amended to read:

3650 **31A-23a-113. License lapse and voluntary surrender.**

3651 (1) (a) A license issued under this chapter shall lapse if the licensee fails to:

3652 (i) pay when due a fee under Section [31A-3-103](#);

3653 (ii) complete continuing education requirements under Section 31A-23a-202 before
3654 submitting the license renewal application;

3655 (iii) submit a completed renewal application as required by Section 31A-23a-104;

3656 (iv) submit additional documentation required to complete the licensing process as
3657 related to a specific license type or line of authority; or

3658 (v) maintain an active license in a ~~[resident]~~ licensee's home state if the licensee is a
3659 nonresident licensee.

3660 (b) (i) A licensee whose license lapses due to the following may request an action
3661 described in Subsection (1)(b)(ii):

3662 (A) military service;

3663 (B) voluntary service for a period of time designated by the person for whom the
3664 licensee provides voluntary service; or

3665 (C) some other extenuating circumstances, such as long-term medical disability.

3666 (ii) A licensee described in Subsection (1)(b)(i) may request:

3667 (A) reinstatement of the license no later than one year after the day on which the
3668 license lapses; and

3669 (B) waiver of any of the following imposed for failure to comply with renewal
3670 procedures:

3671 (I) an examination requirement;

3672 (II) reinstatement fees set under Section 31A-3-103;

3673 (III) continuing education requirements; or

3674 (IV) other sanction imposed for failure to comply with renewal procedures.

3675 (2) If a license issued under this chapter is voluntarily surrendered, the license or line
3676 of authority may be reinstated:

3677 (a) during the license period in which the license is voluntarily surrendered; and

3678 (b) no later than one year after the day on which the license is voluntarily surrendered.

3679 ~~[(3) A voluntarily surrendered license that is reinstated during the license period set
3680 forth in Subsection (2) may not be reinstated until the person who voluntarily surrendered the
3681 license complies with any applicable continuing education requirements for the period during
3682 which the license was voluntarily surrendered.]~~

3683 Section 24. Section 31A-23a-202 is amended to read:

3684 **31A-23a-202. Continuing education requirements.**

3685 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing
3686 education requirements for a producer and a consultant.

3687 (2) (a) The commissioner may not state a continuing education requirement in terms of
3688 formal education.

3689 (b) The commissioner may state a continuing education requirement in terms of hours
3690 of insurance-related instruction received.

3691 (c) Insurance-related formal education may be a substitute, in whole or in part, for the
3692 hours required under Subsection (2)(b).

3693 (3) (a) The commissioner shall impose continuing education requirements in
3694 accordance with a two-year licensing period in which the licensee meets the requirements of
3695 this Subsection (3).

3696 (b) (i) Except as provided in this section, the continuing education requirements shall
3697 require:

3698 (A) that a licensee complete 24 credit hours of continuing education for every two-year
3699 licensing period;

3700 (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses;
3701 and

3702 (C) that the licensee complete at least half of the required hours through classroom
3703 hours of insurance-related instruction.

3704 (ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be
3705 obtained through:

3706 (A) classroom attendance;

3707 (B) home study;

3708 (C) watching a video recording;

3709 (D) experience credit; or

3710 (E) another method provided by rule.

3711 (iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), an individual title insurance
3712 producer is required to complete 12 credit hours of continuing education for every two-year
3713 licensing period, with 3 of the credit hours being ethics courses unless the individual title
3714 insurance producer is licensed in this state as an individual title insurance producer for 20 or

3715 more consecutive years.

3716 (B) If an individual title insurance producer is licensed in this state as an individual
3717 title insurance producer for 20 or more consecutive years, the individual title insurance
3718 producer is required to complete 6 credit hours of continuing education for every two-year
3719 licensing period, with 3 of the credit hours being ethics courses.

3720 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance
3721 producer is considered to have met the continuing education requirements imposed under
3722 Subsection (3)(b)(iii)(A) or (B) if the individual title insurance producer:

3723 (I) is an active member in good standing with the Utah State Bar;

3724 (II) is in compliance with the continuing education requirements of the Utah State Bar;

3725 and

3726 (III) if requested by the department, provides the department evidence that the
3727 individual title insurance producer complied with the continuing education requirements of the
3728 Utah State Bar.

3729 (c) A licensee may obtain continuing education hours at any time during the two-year
3730 licensing period.

3731 (d) (i) A licensee is exempt from continuing education requirements under this section
3732 if:

3733 (A) the licensee was first licensed before [~~April 1, 1978~~] December 31, 1982;

3734 (B) the license does not have a continuous lapse for a period of more than one year,
3735 except for a license for which the licensee has had an exemption approved before May 11,
3736 2011;

3737 (C) the licensee requests an exemption from the department; and

3738 (D) the department approves the exemption.

3739 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is
3740 not required to apply again for the exemption.

3741 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3742 commissioner shall, by rule:

3743 (i) publish a list of insurance professional designations whose continuing education
3744 requirements can be used to meet the requirements for continuing education under Subsection
3745 (3)(b);

3746 (ii) authorize a continuing education provider or a state or national professional
3747 producer or consultant association to:

3748 (A) offer a qualified program for a license type or line of authority on a geographically
3749 accessible basis; and

3750 (B) collect a reasonable fee for funding and administration of a continuing education
3751 program, subject to the review and approval of the commissioner; and

3752 (iii) provide that membership by a producer or consultant in a state or national
3753 professional producer or consultant association is considered a substitute for the equivalent of
3754 two hours for each year during which the producer or consultant is a member of the
3755 professional association, except that the commissioner may not give more than two hours of
3756 continuing education credit in a year regardless of the number of professional associations of
3757 which the producer or consultant is a member.

3758 (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a
3759 professional producer or consultant association program may be less for an association
3760 member, on the basis of the member's affiliation expense, but shall preserve the right of a
3761 nonmember to attend without affiliation.

3762 (4) The commissioner shall approve a continuing education provider or continuing
3763 education course that satisfies the requirements of this section.

3764 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3765 commissioner shall by rule set the processes and procedures for continuing education provider
3766 registration and course approval.

3767 (6) The requirements of this section apply only to a producer or consultant who is an
3768 individual.

3769 (7) A nonresident producer or consultant is considered to have satisfied this state's
3770 continuing education requirements if the nonresident producer or consultant satisfies the
3771 nonresident producer's or consultant's home state's continuing education requirements for a
3772 licensed insurance producer or consultant.

3773 (8) A producer or consultant subject to this section shall keep documentation of
3774 completing the continuing education requirements of this section for two years after the end of
3775 the two-year licensing period to which the continuing education applies.

3776 Section 25. Section **31A-23a-203** is amended to read:

3777 **31A-23a-203. Training period requirements.**

3778 (1) A producer is eligible to become a surplus lines producer only if the producer:

3779 (a) has passed the applicable surplus lines producer examination;

3780 (b) has been a producer with property ~~and~~ or casualty or both lines of authority for at
3781 least three years during the four years immediately preceding the date of application; and

3782 (c) has paid the applicable fee under Section [31A-3-103](#).

3783 (2) A person is eligible to become a consultant only if the person has acted in a
3784 capacity that would provide the person with preparation to act as an insurance consultant for a
3785 period aggregating not less than three years during the four years immediately preceding the
3786 date of application.

3787 (3) (a) A resident producer with an accident and health line of authority may only sell
3788 long-term care insurance if the producer:

3789 (i) initially completes a minimum of three hours of long-term care training before
3790 selling long-term care coverage; and

3791 (ii) after completing the training required by Subsection (3)(a)(i), completes a
3792 minimum of three hours of long-term care training during each subsequent two-year licensing
3793 period.

3794 (b) A course taken to satisfy a long-term care training requirement may be used toward
3795 satisfying a producer continuing education requirement.

3796 (c) Long-term care training is not a continuing education requirement to renew a
3797 producer license.

3798 (d) An insurer that issues long-term care insurance shall demonstrate to the
3799 commissioner, upon request, that a producer who is appointed by the insurer and who sells
3800 long-term care insurance coverage is in compliance with this Subsection (3).

3801 (4) The training periods required under this section apply only to an individual
3802 applying for a license under this chapter.

3803 Section 26. Section **31A-23a-402.5** is amended to read:

3804 **31A-23a-402.5. Inducements.**

3805 (1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee
3806 under this title, or an officer or employee of a licensee, may not induce a person to enter into,
3807 continue, or terminate an insurance contract by offering a benefit that is not:

- 3808 (i) specified in the insurance contract; or
- 3809 (ii) directly related to the insurance contract.
- 3810 (b) An insurer may not make or knowingly allow an agreement of insurance that is not
- 3811 clearly expressed in the insurance contract to be issued or renewed.
- 3812 (c) A licensee under this title may not absorb the tax under Section [31A-3-301](#).
- 3813 (2) This section does not apply to a title insurer, an individual title insurance producer,
- 3814 or agency title insurance producer, or an officer or employee of a title insurer, an individual
- 3815 title insurance producer, or an agency title insurance producer.
- 3816 (3) Items not prohibited by Subsection (1) include an insurer:
- 3817 (a) reducing premiums because of expense savings;
- 3818 (b) providing to a policyholder or insured one or more incentives, as defined by the
- 3819 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 3820 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim
- 3821 expenses, including:
 - 3822 (i) a premium discount offered to a small or large employer group based on a wellness
 - 3823 program if:
 - 3824 (A) the premium discount for the employer group does not exceed 20% of the group
 - 3825 premium; and
 - 3826 (B) the premium discount based on the wellness program is offered uniformly by the
 - 3827 insurer to all employer groups in the large or small group market;
 - 3828 (ii) a premium discount offered to employees of a small or large employer group in an
 - 3829 amount that does not exceed federal limits on wellness program incentives; or
 - 3830 (iii) a combination of premium discounts offered to the employer group and the
 - 3831 employees of an employer group, based on a wellness program, if:
 - 3832 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);
 - 3833 and
 - 3834 (B) the premium discounts for the employees of an employer group comply with
 - 3835 Subsection (3)(b)(ii); or
 - 3836 (c) receiving premiums under an installment payment plan.
- 3837 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other
- 3838 licensee, or an officer or employee of a licensee, either directly or through a third party:

- 3839 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
3840 conditioned on a quote or the purchase of a particular insurance product;
- 3841 (b) extending credit on a premium to the insured:
- 3842 (i) without interest, for no more than 90 days from the effective date of the insurance
3843 contract;
- 3844 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
3845 balance after the time period described in Subsection (4)(b)(i); and
- 3846 (iii) except that an installment or payroll deduction payment of premiums on an
3847 insurance contract issued under an insurer's mass marketing program is not considered an
3848 extension of credit for purposes of this Subsection (4)(b);
- 3849 (c) preparing or conducting a survey that:
- 3850 (i) is directly related to an accident and health insurance policy purchased from the
3851 licensee; or
- 3852 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,
3853 employers, or employees directly related to an insurance product sold by the licensee;
- 3854 (d) providing limited human resource services that are directly related to an insurance
3855 product sold by the licensee, including:
- 3856 (i) answering questions directly related to:
- 3857 (A) an employee benefit offering or administration, if the insurance product purchased
3858 from the licensee is accident and health insurance or health insurance; and
- 3859 (B) employment practices liability, if the insurance product offered by or purchased
3860 from the licensee is property or casualty insurance; and
- 3861 (ii) providing limited human resource compliance training and education directly
3862 pertaining to an insurance product purchased from the licensee;
- 3863 (e) providing the following types of information or guidance:
- 3864 (i) providing guidance directly related to compliance with federal and state laws for an
3865 insurance product purchased from the licensee;
- 3866 (ii) providing a workshop or seminar addressing an insurance issue that is directly
3867 related to an insurance product purchased from the licensee; or
- 3868 (iii) providing information regarding:
- 3869 (A) employee benefit issues;

- 3870 (B) directly related insurance regulatory and legislative updates; or
- 3871 (C) similar education about an insurance product sold by the licensee and how the
- 3872 insurance product interacts with tax law;
- 3873 (f) preparing or providing a form that is directly related to an insurance product
- 3874 purchased from, or offered by, the licensee;
- 3875 (g) preparing or providing documents directly related to a premium only cafeteria plan
- 3876 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but
- 3877 not providing ongoing administration of a flexible spending account;
- 3878 (h) providing enrollment and billing assistance, including:
- 3879 (i) providing benefit statements or new hire insurance benefits packages; and
- 3880 (ii) providing technology services such as an electronic enrollment platform or
- 3881 application system;
- 3882 (i) communicating coverages in writing and in consultation with the insured and
- 3883 employees;
- 3884 (j) providing employee communication materials and notifications directly related to an
- 3885 insurance product purchased from a licensee;
- 3886 (k) providing claims management and resolution to the extent permitted under the
- 3887 licensee's license;
- 3888 (l) providing underwriting or actuarial analysis or services;
- 3889 (m) negotiating with an insurer regarding the placement and pricing of an insurance
- 3890 product;
- 3891 (n) recommending placement and coverage options;
- 3892 (o) providing a health fair or providing assistance or advice on establishing or
- 3893 operating a wellness program, but not providing any payment for or direct operation of the
- 3894 wellness program;
- 3895 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other
- 3896 services directly related to an insurance product purchased from the licensee;
- 3897 (q) assisting with a summary plan description, including providing a summary plan
- 3898 description wraparound;
- 3899 (r) providing information necessary for the preparation of documents directly related to
- 3900 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as

3901 amended;

3902 (s) providing information or services directly related to the Health Insurance Portability
3903 and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services
3904 directly related to health care access, portability, and renewability when offered in connection
3905 with accident and health insurance sold by a licensee;

3906 (t) sending proof of coverage to a third party with a legitimate interest in coverage;

3907 (u) providing information in a form approved by the commissioner and directly related
3908 to determining whether an insurance product sold by the licensee meets the requirements of a
3909 third party contract that requires or references insurance coverage;

3910 (v) facilitating risk management services directly related to property and casualty
3911 insurance products sold or offered for sale by the licensee, including:

3912 (i) risk management;

3913 (ii) claims and loss control services;

3914 (iii) risk assessment consulting, including analysis of:

3915 (A) employer's job descriptions; or

3916 (B) employer's safety procedures or manuals; and

3917 (iv) providing information and training on best practices;

3918 (w) otherwise providing services that are legitimately part of servicing an insurance
3919 product purchased from a licensee; and

3920 (x) providing other directly related services approved by the department.

3921 (5) An inducement prohibited under Subsection (1) includes a producer, consultant, or
3922 other licensee, or an officer or employee of a licensee:

3923 (a) (i) providing a [~~premium or commission~~] rebate;

3924 (ii) paying the salary of an employee of a person who purchases an insurance product
3925 from the licensee; or

3926 (iii) if the licensee is an insurer, or a third party administrator who contracts with an
3927 insurer, paying the salary for an onsite staff member to perform an act prohibited under
3928 Subsection (5)(b)(xii); or

3929 (b) engaging in one or more of the following unless a fee is paid in accordance with
3930 Subsection (8):

3931 (i) performing background checks of prospective employees;

- 3932 (ii) providing legal services by a person licensed to practice law;
- 3933 (iii) performing drug testing that is directly related to an insurance product purchased
- 3934 from the licensee;
- 3935 (iv) preparing employer or employee handbooks, except that a licensee may:
- 3936 (A) provide information for a medical benefit section of an employee handbook;
- 3937 (B) provide information for the section of an employee handbook directly related to an
- 3938 employment practices liability insurance product purchased from the licensee; or
- 3939 (C) prepare or print an employee benefit enrollment guide;
- 3940 (v) providing job descriptions, postings, and applications for a person;
- 3941 (vi) providing payroll services;
- 3942 (vii) providing performance reviews or performance review training;
- 3943 (viii) providing union advice;
- 3944 (ix) providing accounting services;
- 3945 (x) providing data analysis information technology programs, except as provided in
- 3946 Subsection (4)(h)(ii);
- 3947 (xi) providing administration of health reimbursement accounts or health savings
- 3948 accounts; or
- 3949 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
- 3950 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
- 3951 the following prohibited benefits:
- 3952 (A) performing background checks of prospective employees;
- 3953 (B) providing legal services by a person licensed to practice law;
- 3954 (C) performing drug testing that is directly related to an insurance product purchased
- 3955 from the insurer;
- 3956 (D) preparing employer or employee handbooks;
- 3957 (E) providing job descriptions postings, and applications;
- 3958 (F) providing payroll services;
- 3959 (G) providing performance reviews or performance review training;
- 3960 (H) providing union advice;
- 3961 (I) providing accounting services;
- 3962 (J) providing discrimination testing; or

3963 (K) providing data analysis information technology programs.

3964 (6) A producer, consultant, or other licensee or an officer or employee of a licensee
3965 shall itemize and bill separately from any other insurance product or service offered or
3966 provided under Subsection (5)(b).

3967 (7) (a) A de minimis gift or meal not to exceed \$25 for each individual receiving the
3968 gift or meal is presumed to be a social courtesy not conditioned on a quote or purchase of a
3969 particular insurance product for purposes of Subsection (4)(a).

3970 (b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10
3971 may be conditioned on receipt of a quote of a particular insurance product [~~if the de minimis~~
3972 ~~gift or meal is provided by the insurer and not by a producer or consultant~~].

3973 (8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee is
3974 paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with
3975 Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal
3976 or exceed the fair market value of the item.

3977 Section 27. Section 31A-23a-501 is amended to read:

3978 **31A-23a-501. Licensee compensation.**

3979 (1) As used in this section:

3980 (a) "Commission compensation" includes funds paid to or credited for the benefit of a
3981 licensee from:

3982 (i) commission amounts deducted from insurance premiums on insurance sold by or
3983 placed through the licensee; ~~or~~

3984 (ii) commission amounts received from an insurer or another licensee as a result of the
3985 sale or placement of insurance~~[-]; or~~

3986 (iii) overrides, bonuses, contingent bonuses, or contingent commissions received from
3987 an insurer or another licensee as a result of the sale or placement of insurance.

3988 (b) (i) "Compensation from an insurer or third party administrator" means
3989 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,
3990 gifts, prizes, or any other form of valuable consideration:

3991 (A) whether or not payable pursuant to a written agreement; and

3992 (B) received from:

3993 (I) an insurer; or

- 3994 (II) a third party to the transaction for the sale or placement of insurance.
- 3995 (ii) "Compensation from an insurer or third party administrator" does not mean
- 3996 compensation from a customer that is:
- 3997 (A) a fee or pass-through costs as provided in Subsection (1)(e); or
- 3998 (B) a fee or amount collected by or paid to the producer that does not exceed an
- 3999 amount established by the commissioner by administrative rule.
- 4000 (c) (i) "Customer" means:
- 4001 (A) the person signing the application or submission for insurance; or
- 4002 (B) the authorized representative of the insured actually negotiating the placement of
- 4003 insurance with the producer.
- 4004 (ii) "Customer" does not mean a person who is a participant or beneficiary of:
- 4005 (A) an employee benefit plan; or
- 4006 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or
- 4007 negotiated by the producer or affiliate.
- 4008 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the
- 4009 benefit of a licensee other than commission compensation.
- 4010 (ii) "Noncommission compensation" does not include charges for pass-through costs
- 4011 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.
- 4012 (e) "Pass-through costs" include:
- 4013 (i) costs for copying documents to be submitted to the insurer; and
- 4014 (ii) bank costs for processing cash or credit card payments.
- 4015 (2) A licensee may receive from an insured or from a person purchasing an insurance
- 4016 policy, noncommission compensation if the noncommission compensation is stated on a
- 4017 separate, written disclosure.
- 4018 (a) The disclosure required by this Subsection (2) shall:
- 4019 (i) include the signature of the insured or prospective insured acknowledging the
- 4020 noncommission compensation;
- 4021 (ii) clearly specify the amount or extent of the noncommission compensation; and
- 4022 (iii) be provided to the insured or prospective insured before the performance of the
- 4023 service.
- 4024 (b) Noncommission compensation shall be:

- 4025 (i) limited to actual or reasonable expenses incurred for services; and
4026 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of
4027 business or for a specific service or services.
- 4028 (c) A copy of the signed disclosure required by this Subsection (2) shall be maintained
4029 by any licensee who collects or receives the noncommission compensation or any portion of
4030 the noncommission compensation.
- 4031 (d) All accounting records relating to noncommission compensation shall be
4032 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.
- 4033 (3) (a) A licensee may receive noncommission compensation when acting as a
4034 producer for the insured in connection with the actual sale or placement of insurance if:
- 4035 (i) the producer and the insured have agreed on the producer's noncommission
4036 compensation; and
- 4037 (ii) the producer has disclosed to the insured the existence and source of any other
4038 compensation that accrues to the producer as a result of the transaction.
- 4039 (b) The disclosure required by this Subsection (3) shall:
- 4040 (i) include the signature of the insured or prospective insured acknowledging the
4041 noncommission compensation;
- 4042 (ii) clearly specify the amount or extent of the noncommission compensation and the
4043 existence and source of any other compensation; and
- 4044 (iii) be provided to the insured or prospective insured before the performance of the
4045 service.
- 4046 (c) The following additional noncommission compensation is authorized:
- 4047 (i) compensation received by a producer of a compensated corporate surety who under
4048 procedures approved by a rule or order of the commissioner is paid by surety bond principal
4049 debtors for extra services;
- 4050 (ii) compensation received by an insurance producer who is also licensed as a public
4051 adjuster under Section [31A-26-203](#), for services performed for an insured in connection with a
4052 claim adjustment, so long as the producer does not receive or is not promised compensation for
4053 aiding in the claim adjustment prior to the occurrence of the claim;
- 4054 (iii) compensation received by a consultant as a consulting fee, provided the consultant
4055 complies with the requirements of Section [31A-23a-401](#); or

4056 (iv) other compensation arrangements approved by the commissioner after a finding
4057 that they do not violate Section 31A-23a-401 and are not harmful to the public.

4058 (d) Subject to Section 31A-23a-402.5, a producer for the insured may receive
4059 compensation from an insured through an insurer, for the negotiation and sale of a health
4060 benefit plan, if there is a separate written agreement between the insured and the licensee for
4061 the compensation. An insurer who passes through the compensation from the insured to the
4062 licensee under this Subsection (3)(d) is not providing direct or indirect compensation or
4063 commission compensation to the licensee.

4064 (4) (a) For purposes of this Subsection (4), "producer" includes:

4065 (i) a producer;

4066 (ii) an affiliate of a producer; or

4067 (iii) a consultant.

4068 (b) A producer may not accept or receive any compensation from an insurer or third
4069 party administrator for the initial placement of a health benefit plan, other than a hospital
4070 confinement indemnity policy, unless prior to the customer's initial purchase of the health
4071 benefit plan the producer discloses in writing to the customer that the producer will receive
4072 compensation from the insurer or third party administrator for the placement of insurance,
4073 including the amount or type of compensation known to the producer at the time of the
4074 disclosure.

4075 (c) A producer shall:

4076 (i) obtain the customer's signed acknowledgment that the disclosure under Subsection
4077 (4)(b) was made to the customer; or

4078 (ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to
4079 the customer; and

4080 (B) keep the signed statement on file in the producer's office while the health benefit
4081 plan placed with the customer is in force.

4082 (d) (i) A licensee who collects or receives any part of the compensation from an insurer
4083 or third party administrator in a manner that facilitates an audit shall, while the health benefit
4084 plan placed with the customer is in force, maintain a copy of:

4085 (A) the signed acknowledgment described in Subsection (4)(c)(i); or

4086 (B) the signed statement described in Subsection (4)(c)(ii).

4087 (ii) The standard application developed in accordance with Section 31A-22-635 shall
4088 include a place for a producer to provide the disclosure required by this Subsection (4), and if
4089 completed, shall satisfy the requirement of Subsection (4)(d)(i).

4090 (e) Subsection (4)(c) does not apply to:

4091 (i) a person licensed as a producer who acts only as an intermediary between an insurer
4092 and the customer's producer, including a managing general agent; or

4093 (ii) the placement of insurance in a secondary or residual market.

4094 (5) This section does not alter the right of any licensee to recover from an insured the
4095 amount of any premium due for insurance effected by or through that licensee or to charge a
4096 reasonable rate of interest upon past-due accounts.

4097 (6) This section does not apply to bail bond producers or bail enforcement agents as
4098 defined in Section 31A-35-102.

4099 (7) A licensee may not receive noncommission compensation from an insured or
4100 enrollee for providing a service or engaging in an act that is required to be provided or
4101 performed in order to receive commission compensation, except for the surplus lines
4102 transactions that do not receive commissions.

4103 Section 28. Section 31A-23b-102 is amended to read:

4104 **31A-23b-102. Definitions.**

4105 As used in this chapter:

4106 (1) "Compensation" is as defined in:

4107 (a) Subsections 31A-23a-501(1)(a), (b), and (d); and

4108 (b) PPACA.

4109 (2) "Enroll" and "enrollment" mean to:

4110 (a) (i) obtain personally identifiable information about an individual; and

4111 (ii) inform an individual about accident and health insurance plans or public programs
4112 offered on an exchange;

4113 (b) solicit insurance; or

4114 (c) submit to the exchange:

4115 (i) personally identifiable information about an individual; and

4116 (ii) an individual's selection of a particular accident and health insurance plan or public
4117 program offered on the exchange.

4118 (3) (a) "Exchange" means an online marketplace~~[(i) for an individual to purchase a~~
4119 ~~qualified health plan; and (ii)]~~ that is certified by the United States Department of Health and
4120 Human Services as either a state-based small employer exchange or a federally facilitated
4121 individual exchange under PPACA.

4122 (b) ~~[(i)]~~ "Exchange" does not include~~[(A)]~~ an online marketplace for the purchase of
4123 health insurance if the online marketplace is not a certified exchange ~~[under PPACA; or]~~ in
4124 accordance with Subsection (3)(a).

4125 ~~[(B) except as provided in Subsection (3)(b)(ii), an online marketplace for small~~
4126 ~~employers that is certified as a PPACA compliant SHOP exchange.]~~

4127 ~~[(ii) For purposes of this chapter, exchange does include a small employer SHOP~~
4128 ~~exchange described under Subsection (3)(b)(i)(B) if:]~~

4129 ~~[(A) federal regulations under PPACA require a small employer exchange to allow~~
4130 ~~navigators to assist small employers and their employees with selection of qualified health~~
4131 ~~plans on a small employer exchange; and]~~

4132 ~~[(B) the state has not entered into an agreement with the United States Department of~~
4133 ~~Health and Human Services that permits the state to limit the scope of practice of navigators to~~
4134 ~~only the individual PPACA exchange.]~~

4135 (4) "Navigator":

4136 (a) means a person who facilitates enrollment in an exchange by offering to assist, or
4137 who advertises any services to assist, with:

4138 (i) the selection of and enrollment in a qualified health plan or a public program
4139 offered on an exchange; or

4140 (ii) applying for premium subsidies through an exchange; and

4141 (b) includes a person who is an in-person assister or ~~[an]~~ a certified application
4142 ~~[assister]~~ counselor as described in~~[(i)]~~ federal regulations or guidance issued under PPACA~~;~~
4143 ~~and].~~

4144 ~~[(ii) the state exchange blueprint published by the Center for Consumer Information~~
4145 ~~and Insurance Oversight within the Centers for Medicare and Medicaid Services in the United~~
4146 ~~States Department of Health and Human Services.]~~

4147 (5) "Personally identifiable information" is as defined in 45 C.F.R. Sec. 155.260.

4148 (6) "Public programs" means the state Medicaid program in Title 26, Chapter 18,

4149 Medical Assistance Act, and Chapter 40, Utah Children's Health Insurance Act.

4150 (7) "Resident" is as defined by rule made by the commissioner in accordance with Title
4151 63G, Chapter 3, Utah Administrative Rulemaking Act.

4152 [~~7~~] (8) "Solicit" is as defined in Section 31A-23a-102.

4153 Section 29. Section **31A-23b-202** is amended to read:

4154 **31A-23b-202. Qualifications for a license.**

4155 (1) (a) The commissioner shall issue or renew a license to a person to act as a navigator
4156 if the person:

4157 (i) satisfies the:

4158 (A) application requirements under Section 31A-23b-203;

4159 (B) character requirements under Section 31A-23b-204;

4160 (C) examination and training requirements under Section 31A-23b-205; and

4161 (D) continuing education requirements under Section 31A-23b-206;

4162 (ii) certifies that, to the extent applicable, the applicant:

4163 (A) is in compliance with the surety bond requirements of Section 31A-23b-207; and

4164 (B) will maintain compliance with Section 31A-23b-207 during the period for which
4165 the license is issued or renewed; and

4166 (iii) has not committed an act that is a ground for denial, suspension, or revocation as
4167 provided in Section 31A-23b-401.

4168 (b) A license issued under this chapter is valid for [~~two years~~] one year.

4169 (2) (a) A person shall report to the commissioner:

4170 (i) an administrative action taken against the person, including a denial of a new or
4171 renewal license application:

4172 (A) in another jurisdiction; or

4173 (B) by another regulatory agency in this state; and

4174 (ii) a criminal prosecution taken against the person in any jurisdiction.

4175 (b) The report required by Subsection (2)(a) shall be filed:

4176 (i) at the time the person files the application for an individual or agency license; and

4177 (ii) for an action or prosecution that occurs on or after the day on which the person files
4178 the application:

4179 (A) for an administrative action, within 30 days of the final disposition of the

4180 administrative action; or
4181 (B) for a criminal prosecution, within 30 days of the initial appearance before a court.
4182 (c) The report required by Subsection (2)(a) shall include a copy of the complaint or
4183 other relevant legal documents related to the action or prosecution described in Subsection
4184 (2)(a).
4185 (3) (a) The department may:
4186 (i) require a person applying for a license to submit to a criminal background check as
4187 a condition of receiving a license; or
4188 (ii) accept a background check conducted by another organization.
4189 (b) A person, if required to submit to a criminal background check under Subsection
4190 (3)(a), shall:
4191 (i) submit a fingerprint card in a form acceptable to the department; and
4192 (ii) consent to a fingerprint background check by:
4193 (A) the Utah Bureau of Criminal Identification; and
4194 (B) the Federal Bureau of Investigation.
4195 (c) For a person who submits a fingerprint card and consents to a fingerprint
4196 background check under Subsection (3)(b), the department may request:
4197 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
4198 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
4199 (ii) complete Federal Bureau of Investigation criminal background checks through the
4200 national criminal history system.
4201 (d) Information obtained by the department from the review of criminal history records
4202 received under this Subsection (3) shall be used by the department for the purposes of:
4203 (i) determining if a person satisfies the character requirements under Section
4204 [31A-23b-204](#) for issuance or renewal of a license;
4205 (ii) determining if a person failed to maintain the character requirements under Section
4206 [31A-23b-204](#); and
4207 (iii) preventing a person who violates the federal Violent Crime Control and Law
4208 Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from engaging in the business of a navigator or
4209 in-person assistor in the state.
4210 (e) If the department requests the criminal background information, the department

4211 shall:

4212 (i) pay to the Department of Public Safety the costs incurred by the Department of
4213 Public Safety in providing the department criminal background information under Subsection
4214 (3)(c)(i);

4215 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
4216 of Investigation in providing the department criminal background information under
4217 Subsection (3)(c)(ii); and

4218 (iii) charge the person applying for a license a fee equal to the aggregate of Subsections
4219 (3)(e)(i) and (ii).

4220 (4) The commissioner may deny an application for a license under this chapter if the
4221 person applying for the license:

4222 (a) fails to satisfy the requirements of this section; or

4223 (b) commits an act that is grounds for denial, suspension, or revocation as set forth in
4224 Section [31A-23b-401](#).

4225 Section 30. Section **31A-23b-205** is amended to read:

4226 **31A-23b-205. Examination and training requirements.**

4227 (1) The commissioner may require [~~applicants~~] an applicant for a license to pass an
4228 examination and complete a training program as a requirement for a license.

4229 (2) The examination described in Subsection (1) shall reasonably relate to:

4230 (a) the duties and functions of a navigator;

4231 (b) requirements for navigators as established by federal regulation under PPACA; and

4232 (c) other requirements that may be established by the commissioner by administrative
4233 rule.

4234 (3) The examination may be administered by the commissioner or as otherwise
4235 specified by administrative rule.

4236 (4) The training required by Subsection (1) shall be approved by the commissioner and
4237 shall include:

4238 (a) accident and health insurance plans;

4239 (b) qualifications for and enrollment in public programs;

4240 (c) qualifications for and enrollment in premium subsidies;

4241 (d) cultural and linguistic competence;

4242 (e) conflict of interest standards;
4243 (f) exchange functions; and
4244 (g) other requirements that may be adopted by the commissioner by administrative
4245 rule.

4246 (5) The training required by Subsection (1) shall consist of:

4247 (a) at least 21 credit hours of training before obtaining a license;

4248 (b) at least 1 of the 21 credit hours of training described in Subsection (5)(a) on defined

4249 contribution arrangement and the small employer Health Insurance Exchange created in

4250 accordance with Title 63M, Chapter 1, Part 25, Health System Reform Act; and

4251 (c) the navigator training and certification program developed by the Centers for

4252 Medicare and Medicaid Services.

4253 ~~[(5)]~~ (6) This section applies only to [applicants who are natural persons] an applicant

4254 who is a natural person.

4255 Section 31. Section **31A-23b-206** is amended to read:

4256 **31A-23b-206. Continuing education requirements.**

4257 (1) The commissioner shall, by rule, prescribe continuing education requirements for a
4258 navigator.

4259 (2) (a) The commissioner may not require a degree from an institution of higher
4260 education as part of continuing education.

4261 (b) The commissioner may state a continuing education requirement in terms of hours
4262 of instruction received in:

4263 (i) accident and health insurance;

4264 (ii) qualification for and enrollment in public programs;

4265 (iii) qualification for and enrollment in premium subsidies;

4266 (iv) cultural competency;

4267 (v) conflict of interest standards; and

4268 (vi) other exchange functions.

4269 (3) (a) Continuing education requirements shall require:

4270 (i) that a licensee complete [~~24~~] 12 credit hours of continuing education for every

4271 [~~two-year~~] one-year licensing period;

4272 (ii) that [~~3~~] at least 2 of the [~~24~~] 12 credit hours described in Subsection (3)(a)(i) be

4273 ethics courses; ~~[and]~~

4274 ~~[(iii) that the licensee complete at least half of the required hours through classroom~~
4275 ~~hours of insurance and exchange related instruction.]~~

4276 (iii) that at least 1 of the 12 credit hours described in Subsection (3)(a)(i) be a defined
4277 contribution course that includes training on use of the Health Insurance Exchange; and

4278 (iv) that a licensee complete the annual navigator training and certification program
4279 developed by the Centers for Medicare and Medicaid Services.

4280 (b) An hour of continuing education in accordance with Subsection (3)(a)(i) may be
4281 obtained through:

4282 (i) classroom attendance;

4283 (ii) home study;

4284 (iii) watching a video recording; or

4285 ~~[(iv) experience credit; or]~~

4286 ~~[(v)]~~ (iv) another method approved by rule.

4287 (c) A licensee may obtain continuing education hours at any time during the ~~[two-year]~~
4288 one-year license period.

4289 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
4290 commissioner shall~~;~~ by rule~~[(i) publish a list of insurance professional designations whose~~
4291 ~~continuing education requirements can be used to meet the requirements for continuing~~
4292 ~~education under Subsection (3)(b); and (ii)]~~ authorize one or more continuing education
4293 providers, including a state or national professional producer or consultant associations, to:

4294 ~~[(A)]~~ (i) offer a qualified program on a geographically accessible basis; and

4295 ~~[(B)]~~ (ii) collect a reasonable fee for funding and administration of a continuing
4296 education program, subject to the review and approval of the commissioner.

4297 (4) The commissioner shall approve a continuing education provider or a continuing
4298 education course that satisfies the requirements of this section.

4299 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
4300 commissioner shall by rule establish the procedures for continuing education provider
4301 registration and course approval.

4302 (6) This section applies only to a navigator who is a natural person.

4303 (7) A navigator shall keep documentation of completing the continuing education

4304 requirements of this section for two years after the end of the [~~two-year~~] one-year licensing
4305 period to which the continuing education applies.

4306 Section 32. Section **31A-23b-301** is amended to read:

4307 **31A-23b-301. Unfair practices -- Compensation -- Limit of scope of practice.**

4308 (1) As used in this section, "false or misleading information" includes, with intent to
4309 deceive a person examining it:

4310 (a) filing a report;

4311 (b) making a false entry in a record; or

4312 (c) willfully refraining from making a proper entry in a record.

4313 (2) (a) Communication that contains false or misleading information relating to
4314 enrollment in an insurance plan or a public program, including information that is false or
4315 misleading because it is incomplete, may not be made by:

4316 (i) a person who is or should be licensed under this title;

4317 (ii) an employee of a person described in Subsection (2)(a)(i);

4318 (iii) a person whose primary interest is as a competitor of a person licensed under this
4319 title; and

4320 (iv) a person on behalf of [~~any of the persons~~] a person listed in this Subsection (2)(a).

4321 (b) A licensee under this chapter may not:

4322 (i) use [~~any~~] a business name, slogan, emblem, or related device that is misleading or
4323 likely to cause the exchange, insurer, or other licensee to be mistaken for another governmental
4324 agency, a PPACA exchange, insurer, or other licensee already in business; or

4325 (ii) use [~~any~~] an advertisement or other insurance promotional material that would
4326 cause a reasonable person to mistakenly believe that a state or federal government agency,
4327 public program, or insurer:

4328 (A) is responsible for the insurance or public program enrollment assistance activities
4329 of the person;

4330 (B) stands behind the credit of the person; or

4331 (C) is a source of payment of [~~any~~] an insurance obligation of or sold by the person.

4332 (c) A person who is not an insurer may not assume or use [~~any~~] a name that deceptively
4333 implies or suggests that person is an insurer.

4334 (3) A person may not engage in an unfair method of competition or any other unfair or

4335 deceptive act or practice in the business of insurance, as defined by the commissioner by rule,
4336 after a finding that the method of competition, the act, or the practice:

- 4337 (a) is misleading;
- 4338 (b) is deceptive;
- 4339 (c) is unfairly discriminatory;
- 4340 (d) provides an unfair inducement; or
- 4341 (e) unreasonably restrains competition.

4342 (4) A navigator licensed under this chapter is subject to the unfair marketing practices
4343 and inducement provisions of [Section] Sections 31A-23a-402 and 31A-23a-402.5.

4344 (5) A navigator licensed under this chapter or who should be licensed under this
4345 chapter:

4346 (a) may not receive direct or indirect compensation from an accident or health insurer
4347 or from an individual who receives services from a navigator in accordance with:

- 4348 (i) federal conflict of interest regulations established pursuant to PPACA; and
- 4349 (ii) administrative rule adopted by the department;
- 4350 (b) may be compensated by the exchange for performing the duties of a navigator;
- 4351 (c) (i) may perform, offer to perform, or advertise a service as a navigator only for a
4352 person selecting a qualified health plan or public program offered on an exchange; and

4353 (ii) may not perform, offer to perform, or advertise [any] services as a navigator for
4354 individuals or small employer groups selecting accident and health insurance plans, qualified
4355 health plans, public programs, business, or services that are not offered on an exchange; and

4356 (d) may not recommend a particular accident and health insurance plan or qualified
4357 health plan.

4358 Section 33. Section **31A-23b-402** is amended to read:

4359 **31A-23b-402. Probation -- Grounds for revocation.**

4360 (1) The commissioner may place a licensee on probation for a period not to exceed 24
4361 months as follows:

- 4362 (a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative
4363 Procedures Act, for any circumstances that would justify a suspension under this section; or
- 4364 (b) at the issuance of a new license:

4365 (i) with an admitted violation under 18 U.S.C. [Secs.] Sec. 1033 [~~and 1034~~]; or

4366 (ii) with a response to background information questions on a new license application
4367 indicating that:

4368 (A) the person has been convicted of a crime that is listed by rule made in accordance
4369 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is a ground for
4370 probation;

4371 (B) the person is currently charged with a crime that is listed by rule made in
4372 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is
4373 a ground for probation regardless of whether adjudication is withheld;

4374 (C) the person has been involved in an administrative proceeding regarding any
4375 professional or occupational license; or

4376 (D) any business in which the person is or was an owner, partner, officer, or director
4377 has been involved in an administrative proceeding regarding any professional or occupational
4378 license.

4379 (2) The commissioner may place a licensee on probation for a specified period no
4380 longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. [~~Secs.~~] Sec.
4381 1033 [~~and 1034~~].

4382 (3) The probation order shall state the conditions for revocation or retention of the
4383 license, which shall be reasonable.

4384 (4) Any violation of the probation is a ground for revocation pursuant to any
4385 proceeding authorized under Title 63G, Chapter 4, Administrative Procedures Act.

4386 Section 34. Section **31A-25-208** is amended to read:

4387 **31A-25-208. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
4388 **terminating a license -- Rulemaking for renewal and reinstatement.**

4389 (1) A license type issued under this chapter remains in force until:

4390 (a) revoked or suspended under Subsection (4);

4391 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
4392 administrative action;

4393 (c) the licensee dies or is adjudicated incompetent as defined under:

4394 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

4395 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
4396 Minors;

- 4397 (d) lapsed under Section [31A-25-210](#); or
- 4398 (e) voluntarily surrendered.
- 4399 (2) The following may be reinstated within one year after the day on which the license
- 4400 is no longer in force:
- 4401 (a) a lapsed license; or
- 4402 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
- 4403 not be reinstated after the license period in which the license is voluntarily surrendered.
- 4404 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
- 4405 license, submission and acceptance of a voluntary surrender of a license does not prevent the
- 4406 department from pursuing additional disciplinary or other action authorized under:
- 4407 (a) this title; or
- 4408 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
- 4409 Administrative Rulemaking Act.
- 4410 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
- 4411 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
- 4412 commissioner may:
- 4413 (i) revoke a license;
- 4414 (ii) suspend a license for a specified period of 12 months or less;
- 4415 (iii) limit a license in whole or in part; or
- 4416 (iv) deny a license application.
- 4417 (b) The commissioner may take an action described in Subsection (4)(a) if the
- 4418 commissioner finds that the licensee:
- 4419 (i) is unqualified for a license under Section [31A-25-202](#), [31A-25-203](#), or [31A-25-204](#);
- 4420 (ii) has violated:
- 4421 (A) an insurance statute;
- 4422 (B) a rule that is valid under Subsection [31A-2-201\(3\)](#); or
- 4423 (C) an order that is valid under Subsection [31A-2-201\(4\)](#);
- 4424 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 4425 delinquency proceedings in any state;
- 4426 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 4427 days after the day on which the judgment became final;

- 4428 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 4429 admitted insurers;
- 4430 (vi) is affiliated with and under the same general management or interlocking
- 4431 directorate or ownership as another third party administrator that transacts business in this state
- 4432 without a license;
- 4433 (vii) refuses:
- 4434 (A) to be examined; or
- 4435 (B) to produce its accounts, records, and files for examination;
- 4436 (viii) has an officer who refuses to:
- 4437 (A) give information with respect to the third party administrator's affairs; or
- 4438 (B) perform any other legal obligation as to an examination;
- 4439 (ix) provides information in the license application that is:
- 4440 (A) incorrect;
- 4441 (B) misleading;
- 4442 (C) incomplete; or
- 4443 (D) materially untrue;
- 4444 (x) has violated an insurance law, valid rule, or valid order of another state's insurance
- 4445 department;
- 4446 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 4447 (xii) has improperly withheld, misappropriated, or converted money or properties
- 4448 received in the course of doing insurance business;
- 4449 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 4450 (A) insurance contract; or
- 4451 (B) application for insurance;
- 4452 (xiv) has been convicted of a felony;
- 4453 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 4454 or fraud;
- 4455 (xvi) in the conduct of business in this state or elsewhere has:
- 4456 (A) used fraudulent, coercive, or dishonest practices; or
- 4457 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 4458 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in

4459 any other state, province, district, or territory;

4460 (xviii) has forged another's name to:

4461 (A) an application for insurance; or

4462 (B) a document related to an insurance transaction;

4463 (xix) has improperly used notes or any other reference material to complete an

4464 examination for an insurance license;

4465 (xx) has knowingly accepted insurance business from an individual who is not

4466 licensed;

4467 (xxi) has failed to comply with an administrative or court order imposing a child

4468 support obligation;

4469 (xxii) has failed to:

4470 (A) pay state income tax; or

4471 (B) comply with an administrative or court order directing payment of state income

4472 tax;

4473 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and

4474 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 [~~and 1034~~] and therefore under 18 U.S.C.

4475 Sec. 1033 is prohibited from engaging in the business of insurance; or

4476 (xxiv) has engaged in methods and practices in the conduct of business that endanger

4477 the legitimate interests of customers and the public.

4478 (c) For purposes of this section, if a license is held by an agency, both the agency itself

4479 and any individual designated under the license are considered to be the holders of the agency

4480 license.

4481 (d) If an individual designated under the agency license commits an act or fails to

4482 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,

4483 the commissioner may suspend, revoke, or limit the license of:

4484 (i) the individual;

4485 (ii) the agency if the agency:

4486 (A) is reckless or negligent in its supervision of the individual; or

4487 (B) knowingly participated in the act or failure to act that is the ground for suspending,

4488 revoking, or limiting the license; or

4489 (iii) (A) the individual; and

- 4490 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
- 4491 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
- 4492 without a license if:
- 4493 (a) the licensee's license is:
- 4494 (i) revoked;
- 4495 (ii) suspended;
- 4496 (iii) limited;
- 4497 (iv) surrendered in lieu of administrative action;
- 4498 (v) lapsed; or
- 4499 (vi) voluntarily surrendered; and
- 4500 (b) the licensee:
- 4501 (i) continues to act as a licensee; or
- 4502 (ii) violates the terms of the license limitation.
- 4503 (6) A licensee under this chapter shall immediately report to the commissioner:
- 4504 (a) a revocation, suspension, or limitation of the person's license in any other state, the
- 4505 District of Columbia, or a territory of the United States;
- 4506 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
- 4507 the District of Columbia, or a territory of the United States; or
- 4508 (c) a judgment or injunction entered against the person on the basis of conduct
- 4509 involving:
- 4510 (i) fraud;
- 4511 (ii) deceit;
- 4512 (iii) misrepresentation; or
- 4513 (iv) a violation of an insurance law or rule.
- 4514 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
- 4515 license in lieu of administrative action may specify a time, not to exceed five years, within
- 4516 which the former licensee may not apply for a new license.
- 4517 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
- 4518 former licensee may not apply for a new license for five years from the day on which the order
- 4519 or agreement is made without the express approval of the commissioner.
- 4520 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of

4521 a license issued under this part if so ordered by the court.

4522 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
4523 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4524 Section 35. Section **31A-25-209** is amended to read:

4525 **31A-25-209. Probation -- Grounds for revocation.**

4526 (1) The commissioner may place a licensee on probation for a period not to exceed 24
4527 months as follows:

4528 (a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative
4529 Procedures Act, for any circumstances that would justify a suspension under Section
4530 [31A-25-208](#); or

4531 (b) at the issuance of a new license:

4532 (i) with an admitted violation under 18 U.S.C. [~~Sections~~] Sec. 1033 [~~and 1034~~]; or

4533 (ii) with a response to a background information question on a new license application
4534 indicating that:

4535 (A) the person has been convicted of a crime that is listed by rule made in accordance
4536 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for
4537 probation;

4538 (B) the person is currently charged with a crime that is listed by rule made in
4539 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is
4540 grounds for probation regardless of whether adjudication is withheld;

4541 (C) the person has been involved in an administrative proceeding regarding any
4542 professional or occupational license; or

4543 (D) any business in which the person is or was an owner, partner, officer, or director
4544 has been involved in an administrative proceeding regarding any professional or occupational
4545 license.

4546 (2) The commissioner may place a licensee on probation for a specified period no
4547 longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. [~~Sections~~]
4548 Sec. 1033 [~~and 1034~~].

4549 (3) A probation order under this section shall state the conditions for retention of the
4550 license, which shall be reasonable.

4551 (4) A violation of the probation is grounds for revocation pursuant to any proceeding

4552 authorized under Title 63G, Chapter 4, Administrative Procedures Act.

4553 Section 36. Section **31A-26-102** is amended to read:

4554 **31A-26-102. Definitions.**

4555 As used in this chapter, unless expressly provided otherwise:

4556 (1) "Company adjuster" means a person employed by an insurer whose regular duties
4557 include insurance adjusting.

4558 (2) "Designated home state" means the state or territory of the United States or the
4559 District of Columbia:

4560 (a) in which an insurance adjuster does not maintain the adjuster's principal:

4561 (i) place of residence; or

4562 (ii) place of business;

4563 (b) if the resident state, territory, or District of Columbia of the adjuster does not
4564 license adjusters for the line of authority sought, the adjuster has qualified for the license as if
4565 the person were a resident in the state, territory, or District of Columbia described in

4566 Subsection (2)(a), including an applicable:

4567 (i) examination requirement;

4568 (ii) fingerprint background check requirement; and

4569 (iii) continuing education requirement; and

4570 (c) the adjuster has designated the state, territory, or District of Columbia as the
4571 designated home state.

4572 (3) "Home state" means:

4573 (a) a state or territory of the United States or the District of Columbia in which an
4574 insurance adjuster:

4575 (i) maintains the adjuster's principal:

4576 (A) place of residence; or

4577 (B) place of business; and

4578 (ii) is licensed to act as a resident adjuster; or

4579 (b) if the resident state, territory, or the District of Columbia described in Subsection
4580 (3)(a) does not license adjusters for the line of authority sought, a state, territory, or the District
4581 of Columbia:

4582 (i) in which the adjuster is licensed;

4583 (ii) in which the adjuster is in good standing; and

4584 (iii) that the adjuster has designated as the adjuster's designated home state.

4585 [~~2~~] (4) "Independent adjuster" means an insurance adjuster required to be licensed
4586 under Section 31A-26-201, who engages in insurance adjusting as a representative of one or
4587 more insurers.

4588 [~~3~~] (5) "Insurance adjusting" or "adjusting" means directing or conducting the
4589 investigation, negotiation, or settlement of a claim under an insurance policy, on behalf of an
4590 insurer, policyholder, or a claimant under an insurance policy.

4591 [~~4~~] (6) "Organization" means a person other than a natural person, and includes a sole
4592 proprietorship by which a natural person does business under an assumed name.

4593 [~~5~~] (7) "Portable electronics insurance" is as defined in Section 31A-22-1802.

4594 [~~6~~] (8) "Public adjuster" means a person required to be licensed under Section
4595 31A-26-201, who engages in insurance adjusting as a representative of insureds and claimants
4596 under insurance policies.

4597 Section 37. Section 31A-26-206 is amended to read:

4598 **31A-26-206. Continuing education requirements.**

4599 (1) Pursuant to this section, the commissioner shall by rule prescribe continuing
4600 education requirements for each class of license under Section 31A-26-204.

4601 (2) (a) The commissioner shall impose continuing education requirements in
4602 accordance with a two-year licensing period in which the licensee meets the requirements of
4603 this Subsection (2).

4604 (b) (i) Except as otherwise provided in this section, the continuing education
4605 requirements shall require:

4606 (A) that a licensee complete 24 credit hours of continuing education for every two-year
4607 licensing period;

4608 (B) that 3 of the 24 credit hours described in Subsection (2)(b)(i)(A) be ethics courses;
4609 and

4610 (C) that the licensee complete at least half of the required hours through classroom
4611 hours of insurance-related instruction.

4612 (ii) A continuing education hour completed in accordance with Subsection (2)(b)(i)
4613 may be obtained through:

- 4614 (A) classroom attendance;
- 4615 (B) home study;
- 4616 (C) watching a video recording;
- 4617 (D) experience credit; or
- 4618 (E) other methods provided by rule.
- 4619 (iii) Notwithstanding Subsections (2)(b)(i)(A) and (B), a title insurance adjuster is
- 4620 required to complete 12 credit hours of continuing education for every two-year licensing
- 4621 period, with 3 of the credit hours being ethics courses.
- 4622 (c) A licensee may obtain continuing education hours at any time during the two-year
- 4623 licensing period.
- 4624 (d) (i) A licensee is exempt from the continuing education requirements of this section
- 4625 if:
- 4626 (A) the licensee was first licensed before [~~April 1, 1978~~] December 31, 1982;
- 4627 (B) the license does not have a continuous lapse for a period of more than one year,
- 4628 except for a license for which the licensee has had an exemption approved before May 11,
- 4629 2011;
- 4630 (C) the licensee requests an exemption from the department; and
- 4631 (D) the department approves the exemption.
- 4632 (ii) If the department approves the exemption under Subsection (2)(d)(i), the licensee is
- 4633 not required to apply again for the exemption.
- 4634 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 4635 commissioner shall by rule:
- 4636 (i) publish a list of insurance professional designations whose continuing education
- 4637 requirements can be used to meet the requirements for continuing education under Subsection
- 4638 (2)(b); and
- 4639 (ii) authorize a professional adjuster association to:
- 4640 (A) offer a qualified program for a classification of license on a geographically
- 4641 accessible basis; and
- 4642 (B) collect a reasonable fee for funding and administration of a qualified program,
- 4643 subject to the review and approval of the commissioner.
- 4644 (f) (i) A fee permitted under Subsection (2)(e)(ii)(B) that is charged to fund and

4645 administer a qualified program shall reasonably relate to the cost of administering the qualified
4646 program.

4647 (ii) Nothing in this section shall prohibit a provider of a continuing education program
4648 or course from charging a fee for attendance at a course offered for continuing education credit.

4649 (iii) A fee permitted under Subsection (2)(e)(ii)(B) that is charged for attendance at an
4650 association program may be less for an association member, on the basis of the member's
4651 affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

4652 (3) The continuing education requirements of this section apply only to a licensee who
4653 is an individual.

4654 (4) The continuing education requirements of this section do not apply to a member of
4655 the Utah State Bar.

4656 (5) The commissioner shall designate a course that satisfies the requirements of this
4657 section, including a course presented by an insurer.

4658 (6) A nonresident adjuster is considered to have satisfied this state's continuing
4659 education requirements if:

4660 (a) the nonresident adjuster satisfies the nonresident producer's home state's continuing
4661 education requirements for a licensed insurance adjuster; and

4662 (b) on the same basis the nonresident adjuster's home state considers satisfaction of
4663 Utah's continuing education requirements for a producer as satisfying the continuing education
4664 requirements of the home state.

4665 (7) A licensee subject to this section shall keep documentation of completing the
4666 continuing education requirements of this section for two years after the end of the two-year
4667 licensing period to which the continuing education requirement applies.

4668 Section 38. Section **31A-26-207** is amended to read:

4669 **31A-26-207. Examination requirements.**

4670 (1) The commissioner may require applicants for [any] a particular class of license
4671 under Section **31A-26-204** to pass an examination as a requirement to receiving a license. The
4672 examination shall reasonably relate to the specific license class for which it is prescribed. The
4673 examinations may be administered by the commissioner or as specified by rule.

4674 (2) The commissioner shall waive the requirement of an examination for a nonresident
4675 applicant who:

4676 (a) applies for an insurance adjuster license in this state;
4677 (b) has been licensed for the same line of authority in another state; and
4678 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant
4679 applies for an insurance producer license in this state; or
4680 (ii) if the application is received within 90 days of the cancellation of the applicant's
4681 previous license:
4682 (A) the prior state certifies that at the time of cancellation, the applicant was in good
4683 standing in that state; or
4684 (B) the state's producer database records maintained by the National Association of
4685 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or
4686 subsidiaries, indicates that the producer is or was licensed in good standing for the line of
4687 authority requested.
4688 (3) (a) To become a resident licensee in accordance with Sections 31A-26-202 and
4689 31A-26-203, a person licensed as an insurance producer in another state who moves to this
4690 state shall make application within 90 days of establishing legal residence in this state.
4691 (b) A person who becomes a resident licensee under Subsection (3)(a) may not be
4692 required to meet prelicensing education or examination requirements to obtain any line of
4693 authority previously held in the prior state unless:
4694 (i) the prior state would require a prior resident of this state to meet the prior state's
4695 prelicensing education or examination requirements to become a resident licensee; or
4696 (ii) the commissioner imposes the requirements by rule.
4697 (4) The requirements of this section only apply to [~~applicants who are natural persons~~]
4698 an applicant who is a natural person.
4699 (5) The requirements of this section do not apply to [~~members~~]:
4700 (a) a member of the Utah State Bar[-]; or
4701 (b) an applicant for the crop insurance license class who has satisfactorily completed:
4702 (i) a national crop adjuster program, as adopted by the commissioner by rule; or
4703 (ii) the loss adjustment training curriculum and competency testing required by the
4704 Federal Crop Insurance Corporation Standard Reinsurance Agreement through the Risk
4705 Management Agency of the United States Department of Agriculture.
4706 Section 39. Section 31A-26-213 is amended to read:

4707 **31A-26-213. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
4708 **terminating a license -- Rulemaking for renewal or reinstatement.**

4709 (1) A license type issued under this chapter remains in force until:

4710 (a) revoked or suspended under Subsection (5);

4711 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
4712 administrative action;

4713 (c) the licensee dies or is adjudicated incompetent as defined under:

4714 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

4715 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
4716 Minors;

4717 (d) lapsed under Section [31A-26-214.5](#); or

4718 (e) voluntarily surrendered.

4719 (2) The following may be reinstated within one year after the day on which the license
4720 is no longer in force:

4721 (a) a lapsed license; or

4722 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
4723 not be reinstated after the license period in which it is voluntarily surrendered.

4724 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
4725 license, submission and acceptance of a voluntary surrender of a license does not prevent the
4726 department from pursuing additional disciplinary or other action authorized under:

4727 (a) this title; or

4728 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
4729 Administrative Rulemaking Act.

4730 (4) A license classification issued under this chapter remains in force until:

4731 (a) the qualifications pertaining to a license classification are no longer met by the
4732 licensee; or

4733 (b) the supporting license type:

4734 (i) is revoked or suspended under Subsection (5); or

4735 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
4736 administrative action.

4737 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an

4738 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
4739 commissioner may:

4740 (i) revoke:

4741 (A) a license; or

4742 (B) a license classification;

4743 (ii) suspend for a specified period of 12 months or less:

4744 (A) a license; or

4745 (B) a license classification;

4746 (iii) limit in whole or in part:

4747 (A) a license; or

4748 (B) a license classification; or

4749 (iv) deny a license application.

4750 (b) The commissioner may take an action described in Subsection (5)(a) if the
4751 commissioner finds that the licensee:

4752 (i) is unqualified for a license or license classification under Section [31A-26-202](#),
4753 [31A-26-203](#), [31A-26-204](#), or [31A-26-205](#);

4754 (ii) has violated:

4755 (A) an insurance statute;

4756 (B) a rule that is valid under Subsection [31A-2-201](#)(3); or

4757 (C) an order that is valid under Subsection [31A-2-201](#)(4);

4758 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
4759 delinquency proceedings in any state;

4760 (iv) fails to pay a final judgment rendered against the person in this state within 60
4761 days after the judgment became final;

4762 (v) fails to meet the same good faith obligations in claims settlement that is required of
4763 admitted insurers;

4764 (vi) is affiliated with and under the same general management or interlocking
4765 directorate or ownership as another insurance adjuster that transacts business in this state
4766 without a license;

4767 (vii) refuses:

4768 (A) to be examined; or

- 4769 (B) to produce its accounts, records, and files for examination;
- 4770 (viii) has an officer who refuses to:
- 4771 (A) give information with respect to the insurance adjuster's affairs; or
- 4772 (B) perform any other legal obligation as to an examination;
- 4773 (ix) provides information in the license application that is:
- 4774 (A) incorrect;
- 4775 (B) misleading;
- 4776 (C) incomplete; or
- 4777 (D) materially untrue;
- 4778 (x) has violated an insurance law, valid rule, or valid order of another state's insurance
- 4779 department;
- 4780 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 4781 (xii) has improperly withheld, misappropriated, or converted money or properties
- 4782 received in the course of doing insurance business;
- 4783 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 4784 (A) insurance contract; or
- 4785 (B) application for insurance;
- 4786 (xiv) has been convicted of a felony;
- 4787 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 4788 or fraud;
- 4789 (xvi) in the conduct of business in this state or elsewhere has:
- 4790 (A) used fraudulent, coercive, or dishonest practices; or
- 4791 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 4792 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
- 4793 any other state, province, district, or territory;
- 4794 (xviii) has forged another's name to:
- 4795 (A) an application for insurance; or
- 4796 (B) a document related to an insurance transaction;
- 4797 (xix) has improperly used notes or any other reference material to complete an
- 4798 examination for an insurance license;
- 4799 (xx) has knowingly accepted insurance business from an individual who is not

4800 licensed;

4801 (xxi) has failed to comply with an administrative or court order imposing a child
4802 support obligation;

4803 (xxii) has failed to:

4804 (A) pay state income tax; or

4805 (B) comply with an administrative or court order directing payment of state income
4806 tax;

4807 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
4808 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 [~~and 1034~~] and therefore under 18 U.S.C.
4809 Sec. 1033 is prohibited from engaging in the business of insurance; or

4810 (xxiv) has engaged in methods and practices in the conduct of business that endanger
4811 the legitimate interests of customers and the public.

4812 (c) For purposes of this section, if a license is held by an agency, both the agency itself
4813 and any individual designated under the license are considered to be the holders of the license.

4814 (d) If an individual designated under the agency license commits an act or fails to
4815 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
4816 the commissioner may suspend, revoke, or limit the license of:

4817 (i) the individual;

4818 (ii) the agency, if the agency:

4819 (A) is reckless or negligent in its supervision of the individual; or

4820 (B) knowingly participated in the act or failure to act that is the ground for suspending,
4821 revoking, or limiting the license; or

4822 (iii) (A) the individual; and

4823 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

4824 (6) A licensee under this chapter is subject to the penalties for conducting an insurance
4825 business without a license if:

4826 (a) the licensee's license is:

4827 (i) revoked;

4828 (ii) suspended;

4829 (iii) limited;

4830 (iv) surrendered in lieu of administrative action;

- 4831 (v) lapsed; or
4832 (vi) voluntarily surrendered; and
4833 (b) the licensee:
4834 (i) continues to act as a licensee; or
4835 (ii) violates the terms of the license limitation.
4836 (7) A licensee under this chapter shall immediately report to the commissioner:
4837 (a) a revocation, suspension, or limitation of the person's license in any other state, the
4838 District of Columbia, or a territory of the United States;
4839 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
4840 the District of Columbia, or a territory of the United States; or
4841 (c) a judgment or injunction entered against that person on the basis of conduct
4842 involving:
4843 (i) fraud;
4844 (ii) deceit;
4845 (iii) misrepresentation; or
4846 (iv) a violation of an insurance law or rule.
4847 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
4848 license in lieu of administrative action may specify a time not to exceed five years within
4849 which the former licensee may not apply for a new license.
4850 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
4851 former licensee may not apply for a new license for five years without the express approval of
4852 the commissioner.
4853 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
4854 a license issued under this part if so ordered by a court.
4855 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
4856 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
4857 Section 40. Section **31A-26-214** is amended to read:
4858 **31A-26-214. Probation -- Grounds for revocation.**
4859 (1) The commissioner may place a licensee on probation for a period not to exceed 24
4860 months as follows:
4861 (a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative

4862 Procedures Act, for any circumstances that would justify a suspension under Section
4863 31A-26-213; or

4864 (b) at the issuance of a new license:

4865 (i) with an admitted violation under 18 U.S.C. [~~Sections~~] Sec. 1033 [~~and 1034~~]; or

4866 (ii) with a response to a background information question on any new license
4867 application indicating that:

4868 (A) the person has been convicted of a crime, that is listed by rule made in accordance
4869 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for
4870 probation;

4871 (B) the person is currently charged with a crime, that is listed by rule made in
4872 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is
4873 grounds for probation regardless of whether adjudication was withheld;

4874 (C) the person has been involved in an administrative proceeding regarding any
4875 professional or occupational license; or

4876 (D) any business in which the person is or was an owner, partner, officer, or director
4877 has been involved in an administrative proceeding regarding any professional or occupational
4878 license.

4879 (2) The commissioner may put a licensee on probation for a specified period no longer
4880 than 24 months if the licensee has admitted to violations under 18 U.S.C. [~~Sections~~] Sec. 1033
4881 [~~and 1034~~].

4882 (3) A probation order under this section shall state the conditions for retention of the
4883 license, which shall be reasonable.

4884 (4) A violation of the probation is grounds for revocation pursuant to any proceeding
4885 authorized under Title 63G, Chapter 4, Administrative Procedures Act.

4886 Section 41. Section 31A-26-214.5 is amended to read:

4887 **31A-26-214.5. License lapse and voluntary surrender.**

4888 (1) (a) A license issued under this chapter shall lapse if the licensee fails to:

4889 (i) pay when due a fee under Section 31A-3-103;

4890 (ii) complete continuing education requirements under Section 31A-26-206 before
4891 submitting the license renewal application;

4892 (iii) submit a completed renewal application as required by Section 31A-26-202;

4893 (iv) submit additional documentation required to complete the licensing process as
4894 related to a specific license type or license classification; or

4895 (v) maintain an active license in [~~a resident~~] the licensee's home state if the licensee is
4896 a nonresident licensee.

4897 (b) (i) A licensee whose license lapses due to the following may request an action
4898 described in Subsection (1)(b)(ii):

4899 (A) military service;

4900 (B) voluntary service for a period of time designated by the person for whom the
4901 licensee provides voluntary service; or

4902 (C) some other extenuating circumstances, such as long-term medical disability.

4903 (ii) A licensee described in Subsection (1)(b)(i) may request:

4904 (A) reinstatement of the license no later than one year after the day on which the
4905 license lapses; and

4906 (B) waiver of any of the following imposed for failure to comply with renewal
4907 procedures:

4908 (I) an examination requirement;

4909 (II) reinstatement fees set under Section 31A-3-103;

4910 (III) continuing education requirements; or

4911 (IV) other sanction imposed for failure to comply with renewal procedures.

4912 (2) If a license issued under this chapter is voluntarily surrendered, the license may be
4913 reinstated:

4914 (a) during the license period in which it is voluntarily surrendered; and

4915 (b) no later than one year after the day on which the license is voluntarily surrendered.

4916 Section 42. Section 31A-27a-102 is amended to read:

4917 **31A-27a-102. Definitions.**

4918 As used in this chapter:

4919 (1) "Admitted assets" is as defined by and is measured in accordance with the National
4920 Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as
4921 incorporated in this state by rules made by the department in accordance with Title 63G,
4922 Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection
4923 31A-4-113(1)(b)(ii).

4924 (2) "Affected guaranty association" means a guaranty association that is or may
4925 become liable for payment of a covered claim.

4926 (3) "Affiliate" is as defined in Section 31A-1-301.

4927 (4) Notwithstanding Section 31A-1-301, "alien insurer" means an insurer incorporated
4928 or organized under the laws of a jurisdiction that is not a state.

4929 (5) Notwithstanding Section 31A-1-301, "claimant" or "creditor" means a person
4930 having a claim against an insurer whether the claim is:

4931 (a) matured or not matured;

4932 (b) liquidated or unliquidated;

4933 (c) secured or unsecured;

4934 (d) absolute; or

4935 (e) fixed or contingent.

4936 (6) "Commissioner" is as defined in Section 31A-1-301.

4937 (7) "Commodity contract" means:

4938 (a) a contract for the purchase or sale of a commodity for future delivery on, or subject
4939 to the rules of:

4940 (i) a board of trade or contract market under the Commodity Exchange Act, 7 U.S.C.
4941 Sec. 1 et seq.; or

4942 (ii) a board of trade outside the United States;

4943 (b) an agreement that is:

4944 (i) subject to regulation under Section 19 of the Commodity Exchange Act, 7 U.S.C.
4945 Sec. 1 et seq.; and

4946 (ii) commonly known to the commodities trade as:

4947 (A) a margin account;

4948 (B) a margin contract;

4949 (C) a leverage account; or

4950 (D) a leverage contract;

4951 (c) an agreement or transaction that is:

4952 (i) subject to regulation under Section 4c(b) of the Commodity Exchange Act, 7 U.S.C.
4953 Sec. 1 et seq.; and

4954 (ii) commonly known to the commodities trade as a commodity option;

4955 (d) a combination of the agreements or transactions referred to in this Subsection (7);

4956 or

4957 (e) an option to enter into an agreement or transaction referred to in this Subsection (7).

4958 (8) "Control" is as defined in Section 31A-1-301.

4959 (9) "Delinquency proceeding" means a:

4960 (a) proceeding instituted against an insurer for the purpose of rehabilitating or
4961 liquidating the insurer; and

4962 (b) summary proceeding under Section 31A-27a-201.

4963 (10) "Department" is as defined in Section 31A-1-301 unless the context requires
4964 otherwise.

4965 (11) "Doing business," "doing insurance business," and "business of insurance"
4966 includes any of the following acts, whether effected by mail, electronic means, or otherwise:

4967 (a) issuing or delivering a contract, certificate, or binder relating to insurance or
4968 annuities:

4969 (i) to a person who is resident in this state; or

4970 (ii) covering a risk located in this state;

4971 (b) soliciting an application for the contract, certificate, or binder described in
4972 Subsection (11)(a);

4973 (c) negotiating preliminary to the execution of the contract, certificate, or binder
4974 described in Subsection (11)(a);

4975 (d) collecting premiums, membership fees, assessments, or other consideration for the
4976 contract, certificate, or binder described in Subsection (11)(a);

4977 (e) transacting matters:

4978 (i) subsequent to execution of the contract, certificate, or binder described in
4979 Subsection (11)(a); and

4980 (ii) arising out of the contract, certificate, or binder described in Subsection (11)(a);

4981 (f) operating as an insurer under a license or certificate of authority issued by the
4982 department; or

4983 (g) engaging in an act identified in Chapter 15, Unauthorized Insurers, Surplus Lines,
4984 and Risk Retention Groups.

4985 (12) Notwithstanding Section 31A-1-301, "domiciliary state" means the state in which

4986 an insurer is incorporated or organized, except that "domiciliary state" means:

4987 (a) in the case of an alien insurer, its state of entry; or

4988 (b) in the case of a risk retention group, the state in which the risk retention group is
4989 chartered as contemplated in the Liability Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.

4990 (13) "Estate" has the same meaning as "property of the insurer" as defined in
4991 Subsection (30).

4992 (14) "Fair consideration" is given for property or an obligation:

4993 (a) when in exchange for the property or obligation, as a fair equivalent for it, and in
4994 good faith:

4995 (i) property is conveyed;

4996 (ii) services are rendered;

4997 (iii) an obligation is incurred; or

4998 (iv) an antecedent debt is satisfied; or

4999 (b) when the property or obligation is received in good faith to secure a present
5000 advance or an antecedent debt in amount not disproportionately small compared to the value of
5001 the property or obligation obtained.

5002 (15) Notwithstanding Section [31A-1-301](#), "foreign insurer" means an insurer domiciled
5003 in another state.

5004 (16) "Formal delinquency proceeding" means a rehabilitation or liquidation
5005 proceeding.

5006 (17) "Forward contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.
5007 Sec. 1821(e)(8)(D).

5008 (18) (a) "General assets" include all property of the estate that is not:

5009 (i) subject to a properly perfected secured claim;

5010 (ii) subject to a valid and existing express trust for the security or benefit of a specified
5011 person or class of person; or

5012 (iii) required by the insurance laws of this state or any other state to be held for the
5013 benefit of a specified person or class of person.

5014 (b) "General assets" [~~include all~~] includes the property of the estate or its proceeds in
5015 excess of the amount necessary to discharge a claim described in Subsection (18)(a).

5016 (19) "Good faith" means honesty in fact and intention, and in regard to Part 5, Asset

5017 Recovery, also requires the absence of:

5018 (a) information that would lead a reasonable person in the same position to know that
5019 the insurer is financially impaired or insolvent; and

5020 (b) knowledge regarding the imminence or pendency of a delinquency proceeding
5021 against the insurer.

5022 (20) "Guaranty association" means:

5023 (a) a mechanism mandated by Chapter 28, Guaranty Associations; or

5024 (b) a similar mechanism in another state that is created for the payment of claims or
5025 continuation of policy obligations of a financially impaired or insolvent insurer.

5026 (21) "Impaired" means that an insurer:

5027 (a) does not have admitted assets at least equal to the sum of:

5028 (i) all its liabilities; and

5029 (ii) the minimum surplus required to be maintained by Section 31A-5-211 or
5030 31A-8-209; or

5031 (b) has a total adjusted capital that is less than its authorized control level RBC, as
5032 defined in Section 31A-17-601.

5033 (22) "Insolvency" or "insolvent" means that an insurer:

5034 (a) is unable to pay its obligations when they are due;

5035 (b) does not have admitted assets at least equal to all of its liabilities; or

5036 (c) has a total adjusted capital that is less than its mandatory control level RBC, as
5037 defined in Section 31A-17-601.

5038 (23) Notwithstanding Section 31A-1-301, "insurer" means a person who:

5039 (a) is doing, has done, purports to do, or is licensed to do the business of insurance;

5040 (b) is or has been subject to the authority of, or to rehabilitation, liquidation,
5041 reorganization, supervision, or conservation by an insurance commissioner; or

5042 (c) is included under Section 31A-27a-104.

5043 (24) "Liabilities" is as defined by and is measured in accordance with the National
5044 Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as
5045 incorporated in this state by rules made by the department in accordance with Title 63G,
5046 Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection
5047 31A-4-113(1)(b)(ii).

5048 (25) (a) Subject to Subsection (21)(b), "netting agreement" means:
5049 (i) a contract or agreement that:
5050 (A) documents one or more transactions between the parties to the agreement for or
5051 involving one or more qualified financial contracts; and
5052 (B) provides for the netting, liquidation, setoff, termination, acceleration, or close out
5053 under or in connection with:
5054 (I) one or more qualified financial contracts; or
5055 (II) present or future payment or delivery obligations or payment or delivery
5056 entitlements under the agreement, including liquidation or close-out values relating to the
5057 obligations or entitlements, among the parties to the netting agreement;
5058 (ii) a master agreement or bridge agreement for one or more master agreements
5059 described in Subsection (25)(a)(i); or
5060 (iii) any of the following related to a contract or agreement described in Subsection
5061 (25)(a)(i) or (ii):
5062 (A) a security agreement;
5063 (B) a security arrangement;
5064 (C) other credit enhancement or guarantee; or
5065 (D) a reimbursement obligation.
5066 (b) If a contract or agreement described in Subsection (25)(a)(i) or (ii) relates to an
5067 agreement or transaction that is not a qualified financial contract, the contract or agreement
5068 described in Subsection (25)(a)(i) or (ii) is considered a netting agreement only with respect to
5069 an agreement or transaction that is a qualified financial contract.
5070 (c) "Netting agreement" includes:
5071 (i) a term or condition incorporated by reference in the contract or agreement described
5072 in Subsection (25)(a); or
5073 (ii) a master agreement described in Subsection (25)(a).
5074 (d) A master agreement described in Subsection (25)(a), together with all schedules,
5075 confirmations, definitions, and addenda to that master agreement and transactions under any of
5076 the items described in this Subsection (25)(d), are treated as one netting agreement.
5077 (26) (a) "New value" means:
5078 (i) money;

- 5079 (ii) money's worth in goods, services, or new credit; or
5080 (iii) release by a transferee of property previously transferred to the transferee in a
5081 transaction that is neither void nor voidable by the insurer or the receiver under [any]
5082 applicable law, including proceeds of the property.
- 5083 (b) "New value" does not include an obligation substituted for an existing obligation.
- 5084 (27) "Party in interest" means:
- 5085 (a) the commissioner;
- 5086 (b) a nondomiciliary commissioner in whose state the insurer has outstanding claims
5087 liabilities;
- 5088 (c) an affected guaranty association; and
- 5089 (d) the following parties if the party files a request with the receivership court for
5090 inclusion as a party in interest and to be on the service list:
- 5091 (i) an insurer that ceded to or assumed business from the insurer;
- 5092 (ii) a policyholder;
- 5093 (iii) a third party claimant;
- 5094 (iv) a creditor;
- 5095 (v) a 10% or greater equity security holder in the insolvent insurer; and
- 5096 (vi) a person, including an indenture trustee, with a financial or regulatory interest in
5097 the delinquency proceeding.
- 5098 (28) (a) Notwithstanding Section 31A-1-301, "policy" means, notwithstanding what it
5099 is called:
- 5100 (i) a written contract of insurance;
- 5101 (ii) a written agreement for or affecting insurance; or
- 5102 (iii) a certificate of a written contract or agreement described in this Subsection (28)(a).
- 5103 (b) "Policy" includes all clauses, riders, endorsements, and papers that are a part of a
5104 policy.
- 5105 (c) "Policy" does not include a contract of reinsurance.
- 5106 (29) "Preference" means a transfer of property of an insurer to or for the benefit of a
5107 creditor:
- 5108 (a) for or on account of an antecedent debt, made or allowed by the insurer within one
5109 year before the day on which a successful petition for rehabilitation or liquidation is filed under

5110 this chapter;

5111 (b) the effect of which transfer may enable the creditor to obtain a greater percentage of
5112 the creditor's debt than another creditor of the same class would receive; and

5113 (c) if a liquidation order is entered while the insurer is already subject to a
5114 rehabilitation order and the transfer otherwise qualifies, that is made or allowed within the
5115 shorter of:

5116 (i) one year before the day on which a successful petition for rehabilitation is filed; or

5117 (ii) two years before the day on which a successful petition for liquidation is filed.

5118 (30) "Property of the insurer" or "property of the estate" includes:

5119 (a) a right, title, or interest of the insurer in property:

5120 (i) whether:

5121 (A) legal or equitable;

5122 (B) tangible or intangible; or

5123 (C) choate or inchoate; and

5124 (ii) including choses in action, contract rights, and any other interest recognized under
5125 the laws of this state;

5126 (b) entitlements that exist before the entry of an order of rehabilitation or liquidation;

5127 (c) entitlements that may arise by operation of this chapter or other provisions of law
5128 allowing the receiver to avoid prior transfers or assert other rights; and

5129 (d) (i) records or data that is otherwise the property of the insurer; and

5130 (ii) records or data similar to those described in Subsection (30)(d)(i) that are within
5131 the possession, custody, or control of a managing general agent, a third party administrator, a
5132 management company, a data processing company, an accountant, an attorney, an affiliate, or
5133 other person.

5134 (31) Subject to Subsection [31A-27a-611](#)(10), "qualified financial contract" means any
5135 of the following:

5136 (a) a commodity contract;

5137 (b) a forward contract;

5138 (c) a repurchase agreement;

5139 (d) a securities contract;

5140 (e) a swap agreement; or

5141 (f) ~~any~~ a similar agreement that the commissioner determines by rule or order to be a
5142 qualified financial contract for purposes of this chapter.

5143 (32) As the context requires, "receiver" means the commissioner or the commissioner's
5144 designee, including a rehabilitator, liquidator, or ancillary receiver.

5145 (33) As the context requires, "receivership" means a rehabilitation, liquidation, or
5146 ancillary receivership.

5147 (34) Unless the context requires otherwise, "receivership court" refers to the court in
5148 which a delinquency proceeding is pending.

5149 (35) "Reciprocal state" means ~~any~~ a state other than this state that:

5150 (a) enforces a law substantially similar to this chapter;

5151 (b) requires the commissioner to be the receiver of a delinquent insurer; and

5152 (c) has laws for the avoidance of fraudulent conveyances and preferential transfers by
5153 the receiver of a delinquent insurer.

5154 (36) "Record," when used as a noun, means ~~any~~ information or data, in whatever
5155 form maintained, including:

5156 (a) a book;

5157 (b) a document;

5158 (c) a paper;

5159 (d) a file;

5160 (e) an application file;

5161 (f) a policyholder list;

5162 (g) policy information;

5163 (h) a claim or claim file;

5164 (i) an account;

5165 (j) a voucher;

5166 (k) a litigation file;

5167 (l) a premium record;

5168 (m) a rate book;

5169 (n) an underwriting manual;

5170 (o) a personnel record;

5171 (p) a financial record; or

5172 (q) other material.

5173 (37) "Reinsurance" means a transaction or contract under which an assuming insurer
5174 agrees to indemnify a ceding insurer against all, or a part, of [any] a loss that the ceding insurer
5175 may sustain under the one or more policies that the ceding insurer issues or will issue.

5176 (38) "Repurchase agreement" is as defined in the Federal Deposit Insurance Act, 12
5177 U.S.C. Sec. 1821(e)(8)(D).

5178 (39) (a) "Secured claim" means, subject to Subsection (39)(b):

5179 (i) a claim secured by an asset that is not a general asset; or

5180 (ii) the right to set off as provided in Section 31A-27a-510.

5181 (b) "Secured claim" does not include:

5182 (i) a special deposit claim;

5183 (ii) a claim based on mere possession; or

5184 (iii) a claim arising from a constructive or resulting trust.

5185 (40) "Securities contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.
5186 Sec. 1821(e)(8)(D).

5187 (41) "Special deposit" means a deposit established pursuant to statute for the security
5188 or benefit of a limited class or classes of persons.

5189 (42) (a) Subject to Subsection (42)(b), "special deposit claim" means a claim secured
5190 by a special deposit.

5191 (b) "Special deposit claim" does not include a claim against the general assets of the
5192 insurer.

5193 (43) "State" means a state, district, or territory of the United States.

5194 (44) "Subsidiary" is as defined in Section 31A-1-301.

5195 (45) "Swap agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.
5196 Sec. 1821(e)(8)(D).

5197 (46) (a) "Transfer" includes the sale and every other and different mode of disposing of
5198 or parting with property or with an interest in property, whether:

5199 (i) directly or indirectly;

5200 (ii) absolutely or conditionally;

5201 (iii) voluntarily or involuntarily; or

5202 (iv) by or without judicial proceedings.

- 5203 (b) An interest in property includes:
- 5204 (i) a set off;
- 5205 (ii) having possession of the property; or
- 5206 (iii) fixing a lien on the property or on an interest in the property.
- 5207 (c) The retention of a security title in property delivered to an insurer and foreclosure
- 5208 of the insurer's equity of redemption is considered a transfer suffered by the insurer.
- 5209 (47) Notwithstanding Section 31A-1-301, "unauthorized insurer" means an insurer
- 5210 transacting the business of insurance in this state that has not received a certificate of authority
- 5211 from this state, or some other type of authority that allows for the transaction of the business of
- 5212 insurance in this state.
- 5213 Section 43. Section 31A-27a-107 is amended to read:
- 5214 **31A-27a-107. Notice and hearing on matters submitted by the receiver for**
- 5215 **receivership court approval.**
- 5216 (1) (a) Upon written request to the receiver, a person shall be placed on the service list
- 5217 to receive notice of matters filed by the receiver. The person shall include in a written request
- 5218 under this Subsection (1)(a) the person's address, facsimile number, or electronic mail address.
- 5219 (b) It is the responsibility of the person requesting notice to:
- 5220 (i) inform the receiver in writing of any changes in the person's address, facsimile
- 5221 number, or electronic mail address; or
- 5222 (ii) request that the person's name be deleted from the service list.
- 5223 (c) (i) The receiver may serve on a person on the service list a request to confirm
- 5224 continuation on the service list by returning a form.
- 5225 (ii) The request to confirm continuation may be served periodically but not more
- 5226 frequently than every 12 months.
- 5227 (iii) A person who fails to return the form described in this Subsection (1)(c) may be
- 5228 removed from the service list.
- 5229 (d) Inclusion on the service list does not confer standing in the delinquency proceeding
- 5230 to raise, appear, or be heard on any issue.
- 5231 (e) The receiver shall:
- 5232 (i) file a copy of the service list with the receivership court; and
- 5233 (ii) periodically provide to the receivership court notice of changes to the service list.

5234 (f) Notice may be provided by first-class mail postage paid, electronic mail, or
5235 facsimile transmission, at the receiver's discretion.

5236 (2) Except as otherwise provided by this chapter, notice and hearing of any matter
5237 submitted by the receiver to the receivership court for approval under this chapter shall be
5238 conducted in accordance with this Subsection (2).

5239 (a) The receiver:

5240 (i) shall file a motion:

5241 (A) explaining the proposed action; and

5242 (B) the basis for the proposed action; and

5243 (ii) may include any evidence in support of the motion.

5244 (b) If a document, material, or other information supporting the motion is confidential,
5245 the document, material, or other information may be submitted to the receivership court under
5246 seal for in camera inspection.

5247 (c) (i) The receiver shall provide notice and a copy of the motion to:

5248 (A) all persons on the service list; and

5249 (B) any other person as may be required by the receivership court.

5250 (ii) Notice may be provided by first-class mail postage paid, electronic mail, or
5251 facsimile transmission, at the receiver's discretion.

5252 (iii) For purposes of this section, notice is considered to be given on the day on which
5253 it is deposited with the United States Postmaster or transmitted, as applicable, to the
5254 last-known address as shown on the service list.

5255 (d) (i) A party in interest objecting to the motion shall:

5256 (A) file an objection specifying the grounds for the objection within:

5257 (I) 10 days of the day on which the notice of the filing of the motion is sent; or

5258 (II) such other time as the receivership court may specify; and

5259 (B) serve copies on:

5260 (I) the receiver; and

5261 (II) any other person served with the motion within the time period described in this
5262 Subsection (2)(d)(i).

5263 (ii) In accordance with the Utah Rules of Civil Procedure, days may be added to the
5264 time for filing an objection if the notice of the motion is sent only by way of United States

5265 mail.

5266 (iii) An objecting party has the burden of showing why the receivership court should
5267 not authorize the proposed action.

5268 (e) (i) If no objection to the motion is timely filed:

5269 (A) the receivership court may:

5270 (I) enter an order approving the motion without a hearing; or

5271 (II) hold a hearing to determine if the receiver's motion should be approved; and

5272 (B) the receiver may request that the receivership court enter an order or hold a hearing
5273 on an expedited basis.

5274 (ii) (A) If an objection is timely filed, the receivership court may hold a hearing.

5275 (B) If the receivership court approves the motion and, upon a motion by the receiver,
5276 determines that the objection is frivolous or filed merely for delay or for other improper
5277 purpose, the receivership court may order the objecting party to pay the receiver's reasonable
5278 costs and fees of defending against the objection.

5279 Section 44. Section **31A-27a-201** is amended to read:

5280 **31A-27a-201. Receivership court's seizure order.**

5281 (1) The commissioner may file in the Third District Court for Salt Lake County a
5282 petition:

5283 (a) with respect to:

5284 (i) an insurer domiciled in this state;

5285 (ii) an unauthorized insurer; or

5286 (iii) pursuant to Section [31A-27a-901](#), a foreign insurer;

5287 (b) alleging that:

5288 (i) there exists grounds that would justify a court order for a formal delinquency
5289 proceeding against the insurer under this chapter; and

5290 (ii) the interests of policyholders, creditors, or the public will be endangered by delay;

5291 and

5292 (c) setting forth the contents of a seizure order considered necessary by the
5293 commissioner.

5294 (2) (a) Upon a filing under Subsection (1), the receivership court may issue the
5295 requested seizure order:

- 5296 (i) immediately, ex parte, and without notice or hearing;
- 5297 (ii) that directs the commissioner to take possession and control of:
- 5298 (A) all or a part of the property, accounts, and records of an insurer; and
- 5299 (B) the premises occupied by the insurer for transaction of the insurer's business; and
- 5300 (iii) that until further order of the receivership court, enjoins the insurer and its officers,
- 5301 managers, agents, and employees from disposition of its property and from the transaction of
- 5302 its business except with the written consent of the commissioner.
- 5303 (b) ~~Any~~ A person having possession or control of and refusing to deliver any of the
- 5304 records or assets of a person against whom a seizure order is issued under this Subsection (2) is
- 5305 guilty of a class B misdemeanor.
- 5306 (3) (a) A petition that requests injunctive relief:
- 5307 (i) shall be verified by the commissioner or the commissioner's designee; and
- 5308 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.
- 5309 (b) The commissioner shall provide only the notice that the receivership court may
- 5310 require.
- 5311 (4) (a) The receivership court shall specify in the seizure order the duration of the
- 5312 seizure, which shall be the time the receivership court considers necessary for the
- 5313 commissioner to ascertain the condition of the insurer.
- 5314 (b) The receivership court may from time to time:
- 5315 (i) hold a hearing that the receivership court considers desirable:
- 5316 (A) (I) on motion of the commissioner;
- 5317 (II) on motion of the insurer; or
- 5318 (III) on its own motion; and
- 5319 (B) after the notice the receivership court considers appropriate; and
- 5320 (ii) extend, shorten, or modify the terms of the seizure order.
- 5321 (c) The receivership court shall vacate the seizure order if the commissioner fails to
- 5322 commence a formal proceeding under this chapter after having had a reasonable opportunity to
- 5323 commence a formal proceeding under this chapter.
- 5324 (d) An order of the receivership court pursuant to a formal proceeding under this
- 5325 chapter vacates the seizure order.
- 5326 (5) Entry of a seizure order under this section does not constitute a breach or an

5327 anticipatory breach of [any] a contract of the insurer.

5328 (6) (a) An insurer subject to an ex parte seizure order under this section may petition
5329 the receivership court at any time after the issuance of a seizure order for a hearing and review
5330 of the basis for the seizure order.

5331 (b) The receivership court shall hold the hearing and review requested under this
5332 Subsection (6) not more than 15 days after the day on which the request is received or as soon
5333 thereafter as the court may allow.

5334 (c) A hearing under this Subsection (6):

5335 (i) may be held privately in chambers; and

5336 (ii) shall be held privately in chambers if the insurer proceeded against requests that it
5337 be private.

5338 (7) (a) If, at any time after the issuance of a seizure order, it appears to the receivership
5339 court that a person whose interest is or will be substantially affected by the seizure order did
5340 not appear at the hearing and has not been served, the receivership court may order that notice
5341 be given to the person.

5342 (b) An order under this Subsection (7) that notice be given may not stay the effect of
5343 [any] a seizure order previously issued by the receivership court.

5344 (8) Whenever the commissioner makes a seizure as provided in Subsection (2), on the
5345 demand of the commissioner, it shall be the duty of the sheriff of a county of this state, and of
5346 the police department of a municipality in the state to furnish the commissioner with necessary
5347 deputies or officers to assist the commissioner in making and enforcing the seizure order.

5348 (9) The commissioner may appoint a receiver under this section. The insurer shall pay
5349 the costs and expenses of the receiver appointed.

5350 Section 45. Section **31A-27a-701** is amended to read:

5351 **31A-27a-701. Priority of distribution.**

5352 (1) (a) The priority of payment of distributions on unsecured claims shall be in
5353 accordance with the order in which each class of claim is set forth in this section except as
5354 provided in Section **31A-27a-702**.

5355 (b) All claims in each class shall be paid in full or adequate funds retained for the
5356 claim's payment before a member of the next class receives payment.

5357 (c) All claims within a class shall be paid substantially the same percentage.

5358 (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may
5359 not be established within a class.

5360 (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to
5361 circumvent the priority classes through the use of equitable remedies.

5362 (2) The order of distribution of claims shall be as follows:

5363 (a) a Class 1 claim, which:

5364 (i) is a cost or expense of administration expressly approved or ratified by the
5365 liquidator, including the following:

5366 (A) the actual and necessary costs of preserving or recovering the property of the
5367 insurer;

5368 (B) reasonable compensation for all services rendered on behalf of the administrative
5369 supervisor or receiver;

5370 (C) a necessary filing fee;

5371 (D) the fees and mileage payable to a witness;

5372 (E) an unsecured loan obtained by the receiver, which:

5373 (I) unless its terms otherwise provide, has priority over all other costs of
5374 administration; and

5375 (II) absent agreement to the contrary, shares pro rata with all other claims described in
5376 this Subsection (2)(a)(i)(E); and

5377 (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the
5378 course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and

5379 (ii) except as expressly approved by the receiver, excludes any expense arising from a
5380 duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a
5381 Class 7 claim;

5382 (b) a Class 2 claim, which:

5383 (i) is a reasonable expense of a guaranty association, including overhead, salaries, or
5384 other general administrative expenses allocable to the receivership such as:

5385 (A) an administrative or claims handling expense;

5386 (B) an expense in connection with arrangements for ongoing coverage; and

5387 (C) in the case of a property and casualty guaranty association, a loss adjustment
5388 expense, including:

- 5389 (I) an adjusting or other expense; and
 5390 (II) a defense or cost containment expense; and
 5391 (ii) excludes an expense incurred in the performance of duties under Section
 5392 31A-28-112 or similar duties under the statute governing a similar organization in another
 5393 state;
- 5394 (c) a Class 3 claim, which:
 5395 (i) is:
 5396 (A) a claim under a policy of insurance including a third party claim;
 5397 (B) a claim under an annuity contract or funding agreement;
 5398 (C) a claim under a nonassessable policy for unearned premium;
 5399 (D) a claim of an obligee and, subject to the discretion of the receiver, a completion
 5400 contractor under a surety bond or surety undertaking, except for:
 5401 (I) a bail bond;
 5402 (II) a mortgage guaranty;
 5403 (III) a financial guaranty; or
 5404 (IV) other form of insurance offering protection against investment risk or warranties;
 5405 (E) a claim by a principal under a surety bond or surety undertaking for wrongful
 5406 dissipation of collateral by the insurer or its agents;
 5407 (F) an indemnity payment on:
 5408 (I) a covered claim; or
 5409 [~~(H)~~ unearned premium; or]
 5410 [~~(H)~~] (II) a payment for the continuation of coverage made by an entity responsible for
 5411 the payment of a claim or continuation of coverage of an insolvent health maintenance
 5412 organization;
 5413 (G) a claim for unearned premium;
 5414 [~~(G)~~] (H) a claim incurred during the extension of coverage provided for in Sections
 5415 31A-27a-402 and 31A-27a-403; or
 5416 [~~(H)~~] (I) all other claims incurred in fulfilling the statutory obligations of a guaranty
 5417 association not included in Class 2, including:
 5418 (I) an indemnity payment on covered claims; and
 5419 (II) in the case of a life and health guaranty association, a claim:

5420 (Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities
5421 incurred on behalf of a covered claim or covered obligation of the insurer; and
5422 (Bb) for the funds needed to reinsure the obligations described under this Subsection
5423 (2)(c)(i)(H)(II) with a solvent insurer; and
5424 (ii) notwithstanding any other provision of this chapter, excludes the following which
5425 shall be paid under Class 7, except as provided in this section:
5426 (A) an obligation of the insolvent insurer arising out of a reinsurance contract;
5427 (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant
5428 to a claims made policy after:
5429 (I) the expiration date of the policy;
5430 (II) the policy is replaced by the insured;
5431 (III) the policy is canceled at the insured's request; or
5432 (IV) the policy is canceled as provided in this chapter;
5433 (C) an obligation to an insurer, insurance pool, or underwriting association and the
5434 insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or
5435 subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is
5436 the named insured;
5437 (D) an amount accrued as punitive or exemplary damages unless expressly covered
5438 under the terms of the policy, which shall be paid as a claim in Class 9;
5439 (E) a tort claim of any kind against the insurer;
5440 (F) a claim against the insurer for bad faith or wrongful settlement practices; and
5441 (G) a claim of a guaranty association for assessments not paid by the insurer, which
5442 claims shall be paid as claims in Class 7; and
5443 (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium
5444 claim on a policy, other than a reinsurance agreement;
5445 (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial
5446 guaranty, or other forms of insurance offering protection against investment risk or warranties;
5447 (e) a Class 5 claim, which is a claim of the federal government not included in Class 3
5448 or 4;
5449 (f) a Class 6 claim, which is a debt due an employee for services or benefits:
5450 (i) to the extent that the expense:

5451 (A) does not exceed the lesser of:
5452 (I) \$5,000; or
5453 (II) two months' salary; and
5454 (B) represents payment for services performed within one year before the day on which
5455 the initial order of receivership is issued; and
5456 (ii) which priority is in lieu of any other similar priority that may be authorized by law
5457 as to wages or compensation of employees;
5458 (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1
5459 through 6, including:
5460 (i) a claim under a reinsurance contract;
5461 (ii) a claim of a guaranty association for an assessment not paid by the insurer; and
5462 (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8
5463 through 13;
5464 (h) subject to Subsection (3), a Class 8 claim, which is:
5465 (i) a claim of a state or local government, except a claim specifically classified
5466 elsewhere in this section; or
5467 (ii) a claim for services rendered and expenses incurred in opposing a formal
5468 delinquency proceeding;
5469 (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures,
5470 unless expressly covered under the terms of a policy of insurance;
5471 (j) a Class 10 claim, which is, except as provided in Subsections [31A-27a-601\(2\)](#) and
5472 [31A-27a-601\(3\)](#), a late filed claim that would otherwise be classified in Classes 3 through 9;
5473 (k) subject to Subsection (4), a Class 11 claim, which is:
5474 (i) a surplus note;
5475 (ii) a capital note;
5476 (iii) a contribution note;
5477 (iv) a similar obligation;
5478 (v) a premium refund on an assessable policy; or
5479 (vi) any other claim specifically assigned to this class;
5480 (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1
5481 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the

5482 liquidator and approved by the receivership court; and

5483 (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or
5484 other owner arising out of:

5485 (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity;
5486 and

5487 (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.

5488 (3) To prove a claim described in Class 8, the claimant shall show that:

5489 (a) the insurer that is the subject of the delinquency proceeding incurred the fee or
5490 expense on the basis of the insurer's best knowledge, information, and belief:

5491 (i) formed after reasonable inquiry indicating opposition is in the best interests of the
5492 insurer;

5493 (ii) that is well grounded in fact; and

5494 (iii) is warranted by existing law or a good faith argument for the extension,
5495 modification, or reversal of existing law; and

5496 (b) opposition is not pursued for any improper purpose, such as to harass, to cause
5497 unnecessary delay, or to cause needless increase in the cost of the litigation.

5498 (4) (a) A claim in Class 11 is subject to a subordination agreement related to other
5499 claims in Class 11 that exist before the entry of a liquidation order.

5500 (b) A claim in Class 13 is subject to a subordination agreement, related to other claims
5501 in Class 13 that exist before the entry of a liquidation order.

5502 Section 46. Section **31A-29-106** is amended to read:

5503 **31A-29-106. Powers of board.**

5504 (1) The board shall have the general powers and authority granted under the laws of
5505 this state to insurance companies licensed to transact health care insurance business. In
5506 addition, the board shall have the specific authority to:

5507 (a) enter into contracts to carry out the provisions and purposes of this chapter,
5508 including, with the approval of the commissioner, contracts with:

5509 (i) similar pools of other states for the joint performance of common administrative
5510 functions; or

5511 (ii) persons or other organizations for the performance of administrative functions;

5512 (b) sue or be sued, including taking such legal action necessary to avoid the payment of

- 5513 improper claims against the pool or the coverage provided through the pool;
- 5514 (c) establish appropriate rates, rate schedules, rate adjustments, expense allowances,
5515 agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the
5516 operation of the pool;
- 5517 (d) issue policies of insurance in accordance with the requirements of this chapter;
- 5518 (e) retain an executive director and appropriate legal, actuarial, and other personnel as
5519 necessary to provide technical assistance in the operations of the pool;
- 5520 (f) establish rules, conditions, and procedures for reinsuring risks under this chapter;
- 5521 (g) cause the pool to have an annual audit of its operations by the state auditor;
- 5522 (h) coordinate with the Department of Health in seeking to obtain from the Centers for
5523 Medicare and Medicaid Services, or other appropriate office or agency of government, all
5524 appropriate waivers, authority, and permission needed to coordinate the coverage available
5525 from the pool with coverage available under Medicaid, either before or after Medicaid
5526 coverage, or as a conversion option upon completion of Medicaid eligibility, without the
5527 necessity for requalification by the enrollee;
- 5528 (i) provide for and employ cost containment measures and requirements including
5529 preadmission certification, concurrent inpatient review, and individual case management for
5530 the purpose of making the pool more cost-effective;
- 5531 (j) offer pool coverage through contracts with health maintenance organizations,
5532 preferred provider organizations, and other managed care systems that will manage costs while
5533 maintaining quality care;
- 5534 (k) establish annual limits on benefits payable under the pool to or on behalf of any
5535 enrollee;
- 5536 (l) exclude from coverage under the pool specific benefits, medical conditions, and
5537 procedures for the purpose of protecting the financial viability of the pool;
- 5538 (m) administer the Pool Fund;
- 5539 (n) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
5540 Rulemaking Act, to implement this chapter;
- 5541 (o) adopt, trademark, and copyright a trade name for the pool for use in marketing and
5542 publicizing the pool and its products; and
- 5543 (p) transition health care coverage for all individuals covered under the pool as part of

5544 the conversion to health insurance coverage, regardless of preexisting conditions, under
5545 PPACA.

5546 (2) (a) The board shall prepare and submit an annual report to the Legislature which
5547 shall include:

- 5548 (i) the net premiums anticipated;
- 5549 (ii) actuarial projections of payments required of the pool;
- 5550 (iii) the expenses of administration; and
- 5551 (iv) the anticipated reserves or losses of the pool.

5552 (b) The budget for operation of the pool is subject to the approval of the board.

5553 (c) The administrative budget of the board and the commissioner under this chapter
5554 shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is
5555 subject to review and approval by the Legislature.

5556 ~~[(3)(a) The board shall on or before September 1, 2004, require the plan administrator~~
5557 ~~or an independent actuarial consultant retained by the plan administrator to redetermine the~~
5558 ~~reasonable equivalent of the criteria for uninsurability required under Subsection~~
5559 ~~31A-30-106(1)(h) that is used by the board to determine eligibility for coverage in the pool.]~~

5560 ~~[(b) The board shall redetermine the criteria established in Subsection (3)(a) at least~~
5561 ~~every five years thereafter.]~~

5562 Section 47. Section **31A-29-111** is amended to read:

5563 **31A-29-111. Eligibility -- Limitations.**

5564 (1) (a) Except as provided in Subsection (1)(b), an individual who is not HIPAA
5565 eligible is eligible for pool coverage if the individual:

- 5566 (i) pays the established premium;
- 5567 (ii) is a resident of this state; and
- 5568 (iii) meets the health underwriting criteria under Subsection (5)(a).

5569 (b) Notwithstanding Subsection (1)(a), an individual who is not HIPAA eligible is not
5570 eligible for pool coverage if one or more of the following conditions apply:

- 5571 (i) the individual is eligible for health care benefits under Medicaid or Medicare,
5572 except as provided in Section **31A-29-112**;
- 5573 (ii) the individual has terminated coverage in the pool, unless:
5574 (A) 12 months have elapsed since the termination date; or

5575 (B) the individual demonstrates that creditable coverage has been involuntarily
5576 terminated for any reason other than nonpayment of premium;

5577 (iii) the pool has paid the maximum lifetime benefit to or on behalf of the individual;
5578 (iv) the individual is an inmate of a public institution;

5579 (v) the individual is eligible for a public health plan, as defined in federal regulations
5580 adopted pursuant to 42 U.S.C. Sec. 300gg;

5581 (vi) the individual's health condition does not meet the criteria established under
5582 Subsection (5);

5583 (vii) the individual is eligible for coverage under an employer group that offers a health
5584 benefit plan or a self-insurance arrangement to its eligible employees, dependents, or members
5585 as:

5586 (A) an eligible employee;
5587 (B) a dependent of an eligible employee; or
5588 (C) a member;

5589 (viii) the individual is covered under any other health benefit plan;

5590 (ix) except as provided in Subsections (3) and (6), at the time of application, the
5591 individual has not resided in Utah for at least 12 consecutive months preceding the date of
5592 application; or

5593 (x) the individual's employer pays any part of the individual's health benefit plan
5594 premium, either as an insured or a dependent, for pool coverage.

5595 (2) (a) Except as provided in Subsection (2)(b), an individual who is HIPAA eligible is
5596 eligible for pool coverage if the individual:

5597 (i) pays the established premium; and
5598 (ii) is a resident of this state.

5599 (b) Notwithstanding Subsection (2)(a), a HIPAA eligible individual is not eligible for
5600 pool coverage if one or more of the following conditions apply:

5601 (i) the individual is eligible for health care benefits under Medicaid or Medicare,
5602 except as provided in Section [31A-29-112](#);

5603 (ii) the individual is eligible for a public health plan, as defined in federal regulations
5604 adopted pursuant to 42 U.S.C. Sec. 300gg;

5605 (iii) the individual is covered under any other health benefit plan;

5606 (iv) the individual is eligible for coverage under an employer group that offers a health
5607 benefit plan or self-insurance arrangements to its eligible employees, dependents, or members
5608 as:

5609 (A) an eligible employee;

5610 (B) a dependent of an eligible employee; or

5611 (C) a member;

5612 (v) the pool has paid the maximum lifetime benefit to or on behalf of the individual;

5613 (vi) the individual is an inmate of a public institution; or

5614 (vii) the individual's employer pays any part of the individual's health benefit plan
5615 premium, either as an insured or a dependent, for pool coverage.

5616 (3) (a) Notwithstanding Subsection (1)(b)(ix), if otherwise eligible under Subsection
5617 (1)(a), an individual whose health care insurance coverage from a state high risk pool with
5618 similar coverage is terminated because of nonresidency in another state is eligible for coverage
5619 under the pool subject to the conditions of Subsections (1)(b)(i) through (viii).

5620 (b) Coverage under Subsection (3)(a) shall be applied for within 63 days after the
5621 termination date of the previous high risk pool coverage.

5622 (c) The effective date of this state's pool coverage shall be the date of termination of
5623 the previous high risk pool coverage.

5624 (d) The waiting period of an individual with a preexisting condition applying for
5625 coverage under this chapter shall be waived:

5626 (i) to the extent to which the waiting period was satisfied under a similar plan from
5627 another state; and

5628 (ii) if the other state's benefit limitation was not reached.

5629 (4) (a) If an eligible individual applies for pool coverage within 30 days of being
5630 denied coverage by an individual carrier, the effective date for pool coverage shall be no later
5631 than the first day of the month following the date of submission of the completed insurance
5632 application to the carrier.

5633 (b) Notwithstanding Subsection (4)(a), for individuals eligible for coverage under
5634 Subsection (3), the effective date shall be the date of termination of the previous high risk pool
5635 coverage.

5636 (5) (a) The board shall establish and adjust, as necessary, health underwriting criteria

5637 based on:

5638 (i) health condition; and

5639 (ii) expected claims so that the expected claims are anticipated to remain within
5640 available funding.

5641 (b) The board, with approval of the commissioner, may contract with one or more
5642 providers under Title 63G, Chapter 6a, Utah Procurement Code, to develop underwriting
5643 criteria under Subsection (5)(a).

5644 ~~[(c) If an individual is denied coverage by the pool under the criteria established in~~
5645 ~~Subsection (5)(a), the pool shall issue a certificate of insurability to the individual for coverage~~
5646 ~~under Subsection 31A-30-108(3).]~~

5647 (6) (a) Notwithstanding Subsection (1)(b)(ix), if otherwise eligible under Subsection
5648 (1)(a), an individual whose individual health care insurance coverage was involuntarily
5649 terminated, is eligible for coverage under the pool subject to the conditions of Subsections
5650 (1)(b)(i) through (viii) and (x).

5651 (b) Coverage under Subsection (6)(a) shall be applied for within 63 days after the
5652 termination date of the previous individual health care insurance coverage.

5653 (c) The effective date of this state's pool coverage shall be the date of termination of
5654 the previous individual coverage.

5655 (d) The waiting period of an individual with a preexisting condition applying for
5656 coverage under this chapter shall be waived to the extent to which the waiting period was
5657 satisfied under the individual health insurance plan.

5658 Section 48. Section **31A-29-115** is amended to read:

5659 **31A-29-115. Cancellation -- Notice.**

5660 (1) ~~[(a)]~~ On the date of renewal, the pool may cancel an enrollee's policy if:

5661 ~~[(i)]~~ (a) the enrollee's health condition does not meet the criteria established in
5662 Subsection **31A-29-111(5)**; and

5663 ~~[(ii)]~~ (b) the pool has provided written notice to the enrollee's last-known address no
5664 less than 60 days before cancellation~~[-and]~~.

5665 ~~[(iii)]~~ ~~at least one individual carrier has not reached the individual enrollment cap~~
5666 ~~established in Section 31A-30-110.~~

5667 ~~[(b)]~~ The pool shall issue a certificate of insurability to an enrollee whose policy is

5668 cancelled under Subsection (1)(a) for coverage under Subsection ~~31A-30-108(3)~~ if the
5669 requirements of Subsection ~~31A-29-111(5)~~ are met.]

5670 (2) The pool may cancel an enrollee's policy at any time if:

5671 (a) the pool has provided written notice to the enrollee's last-known address no less
5672 than 15 days before cancellation; and

5673 (b) (i) the enrollee establishes a residency outside of Utah for three consecutive
5674 months;

5675 (ii) there is nonpayment of premiums; or

5676 (iii) the pool determines that the enrollee does not meet the eligibility requirements set
5677 forth in Section ~~31A-29-111~~, in which case:

5678 (A) the policy may be retroactively terminated for the period of time in which the
5679 enrollee was not eligible;

5680 (B) retroactive termination may not exceed three years; and

5681 (C) the board's remedy under this Subsection (2)(b) shall be a cause of action against
5682 the enrollee for benefits paid during the period of ineligibility in accordance with Subsection
5683 ~~31A-29-119(3)~~.

5684 Section 49. Section ~~31A-30-102~~ is amended to read:

5685 **~~31A-30-102. Purpose statement.~~**

5686 The purpose of this chapter is to:

5687 (1) prevent abusive rating practices;

5688 (2) require disclosure of rating practices to purchasers;

5689 (3) establish rules regarding:

5690 (a) a universal individual and small group application; and

5691 (b) renewability of coverage;

5692 (4) improve the overall fairness and efficiency of the individual and small group
5693 insurance market;

5694 (5) provide increased access for individuals and small employers to health insurance;
5695 and

5696 (6) provide an employer with the opportunity to establish a defined contribution
5697 arrangement for an employee to purchase a health benefit plan through the [~~Internet portal~~]

5698 Health Insurance Exchange created by Section ~~63M-1-2504~~.

5699 Section 50. Section 31A-30-103 is amended to read:

5700 **31A-30-103. Definitions.**

5701 As used in this chapter:

5702 (1) "Actuarial certification" means a written statement by a member of the American
5703 Academy of Actuaries or other individual approved by the commissioner that a covered carrier
5704 is in compliance with [~~Sections 31A-30-106 and 31A-30-106.1~~] this chapter, based upon the
5705 examination of the covered carrier, including review of the appropriate records and of the
5706 actuarial assumptions and methods used by the covered carrier in establishing premium rates
5707 for applicable health benefit plans.

5708 (2) "Affiliate" or "affiliated" means [~~any entity or~~] a person who directly or indirectly
5709 through one or more intermediaries, controls or is controlled by, or is under common control
5710 with, a specified [~~entity or~~] person.

5711 (3) "Base premium rate" means, for each class of business as to a rating period, the
5712 lowest premium rate charged or that could have been charged under a rating system for that
5713 class of business by the covered carrier to covered insureds with similar case characteristics for
5714 health benefit plans with the same or similar coverage.

5715 (4) (a) "Bona fide employer association" means an association of employers:

5716 (i) that meets the requirements of Subsection 31A-22-701(2)(b);

5717 (ii) in which the employers of the association, either directly or indirectly, exercise
5718 control over the plan;

5719 (iii) that is organized:

5720 (A) based on a commonality of interest between the employers and their employees
5721 that participate in the plan by some common economic or representation interest or genuine
5722 organizational relationship unrelated to the provision of benefits; and

5723 (B) to act in the best interests of its employers to provide benefits for the employer's
5724 employees and their spouses and dependents, and other benefits relating to employment; and

5725 (iv) whose association sponsored health plan complies with 45 C.F.R. 146.121.

5726 (b) The commissioner shall consider the following with regard to determining whether
5727 an association of employers is a bona fide employer association under Subsection (4)(a):

5728 (i) how association members are solicited;

5729 (ii) who participates in the association;

5730 (iii) the process by which the association was formed;

5731 (iv) the purposes for which the association was formed, and what, if any, were the

5732 pre-existing relationships of its members;

5733 (v) the powers, rights and privileges of employer members; and

5734 (vi) who actually controls and directs the activities and operations of the benefit

5735 programs.

5736 (5) "Carrier" means ~~[any]~~ a person ~~[or entity]~~ that provides health insurance in this

5737 state including:

5738 (a) an insurance company;

5739 (b) a prepaid hospital or medical care plan;

5740 (c) a health maintenance organization;

5741 (d) a multiple employer welfare arrangement; and

5742 (e) ~~[any other]~~ another person ~~[or entity]~~ providing a health insurance plan under this

5743 title.

5744 (6) (a) Except as provided in Subsection (6)(b), "case characteristics" means

5745 demographic or other objective characteristics of a covered insured that are considered by the

5746 carrier in determining premium rates for the covered insured.

5747 (b) "Case characteristics" do not include:

5748 (i) duration of coverage since the policy was issued;

5749 (ii) claim experience; and

5750 (iii) health status.

5751 (7) "Class of business" means all or a separate grouping of covered insureds that is

5752 permitted by the commissioner in accordance with Section [31A-30-105](#).

5753 ~~[(8) "Conversion policy" means a policy providing coverage under the conversion~~

5754 ~~provisions required in Chapter 22, Part 7, Group Accident and Health Insurance.]~~

5755 ~~[(9)]~~ (8) "Covered carrier" means ~~[any]~~ an individual carrier or small employer carrier

5756 subject to this chapter.

5757 ~~[(10)]~~ (9) "Covered individual" means ~~[any]~~ an individual who is covered under a

5758 health benefit plan subject to this chapter.

5759 ~~[(11)]~~ (10) "Covered insureds" means small employers and individuals who are issued

5760 a health benefit plan that is subject to this chapter.

5761 ~~[(12)]~~ (11) "Dependent" means an individual to the extent that the individual is defined
5762 to be a dependent by:

- 5763 (a) the health benefit plan covering the covered individual; and
5764 (b) Chapter 22, Part 6, Accident and Health Insurance.

5765 ~~[(13)]~~ (12) "Established geographic service area" means a geographical area approved
5766 by the commissioner within which the carrier is authorized to provide coverage.

5767 ~~[(14)]~~ (13) "Index rate" means, for each class of business as to a rating period for
5768 covered insureds with similar case characteristics, the arithmetic average of the applicable base
5769 premium rate and the corresponding highest premium rate.

5770 ~~[(15)]~~ (14) "Individual carrier" means a carrier that provides coverage on an individual
5771 basis through a health benefit plan regardless of whether:

- 5772 (a) coverage is offered through:
5773 (i) an association;
5774 (ii) a trust;
5775 (iii) a discretionary group; or
5776 (iv) other similar groups; or
5777 (b) the policy or contract is situated out-of-state.

5778 ~~[(16)]~~ (15) "Individual conversion policy" means a conversion policy issued to:

- 5779 (a) an individual; or
5780 (b) an individual with a family.

5781 ~~[(17) "Individual coverage count" means the number of natural persons covered under
5782 a carrier's health benefit products that are individual policies.]~~

5783 ~~[(18) "Individual enrollment cap" means the percentage set by the commissioner in
5784 accordance with Section 31A-30-110.]~~

5785 ~~[(19)]~~ (16) "New business premium rate" means, for each class of business as to a
5786 rating period, the lowest premium rate charged or offered, or that could have been charged or
5787 offered, by the carrier to covered insureds with similar case characteristics for newly issued
5788 health benefit plans with the same or similar coverage.

5789 ~~[(20)]~~ (17) "Premium" means money paid by covered insureds and covered individuals
5790 as a condition of receiving coverage from a covered carrier, including ~~[any]~~ fees or other
5791 contributions associated with the health benefit plan.

5792 ~~[(21)]~~ (18) (a) "Rating period" means the calendar period for which premium rates
5793 established by a covered carrier are assumed to be in effect, as determined by the carrier.

5794 (b) A covered carrier may not have:

5795 (i) more than one rating period in any calendar month; and

5796 (ii) no more than 12 rating periods in any calendar year.

5797 ~~[(22) "Resident" means an individual who has resided in this state for at least 12
5798 consecutive months immediately preceding the date of application.]~~

5799 ~~[(23)]~~ (19) "Short-term limited duration insurance" means a health benefit product that:

5800 (a) is not renewable; and

5801 (b) has an expiration date specified in the contract that is less than 364 days after the
5802 date the plan became effective.

5803 ~~[(24)]~~ (20) "Small employer carrier" means a carrier that provides health benefit plans
5804 covering eligible employees of one or more small employers in this state, regardless of
5805 whether:

5806 (a) coverage is offered through:

5807 (i) an association;

5808 (ii) a trust;

5809 (iii) a discretionary group; or

5810 (iv) other similar grouping; or

5811 (b) the policy or contract is situated out-of-state.

5812 ~~[(25) "Uninsurable" means an individual who:]~~

5813 ~~[(a) is eligible for the Comprehensive Health Insurance Pool coverage under the
5814 underwriting criteria established in Subsection 31A-29-11(5); or]~~

5815 ~~[(b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and]~~

5816 ~~[(ii) has a condition of health that does not meet consistently applied underwriting
5817 criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(g)
5818 and (h) for which coverage the applicant is applying.]~~

5819 ~~[(26) "Uninsurable percentage" for a given calendar year equals UC/CI where, for
5820 purposes of this formula:]~~

5821 ~~[(a) "CI" means the carrier's individual coverage count as of December 31 of the
5822 preceding year; and]~~

5823 ~~[(b) "UC" means the number of uninsurable individuals who were issued an individual~~
5824 ~~policy on or after July 1, 1997.]~~

5825 Section 51. Section **31A-30-104** is amended to read:

5826 **31A-30-104. Applicability and scope.**

5827 (1) This chapter applies to any:

5828 (a) health benefit plan that provides coverage to:

5829 (i) individuals;

5830 (ii) small employers, except as provided in Subsection (3); or

5831 (iii) both Subsections (1)(a)(i) and (ii); or

5832 (b) individual conversion policy for purposes of Sections [31A-30-106.5](#) and

5833 [31A-30-107.5](#).

5834 (2) This chapter applies to a health benefit plan that provides coverage to small

5835 employers or individuals regardless of:

5836 (a) whether the contract is issued to:

5837 (i) an association, except as provided in Subsection (3);

5838 (ii) a trust;

5839 (iii) a discretionary group; or

5840 (iv) other similar grouping; or

5841 (b) the situs of delivery of the policy or contract.

5842 (3) This chapter does not apply to:

5843 (a) short-term limited duration health insurance;

5844 (b) federally funded or partially funded programs; or

5845 (c) a bona fide employer association.

5846 (4) (a) Except as provided in Subsection (4)(b), for the purposes of this chapter:

5847 (i) carriers that are affiliated companies or that are eligible to file a consolidated tax
5848 return shall be treated as one carrier; and

5849 (ii) any restrictions or limitations imposed by this chapter shall apply as if all health
5850 benefit plans delivered or issued for delivery to covered insureds in this state by the affiliated
5851 carriers were issued by one carrier.

5852 (b) Upon a finding of the commissioner, an affiliated carrier that is a health

5853 maintenance organization having a certificate of authority under this title may be considered to

5854 be a separate carrier for the purposes of this chapter.

5855 (c) Unless otherwise authorized by the commissioner or by Chapter 42, Defined
5856 Contribution Risk Adjuster Act, a covered carrier may not enter into one or more ceding
5857 arrangements with respect to health benefit plans delivered or issued for delivery to covered
5858 insureds in this state if the ceding arrangements would result in less than 50% of the insurance
5859 obligation or risk for the health benefit plans being retained by the ceding carrier.

5860 (d) Section [31A-22-1201](#) applies if a covered carrier cedes or assumes all of the
5861 insurance obligation or risk with respect to one or more health benefit plans delivered or issued
5862 for delivery to covered insureds in this state.

5863 (5) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal
5864 Labor Management Relations Act, or a carrier with the written authorization of such a trust,
5865 may make a written request to the commissioner for a waiver from the application of any of the
5866 provisions of ~~[Subsection]~~ [Subsections 31A-30-106\(1\) and 31A-30-106.1\(1\)](#) with respect to a
5867 health benefit plan provided to the trust.

5868 (b) The commissioner may grant a trust or carrier described in Subsection (5)(a) a
5869 waiver if the commissioner finds that application with respect to the trust would:

5870 (i) have a substantial adverse effect on the participants and beneficiaries of the trust;
5871 and

5872 (ii) require significant modifications to one or more collective bargaining arrangements
5873 under which the trust is established or maintained.

5874 (c) A waiver granted under this Subsection (5) may not apply to an individual if the
5875 person participates in a Taft Hartley trust as an associate member of any employee
5876 organization.

5877 (6) Sections [31A-30-106](#), [31A-30-106.1](#), [31A-30-106.5](#), [31A-30-106.7](#), [31A-30-107](#),
5878 [and 31A-30-108](#), ~~[and 31A-30-111]~~ apply to:

5879 (a) any insurer engaging in the business of insurance related to the risk of a small
5880 employer for medical, surgical, hospital, or ancillary health care expenses of the small
5881 employer's employees provided as an employee benefit; and

5882 (b) any contract of an insurer, other than a workers' compensation policy, related to the
5883 risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the
5884 small employer's employees provided as an employee benefit.

5885 (7) The commissioner may make rules requiring that the marketing practices be
5886 consistent with this chapter for:

- 5887 (a) a small employer carrier;
- 5888 (b) a small employer carrier's agent;
- 5889 (c) an insurance producer;
- 5890 (d) an insurance consultant; and
- 5891 (e) a navigator.

5892 Section 52. Section **31A-30-106** is amended to read:

5893 **31A-30-106. Individual premiums -- Rating restrictions -- Disclosure.**

5894 (1) Premium rates for health benefit plans for individuals under this chapter are subject
5895 to this section.

5896 (a) The index rate for a rating period for any class of business may not exceed the
5897 index rate for any other class of business by more than 20%.

5898 (b) (i) For a class of business, the premium rates charged during a rating period to
5899 covered insureds with similar case characteristics for the same or similar coverage, or the rates
5900 that could be charged to the individual under the rating system for that class of business, may
5901 not vary from the index rate by more than 30% of the index rate except as provided under
5902 Subsection (1)(b)(ii).

5903 (ii) A carrier that offers individual and small employer health benefit plans may use the
5904 small employer index rates to establish the rate limitations for individual policies, even if some
5905 individual policies are rated below the small employer base rate.

5906 (c) The percentage increase in the premium rate charged to a covered insured for a new
5907 rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of
5908 the following:

5909 (i) the percentage change in the new business premium rate measured from the first day
5910 of the prior rating period to the first day of the new rating period;

5911 (ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods
5912 of less than one year, due to the claim experience, health status, or duration of coverage of the
5913 covered individuals as determined from the rate manual for the class of business of the carrier
5914 offering an individual health benefit plan; and

5915 (iii) any adjustment due to change in coverage or change in the case characteristics of

5916 the covered insured as determined from the rate manual for the class of business of the carrier
5917 offering an individual health benefit plan.

5918 (d) (i) A carrier offering an individual health benefit plan shall apply rating factors,
5919 including case characteristics, consistently with respect to all covered insureds in a class of
5920 business.

5921 (ii) Rating factors shall produce premiums for identical individuals that:

5922 (A) differ only by the amounts attributable to plan design; and

5923 (B) do not reflect differences due to the nature of the individuals assumed to select
5924 particular health benefit products.

5925 (iii) A carrier offering an individual health benefit plan shall treat all health benefit
5926 plans issued or renewed in the same calendar month as having the same rating period.

5927 (e) For the purposes of this Subsection (1), a health benefit plan that uses a restricted
5928 network provision may not be considered similar coverage to a health benefit plan that does not
5929 use a restricted network provision, provided that use of the restricted network provision results
5930 in substantial difference in claims costs.

5931 (f) A carrier offering a health benefit plan to an individual may not, without prior
5932 approval of the commissioner, use case characteristics other than:

5933 (i) age;

5934 (ii) gender;

5935 (iii) geographic area; and

5936 (iv) family composition.

5937 (g) (i) The commissioner shall establish rules in accordance with Title 63G, Chapter 3,
5938 Utah Administrative Rulemaking Act, to:

5939 (A) implement this chapter; ~~and~~

5940 (B) assure that rating practices used by carriers who offer health benefit plans to
5941 individuals are consistent with the purposes of this chapter[-]; and

5942 (C) promote transparency of rating practices of health benefit plans, except that a
5943 carrier may not be required to disclose proprietary information.

5944 (ii) The rules described in Subsection (1)(g)(i) may include rules that:

5945 (A) assure that differences in rates charged for health benefit products by carriers who
5946 offer health benefit plans to individuals are reasonable and reflect objective differences in plan

5947 design, not including differences due to the nature of the individuals assumed to select
5948 particular health benefit products; and

5949 (B) prescribe the manner in which case characteristics may be used by carriers who
5950 offer health benefit plans to individuals[;].

5951 [~~(C) implement the individual enrollment cap under Section 31A-30-110, including~~
5952 ~~specifying:]~~

5953 [~~(F) the contents for certification;]~~

5954 [~~(H) auditing standards;]~~

5955 [~~(HH) underwriting criteria for uninsurable classification; and]~~

5956 [~~(IV) limitations on high risk enrollees under Section 31A-30-111; and]~~

5957 [~~(D) establish the individual enrollment cap under Subsection 31A-30-110(1);]~~

5958 [~~(h) Before implementing regulations for underwriting criteria for uninsurable~~
5959 ~~classification, the commissioner shall contract with an independent consulting organization to~~
5960 ~~develop industry-wide underwriting criteria for uninsurability based on an individual's expected~~
5961 ~~claims under open enrollment coverage exceeding 325% of that expected for a standard~~
5962 ~~insurable individual with the same case characteristics.]~~

5963 [~~(i)~~] (h) The commissioner shall revise rules issued for Sections 31A-22-602 and
5964 31A-22-605 regarding individual accident and health policy rates to allow rating in accordance
5965 with this section.

5966 (2) For purposes of Subsection (1)(c)(i), if a health benefit product is a health benefit
5967 product into which the covered carrier is no longer enrolling new covered insureds, the covered
5968 carrier shall use the percentage change in the base premium rate, provided that the change does
5969 not exceed, on a percentage basis, the change in the new business premium rate for the most
5970 similar health benefit product into which the covered carrier is actively enrolling new covered
5971 insureds.

5972 (3) (a) A covered carrier may not transfer a covered insured involuntarily into or out of
5973 a class of business.

5974 (b) A covered carrier may not offer to transfer a covered insured into or out of a class
5975 of business unless the offer is made to transfer all covered insureds in the class of business
5976 without regard to:

5977 (i) case characteristics;

5978 (ii) claim experience;
5979 (iii) health status; or
5980 (iv) duration of coverage since issue.

5981 (4) (a) A carrier who offers a health benefit plan to an individual shall maintain at the
5982 carrier's principal place of business a complete and detailed description of its rating practices
5983 and renewal underwriting practices, including information and documentation that demonstrate
5984 that the carrier's rating methods and practices are:

5985 (i) based upon commonly accepted actuarial assumptions; and
5986 (ii) in accordance with sound actuarial principles.

5987 (b) (i) ~~Each~~ A carrier subject to this section shall file with the commissioner, on or
5988 before April 1 of each year, in a form, manner, and containing such information as prescribed
5989 by the commissioner, an actuarial certification certifying that:

5990 (A) the carrier is in compliance with this chapter; and
5991 (B) the rating methods of the carrier are actuarially sound.

5992 (ii) A copy of the certification required by Subsection (4)(b)(i) shall be retained by the
5993 carrier at the carrier's principal place of business.

5994 (c) A carrier shall make the information and documentation described in this
5995 Subsection (4) available to the commissioner upon request.

5996 (d) ~~Records~~ Except as provided in Subsection (1)(g) or required by PPACA, a record
5997 submitted to the commissioner under this section shall be maintained by the commissioner as a
5998 protected ~~records~~ record under Title 63G, Chapter 2, Government Records Access and
5999 Management Act.

6000 Section 53. Section **31A-30-106.7** is amended to read:

6001 **31A-30-106.7. Surcharge for groups changing carriers.**

6002 (1) (a) Except as provided in Subsection (1)(b), if prior notice is given, a covered
6003 carrier may impose upon a small group that changes coverage to that carrier from another
6004 carrier a one-time surcharge of up to 25% of the annualized premium that the carrier could
6005 otherwise charge under Section ~~[31A-30-106]~~ 31A-30-106.1.

6006 (b) A covered carrier may not impose the surcharge described in Subsection (1)(a) if:

6007 (i) the change in carriers occurs on the anniversary of the plan year, as defined in
6008 Section 31A-1-301;

6009 (ii) the previous coverage was terminated under Subsection [31A-30-107\(3\)\(e\)](#); [~~or~~]

6010 (iii) employees from an existing group form a new business[-]; and

6011 (iv) the surcharge is not applied uniformly to all similarly situated small groups.

6012 (2) A covered carrier may not impose the surcharge described in Subsection (1) if the
6013 offer to cover the group occurs at a time other than the anniversary of the plan year because:

6014 (a) (i) the application for coverage is made prior to the anniversary date in accordance
6015 with the covered carrier's published policies; and

6016 (ii) the offer to cover the group is not issued until after the anniversary date; or

6017 (b) (i) the application for coverage is made prior to the anniversary date in accordance
6018 with the covered carrier's published policies; and

6019 (ii) additional underwriting or rating information requested by the covered carrier is not
6020 received until after the anniversary date.

6021 (3) If a covered carrier chooses to apply a surcharge under Subsection (1), the
6022 application of the surcharge and the criteria for incurring or avoiding the surcharge shall be
6023 clearly stated in the:

6024 (a) written application materials provided to the applicant at the time of application;
6025 and

6026 (b) written producer guidelines.

6027 (4) The commissioner shall adopt rules in accordance with Title 63G, Chapter 3, Utah
6028 Administrative Rulemaking Act, to ensure compliance with this section.

6029 Section 54. Section [31A-30-107](#) is amended to read:

6030 **[31A-30-107. Renewal -- Limitations -- Exclusions -- Discontinuance and](#)**
6031 **nonrenewal.**

6032 (1) Except as otherwise provided in this section, a small employer health benefit plan is
6033 renewable and continues in force:

6034 (a) with respect to all eligible employees and dependents; and

6035 (b) at the option of the plan sponsor.

6036 (2) A small employer health benefit plan may be discontinued or nonrenewed:

6037 (a) for a network plan, if[~~-(t)~~] there is no longer any enrollee under the group health
6038 plan who lives, resides, or works in:

6039 [~~(A)~~] (i) the service area of the covered carrier; or

6040 ~~[(B)]~~ (ii) the area for which the covered carrier is authorized to do business; ~~[and] or~~
6041 ~~[(ii) in the case of the small employer market, the small employer carrier applies the~~
6042 ~~same criteria the small employer carrier would apply in denying enrollment in the plan under~~
6043 ~~Subsection 31A-30-108(7); or]~~

6044 (b) for coverage made available in the small or large employer market only through an
6045 association, if:

6046 (i) the employer's membership in the association ceases; and

6047 (ii) the coverage is terminated uniformly without regard to any health status-related
6048 factor relating to any covered individual.

6049 (3) A small employer health benefit plan may be discontinued if:

6050 (a) a condition described in Subsection (2) exists;

6051 (b) except as prohibited by Section 31A-30-206, the plan sponsor fails to pay
6052 premiums or contributions in accordance with the terms of the contract;

6053 (c) the plan sponsor:

6054 (i) performs an act or practice that constitutes fraud; or

6055 (ii) makes an intentional misrepresentation of material fact under the terms of the
6056 coverage;

6057 (d) the covered carrier:

6058 (i) elects to discontinue offering a particular small employer health benefit product
6059 delivered or issued for delivery in this state; and

6060 (ii) (A) provides notice of the discontinuation in writing:

6061 (I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

6062 (II) at least 90 days before the date the coverage will be discontinued;

6063 (B) provides notice of the discontinuation in writing:

6064 (I) to the commissioner; and

6065 (II) at least three working days prior to the date the notice is sent to the affected plan
6066 sponsors, employees, and dependents of the plan sponsors or employees;

6067 (C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase all
6068 other small employer health benefit products currently being offered by the small employer
6069 carrier in the market; and

6070 (D) in exercising the option to discontinue that product and in offering the option of

6071 coverage in this section, acts uniformly without regard to:

6072 (I) the claims experience of a plan sponsor;

6073 (II) any health status-related factor relating to any covered participant or beneficiary; or

6074 (III) any health status-related factor relating to any new participant or beneficiary who

6075 may become eligible for the coverage; or

6076 (e) the covered carrier:

6077 (i) elects to discontinue all of the covered carrier's small employer health benefit plans

6078 in:

6079 (A) the small employer market;

6080 (B) the large employer market; or

6081 (C) both the small employer and large employer markets; and

6082 (ii) (A) provides notice of the discontinuation in writing:

6083 (I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

6084 (II) at least 180 days before the date the coverage will be discontinued;

6085 (B) provides notice of the discontinuation in writing:

6086 (I) to the commissioner in each state in which an affected insured individual is known

6087 to reside; and

6088 (II) at least 30 working days prior to the date the notice is sent to the affected plan

6089 sponsors, employees, and the dependents of the plan sponsors or employees;

6090 (C) discontinues and nonrenews all plans issued or delivered for issuance in the

6091 market; and

6092 (D) provides a plan of orderly withdrawal as required by Section [31A-4-115](#).

6093 (4) A small employer health benefit plan may be discontinued or nonrenewed:

6094 (a) if a condition described in Subsection (2) exists; or

6095 (b) except as prohibited by Section [31A-30-206](#), for noncompliance with the insurer's

6096 employer contribution requirements.

6097 (5) A small employer health benefit plan may be nonrenewed:

6098 (a) if a condition described in Subsection (2) exists; or

6099 (b) except as prohibited by Section [31A-30-206](#), for noncompliance with the insurer's

6100 minimum participation requirements.

6101 (6) (a) Except as provided in Subsection (6)(d), an eligible employee may be

6102 discontinued if after issuance of coverage the eligible employee:

6103 (i) engages in an act or practice that constitutes fraud in connection with the coverage;

6104 or

6105 (ii) makes an intentional misrepresentation of material fact in connection with the
6106 coverage.

6107 (b) An eligible employee that is discontinued under Subsection (6)(a) may reenroll:

6108 (i) 12 months after the date of discontinuance; and

6109 (ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies
6110 to reenroll.

6111 (c) At the time the eligible employee's coverage is discontinued under Subsection
6112 (6)(a), the covered carrier shall notify the eligible employee of the right to reenroll when
6113 coverage is discontinued.

6114 (d) An eligible employee may not be discontinued under this Subsection (6) because of
6115 a fraud or misrepresentation that relates to health status.

6116 (7) For purposes of this section, a reference to "plan sponsor" includes a reference to
6117 the employer:

6118 (a) with respect to coverage provided to an employer member of the association; and

6119 (b) if the small employer health benefit plan is made available by a covered carrier in
6120 the employer market only through:

6121 (i) an association;

6122 (ii) a trust; or

6123 (iii) a discretionary group.

6124 (8) A covered carrier may modify a small employer health benefit plan only:

6125 (a) at the time of coverage renewal; and

6126 (b) if the modification is effective uniformly among all plans with that product.

6127 Section 55. Section **31A-30-108** is amended to read:

6128 **31A-30-108. Eligibility for small employer and individual market.**

6129 (1) (a) [~~Small employer carriers shall accept residents~~] A small employer carrier shall
6130 accept a small employer that applies for small group coverage as set forth in the Health
6131 Insurance Portability and Accountability Act, Sec. 2701(f) and 2711(a), and PPACA, Sec.
6132 2702.

6133 ~~[(b) Individual carriers shall accept residents for individual coverage pursuant to:]~~

6134 ~~[(i) Health Insurance Portability and Accountability Act, Sec. 2741(a)-(b); and]~~

6135 ~~[(ii) Subsection (3).]~~

6136 (b) An individual carrier shall accept an individual that applies for individual coverage

6137 as set forth in PPACA, Sec. 2702.

6138 (2) (a) ~~[Small]~~ A small employer ~~[carriers]~~ carrier shall offer to accept all eligible
6139 employees and their dependents at the same level of benefits under any health benefit plan
6140 provided to a small employer.

6141 (b) ~~[Small]~~ A small employer ~~[carriers]~~ carrier may:

6142 (i) request a small employer to submit a copy of the small employer's quarterly income
6143 tax withholdings to determine whether the employees for whom coverage is provided or
6144 requested are bona fide employees of the small employer; and

6145 (ii) deny or terminate coverage if the small employer refuses to provide documentation
6146 requested under Subsection (2)(b)(i).

6147 ~~[(3) Except as provided in Subsections (5) and (6) and Section 31A-30-110, individual~~
6148 ~~carriers shall accept for coverage individuals to whom all of the following conditions apply:]~~

6149 ~~[(a) the individual is not covered or eligible for coverage:]~~

6150 ~~[(i) (A) as an employee of an employer;]~~

6151 ~~[(B) as a member of an association; or]~~

6152 ~~[(C) as a member of any other group; and]~~

6153 ~~[(ii) under:]~~

6154 ~~[(A) a health benefit plan; or]~~

6155 ~~[(B) a self-insured arrangement that provides coverage similar to that provided by a~~
6156 ~~health benefit plan as defined in Section 31A-1-301;]~~

6157 ~~[(b) the individual is not covered and is not eligible for coverage under any public~~
6158 ~~health benefits arrangement including:]~~

6159 ~~[(i) the Medicare program established under Title XVIII of the Social Security Act;]~~

6160 ~~[(ii) any act of Congress or law of this or any other state that provides benefits~~
6161 ~~comparable to the benefits provided under this chapter; or]~~

6162 ~~[(iii) coverage under the Comprehensive Health Insurance Pool Act created in Chapter~~
6163 ~~29, Comprehensive Health Insurance Pool Act;]~~

6164 ~~[(c) unless the maximum benefit has been reached the individual is not covered or~~
6165 ~~eligible for coverage under any:]~~

6166 ~~[(i) Medicare supplement policy;]~~
6167 ~~[(ii) conversion option;]~~
6168 ~~[(iii) continuation or extension under COBRA; or]~~
6169 ~~[(iv) state extension;]~~

6170 ~~[(d) the individual has not terminated or declined coverage described in Subsection~~
6171 ~~(3)(a), (b), or (c) within 93 days of application for coverage, unless the individual is eligible for~~
6172 ~~individual coverage under Health Insurance Portability and Accountability Act, Sec. 2741(b),~~
6173 ~~in which case, the requirement of this Subsection (3)(d) does not apply; and]~~

6174 ~~[(e) the individual is certified as ineligible for the Health Insurance Pool if:]~~

6175 ~~[(i) the individual applies for coverage with the Comprehensive Health Insurance Pool~~
6176 ~~within 30 days after being rejected or refused coverage by the covered carrier and reapplies for~~
6177 ~~coverage with that covered carrier within 30 days after the date of issuance of a certificate~~
6178 ~~under Subsection [31A-29-111\(5\)\(c\)](#); or]~~

6179 ~~[(ii) the individual applies for coverage with any individual carrier within 45 days~~
6180 ~~after:]~~

6181 ~~[(A) notice of cancellation of coverage under Subsection [31A-29-115\(1\)](#); or]~~

6182 ~~[(B) the date of issuance of a certificate under Subsection [31A-29-111\(5\)\(c\)](#) if the~~
6183 ~~individual applied first for coverage with the Comprehensive Health Insurance Pool:]~~

6184 ~~[(4) (a) If coverage is obtained under Subsection (3)(e)(i) and the required premium is~~
6185 ~~paid, the effective date of coverage shall be the first day of the month following the individual's~~
6186 ~~submission of a completed insurance application to that covered carrier.]~~

6187 ~~[(b) If coverage is obtained under Subsection (3)(e)(ii) and the required premium is~~
6188 ~~paid, the effective date of coverage shall be the day following the:]~~

6189 ~~[(i) cancellation of coverage under Subsection [31A-29-115\(1\)](#); or]~~

6190 ~~[(ii) submission of a completed insurance application to the Comprehensive Health~~
6191 ~~Insurance Pool:]~~

6192 ~~[(5) (a) An individual carrier is not required to accept individuals for coverage under~~
6193 ~~Subsection (3) if the carrier issues no new individual policies in the state after July 1, 1997.]~~

6194 ~~[(b) A carrier described in Subsection (5)(a) may not issue new individual policies in~~

6195 the state for five years from July 1, 1997.]

6196 ~~[(c) Notwithstanding Subsection (5)(b), a carrier may request permission to issue new~~
6197 ~~policies after July 1, 1999, which may only be granted if:]~~

6198 ~~[(i) the carrier accepts uninsurables as is required of a carrier entering the market under~~
6199 ~~Subsection 31A-30-110; and]~~

6200 ~~[(ii) the commissioner finds that the carrier's issuance of new individual policies:]~~

6201 ~~[(A) is in the best interests of the state; and]~~

6202 ~~[(B) does not provide an unfair advantage to the carrier.]~~

6203 ~~[(6) (a) If the Comprehensive Health Insurance Pool, as set forth under Chapter 29;~~
6204 ~~Comprehensive Health Insurance Pool Act, is dissolved or discontinued, or if enrollment is~~
6205 ~~capped or suspended, an individual carrier may decline to accept individuals applying for~~
6206 ~~individual enrollment, other than individuals applying for coverage as set forth in Health~~
6207 ~~Insurance Portability and Accountability Act, Sec. 2741 (a)-(b).]~~

6208 ~~[(b) Within two calendar days of taking action under Subsection (6)(a), an individual~~
6209 ~~carrier will provide written notice to the department.]~~

6210 ~~[(7) (a) If a small employer carrier offers health benefit plans to small employers~~
6211 ~~through a network plan, the small employer carrier may:]~~

6212 ~~[(i) limit the employers that may apply for the coverage to those employers with~~
6213 ~~eligible employees who live, reside, or work in the service area for the network plan; and]~~

6214 ~~[(ii) within the service area of the network plan, deny coverage to an employer if the~~
6215 ~~small employer carrier has demonstrated to the commissioner that the small employer carrier:]~~

6216 ~~[(A) will not have the capacity to deliver services adequately to enrollees of any~~
6217 ~~additional groups because of the small employer carrier's obligations to existing group contract~~
6218 ~~holders and enrollees; and]~~

6219 ~~[(B) applies this section uniformly to all employers without regard to:]~~

6220 ~~[(f) the claims experience of an employer, an employer's employee, or a dependent of~~
6221 ~~an employee; or]~~

6222 ~~[(H) any health status-related factor relating to an employee or dependent of an~~
6223 ~~employee.]~~

6224 ~~[(b) (i) A small employer carrier that denies a health benefit product to an employer in~~
6225 ~~any service area in accordance with this section may not offer coverage in the small employer~~

6226 ~~market within the service area to any employer for a period of 180 days after the date the~~
6227 ~~coverage is denied.]~~

6228 ~~[(ii) This Subsection (7)(b) does not:]~~

6229 ~~[(A) limit the small employer carrier's ability to renew coverage that is in force; or]~~

6230 ~~[(B) relieve the small employer carrier of the responsibility to renew coverage that is in~~
6231 ~~force.]~~

6232 ~~[(c) Coverage offered within a service area after the 180-day period specified in~~
6233 ~~Subsection (7)(b) is subject to the requirements of this section.]~~

6234 Section 56. Section **31A-30-207** is amended to read:

6235 **31A-30-207. Rating and underwriting restrictions for health plans in the defined**
6236 **contribution arrangement market.**

6237 (1) Except as provided in Subsection (2), rating and underwriting restrictions for
6238 defined contribution arrangement health benefit plans offered in the Health Insurance
6239 Exchange shall be in accordance with Section [31A-30-106.1](#), and the plan adopted under
6240 Chapter 42, Defined Contribution Risk Adjuster Act.

6241 (2) Notwithstanding ~~[the provisions of]~~ Subsections [31A-30-106.1](#)(9)(b)(ii) and (iii), a
6242 carrier offering a defined contribution arrangement in the Health Insurance Exchange under
6243 this part~~[-(a)]~~ shall calculate rates based on a family tier rating structure that includes four tiers
6244 in compliance with Subsection [31A-30-106.1](#)(9)(b)(i)~~[-and]~~.

6245 ~~[(b) may not calculate rates based on a family tier rating structure that includes five or~~
6246 ~~six tiers as described in Subsection [31A-30-106](#)(9)(b)(ii) or (iii).]~~

6247 (3) All insurers who participate in the defined contribution market shall:

6248 (a) participate in the risk adjuster mechanism developed under Chapter 42, Defined
6249 Contribution Risk Adjuster Act for all defined contribution arrangement health benefit plans;

6250 (b) provide the risk adjuster board with:

6251 (i) an employer group's risk factor; and

6252 (ii) carrier enrollment data; and

6253 (c) submit rates to the exchange that are net of commissions.

6254 (4) When an employer group enters the defined contribution arrangement market and
6255 the employer group has a health plan with an insurer who is participating in the defined
6256 contribution arrangement market, the risk factor applied to the employer group when it enters

6257 the defined contribution arrangement market may not be greater than the employer group's
6258 renewal risk factor for the same group of covered employees and the same effective date, as
6259 determined by the employer group's insurer.

6260 Section 57. Section **31A-30-209** is amended to read:

6261 **31A-30-209. Insurance producers and the Health Insurance Exchange.**

6262 (1) A producer may be listed on the Health Insurance Exchange as a credentialed
6263 producer [~~for the defined contribution arrangement market in accordance with Section~~
6264 ~~63M-1-2504;~~] if the producer is designated as [~~an appointed~~] credentialed agent for the
6265 [~~defined contribution arrangement market~~] Health Insurance Exchange in accordance with
6266 Subsection (2).

6267 (2) A producer whose license under this title authorizes the producer to sell [~~defined~~
6268 ~~contribution arrangement health benefit plans may be appointed to the defined contribution~~
6269 ~~arrangement market on~~] accident and health insurance may be credentialed by the Health
6270 Insurance Exchange [~~by the Insurance Department~~] and may sell any product on the Health
6271 Insurance Exchange, if the producer:

6272 [~~(a) submits an application to the Insurance Department to be appointed as a producer~~
6273 ~~for the defined contribution arrangement market on the Health Insurance Exchange;~~]

6274 [~~(b) is an appointed agent in accordance with Subsection (3), for products offered in~~
6275 ~~the defined contribution arrangement market of the Health Insurance Exchange, with the~~
6276 ~~carriers that offer a defined contribution arrangement health benefit plan on the Health~~
6277 ~~Insurance Exchange; and]~~

6278 [~~(c) has completed continuing education for the defined contribution arrangement~~
6279 ~~market that;~~]

6280 [~~(i) is required by administrative rule adopted by the commissioner; and]~~

6281 [~~(ii) provides training on premium assistance programs;~~]

6282 (a) is an appointed producer with:

6283 (i) all carriers that offer a plan in the defined contribution market on the Health
6284 Insurance Exchange; and

6285 (ii) at least one carrier that offers a dental plan on the Health Insurance Exchange; and

6286 (b) completes each year the Health Insurance Exchange training that includes training
6287 on premium assistance programs.

6288 (3) A carrier shall appoint a producer to sell the carrier's products in the defined
6289 contribution arrangement market of the Health Insurance Exchange, within 30 days of the
6290 notice required in Subsection (3)(b), if:

6291 (a) the producer is currently appointed by a majority of the carriers in the Health
6292 Insurance Exchange to sell products either outside or inside of the Health Insurance Exchange;
6293 and

6294 (b) the producer informs the carrier that the producer is:

6295 (i) applying to be appointed to the defined contribution arrangement market in the
6296 Health Insurance Exchange;

6297 (ii) appointed by a majority of the carriers in the defined contribution arrangement
6298 market in the Health Insurance Exchange;

6299 (iii) willing to complete training regarding the carrier's products offered on the defined
6300 contribution arrangement market in the Health Insurance Exchange; and

6301 (iv) willing to sign the contracts and business associate's agreements that the carrier
6302 requires for appointed producers in the Health Insurance Exchange.

6303 Section 58. Section **31A-30-211** is amended to read:

6304 **31A-30-211. Insurer disclosure.**

6305 [~~(1) The Health Insurance Exchange shall provide an employer's producer with the~~
6306 ~~group's risk factor used to calculate the employer group's premium at the time of:]~~

6307 [~~(a) the initial offering of a health benefit plan; and]~~

6308 [~~(b) the renewal of a health benefit plan.]~~

6309 [~~(2) For health benefit plans that renew on or after March 1, 2012:]~~

6310 (1) (a) [a] A carrier shall provide an employer and the employer's producer with
6311 premium renewal rates at least 60 days [~~prior to~~] before the group's renewal date for a plan
6312 offered under Part 1, Individual and Small Employer Group[~~;~~and].

6313 (b) [~~the~~] The Health Insurance Exchange shall provide an employer and the employer's
6314 producer with premium renewal rates at least 60 days [~~prior to~~] before the group's renewal date
6315 for a plan offered under Part 2, Defined Contribution Arrangements.

6316 [~~(3)~~] (2) An insurer does not have to provide additional notice of premium renewal
6317 rates to the employer or the employer's producer if the Health Insurance Exchange provides
6318 notice in accordance with Subsection [~~(2)~~] (1)(b).

6319 Section 59. Section 31A-37-501 is amended to read:

6320 **31A-37-501. Reports to commissioner.**

6321 (1) A captive insurance company is not required to make a report except those
6322 provided in this chapter.

6323 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the
6324 commissioner a report of the financial condition of the captive insurance company, verified by
6325 oath of two of the executive officers of the captive insurance company.

6326 (b) Except as provided in Sections 31A-37-204 and 31A-37-205, a captive insurance
6327 company shall report:

6328 (i) using generally accepted accounting principles, except to the extent that the
6329 commissioner requires, approves, or accepts the use of a statutory accounting principle;

6330 (ii) using a useful or necessary modification or adaptation to an accounting principle
6331 that is required, approved, or accepted by the commissioner for the type of insurance and kind
6332 of insurer to be reported upon; and

6333 (iii) supplemental or additional information required by the commissioner.

6334 (c) Except as otherwise provided:

6335 (i) ~~[an association captive insurance company and an industrial insured group]~~ a
6336 licensed captive insurance company shall file the report required by Section 31A-4-113; and

6337 (ii) an industrial insured group shall comply with Section 31A-4-113.5.

6338 (3) (a) A pure captive insurance company may make written application to file the
6339 required report on a fiscal year end that is consistent with the fiscal year of the parent company
6340 of the pure captive insurance company.

6341 (b) If the commissioner grants an alternative reporting date for a pure captive insurance
6342 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal
6343 year end.

6344 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall
6345 file with the commissioner a copy of ~~[aH]~~ the reports and statements required to be filed under
6346 the laws of the jurisdiction in which the alien captive insurance company is formed, verified by
6347 oath by two of the alien captive insurance company's executive officers.

6348 (b) If the commissioner is satisfied that the annual report filed by the alien captive
6349 insurance company in the jurisdiction in which the alien captive insurance company is formed

6350 provides adequate information concerning the financial condition of the alien captive insurance
6351 company, the commissioner may waive the requirement for completion of the annual statement
6352 required for a captive insurance company under this section with respect to business written in
6353 the alien jurisdiction.

6354 (c) A waiver by the commissioner under Subsection (4)(b):

6355 (i) shall be in writing; and

6356 (ii) is subject to public inspection.

6357 Section 60. Section **31A-40-203** is amended to read:

6358 **31A-40-203. Covered employee.**

6359 (1) (a) An individual is a covered employee of a professional employer organization if
6360 the individual is coemployed pursuant to a professional employer agreement subject to this
6361 chapter.

6362 (b) An individual who is a covered employee under a professional employer agreement
6363 is a covered ~~[employer]~~ employee, whether or not the professional employer organization
6364 provides the notice required by Subsection **31A-40-202**(3), the earlier of the day on which:

6365 (i) the employee is first compensated by the professional employer organization; or

6366 (ii) the client notifies the professional employer organization of a new hire.

6367 (2) An individual who is an officer, director, shareholder, partner, or manager of a
6368 client is a covered employee:

6369 (a) to the extent that the client and the professional employer organization expressly
6370 agree in the professional employer agreement that the individual is a covered employee;

6371 (b) if the conditions of Subsection (1) are met; and

6372 (c) if the individual acts as an operational manager or performs day-to-day an
6373 operational service for the client.

6374 Section 61. Section **31A-40-209** is amended to read:

6375 **31A-40-209. Workers' compensation.**

6376 (1) In accordance with Section **34A-2-103**, a client is responsible for securing workers'
6377 compensation coverage for a covered employee.

6378 (2) Subject to the requirements of Section **34A-2-103**, if a professional employer
6379 organization obtains or assists a client in obtaining workers' compensation insurance pursuant
6380 to a professional employer agreement:

6381 (a) the professional employer organization shall ensure that the client maintains and
6382 provides workers' compensation coverage for a covered employee in accordance with
6383 Subsection 34A-2-201(1) or (2) and rules of the Labor Commission, made in accordance with
6384 Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

6385 (b) the workers' compensation coverage may show the professional employer
6386 organization as the named insured through a [~~multiple coordinated~~] master policy, if:

6387 (i) the client is shown as an insured by means of an endorsement for each individual
6388 client;

6389 (ii) the experience modification of a client is used; and

6390 (iii) the insurer files the endorsement with the Division of Industrial Accidents as
6391 directed by a rule of the Labor Commission, made in accordance with Title 63G, Chapter 3,
6392 Utah Administrative Rulemaking Act;

6393 (c) at the termination of the professional employer agreement, if requested by the
6394 client, the insurer shall provide the client records regarding the loss experience related to
6395 workers' compensation insurance provided to a covered employee pursuant to the professional
6396 employer agreement; and

6397 (d) the insurer shall notify a client if the workers' compensation coverage for the client
6398 is terminated.

6399 (3) In accordance with Section 34A-2-105, the exclusive remedy provisions of Section
6400 34A-2-105 apply to both the client and the professional employer organization under a
6401 professional employer agreement regulated under this chapter.

6402 (4) Notwithstanding the other provisions in this section, an insurer may choose whether
6403 to issue:

6404 (a) a policy for a client; or

6405 (b) a [~~multiple coordinated~~] master policy with the client shown as an additional
6406 insured by means of an individual endorsement.

6407 Section 62. Section 31A-42-202 is amended to read:

6408 **31A-42-202. Contents of plan.**

6409 (1) The board shall submit a plan of operation for the risk adjuster to the
6410 commissioner. The plan shall:

6411 (a) establish the methodology for implementing:

- 6412 (i) Subsection (2) for the defined contribution arrangement market established under
6413 Chapter 30, Part 2, Defined Contribution Arrangements; and
- 6414 (ii) the participation of small employer group defined contribution arrangement health
6415 benefit plans;
- 6416 (b) establish regular times and places for meetings of the board;
- 6417 (c) establish procedures for keeping records of all financial transactions and for
6418 sending annual fiscal reports to the commissioner;
- 6419 (d) contain additional provisions necessary and proper for the execution of the powers
6420 and duties of the risk adjuster; and
- 6421 (e) establish procedures in compliance with Title 63A, Utah Administrative Services
6422 Code, to pay for administrative expenses incurred.
- 6423 (2) (a) The plan adopted by the board for the defined contribution arrangement market
6424 shall include:
- 6425 (i) parameters an employer may use to designate eligible employees for the defined
6426 contribution arrangement market; and
- 6427 (ii) underwriting mechanisms and employer eligibility guidelines:
- 6428 (A) consistent with the federal Health Insurance Portability and Accountability Act;
6429 and
- 6430 (B) necessary to protect insurance carriers from adverse selection in the defined
6431 contribution market.
- 6432 (b) The plan required by Subsection (2)(a) shall outline how premium rates for a
6433 qualified individual in the defined contribution arrangement market are determined, including:
- 6434 (i) the identification of an initial rate for a qualified individual based on:
- 6435 (A) standardized age bands submitted by participating insurers; and
- 6436 (B) wellness incentives for the individual as permitted by federal law; and
- 6437 (ii) the identification of a group risk factor to be applied to the initial age rate of a
6438 qualified individual based on the health conditions of all qualified individuals in the same
6439 employer group and, for small employers, in accordance with Sections [31A-30-105](#) and
6440 [31A-30-106.1](#).
- 6441 (c) The plan adopted under Subsection (2)(a) for the defined contribution arrangement
6442 market shall outline how:

- 6443 (i) premium contributions for qualified individuals shall be submitted to the Health
6444 Insurance Exchange in the amount determined under Subsection (2)(b); and
- 6445 (ii) the Health Insurance Exchange shall distribute premiums to the insurers selected by
6446 qualified individuals within an employer group based on each individual's rating factor
6447 determined in accordance with the plan.
- 6448 (d) The plan adopted under Subsection (2)(a) shall outline a mechanism for adjusting
6449 risk between defined contribution arrangement market insurers that:
- 6450 (i) identifies health care conditions subject to risk adjustment;
- 6451 (ii) establishes an adjustment amount for each identified health care condition;
- 6452 (iii) determines the extent to which an insurer has more or less individuals with an
6453 identified health condition than would be expected; and
- 6454 (iv) computes all risk adjustments.
- 6455 (e) The board may amend the plan if necessary to:
- 6456 (i) maintain the proper functioning and solvency of the defined contribution
6457 arrangement market and the risk adjuster mechanism;
- 6458 (ii) mitigate significant issues of risk selection; or
- 6459 (iii) improve the administration of the risk adjuster mechanism.
- 6460 (3) The board shall establish a mechanism in which the defined contribution
6461 arrangement market participating carriers shall submit their plan base rates, rating factors, and
6462 premiums to the commissioner for an actuarial review under [~~the provisions of~~] Section
6463 [31A-30-115](#) [~~prior to~~] before the publication of the premium rates on the Health Insurance
6464 Exchange.
- 6465 Section 63. Section **31A-43-102** is amended to read:
- 6466 **31A-43-102. Definitions.**
- 6467 For purposes of this chapter:
- 6468 (1) "Actuarial certification" means a written statement by a member of the American
6469 Academy of Actuaries, or by another individual acceptable to the commissioner, that an insurer
6470 is in compliance with [~~the provisions of~~] this chapter, based upon the individual's examination
6471 and including a review of the appropriate records and the actuarial assumptions and methods
6472 used by the stop-loss insurer in establishing attachment points and other applicable
6473 determinations in conjunction with the provision of stop-loss insurance coverage.

6474 (2) "Aggregate attachment point" means the dollar amount [~~in losses for eligible~~
6475 ~~expenses~~] of covered claims incurred by a small employer plan beyond which the stop-loss
6476 insurer incurs liability for [~~all or part of the~~] losses incurred by the small employer plan, subject
6477 to limitations included in the contract.

6478 (3) "Coverage" means the combination of the employer plan design and the stop-loss
6479 contract design.

6480 (4) "Expected claims" means the amount of claims that, in the absence of [~~a~~] aggregate
6481 stop-loss [~~contract~~] insurance, are projected to be incurred by a small employer health plan
6482 using reasonable and accepted actuarial principles.

6483 (5) "Lasering":

6484 (a) means increasing or removing stop-loss coverage for a specific individual within an
6485 employer group; and

6486 (b) includes other practices that are prohibited by the commissioner by administrative
6487 rule that result in lowering the stop-loss premium for the employer by transferring the risk for
6488 an [~~individual~~] individual's claims back to the employer.

6489 (6) "Small employer" means an employer who, with respect to a calendar year and to a
6490 plan year:

6491 (a) employed an average of at least two employees but not more than 50 eligible
6492 employees on each business day during the preceding calendar year; and

6493 (b) employs at least two employees on the first day of the plan year.

6494 (7) "Specific attachment point" means the dollar amount [~~in losses for eligible~~
6495 ~~expenses~~] of covered claims attributable to a single individual covered by a small employer
6496 plan in a contract year beyond which the stop-loss insurer assumes [~~all or part of~~] the liability
6497 for losses incurred by the small employer plan, subject to limitations included in the contract.

6498 (8) "Stop-loss insurance" means insurance purchased by a small employer for which
6499 the stop-loss insurer assumes[~~, on a per-loss basis,~~] all loss amounts of the small employer's
6500 plan in excess of a stated amount, subject to the policy limit.

6501 Section 64. Section **31A-43-301** is amended to read:

6502 **31A-43-301. Stop-loss insurance coverage standards.**

6503 (1) A small employer stop-loss insurance contract shall:

6504 (a) be issued to the small employer to provide insurance to the group health benefit

6505 plan, not the employees of the small employer;

6506 (b) use a standard application form developed by the commissioner by administrative
6507 rule;

6508 (c) have a contract term with guaranteed rates for at least 12 months, without
6509 adjustment, unless there is a change in the benefits provided under the small employer's health
6510 plan during the contract period;

6511 (d) include both a specific attachment point and an aggregate attachment point in a
6512 contract;

6513 (e) align stop-loss plan benefit limitations and exclusions with a small employer's
6514 health plan benefit limitations and exclusions, including any annual or lifetime limits in the
6515 employer's health plan;

6516 (f) have an annual specific attachment point that is at least \$10,000;

6517 (g) have an annual aggregate attachment point that may not be less than [90%] 85% of
6518 expected claims;

6519 (h) pay stop-loss claims:

6520 (i) incurred during the contract period; and

6521 (ii) [~~submitted~~] paid within 12 months after the expiration date of the contract; and

6522 (i) include provisions to cover incurred and unpaid claims if a small employer plan
6523 terminates.

6524 (2) A small employer stop-loss contract shall not:

6525 (a) include lasing; and

6526 (b) pay claims directly to an individual employee, member, or participant.

6527 Section 65. Section **31A-43-302** is amended to read:

6528 **31A-43-302. Stop-loss restrictions -- Filing requirements.**

6529 [~~(1) A stop-loss insurer shall demonstrate to the commissioner that the rates associated~~
6530 ~~with specific and aggregate attachment points retained by a small employer group under the~~
6531 ~~insurer's stop-loss plan are actuarially sound.]~~

6532 [(2)] (1) A stop-loss insurer shall file the stop-loss insurance contract form and [rates]
6533 rate methodology with the commissioner pursuant to Sections 31A-2-201 and 31A-2-201.1
6534 before the stop-loss insurance contract may be issued or delivered in the state.

6535 [(3)] (2) A stop-loss insurer shall file with the commissioner, annually on or before

6536 April 1, in a form and manner required by the commissioner by administrative rule adopted by
6537 the commissioner:

6538 (a) an actuarial memorandum and certification which demonstrates that the insurer is in
6539 compliance with this chapter; and

6540 (b) the stop-loss insurer's stop-loss experience.

6541 [~~(4)~~ Each] (3) An insurer shall maintain at its principal place of business:

6542 (a) a complete and detailed description of its rating practices and renewal underwriting
6543 practices, including information and documentation that demonstrate the rating methods and
6544 practices are:

6545 (i) based upon commonly accepted actuarial assumptions; and

6546 (ii) in accordance with sound actuarial principles; and

6547 (b) a copy of the [~~actuarial certification~~] annual filing required by Subsection [~~(3)~~] (2).

6548 Section 66. Section **31A-43-303** is amended to read:

6549 **31A-43-303. Stop-loss insurance disclosure.**

6550 A stop-loss insurance contract delivered, issued for delivery, or entered into shall
6551 include the disclosure exhibit required by the commissioner through administrative rule, which
6552 shall include at least the following information:

6553 (1) the complete costs for the stop-loss contract;

6554 (2) the date on which the insurance takes effect and terminates, including renewability
6555 provisions;

6556 (3) the aggregate attachment point and the specific attachment point;

6557 (4) [~~any~~] limitations on coverage;

6558 (5) an explanation of monthly accommodation and disclosure about any monthly
6559 accommodation features included in the stop-loss contract; [~~and~~]

6560 (6) a description of terminal liability funding, including [~~-(a)~~] the cost of processing
6561 claims before and after the termination of the contract; and

6562 [~~(b)~~] (7) maximum claims liability to the employer.

6563 Section 67. Section **31A-43-304** is amended to read:

6564 **31A-43-304. Administrative rules.**

6565 The commissioner may adopt administrative rules in accordance with Title 63G,
6566 Chapter 3, Utah Administrative Rulemaking Act, to:

- 6567 (1) implement this chapter;
- 6568 [~~(2)~~] ~~assure that differences in rates charged are reasonable and reflect objective~~
- 6569 ~~differences in plan design;~~
- 6570 [~~(3)~~] (2) define lasering practices that are prohibited by this chapter;
- 6571 [~~(4)~~] (3) establish the form and manner of the actuarial certification and the annual
- 6572 report on stop-loss experience required by Section [31A-43-302](#);
- 6573 [~~(5)~~] (4) establish the form and manner of the disclosure required by Section
- 6574 [31A-43-303](#);
- 6575 [~~(6)~~] (5) assure the rates associated with the specific attachment points and aggregate
- 6576 attachment points are actuarially sound and are not against the public interest; and
- 6577 [~~(7)~~] (6) assure that stop-loss contracts include provisions to cover incurred and unpaid
- 6578 claims if a small employer plan terminates.
- 6579 Section 68. Section **53-13-103** is amended to read:
- 6580 **53-13-103. Law enforcement officer.**
- 6581 (1) (a) "Law enforcement officer" means a sworn and certified peace officer who is an
- 6582 employee of a law enforcement agency that is part of or administered by the state or any of its
- 6583 political subdivisions, and whose primary and principal duties consist of the prevention and
- 6584 detection of crime and the enforcement of criminal statutes or ordinances of this state or any of
- 6585 its political subdivisions.
- 6586 (b) "Law enforcement officer" specifically includes the following:
- 6587 (i) any sheriff or deputy sheriff, chief of police, police officer, or marshal of any
- 6588 county, city, or town;
- 6589 (ii) the commissioner of public safety and any member of the Department of Public
- 6590 Safety certified as a peace officer;
- 6591 (iii) all persons specified in Sections [23-20-1.5](#) and [79-4-501](#);
- 6592 (iv) any police officer employed by any college or university;
- 6593 (v) investigators for the Motor Vehicle Enforcement Division;
- 6594 (vi) investigators for the Department of Insurance, Fraud Division;
- 6595 [~~(vi)~~] (vii) special agents or investigators employed by the attorney general, district
- 6596 attorneys, and county attorneys;
- 6597 [~~(vii)~~] (viii) employees of the Department of Natural Resources designated as peace

6598 officers by law;

6599 [~~(viii)~~] (ix) school district police officers as designated by the board of education for
6600 the school district;

6601 [~~(ix)~~] (x) the executive director of the Department of Corrections and any correctional
6602 enforcement or investigative officer designated by the executive director and approved by the
6603 commissioner of public safety and certified by the division;

6604 [~~(x)~~] (xi) correctional enforcement, investigative, or adult probation and parole officers
6605 employed by the Department of Corrections serving on or before July 1, 1993;

6606 [~~(xi)~~] (xii) members of a law enforcement agency established by a private college or
6607 university provided that the college or university has been certified by the commissioner of
6608 public safety according to rules of the Department of Public Safety;

6609 [~~(xii)~~] (xiii) airport police officers of any airport owned or operated by the state or any
6610 of its political subdivisions; and

6611 [~~(xiii)~~] (xiv) transit police officers designated under Section [17B-2a-823](#).

6612 (2) Law enforcement officers may serve criminal process and arrest violators of any
6613 law of this state and have the right to require aid in executing their lawful duties.

6614 (3) (a) A law enforcement officer has statewide full-spectrum peace officer authority,
6615 but the authority extends to other counties, cities, or towns only when the officer is acting
6616 under Title 77, Chapter 9, Uniform Act on Fresh Pursuit, unless the law enforcement officer is
6617 employed by the state.

6618 (b) (i) A local law enforcement agency may limit the jurisdiction in which its law
6619 enforcement officers may exercise their peace officer authority to a certain geographic area.

6620 (ii) Notwithstanding Subsection (3)(b)(i), a law enforcement officer may exercise
6621 authority outside of the limited geographic area, pursuant to Title 77, Chapter 9, Uniform Act
6622 on Fresh Pursuit, if the officer is pursuing an offender for an offense that occurred within the
6623 limited geographic area.

6624 (c) The authority of law enforcement officers employed by the Department of
6625 Corrections is regulated by Title 64, Chapter 13, Department of Corrections - State Prison.

6626 (4) A law enforcement officer shall, prior to exercising peace officer authority:

6627 (a) (i) have satisfactorily completed the requirements of Section [53-6-205](#); or

6628 (ii) have met the waiver requirements in Section [53-6-206](#); and

6629 (b) have satisfactorily completed annual certified training of at least 40 hours per year
6630 as directed by the director of the division, with the advice and consent of the council.

6631 Section 69. **Repealer.**

6632 This bill repeals:

6633 Section **31A-30-110, Individual enrollment cap.**

6634 Section **31A-30-111, Limitations on high risk enrollees.**

6635 Section 70. **Effective date.**

6636 This bill takes effect on May 13, 2014, except that the amendments to Section
6637 31A-3-304 (Effective 07/01/15) take effect on July 1, 2015.

6638 Section 71. **Revisor instructions.**

6639 The Legislature intends that the Office of Legislative Research and General Counsel, in
6640 preparing the Utah Code database for publication, replace the language in Subsections
6641 31A-22-305(10) and 31A-22-305.3(9), from "this bill" with the bill's designated chapter and
6642 section number in the Laws of Utah.