

- 30 • granting rulemaking authority and authority to issue orders;
- 31 • addressing judicial review and mandamus;
- 32 • addressing conflicts with other laws; and
- 33 • providing for severability;
- 34 ▶ addresses provisions related to fidelity bonds;
- 35 ▶ addresses transportation network companies or drivers;
- 36 ▶ addresses trustee groups;
- 37 ▶ modifies exemption from conversion privileges for insured former spouse;
- 38 ▶ modifies definition of "Medicare Supplement Policy";
- 39 ▶ modifies definitions related to licensing;
- 40 ▶ addresses license lapse and voluntary surrender;
- 41 ▶ amends unfair marketing practices to include the use of certain names;
- 42 ▶ addresses inducements;
- 43 ▶ addresses continuing education requirements for navigators;
- 44 ▶ requires third party administrator to maintain with the commissioner certain
- 45 information related to place of business and contact information;
- 46 ▶ addresses receiver's compliance with financial reporting requirements;
- 47 ▶ restricts subrogation rights against an insolvent insurer's insured;
- 48 ▶ modifies definition provisions related to captive insurance companies;
- 49 ▶ addresses commissioner's ability to adopt rules related to waiver or modification of
- 50 certain public notice or hearings related to captive insurance companies;
- 51 ▶ includes certificate of organization as a document used to apply for a certificate of
- 52 authority;
- 53 ▶ addresses requirements for a captive insurance company to conduct insurance
- 54 business in this state;
- 55 ▶ provides for a limited liability company being a captive insurance company;
- 56 ▶ modifies capital requirements for captive insurance companies;
- 57 ▶ repeals language related to capital stock of a captive insurance company;

- 58 ▶ addresses when a captive insurance company can provide reinsurance;
- 59 ▶ addresses conversion or merger of a captive insurance company;
- 60 ▶ provides for a sponsored cell captive insurance company;
- 61 ▶ addresses fees to be paid by a protected cell captive insurance company;
- 62 ▶ modifies requirements for sponsored captive insurance companies;
- 63 ▶ clarifies participants in sponsored captive insurance companies;
- 64 ▶ addresses reporting requirements for sponsored cell captive insurance companies;
- 65 ▶ modifies the timing of examinations;
- 66 ▶ repeals free surplus provisions related to captive insurance companies;
- 67 ▶ repeals provisions related to a captive reinsurance company;
- 68 ▶ addresses stop-loss insurance coverage standards;
- 69 ▶ extends the Defined Contribution Risk Adjuster Act; and
- 70 ▶ makes technical and conforming amendments.

71 **Money Appropriated in this Bill:**

72 None

73 **Other Special Clauses:**

74 This bill provides a special effective date.

75 This bill provides a coordination clause.

76 **Utah Code Sections Affected:**

77 AMENDS:

78 **31A-1-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300

79 **31A-3-304 (Effective 07/01/15)**, as last amended by Laws of Utah 2014, Chapters 290

80 and 300

81 **31A-6a-101**, as enacted by Laws of Utah 1992, Chapter 203

82 **31A-6a-103**, as last amended by Laws of Utah 2008, Chapter 345

83 **31A-6a-104**, as last amended by Laws of Utah 2011, Chapter 297

84 **31A-6a-105**, as last amended by Laws of Utah 2010, Chapter 274

85 **31A-16-103**, as last amended by Laws of Utah 2014, Chapters 290 and 300

86 **31A-16-105**, as last amended by Laws of Utah 2007, Chapter 306
87 **31A-16-106**, as last amended by Laws of Utah 2010, Chapter 324
88 **31A-16-109**, as last amended by Laws of Utah 1987, Chapter 91
89 **31A-21-313**, as last amended by Laws of Utah 2011, Chapter 297
90 **31A-21-314**, as last amended by Laws of Utah 1987, Chapter 95
91 **31A-22-504**, as enacted by Laws of Utah 1985, Chapter 242
92 **31A-22-612**, as last amended by Laws of Utah 2013, Chapter 319
93 **31A-22-620**, as last amended by Laws of Utah 2009, Chapter 349
94 **31A-23a-102**, as last amended by Laws of Utah 2014, Chapters 290 and 300
95 **31A-23a-113**, as last amended by Laws of Utah 2014, Chapters 290 and 300
96 **31A-23a-402**, as last amended by Laws of Utah 2013, Chapter 319
97 **31A-23a-402.5**, as last amended by Laws of Utah 2014, Chapters 290 and 300
98 **31A-23b-206**, as last amended by Laws of Utah 2014, Chapters 290, 300, 425 and last
99 amended by Coordination Clause, Laws of Utah 2014, Chapters 300, and 425
100 **31A-27a-116**, as last amended by Laws of Utah 2008, Chapter 382
101 **31A-28-213**, as last amended by Laws of Utah 2007, Chapter 309
102 **31A-37-102**, as last amended by Laws of Utah 2008, Chapter 302
103 **31A-37-106**, as last amended by Laws of Utah 2011, Chapter 297
104 **31A-37-202**, as last amended by Laws of Utah 2011, Chapters 284 and 297
105 **31A-37-204**, as last amended by Laws of Utah 2004, Chapter 312
106 **31A-37-301**, as last amended by Laws of Utah 2011, Chapter 297
107 **31A-37-302**, as last amended by Laws of Utah 2011, Chapter 297
108 **31A-37-303**, as enacted by Laws of Utah 2003, Chapter 251
109 **31A-37-306**, as last amended by Laws of Utah 2011, Chapter 297
110 **31A-37-401**, as enacted by Laws of Utah 2003, Chapter 251
111 **31A-37-402**, as last amended by Laws of Utah 2011, Chapter 297
112 **31A-37-403**, as last amended by Laws of Utah 2004, Chapter 312
113 **31A-37-404**, as enacted by Laws of Utah 2004, Chapter 312

- 114 **31A-37-501**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 115 **31A-37-502**, as last amended by Laws of Utah 2009, Chapter 349
- 116 **31A-37-505**, as enacted by Laws of Utah 2003, Chapter 251
- 117 **31A-43-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 118 **63I-2-231**, as last amended by Laws of Utah 2013, Chapter 341

119 ENACTS:

- 120 **31A-6a-111**, Utah Code Annotated 1953
- 121 **31A-16-102.5**, Utah Code Annotated 1953
- 122 **31A-16-104.5**, Utah Code Annotated 1953
- 123 **31A-16-108.5**, Utah Code Annotated 1953
- 124 **31A-16-112**, Utah Code Annotated 1953
- 125 **31A-16-113**, Utah Code Annotated 1953
- 126 **31A-16-114**, Utah Code Annotated 1953
- 127 **31A-16-115**, Utah Code Annotated 1953
- 128 **31A-16-116**, Utah Code Annotated 1953
- 129 **31A-16-117**, Utah Code Annotated 1953
- 130 **31A-16-118**, Utah Code Annotated 1953
- 131 **31A-16-119**, Utah Code Annotated 1953
- 132 **31A-22-322**, Utah Code Annotated 1953
- 133 **31A-25-302.5**, Utah Code Annotated 1953

134 RENUMBERS AND AMENDS:

- 135 **31A-16-107.5**, (Renumbered from 31A-16-108, as enacted by Laws of Utah 1985,
136 Chapter 242)

137 REPEALS:

- 138 **31A-37-205**, as last amended by Laws of Utah 2004, Chapter 312
- 139 **31A-37-601**, as last amended by Laws of Utah 2011, Chapter 297
- 140 **31A-37-602**, as last amended by Laws of Utah 2008, Chapters 302 and 382
- 141 **31A-37-603**, as last amended by Laws of Utah 2008, Chapter 302

142 **31A-37-604**, as enacted by Laws of Utah 2004, Chapter 312

143 **Utah Code Sections Affected by Coordination Clause:**

144 **13-51-108** , Utah Code Annotated 1953

145 **31A-22-322**, Utah Code Annotated 1953



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

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

149 **31A-1-301. Definitions.**

150 As used in this title, unless otherwise specified:

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

153 (i) a medical condition including:

154 (A) a medical care expense; or

155 (B) the risk of disability;

156 (ii) accident; or

157 (iii) sickness.

158 (b) "Accident and health insurance":

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

160 (A) an income replacement contract;

161 (B) a health care contract;

162 (C) an expense reimbursement contract;

163 (D) a credit accident and health contract;

164 (E) a continuing care contract; and

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

166 (ii) may provide:

167 (A) hospital coverage;

168 (B) surgical coverage;

169 (C) medical coverage;

- 170 (D) loss of income coverage;
- 171 (E) prescription drug coverage;
- 172 (F) dental coverage; or
- 173 (G) vision coverage.
- 174 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 175 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 176 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 177 (3) "Administrator" is defined in Subsection [~~(164)~~] (166).
- 178 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 179 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 180 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 181 ownership, if substantially the same group of individuals manage the corporations.
- 182 (6) "Agency" means:
- 183 (a) a person other than an individual, including a sole proprietorship by which an
- 184 individual does business under an assumed name; and
- 185 (b) an insurance organization licensed or required to be licensed under Section
- 186 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).
- 187 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 188 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 189 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 190 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 191 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 192 human life.
- 193 (10) "Application" means a document:
- 194 (a) (i) completed by an applicant to provide information about the risk to be insured;
- 195 and
- 196 (ii) that contains information that is used by the insurer to evaluate risk and decide
- 197 whether to:

198 (A) insure the risk under:
199 (I) the coverage as originally offered; or
200 (II) a modification of the coverage as originally offered; or
201 (B) decline to insure the risk; or
202 (b) used by the insurer to gather information from the applicant before issuance of an
203 annuity contract.

204 (11) "Articles" or "articles of incorporation" means:
205 (a) the original articles;
206 (b) a special law;
207 (c) a charter;
208 (d) an amendment;
209 (e) restated articles;
210 (f) articles of merger or consolidation;
211 (g) a trust instrument;
212 (h) another constitutive document for a trust or other entity that is not a corporation;

213 and

214 (i) an amendment to an item listed in Subsections (11)(a) through (h).
215 (12) "Bail bond insurance" means a guarantee that a person will attend court when
216 required, up to and including surrender of the person in execution of a sentence imposed under
217 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

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

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

221 (a) without individual underwriting or application; and
222 (b) that is determined by definition without designating each person covered.

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

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

- 226 (a) that is open to the public;
- 227 (b) that is staffed during regular business hours on regular business days; and
- 228 (c) at which the public may appear in person to obtain services.
- 229 (17) "Business entity" means:
- 230 (a) a corporation;
- 231 (b) an association;
- 232 (c) a partnership;
- 233 (d) a limited liability company;
- 234 (e) a limited liability partnership; or
- 235 (f) another legal entity.
- 236 (18) "Business of insurance" is defined in Subsection [~~(88)~~] (89).
- 237 (19) "Business plan" means the information required to be supplied to the
- 238 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
- 239 when these subsections apply by reference under:
- 240 (a) Section 31A-7-201;
- 241 (b) Section 31A-8-205; or
- 242 (c) Subsection 31A-9-205(2).
- 243 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
- 244 corporation's affairs, however designated.
- 245 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
- 246 corporation.
- 247 (21) "Captive insurance company" means:
- 248 (a) an insurer:
- 249 (i) owned by another organization; and
- 250 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 251 affiliated company; or
- 252 (b) in the case of a group or association, an insurer:
- 253 (i) owned by the insureds; and

- 254 (ii) whose exclusive purpose is to insure risks of:
- 255 (A) a member organization;
- 256 (B) a group member; or
- 257 (C) an affiliate of:
- 258 (I) a member organization; or
- 259 (II) a group member.
- 260 (22) "Casualty insurance" means liability insurance.
- 261 (23) "Certificate" means evidence of insurance given to:
- 262 (a) an insured under a group insurance policy; or
- 263 (b) a third party.
- 264 (24) "Certificate of authority" is included within the term "license."
- 265 (25) "Claim," unless the context otherwise requires, means a request or demand on an
- 266 insurer for payment of a benefit according to the terms of an insurance policy.
- 267 (26) "Claims-made coverage" means an insurance contract or provision limiting
- 268 coverage under a policy insuring against legal liability to claims that are first made against the
- 269 insured while the policy is in force.
- 270 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 271 commissioner.
- 272 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
- 273 supervisory official of another jurisdiction.
- 274 (28) (a) "Continuing care insurance" means insurance that:
- 275 (i) provides board and lodging;
- 276 (ii) provides one or more of the following:
- 277 (A) a personal service;
- 278 (B) a nursing service;
- 279 (C) a medical service; or
- 280 (D) any other health-related service; and
- 281 (iii) provides the coverage described in this Subsection (28)(a) under an agreement

282 effective:

283 (A) for the life of the insured; or

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

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

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

290 (i) by contract;

291 (ii) by common management;

292 (iii) through the ownership of voting securities; or

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

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

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

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

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

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

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

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

309 (i) a corporation doing business:

- 310 (A) as:
- 311 (I) an insurance producer;
- 312 (II) a surplus lines producer;
- 313 (III) a limited line producer;
- 314 (IV) a consultant;
- 315 (V) a managing general agent;
- 316 (VI) a reinsurance intermediary;
- 317 (VII) a third party administrator; or
- 318 (VIII) an adjuster; and
- 319 (B) under:
- 320 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 321 Reinsurance Intermediaries;
- 322 (II) Chapter 25, Third Party Administrators; or
- 323 (III) Chapter 26, Insurance Adjusters; or
- 324 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 325 Holding Companies.
- 326 (b) "Stock corporation" means a stock insurance corporation.
- 327 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 328 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations
- 329 adopted pursuant to the Health Insurance Portability and Accountability Act.
- 330 (b) "Creditable coverage" includes coverage that is offered through a public health plan
- 331 such as:
- 332 (i) the Primary Care Network Program under a Medicaid primary care network
- 333 demonstration waiver obtained subject to Section [26-18-3](#);
- 334 (ii) the Children's Health Insurance Program under Section [26-40-106](#); or
- 335 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
- 336 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
- 337 (35) "Credit accident and health insurance" means insurance on a debtor to provide

338 indemnity for payments coming due on a specific loan or other credit transaction while the
339 debtor has a disability.

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

342 (b) "Credit insurance" includes:

- 343 (i) credit accident and health insurance;
- 344 (ii) credit life insurance;
- 345 (iii) credit property insurance;
- 346 (iv) credit unemployment insurance;
- 347 (v) guaranteed automobile protection insurance;
- 348 (vi) involuntary unemployment insurance;
- 349 (vii) mortgage accident and health insurance;
- 350 (viii) mortgage guaranty insurance; and
- 351 (ix) mortgage life insurance.

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

354 [~~(40)~~] (38) "Creditor" means a person, including an insured, having a claim, whether:

- 355 (a) matured;
- 356 (b) unmatured;
- 357 (c) liquidated;
- 358 (d) unliquidated;
- 359 (e) secured;
- 360 (f) unsecured;
- 361 (g) absolute;
- 362 (h) fixed; or
- 363 (i) contingent.

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

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

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

367 (i) specific loan; or

368 (ii) credit transaction.

369 [~~38~~] (40) "Credit property insurance" means insurance:

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

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

372 (41) (a) "Crop insurance" means insurance providing protection against damage to

373 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,

374 disease, or other yield-reducing conditions or perils that is:

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

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

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

378 (42) (a) "Customer service representative" means a person that provides an insurance

379 service and insurance product information:

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

381 (A) producer;

382 (B) surplus lines producer; or

383 (C) consultant employer; and

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

385 (A) customer;

386 (B) client; or

387 (C) organization.

388 (b) A customer service representative may only operate within the scope of authority of

389 the customer service representative's producer, surplus lines producer, or consultant employer.

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

391 (a) imposed by:

392 (i) statute;

393 (ii) rule; or

- 394 (iii) order; and
- 395 (b) by which a required filing or payment must be received by the department.
- 396 (44) "Deemer clause" means a provision under this title under which upon the
- 397 occurrence of a condition precedent, the commissioner is considered to have taken a specific
- 398 action. If the statute so provides, a condition precedent may be the commissioner's failure to
- 399 take a specific action.
- 400 (45) "Degree of relationship" means the number of steps between two persons
- 401 determined by counting the generations separating one person from a common ancestor and
- 402 then counting the generations to the other person.
- 403 (46) "Department" means the Insurance Department.
- 404 (47) "Director" means a member of the board of directors of a corporation.
- 405 (48) "Disability" means a physiological or psychological condition that partially or
- 406 totally limits an individual's ability to:
 - 407 (a) perform the duties of:
 - 408 (i) that individual's occupation; or
 - 409 (ii) an occupation for which the individual is reasonably suited by education, training,
 - 410 or experience; or
 - 411 (b) perform two or more of the following basic activities of daily living:
 - 412 (i) eating;
 - 413 (ii) toileting;
 - 414 (iii) transferring;
 - 415 (iv) bathing; or
 - 416 (v) dressing.
- 417 (49) "Disability income insurance" is defined in Subsection [~~(79)~~] (80).
- 418 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 419 (51) "Domiciliary state" means the state in which an insurer:
 - 420 (a) is incorporated;
 - 421 (b) is organized; or

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

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

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

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

455 (a) the first day of coverage; or

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

457 (58) "Enterprise risk" means an activity, circumstance, event, or series of events
458 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
459 material adverse effect upon the financial condition or liquidity of the insurer or its insurance
460 holding company system as a whole, including anything that would cause:

461 (a) the insurer's risk-based capital to fall into an action or control level as set forth in
462 Sections [31A-17-601](#) through [31A-17-613](#); or

463 (b) the insurer to be in hazardous financial condition set forth in Section [31A-27a-101](#).

464 [~~58~~] (59) (a) "Escrow" means:

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

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

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

471 (ii) a settlement or closing involving:

472 (A) a mobile home;

473 (B) a grazing right;

474 (C) a water right; or

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

476 (b) "Escrow" does not include:

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

- 478 (A) an acknowledgment;
- 479 (B) a copy certification;
- 480 (C) jurat; and
- 481 (D) an oath or affirmation;
- 482 (ii) the receipt or delivery of a document; or
- 483 (iii) the receipt of money for delivery to the escrow agent.

484 [~~59~~] (60) "Escrow agent" means an agency title insurance producer meeting the
485 requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an
486 individual title insurance producer licensed with an escrow subline of authority.

487 [~~60~~] (61) (a) "Excludes" is not exhaustive and does not mean that another thing is not
488 also excluded.

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

491 [~~61~~] (62) "Exclusion" means for the purposes of accident and health insurance that an
492 insurer does not provide insurance coverage, for whatever reason, for one of the following:

- 493 (a) a specific physical condition;
- 494 (b) a specific medical procedure;
- 495 (c) a specific disease or disorder; or
- 496 (d) a specific prescription drug or class of prescription drugs.

497 [~~62~~] (63) "Expense reimbursement insurance" means insurance:

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

500 (b) written:

- 501 (i) as a daily limit for a specific number of days in a hospital; and
- 502 (ii) to have a one or two day waiting period following a hospitalization.

503 [~~63~~] (64) "Fidelity insurance" means insurance guaranteeing the fidelity of a person
504 holding a position of public or private trust.

505 [~~64~~] (65) (a) "Filed" means that a filing is:

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

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

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

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

512 (B) rule.

513 (b) "Filed" does not include a filing that is rejected by the department because it is not
514 submitted in accordance with Subsection ~~[(64)]~~ [\(65\)](#)(a).

515 ~~[(65)]~~ [\(66\)](#) "Filing," when used as a noun, means an item required to be filed with the
516 department including:

517 (a) a policy;

518 (b) a rate;

519 (c) a form;

520 (d) a document;

521 (e) a plan;

522 (f) a manual;

523 (g) an application;

524 (h) a report;

525 (i) a certificate;

526 (j) an endorsement;

527 (k) an actuarial certification;

528 (l) a licensee annual statement;

529 (m) a licensee renewal application;

530 (n) an advertisement; ~~[or]~~

531 [\(o\)](#) a binder; or

532 ~~[(o)]~~ [\(p\)](#) an outline of coverage.

533 ~~[(66)]~~ [\(67\)](#) "First party insurance" means an insurance policy or contract in which the

534 insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

535 ~~[(67)]~~ (68) "Foreign insurer" means an insurer domiciled outside of this state, including
536 an alien insurer.

537 ~~[(68)]~~ (69) (a) "Form" means one of the following prepared for general use:

538 (i) a policy;

539 (ii) a certificate;

540 (iii) an application;

541 (iv) an outline of coverage; or

542 (v) an endorsement.

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

545 ~~[(69)]~~ (70) "Franchise insurance" means an individual insurance policy provided
546 through a mass marketing arrangement involving a defined class of persons related in some
547 way other than through the purchase of insurance.

548 ~~[(70)]~~ (71) "General lines of authority" include:

549 (a) the general lines of insurance in Subsection ~~[(71)]~~ (72);

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

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

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

553 (iii) title marketing representative only;

554 (c) surplus lines;

555 (d) workers' compensation; and

556 (e) another line of insurance that the commissioner considers necessary to recognize in
557 the public interest.

558 ~~[(71)]~~ (72) "General lines of insurance" include:

559 (a) accident and health;

560 (b) casualty;

561 (c) life;

- 562 (d) personal lines;
- 563 (e) property; and
- 564 (f) variable contracts, including variable life and annuity.

565 [~~72~~] (73) "Group health plan" means an employee welfare benefit plan to the extent
566 that the plan provides medical care:

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

572 [~~73~~] (74) (a) "Group insurance policy" means a policy covering a group of persons
573 that is issued:

- 574 (i) to a policyholder on behalf of the group; and
- 575 (ii) for the benefit of a member of the group who is selected under a procedure defined
576 in:
 - 577 (A) the policy; or
 - 578 (B) an agreement that is collateral to the policy.

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

581 [~~74~~] (75) "Guaranteed automobile protection insurance" means insurance offered in
582 connection with an extension of credit that pays the difference in amount between the
583 insurance settlement and the balance of the loan if the insured automobile is a total loss.

584 [~~75~~] (76) (a) Except as provided in Subsection [~~75~~] (76)(b), "health benefit plan"
585 means a policy or certificate that:

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

- 590 (B) a limited benefit plan.
- 591 (b) "Health benefit plan" does not include a policy or certificate that:
- 592 (i) provides benefits solely for:
- 593 (A) accident;
- 594 (B) dental;
- 595 (C) income replacement;
- 596 (D) long-term care;
- 597 (E) a Medicare supplement;
- 598 (F) a specified disease;
- 599 (G) vision; or
- 600 (H) a short-term limited duration; or
- 601 (ii) is offered and marketed as supplemental health insurance.
- 602 [~~76~~] (77) "Health care" means any of the following intended for use in the diagnosis,
- 603 treatment, mitigation, or prevention of a human ailment or impairment:
- 604 (a) a professional service;
- 605 (b) a personal service;
- 606 (c) a facility;
- 607 (d) equipment;
- 608 (e) a device;
- 609 (f) supplies; or
- 610 (g) medicine.
- 611 [~~77~~] (78) (a) "Health care insurance" or "health insurance" means insurance
- 612 providing:
- 613 (i) a health care benefit; or
- 614 (ii) payment of an incurred health care expense.
- 615 (b) "Health care insurance" or "health insurance" does not include accident and health
- 616 insurance providing a benefit for:
- 617 (i) replacement of income;

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

628 ~~[(78)]~~ (79) "Health Insurance Portability and Accountability Act" means the Health
629 Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as
630 amended.

631 ~~[(79)]~~ (80) "Income replacement insurance" or "disability income insurance" means
632 insurance written to provide payments to replace income lost from accident or sickness.

633 ~~[(80)]~~ (81) "Indemnity" means the payment of an amount to offset all or part of an
634 insured loss.

635 ~~[(81)]~~ (82) "Independent adjuster" means an insurance adjuster required to be licensed
636 under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

637 ~~[(82)]~~ (83) "Independently procured insurance" means insurance procured under
638 Section 31A-15-104.

639 ~~[(83)]~~ (84) "Individual" means a natural person.

640 ~~[(84)]~~ (85) "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~~] (86) "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~~] (87) (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~~] (88) "Insurance adjuster" means a person who directs or conducts the
666 investigation, negotiation, or settlement of a claim under an insurance policy other than life
667 insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance
668 policy.

669 [~~88~~] (89) "Insurance business" or "business of insurance" includes:

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

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

674 benefit may be provided either:

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

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

677 (c) providing an annuity:

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

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

680 and (3);

681 (d) providing the characteristic services of a motor club as outlined in Subsection

682 [~~(116)~~] (117);

683 (e) providing another person with insurance;

684 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,

685 or surety, a contract or policy of title insurance;

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

687 (i) solicitation;

688 (ii) negotiation preliminary to execution;

689 (iii) execution of a contract of title insurance;

690 (iv) insuring; and

691 (v) transacting matters subsequent to the execution of the contract and arising out of

692 the contract, including reinsurance;

693 (h) transacting or proposing a life settlement; and

694 (i) doing, or proposing to do, any business in substance equivalent to Subsections

695 [~~(88)~~] (89)(a) through (h) in a manner designed to evade this title.

696 [~~(89)~~] (90) "Insurance consultant" or "consultant" means a person who:

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

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

699 placed; and

700 (c) except as provided in Section 31A-23a-501, is not compensated directly or

701 indirectly by an insurer or producer for advice given.

702 ~~[(90)]~~ (91) "Insurance holding company system" means a group of two or more
703 affiliated persons, at least one of whom is an insurer.

704 ~~[(91)]~~ (92) (a) "Insurance producer" or "producer" means a person licensed or required
705 to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

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

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

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

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

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

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

716 ~~[(92)]~~ (93) (a) "Insured" means a person to whom or for whose benefit an insurer
717 makes a promise in an insurance policy and includes:

718 (i) a policyholder;

719 (ii) a subscriber;

720 (iii) a member; and

721 (iv) a beneficiary.

722 (b) The definition in Subsection ~~[(92)]~~ (93)(a):

723 (i) applies only to this title; and

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

726 ~~[(93)]~~ (94) (a) "Insurer" means a person doing an insurance business as a principal
727 including:

728 (i) a fraternal benefit society;

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

730 [31A-22-1305](#)(2) and (3);

731 (iii) a motor club;

732 (iv) an employee welfare plan; and

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

734 person's own account.

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

736 entity is engaged in an activity described in Section [31A-12-107](#).

737 [~~94~~] [\(95\)](#) "Interinsurance exchange" is defined in Subsection [~~147~~] [\(148\)](#).

738 [~~95~~] [\(96\)](#) "Involuntary unemployment insurance" means insurance:

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

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

741 coming due on a:

742 (i) specific loan; or

743 (ii) credit transaction.

744 [~~96~~] [\(97\)](#) "Large employer," in connection with a health benefit plan, means an

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

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

747 the preceding calendar year; and

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

749 [~~97~~] [\(98\)](#) "Late enrollee," with respect to an employer health benefit plan, means an

750 individual whose enrollment is a late enrollment.

751 [~~98~~] [\(99\)](#) "Late enrollment," with respect to an employer health benefit plan, means

752 enrollment of an individual other than:

753 (a) on the earliest date on which coverage can become effective for the individual

754 under the terms of the plan; or

755 (b) through special enrollment.

756 [~~99~~] [\(100\)](#) (a) Except for a retainer contract or legal assistance described in Section

757 [31A-1-103](#), "legal expense insurance" means insurance written to indemnify or pay for a

758 specified legal expense.

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

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

763 [~~(100)~~] (101) (a) "Liability insurance" means insurance against liability:

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

766 (A) Subsection [~~(110)~~] (111) for medical malpractice insurance;

767 (B) Subsection [~~(138)~~] (139) for professional liability insurance; and

768 (C) Subsection [~~(173)~~] (175) for workers' compensation insurance;

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

773 (A) Subsection [~~(110)~~] (111) for medical malpractice insurance;

774 (B) Subsection [~~(138)~~] (139) for professional liability insurance; and

775 (C) Subsection [~~(173)~~] (175) for workers' compensation insurance;

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

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

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

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

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

783 (b) "Liability insurance" includes:

784 (i) vehicle liability insurance;

785 (ii) residential dwelling liability insurance; and

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

789 [~~(101)~~] (102) (a) "License" means authorization issued by the commissioner to engage
790 in an activity that is part of or related to the insurance business.

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

792 [~~(102)~~] (103) (a) "Life insurance" means:

793 (i) insurance on a human life; and

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

795 (b) The business of life insurance includes:

796 (i) granting a death benefit;

797 (ii) granting an annuity benefit;

798 (iii) granting an endowment benefit;

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

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

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

802 [~~(103)~~] (104) "Limited license" means a license that:

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

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

805 [~~(104)~~] (105) "Limited line credit insurance" includes the following forms of
806 insurance:

807 (a) credit life;

808 (b) credit accident and health;

809 (c) credit property;

810 (d) credit unemployment;

811 (e) involuntary unemployment;

812 (f) mortgage life;

813 (g) mortgage guaranty;

814 (h) mortgage accident and health;
815 (i) guaranteed automobile protection; and
816 (j) another form of insurance offered in connection with an extension of credit that:
817 (i) is limited to partially or wholly extinguishing the credit obligation; and
818 (ii) the commissioner determines by rule should be designated as a form of limited line
819 credit insurance.

820 [~~(105)~~] (106) "Limited line credit insurance producer" means a person who sells,
821 solicits, or negotiates one or more forms of limited line credit insurance coverage to an
822 individual through a master, corporate, group, or individual policy.

823 [~~(106)~~] (107) "Limited line insurance" includes:

- 824 (a) bail bond;
- 825 (b) limited line credit insurance;
- 826 (c) legal expense insurance;
- 827 (d) motor club insurance;
- 828 (e) car rental related insurance;
- 829 (f) travel insurance;
- 830 (g) crop insurance;
- 831 (h) self-service storage insurance;
- 832 (i) guaranteed asset protection waiver;
- 833 (j) portable electronics insurance; and
- 834 (k) another form of limited insurance that the commissioner determines by rule should
835 be designated a form of limited line insurance.

836 [~~(107)~~] (108) "Limited lines authority" includes the lines of insurance listed in
837 Subsection [~~(106)~~] (107).

838 [~~(108)~~] (109) "Limited lines producer" means a person who sells, solicits, or negotiates
839 limited lines insurance.

840 [~~(109)~~] (110) (a) "Long-term care insurance" means an insurance policy or rider
841 advertised, marketed, offered, or designated to provide coverage:

- 842 (i) in a setting other than an acute care unit of a hospital;
- 843 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 844 (A) expenses incurred;
 - 845 (B) indemnity;
 - 846 (C) prepayment; or
 - 847 (D) another method;
 - 848 (iii) for one or more necessary or medically necessary services that are:
 - 849 (A) diagnostic;
 - 850 (B) preventative;
 - 851 (C) therapeutic;
 - 852 (D) rehabilitative;
 - 853 (E) maintenance; or
 - 854 (F) personal care; and
 - 855 (iv) that may be issued by:
 - 856 (A) an insurer;
 - 857 (B) a fraternal benefit society;
 - 858 (C) (I) a nonprofit health hospital; and
 - 859 (II) a medical service corporation;
 - 860 (D) a prepaid health plan;
 - 861 (E) a health maintenance organization; or
 - 862 (F) an entity similar to the entities described in Subsections [~~(109)~~] (110)(a)(iv)(A)
- 863 through (E) to the extent that the entity is otherwise authorized to issue life or health care
- 864 insurance.
- 865 (b) "Long-term care insurance" includes:
 - 866 (i) any of the following that provide directly or supplement long-term care insurance:
 - 867 (A) a group or individual annuity or rider; or
 - 868 (B) a life insurance policy or rider;
 - 869 (ii) a policy or rider that provides for payment of benefits on the basis of:

- 870 (A) cognitive impairment; or
- 871 (B) functional capacity; or
- 872 (iii) a qualified long-term care insurance contract.
- 873 (c) "Long-term care insurance" does not include:
- 874 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 875 (ii) basic hospital expense coverage;
- 876 (iii) basic medical/surgical expense coverage;
- 877 (iv) hospital confinement indemnity coverage;
- 878 (v) major medical expense coverage;
- 879 (vi) income replacement or related asset-protection coverage;
- 880 (vii) accident only coverage;
- 881 (viii) coverage for a specified:
- 882 (A) disease; or
- 883 (B) accident;
- 884 (ix) limited benefit health coverage; or
- 885 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 886 lump sum payment:
- 887 (A) if the following are not conditioned on the receipt of long-term care:
- 888 (I) benefits; or
- 889 (II) eligibility; and
- 890 (B) the coverage is for one or more the following qualifying events:
- 891 (I) terminal illness;
- 892 (II) medical conditions requiring extraordinary medical intervention; or
- 893 (III) permanent institutional confinement.
- 894 [~~(110)~~] (111) "Medical malpractice insurance" means insurance against legal liability
- 895 incident to the practice and provision of a medical service other than the practice and provision
- 896 of a dental service.
- 897 [~~(111)~~] (112) "Member" means a person having membership rights in an insurance

898 corporation.

899 ~~[(112)]~~ (113) "Minimum capital" or "minimum required capital" means the capital that
900 must be constantly maintained by a stock insurance corporation as required by statute.

901 ~~[(113)]~~ (114) "Mortgage accident and health insurance" means insurance offered in
902 connection with an extension of credit that provides indemnity for payments coming due on a
903 mortgage while the debtor has a disability.

904 ~~[(114)]~~ (115) "Mortgage guaranty insurance" means surety insurance under which a
905 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

906 ~~[(115)]~~ (116) "Mortgage life insurance" means insurance on the life of a debtor in
907 connection with an extension of credit that pays if the debtor dies.

908 ~~[(116)]~~ (117) "Motor club" means a person:

909 (a) licensed under:

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

911 (ii) Chapter 11, Motor Clubs; or

912 (iii) Chapter 14, Foreign Insurers; and

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

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

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

917 (iii) (A) trip reimbursement;

918 (B) towing services;

919 (C) emergency road services;

920 (D) stolen automobile services;

921 (E) a combination of the services listed in Subsections ~~[(117)]~~ (117)(b)(iii)(A) through
922 (D); or

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

924 ~~[(117)]~~ (118) "Mutual" means a mutual insurance corporation.

925 ~~[(118)]~~ (119) "Network plan" means health care insurance:

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

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

930 [~~(119)~~] (120) "Nonparticipating" means a plan of insurance under which the insured is
931 not entitled to receive a dividend representing a share of the surplus of the insurer.

932 [~~(120)~~] (121) "Ocean marine insurance" means insurance against loss of or damage to:

933 (a) ships or hulls of ships;

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

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

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

942 [~~(121)~~] (122) "Order" means an order of the commissioner.

943 [~~(122)~~] (123) "Outline of coverage" means a summary that explains an accident and
944 health insurance policy.

945 [~~(123)~~] (124) "Participating" means a plan of insurance under which the insured is
946 entitled to receive a dividend representing a share of the surplus of the insurer.

947 [~~(124)~~] (125) "Participation," as used in a health benefit plan, means a requirement
948 relating to the minimum percentage of eligible employees that must be enrolled in relation to
949 the total number of eligible employees of an employer reduced by each eligible employee who
950 voluntarily declines coverage under the plan because the employee:

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

952 (b) receives:

953 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social

954 Security Amendments of 1965; or
955 (ii) another government health benefit.
956 [~~(125)~~] (126) "Person" includes:
957 (a) an individual;
958 (b) a partnership;
959 (c) a corporation;
960 (d) an incorporated or unincorporated association;
961 (e) a joint stock company;
962 (f) a trust;
963 (g) a limited liability company;
964 (h) a reciprocal;
965 (i) a syndicate; or
966 (j) another similar entity or combination of entities acting in concert.
967 [~~(126)~~] (127) "Personal lines insurance" means property and casualty insurance
968 coverage sold for primarily noncommercial purposes to:
969 (a) an individual; or
970 (b) a family.
971 [~~(127)~~] (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
972 [~~(128)~~] (129) "Plan year" means:
973 (a) the year that is designated as the plan year in:
974 (i) the plan document of a group health plan; or
975 (ii) a summary plan description of a group health plan;
976 (b) if the plan document or summary plan description does not designate a plan year or
977 there is no plan document or summary plan description:
978 (i) the year used to determine deductibles or limits;
979 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
980 or
981 (iii) the employer's taxable year if:

982 (A) the plan does not impose deductibles or limits on a yearly basis; and
983 (B) (I) the plan is not insured; or
984 (II) the insurance policy is not renewed on an annual basis; or
985 (c) in a case not described in Subsection [~~(128)~~] (129)(a) or (b), the calendar year.
986 [~~(129)~~] (130) (a) "Policy" means a document, including an attached endorsement or
987 application that:

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

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

991 (i) a motor club under Chapter 11, Motor Clubs;
992 (ii) a service contract provided under Chapter 6a, Service Contracts; and
993 (iii) a corporation licensed under:

994 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
995 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

996 (c) "Policy" does not include:

997 (i) a certificate under a group insurance contract; or
998 (ii) a document that does not purport to have legal effect.

999 [~~(130)~~] (131) "Policyholder" means a person who controls a policy, binder, or oral
1000 contract by ownership, premium payment, or otherwise.

1001 [~~(131)~~] (132) "Policy illustration" means a presentation or depiction that includes
1002 nonguaranteed elements of a policy of life insurance over a period of years.

1003 [~~(132)~~] (133) "Policy summary" means a synopsis describing the elements of a life
1004 insurance policy.

1005 [~~(133)~~] (134) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L.
1006 No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152,
1007 and related federal regulations and guidance.

1008 [~~(134)~~] (135) "Preexisting condition," with respect to a health benefit plan:

1009 (a) means a condition that was present before the effective date of coverage, whether or

1010 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
1011 and

1012 (b) does not include a condition indicated by genetic information unless an actual
1013 diagnosis of the condition by a physician has been made.

1014 [~~(135)~~] (136) (a) "Premium" means the monetary consideration for an insurance policy.

1015 (b) "Premium" includes, however designated:

1016 (i) an assessment;

1017 (ii) a membership fee;

1018 (iii) a required contribution; or

1019 (iv) monetary consideration.

1020 (c) (i) "Premium" does not include consideration paid to a third party administrator for
1021 the third party administrator's services.

1022 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1023 insurance on the risks administered by the third party administrator.

1024 [~~(136)~~] (137) "Principal officers" for a corporation means the officers designated under
1025 Subsection 31A-5-203(3).

1026 [~~(137)~~] (138) "Proceeding" includes an action or special statutory proceeding.

1027 [~~(138)~~] (139) "Professional liability insurance" means insurance against legal liability
1028 incident to the practice of a profession and provision of a professional service.

1029 [~~(139)~~] (140) (a) Except as provided in Subsection [~~(139)~~] (140)(b), "property
1030 insurance" means insurance against loss or damage to real or personal property of every kind
1031 and any interest in that property:

1032 (i) from all hazards or causes; and

1033 (ii) against loss consequential upon the loss or damage including vehicle
1034 comprehensive and vehicle physical damage coverages.

1035 (b) "Property insurance" does not include:

1036 (i) inland marine insurance; and

1037 (ii) ocean marine insurance.

1038 [~~(140)~~] (141) "Qualified long-term care insurance contract" or "federally tax qualified
1039 long-term care insurance contract" means:

1040 (a) an individual or group insurance contract that meets the requirements of Section
1041 7702B(b), Internal Revenue Code; or

1042 (b) the portion of a life insurance contract that provides long-term care insurance:

1043 (i) (A) by rider; or

1044 (B) as a part of the contract; and

1045 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1046 Code.

1047 [~~(141)~~] (142) "Qualified United States financial institution" means an institution that:

1048 (a) is:

1049 (i) organized under the laws of the United States or any state; or

1050 (ii) in the case of a United States office of a foreign banking organization, licensed
1051 under the laws of the United States or any state;

1052 (b) is regulated, supervised, and examined by a United States federal or state authority
1053 having regulatory authority over a bank or trust company; and

1054 (c) meets the standards of financial condition and standing that are considered
1055 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1056 will be acceptable to the commissioner as determined by:

1057 (i) the commissioner by rule; or

1058 (ii) the Securities Valuation Office of the National Association of Insurance

1059 Commissioners.

1060 [~~(142)~~] (143) (a) "Rate" means:

1061 (i) the cost of a given unit of insurance; or

1062 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
1063 expressed as:

1064 (A) a single number; or

1065 (B) a pure premium rate, adjusted before the application of individual risk variations

1066 based on loss or expense considerations to account for the treatment of:

- 1067 (I) expenses;
- 1068 (II) profit; and
- 1069 (III) individual insurer variation in loss experience.

1070 (b) "Rate" does not include a minimum premium.

1071 [~~(143)~~] (144) (a) Except as provided in Subsection [~~(143)~~] (144)(b), "rate service
1072 organization" means a person who assists an insurer in rate making or filing by:

- 1073 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1074 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1075 (iii) advising about rate questions, except as an attorney giving legal advice.

1076 (b) "Rate service organization" does not mean:

- 1077 (i) an employee of an insurer;
- 1078 (ii) a single insurer or group of insurers under common control;
- 1079 (iii) a joint underwriting group; or
- 1080 (iv) an individual serving as an actuarial or legal consultant.

1081 [~~(144)~~] (145) "Rating manual" means any of the following used to determine initial and
1082 renewal policy premiums:

- 1083 (a) a manual of rates;
- 1084 (b) a classification;
- 1085 (c) a rate-related underwriting rule; and
- 1086 (d) a rating formula that describes steps, policies, and procedures for determining
1087 initial and renewal policy premiums.

1088 [~~(145)~~] (146) (a) "Rebate" means a licensee paying, allowing, giving, or offering to
1089 pay, allow, or give, directly or indirectly:

- 1090 (i) a refund of premium or portion of premium;
- 1091 (ii) a refund of commission or portion of commission;
- 1092 (iii) a refund of all or a portion of a consultant fee; or
- 1093 (iv) providing services or other benefits not specified in an insurance or annuity

1094 contract.

1095 (b) "Rebate" does not include:

1096 (i) a refund due to termination or changes in coverage;

1097 (ii) a refund due to overcharges made in error by the licensee; or

1098 (iii) savings or wellness benefits as provided in the contract by the licensee.

1099 [~~(146)~~] (147) "Received by the department" means:

1100 (a) the date delivered to and stamped received by the department, if delivered in

1101 person;

1102 (b) the post mark date, if delivered by mail;

1103 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;

1104 (d) the received date recorded on an item delivered, if delivered by:

1105 (i) facsimile;

1106 (ii) email; or

1107 (iii) another electronic method; or

1108 (e) a date specified in:

1109 (i) a statute;

1110 (ii) a rule; or

1111 (iii) an order.

1112 [~~(147)~~] (148) "Reciprocal" or "interinsurance exchange" means an unincorporated

1113 association of persons:

1114 (a) operating through an attorney-in-fact common to all of the persons; and

1115 (b) exchanging insurance contracts with one another that provide insurance coverage

1116 on each other.

1117 [~~(148)~~] (149) "Reinsurance" means an insurance transaction where an insurer, for

1118 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to

1119 reinsurance transactions, this title sometimes refers to:

1120 (a) the insurer transferring the risk as the "ceding insurer"; and

1121 (b) the insurer assuming the risk as the:

1122 (i) "assuming insurer"; or

1123 (ii) "assuming reinsurer."

1124 [~~(149)~~] (150) "Reinsurer" means a person licensed in this state as an insurer with the
1125 authority to assume reinsurance.

1126 [~~(150)~~] (151) "Residential dwelling liability insurance" means insurance against
1127 liability resulting from or incident to the ownership, maintenance, or use of a residential
1128 dwelling that is a detached single family residence or multifamily residence up to four units.

1129 [~~(151)~~] (152) (a) "Retrocession" means reinsurance with another insurer of a liability
1130 assumed under a reinsurance contract.

1131 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1132 liability assumed under a reinsurance contract.

1133 [~~(152)~~] (153) "Rider" means an endorsement to:

1134 (a) an insurance policy; or

1135 (b) an insurance certificate.

1136 [~~(153)~~] (154) (a) "Security" means a:

1137 (i) note;

1138 (ii) stock;

1139 (iii) bond;

1140 (iv) debenture;

1141 (v) evidence of indebtedness;

1142 (vi) certificate of interest or participation in a profit-sharing agreement;

1143 (vii) collateral-trust certificate;

1144 (viii) preorganization certificate or subscription;

1145 (ix) transferable share;

1146 (x) investment contract;

1147 (xi) voting trust certificate;

1148 (xii) certificate of deposit for a security;

1149 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in

1150 payments out of production under such a title or lease;

1151 (xiv) commodity contract or commodity option;

1152 (xv) certificate of interest or participation in, temporary or interim certificate for,

1153 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed

1154 in Subsections [~~(153)~~] (154)(a)(i) through (xiv); or

1155 (xvi) another interest or instrument commonly known as a security.

1156 (b) "Security" does not include:

1157 (i) any of the following under which an insurance company promises to pay money in a

1158 specific lump sum or periodically for life or some other specified period:

1159 (A) insurance;

1160 (B) an endowment policy; or

1161 (C) an annuity contract; or

1162 (ii) a burial certificate or burial contract.

1163 (155) "Securityholder" means a specified person who owns a security of a person,

1164 including:

1165 (a) common stock;

1166 (b) preferred stock;

1167 (c) debt obligations; and

1168 (d) any other security convertible into or evidencing the right of any of the items listed

1169 in this Subsection (155).

1170 [~~(154)~~] (156) "Secondary medical condition" means a complication related to an

1171 exclusion from coverage in accident and health insurance.

1172 [~~(155)~~] (157) (a) "Self-insurance" means an arrangement under which a person

1173 provides for spreading its own risks by a systematic plan.

1174 (b) Except as provided in this Subsection [~~(155)~~] (157), "self-insurance" does not

1175 include an arrangement under which a number of persons spread their risks among themselves.

1176 (c) "Self-insurance" includes:

1177 (i) an arrangement by which a governmental entity undertakes to indemnify an

1178 employee for liability arising out of the employee's employment; and

1179 (ii) an arrangement by which a person with a managed program of self-insurance and
1180 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1181 employees for liability or risk that is related to the relationship or employment.

1182 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1183 [~~(156)~~] (158) "Sell" means to exchange a contract of insurance:

1184 (a) by any means;

1185 (b) for money or its equivalent; and

1186 (c) on behalf of an insurance company.

1187 [~~(157)~~] (159) "Short-term care insurance" means an insurance policy or rider

1188 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
1189 insurance, but that provides coverage for less than 12 consecutive months for each covered
1190 person.

1191 [~~(158)~~] (160) "Significant break in coverage" means a period of 63 consecutive days
1192 during each of which an individual does not have creditable coverage.

1193 [~~(159)~~] (161) "Small employer" means, in connection with a health benefit plan and
1194 with respect to a calendar year and to a plan year, an employer who:

1195 (a) employed at least one employee but not more than an average of 50 eligible
1196 employees on business days during the preceding calendar year; and

1197 (b) employs at least one employee on the first day of the plan year.

1198 [~~(160)~~] (162) "Special enrollment period," in connection with a health benefit plan, has
1199 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1200 Portability and Accountability Act.

1201 [~~(161)~~] (163) (a) "Subsidiary" of a person means an affiliate controlled by that person
1202 either directly or indirectly through one or more affiliates or intermediaries.

1203 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1204 shares are owned by that person either alone or with its affiliates, except for the minimum
1205 number of shares the law of the subsidiary's domicile requires to be owned by directors or

1206 others.

1207 ~~[(162)]~~ (164) Subject to Subsection ~~[(86)]~~ (87)(b), "surety insurance" includes:

1208 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1209 perform the principal's obligations to a creditor or other obligee;

1210 (b) bail bond insurance; and

1211 (c) fidelity insurance.

1212 ~~[(163)]~~ (165) (a) "Surplus" means the excess of assets over the sum of paid-in capital
1213 and liabilities.

1214 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1215 designated by the insurer or organization as permanent.

1216 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require
1217 that insurers or organizations doing business in this state maintain specified minimum levels of
1218 permanent surplus.

1219 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1220 same as the minimum required capital requirement that applies to stock insurers.

1221 (c) "Excess surplus" means:

1222 (i) for a life insurer, accident and health insurer, health organization, or property and
1223 casualty insurer as defined in Section 31A-17-601, the lesser of:

1224 (A) that amount of an insurer's or health organization's total adjusted capital that
1225 exceeds the product of:

1226 (I) 2.5; and

1227 (II) the sum of the insurer's or health organization's minimum capital or permanent
1228 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1229 (B) that amount of an insurer's or health organization's total adjusted capital that
1230 exceeds the product of:

1231 (I) 3.0; and

1232 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1233 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer

1234 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:
1235 (A) 1.5; and
1236 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
1237 [~~164~~] (166) "Third party administrator" or "administrator" means a person who
1238 collects charges or premiums from, or who, for consideration, adjusts or settles claims of
1239 residents of the state in connection with insurance coverage, annuities, or service insurance
1240 coverage, except:
1241 (a) a union on behalf of its members;
1242 (b) a person administering a:
1243 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1244 1974;
1245 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
1246 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
1247 (c) an employer on behalf of the employer's employees or the employees of one or
1248 more of the subsidiary or affiliated corporations of the employer;
1249 (d) an insurer licensed under the following, but only for a line of insurance for which
1250 the insurer holds a license in this state:
1251 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
1252 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
1253 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
1254 (iv) Chapter 9, Insurance Fraternal; or
1255 (v) Chapter 14, Foreign Insurers;
1256 (e) a person:
1257 (i) licensed or exempt from licensing under:
1258 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
1259 Reinsurance Intermediaries; or
1260 (B) Chapter 26, Insurance Adjusters; and
1261 (ii) whose activities are limited to those authorized under the license the person holds

1262 or for which the person is exempt; or

1263 (f) an institution, bank, or financial institution:

1264 (i) that is:

1265 (A) an institution whose deposits and accounts are to any extent insured by a federal
1266 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
1267 Credit Union Administration; or

1268 (B) a bank or other financial institution that is subject to supervision or examination by
1269 a federal or state banking authority; and

1270 (ii) that does not adjust claims without a third party administrator license.

1271 [~~(165)~~] (167) "Title insurance" means the insuring, guaranteeing, or indemnifying of an
1272 owner of real or personal property or the holder of liens or encumbrances on that property, or
1273 others interested in the property against loss or damage suffered by reason of liens or
1274 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
1275 or unenforceability of any liens or encumbrances on the property.

1276 [~~(166)~~] (168) "Total adjusted capital" means the sum of an insurer's or health
1277 organization's statutory capital and surplus as determined in accordance with:

1278 (a) the statutory accounting applicable to the annual financial statements required to be
1279 filed under Section 31A-4-113; and

1280 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1281 Section 31A-17-601.

1282 [~~(167)~~] (169) (a) "Trustee" means "director" when referring to the board of directors of
1283 a corporation.

1284 (b) "Trustee," when used in reference to an employee welfare fund, means an
1285 individual, firm, association, organization, joint stock company, or corporation, whether acting
1286 individually or jointly and whether designated by that name or any other, that is charged with
1287 or has the overall management of an employee welfare fund.

1288 [~~(168)~~] (170) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted
1289 insurer" means an insurer:

1290 (i) not holding a valid certificate of authority to do an insurance business in this state;

1291 or

1292 (ii) transacting business not authorized by a valid certificate.

1293 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1294 (i) holding a valid certificate of authority to do an insurance business in this state; and

1295 (ii) transacting business as authorized by a valid certificate.

1296 ~~[(169)]~~ (171) "Underwrite" means the authority to accept or reject risk on behalf of the
1297 insurer.

1298 ~~[(170)]~~ (172) "Vehicle liability insurance" means insurance against liability resulting
1299 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a
1300 vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(139)]~~ (140).

1301 ~~[(171)]~~ (173) "Voting security" means a security with voting rights, and includes a
1302 security convertible into a security with a voting right associated with the security.

1303 ~~[(172)]~~ (174) "Waiting period" for a health benefit plan means the period that must
1304 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of
1305 the health benefit plan, can become effective.

1306 ~~[(173)]~~ (175) "Workers' compensation insurance" means:

1307 (a) insurance for indemnification of an employer against liability for compensation
1308 based on:

1309 (i) a compensable accidental injury; and

1310 (ii) occupational disease disability;

1311 (b) employer's liability insurance incidental to workers' compensation insurance and
1312 written in connection with workers' compensation insurance; and

1313 (c) insurance assuring to a person entitled to workers' compensation benefits the
1314 compensation provided by law.

1315 Section 2. Section **31A-3-304 (Effective 07/01/15)** is amended to read:

1316 **31A-3-304 (Effective 07/01/15). Annual fees -- Other taxes or fees prohibited --**
1317 **Captive Insurance Restricted Account.**

1318 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
1319 to obtain or renew a certificate of authority.

1320 (b) The commissioner shall:

1321 (i) determine the annual fee pursuant to Section 31A-3-103; and

1322 (ii) consider whether the annual fee is competitive with fees imposed by other states on
1323 captive insurance companies.

1324 (2) A captive insurance company that fails to pay the fee required by this section is
1325 subject to the relevant sanctions of this title.

1326 (3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter
1327 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under
1328 the laws of this state that may be levied or assessed on a captive insurance company:

1329 (i) a fee under this section;

1330 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and

1331 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company
1332 Act.

1333 (b) The state or a county, city, or town within the state may not levy or collect an
1334 occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii)
1335 against a captive insurance company.

1336 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115
1337 against a captive insurance company.

1338 (d) A captive insurance company is subject to real and personal property taxes.

1339 (4) A captive insurance company shall pay the fee imposed by this section to the
1340 commissioner by June 1 of each year.

1341 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be
1342 deposited into the Captive Insurance Restricted Account.

1343 (b) There is created in the General Fund a restricted account known as the "Captive
1344 Insurance Restricted Account."

1345 (c) The Captive Insurance Restricted Account shall consist of the fees described in

1346 Subsection (3)(a).

1347 (d) The commissioner shall administer the Captive Insurance Restricted Account.

1348 Subject to appropriations by the Legislature, the commissioner shall use the money deposited
1349 into the Captive Insurance Restricted Account to:

1350 (i) administer and enforce:

1351 (A) Chapter 37, Captive Insurance Companies Act; and

1352 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1353 (ii) promote the captive insurance industry in Utah.

1354 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
1355 except that at the end of each fiscal year, money received by the commissioner in excess of
1356 ~~[\$1,250,000]~~ the following shall be treated as free revenue in the General Fund[-]:

1357 (i) for fiscal year 2015-2016, in excess of \$1,250,000;

1358 (ii) for fiscal year 2016-2017, in excess of \$1,250,000; and

1359 (iii) for fiscal year 2017-2018 and subsequent fiscal years, in excess of \$1,850,000.

1360 Section 3. Section **31A-6a-101** is amended to read:

1361 **31A-6a-101. Definitions.**

1362 (1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued
1363 by an insurance company that has complied with either [~~Title 31A,~~] Chapter 5, Domestic Stock
1364 and Mutual Insurance Corporations, or [~~Title 31A,~~] Chapter 14, Foreign Insurers, that
1365 undertakes to perform or provide repair or replacement service on goods or property, or
1366 indemnification for repair or replacement service, for the operational or structural failure of the
1367 goods or property due to a defect in materials, workmanship, or normal wear and tear.

1368 (2) "Nonmanufacturers' parts" means replacement parts not made for or by the original
1369 manufacturer of the goods commonly referred to as "after market parts."

1370 (3) (a) "Road hazard" means a hazard that is encountered while driving a motor
1371 vehicle.

1372 (b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic,
1373 curbs, or composite scraps.

1374 ~~[(3)]~~ (4) (a) "Service contract" means a contract or agreement to perform or reimburse
1375 for the repair or maintenance of goods or property, for their operational or structural failure due
1376 to a defect in materials, workmanship, or normal wear and tear, with or without additional
1377 provision for incidental payment of indemnity under limited circumstances.

1378 (b) "Service contract" does not include mechanical breakdown insurance ~~[as defined in~~
1379 Subsection (1)].

1380 (c) "Service contract" includes any contract or agreement to perform or reimburse the
1381 service contract holder for any one or more of the following services:

1382 (i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a
1383 result of coming into contact with a road hazard;

1384 (ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using
1385 the process of paintless dent removal without affecting the existing paint finish and without
1386 replacing vehicle body panels, sanding, bonding, or painting;

1387 (iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as
1388 a result of damage caused by a road hazard, that is primary to the coverage offered by the motor
1389 vehicle owner's motor vehicle insurance policy; or

1390 (iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes
1391 inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to
1392 only the replacement of a lost or stolen motor vehicle key or key-fob.

1393 ~~[(4)]~~ (5) "Service contract holder" or "contract holder" means a person who purchases a
1394 service contract.

1395 ~~[(5)]~~ (6) "Service contract provider" means a person who issues, makes, provides,
1396 administers, sells or offers to sell a service contract, or who is contractually obligated to
1397 provide service under a service contract.

1398 ~~[(6)]~~ (7) "Service contract reimbursement policy" or "reimbursement insurance policy"
1399 means a policy of insurance providing coverage for all obligations and liabilities incurred by
1400 the service contract provider under the terms of the service contract issued by the provider.

1401 (8) (a) "Vehicle protection product" means a device or system that is:

1402 (i) installed on or applied to a motor vehicle; and

1403 (ii) designed to prevent the theft of the vehicle.

1404 (b) "Vehicle protection product" includes:

1405 (i) a vehicle protection product warranty;

1406 (ii) an alarm system;

1407 (iii) a body part marking product;

1408 (iv) a steering lock;

1409 (v) a window etch product;

1410 (vi) a pedal and ignition lock;

1411 (vii) a fuel and ignition kill switch; and

1412 (viii) an electronic, radio, or satellite tracking device.

1413 (9) "Vehicle protection product warranty" means a written agreement by a warrantor
1414 that provides if the vehicle protection product fails to prevent the theft of the motor vehicle,
1415 that the warrantor will reimburse the warranty holder under the warranty in a fixed amount
1416 specified in the warranty, not to exceed \$5,000.

1417 (10) "Warrantor" means a person who is contractually obligated to the warranty holder
1418 under the terms of a vehicle protection product warranty.

1419 (11) "Warranty holder" means the person who purchases a vehicle protection product,
1420 any authorized transferee or assignee of the purchaser, or any other person legally assuming the
1421 purchaser's rights under the vehicle protection product warranty.

1422 Section 4. Section **31A-6a-103** is amended to read:

1423 **31A-6a-103. Requirements for doing business.**

1424 (1) A service contract or vehicle protection product warranty may not be issued, sold,
1425 or offered for sale in this state unless the service contract or vehicle protection product
1426 warranty is insured under a [~~service contract~~] reimbursement insurance policy issued by:

1427 (a) an insurer authorized to do business in this state; or

1428 (b) a recognized surplus lines carrier.

1429 (2) (a) A service contract or vehicle protection product warranty may not be issued,

1430 sold, or offered for sale unless the service contract provider or warrantor completes the
1431 registration process described in this Subsection (2).

1432 (b) To register, a service contract provider or warrantor shall submit to the department
1433 the following:

1434 (i) an application for registration;

1435 (ii) a fee established in accordance with Section [31A-3-103](#);

1436 (iii) a copy of any service contract or vehicle protection product warranty that the
1437 service contract provider or warrantor offers in this state; and

1438 (iv) a copy of the service contract provider's or warrantor's reimbursement insurance
1439 policy.

1440 (c) A service provider or warrantor shall submit the information described in
1441 Subsection (2)(b) no less than 30 days before the day on which the service provider or
1442 warrantor issues, sells, offers for sale, or uses a service contract, vehicle protection product
1443 warranty, or reimbursement insurance policy in this state.

1444 (d) A service provider or warrantor shall file any modification of the terms of a service
1445 contract, vehicle protection product warranty, or reimbursement insurance policy 30 days
1446 before the day on which it is used in this state.

1447 (e) A person complying with this chapter is not required to comply with:

1448 (i) Subsections [31A-21-201](#)(1) and [31A-23a-402](#)(3); or

1449 (ii) Chapter 19a, Utah Rate Regulation Act.

1450 (3) (a) Premiums collected on a service contract are not subject to premium taxes.

1451 (b) Premiums collected by an issuer of a reimbursement insurance policy are subject to
1452 premium taxes.

1453 (4) A person marketing, selling, or offering to sell a service contract or vehicle
1454 protection product warranty for a service contract provider or warrantor that complies with this
1455 chapter is exempt from the licensing requirements of this title.

1456 (5) A service contract provider or warrantor complying with this chapter is not required
1457 to comply with:

- 1458 (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 1459 (b) Chapter 7, Nonprofit Health Service Insurance Corporations;
- 1460 (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1461 (d) Chapter 9, Insurance Fraternal;
- 1462 (e) Chapter 10, Annuities;
- 1463 (f) Chapter 11, Motor Clubs;
- 1464 (g) Chapter 12, State Risk Management Fund;
- 1465 (h) Chapter 13, Employee Welfare Funds and Plans;
- 1466 (i) Chapter 14, Foreign Insurers;
- 1467 (j) Chapter 19a, Utah Rate Regulation Act;
- 1468 (k) Chapter 25, Third Party Administrators; and
- 1469 (l) Chapter 28, Guaranty Associations.

1470 Section 5. Section **31A-6a-104** is amended to read:

1471 **31A-6a-104. Required disclosures.**

1472 (1) A service contract reimbursement insurance policy insuring a service contract that
1473 is issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the
1474 service contract provider to perform under the contract, the issuer of the policy shall:

1475 (a) pay on behalf of the service contract provider any sums the service contract
1476 provider is legally obligated to pay according to the service contract provider's contractual
1477 obligations under the service contract issued or sold by the service contract provider; or

1478 (b) provide the service which the service contract provider is legally obligated to
1479 perform, according to the service contract provider's contractual obligations under the service
1480 contract issued or sold by the service contract provider.

1481 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless
1482 the service contract contains the following statements in substantially the following form:

1483 (i) "Obligations of the provider under this service contract are guaranteed under a
1484 service contract reimbursement insurance policy. Should the provider fail to pay or provide
1485 service on any claim within 60 days after proof of loss has been filed, the contract holder is

1486 entitled to make a claim directly against the Insurance Company."; and

1487 (ii) "This service contract or warranty is subject to limited regulation by the Utah
1488 Insurance Department. To file a complaint, contact the Utah Insurance Department."

1489 (b) A service contract or reimbursement insurance policy may not be issued, sold, or
1490 offered for sale in this state unless the contract contains a statement in substantially the
1491 following form, "Coverage afforded under this contract is not guaranteed by the Property and
1492 Casualty Guaranty Association."

1493 (3) A service contract shall:

1494 (a) conspicuously state the name, address, and a toll free claims service telephone
1495 number of the reimbursement insurer;

1496 (b) identify the service contract provider, the seller, and the service contract holder;

1497 (c) conspicuously state the total purchase price and the terms under which the service
1498 contract is to be paid;

1499 (d) conspicuously state the existence of any deductible amount;

1500 (e) specify the merchandise, service to be provided, and any limitation, exception, or
1501 exclusion;

1502 (f) state a term, restriction, or condition governing the transferability of the service
1503 contract; and

1504 (g) state a term, restriction, or condition that governs cancellation of the service
1505 contract as provided in Sections [31A-21-303](#) through [31A-21-305](#) by either the contract holder
1506 or service contract provider.

1507 (4) If prior approval of repair work is required, a service contract shall conspicuously
1508 state the procedure for obtaining prior approval and for making a claim, including:

1509 (a) a toll free telephone number for claim service; and

1510 (b) a procedure for obtaining reimbursement for emergency repairs performed outside
1511 of normal business hours.

1512 (5) A preexisting condition clause in a service contract shall specifically state which
1513 preexisting condition is excluded from coverage.

1514 (6) (a) Except as provided in Subsection (6)(c), a service contract shall state the
1515 conditions upon which the use of a nonmanufacturers' part is allowed.

1516 (b) A condition described in Subsection (6)(a) shall comply with applicable state and
1517 federal laws.

1518 (c) This Subsection (6) does not apply to a home warranty contract.

1519 (7) This section applies to a vehicle protection product warranty, except for the
1520 requirements of Subsection (3)(g). The department may make rules in accordance with Title
1521 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the application of this
1522 section to a vehicle protection product warranty.

1523 (8) A vehicle protection product warranty shall contain a conspicuous statement in
1524 substantially the following form: "Purchase of this product is optional and is not required in
1525 order to finance, lease, or purchase a motor vehicle."

1526 Section 6. Section **31A-6a-105** is amended to read:

1527 **31A-6a-105. Prohibited acts.**

1528 (1) Except as provided in Subsection **31A-6a-104(2)**, a service contract provider may
1529 not use in its name, a contract, or literature:

1530 (a) any of the following words:

1531 (i) "insurance";

1532 (ii) "casualty";

1533 (iii) "surety";

1534 (iv) "mutual"; or

1535 (v) another word descriptive of the insurance, casualty, or surety business; or

1536 (b) a name deceptively similar to the name or description of:

1537 (i) an insurance or surety corporation; or

1538 (ii) another service contract provider.

1539 (2) A service contract provider or the service contract provider's representative may
1540 not:

1541 (a) make, permit, or cause to be made a false or misleading statement in connection

1542 with the sale, offer to sell, or advertisement of a service contract; or

1543 (b) deliberately omit a material statement that would be considered misleading if
1544 omitted, in connection with the sale, offer to sell, or advertisement of a service contract.

1545 (3) A bank, savings and loan association, insurance company, or other lending
1546 institution may not require the purchase of a service contract as a condition of a loan.

1547 (4) Except for a bank, savings and loan association, industrial bank, or credit union, a
1548 service contract provider may not sell, or be the obligated party for:

1549 (a) a guaranteed asset protection waiver, unless registered with the commissioner under
1550 Chapter 6b, Guaranteed Asset Protection Waiver Act;

1551 (b) a debt cancellation agreement, unless licensed by the commissioner; or

1552 (c) a debt suspension agreement, unless licensed by the commissioner.

1553 (5) A warrantor or its representative may not require the purchase of a vehicle
1554 protection product as a condition of the financing, lease, or purchase of a motor vehicle.

1555 Section 7. Section **31A-6a-111** is enacted to read:

1556 **31A-6a-111. Vehicle protection product warranty requirements.**

1557 The fixed amount of reimbursement under a vehicle protection product warranty shall
1558 be uniform for all warranty holders of the same vehicle protection product warranty.

1559 Section 8. Section **31A-16-102.5** is enacted to read:

1560 **31A-16-102.5. Subsidiaries of insurers.**

1561 (1) (a) A domestic insurer may organize or acquire one or more subsidiaries either:

1562 (i) by itself; or

1563 (ii) in cooperation with one or more persons.

1564 (b) A subsidiary of a domestic insurer may conduct any kind of business or businesses
1565 and its authority to do so may not be limited by reason of the fact that it is a subsidiary of a
1566 domestic insurer.

1567 (2) (a) In addition to investments in common stock, preferred stock, debt obligations,
1568 and other securities permitted under all other sections of this chapter, a domestic insurer may
1569 also invest in the following securities of one or more subsidiaries:

1570 (i) common stock;

1571 (ii) preferred stock;

1572 (iii) debt obligations; or

1573 (iv) other securities.

1574 (b) Amounts under Subsection (2)(a) that do not exceed the lesser of 10% of the
1575 insurer's assets or 50% of the insurer's surplus as regards policyholders are permitted, if after
1576 the investments, the insurer's surplus as regards policyholders will be reasonable in relation to
1577 the insurer's outstanding liabilities and adequate to meet its financial needs.

1578 (c) In calculating the amount of the investments described in Subsection (2)(b),
1579 investments in domestic or foreign insurance subsidiaries and health organizations shall be
1580 excluded, and there shall be included:

1581 (i) total net money or other consideration expended and obligations assumed in the
1582 acquisition or formation of a subsidiary, including all organizational expenses and
1583 contributions to capital and surplus of the subsidiary whether or not represented by the
1584 purchase of capital stock or issuance of other securities; and

1585 (ii) the amounts expended in acquiring additional common stock, preferred stock, debt
1586 obligations, and other securities, and all contributions to the capital or surplus of a subsidiary
1587 subsequent to its acquisition or formation.

1588 (d) (i) A domestic insurer may invest any amount in securities described in Subsection
1589 (2)(a) of one or more subsidiaries engaged or organized to engage exclusively in the ownership
1590 and management of assets authorized as investments for the insurer if each subsidiary agrees to
1591 limit its investments in any asset so that the investments will not cause the amount of the total
1592 investment of the insurer to exceed any of the investment limitations specified in Subsection
1593 (2)(b) applicable to the insurer.

1594 (ii) For purposes of this Subsection (2)(d), "the total investment of the insurer" shall
1595 include:

1596 (A) a direct investment by the insurer in an asset; and

1597 (B) the insurer's proportionate share of an investment in an asset by a subsidiary of the

1598 insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by
1599 the percentage of the ownership of the subsidiary.

1600 (e) With the approval of the commissioner, a domestic insurer may invest any greater
1601 amount in securities described in Subsection (2)(a) provided that after the investment the
1602 insurer's surplus as regards policyholders will be reasonable in relation to the insurer's
1603 outstanding liabilities and adequate to its financial needs.

1604 (3) Investments in securities described in Subsection (2)(a) may not be subject to any
1605 of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to
1606 the investments of insurers.

1607 (4) Whether any investment made pursuant to Subsection (2) meets the applicable
1608 requirements of Subsection (2) shall be determined before the investment is made, by
1609 calculating the applicable investment limitations as though the investment had already been
1610 made, taking into account:

1611 (a) the then outstanding principal balance on all previous investments in debt
1612 obligations; and

1613 (b) the value of all previous investments in equity securities as of the day they were
1614 made net of any return of capital invested not including dividends.

1615 (5) (a) Subject to Subsection (5)(b), if an insurer ceases to control a subsidiary, it shall
1616 dispose of any investment in the subsidiary made pursuant to this section:

1617 (i) within three years from the time of the cessation of control; or

1618 (ii) within such further time as the commissioner may prescribe.

1619 (b) Subsection (5)(a) does not apply if at any time after the investment is made, the
1620 investment meets the requirements for investment under any other section of this chapter, and
1621 the insurer has so notified the commissioner.

1622 Section 9. Section **31A-16-103** is amended to read:

1623 **31A-16-103. Acquisition of control of, divestiture of control of, or merger with**
1624 **domestic insurer.**

1625 (1) (a) A person may not take the actions described in [~~Subsections~~] Subsection (1)(b)

1626 or (c) unless, at the time any offer, request, or invitation is made or any such agreement is
1627 entered into, or prior to the acquisition of securities if no offer or agreement is involved:

1628 (i) the person files with the commissioner a statement containing the information
1629 required by this section;

1630 (ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the
1631 insurer; and

1632 (iii) the commissioner approves the offer, request, invitation, agreement, or acquisition.

1633 (b) Unless the person complies with Subsection (1)(a), a person other than the issuer
1634 may not make a tender offer for, a request or invitation for tenders of, or enter into any
1635 agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise,
1636 any voting security of a domestic insurer if after the acquisition, the person would directly,
1637 indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

1638 (c) Unless the person complies with Subsection (1)(a), a person may not enter into an
1639 agreement to merge with or otherwise to acquire control of:

1640 (i) a domestic insurer; or

1641 (ii) any person controlling a domestic insurer.

1642 (d) For purposes of this section, a controlling person of a domestic insurer seeking to
1643 divest its controlling interest in the domestic insurer, in any manner, shall file with the
1644 commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least
1645 30 days before the cessation of control. The commissioner shall determine those instances in
1646 which the one or more persons seeking to divest or to acquire a controlling interest in an
1647 insurer, will be required to file for and obtain approval of the transaction. The information
1648 shall remain confidential until the conclusion of the transaction unless the commissioner, in the
1649 commissioner's discretion, determines that confidential treatment will interfere with
1650 enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed,
1651 this Subsection (1)(d) does not apply.

1652 (e) With respect to a transaction subject to this section, the acquiring person shall also
1653 file a pre-acquisition notification with the commissioner, which shall contain the information

1654 set forth in Section 31A-16-104.5. A failure to file the notification may be subject to penalties
1655 specified in Section 31A-16-104.5.

1656 ~~(f)~~ (f) (i) For purposes of this section, a domestic insurer includes any person
1657 controlling a domestic insurer unless the person as determined by the commissioner is either
1658 directly or through its affiliates primarily engaged in business other than the business of
1659 insurance.

1660 (ii) The controlling person described in Subsection (1)~~(f)~~(f)(i) shall file with the
1661 commissioner a preacquisition notification containing the information required in Subsection
1662 (2) 30 calendar days before the proposed effective date of the acquisition.

1663 (iii) For the purposes of this section, "person" does not include any securities broker
1664 that in the usual and customary brokers function holds less than 20% of:

- 1665 (A) the voting securities of an insurance company; or
1666 (B) any person that controls an insurance company.

1667 (iv) This section applies to all domestic insurers and other entities licensed under
1668 [~~Chapters 5, 7, 8, 9, and 11~~]:

1669 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1670 (B) Chapter 7, Nonprofit Health Service Insurance Corporations;

1671 (C) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1672 (D) Chapter 9, Insurance Fraternal; and

1673 (E) Chapter 11, Motor Clubs.

1674 ~~(g)~~ (g) (i) An agreement for acquisition of control or merger as contemplated by this
1675 Subsection (1) is not valid or enforceable unless the agreement:

1676 (A) is in writing; and

1677 (B) includes a provision that the agreement is subject to the approval of the
1678 commissioner upon the filing of any applicable statement required under this chapter.

1679 (ii) A written agreement for acquisition or control that includes the provision described
1680 in Subsection (1)~~(g)~~(g)(i) satisfies the requirements of this Subsection (1).

1681 (2) The statement to be filed with the commissioner under Subsection (1) shall be

1682 made under oath or affirmation and shall contain the following information:

1683 (a) the name and address of the "acquiring party," which means each person by whom
1684 or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to
1685 be effected; and

1686 (i) if the person is an individual:

1687 (A) the person's principal occupation;

1688 (B) a listing of all offices and positions held by the person during the past five years;

1689 and

1690 (C) any conviction of crimes other than minor traffic violations during the past 10
1691 years; and

1692 (ii) if the person is not an individual:

1693 (A) a report of the nature of its business operations during:

1694 (I) the past five years; or

1695 (II) for any lesser period as the person and any of its predecessors has been in
1696 existence;

1697 (B) an informative description of the business intended to be done by the person and
1698 the person's subsidiaries;

1699 (C) a list of all individuals who are or who have been selected to become directors or
1700 executive officers of the person, or individuals who perform, or who will perform functions
1701 appropriate to such positions; and

1702 (D) for each individual described in Subsection (2)(a)(ii)(C), the information required
1703 by Subsection (2)(a)(i) for each individual;

1704 (b) (i) the source, nature, and amount of the consideration used or to be used in
1705 effecting the merger or acquisition of control;

1706 (ii) a description of any transaction in which funds were or are to be obtained for the
1707 purpose of effecting the merger or acquisition of control, including any pledge of:

1708 (A) the insurer's stock; or

1709 (B) the stock of any of the insurer's subsidiaries or controlling affiliates; and

1710 (iii) the identity of persons furnishing the consideration;

1711 (c) (i) fully audited financial information, or other financial information considered

1712 acceptable by the commissioner, of the earnings and financial condition of each acquiring party

1713 for:

1714 (A) the preceding five fiscal years of each acquiring party; or

1715 (B) any lesser period the acquiring party and any of its predecessors shall have been in

1716 existence; and

1717 (ii) unaudited information:

1718 (A) similar to the information described in Subsection (2)(c)(i); and

1719 (B) prepared within the 90 days prior to the filing of the statement;

1720 (d) any plans or proposals which each acquiring party may have to:

1721 (i) liquidate the insurer;

1722 (ii) sell its assets;

1723 (iii) merge or consolidate the insurer with any person; or

1724 (iv) make any other material change in the insurer's:

1725 (A) business;

1726 (B) corporate structure; or

1727 (C) management;

1728 (e) (i) the number of shares of any security referred to in Subsection (1) that each

1729 acquiring party proposes to acquire;

1730 (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in

1731 Subsection (1); and

1732 (iii) a statement as to the method by which the fairness of the proposal was arrived at;

1733 (f) the amount of each class of any security referred to in Subsection (1) that:

1734 (i) is beneficially owned; or

1735 (ii) concerning which there is a right to acquire beneficial ownership by each acquiring

1736 party;

1737 (g) a full description of any contract, arrangement, or understanding with respect to any

1738 security referred to in Subsection (1) in which any acquiring party is involved, including:
1739 (i) the transfer of any of the securities;
1740 (ii) joint ventures;
1741 (iii) loan or option arrangements;
1742 (iv) puts or calls;
1743 (v) guarantees of loans;
1744 (vi) guarantees against loss or guarantees of profits;
1745 (vii) division of losses or profits; or
1746 (viii) the giving or withholding of proxies;
1747 (h) a description of the purchase by any acquiring party of any security referred to in
1748 Subsection (1) during the 12 calendar months preceding the filing of the statement including:
1749 (i) the dates of purchase;
1750 (ii) the names of the purchasers; and
1751 (iii) the consideration paid or agreed to be paid for the purchase;
1752 (i) a description of:
1753 (i) any recommendations to purchase by any acquiring party any security referred to in
1754 Subsection (1) made during the 12 calendar months preceding the filing of the statement; or
1755 (ii) any recommendations made by anyone based upon interviews or at the suggestion
1756 of the acquiring party;
1757 (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange
1758 offers for, and agreements to acquire or exchange any securities referred to in Subsection (1);
1759 and
1760 (ii) if distributed, copies of additional soliciting material relating to the transactions
1761 described in Subsection (2)(j)(i);
1762 (k) (i) the term of any agreement, contract, or understanding made with, or proposed to
1763 be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for
1764 tender; and
1765 (ii) the amount of any fees, commissions, or other compensation to be paid to

1766 broker-dealers with regard to any agreement, contract, or understanding described in
1767 Subsection (2)(k)(i); [~~and~~]
1768 (l) an agreement by the person required to file the statement referred to in Subsection
1769 (1) that it will provide the annual report, specified in Section 31A-16-105, for so long as
1770 control exists;
1771 (m) an acknowledgment by the person required to file the statement referred to in
1772 Subsection (1) that the person and all subsidiaries within its control in the insurance holding
1773 company system will provide information to the commissioner upon request as necessary to
1774 evaluate enterprise risk to the insurer; and
1775 [~~(n)~~] (n) any additional information the commissioner requires by rule, which the
1776 commissioner determines to be:
1777 (i) necessary or appropriate for the protection of policyholders of the insurer; or
1778 (ii) in the public interest.
1779 (3) The department may request:
1780 (a) (i) criminal background information maintained pursuant to Title 53, Chapter 10,
1781 Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
1782 (ii) complete Federal Bureau of Investigation criminal background checks through the
1783 national criminal history system.
1784 (b) Information obtained by the department from the review of criminal history records
1785 received under Subsection (3)(a) shall be used by the department for the purpose of:
1786 (i) verifying the information in Subsection (2)(a)(i);
1787 (ii) determining the integrity of persons who would control the operation of an insurer;
1788 and
1789 (iii) preventing persons who violate 18 U.S.C. Sec. 1033 from engaging in the business
1790 of insurance in the state.
1791 (c) If the department requests the criminal background information, the department
1792 shall:
1793 (i) pay to the Department of Public Safety the costs incurred by the Department of

1794 Public Safety in providing the department criminal background information under Subsection
1795 (3)(a)(i);

1796 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
1797 of Investigation in providing the department criminal background information under
1798 Subsection (3)(a)(ii); and

1799 (iii) charge the person required to file the statement referred to in Subsection (1) a fee
1800 equal to the aggregate of Subsections (3)(c)(i) and (ii).

1801 (4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in
1802 the lender's ordinary course of business, the identity of the lender shall remain confidential, if
1803 the person filing the statement so requests.

1804 (b) (i) Under Subsection (2)(e), the commissioner may require a statement of the
1805 adjusted book value assigned by the acquiring party to each security in arriving at the terms of
1806 the offer.

1807 (ii) For purposes of this Subsection (4)(b), "adjusted book value" means each security's
1808 proportional interest in the capital and surplus of the insurer with adjustments that reflect:

1809 (A) market conditions;

1810 (B) business in force; and

1811 (C) other intangible assets or liabilities of the insurer.

1812 (c) The description required by Subsection (2)(g) shall identify the persons with whom
1813 the contracts, arrangements, or understandings have been entered into.

1814 (5) (a) If the person required to file the statement referred to in Subsection (1) is a
1815 partnership, limited partnership, syndicate, or other group, the commissioner may require that
1816 all the information called for by ~~Subsections~~ Subsection (2), (3), or (4) shall be given with
1817 respect to each:

1818 (i) partner of the partnership or limited partnership;

1819 (ii) member of the syndicate or group; and

1820 (iii) person who controls the partner or member.

1821 (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation,

1822 or if the person required to file the statement referred to in Subsection (1) is a corporation, the
1823 commissioner may require that the information called for by Subsection (2) shall be given with
1824 respect to:

- 1825 (i) the corporation;
- 1826 (ii) each officer and director of the corporation; and
- 1827 (iii) each person who is directly or indirectly the beneficial owner of more than 10% of
1828 the outstanding voting securities of the corporation.

1829 (6) If any material change occurs in the facts set forth in the statement filed with the
1830 commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth
1831 the change, together with copies of all documents and other material relevant to the change,
1832 shall be filed with the commissioner and sent to the insurer within two business days after the
1833 filing person learns of such change.

1834 (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection
1835 (1) is proposed to be made by means of a registration statement under the Securities Act of
1836 1933, or under circumstances requiring the disclosure of similar information under the
1837 Securities Exchange Act of 1934, or under a state law requiring similar registration or
1838 disclosure, a person required to file the statement referred to in Subsection (1) may use copies
1839 of any registration or disclosure documents in furnishing the information called for by the
1840 statement.

1841 (8) (a) The commissioner shall approve any merger or other acquisition of control
1842 referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, the
1843 commissioner finds that:

1844 (i) after the change of control, the domestic insurer referred to in Subsection (1) would
1845 not be able to satisfy the requirements for the issuance of a license to write the line or lines of
1846 insurance for which it is presently licensed;

1847 (ii) the effect of the merger or other acquisition of control would:

1848 (A) substantially lessen competition in insurance in this state; or

1849 (B) tend to create a monopoly in insurance;

1850 (iii) the financial condition of any acquiring party might:
1851 (A) jeopardize the financial stability of the insurer; or
1852 (B) prejudice the interest of:
1853 (I) its policyholders; or
1854 (II) any remaining securityholders who are unaffiliated with the acquiring party;
1855 (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in
1856 Subsection (1) are unfair and unreasonable to the securityholders of the insurer;
1857 (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its
1858 assets, or consolidate or merge it with any person, or to make any other material change in its
1859 business or corporate structure or management, are:
1860 (A) unfair and unreasonable to policyholders of the insurer; and
1861 (B) not in the public interest; or
1862 (vi) the competence, experience, and integrity of those persons who would control the
1863 operation of the insurer are such that it would not be in the interest of the policyholders of the
1864 insurer and the public to permit the merger or other acquisition of control.
1865 (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not
1866 be considered unfair if the adjusted book values under Subsection (2)(e):
1867 (i) are disclosed to the securityholders; and
1868 (ii) determined by the commissioner to be reasonable.
1869 (9) (a) The public hearing referred to in Subsection (8) shall be held within 30 days
1870 after the statement required by Subsection (1) is filed.
1871 (b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the
1872 person filing the statement.
1873 (ii) Affected parties may waive the notice required by this Subsection (9)(b).
1874 (iii) Not less than seven days notice of the public hearing shall be given by the person
1875 filing the statement to:
1876 (A) the insurer; and
1877 (B) any person designated by the commissioner.

1878 (c) The commissioner shall make a determination within 30 days after the conclusion
1879 of the hearing.

1880 (d) At the hearing, the person filing the statement, the insurer, any person to whom
1881 notice of hearing was sent, and any other person whose interest may be affected by the hearing
1882 may:

- 1883 (i) present evidence;
- 1884 (ii) examine and cross-examine witnesses; and
- 1885 (iii) offer oral and written arguments.

1886 (e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery
1887 proceedings in the same manner as is presently allowed in the district courts of this state.

1888 (ii) All discovery proceedings shall be concluded not later than three days before the
1889 commencement of the public hearing.

1890 (10) If the proposed acquisition of control will require the approval of more than one
1891 commissioner, the public hearing referred to in Subsection (9)(a) may be held on a
1892 consolidated basis upon request of the person filing the statement referred to in Subsection (1).
1893 The person shall file the statement referred to in Subsection (1) with the National Association
1894 of Insurance Commissioners within five days of making the request for a public hearing. A
1895 commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of
1896 the opt-out within 10 days of the receipt of the statement referred to in Subsection (1). A
1897 hearing conducted on a consolidated basis shall be public and shall be held within the United
1898 States before the commissioners of the states in which the insurers are domiciled. The
1899 commissioners shall hear and receive evidence. A commissioner may attend a hearing under
1900 this Subsection (10) in person or by telecommunication.

1901 (11) In connection with a change of control of a domestic insurer, any determination by
1902 the commissioner that the person acquiring control of the insurer shall be required to maintain
1903 or restore the capital of the insurer to the level required by the laws and regulations of this state
1904 shall be made not later than 60 days after the date of notification of the change in control
1905 submitted pursuant to Subsection (1).

1906 [~~(10)~~] (12) (a) The commissioner may retain technical experts to assist in reviewing all,
1907 or a portion of, information filed in connection with a proposed merger or other acquisition of
1908 control referred to in Subsection (1).

1909 (b) In determining whether any of the conditions in Subsection (8) exist, the
1910 commissioner may consider the findings of technical experts employed to review applicable
1911 filings.

1912 (c) (i) A technical expert employed under Subsection [~~(10)~~] (12)(a) shall present to the
1913 commissioner a statement of all expenses incurred by the technical expert in conjunction with
1914 the technical expert's review of a proposed merger or other acquisition of control.

1915 (ii) At the commissioner's direction the acquiring person shall compensate the technical
1916 expert at customary rates for time and expenses:

1917 (A) necessarily incurred; and

1918 (B) approved by the commissioner.

1919 (iii) The acquiring person shall:

1920 (A) certify the consolidated account of all charges and expenses incurred for the review
1921 by technical experts;

1922 (B) retain a copy of the consolidated account described in Subsection [~~(10)~~]
1923 (12)(c)(iii)(A); and

1924 (C) file with the department as a public record a copy of the consolidated account
1925 described in Subsection [~~(10)~~] (12)(c)(iii)(A).

1926 [~~(11)~~] (13) (a) (i) If a domestic insurer proposes to merge into another insurer, any
1927 securityholder electing to exercise a right of dissent may file with the insurer a written request
1928 for payment of the adjusted book value given in the statement required by Subsection (1) and
1929 approved under Subsection (8), in return for the surrender of the security holder's securities.

1930 (ii) The request described in Subsection [~~(11)~~] (13)(a)(i) shall be filed not later than 10
1931 days after the day of the securityholders' meeting where the corporate action is approved.

1932 (b) The dissenting securityholder is entitled to and the insurer is required to pay to the
1933 dissenting securityholder the specified value within 60 days of receipt of the dissenting security

1934 holder's security.

1935 (c) Persons electing under this Subsection [~~(11)~~] (13) to receive cash for their securities
1936 waive the dissenting shareholder and appraisal rights otherwise applicable under Title 16,
1937 Chapter 10a, Part 13, Dissenters' Rights.

1938 (d) (i) This Subsection [~~(11)~~] (13) provides an elective procedure for dissenting
1939 securityholders to resolve their objections to the plan of merger.

1940 (ii) This section does not restrict the rights of dissenting securityholders under Title 16,
1941 Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this
1942 Subsection [~~(11)~~] (13).

1943 [~~(12)~~] (14) (a) All statements, amendments, or other material filed under Subsection
1944 (1), and all notices of public hearings held under Subsection (8), shall be mailed by the insurer
1945 to its securityholders within five business days after the insurer has received the statements,
1946 amendments, other material, or notices.

1947 (b) (i) Mailing expenses shall be paid by the person making the filing.

1948 (ii) As security for the payment of mailing expenses, that person shall file with the
1949 commissioner an acceptable bond or other deposit in an amount determined by the
1950 commissioner.

1951 [~~(13)~~] (15) This section does not apply to any offer, request, invitation, agreement, or
1952 acquisition that the commissioner by order exempts from the requirements of this section as:

1953 (a) not having been made or entered into for the purpose of, and not having the effect
1954 of, changing or influencing the control of a domestic insurer; or

1955 (b) otherwise not comprehended within the purposes of this section.

1956 [~~(14)~~] (16) The following are violations of this section:

1957 (a) the failure to file any statement, amendment, or other material required to be filed
1958 pursuant to Subsections (1), (2), and (5); or

1959 (b) the effectuation, or any attempt to effectuate, an acquisition of control of,
1960 divestiture of, or merger with a domestic insurer unless the commissioner has given the
1961 commissioner's approval to the acquisition or merger.

1962 [~~(15)~~] (17) (a) The courts of this state are vested with jurisdiction over:
1963 (i) a person who:
1964 (A) files a statement with the commissioner under this section; and
1965 (B) is not resident, domiciled, or authorized to do business in this state; and
1966 (ii) overall actions involving persons described in Subsection [~~(15)~~] (17)(a)(i) arising
1967 out of a violation of this section.

1968 (b) A person described in Subsection [~~(15)~~] (17)(a) is considered to have performed
1969 acts equivalent to and constituting an appointment of the commissioner by that person, to be
1970 that person's lawful agent upon whom may be served all lawful process in any action, suit, or
1971 proceeding arising out of a violation of this section.

1972 (c) A copy of a lawful process described in Subsection [~~(15)~~] (17)(b) shall be:
1973 (i) served on the commissioner; and
1974 (ii) transmitted by registered or certified mail by the commissioner to the person at that
1975 person's last-known address.

1976 Section 10. Section **31A-16-104.5** is enacted to read:

1977 **31A-16-104.5. Acquisitions involving insurers not otherwise covered.**

1978 (1) The following definitions apply for the purposes of this section only:

1979 (a) "Acquisition" means an agreement, arrangement, or activity the consummation of
1980 which results in a person acquiring directly or indirectly the control of another person and
1981 includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and
1982 mergers.

1983 (b) "Insurer" includes any company or group of companies under common
1984 management, ownership, or control.

1985 (c) "Involved insurer" includes an insurer that either acquires or is acquired, is
1986 affiliated with an acquirer or acquired, or is the result of a merger.

1987 (d) (i) "Market" means the relevant product and geographical markets. In determining
1988 the relevant product and geographical markets, the commissioner shall give due consideration
1989 to, among other things, the definitions or guidelines, if any, promulgated by the National

1990 Association of Insurance Commissioners and to information, if any, submitted by parties to the
1991 acquisition. In the absence of sufficient information to the contrary, the relevant product
1992 market is assumed to be the direct written insurance premium for a line of business, such line
1993 being that used in the annual statement required to be filed by insurers doing business in this
1994 state, and the relevant geographical market is assumed to be this state.

1995 (ii) Notwithstanding Subsection (1)(d)(i), for purposes of Subsection (2)(b), "market"
1996 means direct written insurance premium in this state for a line of business as contained in the
1997 annual statement required to be filed by insurers licensed to do business in this state.

1998 (2) (a) This section applies to any acquisition in which there is a change in control of
1999 an insurer authorized to do business in Utah.

2000 (b) This section does not apply to the following:

2001 (i) securities purchased solely for investment purposes so long as the securities are not
2002 used by voting or otherwise to cause or attempt to cause the substantial lessening of
2003 competition in any insurance market in this state;

2004 (ii) if a purchase of securities results in a presumption of control under Subsection
2005 31A-1-301(29)(d), it is not solely for investment purposes unless the commissioner of the
2006 insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control
2007 does not exist and the disclaimer action or affirmative finding is communicated by the
2008 domiciliary commissioner to the commissioner of this state;

2009 (iii) the acquisition of a person by another person when both persons are neither
2010 directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition
2011 notification is filed with the commissioner in accordance with Subsection (3)(a) 30 days before
2012 the proposed effective date of the acquisition;

2013 (iv) the acquisition of an already affiliated person;

2014 (v) an acquisition if, as an immediate result of the acquisition:

2015 (A) in no market would the combined market share of the involved insurers exceed 5%
2016 of the total market;

2017 (B) there would be no increase in any market share; or

2018 (C) in no market would the combined market share of the involved insurers exceeds
2019 12% of the total market, and the market share increase by more than 2% of the total market;

2020 (vi) an acquisition for which a pre-acquisition notification would be required pursuant
2021 to this section due solely to the resulting effect on the ocean marine insurance line of business;

2022 or

2023 (vii) an acquisition of an insurer whose domiciliary commissioner affirmatively finds
2024 that the insurer is in failing condition, and:

2025 (A) there is a lack of feasible alternative to improving such condition;

2026 (B) the public benefits of improving the insurer's condition through the acquisition
2027 exceed the public benefits that would arise from not lessening competition; and

2028 (C) the findings are communicated by the domiciliary commissioner to the
2029 commissioner of this state.

2030 (3) An acquisition covered by Subsection (2) may be subject to an order pursuant to
2031 Subsection (5) unless the acquiring person files a pre-acquisition notification and the waiting
2032 period has expired. The acquired person may file a pre-acquisition notification. The
2033 commissioner shall give confidential treatment to information submitted under this Subsection
2034 (3) in the same manner as provided in Section [31A-16-109](#).

2035 (a) The pre-acquisition notification shall be in the form and contain such information
2036 as prescribed by the National Association of Insurance Commissioners relating to those
2037 markets that, under Subsection (2)(b)(v), cause the acquisition not to be exempted from this
2038 section. The commissioner may require additional material and information as considered
2039 necessary to determine whether the proposed acquisition, if consummated, would violate the
2040 competitive standard of Subsection (4). The required information may include an opinion of an
2041 economist as to the competitive impact of the acquisition in this state accompanied by a
2042 summary of the education and experience of the economist indicating the economist's ability to
2043 render an informed opinion.

2044 (b) The waiting period required shall begin on the date of receipt of the commissioner
2045 of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of

2046 receipt, or termination of the waiting period by the commissioner. Before the end of the
2047 waiting period, the commissioner on a one-time basis may require the submission of additional
2048 needed information relevant to the proposed acquisition, in which event the waiting period
2049 shall end on the earlier of the 30th day after receipt of the additional information by the
2050 commissioner or termination of the waiting period by the commissioner.

2051 (4) (a) The commissioner may enter an order under Subsection (5)(a) with respect to an
2052 acquisition if there is substantial evidence that the effect of the acquisition may be substantially
2053 to lessen competition in any line of insurance in this state, tend to create a monopoly, or if the
2054 insurer fails to file adequate information in compliance with this section.

2055 (b) In determining whether a proposed acquisition would violate the competitive
2056 standard of Subsection (4)(a), the commissioner shall consider the following:

2057 (i) Any acquisition covered under this Subsection (4) involving two or more insurers
2058 competing in the same market is prima facie evidence of violation of the competitive standards
2059 if:

2060 (A) the market is highly concentrated and the involved insurers possess the following
2061 shares of the market:

2062	<u>Insurer A</u>	<u>Insurer B</u>
2063	<u>4%</u>	<u>4% or more</u>
2064	<u>10%</u>	<u>2% or more</u>
2065	<u>15%</u>	<u>1% or more; or</u>

2066 (B) the market is not highly concentrated and the involved insurers possess the
2067 following shares of the market:

2068	<u>Insurer A</u>	<u>Insurer B</u>
2069	<u>5%</u>	<u>5% or more</u>
2070	<u>10%</u>	<u>4% or more</u>
2071	<u>15%</u>	<u>3% or more</u>
2072	<u>19%</u>	<u>1% or more.</u>

2073 (ii) For purposes of this section, a highly concentrated market is one in which the share
2074 of the four largest insurers is 75% or more of the market. Percentages not shown in the tables
2075 are interpolated proportionately to the percentages that are shown. If more than two insurers
2076 are involved, exceeding the total of the two columns in the table is prima facie evidence of
2077 violation of the competitive standard in Subsection (4)(a).

2078 (iii) For purposes of this section, the insurer with the largest share of the market shall
2079 be considered to be Insurer A.

2080 (c) There is a significant trend toward increased concentration when the aggregate
2081 market share of any grouping of the largest insurers in the market, from the two largest to the
2082 eight largest, has increased by 7% or more of the market over a period of time extending from
2083 any base year 5 to 10 years before the acquisition up to the time of the acquisition. Any
2084 acquisition or merger covered under Subsection (1) involving two or more insurers competing
2085 in the same market is prima facie evidence of violation of the competitive standard in
2086 Subsection (4)(a) if:

2087 (i) there is a significant trend toward increased concentration in the market;
2088 (ii) one of the insurers involved is one of the insurers in a grouping of large insurers
2089 showing the requisite increase in the market share; and

2090 (iii) another involved insurer's market is 2% or more.

2091 (d) The burden of showing prima facie evidence of violation of the competitive
2092 standard rests upon the commissioner.

2093 (e) Even though an acquisition is not prima facie violative of the competitive standard
2094 under Subsections (4)(b) and (4)(c), the commissioner may establish the requisite
2095 anticompetitive effect based upon other substantial evidence.

2096 (f) Even though an acquisition is prima facie violative of the competitive standard
2097 under Subsections (4)(b) and (4)(c), a party may establish the absence of the requisite
2098 anticompetitive effect based upon other substantial evidence. Relevant factors in making a
2099 determination under this Subsection (4)(f) include the following:

2100 (i) market shares;

2101 (ii) volatility of ranking of market leaders;
2102 (iii) number of competitors;
2103 (iv) concentration or trend of concentration in the industry; and
2104 (v) ease of entry and exit into the market.
2105 (g) An order may not be entered under Subsection (5) if:
2106 (i) the acquisition will yield substantial economies of scale or economies in resource
2107 use that cannot be feasibly achieved in any other way, and the public benefits that would arise
2108 from the economies exceed the public benefits that would arise from not lessening competition;
2109 or
2110 (ii) the acquisition will substantially increase the availability of insurance, and the
2111 public benefits of the increase exceed the public benefits that would arise from not lessening
2112 competition.
2113 (5) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if an
2114 acquisition violates the standards of this section, the commissioner may enter an order:
2115 (i) requiring an involved insurer to cease and desist from doing business in this state
2116 with respect to the line or lines of insurance involved in the violation; or
2117 (ii) denying the application of an acquired or acquiring insurer for a license to do
2118 business in this state.
2119 (b) The commissioner shall accompany an order issued under this Subsection (5) with
2120 a written decision of the commissioner setting forth findings of fact and conclusions of law.
2121 (c) An order pursuant to this section may not apply if the acquisition is not
2122 consummated.
2123 (d) A person who violates a cease and desist order of the commissioner under
2124 Subsection (5)(a)(i) and while the order is in effect may after notice and hearing and upon order
2125 of the commissioner be subject at the discretion of the commissioner to one or more of the
2126 following:
2127 (i) notwithstanding Section [31A-2-308](#), a monetary penalty of not more than \$10,000
2128 for every day of violation; or

2129 (ii) suspension or revocation of the person's license.

2130 (e) An insurer or other person who fails to make any filing required by this section, and
2131 who fails to demonstrate a good faith effort to comply with a filing requirement, is subject to a
2132 fine of not more than \$50,000 notwithstanding Section 31A-2-308.

2133 Section 11. Section **31A-16-105** is amended to read:

2134 **31A-16-105. Registration of insurers.**

2135 (1) (a) [~~Every~~] An insurer [~~which~~] that is authorized to do business in this state and
2136 [~~which~~] that is a member of an insurance holding company system shall register with the
2137 commissioner, except a foreign insurer subject to registration requirements and standards
2138 adopted by statute or regulation in the jurisdiction of its domicile, if the requirements and
2139 standards are substantially similar to those contained in this section, Subsections
2140 31A-16-106(1)(a) and (2) and either Subsection 31A-16-106(1)(b) or a statutory provision
2141 similar to the following: "Each registered insurer shall keep current the information required to
2142 be disclosed in its registration statement by reporting all material changes or additions within
2143 15 days after the end of the month in which it learns of each change or addition."

2144 (b) [~~Any~~] An insurer [~~which~~] that is subject to registration under this section shall
2145 register within 15 days after it becomes subject to registration, and annually thereafter by May
2146 1 of each year for the previous calendar year, unless the commissioner for good cause extends
2147 the time for registration and then at the end of the extended time period. The commissioner
2148 may require any insurer authorized to do business in the state, which is a member of a holding
2149 company system, and which is not subject to registration under this section, to furnish a copy of
2150 the registration statement, the summary specified in Subsection (3), or any other information
2151 filed by the insurer with the insurance regulatory authority of domiciliary jurisdiction.

2152 (2) [~~Every~~] An insurer subject to registration shall file the registration statement with
2153 the commissioner on a form and in a format prescribed by the National Association of
2154 Insurance Commissioners, which shall contain the following current information:

2155 (a) the capital structure, general financial condition, and ownership and management of
2156 the insurer and any person controlling the insurer;

2157 (b) the identity and relationship of every member of the insurance holding company
2158 system;

2159 (c) any of the following agreements in force, and transactions currently outstanding or
2160 which have occurred during the last calendar year between the insurer and its affiliates:

2161 (i) loans, other investments, or purchases, sales or exchanges of securities of the
2162 affiliates by the insurer or of securities of the insurer by its affiliates;

2163 (ii) purchases, sales, or exchanges of assets;

2164 (iii) transactions not in the ordinary course of business;

2165 (iv) guarantees or undertakings for the benefit of an affiliate which result in an actual
2166 contingent exposure of the insurer's assets to liability, other than insurance contracts entered
2167 into in the ordinary course of the insurer's business;

2168 (v) all management agreements, service contracts, and all cost-sharing arrangements;

2169 (vi) reinsurance agreements;

2170 (vii) dividends and other distributions to shareholders; and

2171 (viii) consolidated tax allocation agreements;

2172 (d) any pledge of the insurer's stock, including stock of any subsidiary or controlling
2173 affiliate, for a loan made to any member of the insurance holding company system; [~~and~~]

2174 (e) if requested by the commissioner, financial statements of or within an insurance
2175 holding company system, including all affiliates:

2176 (i) which may include annual audited financial statements filed with the United States
2177 Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or
2178 the Securities Exchange Act of 1934, as amended; and

2179 (ii) which request is satisfied by providing the commissioner with the most recently
2180 filed parent corporation financial statements that have been filed with the United States
2181 Securities and Exchange Commission;

2182 [~~e~~] (f) any other matters concerning transactions between registered insurers and any
2183 affiliates as may be included in any subsequent registration forms adopted or approved by the
2184 commissioner[?];

2185 (g) statements that the insurer's board of directors oversees corporate governance and
2186 internal controls and that the insurer's officers or senior management have approved,
2187 implemented, and continue to maintain and monitor corporate governance and internal control
2188 procedures; and

2189 (h) any other information required by rule made by the commissioner in accordance
2190 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2191 (3) All registration statements shall contain a summary outlining all items in the
2192 current registration statement representing changes from the prior registration statement.

2193 (4) No information need be disclosed on the registration statement filed pursuant to
2194 Subsection (2) if the information is not material for the purposes of this section. Unless the
2195 commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or
2196 extensions of credit, investments, or guarantees involving one-half of 1%, or less, of an
2197 insurer's admitted assets as of the next preceding December 31 may not be considered material
2198 for purposes of this section.

2199 (5) Subject to Section 31A-16-106, each registered insurer shall report to the
2200 commissioner a dividend or other distribution to shareholders within 15 business days
2201 following the declaration of the dividend or distribution.

2202 [~~5~~] (6) Any person within an insurance holding company system subject to
2203 registration shall provide complete and accurate information to an insurer if the information is
2204 reasonably necessary to enable the insurer to comply with the provisions of this chapter.

2205 [~~6~~] (7) The commissioner shall terminate the registration of any insurer which
2206 demonstrates that it no longer is a member of an insurance holding company system.

2207 [~~7~~] (8) The commissioner may require or allow two or more affiliated insurers subject
2208 to registration under this section to file a consolidated registration statement.

2209 [~~8~~] (9) The commissioner may allow an insurer which is authorized to do business in
2210 this state, and which is part of an insurance holding company system, to register on behalf of
2211 any affiliated insurer which is required to register under Subsection (1) and to file all
2212 information and material required to be filed under this section.

2213 ~~[(9) The provisions of this]~~ (10) This section ~~[do]~~ does not apply to any insurer,
2214 information, or transaction if, and to the extent that, the commissioner by rule or order exempts
2215 the insurer from ~~[the provisions of]~~ this section.

2216 ~~[(10)]~~ (11) Any person may file with the commissioner a disclaimer of affiliation with
2217 any authorized insurer, or a disclaimer of affiliation may be filed by any insurer or any member
2218 of an insurance holding company system. The disclaimer shall fully disclose all material
2219 relationships and bases for affiliation between the person and the insurer as well as the basis for
2220 disclaiming the affiliation. ~~[After a disclaimer has been filed, the insurer shall be relieved of~~
2221 ~~any duty to register or report under this section which may arise out of the insurer's relationship~~
2222 ~~with the person unless and until the commissioner disallows the disclaimer. The commissioner~~
2223 ~~shall disallow a disclaimer only after furnishing all parties in interest with notice and~~
2224 ~~opportunity to be heard, and after making specific findings of fact to support the disallowance.]~~
2225 A disclaimer of affiliation is considered to have been granted unless the commissioner, within
2226 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is
2227 disallowed. If disallowed, the disclaiming party may request an administrative hearing, which
2228 shall be granted. The disclaiming party shall be relieved of its duty to register under this
2229 section if approval of the disclaimer is granted by the commissioner, or if the disclaimer is
2230 considered to have been approved.

2231 (12) The ultimate controlling person of an insurer subject to registration shall also file
2232 an annual enterprise risk report. The annual enterprise risk report shall, to the best of the
2233 ultimate controlling person's knowledge and belief, identify the material risks within the
2234 insurance holding company that could pose enterprise risk to the insurer. The annual enterprise
2235 risk report shall be filed with the lead state commissioner of the insurance holding company
2236 system as determined by the procedures within the Financial Analysis Handbook adopted by
2237 the National Association of Insurance Commissioners.

2238 ~~[(11)]~~ (13) The failure to file a registration statement or any summary of the
2239 registration statement or enterprise risk filing required by this section within the time specified
2240 for the filing is a violation of this section.

2241 Section 12. Section **31A-16-106** is amended to read:

2242 **31A-16-106. Standards and management of an insurer within a holding company**
2243 **system.**

2244 (1) (a) Transactions within ~~[a]~~ an insurance holding company system to which an
2245 insurer subject to registration is a party are subject to the following standards:

2246 (i) the terms shall be fair and reasonable;

2247 (ii) agreements for cost sharing services and management shall include the provisions
2248 required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah
2249 Administrative Rulemaking Act;

2250 ~~[(ii)]~~ (iii) charges or fees for services performed shall be reasonable;

2251 ~~[(iii)]~~ (iv) expenses incurred and payment received shall be allocated to the insurer in
2252 conformity with customary insurance accounting practices consistently applied;

2253 ~~[(iv)]~~ (v) the books, accounts, and records of each party to all transactions shall be so
2254 maintained as to clearly and accurately disclose the nature and details of the transactions,
2255 including the accounting information necessary to support the reasonableness of the charges or
2256 fees to the respective parties; and

2257 ~~[(v)]~~ (vi) the insurer's surplus held for policyholders, following any dividends or
2258 distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding
2259 liabilities and shall be adequate to its financial needs.

2260 (b) The following transactions involving a domestic insurer and any person in its
2261 insurance holding company system, including amendments or modifications of affiliate
2262 agreements previously filed pursuant to this section, which are subject to any materiality
2263 standards contained in Subsections (1)(a)(i) through (vi), may not be entered into unless the
2264 insurer has notified the commissioner in writing of its intention to enter into the transaction at
2265 least 30 days ~~[prior to]~~ before entering into the transaction, or within any shorter period the
2266 commissioner may permit, if the commissioner has not disapproved the transaction within the
2267 period[:]. The notice for an amendment or modification shall include the reasons for the change
2268 and financial impact on the domestic insurer. Informal notice shall be reported, within 30 days

2269 after a termination of a previously filed agreement, to the commissioner for determination of
2270 the type of filing required, if any:

2271 (i) sales, purchases, exchanges, loans or extensions of credit, guarantees, or
2272 investments if the transactions are equal to, or exceed as of the next preceding December 31:

2273 (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of
2274 surplus held for policyholders;

2275 (B) for life insurers, 3% of the insurer's admitted assets;

2276 (ii) loans or extensions of credit made to any person who is not an affiliate, if the
2277 insurer makes the loans or extensions of credit with the agreement or understanding that the
2278 proceeds of the transactions, in whole or in substantial part, are to be used to make loans or
2279 extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the
2280 insurer making the loans or extensions of credit if the transactions are equal to, or exceed as of
2281 the next preceding December 31:

2282 (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of
2283 surplus held for policyholders;

2284 (B) for life insurers, 3% of the insurer's admitted assets;

2285 (iii) reinsurance agreements or modifications to reinsurance agreements [~~in which the~~
2286 ~~reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the~~
2287 ~~insurer's surplus held for policyholders, as of the next preceding December 31, including those~~
2288 ~~agreements which may require as consideration the transfer of assets from an insurer to a~~
2289 ~~nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate~~
2290 ~~that any portion of the assets will be transferred to one or more affiliates of the insurer;],
2291 including an agreement in which the reinsurance premium, a change in the insurer's liabilities,
2292 or the projected reinsurance premium or a change in the insurer's liabilities in any of the current
2293 and succeeding three years, equals or exceeds 5% of the insurer's surplus held for
2294 policyholders, as of the next preceding December 31, including those agreements that may
2295 require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement
2296 or understanding exists between the insurer and the non-affiliate that any portion of the assets~~

2297 will be transferred to one or more affiliates of the reinsurer;
2298 (iv) all management agreements, service contracts, tax allocation agreements, and all
2299 cost-sharing arrangements;
2300 (v) guarantees when made by a domestic insurer, except that:
2301 (A) a guarantee that is quantifiable as to amount is not subject to the notice
2302 requirements of this Subsection (1) unless it exceeds the lesser of .5% of the insurer's admitted
2303 assets or 10% of surplus held for policyholders, as of the next preceding December 31; and
2304 (B) a guarantee that is not quantifiable as to amount is subject to the notice
2305 requirements of this Subsection (1);
2306 (vi) direct or indirect acquisitions or investments in a person that controls the insurer or
2307 in an affiliate of the insurer in an amount that, together with its present holdings in the
2308 investments, exceeds 2.5% of the insurer's surplus to policyholders, except that a direct or
2309 indirect acquisition or investment in a subsidiary acquired pursuant to Section [31A-16-102.5](#),
2310 or in a non-subsiary insurance affiliate that is subject to this chapter, is exempt from this
2311 Subsection (1)(b)(vi);
2312 ~~[(v)]~~ (vii) any material transactions, specified by rule, which the commissioner
2313 determines may adversely affect the interests of the insurer's policyholders; and
2314 ~~[(vi) this subsection]~~ (viii) this Subsection (1) may not be interpreted to authorize or
2315 permit any transactions which would be otherwise contrary to law in the case of an insurer not
2316 a member of the same holding company system.
2317 (c) A domestic insurer may not enter into transactions which are part of a plan or series
2318 of like transactions with persons within the holding company system if the purpose of the
2319 separate transactions is to avoid the statutory threshold amount and thus to avoid the review by
2320 the commissioner that would occur otherwise. If the commissioner determines that the
2321 separate transactions were entered into over any 12 month period for such a purpose, ~~the~~ the
2322 commissioner may exercise ~~his~~ the commissioner's authority under Section [31A-16-110](#).
2323 (d) The commissioner, in reviewing transactions pursuant to Subsection (1)(b), shall
2324 consider whether the transactions comply with the standards set forth in Subsection (1)(a) and

2325 whether they may adversely affect the interests of policyholders.

2326 (e) The commissioner shall be notified within 30 days of any investment of the
2327 domestic insurer in any one corporation, if the total investment in the corporation by the
2328 insurance holding company system exceeds 10% of the corporation's voting securities.

2329 (2) (a) A domestic insurer may not pay any extraordinary dividend or make any other
2330 extraordinary distribution to its shareholders until:

2331 (i) 30 days after the commissioner has received notice of the declaration of the
2332 dividend and has not within the 30-day period disapproved the payment; or

2333 (ii) the commissioner has approved the payment within the 30-day period.

2334 (b) For purposes of this ~~subsection~~ Subsection (2), an extraordinary dividend or
2335 distribution includes any dividend or distribution of cash or other property, fair market value of
2336 which, together with that of other dividends or distributions made within the preceding 12
2337 months, exceeds the lesser of:

2338 (i) 10% of the insurer's surplus held for policyholders as of the next preceding
2339 December 31; ~~or~~

2340 (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net
2341 income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month
2342 period ending the next preceding December 31; or

2343 (iii) an extraordinary dividend does not include pro rata distributions of any class of the
2344 insurer's own securities.

2345 (c) In determining whether a dividend or distribution is extraordinary, an insurer other
2346 than a life insurer may carry forward net income from the previous two calendar years that has
2347 not already been paid out as dividends. This carry-forward shall be computed by taking the net
2348 income from the second and third preceding calendar years, not including realized capital
2349 gains, less dividends paid in the second and immediate preceding calendar years.

2350 (d) Notwithstanding any other provision of law, an insurer may declare an
2351 extraordinary dividend or distribution, which is conditioned upon the commissioner's approval
2352 of the dividend or distribution, and the declaration shall confer no rights upon shareholders

2353 until:

2354 (i) the commissioner has approved the payment of the dividend or distribution; or

2355 (ii) the commissioner has not disapproved the payment within the 30-day period

2356 referred to in Subsection (2)(a).

2357 (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers
2358 and directors of the insurer may not be relieved of any obligation or liability to which they
2359 would otherwise be subject by law, and the insurer shall be managed so as to assure its separate
2360 operating identity consistent with this chapter.

2361 (b) Nothing in this section precludes a domestic insurer from having or sharing a
2362 common management or cooperative or joint use of personnel, property, or services with one or
2363 more other persons under arrangements meeting the standards of Subsection (1)(a).

2364 (c) (i) Not less than one-third of the directors of a domestic insurer, and not less than
2365 one-third of the members of each committee of the board of directors of a domestic insurer,
2366 shall be persons who are not officers or employees of the insurer or of any entity controlling,
2367 controlled by, or under common control with the insurer and who are not beneficial owners of a
2368 controlling interest in the voting stock of the insurer or entity.

2369 (ii) At least one person described in Subsection (3)(c)(i) shall be included in a quorum
2370 for the transaction of business at a meeting of the board of directors or a committee of the
2371 board of directors.

2372 (d) Subsection (3)(c) does not apply to a domestic insurer if the person controlling the
2373 insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation,
2374 has a board of directors and committees of the board of directors that meet the requirements of
2375 Subsection (3)(c) with respect to the controlling entity.

2376 (e) An insurer may make application to the commissioner for a waiver from the
2377 requirements of this Subsection (3) if the insurer's annual direct written and assumed premium,
2378 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood
2379 Program, is less than \$300,000,000. An insurer may also make application to the
2380 commissioner for a waiver from the requirements of this Subsection (3) based upon unique

2381 circumstances. The commissioner may consider various factors, including:

2382 (i) the type of business entity;

2383 (ii) the volume of business written;

2384 (iii) the availability of qualified board members; or

2385 (iv) the ownership or organizational structure of the entity.

2386 (4) (a) For purposes of this chapter, in determining whether an insurer's surplus as

2387 regards policyholders is reasonable in relation to the insurer's outstanding liabilities and

2388 adequate to meet its financial needs, the following factors, among others, shall be considered:

2389 (i) the size of the insurer as measured by its assets, capital and surplus, reserves,

2390 premium writings, insurance in force, and other appropriate criteria;

2391 (ii) the extent to which the insurer's business is diversified among several lines of

2392 insurance;

2393 (iii) the number and size of risks insured in each line of business;

2394 (iv) the extent of the geographical dispersion of the insurer's insured risks;

2395 (v) the nature and extent of the insurer's reinsurance program;

2396 (vi) the quality, diversification, and liquidity of the insurer's investment portfolio;

2397 (vii) the recent past and projected future trend in the size of the insurer's investment

2398 portfolio;

2399 (viii) the surplus as regards policyholders maintained by other comparable insurers;

2400 (ix) the adequacy of the insurer's reserves; and

2401 (x) the quality and liquidity of investments in affiliates.

2402 (b) The commissioner may treat an investment described in Subsection (4)(a)(x) as a

2403 disallowed asset for purposes of determining the adequacy of surplus as regards policyholders

2404 whenever in the judgment of the commissioner the investment so warrants.

2405 Section 13. Section **31A-16-107.5**, which is renumbered from Section 31A-16-108 is

2406 renumbered and amended to read:

2407 ~~[31A-16-108].~~ **31A-16-107.5. Examination of registered insurers.**

2408 (1) Subject to the limitation contained in this section and the powers which the

2409 commissioner has under Chapter 2, Administration of the Insurance Laws, relating to the
2410 examination of insurers, the commissioner has the power to ~~[order any]~~ examine an insurer
2411 registered under Section 31A-16-105 ~~[to produce the records, books, or other informational~~
2412 ~~papers in the possession of the insurer or its affiliates which the commissioner considers~~
2413 ~~necessary]~~ and its affiliates to ascertain the financial condition ~~[or legality of conduct]~~ of the
2414 insurer~~[- If an insurer fails to comply with this order, the commissioner may examine the~~
2415 ~~affiliates to obtain the information.],~~ including the enterprise risk to the insurer by the ultimate
2416 controlling party, or by the insurance holding company system on a consolidated basis.

2417 ~~[(2) The commissioner shall exercise his power under Subsection (1) only if the~~
2418 ~~examination of the insurer under Chapter 2 is inadequate, or the interests of the policyholders~~
2419 ~~of the insurer may be adversely affected if the commissioner fails to exercise his power.]~~

2420 (2) (a) The commissioner may order an insurer registered under Section 31A-16-105 to
2421 produce the records, books, or other information papers in the possession of the insurer or its
2422 affiliates as are reasonably necessary to determine compliance with this chapter.

2423 (b) To determine compliance with this chapter, the commissioner may order an insurer
2424 registered under Section 31A-16-105 to produce information not in the possession of the
2425 insurer if the insurer can obtain access to the information pursuant to contractual relationships,
2426 statutory obligations, or other methods.

2427 (c) If an insurer cannot obtain the information requested by the commissioner, the
2428 insurer shall provide the commissioner a detailed explanation of the reason that the insurer
2429 cannot obtain the information and the identity of the holder of the information.

2430 (d) Whenever it appears to the commissioner that the detailed explanation is without
2431 merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of
2432 \$5,000 for each day's delay, or may suspend or revoke the insurer's license.

2433 (3) The commissioner may retain, at the registered insurer's expense, attorneys,
2434 actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, if
2435 they are necessary to assist in the conduct of the examination under Subsection (1). Any
2436 persons so retained are under the direction and control of the commissioner and shall act in a

2437 purely advisory capacity.

2438 (4) ~~[Each]~~ A registered insurer who produces records, books, and papers under
2439 Subsection (1) for examination is liable for and shall pay the expense of the examination under
2440 Section [31A-2-205](#).

2441 (5) If an insurer fails to comply with an order issued under this section, the
2442 commissioner may:

2443 (a) examine the affiliates to obtain the information; or

2444 (b) issue subpoenas, administer oaths, and examine under oath any person for purposes
2445 of determining compliance with this section.

2446 (6) Upon the failure or refusal of any person to obey a subpoena under Subsection (5),
2447 the commissioner may petition the Third District Court of Salt Lake County to enter an order
2448 compelling the witness to appear and testify or produce documentary evidence. A person shall
2449 be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed,
2450 anywhere within the state. A person subpoenaed is entitled to the same fees and mileage, if
2451 claimed, as a witness in the Third District Court of Salt Lake County, which fees, mileage, and
2452 actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their
2453 testimony, shall be itemized and charged against, and be paid by, the company being examined.

2454 Section 14. Section **31A-16-108.5** is enacted to read:

2455 **31A-16-108.5. Supervisory colleges.**

2456 (1) (a) For an insurer registered under Section [31A-16-105](#) and in accordance with
2457 Subsection (3), the commissioner may participate in a supervisory college for a domestic
2458 insurer that is part of an insurance holding company system with international operations to
2459 determine compliance by the insurer with this chapter. The powers of the commissioner with
2460 respect to supervisory colleges include the following:

2461 (i) initiating the establishment of a supervisory college;

2462 (ii) clarifying the membership and participation of other supervisors in the supervisory
2463 college;

2464 (iii) clarifying the functions of the supervisory college and the role of other regulators,

2465 including the establishment of a group-wide supervisor;

2466 (iv) coordinating the ongoing activities of the supervisory college, including:

2467 (A) planning meetings;

2468 (B) supervisory activities; and

2469 (C) processes for information sharing; and

2470 (v) establishing a crisis management plan.

2471 (2) (a) A registered insurer subject to this section is liable for and shall pay the
2472 reasonable expenses of the commissioner's participation in a supervisory college in accordance
2473 with Subsection (3), including reasonable travel expenses.

2474 (b) For purposes of this section, a supervisory college may be convened as either a
2475 temporary or permanent forum for communication and cooperation between the regulators
2476 charged with supervision of the insurer or its affiliates and the commissioner may establish a
2477 regular assessment to the insurer for the payment of these expenses.

2478 (3) (a) The commissioner may participate in a supervisory college with other regulators
2479 charged with supervision of the insurer or its affiliates, including:

2480 (i) other state regulatory agencies;

2481 (ii) federal regulatory agencies; or

2482 (iii) international regulatory agencies.

2483 (b) The commissioner may enter into agreements in accordance with Section
2484 [31A-16-109](#) providing the basis for cooperation between the commissioner and other
2485 regulatory agencies, and the activities of the supervisory college, in order to assess:

2486 (i) the business strategy;

2487 (ii) financial position;

2488 (iii) legal and regulatory position;

2489 (iv) risk exposure; and

2490 (v) management and governance processes.

2491 (c) Nothing in this section shall delegate to the supervisory college the authority of the
2492 commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

2493 Section 15. Section **31A-16-109** is amended to read:

2494 **31A-16-109. Confidentiality of information obtained by commissioner.**

2495 ~~[All information]~~ (1) Information, documents, and copies of these ~~[which]~~ that are
2496 obtained by or disclosed to the commissioner or any other person in the course of an
2497 examination or investigation made under Section ~~[31A-16-108]~~ 31A-16-107.5, and all
2498 information reported under Section 31A-16-105, is confidential. It is not subject to subpoena
2499 and may not be made public by the commissioner or any other person, except it may be
2500 provided to the insurance departments of other states, without the prior written consent of the
2501 insurer to which it pertains. The confidentiality of this section does not apply if the
2502 commissioner, after giving the insurer and its affiliates who would be affected by the
2503 disclosure, proper notice and an opportunity to be heard, and determines that the interests of
2504 policyholders, shareholders, or the public will be served by the publication of the information.
2505 In this situation, the commissioner may publish all or any part of the information in any manner
2506 ~~[he]~~ the commissioner considers appropriate.

2507 (2) The commissioner and any person who received documents, materials, or other
2508 information while acting under the authority of the commissioner or with whom the
2509 documents, materials, or other information are shared pursuant to this chapter shall keep
2510 confidential any confidential documents, materials, or information subject to Subsection (1).

2511 (3) (a) To assist in the performance of the commissioner's duties, the commissioner:

2512 (i) may share documents, materials, or other information, including the confidential
2513 documents, materials, or information subject to Subsection (1), with the following if the
2514 recipient agrees in writing to maintain the confidentiality status of the document, material, or
2515 other information, and has verified in writing the legal authority to maintain confidentiality:

2516 (A) other state, federal, and international regulatory agencies;

2517 (B) the National Association of Insurance Commissioners and its affiliates and
2518 subsidiaries; and

2519 (C) state, federal, and international law enforcement authorities, including members of
2520 a supervisory college described in Section 31A-16-108.5;

2521 (ii) notwithstanding Subsection (1), may only share confidential documents, material,
2522 or information reported pursuant to Section 31A-16-105 with commissioners of states having
2523 statutes or regulations substantially similar to Subsection (1) and who have agreed in writing
2524 not to disclose the documents, material, or information;

2525 (iii) may receive documents, materials, or information, including otherwise
2526 confidential documents, materials, or information from the National Association of Insurance
2527 Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement
2528 officials of other foreign or domestic jurisdictions, and shall maintain as confidential any
2529 document, material, or information received with notice or the understanding that it is
2530 confidential under the laws of the jurisdiction that is the source of the document, material, or
2531 information; and

2532 (iv) shall enter into written agreements with the National Association of Insurance
2533 Commissioners governing sharing and use of information provided pursuant to this chapter
2534 consistent with this Subsection (3) that shall:

2535 (A) specify procedures and protocols regarding the confidentiality and security of
2536 information shared with the National Association of Insurance Commissioners and its affiliates
2537 and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the
2538 National Association of Insurance Commissioners with other state, federal, or international
2539 regulators;

2540 (B) specify that ownership of information shared with the National Association of
2541 Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter remains
2542 with the commissioner and the National Association of Insurance Commissioner's use of the
2543 information is subject to the direction of the commissioner;

2544 (C) require prompt notice to be given to an insurer whose confidential information in
2545 the possession of the National Association of Insurance Commissioners pursuant to this chapter
2546 is subject to a request or subpoena to the National Association of Insurance Commissioners for
2547 disclosure or production; and

2548 (D) require the National Association of Insurance Commissioners and its affiliates and

2549 subsidiaries to consent to intervention by an insurer in any judicial or administrative action in
2550 which the National Association of Insurance Commissioners and its affiliates and subsidiaries
2551 may be required to disclose confidential information about the insurer shared with the National
2552 Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this
2553 chapter.

2554 (4) The sharing of information by the commissioner pursuant to this chapter does not
2555 constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely
2556 responsible for the administration, execution, and enforcement of this chapter.

2557 (5) A waiver of any applicable claim of confidentiality in the documents, materials, or
2558 information does not occur as a result of disclosure to the commissioner under this section or
2559 as a result of sharing as authorized in Subsection (3).

2560 (6) Documents, materials, or other information in the possession or control of the
2561 National Association of Insurance Commissioners pursuant to this chapter are:

2562 (a) confidential, not public records, and not open to public inspection; and

2563 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
2564 Act.

2565 Section 16. Section **31A-16-112** is enacted to read:

2566 **31A-16-112. Sanctions.**

2567 (1) (a) Notwithstanding Section [31A-2-308](#), the following sanctions apply:

2568 (i) An insurer failing, without just cause, to file a registration statement required by this
2569 chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to
2570 be recovered by the commissioner and the penalty so recovered shall be paid into the General
2571 Fund.

2572 (ii) The maximum penalty under this section is \$250,000.

2573 (b) The commissioner may reduce the penalty if the insurer demonstrates to the
2574 commissioner that the imposition of the penalty would constitute a financial hardship to the
2575 insurer.

2576 (2) A director or officer of an insurance holding company system who knowingly

2577 violates, participates in, or assents to, or who knowingly shall permit any of the officers or
2578 agents of the insurer to engage in transactions or make investments that have not been properly
2579 reported or submitted pursuant to Subsection [31A-16-105\(1\)](#), [31A-16-106\(1\)\(b\)](#), or
2580 [31A-16-106\(2\)](#), or that violates this chapter, shall pay, in the director's or officer's individual
2581 capacity, a civil forfeiture of not more than \$10,000 per violation, notwithstanding Section
2582 [31A-2-308](#), after notice and hearing before the commissioner. In determining the amount of
2583 the civil forfeiture, the commissioner shall take into account the appropriateness of the
2584 forfeiture with respect to the gravity of the violation, the history of previous violations, and
2585 such other matters as justice may require.

2586 (3) Whenever it appears to the commissioner that any insurer subject to this chapter or
2587 a director, officer, employee, or agent of the insurer has engaged in any transaction or entered
2588 into a contract that is subject to Section [31A-16-106](#) and that would not have been approved
2589 had the approval been requested, the commissioner may order the insurer to cease and desist
2590 immediately any further activity under that transaction or contract. After notice and hearing,
2591 the commissioner may also order the insurer to void any contract and restore the status quo if
2592 the action is in the best interest of the policyholders, creditors, or the public.

2593 (4) Whenever it appears to the commissioner that an insurer or any director, officer,
2594 employee, or agent of the insurer has committed a willful violation of this chapter, the
2595 commissioner may refer the case to the appropriate prosecutor. Venue for the criminal action
2596 shall be in the Third District Court of Salt Lake County, against the insurer or the responsible
2597 director, officer, employee, or agent of the insurer. An insurer that willfully violates this
2598 chapter may be fined not more than \$250,000 notwithstanding Section [31A-2-308](#). An
2599 individual who willfully violates this chapter may be fined in the individual's individual
2600 capacity not more than \$100,000 notwithstanding Section [31A-2-308](#) and is guilty of a
2601 third-degree felony.

2602 (5) An officer, director, or employee of an insurance holding company system who
2603 willfully and knowingly subscribes to or makes or causes to be made any false statements, false
2604 reports, or false filings with the intent to deceive the commissioner in the performances of the

2605 commissioner's duties under this chapter, is guilty of a third-degree felony. Any fines imposed
2606 shall be paid by the officer, director, or employee in the officer's, director's, or employee's
2607 individual capacity.

2608 (6) Whenever it appears to the commissioner that a person has committed a violation
2609 of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the
2610 insurer by affiliates or by the insurance holding company system, the violation may serve as an
2611 independent basis for disapproving dividends or distributions and for placing the insurer under
2612 an order of supervision in accordance with Section 31A-27-503.

2613 Section 17. Section 31A-16-113 is enacted to read:

2614 **31A-16-113. Receivership.**

2615 Whenever it appears to the commissioner that a person has committed a violation of
2616 this chapter that so impairs the financial condition of a domestic insurer as to threaten
2617 insolvency or make the further transaction of business by it hazardous to its policyholders,
2618 creditors, shareholders, or the public, then the commissioner may proceed as provided in
2619 Section 31A-16-114 to take possession of the property of the domestic insurer and to conduct
2620 its business.

2621 Section 18. Section 31A-16-114 is enacted to read:

2622 **31A-16-114. Recovery.**

2623 (1) If an order for liquidation or rehabilitation of a domestic insurer is entered, the
2624 receiver appointed under the order shall have a right to recover on behalf of the insurer:

2625 (a) from any parent corporation, holding company, or person or affiliate who otherwise
2626 controlled the insurer, the amount of distributions other than distributions of shares of the same
2627 class of stock paid by the insurer on its capital stock; or

2628 (b) any payment in the form of a bonus, termination settlement, or extraordinary lump
2629 sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee,
2630 when the distribution or payment pursuant to Subsection (1)(a) or this Subsection (1)(b) is
2631 made at any time during the one year preceding the petition for liquidation, conservation, or
2632 rehabilitation, as the case may be, subject to the limitations of Subsections (2), (3), and (4).

2633 (2) A distribution may not be recovered if the parent or affiliate shows that when paid
2634 the distribution was lawful and reasonable and that the insurer did not know and could not
2635 reasonably have known that the distribution might adversely affect the ability of the insurer to
2636 fulfill its contractual obligations.

2637 (3) A person who was a parent corporation or holding company or a person who
2638 otherwise controlled the insurer or affiliate at the time the distributions were paid shall be
2639 liable up to the amount of distributions or payments under Subsection (1) that the person
2640 received. A person who otherwise controlled the insurer at the time the distributions were
2641 declared is liable up to the amount of distributions that would have been received if they had
2642 been paid immediately. If two or more persons are liable with respect to the same
2643 distributions, they shall be jointly and severally liable.

2644 (4) The maximum amount recoverable under this section shall be the amount needed in
2645 excess of all other available assets of the impaired or insolvent insurer to pay the contractual
2646 obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

2647 (5) To the extent that any person liable under Subsection (3) is insolvent or otherwise
2648 fails to pay claims due from the person, its parent corporation, holding company, or person who
2649 otherwise controlled it at the time the distribution was paid, are jointly and severally liable for
2650 any resulting deficiency in the amount recovered from the parent corporation or holding
2651 company or person who otherwise controlled it.

2652 Section 19. Section **31A-16-115** is enacted to read:

2653 **31A-16-115. Revocation, suspension, or nonrenewal of insurer's license.**

2654 Whenever it appears to the commissioner that a person has committed a violation of
2655 this chapter that makes the continued operation of an insurer contrary to the interests of
2656 policyholders or the public, the commissioner may, after giving notice and an opportunity to be
2657 heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in
2658 this state for such period as the commissioner finds is required for the protection of
2659 policyholders or the public. Any such determination shall be accompanied by specific findings
2660 of fact and conclusions of law.

2661 Section 20. Section **31A-16-116** is enacted to read:

2662 **31A-16-116. Rules and orders.**

2663 The commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
2664 Rulemaking Act, may make rules necessary to carry out this chapter. The commissioner may
2665 issue orders as is necessary to carry out this chapter.

2666 Section 21. Section **31A-16-117** is enacted to read:

2667 **31A-16-117. Judicial review -- Mandamus.**

2668 (1) A person aggrieved by an act, determination, rule, or order or any other action of
2669 the commissioner pursuant to this chapter may seek judicial review in accordance with Title
2670 63G, Chapter 4, Administrative Procedures Act.

2671 (2) The filing of an appeal pursuant to this section shall stay the application of any rule,
2672 order, or other action of the commissioner to the appealing party unless the court, after giving
2673 party notice and an opportunity to be heard, determines that a stay would be detrimental to the
2674 interest of policyholders, shareholders, creditors, or the public.

2675 (3) A person aggrieved by a failure of the commissioner to act or make a determination
2676 required by this chapter may petition the Third District Court of Salt Lake County for writ in
2677 the nature of a mandamus or a peremptory mandamus directing the commissioner to act or
2678 make a determination.

2679 Section 22. Section **31A-16-118** is enacted to read:

2680 **31A-16-118. Conflict with other laws.**

2681 If any law or part of a law of this state is inconsistent with this chapter, this chapter
2682 governs.

2683 Section 23. Section **31A-16-119** is enacted to read:

2684 **31A-16-119. Severability.**

2685 If any chapter, section, or subsection of this chapter or the application of any chapter,
2686 section, or subsection to any person or circumstance is held invalid, the remainder of the
2687 provisions of this chapter shall be given effect without the invalid provision or application.
2688 The provisions of this chapter are severable.

2689 Section 24. Section **31A-21-313** is amended to read:

2690 **31A-21-313. Limitation of actions.**

2691 (1) (a) An action on a written policy or contract of first party insurance shall be
2692 commenced within three years after the inception of the loss.

2693 (b) The inception of the loss on a fidelity bond is the date the insurer first denies all or
2694 part of a claim made under the fidelity bond.

2695 (2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to
2696 limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on
2697 insurance policies.

2698 (3) An insurance policy may not:

2699 (a) limit the time for beginning an action on the policy to a time less than that
2700 authorized by statute;

2701 (b) prescribe in what court an action may be brought on the policy; or

2702 (c) provide that no action may be brought, subject to permissible arbitration provisions
2703 in contracts.

2704 (4) Unless by verified complaint it is alleged that prejudice to the complainant will
2705 arise from a delay in bringing suit against an insurer, which prejudice is other than the delay
2706 itself, no action may be brought against an insurer on an insurance policy to compel payment
2707 under the policy until the earlier of:

2708 (a) 60 days after proof of loss has been furnished as required under the policy;

2709 (b) waiver by the insurer of proof of loss; or

2710 (c) the insurer's denial of full payment.

2711 (5) The period of limitation is tolled during the period in which the parties conduct an
2712 appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by
2713 the parties.

2714 Section 25. Section **31A-21-314** is amended to read:

2715 **31A-21-314. Prohibited provisions.**

2716 [~~No~~] (1) An insurance policy subject to this chapter may not contain any provision:

2717 ~~[(1)]~~ (a) requiring it to be construed according to the laws of another jurisdiction
2718 except as necessary to meet the requirements of compulsory insurance laws of other
2719 jurisdictions;

2720 ~~[(2)]~~ (b) depriving Utah courts of jurisdiction over an action against the insurer, except
2721 as provided in permissible arbitration provisions; or

2722 ~~[(3)]~~ (c) limiting the right of action against the insurer to less than three years from the
2723 date the cause of action accrues.

2724 (2) For purposes of Subsection (1)(c), the cause of action accrues on a fidelity bond on
2725 the date the insurer first denies all or part of a claim made under the fidelity bond.

2726 Section 26. Section **31A-22-322** is enacted to read:

2727 **31A-22-322. Transportation network company or driver.**

2728 (1) As used in this section:

2729 (a) "Prearranged ride" means a period of time that:

2730 (i) begins when the transportation network driver has accepted a passenger's request for
2731 a ride through the transportation network company's software application; and

2732 (ii) ends when the passenger exits the transportation network driver's vehicle.

2733 (b) "Software application" means an Internet-connected software platform, including a
2734 mobile application, that a transportation network company uses to:

2735 (i) connect a transportation network driver to a passenger; and

2736 (ii) process passenger requests.

2737 (c) "Transportation network company" means an entity that:

2738 (i) uses a software application to connect a passenger to a transportation network driver
2739 providing transportation network services;

2740 (ii) is not:

2741 (A) a taxicab, as defined in Section [53-3-102](#); or

2742 (B) a motor carrier, as defined in Section [72-9-102](#); and

2743 (iii) does not own, control, operate, or manage the vehicle used to provide the
2744 transportation network services.

- 2745 (d) "Transportation network driver" means an individual who:
2746 (i) pays a fee to a transportation network company, and, in exchange, receives a
2747 connection to a potential passenger from the transportation network company; and
2748 (ii) operates a motor vehicle that:
2749 (A) the individual owns, leases, or is authorized to use; and
2750 (B) the individual uses to provide transportation network services.
2751 (e) "Transportation network services" means, for a transportation network driver
2752 providing services through a transportation network company:
2753 (i) providing a prearranged ride; or
2754 (ii) being engaged in a waiting period.
2755 (f) "Waiting period" means a period of time when:
2756 (i) a transportation network driver is logged into a transportation network company's
2757 software application; and
2758 (ii) the transportation network driver is not engaged in a prearranged ride.
2759 (2) A transportation network company or a transportation network driver shall maintain
2760 insurance that covers, on a primary basis, a transportation network driver's use of a vehicle
2761 during a prearranged ride and that includes:
2762 (a) an acknowledgment that the transportation network driver is using the vehicle in
2763 connection with a transportation network company during a prearranged ride or that the
2764 transportation network driver is otherwise using the vehicle for a commercial purpose;
2765 (b) liability coverage for a minimum amount of \$1,000,000 per occurrence;
2766 (c) personal injury protection to the extent required under Sections [31A-22-306](#)
2767 through [31A-22-309](#);
2768 (d) uninsured motorist coverage where required by Section [31A-22-305](#); and
2769 (e) underinsured motorist coverage where required by Section [31A-22-305.3](#).
2770 (3) A transportation network company or a transportation network driver shall maintain
2771 insurance that covers, on a primary basis, a transportation network driver's use of a vehicle
2772 during a waiting period and that includes:

2773 (a) an acknowledgment that the transportation network driver is using the vehicle in
2774 connection with a transportation network company during a waiting period or that the
2775 transportation network driver is otherwise using the vehicle for a commercial purpose;

2776 (b) liability coverage in a minimum amount, per occurrence, of:

2777 (i) \$50,000 to any one individual;

2778 (ii) \$100,000 to all individuals; and

2779 (iii) \$30,000 for property damage;

2780 (c) personal injury protection to the extent required under Sections [31A-22-306](#)
2781 through [31A-22-309](#);

2782 (d) uninsured motorist coverage where required by Section [31A-22-305](#); and

2783 (e) underinsured motorist coverage where required by Section [31A-22-305.3](#).

2784 (4) A transportation network company or a transportation network driver shall maintain
2785 comprehensive and collision insurance that covers, on a primary or contingent basis, a
2786 transportation network driver's use of a vehicle while providing transportation network
2787 services, and that includes:

2788 (a) an acknowledgment that the transportation network driver is using the vehicle in
2789 connection with a transportation network company during a prearranged ride or waiting period,
2790 or that the transportation network driver is otherwise using the vehicle for a commercial
2791 purpose; and

2792 (b) coverage limits that are at least equal to such coverage limits, if any, for the
2793 personal automobile insurance maintained by the vehicle's owner and reported to the
2794 transportation network company.

2795 (5) A transportation network company and a transportation network driver may satisfy
2796 the requirements of Subsections (2), (3), and (4) by:

2797 (a) the transportation network driver purchasing coverage that complies with
2798 Subsections (2), (3), and (4);

2799 (b) the transportation network company purchasing, on the transportation network
2800 driver's behalf, coverage that complies with Subsections (2), (3), and (4); or

2801 (c) a combination of Subsections (5)(a) and (b).

2802 (6) An insurer may offer to a transportation network driver a personal automobile
2803 liability insurance policy, or an amendment or endorsement to a personal automobile liability
2804 policy, that:

2805 (a) covers a private passenger motor vehicle while used to provide transportation
2806 network services; and

2807 (b) satisfies the coverage requirements described in Subsection (2), (3), or (4).

2808 (7) Nothing in this section requires a personal automobile insurance policy to provide
2809 coverage while a driver is providing transportation network services.

2810 (8) If a transportation network company does not purchase a policy that complies with
2811 Subsections (2), (3), and (4) on behalf of a transportation network driver, the transportation
2812 network company shall verify that the driver has purchased a policy that complies with
2813 Subsections (2), (3), and (4).

2814 (9) An insurance policy that a transportation network company or a transportation
2815 network driver maintains under Subsection (2) or (3):

2816 (a) satisfies the security requirements of Section [41-12a-301](#); and

2817 (b) may, along with insurance maintained under Subsection (4), be placed with:

2818 (i) an insurer that is certified under Section [31A-4-103](#); or

2819 (ii) a surplus lines insurer licensed under Section [31A-23a-104](#).

2820 (10) An insurer that provides coverage for a transportation network driver explicitly for
2821 the transportation network driver's transportation network services under Subsection (2) or (3)
2822 shall have the duty to defend a liability claim arising from an occurrence while the
2823 transportation network driver is providing transportation network services.

2824 (11) (a) If insurance a transportation network driver maintains under Subsection (2),
2825 (3), or (4) lapses or ceases to exist, a transportation network company shall provide coverage
2826 complying with Subsection (2), (3), or (4) beginning with the first dollar of a claim.

2827 (b) Subsection (11)(a) does not apply to comprehensive or collision insurance
2828 otherwise required under Subsection (4) if, at the time of a claim for damage to a vehicle being

2829 used to provide transportation network services, there is no outstanding lien on the vehicle.

2830 (12) (a) An insurance policy that a transportation network company or transportation
2831 network driver maintains under Subsection (2) or (3) may not provide that coverage is
2832 dependent on a transportation network driver's personal automobile insurance policy first
2833 denying a claim.

2834 (b) Subsection (12)(a) does not apply to coverage a transportation network company
2835 provides under Subsection (10) in the event a transportation network driver's coverage under
2836 Subsection (2) or (3) lapses or ceases to exist.

2837 (13) A personal automobile insurer:

2838 (a) notwithstanding Section [31A-22-302](#), may offer a personal automobile liability
2839 policy that excludes coverage for a loss that arises from the use of the insured vehicle to
2840 provide transportation network services; and

2841 (b) does not have the duty to defend or indemnify a loss if an exclusion described in
2842 Subsection (13)(a) excludes coverage according to the policy's terms.

2843 (14) If a transportation network company's insurer insures a vehicle with a lien against
2844 the vehicle, and the transportation network company's insurer covers a claim regarding the
2845 vehicle under comprehensive or collision coverage, the transportation network company shall
2846 direct the transportation network company's insurer to issue the payment for the claim:

2847 (a) directly to the person that is repairing the vehicle; or

2848 (b) jointly to the owner of the vehicle and the primary lienholder.

2849 Section 27. Section **31A-22-504** is amended to read:

2850 **31A-22-504. Trustee groups.**

2851 (1) Group life insurance policies may be issued to:

2852 (a) policyholders who are the trustees of a fund established by two or more employers,
2853 by one or more labor unions, or similar employee organizations, or by one or more employers
2854 and one or more labor unions or similar employee organizations, to insure employees of the
2855 employers or members of the unions or the organizations for the benefit of persons other than
2856 the employers, the unions, or the organizations[?]; or

2857 (b) notwithstanding Subsection 31A-22-501(2), a Taft Hartley trust created in
2858 accordance with Section 302(c)(5) of the Federal Labor Management Relations Act.

2859 (2) These policies are subject to the following requirements:

2860 ~~[(1)]~~ (a) The persons eligible for insurance are all of the employees of the employers or
2861 all of the members of the unions or organizations, or all of any classes of employees or
2862 members. The policy may include retired employees, elected and appointed officials of a
2863 public agency if the employees of the agency are insured, and individual proprietors or partners
2864 who are employers. The policy may include the trustees or their employees, or both, if their
2865 duties are principally connected with the trusteeship.

2866 ~~[(2)]~~ (b) The premiums for the policy are paid by the policyholders from funds
2867 contributed by the employers, unions, or similar employee organizations, or from funds
2868 contributed by the insured persons, or any combination of these. Except as provided under
2869 Section 31A-22-512, a policy on which no part of the premium is contributed by the insured
2870 persons specifically for their insurance is required to insure all eligible persons.

2871 Section 28. Section 31A-22-612 is amended to read:

2872 **31A-22-612. Conversion privileges for insured former spouse.**

2873 (1) An accident and health insurance policy, which in addition to covering the insured
2874 also provides coverage to the spouse of the insured, may not contain a provision for
2875 termination of coverage of a spouse covered under the policy, except by entry of a valid decree
2876 of divorce or annulment between the parties.

2877 (2) Every policy which contains this type of provision shall provide that upon the entry
2878 of the divorce decree the spouse is entitled to have issued an individual policy of accident and
2879 health insurance without evidence of insurability, upon application to the company and
2880 payment of the appropriate premium. The policy shall provide the coverage being issued
2881 which is most nearly similar to the terminated coverage. Probationary or waiting periods in the
2882 policy are considered satisfied to the extent the coverage was in force under the prior policy.

2883 (3) When the insurer receives actual notice that the coverage of a spouse is to be
2884 terminated because of a divorce or annulment, the insurer shall promptly provide the spouse

2885 written notification of the right to obtain individual coverage as provided in Subsection (2), the
2886 premium amounts required, and the manner, place, and time in which premiums may be paid.
2887 The premium is determined in accordance with the insurer's table of premium rates applicable
2888 to the age and class of risk of the persons to be covered and to the type and amount of coverage
2889 provided. If the spouse applies and tenders the first monthly premium to the insurer within 30
2890 days after receiving the notice provided by this Subsection (3), the spouse shall receive
2891 individual coverage that commences immediately upon termination of coverage under the
2892 insured's policy.

2893 (4) This section does not apply to accident and health insurance policies offered on a
2894 group blanket basis or a health benefit plan.

2895 Section 29. Section **31A-22-620** is amended to read:

2896 **31A-22-620. Medicare Supplement Insurance Minimum Standards Act.**

2897 (1) As used in this section:

2898 (a) "Applicant" means:

2899 (i) in the case of an individual Medicare supplement policy, the person who seeks to
2900 contract for insurance benefits; and

2901 (ii) in the case of a group Medicare supplement policy, the proposed certificate holder.

2902 (b) "Certificate" means any certificate delivered or issued for delivery in this state
2903 under a group Medicare supplement policy.

2904 (c) "Certificate form" means the form on which the certificate is delivered or issued for
2905 delivery by the issuer.

2906 (d) "Issuer" includes insurance companies, fraternal benefit societies, health care
2907 service plans, health maintenance organizations, and any other entity delivering, or issuing for
2908 delivery in this state, Medicare supplement policies or certificates.

2909 (e) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the
2910 Social Security Amendments of 1965, as then constituted or later amended.

2911 (f) "Medicare Supplement Policy":

2912 (i) means a group or individual policy of [~~disability~~] health insurance, other than a

2913 policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42
2914 U.S.C. [~~Section~~] Sec. 1395 et seq., or an issued policy under a demonstration project specified
2915 in 42 U.S.C. [~~Section~~] Sec. 1395ss(g)(1), that is advertised, marketed, or designed primarily as
2916 a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses
2917 of persons eligible for Medicare; and

2918 (ii) does not include Medicare Advantage plans established under Medicare Part C,
2919 outpatient prescription drug plans established under Medicare Part D, or any health care
2920 prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A)
2921 of the Social Security Act.

2922 (g) "Policy form" means the form on which the policy is delivered or issued for
2923 delivery by the issuer.

2924 (2) (a) Except as otherwise specifically provided, this section applies to:

2925 (i) all Medicare supplement policies delivered or issued for delivery in this state on or
2926 after the effective date of this section;

2927 (ii) all certificates issued under group Medicare supplement policies, that have been
2928 delivered or issued for delivery in this state on or after the effective date of this section; and

2929 (iii) policies or certificates that were in force prior to the effective date of this section,
2930 with respect to requirements for benefits, claims payment, and policy reporting practice under
2931 Subsection (3)(d), and loss ratios under Subsection (4).

2932 (b) This section does not apply to a policy of one or more employers or labor
2933 organizations, or of the trustees of a fund established by one or more employers or labor
2934 organizations, or a combination of employers and labor unions, for employees or former
2935 employees or a combination of employees and former employees, or for members or former
2936 members of the labor organizations, or a combination of members and former members of
2937 labor organizations.

2938 (c) This section does not prohibit, nor does it apply to insurance policies or health care
2939 benefit plans, including group conversion policies, provided to Medicare eligible persons that
2940 are not marketed or held out to be Medicare supplement policies or benefit plans.

2941 (3) (a) A Medicare supplement policy or certificate in force in the state may not contain
2942 benefits that duplicate benefits provided by Medicare.

2943 (b) Notwithstanding any other provision of law of this state, a Medicare supplement
2944 policy or certificate may not exclude or limit benefits for loss incurred more than six months
2945 from the effective date of coverage because it involved a preexisting condition. The policy or
2946 certificate may not define a preexisting condition more restrictively than: "A condition for
2947 which medical advice was given or treatment was recommended by or received from a
2948 physician within six months before the effective date of coverage."

2949 (c) The commissioner shall adopt rules to establish specific standards for policy
2950 provisions of Medicare supplement policies and certificates. The standards adopted shall be in
2951 addition to and in accordance with applicable laws of this state. A requirement of this title
2952 relating to minimum required policy benefits, other than the minimum standards contained in
2953 this section, may not apply to Medicare supplement policies and certificates. The standards
2954 may include:

- 2955 (i) terms of renewability;
- 2956 (ii) initial and subsequent conditions of eligibility;
- 2957 (iii) nonduplication of coverage;
- 2958 (iv) probationary periods;
- 2959 (v) benefit limitations, exceptions, and reductions;
- 2960 (vi) elimination periods;
- 2961 (vii) requirements for replacement;
- 2962 (viii) recurrent conditions; and
- 2963 (ix) definitions of terms.

2964 (d) The commissioner shall adopt rules establishing minimum standards for benefits,
2965 claims payment, marketing practices, compensation arrangements, and reporting practices for
2966 Medicare supplement policies and certificates.

2967 (e) The commissioner may adopt rules to conform Medicare supplement policies and
2968 certificates to the requirements of federal law and regulations, including:

2969 (i) requiring refunds or credits if the policies do not meet loss ratio requirements;
2970 (ii) establishing a uniform methodology for calculating and reporting loss ratios;
2971 (iii) assuring public access to policies, premiums, and loss ratio information of issuers
2972 of Medicare supplement insurance;

2973 (iv) establishing a process for approving or disapproving policy forms and certificate
2974 forms and proposed premium increases;

2975 (v) establishing a policy for holding public hearings prior to approval of premium
2976 increases;

2977 (vi) establishing standards for Medicare select policies and certificates; and

2978 (vii) nondiscrimination for genetic testing or genetic information.

2979 (f) The commissioner may adopt rules that prohibit policy provisions not otherwise
2980 specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or
2981 unfairly discriminatory to any person insured or proposed to be insured under a Medicare
2982 supplement policy or certificate.

2983 (4) Medicare supplement policies shall return to policyholders benefits that are
2984 reasonable in relation to the premium charged. The commissioner shall make rules to establish
2985 minimum standards for loss ratios of Medicare supplement policies on the basis of incurred
2986 claims experience, or incurred health care expenses where coverage is provided by a health
2987 maintenance organization on a service basis rather than on a reimbursement basis, and earned
2988 premiums in accordance with accepted actuarial principles and practices.

2989 (5) (a) To provide for full and fair disclosure in the sale of Medicare supplement
2990 policies, a Medicare supplement policy or certificate may not be delivered in this state unless
2991 an outline of coverage is delivered to the applicant at the time application is made.

2992 (b) The commissioner shall prescribe the format and content of the outline of coverage
2993 required by Subsection (5)(a).

2994 (c) For purposes of this section, "format" means style arrangements and overall
2995 appearance, including such items as the size, color, and prominence of type and arrangement of
2996 text and captions. The outline of coverage shall include:

- 2997 (i) a description of the principal benefits and coverage provided in the policy;
- 2998 (ii) a statement of the renewal provisions, including any reservation by the issuer of a
- 2999 right to change premiums; and disclosure of the existence of any automatic renewal premium
- 3000 increases based on the policyholder's age; and
- 3001 (iii) a statement that the outline of coverage is a summary of the policy issued or
- 3002 applied for and that the policy should be consulted to determine governing contractual
- 3003 provisions.
- 3004 (d) The commissioner may make rules for captions or notice if the commissioner finds
- 3005 that the rules are:
- 3006 (i) in the public interest; and
- 3007 (ii) designed to inform prospective insureds that particular insurance coverages are not
- 3008 Medicare supplement coverages, for all accident and health insurance policies sold to persons
- 3009 eligible for Medicare, other than:
- 3010 (A) a medicare supplement policy; or
- 3011 (B) a disability income policy.
- 3012 (e) The commissioner may prescribe by rule a standard form and the contents of an
- 3013 informational brochure for persons eligible for Medicare, that is intended to improve the
- 3014 buyer's ability to select the most appropriate coverage and improve the buyer's understanding of
- 3015 Medicare. Except in the case of direct response insurance policies, the commissioner may
- 3016 require by rule that the informational brochure be provided concurrently with delivery of the
- 3017 outline of coverage to any prospective insureds eligible for Medicare. With respect to direct
- 3018 response insurance policies, the commissioner may require by rule that the prescribed brochure
- 3019 be provided upon request to any prospective insureds eligible for Medicare, but in no event
- 3020 later than the time of policy delivery.
- 3021 (f) The commissioner may adopt reasonable rules to govern the full and fair disclosure
- 3022 of the information in connection with the replacement of accident and health policies,
- 3023 subscriber contracts, or certificates by persons eligible for Medicare.
- 3024 (6) Notwithstanding Subsection (1), Medicare supplement policies and certificates

3025 shall have a notice prominently printed on the first page of the policy or certificate, or attached
3026 to the front page, stating in substance that the applicant has the right to return the policy or
3027 certificate within 30 days of its delivery and to have the premium refunded if, after examination
3028 of the policy or certificate, the applicant is not satisfied for any reason. Any refund made
3029 pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

3030 (7) Every issuer of Medicare supplement insurance policies or certificates in this state
3031 shall provide a copy of any Medicare supplement advertisement intended for use in this state,
3032 whether through written or broadcast medium, to the commissioner for review.

3033 (8) The commissioner may adopt rules to conform Medicare and Medicare supplement
3034 policies and certificates to the marketing requirements of federal law and regulation.

3035 Section 30. Section **31A-23a-102** is amended to read:

3036 **31A-23a-102. Definitions.**

3037 As used in this chapter:

3038 (1) "Bail bond producer" is as defined in Section [31A-35-102](#).

3039 (2) "Designated home state" means the state or territory of the United States or the
3040 District of Columbia:

3041 (a) in which an insurance producer, limited lines producer, consultant, managing
3042 general agent, or reinsurance intermediary licensee does not maintain the licensee's principal:

3043 (i) place of residence; or

3044 (ii) place of business;

3045 (b) if the resident state, territory, or District of Columbia of the licensee does not
3046 license for the line of authority sought, the licensee has qualified for the license as if the person
3047 were a resident in the state, territory, or District of Columbia described in Subsection (2)(a),
3048 including an applicable:

3049 (i) examination requirement;

3050 (ii) fingerprint background check requirement; and

3051 (iii) continuing education requirement; and

3052 (c) if the licensee has designated the state, territory, or District of Columbia as the

3053 designated home state.
3054 ~~[(2)]~~ (3) "Home state" means:
3055 ~~(a)~~ (a) a state or territory of the United States or the District of Columbia in which an
3056 insurance producer, limited lines producer, consultant, managing general agent, or reinsurance
3057 intermediary licensee:
3058 ~~[(a)]~~ (i) maintains the ~~[insurance producer's]~~ licensee's principal:
3059 ~~[(i)]~~ (A) place of residence; or
3060 ~~[(ii)]~~ (B) place of business; and
3061 ~~[(b)]~~ (ii) is licensed to act as ~~[an insurance producer]~~ a resident licensee; or
3062 ~~(b)~~ if the resident state, territory, or the District of Columbia described in Subsection
3063 (3)(a) does not license for the line of authority sought, a state, territory, or the District of
3064 Columbia:
3065 (i) in which the licensee is licensed;
3066 (ii) in which the licensee is in good standing; and
3067 (iii) that the licensee has designated as the licensee's designated home state.
3068 ~~[(3)]~~ (4) "Insurer" is as defined in Section 31A-1-301, except that the following
3069 persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:
3070 (a) a risk retention group as defined in:
3071 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
3072 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
3073 (iii) Chapter 15, Part 2, Risk Retention Groups Act;
3074 (b) a residual market pool;
3075 (c) a joint underwriting authority or association; and
3076 (d) a captive insurer.
3077 ~~[(4)]~~ (5) "License" is defined in Section 31A-1-301.
3078 ~~[(5)]~~ (6) (a) "Managing general agent" means a person that:
3079 (i) manages all or part of the insurance business of an insurer, including the
3080 management of a separate division, department, or underwriting office;

3081 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
3082 manager, or other similar term;

3083 (iii) produces and underwrites an amount of gross direct written premium equal to, or
3084 more than, 5% of the policyholder surplus as reported in the last annual statement of the insurer
3085 in any one quarter or year:

3086 (A) with or without the authority;

3087 (B) separately or together with an affiliate; and

3088 (C) directly or indirectly; and

3089 (iv) (A) adjusts or pays claims in excess of an amount determined by the
3090 commissioner; or

3091 (B) negotiates reinsurance on behalf of the insurer.

3092 (b) Notwithstanding Subsection [~~(5)~~] (6)(a), the following persons may not be
3093 considered as managing general agent for the purposes of this chapter:

3094 (i) an employee of the insurer;

3095 (ii) a United States manager of the United States branch of an alien insurer;

3096 (iii) an underwriting manager that, pursuant to contract:

3097 (A) manages all the insurance operations of the insurer;

3098 (B) is under common control with the insurer;

3099 (C) is subject to Chapter 16, Insurance Holding Companies; and

3100 (D) is not compensated based on the volume of premiums written; and

3101 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
3102 insurer or inter-insurance exchange under powers of attorney.

3103 [~~(6)~~] (7) "Negotiate" means the act of conferring directly with or offering advice
3104 directly to a purchaser or prospective purchaser of a particular contract of insurance concerning
3105 a substantive benefit, term, or condition of the contract if the person engaged in that act:

3106 (a) sells insurance; or

3107 (b) obtains insurance from insurers for purchasers.

3108 [~~(7)~~] (8) "Reinsurance intermediary" means:

3109 (a) a reinsurance intermediary-broker; or

3110 (b) a reinsurance intermediary-manager.

3111 [~~8~~] 9 "Reinsurance intermediary-broker" means a person other than an officer or
3112 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
3113 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
3114 or power to bind reinsurance on behalf of the insurer.

3115 [~~9~~] 10 (a) "Reinsurance intermediary-manager" means a person who:

3116 (i) has authority to bind or who manages all or part of the assumed reinsurance
3117 business of a reinsurer, including the management of a separate division, department, or
3118 underwriting office; and

3119 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
3120 intermediary-manager, manager, or other similar term.

3121 (b) Notwithstanding Subsection [~~9~~] 10(a), the following persons may not be
3122 considered reinsurance intermediary-managers for the purpose of this chapter with respect to
3123 the reinsurer:

3124 (i) an employee of the reinsurer;

3125 (ii) a United States manager of the United States branch of an alien reinsurer;

3126 (iii) an underwriting manager that, pursuant to contract:

3127 (A) manages all the reinsurance operations of the reinsurer;

3128 (B) is under common control with the reinsurer;

3129 (C) is subject to Chapter 16, Insurance Holding Companies; and

3130 (D) is not compensated based on the volume of premiums written; and

3131 (iv) the manager of a group, association, pool, or organization of insurers that:

3132 (A) engage in joint underwriting or joint reinsurance; and

3133 (B) are subject to examination by the insurance commissioner of the state in which the
3134 manager's principal business office is located.

3135 [~~10~~] 11 "Resident" is as defined by rule made by the commissioner in accordance
3136 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3137 [~~(11)~~] (12) "Search" means a license subline of authority in conjunction with the title
3138 insurance line of authority that allows a person to issue title insurance commitments or policies
3139 on behalf of a title insurer.

3140 [~~(12)~~] (13) "Sell" means to exchange a contract of insurance:

- 3141 (a) by any means;
- 3142 (b) for money or its equivalent; and
- 3143 (c) on behalf of an insurance company.

3144 [~~(13)~~] (14) "Solicit" means:

- 3145 (a) attempting to sell insurance;
- 3146 (b) asking or urging a person to apply for:
 - 3147 (i) a particular kind of insurance; and
 - 3148 (ii) insurance from a particular insurance company;
- 3149 (c) advertising insurance, including advertising for the purpose of obtaining leads for
3150 the sale of insurance; or
- 3151 (d) holding oneself out as being in the insurance business.

3152 [~~(14)~~] (15) "Terminate" means:

- 3153 (a) the cancellation of the relationship between:
 - 3154 (i) an individual licensee or agency licensee and a particular insurer; or
 - 3155 (ii) an individual licensee and a particular agency licensee; or
- 3156 (b) the termination of:
 - 3157 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf
3158 of a particular insurance company; or
 - 3159 (ii) an individual licensee's authority to transact insurance on behalf of a particular
3160 agency licensee.

3161 [~~(15)~~] (16) "Title marketing representative" means a person who:

- 3162 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:
 - 3163 (i) title insurance; or
 - 3164 (ii) escrow services; and

3165 (b) does not have a search or escrow license as provided in Section 31A-23a-106.

3166 [(+6)] (17) "Uniform application" means the version of the National Association of
3167 Insurance Commissioners' uniform application for resident and nonresident producer licensing
3168 at the time the application is filed.

3169 [(+7)] (18) "Uniform business entity application" means the version of the National
3170 Association of Insurance Commissioners' uniform business entity application for resident and
3171 nonresident business entities at the time the application is filed.

3172 Section 31. Section 31A-23a-113 is amended to read:

3173 **31A-23a-113. License lapse and voluntary surrender.**

3174 (1) (a) A license issued under this chapter, including a line of authority, shall lapse if
3175 the licensee fails to:

3176 (i) pay when due a fee under Section 31A-3-103;

3177 (ii) complete continuing education requirements under Section 31A-23a-202 before
3178 submitting the license renewal application;

3179 (iii) submit a completed renewal application as required by Section 31A-23a-104;

3180 (iv) submit additional documentation required to complete the licensing process as
3181 related to a specific license type or line of authority; or

3182 (v) maintain an active license in a licensee's home state if the licensee is a nonresident
3183 licensee.

3184 (b) (i) A licensee whose license lapses may request reinstatement of the license and
3185 line of authority no more than one year after the day on which the license lapses.

3186 (ii) A licensee whose license lapses due to the following may request an action
3187 described in Subsection (1)(b)[(†)](iii):

3188 (A) military service;

3189 (B) voluntary service for a period of time designated by the person for whom the
3190 licensee provides voluntary service; or

3191 (C) some other extenuating circumstances, such as long-term medical disability.

3192 [(†)] (iii) A licensee described in Subsection (1)(b)[(†)](ii) may request:

3193 (A) reinstatement of the license and line of authority no later than one year after the
3194 day on which the license lapses; and

3195 (B) waiver of any of the following imposed for failure to comply with renewal
3196 procedures:

3197 (I) an examination requirement;

3198 (II) reinstatement fees set under Section 31A-3-103;

3199 (III) continuing education requirements; or

3200 (IV) other sanction imposed for failure to comply with renewal procedures.

3201 (2) If a license or line of authority issued under this chapter is voluntarily surrendered,
3202 the license or line of authority may be reinstated:

3203 (a) during the license period in which the license or line of authority is voluntarily
3204 surrendered; and

3205 (b) no later than one year after the day on which the license or line of authority is
3206 voluntarily surrendered.

3207 Section 32. Section 31A-23a-402 is amended to read:

3208 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**
3209 **discrimination -- Coercion or intimidation -- Restriction on choice.**

3210 (1) (a) (i) Any of the following may not make or cause to be made any communication
3211 that contains false or misleading information, relating to an insurance product or contract, any
3212 insurer, or any licensee under this title, including information that is false or misleading
3213 because it is incomplete:

3214 (A) a person who is or should be licensed under this title;

3215 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

3216 (C) a person whose primary interest is as a competitor of a person licensed under this
3217 title; and

3218 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

3219 (ii) As used in this Subsection (1), "false or misleading information" includes:

3220 (A) assuring the nonobligatory payment of future dividends or refunds of unused

3221 premiums in any specific or approximate amounts, but reporting fully and accurately past
3222 experience is not false or misleading information; and
3223 (B) with intent to deceive a person examining it:
3224 (I) filing a report;
3225 (II) making a false entry in a record; or
3226 (III) wilfully refraining from making a proper entry in a record.
3227 (iii) A licensee under this title may not:
3228 (A) use any business name, slogan, emblem, or related device that is misleading or
3229 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
3230 already in business; or
3231 (B) use any name, advertisement or other insurance promotional material that would
3232 cause a reasonable person to mistakenly believe that a state or federal government agency,
3233 including the Health Insurance Exchange, also called the "Utah Health Exchange[;]" or
3234 "Avenue H," created in Section [63M-1-2504](#), the Comprehensive Health Insurance Pool
3235 created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health
3236 Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act:
3237 (I) is responsible for the insurance sales activities of the person;
3238 (II) stands behind the credit of the person;
3239 (III) guarantees any returns on insurance products of or sold by the person; or
3240 (IV) is a source of payment of any insurance obligation of or sold by the person.
3241 (iv) A person who is not an insurer may not assume or use any name that deceptively
3242 implies or suggests that person is an insurer.
3243 (v) A person other than persons licensed as health maintenance organizations under
3244 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
3245 itself.
3246 (b) A licensee's violation creates a rebuttable presumption that the violation was also
3247 committed by the insurer if:
3248 (i) the licensee under this title distributes cards or documents, exhibits a sign, or

3249 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
3250 insurer:

- 3251 (A) that the licensee represents; or
- 3252 (B) for whom the licensee processes claims; and
- 3253 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
3254 insurer.

3255 (2) (a) A title insurer, individual title insurance producer, or agency title insurance
3256 producer or any officer or employee of the title insurer, individual title insurance producer, or
3257 agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give,
3258 directly or indirectly, as an inducement to obtaining any title insurance business:

- 3259 (i) any rebate, reduction, or abatement of any rate or charge made incident to the
3260 issuance of the title insurance;
- 3261 (ii) any special favor or advantage not generally available to others;
- 3262 (iii) any money or other consideration, except if approved under Section [31A-2-405](#); or
- 3263 (iv) material inducement.

3264 (b) "Charge made incident to the issuance of the title insurance" includes escrow
3265 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
3266 after consultation with the commissioner and subject to Section [31A-2-404](#).

3267 (c) An insured or any other person connected, directly or indirectly, with the
3268 transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to
3269 in Subsection (2)(a), including:

- 3270 (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices
3271 and Licensing Act;
- 3272 (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices
3273 Act;
- 3274 (iii) a builder;
- 3275 (iv) an attorney; or
- 3276 (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

3277 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
3278 different premiums or by offering different terms of coverage, except on the basis of
3279 classifications related to the nature and the degree of the risk covered or the expenses involved.

3280 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
3281 insured under a group, blanket, or franchise policy, and the terms of those policies are not
3282 unfairly discriminatory merely because they are more favorable than in similar individual
3283 policies.

3284 (4) (a) This Subsection (4) applies to:

3285 (i) a person who is or should be licensed under this title;

3286 (ii) an employee of that licensee or person who should be licensed;

3287 (iii) a person whose primary interest is as a competitor of a person licensed under this
3288 title; and

3289 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

3290 (b) A person described in Subsection (4)(a) may not commit or enter into any
3291 agreement to participate in any act of boycott, coercion, or intimidation that:

3292 (i) tends to produce:

3293 (A) an unreasonable restraint of the business of insurance; or

3294 (B) a monopoly in that business; or

3295 (ii) results in an applicant purchasing or replacing an insurance contract.

3296 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
3297 insurer or licensee under this chapter, another person who is required to pay for insurance as a
3298 condition for the conclusion of a contract or other transaction or for the exercise of any right
3299 under a contract.

3300 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
3301 coverage selected on reasonable grounds.

3302 (b) The form of corporate organization of an insurer authorized to do business in this
3303 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
3304 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from

3305 declining an application for insurance.

3306 (6) A person may not make any charge other than insurance premiums and premium
3307 financing charges for the protection of property or of a security interest in property, as a
3308 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
3309 the lending of money on the security of an interest in the property.

3310 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
3311 agency to the principal on demand.

3312 (b) A licensee whose license is suspended, limited, or revoked under Section
3313 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
3314 commissioner on demand.

3315 (8) (a) A person may not engage in an unfair method of competition or any other unfair
3316 or deceptive act or practice in the business of insurance, as defined by the commissioner by
3317 rule, after a finding that the method of competition, the act, or the practice:

- 3318 (i) is misleading;
- 3319 (ii) is deceptive;
- 3320 (iii) is unfairly discriminatory;
- 3321 (iv) provides an unfair inducement; or
- 3322 (v) unreasonably restrains competition.

3323 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
3324 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an
3325 unfair method of competition or unfair or deceptive act or practice after a finding that the
3326 method of competition, the act, or the practice:

- 3327 (i) is misleading;
- 3328 (ii) is deceptive;
- 3329 (iii) is unfairly discriminatory;
- 3330 (iv) provides an unfair inducement; or
- 3331 (v) unreasonably restrains competition.

3332 Section 33. Section 31A-23a-402.5 is amended to read:

3333 **31A-23a-402.5. Inducements.**

3334 (1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee
3335 under this title, or an officer or employee of a licensee, may not induce a person to enter into,
3336 continue, or terminate an insurance contract by offering a benefit that is not:

3337 (i) specified in the insurance contract; or

3338 (ii) directly related to the insurance contract.

3339 (b) An insurer may not make or knowingly allow an agreement of insurance that is not
3340 clearly expressed in the insurance contract to be issued or renewed.

3341 (c) A licensee under this title may not absorb the tax under Section [31A-3-301](#).

3342 (2) This section does not apply to a title insurer, an individual title insurance producer,
3343 or agency title insurance producer, or an officer or employee of a title insurer, an individual
3344 title insurance producer, or an agency title insurance producer.

3345 (3) Items not prohibited by Subsection (1) include an insurer:

3346 (a) reducing premiums because of expense savings;

3347 (b) providing to a policyholder or insured one or more incentives, as defined by the
3348 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
3349 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim
3350 expenses, including:

3351 (i) a premium discount offered to a small or large employer group based on a wellness
3352 program if:

3353 (A) the premium discount for the employer group does not exceed 20% of the group
3354 premium; and

3355 (B) the premium discount based on the wellness program is offered uniformly by the
3356 insurer to all employer groups in the large or small group market;

3357 (ii) a premium discount offered to employees of a small or large employer group in an
3358 amount that does not exceed federal limits on wellness program incentives; or

3359 (iii) a combination of premium discounts offered to the employer group and the
3360 employees of an employer group, based on a wellness program, if:

- 3361 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);
3362 and
- 3363 (B) the premium discounts for the employees of an employer group comply with
3364 Subsection (3)(b)(ii); or
- 3365 (c) receiving premiums under an installment payment plan.
- 3366 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other
3367 licensee, or an officer or employee of a licensee, either directly or through a third party:
- 3368 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
3369 conditioned on a quote or the purchase of a particular insurance product;
- 3370 (b) extending credit on a premium to the insured:
- 3371 (i) without interest, for no more than 90 days from the effective date of the insurance
3372 contract;
- 3373 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
3374 balance after the time period described in Subsection (4)(b)(i); and
- 3375 (iii) except that an installment or payroll deduction payment of premiums on an
3376 insurance contract issued under an insurer's mass marketing program is not considered an
3377 extension of credit for purposes of this Subsection (4)(b);
- 3378 (c) preparing or conducting a survey that:
- 3379 (i) is directly related to an accident and health insurance policy purchased from the
3380 licensee; or
- 3381 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,
3382 employers, or employees directly related to an insurance product sold by the licensee;
- 3383 (d) providing limited human resource services that are directly related to an insurance
3384 product sold by the licensee, including:
- 3385 (i) answering questions directly related to:
- 3386 (A) an employee benefit offering or administration, if the insurance product purchased
3387 from the licensee is accident and health insurance or health insurance; and
- 3388 (B) employment practices liability, if the insurance product offered by or purchased

3389 from the licensee is property or casualty insurance; and
3390 (ii) providing limited human resource compliance training and education directly
3391 pertaining to an insurance product purchased from the licensee;
3392 (e) providing the following types of information or guidance:
3393 (i) providing guidance directly related to compliance with federal and state laws for an
3394 insurance product purchased from the licensee;
3395 (ii) providing a workshop or seminar addressing an insurance issue that is directly
3396 related to an insurance product purchased from the licensee; or
3397 (iii) providing information regarding:
3398 (A) employee benefit issues;
3399 (B) directly related insurance regulatory and legislative updates; or
3400 (C) similar education about an insurance product sold by the licensee and how the
3401 insurance product interacts with tax law;
3402 (f) preparing or providing a form that is directly related to an insurance product
3403 purchased from, or offered by, the licensee;
3404 (g) preparing or providing documents directly related to a premium only cafeteria plan
3405 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but
3406 not providing ongoing administration of a flexible spending account;
3407 (h) providing enrollment and billing assistance, including:
3408 (i) providing benefit statements or new hire insurance benefits packages; and
3409 (ii) providing technology services such as an electronic enrollment platform or
3410 application system;
3411 (i) communicating coverages in writing and in consultation with the insured and
3412 employees;
3413 (j) providing employee communication materials and notifications directly related to an
3414 insurance product purchased from a licensee;
3415 (k) providing claims management and resolution to the extent permitted under the
3416 licensee's license;

- 3417 (l) providing underwriting or actuarial analysis or services;
- 3418 (m) negotiating with an insurer regarding the placement and pricing of an insurance
- 3419 product;
- 3420 (n) recommending placement and coverage options;
- 3421 (o) providing a health fair or providing assistance or advice on establishing or
- 3422 operating a wellness program, but not providing any payment for or direct operation of the
- 3423 wellness program;
- 3424 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other
- 3425 services directly related to an insurance product purchased from the licensee;
- 3426 (q) assisting with a summary plan description, including providing a summary plan
- 3427 description wraparound;
- 3428 (r) providing information necessary for the preparation of documents directly related to
- 3429 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as
- 3430 amended;
- 3431 (s) providing information or services directly related to the Health Insurance Portability
- 3432 and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services
- 3433 directly related to health care access, portability, and renewability when offered in connection
- 3434 with accident and health insurance sold by a licensee;
- 3435 (t) sending proof of coverage to a third party with a legitimate interest in coverage;
- 3436 (u) providing information in a form approved by the commissioner and directly related
- 3437 to determining whether an insurance product sold by the licensee meets the requirements of a
- 3438 third party contract that requires or references insurance coverage;
- 3439 (v) facilitating risk management services directly related to property and casualty
- 3440 insurance products sold or offered for sale by the licensee, including:
 - 3441 (i) risk management;
 - 3442 (ii) claims and loss control services;
 - 3443 (iii) risk assessment consulting, including analysis of:
 - 3444 (A) employer's job descriptions; or

- 3445 (B) employer's safety procedures or manuals; and
- 3446 (iv) providing information and training on best practices;
- 3447 (w) otherwise providing services that are legitimately part of servicing an insurance
- 3448 product purchased from a licensee; and
- 3449 (x) providing other directly related services approved by the department.
- 3450 (5) An inducement prohibited under Subsection (1) includes a producer, consultant, or
- 3451 other licensee, or an officer or employee of a licensee:
- 3452 (a) (i) providing a rebate;
- 3453 (ii) paying the salary of an employee of a person who purchases an insurance product
- 3454 from the licensee; or
- 3455 (iii) if the licensee is an insurer, or a third party administrator who contracts with an
- 3456 insurer, paying the salary for an onsite staff member to perform an act prohibited under
- 3457 Subsection (5)(b)(xii); or
- 3458 (b) engaging in one or more of the following unless a fee is paid in accordance with
- 3459 Subsection (8):
- 3460 (i) performing background checks of prospective employees;
- 3461 (ii) providing legal services by a person licensed to practice law;
- 3462 (iii) performing drug testing that is directly related to an insurance product purchased
- 3463 from the licensee;
- 3464 (iv) preparing employer or employee handbooks, except that a licensee may:
- 3465 (A) provide information for a medical benefit section of an employee handbook;
- 3466 (B) provide information for the section of an employee handbook directly related to an
- 3467 employment practices liability insurance product purchased from the licensee; or
- 3468 (C) prepare or print an employee benefit enrollment guide;
- 3469 (v) providing job descriptions, postings, and applications for a person;
- 3470 (vi) providing payroll services;
- 3471 (vii) providing performance reviews or performance review training;
- 3472 (viii) providing union advice;

- 3473 (ix) providing accounting services;
- 3474 (x) providing data analysis information technology programs, except as provided in
3475 Subsection (4)(h)(ii);
- 3476 (xi) providing administration of health reimbursement accounts or health savings
3477 accounts; or
- 3478 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
3479 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
3480 the following prohibited benefits:
- 3481 (A) performing background checks of prospective employees;
- 3482 (B) providing legal services by a person licensed to practice law;
- 3483 (C) performing drug testing that is directly related to an insurance product purchased
3484 from the insurer;
- 3485 (D) preparing employer or employee handbooks;
- 3486 (E) providing job descriptions postings, and applications;
- 3487 (F) providing payroll services;
- 3488 (G) providing performance reviews or performance review training;
- 3489 (H) providing union advice;
- 3490 (I) providing accounting services;
- 3491 (J) providing discrimination testing; or
- 3492 (K) providing data analysis information technology programs.
- 3493 (6) A producer, consultant, or other licensee or an officer or employee of a licensee
3494 shall itemize and bill separately from any other insurance product or service offered or
3495 provided under Subsection (5)(b).
- 3496 (7) (a) A de minimis gift or meal not to exceed a fair market value of [~~\$25~~] \$100 for
3497 each individual receiving the gift or meal is presumed to be a social courtesy not conditioned
3498 on a quote or purchase of a particular insurance product for purposes of Subsection (4)(a).
- 3499 (b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10
3500 may be conditioned on receipt of a quote of a particular insurance product.

3501 (8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee is
3502 paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with
3503 Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal
3504 or exceed the fair market value of the item.

3505 (9) For purposes of this section, "fair market value" [~~is determined on the basis of what~~
3506 ~~an individual insured or policyholder would pay on the open market for that item]~~ means what
3507 a knowledgeable, willing, and unpressured buyer would pay for a product or service to a
3508 knowledgeable, willing, and unpressured seller in the open market without any connection to
3509 other goods, services, including insurance services, or contracts, including insurance contracts,
3510 sold by the producer, consultant, or other licensee, or an officer or employee of the licensee.

3511 Section 34. Section 31A-23b-206 is amended to read:

3512 **31A-23b-206. Continuing education requirements.**

3513 (1) The commissioner shall, by rule, prescribe continuing education requirements for a
3514 navigator.

3515 (2) (a) The commissioner may not require a degree from an institution of higher
3516 education as part of continuing education.

3517 (b) The commissioner may state a continuing education requirement in terms of hours
3518 of instruction received in:

- 3519 (i) accident and health insurance;
- 3520 (ii) qualification for and enrollment in public programs;
- 3521 (iii) qualification for and enrollment in premium subsidies;
- 3522 (iv) cultural competency;
- 3523 (v) conflict of interest standards; and
- 3524 (vi) other exchange functions.

3525 (3) (a) For a navigator line of authority, continuing education requirements shall
3526 require:

- 3527 (i) that a licensee complete 12 credit hours of continuing education for every one-year
3528 licensing period;

3529 (ii) that at least two of the 12 credit hours described in Subsection (3)(a)(i) be ethics
3530 courses;

3531 (iii) that at least one of the 12 credit hours described in Subsection (3)(a)(i) be training
3532 on defined contribution arrangements and the use of the small employer health insurance
3533 exchange; and

3534 (iv) that a licensee complete the annual navigator training and certification program
3535 developed by the Centers for Medicare and Medicaid Services.

3536 (b) For a certified application counselor, the continuing education requirements shall
3537 require:

3538 (i) that a licensee complete six credit hours of continuing education for every one-year
3539 licensing period;

3540 (ii) that at least two of the six credit hours described in Subsection (3)(b)(i) be on
3541 ethics courses;

3542 (iii) that at least one of the six credit hours described in Subsection (3)(b)(i) be training
3543 on defined contribution arrangements and the use of the small employer health insurance
3544 exchange; and

3545 (iv) that a licensee complete the annual certified application counselor training and
3546 certification program developed by the Centers for Medicare and Medicaid Services.

3547 (c) An hour of continuing education in accordance with Subsections (3)(a)(i) and (b)(i)
3548 may be obtained through:

3549 (i) classroom attendance;

3550 (ii) home study;

3551 (iii) watching a video recording; or

3552 (iv) another method approved by rule.

3553 (d) A licensee may obtain continuing education hours at any time during the one-year
3554 license period.

3555 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3556 commissioner shall, by rule, authorize one or more continuing education providers, including a

3557 state or national professional producer or consultant associations, to:

3558 (i) offer a qualified program on a geographically accessible basis; and

3559 (ii) collect a reasonable fee for funding and administration of a continuing education
3560 program, subject to the review and approval of the commissioner.

3561 (4) The commissioner shall approve a continuing education provider or a continuing
3562 education course that satisfies the requirements of this section.

3563 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3564 commissioner shall by rule establish the procedures for continuing education provider
3565 registration and course approval.

3566 (6) This section applies only to a navigator who is a natural person.

3567 (7) A navigator shall keep documentation of completing the continuing education
3568 requirements of this section for [~~two years~~] one year after the end of the [~~two-year~~] one-year
3569 licensing period to which the continuing education applies.

3570 Section 35. Section **31A-25-302.5** is enacted to read:

3571 **31A-25-302.5. Place of business and residence address.**

3572 (1) A third-party administrator licensed under this chapter shall register and maintain
3573 with the commissioner:

3574 (a) the address and one or more telephone numbers of the licensee's principal place of
3575 business;

3576 (b) a valid business email address at which the commissioner may contact the licensee;
3577 and

3578 (c) if the licensee is an individual, the licensee's residence address and telephone
3579 number.

3580 (2) A licensee shall notify the commissioner within 30 days of a change of any of the
3581 following required to be registered with the commissioner under this section:

3582 (a) an address;

3583 (b) a telephone number; or

3584 (c) a business email address.

3585 Section 36. Section 31A-27a-116 is amended to read:

3586 **31A-27a-116. Financial reporting.**

3587 (1) (a) The receiver shall comply with all requirements for receivership financial
3588 reporting in this section and as may be specified by the commissioner by rule or ordered by the
3589 court within:

3590 (i) 180 days after the day on which the receivership court enters an order of
3591 receivership; and

3592 (ii) 45 days following each calendar quarter after the period specified in Subsection
3593 (1)(a)(i).

3594 (b) The rule described in this Subsection (1) shall:

3595 (i) comply with this section;

3596 (ii) be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
3597 Act; and

3598 (iii) require the receiver to file any financial report with the receivership court in
3599 addition to any other person specified in the rule.

3600 (c) A financial report shall include, at a minimum, a statement of:

3601 (i) the assets and liabilities of the insurer;

3602 (ii) the changes in those assets and liabilities; and

3603 (iii) all funds received or disbursed by the receiver during that reporting period.

3604 (d) The receiver may qualify a financial report or provide notes to the financial
3605 statement for further explanation.

3606 (e) The receivership court may order the receiver to provide any additional information
3607 as the receivership court considers appropriate.

3608 (2) Each affected guaranty association shall file one or more reports with the liquidator:

3609 (a) (i) within 180 days after the day on which the receivership court enters an order of
3610 liquidation; and

3611 (ii) (A) within 45 days following each calendar quarter after the period described in
3612 Subsection (2)(a)(i); or

- 3613 (B) at an interval:
- 3614 (I) agreed to between the liquidator and the affected guaranty association; or
- 3615 (II) required by the receivership court; and
- 3616 (b) in no event less than annually.
- 3617 (3) For good cause shown, the receivership court may grant:
- 3618 (a) relief for an extension or modification of time to comply with Subsection (1) or (2);

3619 or

- 3620 (b) such other relief as may be appropriate.

3621 Section 37. Section **31A-28-213** is amended to read:

3622 **31A-28-213. Miscellaneous provisions.**

3623 (1) (a) Any person who has a claim against an insurer, whether or not the insurer is a
3624 member insurer, under any provision in an insurance policy, other than a policy of an insolvent
3625 insurer that is also a covered claim, is required to first exhaust that person's right under that
3626 person's policy.

3627 (b) Any amount payable on a covered claim under this part under an insurance policy is
3628 reduced by the amount of any recovery under the insurance policy described in Subsection
3629 (1)(a).

3630 (c) (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be
3631 recovered under more than one insurance guaranty association or its equivalent shall first seek
3632 recovery from the association of the place of residence of the insured.

3633 (ii) If the person's claim is:

3634 (A) a first-party claim for damage to property with a permanent location, the person
3635 shall seek recovery first from the association of the location of the property; and

3636 (B) a workers' compensation claim, the person shall seek recovery first from the
3637 association of the residence of the claimant.

3638 (iii) Any recovery under this part shall be reduced by the amount of recovery from any
3639 other insurance guaranty association or its equivalent.

3640 (2) An insurer may not exercise any right of subrogation against an insolvent insurer's

3641 insured if exercise of the right would require the insured, or a guaranty fund under this chapter,
3642 to pay an amount the insolvent insurer is obligated to pay under an insurance policy issued to
3643 the insured, except that an insurer may exercise a right of subrogation for the amount the
3644 subrogation claim exceeds the guaranty association obligation limitations.

3645 [~~2~~] (3) This part may not be construed to reduce the liability for unpaid assessments of
3646 the insureds of an impaired or insolvent insurer operating under a plan with assessment
3647 liability.

3648 [~~3~~] (4) (a) Records shall be kept of all negotiations and meetings in which the
3649 association or its representatives are involved to discuss the activities of the association in
3650 carrying out the association's powers and duties under Section 31A-28-207. Records of these
3651 negotiations or meetings shall be made public only upon:

3652 (i) [~~upon~~] the termination of a liquidation, rehabilitation, or conservation proceeding
3653 involving the insolvent insurer;

3654 (ii) the termination of the insolvency of the insurer; or

3655 (iii) the order of a court of competent jurisdiction.

3656 (b) This Subsection [~~3~~] (4) does not limit the duty of the association to render a report
3657 of its activities under Section 31A-28-214.

3658 [~~4~~] (5) For the purpose of carrying out its obligations under this part, the association
3659 is considered to be a creditor of the insolvent insurer, except to the extent of any amounts the
3660 association is entitled as subrogee under Section 31A-28-207.

3661 [~~5~~] (6) (a) Before the termination of any liquidation, rehabilitation, or conservation
3662 proceeding, the court may take into consideration the contributions of the respective parties,
3663 including:

3664 (i) the association;

3665 (ii) the shareholders;

3666 (iii) the policyowners of the insolvent insurer; and

3667 (iv) any other party with a bona fide interest, in making an equitable distribution of the
3668 ownership rights of the insolvent insurer.

3669 (b) In making the determination described in Subsection [~~(5)~~] (6)(a), the court shall
3670 consider the welfare of the policyholders of the continuing or successor insurer.

3671 (c) A distribution to stockholders, if any, of an insolvent insurer may not be made until
3672 the total amount of valid claims of the association with interest on those claims for funds
3673 expended in carrying out its powers and duties under Section 31A-28-207 regarding this
3674 insurer have been fully recovered by the association.

3675 [~~(6)~~] (7) A rehabilitator, liquidator, or conservator appointed under any section of this
3676 part may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant
3677 to Section 31A-27a-502.

3678 Section 38. Section **31A-37-102** is amended to read:

3679 **31A-37-102. Definitions.**

3680 As used in this chapter:

3681 (1) "Affiliated company" means a business entity that because of common ownership,
3682 control, operation, or management is in the same corporate or limited liability company system
3683 as:

- 3684 (a) a parent;
- 3685 (b) an industrial insured; or
- 3686 (c) a member organization.

3687 (2) "Alien captive insurance company" means an insurer:

- 3688 (a) formed to write insurance business for a parent or affiliate of the insurer; and
- 3689 (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or
3690 regulatory standards:

- 3691 (i) on a business entity transacting the business of insurance in the alien jurisdiction;
- 3692 and
- 3693 (ii) in a form acceptable to the commissioner.

3694 (3) "Association" means a legal association of two or more persons that has been in
3695 continuous existence for at least one year if:

- 3696 (a) the association or its member organizations:

3697 (i) own, control, or hold with power to vote all of the outstanding voting securities of
3698 an association captive insurance company incorporated as a stock insurer; or

3699 (ii) have complete voting control over an association captive insurance company
3700 incorporated as a mutual insurer;

3701 (b) the association's member organizations collectively constitute all of the subscribers
3702 of an association captive insurance company formed as a reciprocal insurer; or

3703 (c) the association or its member organizations have complete voting control over an
3704 association captive insurance company formed as a limited liability company.

3705 (4) "Association captive insurance company" means a business entity that insures risks
3706 of:

3707 (a) a member organization of the association;

3708 (b) an affiliate of a member organization of the association; and

3709 (c) the association.

3710 (5) "Branch business" means an insurance business transacted by a branch captive
3711 insurance company in this state.

3712 (6) "Branch captive insurance company" means an alien captive insurance company
3713 that has a certificate of authority from the commissioner to transact the business of insurance in
3714 this state through a business unit with a principal place of business in this state.

3715 (7) "Branch operation" means a business operation of a branch captive insurance
3716 company in this state.

3717 (8) "Captive insurance company" means any of the following formed or holding a
3718 certificate of authority under this chapter:

3719 (a) a branch captive insurance company;

3720 (b) a pure captive insurance company;

3721 (c) an association captive insurance company;

3722 (d) a sponsored captive insurance company;

3723 (e) an industrial insured captive insurance company;

3724 [~~(f) a captive reinsurance company;~~]

3725 [~~(g)~~] (f) a special purpose captive insurance company; or
3726 [~~(h)~~] (g) a special purpose financial captive insurance company.
3727 [~~(9)~~] "~~Captive reinsurance company~~" means a reinsurer that is:
3728 [~~(a)~~] ~~formed or has a certificate of authority pursuant to this chapter;~~
3729 [~~(b)~~] ~~wholly owned by a qualifying reinsurer parent company; and~~
3730 [~~(c)~~] ~~a stock corporation.~~
3731 [~~(H)~~] (9) "Commissioner" means [~~the~~] Utah's Insurance Commissioner or the
3732 commissioner's designee.
3733 (10) "Common ownership and control" means that two or more captive insurance
3734 companies are owned or controlled by the same person or group of persons as follows:
3735 (a) in the case of a captive insurance company that is a stock corporation, the direct or
3736 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;
3737 (b) in the case of a captive insurance company that is a mutual corporation, the direct
3738 or indirect ownership of 80% or more of the surplus and the voting power of the mutual
3739 corporation;
3740 (c) in the case of a captive insurance company that is a limited liability company, the
3741 direct or indirect ownership by the same member or members of 80% or more of the
3742 membership interests in the limited liability company; or
3743 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
3744 captive insurance company owned and controlled by the protected cell's participant, only if:
3745 (i) the participant is the only participant with respect to the protected cell; and
3746 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
3747 captive insurance company through common ownership and control.
3748 [~~(12)~~] (11) "Consolidated debt to total capital ratio" means the ratio of Subsection
3749 [~~(12)~~] (11)(a) to (b).
3750 (a) This Subsection [~~(12)~~] (11)(a) is an amount equal to the sum of all debts and hybrid
3751 capital instruments including:
3752 (i) all borrowings from depository institutions;

- 3753 (ii) all senior debt;
- 3754 (iii) all subordinated debts;
- 3755 (iv) all trust preferred shares; and
- 3756 (v) all other hybrid capital instruments that are not included in the determination of
- 3757 consolidated GAAP net worth issued and outstanding.
- 3758 (b) This Subsection [~~(12)~~] (11)(b) is an amount equal to the sum of:
- 3759 (i) total capital consisting of all debts and hybrid capital instruments as described in
- 3760 Subsection [~~(12)~~] (11)(a); and
- 3761 (ii) shareholders' equity determined in accordance with generally accepted accounting
- 3762 principles for reporting to the United States Securities and Exchange Commission.
- 3763 [~~(13)~~] (12) "Consolidated GAAP net worth" means the consolidated shareholders' or
- 3764 members' equity determined in accordance with generally accepted accounting principles for
- 3765 reporting to the United States Securities and Exchange Commission.
- 3766 [~~(14)~~] (13) "Controlled unaffiliated business" means a business entity:
- 3767 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or
- 3768 limited liability company system of a parent or the parent's affiliate; or
- 3769 (ii) in the case of an industrial insured captive insurance company, that is not in the
- 3770 corporate or limited liability company system of an industrial insured or an affiliated company
- 3771 of the industrial insured;
- 3772 (b) (i) in the case of a pure captive insurance company, that has a contractual
- 3773 relationship with a parent or affiliate; or
- 3774 (ii) in the case of an industrial insured captive insurance company, that has a
- 3775 contractual relationship with an industrial insured or an affiliated company of the industrial
- 3776 insured; and
- 3777 (c) whose risks are managed by one of the following in accordance with Subsection
- 3778 [31A-37-106\(1\)\(~~k~~\)\(j\)](#):
- 3779 (i) a pure captive insurance company; or
- 3780 (ii) an industrial insured captive insurance company.

3781 [~~(15)~~] (14) "Department" means the Insurance Department.
3782 [~~(16)~~] (15) "Industrial insured" means an insured:
3783 (a) that produces insurance:
3784 (i) by the services of a full-time employee acting as a risk manager or insurance
3785 manager; or
3786 (ii) using the services of a regularly and continuously qualified insurance consultant;
3787 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
3788 and
3789 (c) that has at least 25 full-time employees.
3790 [~~(17)~~] (16) "Industrial insured captive insurance company" means a business entity
3791 that:
3792 (a) insures risks of the industrial insureds that comprise the industrial insured group;
3793 and
3794 (b) may insure the risks of:
3795 (i) an affiliated company of an industrial insured; or
3796 (ii) a controlled unaffiliated business of:
3797 (A) an industrial insured; or
3798 (B) an affiliated company of an industrial insured.
3799 [~~(18)~~] (17) "Industrial insured group" means:
3800 (a) a group of industrial insureds that collectively:
3801 (i) own, control, or hold with power to vote all of the outstanding voting securities of
3802 an industrial insured captive insurance company incorporated or organized as a limited liability
3803 company as a stock insurer; or
3804 (ii) have complete voting control over an industrial insured captive insurance company
3805 incorporated or organized as a limited liability company as a mutual insurer;
3806 (b) a group that is:
3807 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. [~~Section~~]
3808 Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and

- 3809 (ii) taxable under this title as a:
- 3810 (A) stock corporation; or
- 3811 (B) mutual insurer; or
- 3812 (c) a group that has complete voting control over an industrial captive insurance
- 3813 company formed as a limited liability company.
- 3814 [~~(19)~~] (18) "Member organization" means a person that belongs to an association.
- 3815 [~~(20)~~] (19) "Parent" means a person that directly or indirectly owns, controls, or holds
- 3816 with power to vote more than 50% of:
- 3817 (a) the outstanding voting securities of a pure captive insurance company; or
- 3818 (b) the pure captive insurance company, if the pure captive insurance company is
- 3819 formed as a limited liability company.
- 3820 [~~(21)~~] (20) "Participant" means an entity that is insured by a sponsored captive
- 3821 insurance company:
- 3822 (a) if the losses of the participant are limited through a participant contract to the assets
- 3823 of a protected cell; and
- 3824 (b)(i) the entity is permitted to be a participant under Section 31A-37-403; or
- 3825 (ii) the entity is an affiliate of an entity permitted to be a participant under Section
- 3826 31A-37-403.
- 3827 [~~(22)~~] (21) "Participant contract" means a contract by which a sponsored captive
- 3828 insurance company:
- 3829 (a) insures the risks of a participant; and
- 3830 (b) limits the losses of the participant to the assets of a protected cell.
- 3831 [~~(23)~~] (22) "Protected cell" means a separate account established and maintained by a
- 3832 sponsored captive insurance company for one participant.
- 3833 [~~(24)~~] (23) "Pure captive insurance company" means a business entity that insures risks
- 3834 of a parent or affiliate of the business entity.
- 3835 [~~(25) "Qualifying reinsurer parent company" means a reinsurer:~~]
- 3836 [~~(a) authorized to write reinsurance by this state, and]~~

3837 ~~[(b) that has:]~~
3838 ~~[(i) a consolidated GAAP net worth of not less than \$500,000,000; and]~~
3839 ~~[(ii) a consolidated debt to total capital ratio not greater than .50:]~~
3840 ~~[(26)]~~ (24) "Special purpose financial captive insurance company" is as defined in
3841 Section 31A-37a-102.
3842 ~~[(27)]~~ (25) "Sponsor" means an entity that:
3843 (a) meets the requirements of Section 31A-37-402; and
3844 (b) is approved by the commissioner to:
3845 (i) provide all or part of the capital and surplus required by applicable law in an amount
3846 of not less than \$350,000, which amount the commissioner may increase by order if the
3847 commissioner considers it necessary; and
3848 (ii) organize and operate a sponsored captive insurance company.
3849 ~~[(28)]~~ (26) "Sponsored captive insurance company" means a captive insurance
3850 company:
3851 (a) in which the minimum capital and surplus required by applicable law is provided by
3852 one or more sponsors;
3853 (b) that is formed or holding a certificate of authority under this chapter;
3854 (c) that insures the risks of a separate participant through the contract; and
3855 (d) that segregates each participant's liability through one or more protected cells.
3856 ~~[(29)]~~ (27) "Treasury rates" means the United States Treasury strip asked yield as
3857 published in the Wall Street Journal as of a balance sheet date.
3858 Section 39. Section 31A-37-106 is amended to read:
3859 **31A-37-106. Authority to make rules -- Authority to issue orders.**
3860 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3861 commissioner may adopt rules to:
3862 (a) determine circumstances under which a branch captive insurance company is not
3863 required to be a pure captive insurance company;
3864 (b) require a statement, document, or information that a captive insurance company

3865 shall provide to the commissioner to obtain a certificate of authority;

3866 (c) determine a factor a captive insurance company shall provide evidence of under

3867 Subsection [31A-37-202\(4\)\(c\)](#);

3868 (d) prescribe one or more capital requirements for a captive insurance company in

3869 addition to those required under Section [31A-37-204](#) based on the type, volume, and nature of

3870 insurance business transacted by the captive insurance company;

3871 [~~(e) establish:~~]

3872 [~~(i) the amount of capital or surplus required to be retained under Subsection~~

3873 ~~[31A-37-205\(4\)](#) at the payment of a dividend or other distribution by a captive insurance~~

3874 ~~company; or]~~

3875 [~~(ii) a formula to determine the amount described in Subsection [31A-37-205\(4\)](#);~~]

3876 [~~(f)~~] (e) waive or modify a requirement for public notice and hearing for the following

3877 by a captive insurance company:

3878 (i) merger;

3879 (ii) consolidation;

3880 (iii) conversion;

3881 (iv) mutualization; [~~or~~]

3882 (v) redomestication; or

3883 (vi) acquisition;

3884 [~~(g)~~] (f) approve the use of one or more reliable methods of valuation and rating for:

3885 (i) an association captive insurance company;

3886 (ii) a sponsored captive insurance company; or

3887 (iii) an industrial insured group;

3888 [~~(h)~~] (g) prohibit or limit an investment that threatens the solvency or liquidity of:

3889 (i) a pure captive insurance company; or

3890 (ii) an industrial insured captive insurance company;

3891 [~~(i)~~] (h) determine the financial reports a sponsored captive insurance company shall

3892 annually file with the commissioner;

3893 [~~(j)~~] (i) prescribe the required forms and reports under Section 31A-37-501; and
3894 [~~(k)~~] (j) establish one or more standards to ensure that:
3895 (i) one of the following is able to exercise control of the risk management function of a
3896 controlled unaffiliated business to be insured by a pure captive insurance company:
3897 (A) a parent; or
3898 (B) an affiliated company of a parent; or
3899 (ii) one of the following is able to exercise control of the risk management function of
3900 a controlled unaffiliated business to be insured by an industrial insured captive insurance
3901 company:
3902 (A) an industrial insured; or
3903 (B) an affiliated company of the industrial insured.
3904 (2) Notwithstanding Subsection (1)[~~(k)~~](j), until the commissioner adopts the rules
3905 authorized under Subsection (1)[~~(k)~~](j), the commissioner may by temporary order grant
3906 authority to insure risks to:
3907 (a) a pure captive insurance company; or
3908 (b) an industrial insured captive insurance company.
3909 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a
3910 captive insurance company as necessary to enable the commissioner to secure compliance with
3911 this chapter.
3912 Section 40. Section 31A-37-202 is amended to read:
3913 **31A-37-202. Permissive areas of insurance.**
3914 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of
3915 incorporation, certificate of organization, or charter, a captive insurance company may apply to
3916 the commissioner for a certificate of authority to do all insurance authorized by this title except
3917 workers' compensation insurance.
3918 (b) Notwithstanding Subsection (1)(a):
3919 (i) a pure captive insurance company may not insure a risk other than a risk of:
3920 (A) its parent or affiliate;

- 3921 (B) a controlled unaffiliated business; or
- 3922 (C) a combination of Subsections (1)(b)(i)(A) and (B);
- 3923 (ii) an association captive insurance company may not insure a risk other than a risk of:
- 3924 (A) an affiliate;
- 3925 (B) a member organization of its association; and
- 3926 (C) an affiliate of a member organization of its association;
- 3927 (iii) an industrial insured captive insurance company may not insure a risk other than a
- 3928 risk of:
- 3929 (A) an industrial insured that is part of the industrial insured group;
- 3930 (B) an affiliate of an industrial insured that is part of the industrial insured group; and
- 3931 (C) a controlled unaffiliated business of:
- 3932 (I) an industrial insured that is part of the industrial insured group; or
- 3933 (II) an affiliate of an industrial insured that is part of the industrial insured group;
- 3934 (iv) a special purpose captive insurance company may only insure a risk of its parent;
- 3935 (v) a captive insurance company may not provide:
- 3936 (A) personal motor vehicle insurance coverage;
- 3937 (B) homeowner's insurance coverage; or
- 3938 (C) a component of a coverage described in this Subsection (1)(b)(v); and
- 3939 (vi) a captive insurance company may not accept or cede reinsurance except as
- 3940 provided in Section [31A-37-303](#).
- 3941 (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a
- 3942 special purpose captive insurance company may provide:
- 3943 (i) insurance;
- 3944 (ii) reinsurance; or
- 3945 (iii) both insurance and reinsurance.
- 3946 (2) To conduct insurance business in this state a captive insurance company shall:
- 3947 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
- 3948 insurance business in this state;

- 3949 (b) hold at least once each year in this state:
- 3950 (i) a board of directors meeting; [~~or~~]
- 3951 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting; or
- 3952 (iii) in the case of a limited liability company, a meeting of the managers;
- 3953 (c) maintain in this state:
- 3954 (i) the principal place of business of the captive insurance company; or
- 3955 (ii) in the case of a branch captive insurance company, the principal place of business
- 3956 for the branch operations of the branch captive insurance company; and
- 3957 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
- 3958 service of process and to otherwise act on behalf of the captive insurance company in this state.
- 3959 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company
- 3960 formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable
- 3961 diligence be found at the registered office of the captive insurance company, the commissioner
- 3962 is the agent of the captive insurance company upon whom process, notice, or demand may be
- 3963 served.
- 3964 (4) (a) Before receiving a certificate of authority, a captive insurance company:
- 3965 (i) formed as a corporation shall file with the commissioner:
- 3966 (A) a certified copy of:
- 3967 (I) articles of incorporation or the charter of the corporation; and
- 3968 (II) bylaws of the corporation;
- 3969 (B) a statement under oath of the president and secretary of the corporation showing
- 3970 the financial condition of the corporation; and
- 3971 (C) any other statement or document required by the commissioner under Section
- 3972 [31A-37-106](#);
- 3973 (ii) formed as a reciprocal shall:
- 3974 (A) file with the commissioner:
- 3975 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;
- 3976 (II) a certified copy of the subscribers' agreement of the reciprocal;

3977 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the
3978 financial condition of the reciprocal; and
3979 (IV) any other statement or document required by the commissioner under Section
3980 [31A-37-106](#); and
3981 (B) submit to the commissioner for approval a description of the:
3982 (I) coverages;
3983 (II) deductibles;
3984 (III) coverage limits;
3985 (IV) rates; and
3986 (V) any other information the commissioner requires under Section [31A-37-106](#)~~[-]~~; and
3987 (iii) formed as a limited liability company shall file with the commissioner:
3988 (A) a certified copy of the certificate of organization and the operating agreement of
3989 the organization;
3990 (B) a statement under oath of the president and secretary of the organization showing
3991 the financial condition of the organization;
3992 (C) evidence that the limited liability company is manager-managed; and
3993 (D) any other statement or document required by the commissioner under Section
3994 [31A-37-106](#).
3995 (b) (i) If there is a subsequent material change in an item in the description required
3996 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal
3997 captive insurance company shall submit to the commissioner for approval an appropriate
3998 revision to the description required under Subsection (4)(a)(ii)(B).
3999 (ii) A reciprocal captive insurance company that is required to submit a revision under
4000 Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner
4001 approves a revision of the description.
4002 (iii) A reciprocal captive insurance company shall inform the commissioner of a
4003 material change in a rate within 30 days of the adoption of the change.
4004 (c) In addition to the information required by Subsection (4)(a), an applicant captive

4005 insurance company shall file with the commissioner evidence of:

4006 (i) the amount and liquidity of the assets of the applicant captive insurance company
4007 relative to the risks to be assumed by the applicant captive insurance company;

4008 (ii) the adequacy of the expertise, experience, and character of the person who will
4009 manage the applicant captive insurance company;

4010 (iii) the overall soundness of the plan of operation of the applicant captive insurance
4011 company;

4012 (iv) the adequacy of the loss prevention programs for the following of the applicant
4013 captive insurance company:

4014 (A) a parent;

4015 (B) a member organization; or

4016 (C) an industrial insured; and

4017 (v) any other factor the commissioner:

4018 (A) adopts by rule under Section 31A-37-106; and

4019 (B) considers relevant in ascertaining whether the applicant captive insurance company
4020 will be able to meet the policy obligations of the applicant captive insurance company.

4021 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an
4022 applicant sponsored captive insurance company shall file with the commissioner:

4023 (i) a business plan at the level of detail required by the commissioner under Section
4024 31A-37-106 demonstrating:

4025 (A) the manner in which the applicant sponsored captive insurance company will
4026 account for the losses and expenses of each protected cell; and

4027 (B) the manner in which the applicant sponsored captive insurance company will report
4028 to the commissioner the financial history, including losses and expenses, of each protected cell;

4029 (ii) a statement acknowledging that the applicant sponsored captive insurance company
4030 will make all financial records of the applicant sponsored captive insurance company,
4031 including records pertaining to a protected cell, available for inspection or examination by the
4032 commissioner;

4033 (iii) a contract or sample contract between the applicant sponsored captive insurance
4034 company and a participant; and

4035 (iv) evidence that expenses will be allocated to each protected cell in an equitable
4036 manner.

4037 (5) (a) Information submitted pursuant to Subsection (4) is classified as a protected
4038 record under Title 63G, Chapter 2, Government Records Access and Management Act.

4039 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and
4040 Management Act, the commissioner may disclose information submitted pursuant to
4041 Subsection (4) to a public official having jurisdiction over the regulation of insurance in
4042 another state if:

4043 (i) the public official receiving the information agrees in writing to maintain the
4044 confidentiality of the information; and

4045 (ii) the laws of the state in which the public official serves require the information to be
4046 confidential.

4047 (c) This Subsection (5) does not apply to information provided by an industrial insured
4048 captive insurance company insuring the risks of an industrial insured group.

4049 (6) (a) A captive insurance company shall pay to the department the following
4050 nonrefundable fees established by the department under Sections [31A-3-103](#), [31A-3-304](#), and
4051 [63J-1-504](#):

4052 (i) a fee for examining, investigating, and processing, by a department employee, of an
4053 application for a certificate of authority made by a captive insurance company;

4054 (ii) a fee for obtaining a certificate of authority for the year the captive insurance
4055 company is issued a certificate of authority by the department; and

4056 (iii) a certificate of authority renewal fee.

4057 (b) The commissioner may:

4058 (i) assign a department employee or retain legal, financial, and examination services
4059 from outside the department to perform the services described in:

4060 (A) Subsection (6)(a); and

4061 (B) Section 31A-37-502; and
4062 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the
4063 applicant captive insurance company.

4064 (7) If the commissioner is satisfied that the documents and statements filed by the
4065 applicant captive insurance company comply with this chapter, the commissioner may grant a
4066 certificate of authority authorizing the company to do insurance business in this state.

4067 (8) A certificate of authority granted under this section expires annually and shall be
4068 renewed by July 1 of each year.

4069 Section 41. Section 31A-37-204 is amended to read:

4070 **31A-37-204. Paid-in capital -- Other capital.**

4071 (1) (a) The commissioner may not issue a certificate of authority to a company
4072 described in Subsection (1)(c) unless the company possesses and thereafter maintains
4073 unimpaired paid-in capital and unimpaired paid-in surplus of:

4074 (i) in the case of a pure captive insurance company, not less than [~~\$100,000~~] \$250,000;

4075 (ii) in the case of an association captive insurance company incorporated as a stock
4076 insurer, not less than [~~\$400,000~~] \$750,000;

4077 (iii) in the case of an industrial insured captive insurance company incorporated as a
4078 stock insurer, not less than [~~\$200,000~~] \$700,000;

4079 (iv) in the case of a sponsored captive insurance company, not less than [~~\$500,000~~]
4080 \$1,000,000, of which a minimum of \$350,000 is provided by the sponsor; or

4081 (v) in the case of a special purpose captive insurance company, an amount determined
4082 by the commissioner after giving due consideration to the company's business plan, feasibility
4083 study, and pro-formas, including the nature of the risks to be insured.

4084 (b) The paid-in capital and surplus required under this Subsection (1) may be in the
4085 form of:

4086 (i) (A) cash; or

4087 (B) cash equivalent; or

4088 (ii) an irrevocable letter of credit:

- 4089 (A) issued by:
- 4090 (I) a bank chartered by this state; or
- 4091 (II) a member bank of the Federal Reserve System; and
- 4092 (B) approved by the commissioner.
- 4093 (c) This Subsection (1) applies to:
- 4094 (i) a pure captive insurance company;
- 4095 (ii) a sponsored captive insurance company;
- 4096 (iii) a special purpose captive insurance company;
- 4097 (iv) an association captive insurance company incorporated as a stock insurer; or
- 4098 (v) an industrial insured captive insurance company incorporated as a stock insurer.
- 4099 (2) (a) The commissioner may, under Section [31A-37-106](#), prescribe additional capital
- 4100 based on the type, volume, and nature of insurance business transacted.
- 4101 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the
- 4102 form of:
- 4103 (i) cash; or
- 4104 (ii) an irrevocable letter of credit issued by:
- 4105 (A) a bank chartered by this state; or
- 4106 (B) a member bank of the Federal Reserve System.
- 4107 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as
- 4108 security for the payment of liabilities attributable to branch operations, shall, through its branch
- 4109 operations, establish and maintain a trust fund:
- 4110 (i) funded by an irrevocable letter of credit or other acceptable asset; and
- 4111 (ii) in the United States for the benefit of:
- 4112 (A) United States policyholders; and
- 4113 (B) United States ceding insurers under:
- 4114 (I) insurance policies issued; or
- 4115 (II) reinsurance contracts issued or assumed.
- 4116 (b) The amount of the security required under this Subsection (3) shall be no less than:

- 4117 (i) the capital and surplus required by this chapter; and
- 4118 (ii) the reserves on the insurance policies or reinsurance contracts, including:
- 4119 (A) reserves for losses;
- 4120 (B) allocated loss adjustment expenses;
- 4121 (C) incurred but not reported losses; and
- 4122 (D) unearned premiums with regard to business written through branch operations.
- 4123 (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may
- 4124 permit a branch captive insurance company that is required to post security for loss reserves on
- 4125 branch business by its reinsurer to reduce the funds in the trust account required by this section
- 4126 by the same amount as the security posted if the security remains posted with the reinsurer.
- 4127 (4) (a) A captive insurance company may not pay the following without the prior
- 4128 approval of the commissioner:
- 4129 (i) a dividend out of capital or surplus in excess of the limits under Section
- 4130 [16-10a-640](#); or
- 4131 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
- 4132 [16-10a-640](#).
- 4133 (b) The commissioner shall condition approval of an ongoing plan for the payment of
- 4134 dividends or other distributions on the retention, at the time of each payment, of capital or
- 4135 surplus in excess of:
- 4136 (i) amounts specified by the commissioner under Section [31A-37-106](#); or
- 4137 (ii) determined in accordance with formulas approved by the commissioner under
- 4138 Section [31A-37-106](#).
- 4139 (5) Notwithstanding Subsection (1), a captive insurance company organized as a
- 4140 reciprocal insurer under this chapter may not be issued a certificate of authority unless the
- 4141 captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.
- 4142 (6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based
- 4143 upon the type, volume, and nature of the insurance business transacted.
- 4144 (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the

4145 form of an irrevocable letter of credit issued by:

4146 (i) a bank chartered by this state; or

4147 (ii) a member bank of the Federal Reserve System.

4148 Section 42. Section **31A-37-301** is amended to read:

4149 **31A-37-301. Incorporation -- Organization.**

4150 (1) A pure captive insurance company or a sponsored captive insurance company shall
4151 be incorporated as a stock insurer with the capital of the pure captive insurance company or
4152 sponsored captive insurance company:

4153 (a) divided into shares; and

4154 (b) held by the stockholders of the pure captive insurance company or sponsored
4155 captive insurance company.

4156 (2) A pure captive insurance company or a sponsored captive insurance company
4157 formed as a limited liability company shall be organized as a members' interest insurer with the
4158 capital of the pure captive insurance company or sponsored captive insurance company:

4159 (a) divided into interests; and

4160 (b) held by the members of the pure captive insurance company or sponsored captive
4161 insurance company.

4162 [~~2~~] (3) An association captive insurance company or an industrial insured captive
4163 insurance company may be:

4164 (a) incorporated as a stock insurer with the capital of the association captive insurance
4165 company or industrial insured captive insurance company:

4166 (i) divided into shares; and

4167 (ii) held by the stockholders of the association captive insurance company or industrial
4168 insured captive insurance company;

4169 (b) incorporated as a mutual insurer without capital stock, with a governing body
4170 elected by the member organizations of the association captive insurance company or industrial
4171 insured captive insurance company; or

4172 (c) organized as a reciprocal.

4173 [~~(3)~~] (4) A captive insurance company formed as a corporation may not have fewer
4174 than three incorporators of whom [~~not fewer than two shall be residents~~] one shall be a resident
4175 of this state.

4176 (5) A captive insurance company formed as a limited liability company may not have
4177 fewer than three organizers of whom one shall be a resident of this state.

4178 [~~(4)~~] (6) (a) Before a captive insurance company formed as a corporation files the
4179 corporation's articles of incorporation with the Division of Corporations and Commercial
4180 Code, the incorporators shall obtain from the commissioner a certificate finding that the
4181 establishment and maintenance of the proposed corporation will promote the general good of
4182 the state.

4183 (b) In considering a request for a certificate under Subsection [~~(4)~~] (6)(a), the
4184 commissioner shall consider:

4185 (i) the character, reputation, financial standing, and purposes of the incorporators;

4186 (ii) the character, reputation, financial responsibility, insurance experience, and
4187 business qualifications of the officers and directors;

4188 (iii) any information in:

4189 (A) the application for a certificate of authority; or

4190 (B) the department's files; and

4191 (iv) other aspects that the commissioner considers advisable.

4192 (7) (a) Before a captive insurance company formed as a limited liability company files
4193 the limited liability company's articles of organization with the Division of Corporations and
4194 Commercial Code, the limited liability company shall obtain from the commissioner a
4195 certificate finding that the establishment and maintenance of the proposed limited liability
4196 company will promote the general good of the state.

4197 (b) In considering a request for a certificate under Subsection (7)(a), the commissioner
4198 shall consider:

4199 (i) the character, reputation, financial standing, and purposes of the organizers;

4200 (ii) the character, reputation, financial responsibility, insurance experience, and

4201 business qualifications of the managers;

4202 (iii) any information in:

4203 (A) the application for a certificate of authority; or

4204 (B) the department's files; and

4205 (iv) other aspects that the commissioner considers advisable.

4206 [~~5~~] (8) (a) A captive insurance company formed as a corporation shall file with the

4207 Division of Corporations and Commercial Code:

4208 (i) the captive insurance company's articles of incorporation;

4209 (ii) the certificate issued pursuant to Subsection [~~4~~] (6); and

4210 (iii) the fees required by the Division of Corporations and Commercial Code.

4211 (b) The Division of Corporations and Commercial Code shall file both the articles of

4212 incorporation and the certificate described in Subsection [~~4~~] (6) for a captive insurance

4213 company that complies with this section.

4214 (9) (a) A captive insurance company formed as a limited liability company shall file

4215 with the Division of Corporations and Commercial Code:

4216 (i) the captive insurance company's certificate of organization;

4217 (ii) the certificate issued pursuant to Subsection (7); and

4218 (iii) the fees required by the Division of Corporations and Commercial Code.

4219 (b) The Division of Corporations and Commercial Code shall file both the certificate

4220 of organization and the certificate described in Subsection (7) for a captive insurance company

4221 that complies with this section.

4222 [~~6~~] (10) (a) The organizers of a captive insurance company formed as a reciprocal

4223 insurer shall obtain from the commissioner a certificate finding that the establishment and

4224 maintenance of the proposed association will promote the general good of the state.

4225 (b) In considering a request for a certificate under Subsection [~~6~~] (10)(a), the

4226 commissioner shall consider:

4227 (i) the character, reputation, financial standing, and purposes of the incorporators;

4228 (ii) the character, reputation, financial responsibility, insurance experience, and

4229 business qualifications of the officers and directors;

4230 (iii) any information in:

4231 (A) the application for a certificate of authority; or

4232 (B) the department's files; and

4233 (iv) other aspects that the commissioner considers advisable.

4234 ~~[(7)]~~ (11) (a) An alien captive insurance company that has received a certificate of
4235 authority to act as a branch captive insurance company shall obtain from the commissioner a
4236 certificate finding that:

4237 (i) the home state of the alien captive insurance company imposes statutory or
4238 regulatory standards in a form acceptable to the commissioner on companies transacting the
4239 business of insurance in that state; and

4240 (ii) after considering the character, reputation, financial responsibility, insurance
4241 experience, and business qualifications of the officers and directors of the alien captive
4242 insurance company, and other relevant information, the establishment and maintenance of the
4243 branch operations will promote the general good of the state.

4244 (b) After the commissioner issues a certificate under Subsection ~~[(7)]~~ (11)(a) to an
4245 alien captive insurance company, the alien captive insurance company may register to do
4246 business in this state.

4247 ~~[(8) The capital stock of a captive insurance company incorporated as a stock insurer
4248 may not be issued at less than par value.]~~

4249 ~~[(9)]~~ (12) At least one of the members of the board of directors of a captive insurance
4250 company formed as a corporation shall be a resident of this state.

4251 (13) At least one of the managers of a limited liability company shall be a resident of
4252 this state.

4253 ~~[(10)]~~ (14) At least one of the members of the subscribers' advisory committee of a
4254 captive insurance company formed as a reciprocal insurer shall be a resident of this state.

4255 ~~[(11)]~~ (15) (a) A captive insurance company formed as a corporation under this chapter
4256 has the privileges and is subject to the provisions of the general corporation law as well as the

4257 applicable provisions contained in this chapter.

4258 (b) If a conflict exists between a provision of the general corporation law and a
4259 provision of this chapter, this chapter shall control.

4260 (c) Except as provided in Subsection [~~(11)~~] (15)(d), the provisions of this title
4261 pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in
4262 determining the procedures to be followed by a captive insurance company in carrying out any
4263 of the transactions described in those provisions.

4264 (d) Notwithstanding Subsection [~~(11)~~] (15)(c), the commissioner may waive or modify
4265 the requirements for public notice and hearing in accordance with rules adopted under Section
4266 [31A-37-106](#).

4267 (e) If a notice of public hearing is required, but no one requests a hearing, the
4268 commissioner may cancel the public hearing.

4269 (16) (a) A captive insurance company formed as a limited liability company under this
4270 chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability
4271 Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act,
4272 as appropriate pursuant to Section [48-3a-1405](#), as well as the applicable provisions in this
4273 chapter.

4274 (b) If a conflict exists between a provision of the limited liability company law and a
4275 provision of this chapter, this chapter controls.

4276 (c) The provisions of this title pertaining to a merger, consolidation, conversion,
4277 mutualization, and redomestication apply in determining the procedures to be followed by a
4278 captive insurance company in carrying out any of the transactions described in those
4279 provisions.

4280 (d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the
4281 requirements for public notice and hearing in accordance with rules adopted under Section
4282 [31A-37-106](#).

4283 (e) If a notice of public hearing is required, but no one requests a hearing, the
4284 commissioner may cancel the public hearing.

4285 ~~[(12)]~~ (17) (a) A captive insurance company formed as a reciprocal insurer under this
4286 chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions
4287 of this chapter.

4288 (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions
4289 of this chapter with respect to a captive insurance company, this chapter shall control.

4290 (c) To the extent a reciprocal insurer is made subject to other provisions of this title
4291 pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer
4292 formed under this chapter unless the provisions are expressly made applicable to a captive
4293 insurance company under this chapter.

4294 (d) In addition to the provisions of this Subsection ~~[(12)]~~ (17), a captive insurance
4295 company organized as a reciprocal insurer that is an industrial insured group has the privileges
4296 of Section 31A-4-114 in addition to applicable provisions of this title.

4297 ~~[(13)]~~ (18) (a) The articles of incorporation or bylaws of a captive insurance company
4298 formed as a corporation may not authorize a quorum of a board of directors to consist of fewer
4299 than one-third of the fixed or prescribed number of directors as provided in Section
4300 16-10a-824.

4301 (b) The certificate of organization of a captive insurance company formed as a limited
4302 liability company may not authorize a quorum of a board of managers to consist of fewer than
4303 one-third of the fixed or prescribed number of directors required in Section 16-10a-824.

4304 Section 43. Section 31A-37-302 is amended to read:

4305 **31A-37-302. Investment requirements.**

4306 (1) (a) Except as provided in Subsection (1)(b), an association captive insurance
4307 company, a sponsored captive insurance company, and an industrial insured group shall
4308 comply with the investment requirements contained in this title.

4309 (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the
4310 commissioner may approve the use of alternative reliable methods of valuation and rating
4311 under Section 31A-37-106 for:

4312 (i) an association captive insurance company;

4313 (ii) a sponsored captive insurance company; or

4314 (iii) an industrial insured group.

4315 (2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or
4316 industrial insured captive insurance company is not subject to any restrictions on allowable
4317 investments contained in this title.

4318 (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section
4319 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

4320 (i) a pure captive insurance company; or

4321 (ii) an industrial insured captive insurance company.

4322 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may
4323 not make loans to:

4324 (A) the parent company of the captive insurance company; or

4325 (B) an affiliate of the captive insurance company.

4326 (ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make
4327 loans to:

4328 (A) the parent company of the pure captive insurance company; or

4329 (B) an affiliate of the pure captive insurance company.

4330 (b) A loan under Subsection (3)(a):

4331 (i) may be made only on the prior written approval of the commissioner; and

4332 (ii) shall be evidenced by a note in a form approved by the commissioner.

4333 (c) A pure captive insurance company may not make a loan from ~~[(i)]~~ the paid-in
4334 capital required under Subsection 31A-37-204(1) ~~[; or]~~.

4335 ~~[(ii) the free surplus required under Subsection 31A-37-205(1).]~~

4336 Section 44. Section 31A-37-303 is amended to read:

4337 **31A-37-303. Reinsurance.**

4338 (1) A captive insurance company may provide reinsurance, as authorized in this title,
4339 on risks ceded ~~[by any other insurer]~~ for the benefit of a parent, affiliate, or controlled
4340 unaffiliated business.

4341 (2) (a) A captive insurance company may take credit for reserves on risks or portions of
4342 risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404.

4343 (b) Unless the reinsurer is in compliance with Section 31A-17-404, a captive insurance
4344 company may not take credit for:

4345 (i) reserves on risks ceded to a reinsurer; or

4346 (ii) portions of risks ceded to a reinsurer.

4347 Section 45. Section 31A-37-306 is amended to read:

4348 **31A-37-306. Conversion or merger.**

4349 (1) An association captive insurance company or industrial insured group formed as a
4350 stock or mutual corporation may be:

4351 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

4352 (b) merged with and into a reciprocal insurer in accordance with a plan and this
4353 section.

4354 (2) An association captive insurance company or industrial group formed as a limited
4355 liability company may be:

4356 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

4357 (b) merged with and into a reciprocal insurer in accordance with a plan and this
4358 section.

4359 [~~2~~] (3) A plan for a conversion or merger under this section:

4360 (a) shall be fair and equitable to:

4361 (i) the shareholders, in the case of a stock insurer; [~~or~~]

4362 (ii) the policyholders, in the case of a mutual insurer; and

4363 (iii) the members, in the case of a limited liability company insurer; and

4364 (b) shall provide for the purchase of:

4365 (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the
4366 same manner and subject to the same rights and conditions as are provided a dissenting
4367 shareholder; or

4368 (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in

4369 substantially the same manner and subject to the same rights and conditions as are provided a
4370 dissenting policyholder.

4371 ~~[(3)]~~ (4) In the case of a conversion authorized under Subsection (1) or (2):

4372 (a) the conversion shall be accomplished under a reasonable plan and procedure that
4373 are approved by the commissioner;

4374 (b) the commissioner may not approve the plan of conversion under this section unless
4375 the plan:

4376 (i) satisfies Subsections ~~[(2)]~~ (3) and ~~[(6)]~~ (7);

4377 (ii) provides for the conversion of existing stockholder [~~or~~], policyholder, or member
4378 interests into subscriber interests in the resulting reciprocal insurer, proportionate to
4379 stockholder [~~or~~], policyholder, or member interests in the stock or mutual insurer or limited
4380 liability company; and

4381 (iii) is approved:

4382 (A) in the case of a stock insurer, by a majority of the shares entitled to vote
4383 represented in person or by proxy at a duly called regular or special meeting at which a quorum
4384 is present; [~~or~~]

4385 (B) in the case of a mutual insurer, by a majority of the voting interests of
4386 policyholders represented in person or by proxy at a duly called regular or special meeting at
4387 which a quorum is present; or

4388 (C) in the case of a limited liability company insurer, by a majority of the voting
4389 managers represented in person or by proxy at a duly called regular or special meeting at which
4390 a quorum is present;

4391 (c) the commissioner shall approve a plan of conversion if the commissioner finds that
4392 the conversion will promote the general good of the state in conformity with the standards
4393 under [~~Subsection~~] Section 31A-37-301~~[(4)]~~;

4394 (d) if the commissioner approves a plan of conversion, the commissioner shall amend
4395 the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and
4396 issue the amended certificate of authority to the company's attorney-in-fact;

4397 (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the
4398 commissioner, the conversion is effective; and

4399 (f) upon the effectiveness of the conversion:

4400 (i) the corporate existence of the converting insurer shall cease; and

4401 (ii) the resulting reciprocal insurer shall notify the Division of Corporations and
4402 Commercial Code of the conversion.

4403 ~~[(4)]~~ (5) A merger authorized under Subsection (1) or (2) shall be accomplished
4404 substantially in accordance with the procedures set forth in this title except that, solely for
4405 purposes of the merger:

4406 (a) the plan or merger shall satisfy Subsection ~~[(2)]~~ (3);

4407 (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the
4408 board of directors of a stock or mutual insurance company;

4409 (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of
4410 a mutual insurance company;

4411 (d) if a subscribers' advisory committee does not have a president or secretary, the
4412 officers of the committee having substantially equivalent duties are the president and secretary
4413 of the committee;

4414 (e) the commissioner shall approve the articles of merger if the commissioner finds that
4415 the merger will promote the general good of the state in conformity with the standards under
4416 ~~[Subsection]~~ Section 31A-37-301~~[(4)]~~;

4417 (f) notwithstanding ~~[Sections]~~ Section 31A-37-204 ~~[and 31A-37-205]~~, the
4418 commissioner may permit the formation, without capital and surplus, of a captive insurance
4419 company organized as a reciprocal insurer, into which an existing captive insurance company
4420 may be merged to facilitate a transaction under this section, if there is no more than one
4421 authorized insurance company surviving the merger; and

4422 (g) an alien insurer may be a party to a merger authorized under Subsection (1) or (2)
4423 if:

4424 (i) the requirements for the merger between a domestic and a foreign insurer under

4425 Chapter 16, Insurance Holding Companies, are applied to the merger; and

4426 (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding
4427 Companies.

4428 ~~[(5)]~~ (6) If the commissioner approves the articles of merger under this section:

4429 (a) the commissioner shall endorse the commissioner's approval on the articles; and

4430 (b) the surviving insurer shall present the name to the Division of Corporations and
4431 Commercial Code.

4432 ~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), a conversion authorized
4433 under Subsection (1) shall provide for a hearing, of which notice has been given to the insurer,
4434 its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the
4435 case of a mutual insurer, all of whom have the right to appear at the hearing.

4436 (b) Notwithstanding Subsection ~~[(6)]~~ (7)(a), the commissioner may waive or modify
4437 the requirements for the hearing.

4438 (c) If a notice of hearing is required, but no hearing is requested, after notice has been
4439 given under Subsection ~~[(6)]~~ (7)(a), the commissioner may cancel the hearing.

4440 Section 46. Section **31A-37-401** is amended to read:

4441 **31A-37-401. Sponsored captive insurance companies -- Formation.**

4442 (1) One or more sponsors may form a sponsored captive insurance company under this
4443 chapter.

4444 (2) A sponsored captive insurance company formed under this chapter may establish
4445 and maintain a protected cell to insure risks of a participant if:

4446 (a) the shareholders of a sponsored captive insurance company are limited to:

4447 (i) the participants of the sponsored captive insurance company; and

4448 (ii) the sponsors of the sponsored captive insurance company;

4449 (b) each protected cell is accounted for separately on the books and records of the
4450 sponsored cell captive insurance company to reflect:

4451 (i) the financial condition of ~~[the]~~ each individual protected cell;

4452 (ii) the results of operations of ~~[the]~~ each individual protected cell;

- 4453 (iii) the net income or loss of ~~[the]~~ each individual protected cell;
- 4454 (iv) the dividends or other distributions to participants of ~~[the]~~ each individual
- 4455 protected cell; and
- 4456 (v) other factors that may be:
- 4457 (A) provided in the participant contract; or
- 4458 (B) required by the commissioner;
- 4459 (c) the assets of a protected cell are not chargeable with liabilities arising out of any
- 4460 other insurance business the sponsored captive insurance company may conduct;
- 4461 (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive
- 4462 insurance company between or among any of the protected cells of the sponsored captive
- 4463 insurance company without the consent of the protected cells;
- 4464 (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a
- 4465 protected cell to a sponsor or participant without the commissioner's approval, which may not
- 4466 be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or
- 4467 impairment with respect to a protected cell;
- 4468 (f) a sponsored captive insurance company annually files with the commissioner
- 4469 financial reports the commissioner requires under Section [31A-37-106](#), including accounting
- 4470 statements detailing the financial experience of each protected cell;
- 4471 (g) a sponsored captive insurance company notifies the commissioner in writing within
- 4472 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or
- 4473 expense obligations of the protected cell;
- 4474 (h) a participant contract does not take effect without the commissioner's prior written
- 4475 approval; ~~[and]~~
- 4476 (i) the addition of each new protected cell and withdrawal of a participant of any
- 4477 existing protected cell does not take effect without the commissioner's prior written
- 4478 approval~~[-]~~; and
- 4479 (j) (i) a protected cell captive insurance company shall pay to the department the
- 4480 following nonrefundable fees established by the department under Sections [31A-3-103](#),

4481 31A-3-304, and 63J-1-504:

4482 (A) a fee for examining, investigating, and processing by a department employee of an
4483 application for a certificate of authority made by a protected cell captive insurance company;

4484 (B) a fee for obtaining a certificate of authority for the year the protected cell captive
4485 insurance company is issued a certificate of authority by the department; and

4486 (C) a certificate of authority renewal fee; and

4487 (ii) a protected cell may be created by the sponsor or the sponsor may create a pooling
4488 insurance arrangement to provide for pooling of risks to allow for risk distribution upon written
4489 approval from every protected cell under the sponsor and written approval of the
4490 commissioner.

4491 Section 47. Section **31A-37-402** is amended to read:

4492 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**
4493 **mandatory.**

4494 (1) A sponsor of a sponsored captive insurance company shall be:

4495 (a) an insurer authorized or approved under the laws of a state;

4496 (b) a reinsurer authorized or approved under the laws of a state;

4497 (c) a captive insurance company holding a certificate of authority under this chapter;

4498 (d) an insurance holding company that:

4499 (i) controls an insurer licensed pursuant to the laws of a state; and

4500 (ii) is subject to registration pursuant to the holding company system of laws of the
4501 state of domicile of the insurer described in Subsection (1)(d)(i); [~~or~~]

4502 (e) an approved captive management firm in Utah or its affiliates; or

4503 [~~(e)~~] (f) another person approved by the commissioner after finding that the approval of
4504 the person as a sponsor is not inconsistent with the purposes of this chapter.

4505 (2) (a) The business written by a sponsored captive insurance company with respect to
4506 a protected cell shall be fronted by the sponsor insurance company through a controlled
4507 unaffiliated contract or an insurer that is:

4508 (i) authorized or approved:

- 4509 (A) under the laws of a state; or
- 4510 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an
- 4511 insurance company licensed pursuant to the laws of a state;
- 4512 (ii) reinsured by a reinsurer authorized or approved by this state; or
- 4513 (iii) subject to Subsection (2)(b), secured by a trust fund:
- 4514 (A) in the United States;
- 4515 (B) for the benefit of policyholders and claimants; [~~and~~]
- 4516 (C) funded by an irrevocable letter of credit or other asset acceptable to the
- 4517 commissioner[-]; and
- 4518 (D) held by the sponsor as provided in Subsection [31A-17-404\(1\)](#).
- 4519 (b) (i) The amount of security provided by the trust fund described in Subsection
- 4520 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,
- 4521 including:
- 4522 (A) reserves for losses;
- 4523 (B) allocated loss adjustment expenses;
- 4524 (C) incurred but unreported losses; and
- 4525 (D) unearned premiums for business written through the participant's protected cell.
- 4526 (ii) The commissioner may require the sponsored captive insurance company to
- 4527 increase the funding of a trust established pursuant to this Subsection (2).
- 4528 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of
- 4529 credit, the letter of credit shall be established, issued, or confirmed by a bank that is:
- 4530 (A) chartered in this state;
- 4531 (B) a member of the federal reserve system; or
- 4532 (C) chartered by another state if that state-chartered bank is acceptable to the
- 4533 commissioner.
- 4534 (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a
- 4535 form and upon terms approved by the commissioner.
- 4536 (3) A risk retention group may not be either a sponsor or a participant of a sponsored

4537 captive insurance company.

4538 Section 48. Section **31A-37-403** is amended to read:

4539 **31A-37-403. Participants in sponsored captive insurance companies.**

4540 (1) Any of the following may be a participant in a sponsored captive insurance
4541 company holding a certificate of authority under this chapter:

4542 (a) an association;

4543 (b) a corporation that is for profit or nonprofit;

4544 (c) a limited liability company;

4545 (d) a partnership;

4546 (e) a trust; or

4547 (f) any other business entity.

4548 (2) A sponsor may be a participant in a sponsored captive insurance company.

4549 (3) A participant need not be:

4550 (a) a shareholder of the sponsored captive insurance company; or

4551 (b) an affiliate of the sponsored captive insurance company.

4552 (4) A participant shall insure only the participant's own risks through a sponsored
4553 captive insurance company unless otherwise approved by the commissioner.

4554 Section 49. Section **31A-37-404** is amended to read:

4555 **31A-37-404. Discounting of loss and loss adjustment expense reserves.**

4556 (1) [~~The following~~] A sponsored captive insurance company may discount its loss and
4557 loss adjustment expense reserves at treasury rates applied to the applicable payments projected
4558 through the use of the expected payment pattern associated with the reserves[?].

4559 [~~(a) a sponsored captive insurance company; and~~]

4560 [~~(b) a captive reinsurance company.~~]

4561 (2) (a) [~~The following~~] A sponsored captive insurance company shall annually file with
4562 the department an actuarial opinion provided by an independent actuary on loss and loss
4563 adjustment expense reserves[?].

4564 [~~(i) a sponsored captive insurance company; and~~]

4565 ~~[(ii) a captive reinsurance company.]~~
4566 (b) The independent actuary described in Subsection (2)(a) may not be an employee of:
4567 (i) the company filing the actuarial opinion; or
4568 (ii) an affiliate of the company filing the actuarial opinion.
4569 (3) The commissioner may disallow the discounting of reserves by ~~[the following]~~ a
4570 sponsored captive insurance company if the sponsored captive insurance company violates this
4571 title[?].
4572 ~~[(a) a sponsored captive insurance company, or]~~
4573 ~~[(b) a captive reinsurance company.]~~
4574 Section 50. Section **31A-37-501** is amended to read:
4575 **31A-37-501. Reports to commissioner.**
4576 (1) A captive insurance company is not required to make a report except those
4577 provided in this chapter.
4578 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the
4579 commissioner a report of the financial condition of the captive insurance company, verified by
4580 oath of two of the executive officers of the captive insurance company.
4581 (b) Except as provided in ~~[Sections]~~ Section 31A-37-204 ~~[and 31A-37-205]~~, a captive
4582 insurance company shall report:
4583 (i) using generally accepted accounting principles, except to the extent that the
4584 commissioner requires, approves, or accepts the use of a statutory accounting principle;
4585 (ii) using a useful or necessary modification or adaptation to an accounting principle
4586 that is required, approved, or accepted by the commissioner for the type of insurance and kind
4587 of insurer to be reported upon; and
4588 (iii) supplemental or additional information required by the commissioner.
4589 (c) Except as otherwise provided:
4590 (i) a licensed captive insurance company shall file the report required by Section
4591 31A-4-113; and
4592 (ii) an industrial insured group shall comply with Section 31A-4-113.5.

4593 (3) (a) A pure captive insurance company may make written application to file the
4594 required report on a fiscal year end that is consistent with the fiscal year of the parent company
4595 of the pure captive insurance company.

4596 (b) If the commissioner grants an alternative reporting date for a pure captive insurance
4597 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal
4598 year end.

4599 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall
4600 file with the commissioner a copy of the reports and statements required to be filed under the
4601 laws of the jurisdiction in which the alien captive insurance company is formed, verified by
4602 oath by two of the alien captive insurance company's executive officers.

4603 (b) If the commissioner is satisfied that the annual report filed by the alien captive
4604 insurance company in the jurisdiction in which the alien captive insurance company is formed
4605 provides adequate information concerning the financial condition of the alien captive insurance
4606 company, the commissioner may waive the requirement for completion of the annual statement
4607 required for a captive insurance company under this section with respect to business written in
4608 the alien jurisdiction.

4609 (c) A waiver by the commissioner under Subsection (4)(b):

4610 (i) shall be in writing; and

4611 (ii) is subject to public inspection.

4612 (5) Before March 1 of each year, a sponsored cell captive insurance company shall
4613 submit to the commissioner a consolidated report of the financial condition of each individual
4614 protected cell, including a financial statement for each protected cell.

4615 Section 51. Section **31A-37-502** is amended to read:

4616 **31A-37-502. Examination.**

4617 (1) (a) As provided in this section, the commissioner, or a person appointed by the
4618 commissioner, shall examine each captive insurance company in each [~~three-year~~] five-year
4619 period.

4620 (b) The [~~three-year~~] five-year period described in Subsection (1)(a) shall be determined

4621 on the basis of [~~three~~] five full annual accounting periods of operation.

4622 (c) The examination is to be made as of:

4623 (i) December 31 of the full three-year period; or

4624 (ii) the last day of the month of an annual accounting period authorized for a captive
4625 insurance company under this section.

4626 (d) In addition to an examination required under this Subsection (1), the commissioner,
4627 or a person appointed by the commissioner may examine a captive insurance company
4628 whenever the commissioner determines it to be prudent.

4629 (2) During an examination under this section the commissioner, or a person appointed
4630 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance
4631 company to ascertain:

4632 (a) the financial condition of the captive insurance company;

4633 (b) the ability of the captive insurance company to fulfill the obligations of the captive
4634 insurance company; and

4635 (c) whether the captive insurance company has complied with this chapter.

4636 [~~(3) The commissioner upon application may enlarge the three-year period described in~~
4637 ~~Subsection (1) to five years, if a captive insurance company is subject to a comprehensive~~
4638 ~~annual audit during that period:]~~

4639 [~~(a) of a scope satisfactory to the commissioner; and]~~

4640 [~~(b) performed by independent auditors approved by the commissioner.]~~

4641 [~~(4)~~] (3) The commissioner may accept a comprehensive annual independent audit in
4642 lieu of an examination:

4643 (a) of a scope satisfactory to the commissioner; and

4644 (b) performed by an independent auditor approved by the commissioner.

4645 [~~(5)~~] (4) A captive insurance company that is inspected and examined under this
4646 section shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an
4647 inspection and examination.

4648 Section 52. Section 31A-37-505 is amended to read:

4649 **31A-37-505. Suspension or revocation -- Grounds.**

4650 (1) The commissioner may suspend or revoke the certificate of authority of a captive
4651 insurance company to conduct an insurance business in this state for:

4652 (a) insolvency or impairment of capital or surplus;

4653 (b) failure to meet the requirements of Section 31A-37-204 [~~or 31A-37-205~~];

4654 (c) refusal or failure to submit:

4655 (i) an annual report required by Section 31A-37-501; or

4656 (ii) any other report or statement required by law or by lawful order of the
4657 commissioner;

4658 (d) failure to comply with the charter, bylaws, or other organizational document of the
4659 captive insurance company;

4660 (e) failure to submit to:

4661 (i) an examination under Section 31A-37-502; or

4662 (ii) any legal obligation relative to an examination under Section 31A-37-502;

4663 (f) refusal or failure to pay the cost of examination under Section 31A-37-502;

4664 (g) use of methods that, although not otherwise specifically prohibited by law, render:

4665 (i) the operation of the captive insurance company detrimental to the public or the
4666 policyholders of the captive insurance company; or

4667 (ii) the condition of the captive insurance company unsound with respect to the public
4668 or to the policyholders of the captive insurance company; or

4669 (h) failure otherwise to comply with laws of this state.

4670 (2) Notwithstanding any other provision of this title, if the commissioner finds, upon
4671 examination, hearing, or other evidence, that a captive insurance company has committed any
4672 of the acts specified in Subsection (1), the commissioner may suspend or revoke the certificate
4673 of authority of the captive insurance company if the commissioner considers it in the best
4674 interest of the public and the policyholders of the captive insurance company to revoke the
4675 certificate of authority.

4676 Section 53. Section 31A-43-301 is amended to read:

4677 **31A-43-301. Stop-loss insurance coverage standards.**

4678 (1) A small employer stop-loss insurance contract shall:

4679 (a) be issued to the small employer to provide insurance to the group health benefit
4680 plan, not the employees of the small employer;

4681 [~~(b)~~] ~~use a standard application form developed by the commissioner by administrative~~
4682 ~~rule;~~]

4683 [~~(c)~~] (b) have a contract term with guaranteed rates for at least 12 months, without
4684 adjustment, unless there is a change in the benefits provided under the small employer's health
4685 plan during the contract period;

4686 [~~(d)~~] (c) include both a specific attachment point and an aggregate attachment point in
4687 a contract;

4688 [~~(e)~~] (d) align stop-loss plan benefit limitations and exclusions with a small employer's
4689 health plan benefit limitations and exclusions, including any annual or lifetime limits in the
4690 employer's health plan;

4691 [~~(f)~~] (e) have an annual specific attachment point that is at least \$10,000;

4692 [~~(g)~~] (f) have an annual aggregate attachment point that may not be less than 85% of
4693 expected claims;

4694 [~~(h)~~] (g) pay stop-loss claims:

4695 (i) incurred during the contract period; and

4696 (ii) paid within 12 months after the expiration date of the contract; and

4697 [~~(i)~~] (h) include provisions to cover incurred and unpaid stop-loss claims [~~if a~~] when
4698 the small [employer] employer's stop-loss plan terminates.

4699 (2) A small employer stop-loss contract shall not:

4700 (a) include lasering; and

4701 (b) pay claims directly to an individual employee, member, or participant.

4702 Section 54. Section **63I-2-231** is amended to read:

4703 **63I-2-231. Repeal dates, Title 31A.**

4704 (1) Section [31A-22-315.5](#) is repealed July 1, 2016.

4705 (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed July 1,
4706 ~~[2015]~~ 2016.

4707 Section 55. **Repealer.**

4708 This bill repeals:

4709 Section **31A-37-205, Free surplus.**

4710 Section **31A-37-601, Incorporation of a captive reinsurance company.**

4711 Section **31A-37-602, Requirements of a captive reinsurance company.**

4712 Section **31A-37-603, Minimum capitalization or reserves for a captive reinsurance**
4713 **company.**

4714 Section **31A-37-604, Management of assets of a captive reinsurance company.**

4715 Section 56. **Effective date.**

4716 This bill takes effect on May 12, 2015, except that:

4717 (1) the amendments in this bill to Section **31A-3-304** (Effective 07/01/15) take effect
4718 on July 1, 2015; and

4719 (2) the actions affecting the following sections in this bill take effect on October 1,
4720 2015:

4721 (a) Section **31A-16-102.5**;

4722 (b) Section **31A-16-103**;

4723 (c) Section **31A-16-104.5**;

4724 (d) Section **31A-16-105**;

4725 (e) Section **31A-16-106**;

4726 (f) Section **31A-16-107.5**;

4727 (g) Section **31A-16-108.5**;

4728 (h) Section **31A-16-109**;

4729 (i) Section **31A-16-112**;

4730 (j) Section **31A-16-113**;

4731 (k) Section **31A-16-114**;

4732 (l) Section **31A-16-115**;

4733 (m) Section 31A-16-116;

4734 (n) Section 31A-16-117;

4735 (o) Section 31A-16-118; and

4736 (p) Section 31A-16-119.

4737 **Section 57. Coordinating H.B. 24 with S.B. 294 -- Substantive amendments.**

4738 If this H.B. 24 and S.B. 294, Transportation Network Company Amendments, both pass

4739 and become law, it is the intent of the Legislature that the Office of Legislative Research and

4740 General Counsel, in preparing the Utah Code database for publication do the following:

4741 (1) delete Section 13-51-108 enacted in S.B. 294;

4742 (2) delete Subsection (1) of Section 31A-22-322 enacted in this bill and renumber

4743 remaining subsections accordingly and change internal cross references;

4744 (3) delete Subsection (14) enacted in Section 31A-22-322; and

4745 (4) renumber Section 31A-22-322 enacted in this bill to be Section 13-51-108.