

HB0024S01 compared with HB0024

~~{deleted text}~~ shows text that was in HB0024 but was deleted in HB0024S01.

inserted text shows text that was not in HB0024 but was inserted into HB0024S01.

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Representative James A. Dunnigan proposes the following substitute bill:

INSURANCE MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

~~{Committee Note:~~

~~—The Business and Labor Interim Committee recommended this bill.~~

~~{General Description:~~

This bill modifies the Insurance Code and provisions citing the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ amends definition provisions;
- ▶ amends the cap on the Captive Insurance Restricted Account;
- ▶ amends service contract provisions to address appearance protection products and vehicle protection products;
- ▶ revises provisions related to insurance holding companies, including:
 - addressing subsidiaries;

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- addressing acquisition of control of, divestiture of control of, or merger with domestic insurer;
- providing for acquisitions involving insurers not otherwise covered;
- modifying provisions related to registration of insurers;
- addressing standards and management of an insurer within a holding company system;
- addressing examination of registered insurers;
- providing for supervisory colleges;
- addressing confidentiality of information;
- imposing sanctions;
- providing for receivership;
- providing for recovery;
- allowing revocation, suspension, or renewal of insurers license;
- granting rulemaking authority and authority to issue orders;
- addressing judicial review and mandamus;
- addressing conflicts with other laws; and
- providing for severability;
- ▶ enacts the Own Risk and Solvency Assessment Act, including:
 - providing the scope of the chapter;
 - defining terms;
 - requiring a risk management framework;
 - requiring own risk and solvency assessments to be conducted;
 - requiring reporting;
 - providing for exemptions;
 - addressing confidentiality of information;
 - imposing sanctions; and
 - providing for severability;
- ▶ addresses provisions related to fidelity bonds:
- ▶ modifies exemption from conversion privileges for insured former spouse;
- ▶ modifies definition of "Medicare Supplement Policy";
- ▶ modifies definitions related to licensing;

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- ▶ addresses license lapse and voluntary surrender;
- ▶ amends unfair marketing practices to include the use of certain names;
- ▶ addresses continuing education requirements for navigators;
- ▶ requires third party administrator to maintain with the commissioner certain information related to place of business and contact information;
- ▶ addresses receiver's compliance with financial reporting requirements;
- ▶ restricts subrogation rights against an insolvent insurer's insured;
- ▶ modifies definition provisions related to captive insurance companies;
- ▶ addresses commissioner's ability to adopt rules related to waiver or modification of certain public notice or hearings related to captive insurance companies;
- ▶ includes certificate of organization as a document used to apply for a certificate of authority;
- ▶ addresses requirements for a captive insurance company to conduct insurance business in this state;
- ▶ provides for a limited liability company being a captive insurance company;
- ▶ modifies capital requirements for captive insurance companies;
- ▶ repeals language related to capital stock of a captive insurance company;
- ▶ addresses when a captive insurance company can provide reinsurance;
- ▶ addresses conversion or merger of a captive insurance company;
- ▶ provides for a sponsored cell captive insurance company;
- ▶ addresses fees to be paid by a protected cell captive insurance company;
- ▶ modifies requirements for sponsored captive insurance companies;
- ▶ clarifies participants in sponsored captive insurance companies;
- ▶ addresses reporting requirements for sponsored cell captive insurance companies;
- ▶ modifies the timing of examinations;
- ▶ repeals free surplus provisions related to captive insurance companies;
- ▶ repeals provisions related to a captive reinsurance company;
- ▶ addresses stop-loss insurance coverage standards;
- ▶ extends the Defined Contribution Risk Adjuster Act; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

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None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

31A-3-304 (Effective 07/01/15), as last amended by Laws of Utah 2014, Chapters 290 and 300

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

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

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

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

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

31A-16-105, as last amended by Laws of Utah 2007, Chapter 306

31A-16-106, as last amended by Laws of Utah 2010, Chapter 324

31A-16-109, as last amended by Laws of Utah 1987, Chapter 91

31A-21-313, as last amended by Laws of Utah 2011, Chapter 297

31A-21-314, as last amended by Laws of Utah 1987, Chapter 95

31A-22-612, as last amended by Laws of Utah 2013, Chapter 319

31A-22-620, as last amended by Laws of Utah 2009, Chapter 349

31A-23a-102, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-23a-113, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-23a-402, as last amended by Laws of Utah 2013, Chapter 319

31A-23b-206, as last amended by Laws of Utah 2014, Chapters 290, 300, 425 and last amended by Coordination Clause, Laws of Utah 2014, Chapters 300, and 425

31A-27a-116, as last amended by Laws of Utah 2008, Chapter 382

31A-28-213, as last amended by Laws of Utah 2007, Chapter 309

31A-37-102, as last amended by Laws of Utah 2008, Chapter 302

31A-37-106, as last amended by Laws of Utah 2011, Chapter 297

31A-37-202, as last amended by Laws of Utah 2011, Chapters 284 and 297

31A-37-204, as last amended by Laws of Utah 2004, Chapter 312

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31A-37-301, as last amended by Laws of Utah 2011, Chapter 297

31A-37-302, as last amended by Laws of Utah 2011, Chapter 297

31A-37-303, as enacted by Laws of Utah 2003, Chapter 251

31A-37-306, as last amended by Laws of Utah 2011, Chapter 297

31A-37-401, as enacted by Laws of Utah 2003, Chapter 251

31A-37-402, as last amended by Laws of Utah 2011, Chapter 297

31A-37-403, as last amended by Laws of Utah 2004, Chapter 312

31A-37-404, as enacted by Laws of Utah 2004, Chapter 312

31A-37-501, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-37-502, as last amended by Laws of Utah 2009, Chapter 349

31A-37-505, as enacted by Laws of Utah 2003, Chapter 251

31A-43-301, as last amended by Laws of Utah 2014, Chapters 290 and 300

63I-2-231, as last amended by Laws of Utah 2013, Chapter 341

ENACTS:

31A-6a-111, Utah Code Annotated 1953

31A-16-102.5, Utah Code Annotated 1953

31A-16-104.5, Utah Code Annotated 1953

31A-16-108.5, Utah Code Annotated 1953

31A-16-112, Utah Code Annotated 1953

31A-16-113, Utah Code Annotated 1953

31A-16-114, Utah Code Annotated 1953

31A-16-115, Utah Code Annotated 1953

31A-16-116, Utah Code Annotated 1953

31A-16-117, Utah Code Annotated 1953

31A-16-118, Utah Code Annotated 1953

31A-16-119, Utah Code Annotated 1953

31A-16a-101, Utah Code Annotated 1953

31A-16a-102, Utah Code Annotated 1953

31A-16a-103, Utah Code Annotated 1953

31A-16a-104, Utah Code Annotated 1953

31A-16a-105, Utah Code Annotated 1953

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31A-16a-106, Utah Code Annotated 1953

31A-16a-107, Utah Code Annotated 1953

31A-16a-108, Utah Code Annotated 1953

31A-16a-109, Utah Code Annotated 1953

31A-16a-110, Utah Code Annotated 1953

31A-25-302.5, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

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

REPEALS:

31A-37-205, as last amended by Laws of Utah 2004, Chapter 312

31A-37-601, as last amended by Laws of Utah 2011, Chapter 297

31A-37-602, as last amended by Laws of Utah 2008, Chapters 302 and 382

31A-37-603, as last amended by Laws of Utah 2008, Chapter 302

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

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

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

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

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

(i) a medical condition including:

(A) a medical care expense; or

(B) the risk of disability;

(ii) accident; or

(iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

(A) an income replacement contract;

(B) a health care contract;

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- (C) an expense reimbursement contract;
- (D) a credit accident and health contract;
- (E) a continuing care contract; and
- (F) a long-term care contract; and
- (ii) may provide:
 - (A) hospital coverage;
 - (B) surgical coverage;
 - (C) medical coverage;
 - (D) loss of income coverage;
 - (E) prescription drug coverage;
 - (F) dental coverage; or
 - (G) vision coverage.
- (c) "Accident and health insurance" does not include workers' compensation insurance.
- (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) "Administrator" is defined in Subsection [~~(164)~~] (166).
- (4) "Adult" means an individual who has attained the age of at least 18 years.
- (5) "Affiliate" means a person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of individuals manage the corporations.
- (6) "Agency" means:
 - (a) a person other than an individual, including a sole proprietorship by which an individual does business under an assumed name; and
 - (b) an insurance organization licensed or required to be licensed under Section 31A-23a-301, 31A-25-207, or 31A-26-209.
- (7) "Alien insurer" means an insurer domiciled outside the United States.
- (8) "Amendment" means an endorsement to an insurance policy or certificate.
- (9) "Annuity" means an agreement to make periodical payments for a period certain or over the lifetime of one or more individuals if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life.

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(10) "Application" means a document:

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

and

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

whether to:

(A) insure the risk under:

(I) the coverage as originally offered; or

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

(B) decline to insure the risk; or

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

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

(a) the original articles;

(b) a special law;

(c) a charter;

(d) an amendment;

(e) restated articles;

(f) articles of merger or consolidation;

(g) a trust instrument;

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

and

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

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

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

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

(a) without individual underwriting or application; and

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

(15) "Board," "board of trustees," or "board of directors" means the group of persons

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with responsibility over, or management of, a corporation, however designated.

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

- (a) that is open to the public;
- (b) that is staffed during regular business hours on regular business days; and
- (c) at which the public may appear in person to obtain services.

(17) "Business entity" means:

- (a) a corporation;
- (b) an association;
- (c) a partnership;
- (d) a limited liability company;
- (e) a limited liability partnership; or
- (f) another legal entity.

(18) "Business of insurance" is defined in Subsection [~~(88)~~] (89).

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

- (a) Section 31A-7-201;
- (b) Section 31A-8-205; or
- (c) Subsection 31A-9-205(2).

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

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

(21) "Captive insurance company" means:

- (a) an insurer:
 - (i) owned by another organization; and
 - (ii) whose exclusive purpose is to insure risks of the parent organization and an affiliated company; or

(b) in the case of a group or association, an insurer:

- (i) owned by the insureds; and
- (ii) whose exclusive purpose is to insure risks of:

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(A) a member organization;

(B) a group member; or

(C) an affiliate of:

(I) a member organization; or

(II) a group member.

(22) "Casualty insurance" means liability insurance.

(23) "Certificate" means evidence of insurance given to:

(a) an insured under a group insurance policy; or

(b) a third party.

(24) "Certificate of authority" is included within the term "license."

(25) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of a benefit according to the terms of an insurance policy.

(26) "Claims-made coverage" means an insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.

(27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.

(b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent supervisory official of another jurisdiction.

(28) (a) "Continuing care insurance" means insurance that:

(i) provides board and lodging;

(ii) provides one or more of the following:

(A) a personal service;

(B) a nursing service;

(C) a medical service; or

(D) any other health-related service; and

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

(A) for the life of the insured; or

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

(b) Insurance is continuing care insurance regardless of whether or not the board and

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lodging are provided at the same location as a service described in Subsection (28)(a)(ii).

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

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

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

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

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

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

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

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

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

- (i) a corporation doing business:
 - (A) as:
 - (I) an insurance producer;
 - (II) a surplus lines producer;
 - (III) a limited line producer;
 - (IV) a consultant;
 - (V) a managing general agent;
 - (VI) a reinsurance intermediary;

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(VII) a third party administrator; or

(VIII) an adjuster; and

(B) under:

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

Reinsurance Intermediaries;

(II) Chapter 25, Third Party Administrators; or

(III) Chapter 26, Insurance Adjusters; or

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

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

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

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

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

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

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

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

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

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

(b) "Credit insurance" includes:

(i) credit accident and health insurance;

(ii) credit life insurance;

(iii) credit property insurance;

(iv) credit unemployment insurance;

(v) guaranteed automobile protection insurance;

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- (vi) involuntary unemployment insurance;
- (vii) mortgage accident and health insurance;
- (viii) mortgage guaranty insurance; and
- (ix) mortgage life insurance.

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

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

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

(39) "Credit unemployment insurance" means insurance:

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

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

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

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

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

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

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service and insurance product information:

(i) for the customer service representative's:

(A) producer;

(B) surplus lines producer; or

(C) consultant employer; and

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

(A) customer;

(B) client; or

(C) organization.

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

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

(a) imposed by:

(i) statute;

(ii) rule; or

(iii) order; and

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

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

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

(46) "Department" means the Insurance Department.

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

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

(a) perform the duties of:

(i) that individual's occupation; or

(ii) an occupation for which the individual is reasonably suited by education, training,

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or experience; or

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

(i) eating;

(ii) toileting;

(iii) transferring;

(iv) bathing; or

(v) dressing.

(49) "Disability income insurance" is defined in Subsection [~~(79)~~] (80).

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

(51) "Domiciliary state" means the state in which an insurer:

(a) is incorporated;

(b) is organized; or

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

(52) (a) "Eligible employee" means:

(i) an employee who:

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

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

(ii) a person described in Subsection (52)(b).

(b) "Eligible employee" includes, if the individual is included under a health benefit

plan of a small employer:

(i) a sole proprietor;

(ii) a partner in a partnership; or

(iii) an independent contractor.

(c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):

(i) an individual who works on a temporary or substitute basis for a small employer;

(ii) an employer's spouse; or

(iii) a dependent of an employer.

(53) "Employee" means an individual employed by an employer.

(54) "Employee benefits" means one or more benefits or services provided to:

(a) an employee; or

(b) a dependent of an employee.

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(55) (a) "Employee welfare fund" means a fund:

(i) established or maintained, whether directly or through a trustee, by:

(A) one or more employers;

(B) one or more labor organizations; or

(C) a combination of employers and labor organizations; and

(ii) that provides employee benefits paid or contracted to be paid, other than income from investments of the fund:

(A) by or on behalf of an employer doing business in this state; or

(B) for the benefit of a person employed in this state.

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

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

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

(a) the first day of coverage; or

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

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

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

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

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

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

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

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

(ii) a settlement or closing involving:

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- (A) a mobile home;
- (B) a grazing right;
- (C) a water right; or
- (D) other personal property authorized by the commissioner.
- (b) "Escrow" does not include:
 - (i) the following notarial acts performed by a notary within the state:
 - (A) an acknowledgment;
 - (B) a copy certification;
 - (C) jurat; and
 - (D) an oath or affirmation;
 - (ii) the receipt or delivery of a document; or
 - (iii) the receipt of money for delivery to the escrow agent.

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

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

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

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

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

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

- (a) written to provide a payment for an expense relating to hospital confinement resulting from illness or injury; and
- (b) written:
 - (i) as a daily limit for a specific number of days in a hospital; and
 - (ii) to have a one or two day waiting period following a hospitalization.

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

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

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

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

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

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

(B) rule.

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

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

(a) a policy;

(b) a rate;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application;

(h) a report;

(i) a certificate;

(j) an endorsement;

(k) an actuarial certification;

(l) a licensee annual statement;

(m) a licensee renewal application;

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

(o) a binder; or

~~[(67)]~~ (p) an outline of coverage.

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

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

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

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

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

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

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

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

- (a) the general lines of insurance in Subsection ~~[(71)]~~ (72);
- (b) title insurance under one of the following sublines of authority:
 - (i) search, including authority to act as a title marketing representative;
 - (ii) escrow, including authority to act as a title marketing representative; and
 - (iii) title marketing representative only;
- (c) surplus lines;
- (d) workers' compensation; and
- (e) another line of insurance that the commissioner considers necessary to recognize in the public interest.

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

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

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

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

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

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

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

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

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

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

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

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

- (i) provides benefits solely for:
 - (A) accident;
 - (B) dental;
 - (C) income replacement;

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- (D) long-term care;
- (E) a Medicare supplement;
- (F) a specified disease;
- (G) vision; or
- (H) a short-term limited duration; or
- (ii) is offered and marketed as supplemental health insurance.

~~[(76)]~~ (77) "Health care" means any of the following intended for use in the diagnosis, treatment, mitigation, or prevention of a human ailment or impairment:

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

~~[(77)]~~ (78) (a) "Health care insurance" or "health insurance" means insurance providing:

- (i) a health care benefit; or
- (ii) payment of an incurred health care expense.

(b) "Health care insurance" or "health insurance" does not include accident and health insurance providing a benefit for:

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

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another type of policy.

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

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

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

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

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

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

~~[(84)]~~ (85) "Inland marine insurance" includes insurance covering:

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

~~[(85)]~~ (86) "Insolvency" means that:

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

~~[(86)]~~ (87) (a) "Insurance" means:

- (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or
- (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.

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(b) "Insurance" includes:

- (i) a risk distributing arrangement providing for compensation or replacement for damages or loss through the provision of a service or a benefit in kind;
- (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and
- (iii) a plan in which the risk does not rest upon the person who makes an arrangement, but with a class of persons who have agreed to share the risk.

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

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

- (a) providing health care insurance by an organization that is or is required to be licensed under this title;
- (b) providing a benefit to an employee in the event of a contingency not within the control of the employee, in which the employee is entitled to the benefit as a right, which benefit may be provided either:
 - (i) by a single employer or by multiple employer groups; or
 - (ii) through one or more trusts, associations, or other entities;
- (c) providing an annuity:
 - (i) including an annuity issued in return for a gift; and
 - (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2) and (3);
- (d) providing the characteristic services of a motor club as outlined in Subsection ~~[(116)]~~ (117);
- (e) providing another person with insurance;
- (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, a contract or policy of title insurance;
- (g) transacting or proposing to transact any phase of title insurance, including:
 - (i) solicitation;
 - (ii) negotiation preliminary to execution;

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(iii) execution of a contract of title insurance;
(iv) insuring; and
(v) transacting matters subsequent to the execution of the contract and arising out of the contract, including reinsurance;

(h) transacting or proposing a life settlement; and

(i) doing, or proposing to do, any business in substance equivalent to Subsections ~~[(88)]~~ (89)(a) through (h) in a manner designed to evade this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a policyholder;

(ii) a subscriber;

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(iii) a member; and

(iv) a beneficiary.

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

(i) applies only to this title; and

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

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

(i) a fraternal benefit society;

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

(iii) a motor club;

(iv) an employee welfare plan; and

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

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

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

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

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

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

(i) specific loan; or

(ii) credit transaction.

[~~(96)~~] (97) "Large employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

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

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

[~~(97)~~] (98) "Late enrollee," with respect to an employer health benefit plan, means an individual whose enrollment is a late enrollment.

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~~[(98)]~~ (99) "Late enrollment," with respect to an employer health benefit plan, means enrollment of an individual other than:

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

(b) through special enrollment.

~~[(99)]~~ (100) (a) Except for a retainer contract or legal assistance described in Section 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a specified legal expense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) for other loss or damage properly the subject of insurance not within another kind

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of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

(b) "Liability insurance" includes:

(i) vehicle liability insurance;

(ii) residential dwelling liability insurance; and

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

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

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

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

(i) insurance on a human life; and

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

(b) The business of life insurance includes:

(i) granting a death benefit;

(ii) granting an annuity benefit;

(iii) granting an endowment benefit;

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

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

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

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

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

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

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

(a) credit life;

(b) credit accident and health;

(c) credit property;

(d) credit unemployment;

(e) involuntary unemployment;

(f) mortgage life;

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

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

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

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

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

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

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

- (i) in a setting other than an acute care unit of a hospital;
- (ii) for not less than 12 consecutive months for a covered person on the basis of:

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- (A) expenses incurred;
- (B) indemnity;
- (C) prepayment; or
- (D) another method;
- (iii) for one or more necessary or medically necessary services that are:

- (A) diagnostic;
- (B) preventative;
- (C) therapeutic;
- (D) rehabilitative;
- (E) maintenance; or
- (F) personal care; and

- (iv) that may be issued by:

- (A) an insurer;
- (B) a fraternal benefit society;
- (C) (I) a nonprofit health hospital; and
- (II) a medical service corporation;
- (D) a prepaid health plan;
- (E) a health maintenance organization; or

- (F) an entity similar to the entities described in Subsections [~~(109)~~] (110)(a)(iv)(A)

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

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

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

- (A) a group or individual annuity or rider; or
- (B) a life insurance policy or rider;

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

- (A) cognitive impairment; or
- (B) functional capacity; or

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

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

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

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- (ii) basic hospital expense coverage;
- (iii) basic medical/surgical expense coverage;
- (iv) hospital confinement indemnity coverage;
- (v) major medical expense coverage;
- (vi) income replacement or related asset-protection coverage;
- (vii) accident only coverage;
- (viii) coverage for a specified:
 - (A) disease; or
 - (B) accident;
- (ix) limited benefit health coverage; or
- (x) a life insurance policy that accelerates the death benefit to provide the option of a

lump sum payment:

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

~~[(110)]~~ (111) "Medical malpractice insurance" means insurance against legal liability incident to the practice and provision of a medical service other than the practice and provision of a dental service.

~~[(111)]~~ (112) "Member" means a person having membership rights in an insurance corporation.

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

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

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

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

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

(a) licensed under:

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

(ii) Chapter 11, Motor Clubs; or

(iii) Chapter 14, Foreign Insurers; and

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

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

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

(iii) (A) trip reimbursement;

(B) towing services;

(C) emergency road services;

(D) stolen automobile services;

(E) a combination of the services listed in Subsections ~~[(116)]~~ (117)(b)(iii)(A) through (D); or

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

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

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

(a) that is issued by an insurer; and

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

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

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

(a) ships or hulls of ships;

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

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

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

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

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

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

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

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

(b) receives:

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

(ii) another government health benefit.

~~[(125)]~~ (126) "Person" includes:

(a) an individual;

(b) a partnership;

(c) a corporation;

(d) an incorporated or unincorporated association;

(e) a joint stock company;

(f) a trust;

(g) a limited liability company;

(h) a reciprocal;

(i) a syndicate; or

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

~~[(126)]~~ (127) "Personal lines insurance" means property and casualty insurance

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coverage sold for primarily noncommercial purposes to:

(a) an individual; or

(b) a family.

~~[(127)]~~ (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

~~[(128)]~~ (129) "Plan year" means:

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

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

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

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

there is no plan document or summary plan description:

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

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

or

(iii) the employer's taxable year if:

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

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

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

(c) in a case not described in Subsection ~~[(128)]~~ (129)(a) or (b), the calendar year.

~~[(129)]~~ (130) (a) "Policy" means a document, including an attached endorsement or

application that:

(i) purports to be an enforceable contract; and

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

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

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

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

(iii) a corporation licensed under:

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

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

(c) "Policy" does not include:

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

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

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

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

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

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

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

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

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

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

(b) "Premium" includes, however designated:

(i) an assessment;

(ii) a membership fee;

(iii) a required contribution; or

(iv) monetary consideration.

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

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

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

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

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

~~[(139)]~~ (140) (a) Except as provided in Subsection ~~[(139)]~~ (140)(b), "property

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

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

comprehensive and vehicle physical damage coverages.

(b) "Property insurance" does not include:

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

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

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

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

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

Code.

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

(a) is:

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

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

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

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

Commissioners.

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

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

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

(A) a single number; or

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

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

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

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

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

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

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

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

(i) an employee of an insurer;

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

(iii) a joint underwriting group; or

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

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

(a) a manual of rates;

(b) a classification;

(c) a rate-related underwriting rule; and

(d) a rating formula that describes steps, policies, and procedures for determining initial and renewal policy premiums.

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

(i) a refund of premium or portion of premium;

(ii) a refund of commission or portion of commission;

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- (iii) a refund of all or a portion of a consultant fee; or
- (iv) providing services or other benefits not specified in an insurance or annuity

contract.

(b) "Rebate" does not include:

- (i) a refund due to termination or changes in coverage;
- (ii) a refund due to overcharges made in error by the licensee; or
- (iii) savings or wellness benefits as provided in the contract by the licensee.

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

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

- (b) the post mark date, if delivered by mail;
- (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- (d) the received date recorded on an item delivered, if delivered by:
 - (i) facsimile;
 - (ii) email; or
 - (iii) another electronic method; or
- (e) a date specified in:
 - (i) a statute;
 - (ii) a rule; or
 - (iii) an order.

~~[(147)]~~ (148) "Reciprocal" or "interinsurance exchange" means an unincorporated association of persons:

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

~~[(148)]~~ (149) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

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

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(ii) "assuming reinsurer."

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

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

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

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

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

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

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

- (i) note;
- (ii) stock;
- (iii) bond;
- (iv) debenture;
- (v) evidence of indebtedness;
- (vi) certificate of interest or participation in a profit-sharing agreement;
- (vii) collateral-trust certificate;
- (viii) preorganization certificate or subscription;
- (ix) transferable share;
- (x) investment contract;
- (xi) voting trust certificate;
- (xii) certificate of deposit for a security;
- (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;
- (xiv) commodity contract or commodity option;
- (xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed

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

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

(b) "Security" does not include:

(i) any of the following under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period:

(A) insurance;

(B) an endowment policy; or

(C) an annuity contract; or

(ii) a burial certificate or burial contract.

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

including:

(a) common stock;

(b) preferred stock;

(c) debt obligations; and

(d) any other security convertible into or evidencing the right of any of the items listed in this Subsection (155).

[~~(154)~~] (156) "Secondary medical condition" means a complication related to an exclusion from coverage in accident and health insurance.

[~~(155)~~] (157) (a) "Self-insurance" means an arrangement under which a person provides for spreading its own risks by a systematic plan.

(b) Except as provided in this Subsection [~~(155)~~] (157), "self-insurance" does not include an arrangement under which a number of persons spread their risks among themselves.

(c) "Self-insurance" includes:

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

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

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

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

(a) by any means;

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

~~[(157)]~~ (159) "Short-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designed to provide coverage that is similar to long-term care insurance, but that provides coverage for less than 12 consecutive months for each covered person.

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

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

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

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

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

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

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

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

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

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

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

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

(c) "Excess surplus" means:

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

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

(I) 2.5; and

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

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

(I) 3.0; and

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

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

(A) 1.5; and

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

~~[(164)]~~ (166) "Third party administrator" or "administrator" means a person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person administering a:

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

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

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

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(c) an employer on behalf of the employer's employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under the following, but only for a line of insurance for which the insurer holds a license in this state:

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

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

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

(iv) Chapter 9, Insurance Fraternal; or

(v) Chapter 14, Foreign Insurers;

(e) a person:

(i) licensed or exempt from licensing under:

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

(B) Chapter 26, Insurance Adjusters; and

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

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

(i) that is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- (i) a compensable accidental injury; and
- (ii) occupational disease disability;
- (b) employer's liability insurance incidental to workers' compensation insurance and written in connection with workers' compensation insurance; and
- (c) insurance assuring to a person entitled to workers' compensation benefits the compensation provided by law.

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

31A-3-304 (Effective 07/01/15). Annual fees -- Other taxes or fees prohibited --

Captive Insurance Restricted Account.

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

(b) The commissioner shall:

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

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

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

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

(i) a fee under this section;

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

(iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company

Act.

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

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

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

(4) A captive insurance company shall pay the fee imposed by this section to the

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commissioner by June 1 of each year.

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

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

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

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

(i) administer and enforce;

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

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

(ii) promote the captive insurance industry in Utah.

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

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

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

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

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

31A-6a-101. Definitions.

(1) (a) "Appearance protection product" means a protective chemical, substance, or system that is:

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

(ii) designed to prevent damage to the exterior, interior, or both surfaces of a motor vehicle from a specific cause.

(b) "Appearance protection product" includes an appearance protection product warranty.

(2) "Appearance protection product warranty" means a written agreement by a warrantor that provides that if an appearance protection product fails to prevent damage to the

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exterior, interior, or both surfaces of a motor vehicle from a specific cause, the warrantor will repair or replace, or will reimburse the warranty holder for the cost of repair or replacement of the interior, exterior, or both surfaces as a result of the failure of the appearance protection product to perform pursuant to the terms of the appearance protection product warranty.

~~[(1)]~~ (3) "Mechanical breakdown insurance" means a policy, contract, or agreement issued by an insurance company that has complied with either ~~[Title 31A,]~~ Chapter 5, Domestic Stock and Mutual Insurance Corporations, or ~~[Title 31A,]~~ Chapter 14, Foreign Insurers, that undertakes to perform or provide repair or replacement service on goods or property, or indemnification for repair or replacement service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear.

~~[(2)]~~ (4) "Nonmanufacturers' parts" means replacement parts not made for or by the original manufacturer of the goods commonly referred to as "after market parts."

(5) (a) "Road hazard" means a hazard that is encountered while driving a motor vehicle.

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

~~[(3)]~~ (6) (a) "Service contract" means a contract or agreement to perform or reimburse for the repair or maintenance of goods or property, for their operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances.

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

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

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

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

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(iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes inoperable, lost, or stolen; or

(v) other services that may be approved by the commissioner;

(A) if not inconsistent with other provisions of this chapter; and

(B) except that the replacement of lost or stolen property is limited to only the replacement of a lost or stolen motor vehicle key or key-fob.

(b) "Service contract" does not include:

(i) mechanical breakdown insurance [as defined in Subsection (1)];

(ii) coverage for the repair, replacement, or both of damage to the interior surfaces of a motor vehicle; or

(iii) coverage for the repair, replacement, or both of damage to the exterior paint or finish of a motor vehicle.

(c) Coverage excluded from a service contract under Subsection (6)(b) may be offered in connection with the sale of an appearance protection product.

[4] (7) "Service contract holder" or "contract holder" means a person who purchases a service contract.

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

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

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

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

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

(b) "Vehicle protection product" includes:

(i) a vehicle protection product warranty;

(ii) an alarm system;

(iii) a body part marking product;

(iv) a steering lock;

(v) a window etch product;

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(vi) a pedal and ignition lock;

(vii) a fuel and ignition kill switch; and

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

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

(12) "Warrantor" means a person who is contractually obligated to the warranty holder under the terms of a vehicle protection product warranty or appearance protection product warranty.

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

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

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

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

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

(b) a recognized surplus lines carrier.

(2) (a) A service contract, vehicle protection product warranty, or appearance protection product warranty may not be issued, sold, or offered for sale unless the service contract provider or warrantor completes the registration process described in this Subsection (2).

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

(i) an application for registration;

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

(iii) a copy of any service contract, vehicle protection product warranty, or appearance

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protection product warranty that the service contract provider or warrantor offers in this state; and

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

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

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

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

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

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

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

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

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

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

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

(b) Chapter 7, Nonprofit Health Service Insurance Corporations;

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

(d) Chapter 9, Insurance Fraternal;

(e) Chapter 10, Annuities;

(f) Chapter 11, Motor Clubs;

(g) Chapter 12, State Risk Management Fund;

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- (h) Chapter 13, Employee Welfare Funds and Plans;
- (i) Chapter 14, Foreign Insurers;
- (j) Chapter 19a, Utah Rate Regulation Act;
- (k) Chapter 25, Third Party Administrators; and
- (l) Chapter 28, Guaranty Associations.

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

31A-6a-104. Required disclosures.

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

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

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

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

(i) "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. Should the provider fail to pay or provide service on any claim within 60 days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the Insurance Company."; and

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

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

(3) A service contract shall:

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

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- (b) identify the service contract provider, the seller, and the service contract holder;
- (c) conspicuously state the total purchase price and the terms under which the service contract is to be paid;
- (d) conspicuously state the existence of any deductible amount;
- (e) specify the merchandise, service to be provided, and any limitation, exception, or exclusion;
- (f) state a term, restriction, or condition governing the transferability of the service contract; and
- (g) state a term, restriction, or condition that governs cancellation of the service contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder or service contract provider.

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

- (a) a toll free telephone number for claim service; and
- (b) a procedure for obtaining reimbursement for emergency repairs performed outside of normal business hours.

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

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

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

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

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

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

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

31A-6a-105. Prohibited acts.

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

(a) any of the following words:

(i) "insurance";

(ii) "casualty";

(iii) "surety";

(iv) "mutual"; or

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

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

(i) an insurance or surety corporation; or

(ii) another service contract provider.

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

(a) make, permit, or cause to be made a false or misleading statement in connection with the sale, offer to sell, or advertisement of a service contract; or

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

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

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

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

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

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

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

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

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

(1) The repair or reimbursement promised under an appearance protection product warranty shall be tied to the purchase of a physical product that is formulated or designed to make the specified loss or damage from a specific cause less likely to occur.

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

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

31A-16-102.5. Subsidiaries of insurers.

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

(i) by itself; or

(ii) in cooperation with one or more persons.

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

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

(i) common stock;

(ii) preferred stock;

(iii) debt obligations; or

(iv) other securities.

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

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

(i) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and

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contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

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

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

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

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

(B) the insurer's proportionate share of an investment in an asset by a subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary.

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

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

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

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

(b) the value of all previous investments in equity securities as of the day they were

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made net of any return of capital invested not including dividends.

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

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

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

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

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

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

(1) (a) A person may not take the actions described in Subsections (1)(b) or (c) unless, at the time any offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of securities if no offer or agreement is involved:

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

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

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

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

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

(i) a domestic insurer; or

(ii) any person controlling a domestic insurer.

(d) For purposes of this section, a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least

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30 days before the cessation of control. The commissioner shall determine those instances in which the one or more persons seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed, this Subsection (1)(d) does not apply.

(e) With respect to a transaction subject to this section, the acquiring person shall also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 31A-16-104.5. A failure to file the notification may be subject to penalties specified in Section 31A-16-104.5.

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

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

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

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

(B) any person that controls an insurance company.

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

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

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

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

(D) Chapter 9, Insurance Fraternal; and

(E) Chapter 11, Motor Clubs.

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

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(A) is in writing; and

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

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

(2) The statement to be filed with the commissioner under Subsection (1) shall be made under oath or affirmation and shall contain the following information:

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

(i) if the person is an individual:

(A) the person's principal occupation;

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

and

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

(ii) if the person is not an individual:

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

(I) the past five years; or

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

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

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

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

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

(ii) a description of any transaction in which funds were or are to be obtained for the

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purpose of effecting the merger or acquisition of control, including any pledge of:

(A) the insurer's stock; or

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

(iii) the identity of persons furnishing the consideration;

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

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

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

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

existence; and

(ii) unaudited information:

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

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

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

(i) liquidate the insurer;

(ii) sell its assets;

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

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

(A) business;

(B) corporate structure; or

(C) management;

(e) (i) the number of shares of any security referred to in Subsection (1) that each
acquiring party proposes to acquire;

(ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in
Subsection (1); and

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

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

(i) is beneficially owned; or

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

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

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

- (i) the transfer of any of the securities;
- (ii) joint ventures;
- (iii) loan or option arrangements;
- (iv) puts or calls;
- (v) guarantees of loans;
- (vi) guarantees against loss or guarantees of profits;
- (vii) division of losses or profits; or
- (viii) the giving or withholding of proxies;

(h) a description of the purchase by any acquiring party of any security referred to in Subsection (1) during the 12 calendar months preceding the filing of the statement including:

- (i) the dates of purchase;
- (ii) the names of the purchasers; and
- (iii) the consideration paid or agreed to be paid for the purchase;

(i) a description of:

(i) any recommendations to purchase by any acquiring party any security referred to in Subsection (1) made during the 12 calendar months preceding the filing of the statement; or

(ii) any recommendations made by anyone based upon interviews or at the suggestion of the acquiring party;

(j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (1); and

(ii) if distributed, copies of additional soliciting material relating to the transactions described in Subsection (2)(j)(i);

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

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

(l) an agreement by the person required to file the statement referred to in Subsection

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(1) that it will provide the annual report, specified in Section 31A-16-105, for so long as control exists;

(m) an acknowledgment by the person required to file the statement referred to in Subsection (1) that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

[~~(f)~~] (n) any additional information the commissioner requires by rule, which the commissioner determines to be:

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

(ii) in the public interest.

(3) The department may request:

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

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

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

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

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

and

(iii) preventing persons who violate 18 U.S.C. Sec. 1033 from engaging in the business of insurance in the state.

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

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

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

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

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

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

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

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

(A) market conditions;

(B) business in force; and

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

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

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

(i) partner of the partnership or limited partnership;

(ii) member of the syndicate or group; and

(iii) person who controls the partner or member.

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

(i) the corporation;

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

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

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

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

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

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

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

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

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

(B) tend to create a monopoly in insurance;

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

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

(B) prejudice the interest of:

(I) its policyholders; or

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

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

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

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

(B) not in the public interest; or

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

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

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

(i) are disclosed to the securityholders; and

(ii) determined by the commissioner to be reasonable.

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

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

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

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

(A) the insurer; and

(B) any person designated by the commissioner.

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

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

(i) present evidence;

(ii) examine and cross-examine witnesses; and

(iii) offer oral and written arguments.

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

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

(10) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Subsection (9)(a) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection (1). The person shall file the statement referred to in Subsection (1) with the National Association

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of Insurance Commissioners within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in Subsection (1). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend a hearing under this Subsection (10) in person or by telecommunication.

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

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

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

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

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

(A) necessarily incurred; and

(B) approved by the commissioner.

(iii) The acquiring person shall:

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

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

(C) file with the department as a public record a copy of the consolidated account

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described in Subsection ~~[(10)]~~ (12)(c)(iii)(A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(15)]~~ (17) (a) The courts of this state are vested with jurisdiction over:

(i) a person who:

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

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

(ii) overall actions involving persons described in Subsection ~~[(15)]~~ (17)(a)(i) arising out of a violation of this section.

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

(c) A copy of a lawful process described in Subsection ~~[(15)]~~ (17)(b) shall be:

(i) served on the commissioner; and

(ii) transmitted by registered or certified mail by the commissioner to the person at that person's last-known address.

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

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

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

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

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

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

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(d) (i) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.

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

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

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

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

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

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

(iv) the acquisition of an already affiliated person;

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

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

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

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

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

or

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

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

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

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

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

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

(b) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of receipt, or termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period

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shall end on the earlier of the 30th day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

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

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

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

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

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

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

<u>Insurer A</u>	<u>Insurer B</u>
<u>5%</u>	<u>5% or more</u>
<u>10%</u>	<u>4% or more</u>
<u>15%</u>	<u>3% or more</u>
<u>19%</u>	<u>1% or more.</u>

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

(iii) For purposes of this section, the insurer with the largest share of the market shall

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be considered to be Insurer A.

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

(i) there is a significant trend toward increased concentration in the market;

(ii) one of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

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

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

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

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

(i) market shares;

(ii) volatility of ranking of market leaders;

(iii) number of competitors;

(iv) concentration or trend of concentration in the industry; and

(v) ease of entry and exit into the market.

(g) An order may not be entered under Subsection (5) if:

(i) the acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition;
or

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(ii) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

(5) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if an acquisition violates the standards of this section, the commissioner may enter an order:

(i) requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(ii) denying the application of an acquired or acquiring insurer for a license to do business in this state.

(b) The commissioner shall accompany an order issued under this Subsection (5) with a written decision of the commissioner setting forth findings of fact and conclusions of law.

(c) An order pursuant to this section may not apply if the acquisition is not consummated.

(d) A person who violates a cease and desist order of the commissioner under Subsection (5)(a)(i) and while the order is in effect may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to one or more of the following:

(i) notwithstanding Section 31A-2-308, a monetary penalty of not more than \$10,000 for every day of violation; or

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

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

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

31A-16-105. Registration of insurers.

(1) (a) [Every] An insurer [which] that is authorized to do business in this state and [which] that is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile, if the requirements and standards are substantially similar to those contained in this section, Subsections 31A-16-106(1)(a) and (2) and either Subsection 31A-16-106(1)(b) or a statutory provision

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similar to the following: "Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition."

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

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

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

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

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

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

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

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

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

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

(vi) reinsurance agreements;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

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

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

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

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

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

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

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

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

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

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

~~[(5)]~~ (6) Any person within an insurance holding company system subject to

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registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

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

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

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

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

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

(12) The ultimate controlling person of an insurer subject to registration shall also file an annual enterprise risk report. The annual enterprise risk report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the

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insurance holding company that could pose enterprise risk to the insurer. The annual enterprise risk report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

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

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

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

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

(i) the terms shall be fair and reasonable;

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

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

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

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

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

(b) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in Subsections (1)(a)(i) through (vi), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at

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least 30 days [prior to] before entering into the transaction, or within any shorter period the commissioner may permit, if the commissioner has not disapproved the transaction within the period[.]. The notice for an amendment or modification shall include the reasons for the change and financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:

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

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

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

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

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

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

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

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or understanding exists between the insurer and the non-affiliate that any portion of the assets will be transferred to one or more affiliates of the reinsurer;

(iv) all management agreements, service contracts, tax allocation agreements, and all cost-sharing arrangements;

(v) guarantees when made by a domestic insurer, except that:

(A) a guarantee that is quantifiable as to amount is not subject to the notice requirements of this Subsection (1) unless it exceeds the lesser of .5% of the insurer's admitted assets or 10% of surplus held for policyholders, as of the next preceding December 31; and

(B) a guarantee that is not quantifiable as to amount is subject to the notice requirements of this Subsection (1);

(vi) direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in the investments, exceeds 2.5% of the insurer's surplus to policyholders, except that a direct or indirect acquisition or investment in a subsidiary acquired pursuant to Section 31A-16-102.5, or in a non-subsidary insurance affiliate that is subject to this chapter, is exempt from this Subsection (1)(b)(vi);

~~[(v)]~~ (vii) any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders; and

~~[(vi) this subsection]~~ (viii) this Subsection (1) may not be interpreted to authorize or permit any transactions which would be otherwise contrary to law in the case of an insurer not a member of the same holding company system.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of the separate transactions is to avoid the statutory threshold amount and thus to avoid the review by the commissioner that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any 12 month period for such a purpose, ~~[he]~~ the commissioner may exercise ~~[his]~~ the commissioner's authority under Section 31A-16-110.

(d) The commissioner, in reviewing transactions pursuant to Subsection (1)(b), shall consider whether the transactions comply with the standards set forth in Subsection (1)(a) and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within 30 days of any investment of the

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domestic insurer in any one corporation, if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

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

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

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

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

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

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

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

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

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

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

(ii) the commissioner has not disapproved the payment within the 30-day period referred to in Subsection (2)(a).

(3) (a) Notwithstanding the control of a domestic insurer by any person, the officers

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and directors of the insurer may not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

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

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

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

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

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

(i) the type of business entity;

(ii) the volume of business written;

(iii) the availability of qualified board members; or

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

(4) (a) For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

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- (i) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
- (ii) the extent to which the insurer's business is diversified among several lines of insurance;
- (iii) the number and size of risks insured in each line of business;
- (iv) the extent of the geographical dispersion of the insurer's insured risks;
- (v) the nature and extent of the insurer's reinsurance program;
- (vi) the quality, diversification, and liquidity of the insurer's investment portfolio;
- (vii) the recent past and projected future trend in the size of the insurer's investment portfolio;
- (viii) the surplus as regards policyholders maintained by other comparable insurers;
- (ix) the adequacy of the insurer's reserves; and
- (x) the quality and liquidity of investments in affiliates.

(b) The commissioner may treat an investment described in Subsection (4)(a)(x) as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

Section 13. Section **31A-16-107.5**, which is renumbered from Section 31A-16-108 is renumbered and amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(6) Upon the failure or refusal of any person to obey a subpoena under Subsection (5), the commissioner may petition the Third District Court of Salt Lake County to enter an order compelling the witness to appear and testify or produce documentary evidence. A person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. A person subpoenaed is entitled to the same fees and mileage, if

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claimed, as a witness in the Third District Court of Salt Lake County, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

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

31A-16-108.5. Supervisory colleges.

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

- (i) initiating the establishment of a supervisory college;
- (ii) clarifying the membership and participation of other supervisors in the supervisory college;
- (iii) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

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

- (A) planning meetings;
- (B) supervisory activities; and
- (C) processes for information sharing; and
- (v) establishing a crisis management plan.

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

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

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

- (i) other state regulatory agencies;
- (ii) federal regulatory agencies; or

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(iii) international regulatory agencies.

(b) The commissioner may enter into agreements in accordance with Section 31A-16-107.5 providing the basis for cooperation between the commissioner and other regulatory agencies, and the activities of the supervisory college, in order to assess:

(i) the business strategy;

(ii) financial position;

(iii) legal and regulatory position;

(iv) risk exposure; and

(v) management and governance processes.

(c) Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

Section 15. Section 31A-16-109 is amended to read:

31A-16-109. Confidentiality of information obtained by commissioner.

[All information] (1) Information, documents, and copies of these [which] that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made under Section [31A-16-108] 31A-16-107.5, and all information reported under Section 31A-16-105, is confidential. It is not subject to subpoena and may not be made public by the commissioner or any other person, except it may be provided to the insurance departments of other states, without the prior written consent of the insurer to which it pertains. The confidentiality of this section does not apply if the commissioner, after giving the insurer and its affiliates who would be affected by the disclosure, proper notice and an opportunity to be heard, and determines that the interests of policyholders, shareholders, or the public will be served by the publication of the information. In this situation, the commissioner may publish all or any part of the information in any manner [he] the commissioner considers appropriate.

(2) The commissioner and any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom the documents, materials, or other information are shared pursuant to this chapter shall keep confidential any confidential documents, materials, or information subject to Subsection (1).

(3) (a) To assist in the performance of the commissioner's duties, the commissioner:

(i) may share documents, materials, or other information, including the confidential

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documents, materials, or information subject to Subsection (1), with the following if the recipient agrees in writing to maintain the confidentiality status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality:

(A) other state, federal, and international regulatory agencies;

(B) the National Association of Insurance Commissioners and its affiliates and subsidiaries; and

(C) state, federal, and international law enforcement authorities, including members of a supervisory college described in Section 31A-16-108.5;

(ii) notwithstanding Subsection (1), may only share confidential documents, material, or information reported pursuant to Section 31A-16-105 with commissioners of states having statutes or regulations substantially similar to Subsection (1) and who have agreed in writing not to disclose the documents, material, or information;

(iii) may receive documents, materials, or information, including otherwise confidential documents, materials, or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential any document, material, or information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material, or information; and

(iv) shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this chapter consistent with this Subsection (3) that shall:

(A) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;

(B) specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter remains with the commissioner and the National Association of Insurance Commissioner's use of the information is subject to the direction of the commissioner;

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(C) require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and

(D) require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter.

(4) The sharing of information by the commissioner pursuant to this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

(5) A waiver of any applicable claim of confidentiality in the documents, materials, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection (3).

(6) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this chapter are:

(a) confidential, not public records, and not open to public inspection; and

(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Section 16. Section **31A-16-112** is enacted to read:

31A-16-112. Sanctions.

(1) (a) Notwithstanding Section 31A-2-308, the following sanctions apply:

(i) An insurer failing, without just cause, to file a registration statement required by this chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Fund.

(ii) The maximum penalty under this section is \$250,000.

(b) The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the

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insurer.

(2) A director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments that have not been properly reported or submitted pursuant to Subsection 31A-16-105(1), 31A-16-106(1)(b), or 31A-16-106(2), or that violates this chapter, shall pay, in the director's or officer's individual capacity, a civil forfeiture of not more than \$10,000 per violation, notwithstanding Section 31A-2-308, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Whenever it appears to the commissioner that any insurer subject to this chapter or a director, officer, employee, or agent of the insurer has engaged in any transaction or entered into a contract that is subject to Section 31A-16-106 and that would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contract and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that an insurer or any director, officer, employee, or agent of the insurer has committed a willful violation of this chapter, the commissioner may refer the case to the appropriate prosecutor. Venue for the criminal action shall be in the Third District Court of Salt Lake County, against the insurer or the responsible director, officer, employee, or agent of the insurer. An insurer that willfully violates this chapter may be fined not more than \$250,000 notwithstanding Section 31A-2-308. An individual who willfully violates this chapter may be fined in the individual's individual capacity not more than \$100,000 notwithstanding Section 31A-2-308 and is guilty of a third-degree felony.

(5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the commissioner in the performances of the commissioner's duties under this chapter, is guilty of a third-degree felony. Any fines imposed

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shall be paid by the officer, director, or employee in the officer's, director's, or employee's individual capacity.

(6) Whenever it appears to the commissioner that a person has committed a violation of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with Section 31A-27-503.

Section 17. Section 31A-16-113 is enacted to read:

31A-16-113. Receivership.

Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in Section 31A-16-114 to take possession of the property of the domestic insurer and to conduct its business.

Section 18. Section 31A-16-114 is enacted to read:

31A-16-114. Recovery.

(1) If an order for liquidation or rehabilitation of a domestic insurer is entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer:

(a) from any parent corporation, holding company, or person or affiliate who otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock; or

(b) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to Subsection (1)(a) or this Subsection (1)(b) is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of Subsections (2), (3), and (4).

(2) A distribution may not be recovered if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

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(3) A person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection (1) that the person received. A person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under Subsection (3) is insolvent or otherwise fails to pay claims due from the person, its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Section 19. Section **31A-16-115** is enacted to read:

31A-16-115. Revocation, suspension, or nonrenewal of insurer's license.

Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Section 20. Section **31A-16-116** is enacted to read:

31A-16-116. Rules and orders.

The commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules necessary to carry out this chapter. The commissioner may issue orders as is necessary to carry out this chapter.

Section 21. Section **31A-16-117** is enacted to read:

31A-16-117. Judicial review -- Mandamus.

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(1) A person aggrieved by an act, determination, rule, or order or any other action of the commissioner pursuant to this chapter may seek judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) The filing of an appeal pursuant to this section shall stay the application of any rule, order, or other action of the commissioner to the appealing party unless the court, after giving party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(3) A person aggrieved by a failure of the commissioner to act or make a determination required by this chapter may petition the Third District Court of Salt Lake County for writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.

Section 22. Section 31A-16-118 is enacted to read:

31A-16-118. Conflict with other laws.

If any law or part of a law of this state is inconsistent with this chapter, this chapter governs.

Section 23. Section 31A-16-119 is enacted to read:

31A-16-119. Severability.

If any chapter, section, or subsection of this chapter or the application of any chapter, section, or subsection to any person or circumstance is held invalid, the remainder of the provisions of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

Section 24. Section 31A-16a-101 is enacted to read:

CHAPTER 16a. OWN RISK AND SOLVENCY ASSESSMENT ACT

31A-16a-101. Title -- Scope.

(1) This chapter is known as the "Own Risk and Solvency Assessment Act."

(2) This chapter applies to an insurer domiciled in this state unless exempt pursuant to Section 31A-16a-106.

(3) An own risk and solvency assessment summary report is confidential pursuant to Section 31A-16a-108.

Section 25. Section 31A-16a-102 is enacted to read:

31A-16a-102. Definitions.

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(1) "Insurance group" means the insurers and affiliates included within an insurance holding company system as defined in Section 31A-1-301.

(2) "Insurer" has the same meaning as defined in Section 31A-1-301, except that it does not include an agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(3) "Own risk and solvency assessment" means a confidential internal assessment:

(a) appropriate to the nature, scale, and complexity of an insurer or insurance group;

(b) conducted by that insurer or insurance group; and

(c) including the material and relevant risks associated with the insurer's or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

(4) "Own risk and solvency assessment guidance manual" means the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners.

(5) "Own risk and solvency assessment summary report" means a confidential high-level summary of an insurer's or insurance group's own risk and solvency assessment.

Section 26. Section **31A-16a-103** is enacted to read:

31A-16a-103. Risk management framework.

(1) An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.

(2) An insurer may satisfy Subsection (1) if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Section 27. Section **31A-16a-104** is enacted to read:

31A-16a-104. Own risk and solvency assessment requirement.

(1) (a) Subject to Section 31A-16a-106, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual.

(b) A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the National Association of Insurance Commissioners.

(2) The own risk and solvency assessment shall be conducted:

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(a) no less than annually; and

(b) at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Section 28. Section 31A-16a-105 is enacted to read:

31A-16a-105. Own risk and solvency assessment summary report.

(1) Upon the commissioner's request, an insurer shall submit to the commissioner:

(a) an own risk and solvency assessment summary report; or

(b) any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual, applicable to the insurer, the insurance group of which it is a member, or both the insurer and insurance group.

(2) Notwithstanding a request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the one or more reports required by this section if the commissioner is the lead state commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(3) The commissioner may not request the one or more reports required by this section more than once each year.

(4) The one or more reports shall include a signature of the insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of the person's belief and knowledge that:

(a) the insurer applies the enterprise risk management process described in the own risk and solvency assessment summary report; and

(b) a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board of directors.

(5) An insurer may comply with Subsection (1) by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member, to the commissioner of another state, or to a supervisor or regulator of a foreign jurisdiction if:

(a) the report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual; and

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(b) the report is written in a language other than English, it is accompanied by a translation of that report into the English language.

Section 29. Section 31A-16a-106 is enacted to read:

31A-16a-106. Exemption.

(1) An insurer shall be exempt from the requirements of this chapter, if:

(a) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

(b) the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

(2) If an insurer qualifies for exemption pursuant to Subsection (1)(a), but the insurance group of which the insurer is a member does not qualify for exemption pursuant to Subsection (1)(b), the own risk and solvency assessment summary report that may be required pursuant to Section 31A-16a-105:

(a) shall include every insurer within the insurance group; or

(b) if more than one own risk and solvency assessment summary report is submitted for any combination of insurers, the reports shall include every insurer within the insurance group.

(3) If an insurer does not qualify for exemption pursuant to Subsection (1)(a), but the insurance group of which it is a member qualifies for exemption pursuant to Subsection (1)(b), then the only own risk and solvency assessment summary report that may be required pursuant to Section 31A-16a-105 is the report applicable to that insurer.

(4) An insurer that does not qualify for exemption pursuant to Subsection (1) may apply to the commissioner for a waiver from the requirements of this chapter.

(5) In deciding whether to grant the insurer's request for waiver, the commissioner will consider unique circumstances that may include factors such as:

(a) the type and volume of business written;

(b) ownership and organizational structure; and

(c) any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member.

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(6) If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner, as determined by procedures outlined in the Financial Analysis Handbook of the National Association of Insurance Commissioners, and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(7) Notwithstanding the exemptions stated in this section, the commissioner may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances, including:

(a) the insurer has a risk-based capital for company action level event as set forth in Section 31A-17-603;

(b) the insurer meets one or more of the standards of an insurer considered to be in hazardous financial condition or potentially hazardous financial condition, as defined by rule made under Subsection 31A-27a-101(3)(c);

(c) the insurer otherwise exhibits qualities of a troubled insurer as determined by the commissioner;

(d) the type and volume of business written;

(e) ownership and organizational structure; or

(f) federal agency requests and international supervisor requests.

(8) If an insurer that qualifies for an exemption pursuant to Subsection (1) subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this chapter.

Section 30. Section **31A-16a-107** is enacted to read:

31A-16a-107. Contents of the own risk and solvency assessment summary report.

(1) The own risk and solvency assessment summary report shall be prepared consistent with the own risk and solvency assessment guidance manual, subject to Subsection (3).

(2) Documentation supporting information shall be maintained and made available upon examination or upon request of the commissioner.

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(3) The review of the own risk and solvency assessment summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multi-state or global insurers and insurance groups.

Section 31. Section 31A-16a-108 is enacted to read:

31A-16a-108. Confidentiality of information obtained by commissioner.

(1) Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person under this chapter, are proprietary and contain trade secrets. These documents, materials, or other information are:

(a) confidential, not public records, and not open to public inspection; and

(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(2) The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(3) Other than under Subsection (2), the commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(4) The commissioner and any person who received documents, materials, or other own risk and solvency assessment related information, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter shall keep confidential any confidential documents, materials, or information subject to Subsection (1).

(5) To assist in the performance of the commissioner's regulatory duties, the commissioner:

(a) may, upon request, share documents, materials, or other own risk and solvency assessment related information, including the confidential documents, materials, or information subject to Subsection (1), including proprietary and trade secret documents and materials with:

(i) other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in Chapter 16, Insurance Holding Companies;

(ii) the National Association of Insurance Commissioners; and

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(iii) any third-party consultants designated by the commissioner;

(b) may not share the information described in Subsection (5)(a) unless the recipient of the information agrees in writing to:

(i) maintain the confidentiality status of the own risk and solvency assessment related documents, materials, or other information; and

(ii) state that it has the legal authority to maintain confidentiality;

(c) may receive documents from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college described in Chapter 16, Insurance Holding Companies, and from the National Association of Insurance Commissioners, materials or other own risk and solvency assessment related information, including:

(i) otherwise confidential documents, materials, or information; or

(ii) proprietary and trade-secret information or documents;

(d) shall maintain as confidential any documents, materials, or information received under Subsection (5)(c) with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material, or information;

(e) shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to this chapter consistent with this Subsection (5) that shall:

(i) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers;

(ii) provide that the recipient agrees in writing:

(A) to maintain the confidentiality status of the own risk and solvency assessment related documents, materials, or other information; and

(B) to verify the legal authority to maintain confidentiality;

(iii) specify that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter remains with the commissioner and the National Association of Insurance Commissioners' or a third-party consultant's use of the information is subject to the direction of the commissioner;

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(iv) prohibit the National Association of Insurance Commissioners or third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;

(v) require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;

(vi) require the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter;
and

(vii) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(6) The sharing of information and documents by the commissioner pursuant to this chapter may not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

(7) No waiver of any applicable claim of confidentiality in the documents, proprietary and trade-secret materials, or other own risk and solvency assessment related information shall occur as a result of disclosure of such own risk and solvency assessment related information or documents to the commissioner under this section or as a result of sharing as authorized in this chapter.

(8) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter are:

(a) confidential, not public records, and not open to public inspection; and

(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

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Section 32. Section 31A-16a-109 is enacted to read:

31A-16a-109. Sanctions.

(1) An insurer failing, without just cause, to timely file the own risk and solvency assessment summary report as required in this chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each working day the own risk and solvency assessment summary report is late notwithstanding Section 31A-2-308.

(2) The penalty recovered under Subsection (1) shall be paid into the General Fund. The maximum penalty under this section is \$250,000 notwithstanding Section 31A-2-308. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Section 33. Section 31A-16a-110 is enacted to read:

31A-16a-110. Severability.

If any chapter, section, or subsection of this chapter or the application of any chapter, section, or subsection to any person or circumstance is held invalid, the remainder of the provisions of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

Section 34. Section 31A-21-313 is amended to read:

31A-21-313. Limitation of actions.

(1) (a) An action on a written policy or contract of first party insurance shall be commenced within three years after the inception of the loss.

(b) The inception of the loss on a fidelity bond is the date the insurer first denies all or part of a claim made under the fidelity bond.

(2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on insurance policies.

(3) An insurance policy may not:

(a) limit the time for beginning an action on the policy to a time less than that authorized by statute;

(b) prescribe in what court an action may be brought on the policy; or

(c) provide that no action may be brought, subject to permissible arbitration provisions in contracts.

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(4) Unless by verified complaint it is alleged that prejudice to the complainant will arise from a delay in bringing suit against an insurer, which prejudice is other than the delay itself, no action may be brought against an insurer on an insurance policy to compel payment under the policy until the earlier of:

- (a) 60 days after proof of loss has been furnished as required under the policy;
- (b) waiver by the insurer of proof of loss; or
- (c) the insurer's denial of full payment.

(5) The period of limitation is tolled during the period in which the parties conduct an appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by the parties.

Section 35. Section 31A-21-314 is amended to read:

31A-21-314. Prohibited provisions.

~~No~~ (1) An insurance policy subject to this chapter may contain any provision:

~~(1)~~ (a) requiring it to be construed according to the laws of another jurisdiction except as necessary to meet the requirements of compulsory insurance laws of other jurisdictions;

~~(2)~~ (b) depriving Utah courts of jurisdiction over an action against the insurer, except as provided in permissible arbitration provisions; or

~~(3)~~ (c) limiting the right of action against the insurer to less than three years from the date the cause of action accrues.

~~(631-2-231. Repeal dates, Title 31A:~~

~~—— (1) Section 31A-22-315.5 is repealed July 1, 2016.~~

~~—— (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed July 1, 2015.~~

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

~~—— 31A-3-304 (Effective 07/01/15). Annual fees — Other taxes or fees prohibited — Captive Insurance Restricted Account:~~

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

~~—— (b) The commissioner shall:~~

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

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

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

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

~~—— (i) a fee under this section;~~

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

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

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

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

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

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

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

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

~~—— (c) The Captive Insurance Restricted Account shall consist of the fees described in Subsection (3)(a):~~

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

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

~~—— (i) administer and enforce:~~

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

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

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- ~~—— (ii) promote the captive insurance industry in Utah.~~
- ~~—— (c) An appropriation from the Captive Insurance Restricted Account is nonlapsing, except that at the end of each fiscal year, money received by the commissioner in excess of [\$1,250,000] the following shall be treated as free revenue in the General Fund[.]:~~
 - ~~—— (i) for fiscal year 2015-2016, in excess of \$1,250,000;~~
 - ~~—— (ii) for fiscal year 2016-2017, in excess of \$1,250,000; and~~
 - ~~—— (iii) for fiscal year 2017-2018 and subsequent fiscal years, in excess of \$1,850,000.~~
- ~~—— Section 3. Section 31A-16-102.5 is enacted to read:~~
- ~~—— **31A-16-102.5. Subsidiaries of insurers.**~~
 - ~~—— (1) (a) A domestic insurer may organize or acquire one or more subsidiaries either:~~
 - ~~—— (i) by itself; or~~
 - ~~—— (ii) in cooperation with one or more persons.~~
 - ~~—— (b) A subsidiary of a domestic insurer may conduct any kind of business or businesses and its authority to do so may not be limited by reason of the fact that it is a subsidiary of a domestic insurer.~~
 - ~~—— (2) (a) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of this chapter, a domestic insurer may also invest in the following securities of one or more subsidiaries:~~
 - ~~—— (i) common stock;~~
 - ~~—— (ii) preferred stock;~~
 - ~~—— (iii) debt obligations; or~~
 - ~~—— (iv) other securities.~~
 - ~~—— (b) Amounts under Subsection (2)(a) that do not exceed the lesser of 10% of the insurer's assets or 50% of the insurer's surplus as regards policyholders are permitted, if after the investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs.~~
 - ~~—— (c) In calculating the amount of the investments described in Subsection (2)(b), investments in domestic or foreign insurance subsidiaries and health organizations shall be excluded, and there shall be included:~~
 - ~~—— (i) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and~~

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~~contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and~~

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

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

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

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

~~—— (B) the insurer's proportionate share of an investment in an asset by a subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;~~

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

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

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

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

~~—— (b) the value of all previous investments in equity securities as of the day they were~~

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~~made net of any return of capital invested not including dividends.~~

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

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

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

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

~~—— Section 4. Section **31A-16-103** is amended to read:~~

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

~~—— (1) (a) A person may not take the actions described in Subsections (1)(b) or (c) unless, at the time any offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of securities if no offer or agreement is involved:~~

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

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

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

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

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

~~—— (i) a domestic insurer; or~~

~~—— (ii) any person controlling a domestic insurer.~~

~~—— (d) For purposes of this section, a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least~~

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~~30 days before the cessation of control. The commissioner shall determine those instances in which the one or more persons seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed, this Subsection (1)(d) does not apply.~~

~~—— (e) With respect to a transaction subject to this section, the acquiring person shall also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 31A-16-104.5. A failure to file the notification may be subject to penalties specified in Section 31A-16-104.5.~~

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

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

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

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

~~—— (B) any person that controls an insurance company.~~

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

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

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

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

~~—— (D) Chapter 9, Insurance Fraternal; and~~

~~—— (E) Chapter 11, Motor Clubs.~~

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

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- ~~—— (A) is in writing; and~~
- ~~—— (B) includes a provision that the agreement is subject to the approval of the commissioner upon the filing of any applicable statement required under this chapter.~~
- ~~—— (ii) A written agreement for acquisition or control that includes the provision described in Subsection (1)[(c)](g)(i) satisfies the requirements of this Subsection (1).~~
- ~~—— (2) The statement to be filed with the commissioner under Subsection (1) shall be made under oath or affirmation and shall contain the following information:~~
 - ~~—— (a) the name and address of the "acquiring party," which means each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to be effected; and~~
 - ~~—— (i) if the person is an individual:~~
 - ~~—— (A) the person's principal occupation;~~
 - ~~—— (B) a listing of all offices and positions held by the person during the past five years;~~
 - ~~and~~
 - ~~—— (C) any conviction of crimes other than minor traffic violations during the past 10 years; and~~
 - ~~—— (ii) if the person is not an individual:~~
 - ~~—— (A) a report of the nature of its business operations during:~~
 - ~~—— (I) the past five years; or~~
 - ~~—— (II) for any lesser period as the person and any of its predecessors has been in existence;~~
 - ~~—— (B) an informative description of the business intended to be done by the person and the person's subsidiaries;~~
 - ~~—— (C) a list of all individuals who are or who have been selected to become directors or executive officers of the person, or individuals who perform, or who will perform functions appropriate to such positions; and~~
 - ~~—— (D) for each individual described in Subsection (2)(a)(ii)(C), the information required by Subsection (2)(a)(i) for each individual;~~
 - ~~—— (b) (i) the source, nature, and amount of the consideration used or to be used in effecting the merger or acquisition of control;~~
 - ~~—— (ii) a description of any transaction in which funds were or are to be obtained for the~~

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~~purpose of effecting the merger or acquisition of control, including any pledge of:~~

~~—— (A) the insurer's stock; or~~
~~—— (B) the stock of any of the insurer's subsidiaries or controlling affiliates; and~~
~~—— (iii) the identity of persons furnishing the consideration;~~
~~—— (c) (i) fully audited financial information, or other financial information considered acceptable by the commissioner, of the earnings and financial condition of each acquiring party for:~~

~~—— (A) the preceding five fiscal years of each acquiring party; or~~
~~—— (B) any lesser period the acquiring party and any of its predecessors shall have been in existence; and~~

~~—— (ii) unaudited information:~~
~~—— (A) similar to the information described in Subsection (2)(c)(i); and~~
~~—— (B) prepared within the 90 days prior to the filing of the statement;~~
~~—— (d) any plans or proposals which each acquiring party may have to:~~

~~—— (i) liquidate the insurer;~~
~~—— (ii) sell its assets;~~
~~—— (iii) merge or consolidate the insurer with any person; or~~
~~—— (iv) make any other material change in the insurer's:~~

~~—— (A) business;~~
~~—— (B) corporate structure; or~~
~~—— (C) management;~~

~~—— (e) (i) the number of shares of any security referred to in Subsection (1) that each acquiring party proposes to acquire;~~

~~—— (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1); and~~

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

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

~~—— (i) is beneficially owned; or~~

~~—— (ii) concerning which there is a right to acquire beneficial ownership by each acquiring party;~~

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

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

- ~~—— (i) the transfer of any of the securities;~~
- ~~—— (ii) joint ventures;~~
- ~~—— (iii) loan or option arrangements;~~
- ~~—— (iv) puts or calls;~~
- ~~—— (v) guarantees of loans;~~
- ~~—— (vi) guarantees against loss or guarantees of profits;~~
- ~~—— (vii) division of losses or profits; or~~
- ~~—— (viii) the giving or withholding of proxies;~~
- ~~—— (h) a description of the purchase by any acquiring party of any security referred to in Subsection (1) during the 12 calendar months preceding the filing of the statement including:~~
 - ~~—— (i) the dates of purchase;~~
 - ~~—— (ii) the names of the purchasers; and~~
 - ~~—— (iii) the consideration paid or agreed to be paid for the purchase;~~
- ~~—— (i) a description of:~~
 - ~~—— (i) any recommendations to purchase by any acquiring party any security referred to in Subsection (1) made during the 12 calendar months preceding the filing of the statement; or~~
 - ~~—— (ii) any recommendations made by anyone based upon interviews or at the suggestion of the acquiring party;~~
- ~~—— (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (1); and~~
- ~~—— (ii) if distributed, copies of additional soliciting material relating to the transactions described in Subsection (2)(j)(i);~~
- ~~—— (k) (i) the term of any agreement, contract, or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for tender; and~~
- ~~—— (ii) the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to any agreement, contract, or understanding described in Subsection (2)(k)(i); [and]~~
- ~~—— (l) an agreement by the person required to file the statement referred to in Subsection~~

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~~(1) that it will provide the annual report, specified in Section 31A-16-105, for so long as control exists;~~

~~—— (m) an acknowledgment by the person required to file the statement referred to in Subsection (1) that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and~~

~~—— [(l)] (n) any additional information the commissioner requires by rule, which the commissioner determines to be:~~

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

~~—— (ii) in the public interest.~~

~~—— (3) The department may request:~~

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

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

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

~~—— (i) verifying the information in Subsection (2)(a)(i);~~

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

~~—— (iii) preventing persons who violate 18 U.S.C. Sec. 1033 from engaging in the business of insurance in the state.~~

~~—— (c) If the department requests the criminal background information, the department shall:~~

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

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

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

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

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

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

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

~~—— (A) market conditions;~~

~~—— (B) business in force; and~~

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

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

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

~~—— (i) partner of the partnership or limited partnership;~~

~~—— (ii) member of the syndicate or group; and~~

~~—— (iii) person who controls the partner or member.~~

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

~~—— (i) the corporation;~~

~~—— (ii) each officer and director of the corporation; and~~

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

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

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

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

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

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

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

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

~~—— (B) tend to create a monopoly in insurance;~~

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

~~—— (A) jeopardize the financial stability of the insurer; or~~

~~—— (B) prejudice the interest of:~~

~~—— (I) its policyholders; or~~

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

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

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

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

~~—— (B) not in the public interest; or~~

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

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

~~—— (b) (2) For purposes of Subsection (18) (1) (a)(iv), the offering price for each security may not be considered unfair if the adjusted book values under Subsection (2)(c):~~

~~—— (i) are disclosed to the securityholders; and~~

~~—— (ii) determined by the commissioner to be reasonable.~~

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

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

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

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

~~—— (A) the insurer; and~~

~~—— (B) any person designated by the commissioner.~~

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

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

~~—— (i) present evidence;~~

~~—— (ii) examine and cross-examine witnesses; and~~

~~—— (iii) offer oral and written arguments.~~

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

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

~~—— (10) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Subsection (9)(a) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection (1). The person shall file the statement referred to in Subsection (1) with the National Association~~

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~~of Insurance Commissioners within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in Subsection (1). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend a hearing under this Subsection (10) in person or by telecommunication.~~

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

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

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

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

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

~~—— (A) necessarily incurred; and~~

~~—— (B) approved by the commissioner.~~

~~—— (iii) The acquiring person shall:~~

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

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

~~—— (C) file with the department as a public record a copy of the consolidated account~~

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described in Subsection [(10)] (12)(c)(iii)(A):

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

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

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

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

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

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

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

—— (b) (i) Mailing expenses shall be paid by the person making the filing:

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

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

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

—— (b) otherwise not comprehended within the purposes of this section:

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- ~~— [(14)] (16) The following are violations of this section:~~
- ~~— (a) the failure to file any statement, amendment, or other material required to be filed pursuant to Subsections (1), (2), and (5); or~~
- ~~— (b) the effectuation, or any attempt to effectuate, an acquisition of control of, divestiture of, or merger with a domestic insurer unless the commissioner has given the commissioner's approval to the acquisition or merger.~~
- ~~— [(15)] (17) (a) The courts of this state are vested with jurisdiction over:~~
- ~~— (i) a person who:~~
- ~~— (A) files a statement with the commissioner under this section; and~~
- ~~— (B) is not resident, domiciled, or authorized to do business in this state; and~~
- ~~— (ii) overall actions involving persons described in Subsection [(15)] (17)(a)(i) arising out of a violation of this section.~~
- ~~— (b) A person described in Subsection [(15)] (17)(a) is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person, to be that person's lawful agent upon whom may be served all lawful process in any action, suit, or proceeding arising out of a violation of this section.~~
- ~~— (c) A copy of a lawful process described in Subsection [(15)] (17)(b) shall be:~~
- ~~— (i) served on the commissioner; and~~
- ~~— (ii) transmitted by registered or certified mail by the commissioner to the person at that person's last-known address.~~
- ~~— Section 5. Section **31A-16-104.5** is enacted to read:~~
- ~~— **31A-16-104.5. Acquisitions involving insurers not otherwise covered:**~~
- ~~— (1) The following definitions apply for the purposes of this section only:~~
- ~~— (a) "Acquisition" means an agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.~~
- ~~— (b) "Insurer" includes any company or group of companies under common management, ownership, or control.~~
- ~~— (c) "Involved insurer" includes an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.~~

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~~—— (d) (i) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.~~

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

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

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

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

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

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

~~—— (iv) the acquisition of an already affiliated person;~~

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

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

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

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

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

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

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

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

~~—— (C) the findings are communicated by the domiciliary commissioner to the commissioner of this state.~~

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

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

~~—— (b) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of receipt, or termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period~~

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~~shall end on the earlier of the 30th day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.~~

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

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

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

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

~~Insurer A Insurer B 4% 4% or more 10% 2% or more 15% 1% or more; or —— (B) the market is not highly concentrated and the involved insurers possess the following shares of the market:~~

~~Insurer A Insurer B 5% 5% or more 10% 4% or more 15% 3% or more 19% 1% or more.~~

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

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

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

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- ~~—— (i) there is a significant trend toward increased concentration in the market;~~
- ~~—— (ii) one of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and~~
- ~~—— (iii) another involved insurer's market is 2% or more;~~
- ~~—— (d) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.~~
- ~~—— (e) Even though an acquisition is not prima facie violative of the competitive standard under Subsections (4)(b) and (4)(c), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence;~~
- ~~—— (f) Even though an acquisition is prima facie violative of the competitive standard under Subsections (4)(b) and (4)(c), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this Subsection (4)(f) include the following:~~
 - ~~—— (i) market shares;~~
 - ~~—— (ii) volatility of ranking of market leaders;~~
 - ~~—— (iii) number of competitors;~~
 - ~~—— (iv) concentration or trend of concentration in the industry; and~~
 - ~~—— (v) ease of entry and exit into the market.~~
- ~~—— (g) An order may not be entered under Subsection (5) if:~~
 - ~~—— (i) the acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition;~~
 - ~~or~~
 - ~~—— (ii) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition;~~
- ~~—— (5) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if an acquisition violates the standards of this section, the commissioner may enter an order:~~
 - ~~—— (i) requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or~~
 - ~~—— (ii) denying the application of an acquired or acquiring insurer for a license to do~~

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business in this state:

—— (b) The commissioner shall accompany an order issued under this Subsection (5) with a written decision of the commissioner setting forth findings of fact and conclusions of law.

—— (c) An order pursuant to this section may not apply if the acquisition is not consummated.

—— (d) A person who violates a cease and desist order of the commissioner under Subsection (5)(a)(i) and while the order is in effect may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to one or more of the following:

—— (i) notwithstanding Section 31A-2-308, a monetary penalty of not more than \$10,000 for every day of violation; or

—— (ii) suspension or revocation of the person's license.

—— (e) An insurer or other person who fails to make any filing required by this section, and who fails to demonstrate a good faith effort to comply with a filing requirement, is subject to a fine of not more than \$50,000 notwithstanding Section 31A-2-308.

—— Section 6. Section 31A-16-105 is amended to read:

—— **31A-16-105. Registration of insurers.**

—— (1) (a) [Every] An insurer [which] that is authorized to do business in this state and [which] that is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile, if the requirements and standards are substantially similar to those contained in this section, Subsections 31A-16-106(1)(a) and (2) and either Subsection 31A-16-106(1)(b) or a statutory provision similar to the following: "Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition."

—— (b) [Any] An insurer [which] that is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by May 1 of each year for the previous calendar year, unless the commissioner for good cause extends the time for registration and then at the end of the extended time period. The commissioner may require any insurer authorized to do business in the state, which is a member of a holding

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~~company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Subsection (3), or any other information filed by the insurer with the insurance regulatory authority of domiciliary jurisdiction:~~

~~—— (2) [Every] An insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:~~

~~—— (a) the capital structure, general financial condition, and ownership and management of the insurer and any person controlling the insurer;~~

~~—— (b) the identity and relationship of every member of the insurance holding company system;~~

~~—— (c) any of the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:~~

~~—— (i) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of securities of the insurer by its affiliates;~~

~~—— (ii) purchases, sales, or exchanges of assets;~~

~~—— (iii) transactions not in the ordinary course of business;~~

~~—— (iv) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;~~

~~—— (v) all management agreements, service contracts, and all cost-sharing arrangements;~~

~~—— (vi) reinsurance agreements;~~

~~—— (vii) dividends and other distributions to shareholders; and~~

~~—— (viii) consolidated tax allocation agreements;~~

~~—— (d) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; [and]~~

~~—— (e) if requested by the commissioner, financial statements of or within an insurance holding company system, including all affiliates:~~

~~—— (i) which may include annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended; and~~

~~—— (ii) which request is satisfied by providing the commissioner with the most recently~~

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~~filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission;~~

~~—— [(c)] (f) any other matters concerning transactions between registered insurers and any affiliates as may be included in any subsequent registration forms adopted or approved by the commissioner[.];~~

~~—— (g) statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and~~

~~—— (h) any other information required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— (3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.~~

~~—— (4) No information need be disclosed on the registration statement filed pursuant to Subsection (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of 1%, or less, of an insurer's admitted assets as of the next preceding December 31 may not be considered material for purposes of this section.~~

~~—— (5) Subject to Section 31A-16-106, each registered insurer shall report to the commissioner a dividend or other distribution to shareholders within 15 business days following the declaration of the dividend or distribution.~~

~~—— [(5)] (6) Any person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.~~

~~—— [(6)] (7) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.~~

~~—— [(7)] (8) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.~~

~~—— [(8)] (9) The commissioner may allow an insurer which is authorized to do business in this state, and which is part of an insurance holding company system, to register on behalf of~~

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any affiliated insurer which is required to register under Subsection (1) and to file all information and material required to be filed under this section.

——— [(9) The provisions of this] (10) This section [do] does not apply to any insurer, information, or transaction if, and to the extent that, the commissioner by rule or order exempts the insurer from [the provisions of] this section.

——— [(10)] (11) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or a disclaimer of affiliation may be filed by any insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. [After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard, and after making specific findings of fact to support the disallowance.] A disclaimer of affiliation is considered to have been granted unless the commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. If disallowed, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer is granted by the commissioner, or if the disclaimer is considered to have been approved.

——— (12) The ultimate controlling person of an insurer subject to registration shall also file an annual enterprise risk report. The annual enterprise risk report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company that could pose enterprise risk to the insurer. The annual enterprise risk report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

——— [(11)] (13) The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

——— Section 7. Section ~~31A-16-106~~ is amended to read:

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~~31A-16-106. Standards and management of an insurer within a holding company system:~~

~~(1) (a) Transactions within [a] an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:~~

~~(i) the terms shall be fair and reasonable;~~

~~(ii) agreements for cost sharing services and management shall include the provisions required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~

~~[(ii)] (iii) charges or fees for services performed shall be reasonable;~~

~~[(iii)] (iv) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;~~

~~[(iv)] (v) the books, accounts, and records of each party to all transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and~~

~~[(v)] (vi) the insurer's surplus held for policyholders, following any dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and shall be adequate to its financial needs;~~

~~(b) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in Subsections (1)(a)(i) through (vi), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days [prior to] before entering into the transaction, or within any shorter period the commissioner may permit, if the commissioner has not disapproved the transaction within the period[:]. The notice for an amendment or modification shall include the reasons for the change and financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:~~

~~(i) sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to, or exceed as of the next preceding December 31:~~

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~~—— (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus held for policyholders;~~

~~—— (B) for life insurers, 3% of the insurer's admitted assets;~~

~~—— (ii) loans or extensions of credit made to any person who is not an affiliate, if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if the transactions are equal to, or exceed as of the next preceding December 31;~~

~~—— (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus held for policyholders;~~

~~—— (B) for life insurers, 3% of the insurer's admitted assets;~~

~~—— (iii) reinsurance agreements or modifications to reinsurance agreements [in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus held for policyholders, as of the next preceding December 31, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;]; including an agreement in which the reinsurance premium, a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the current and succeeding three years, equals or exceeds 5% of the insurer's surplus held for policyholders, as of the next preceding December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and the non-affiliate that any portion of the assets will be transferred to one or more affiliates of the reinsurer;~~

~~—— (iv) all management agreements, service contracts, tax allocation agreements, and all cost-sharing arrangements;~~

~~—— (v) guarantees when made by a domestic insurer, except that:~~

~~—— (A) a guarantee that is quantifiable as to amount is not subject to the notice requirements of this Subsection (1) unless it exceeds the lesser of .5% of the insurer's admitted assets or 10% of surplus held for policyholders, as of the next preceding December 31; and~~

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~~—— (B) a guarantee that is not quantifiable as to amount is subject to the notice requirements of this Subsection (1);~~

~~—— (vi) direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in the investments, exceeds 2.5% of the insurer's surplus to policyholders, except that a direct or indirect acquisition or investment in a subsidiary acquired pursuant to Section 31A-16-102.5, or in a non-subsiary insurance affiliate that is subject to this chapter, is exempt from this Subsection (1)(b)(vi);~~

~~—— [(v)] (vii) any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders; and~~

~~—— [(vi) this subsection] (viii) this Subsection (1) may not be interpreted to authorize or permit any transactions which would be otherwise contrary to law in the case of an insurer not a member of the same holding company system;~~

~~—— (c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of the separate transactions is to avoid the statutory threshold amount and thus to avoid the review by the commissioner that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any 12 month period for such a purpose, [he] the commissioner may exercise [his] the commissioner's authority under Section 31A-16-110;~~

~~—— (d) The commissioner, in reviewing transactions pursuant to Subsection (1)(b), shall consider whether the transactions comply with the standards set forth in Subsection (1)(a) and whether they may adversely affect the interests of policyholders;~~

~~—— (e) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation, if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities;~~

~~—— (2) (a) A domestic insurer may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:~~

~~—— (i) 30 days after the commissioner has received notice of the declaration of the dividend and has not within the 30-day period disapproved the payment; or~~

~~—— (ii) the commissioner has approved the payment within the 30-day period;~~

~~—— (b) For purposes of this [subsection] Subsection (2), an extraordinary dividend or~~

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~~distribution includes any dividend or distribution of cash or other property, fair market value of which, together with that of other dividends or distributions made within the preceding 12 months, exceeds the lesser of:~~

~~—— (i) 10% of the insurer's surplus held for policyholders as of the next preceding December 31; [or]~~

~~—— (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the next preceding December 31; or~~

~~—— (iii) an extraordinary dividend does not include pro rata distributions of any class of the insurer's own securities.~~

~~—— (c) In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.~~

~~—— (d) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution, which is conditioned upon the commissioner's approval of the dividend or distribution, and the declaration shall confer no rights upon shareholders until:~~

~~—— (i) the commissioner has approved the payment of the dividend or distribution; or~~

~~—— (ii) the commissioner has not disapproved the payment within the 30-day period referred to in Subsection (2)(a).~~

~~—— (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer may not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.~~

~~—— (b) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of Subsection (1)(a).~~

~~—— (c) (i) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of a domestic insurer,~~

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~~shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity.~~

~~—— (ii) At least one person described in Subsection (3)(c)(i) shall be included in a quorum for the transaction of business at a meeting of the board of directors or a committee of the board of directors.~~

~~—— (d) The board of directors of a domestic insurer shall establish one or more committees composed solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The one or more committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers considered to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.~~

~~—— (e) Subsections (3)(c) and (d) do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees of the board of directors that meet the requirements of Subsections (3)(c) and (d) with respect to the controlling entity.~~

~~—— (f) An insurer may make application to the commissioner for a waiver from the requirements of this Subsection (3) if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this Subsection (3) based upon unique circumstances. The commissioner may consider various factors, including:~~

~~—— (i) the type of business entity;~~

~~—— (ii) the volume of business written;~~

~~—— (iii) the availability of qualified board members; or~~

~~—— (iv) the ownership or organizational structure of the entity.~~

~~—— (4) (a) For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:~~

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- ~~—— (i) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;~~
- ~~—— (ii) the extent to which the insurer's business is diversified among several lines of insurance;~~
- ~~—— (iii) the number and size of risks insured in each line of business;~~
- ~~—— (iv) the extent of the geographical dispersion of the insurer's insured risks;~~
- ~~—— (v) the nature and extent of the insurer's reinsurance program;~~
- ~~—— (vi) the quality, diversification, and liquidity of the insurer's investment portfolio;~~
- ~~—— (vii) the recent past and projected future trend in the size of the insurer's investment portfolio;~~
- ~~—— (viii) the surplus as regards policyholders maintained by other comparable insurers;~~
- ~~—— (ix) the adequacy of the insurer's reserves; and~~
- ~~—— (x) the quality and liquidity of investments in affiliates.~~
- ~~—— (b) The commissioner may treat an investment described in Subsection (4)(a)(x) as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.~~
- ~~—— Section 8. Section 31A-16-107.5, which is renumbered from Section 31A-16-108 is renumbered and amended to read:~~
- ~~—— [31A-16-108]. **31A-16-107.5. Examination of registered insurers:**~~
- ~~—— (1) Subject to the limitation contained in this section and the powers which the commissioner has under Chapter 2, Administration of the Insurance Laws, relating to the examination of insurers, the commissioner has the power to [order any] examine an insurer registered under Section 31A-16-105 [to produce the records, books, or other informational papers in the possession of the insurer or its affiliates which the commissioner considers necessary] and its affiliates to ascertain the financial condition [or legality of conduct] of the insurer[. If an insurer fails to comply with this order, the commissioner may examine the affiliates to obtain the information.], including the enterprise risk to the insurer by the ultimate controlling party, or by the insurance holding company system on a consolidated basis.~~
- ~~—— [(2) The commissioner shall exercise his power under Subsection (1) only if the examination of the insurer under Chapter 2 is inadequate, or the interests of the policyholders of the insurer may be adversely affected if the commissioner fails to exercise his power.]~~

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~~—— (2) (a) The commissioner may order an insurer registered under Section 31A-16-105 to produce the records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this chapter.~~

~~—— (b) To determine compliance with this chapter, the commissioner may order an insurer registered under Section 31A-16-105 to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual relationships, statutory obligations, or other methods.~~

~~—— (c) If an insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information.~~

~~—— (d) Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of \$5,000 for each day's delay, or may suspend or revoke the insurer's license.~~

~~—— (3) The commissioner may retain, at the registered insurer's expense, attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, if they are necessary to assist in the conduct of the examination under Subsection (1). Any persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.~~

~~—— (4) [Each] A registered insurer who produces records, books, and papers under Subsection (1) for examination is liable for and shall pay the expense of the examination under Section 31A-2-205.~~

~~—— (5) If an insurer fails to comply with an order issued under this section, the commissioner may:~~

~~—— (a) examine the affiliates to obtain the information; or~~

~~—— (b) issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section.~~

~~—— (6) Upon the failure or refusal of any person to obey a subpoena under Subsection (5), the commissioner may petition the Third District Court of Salt Lake County to enter an order compelling the witness to appear and testify or produce documentary evidence. A person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. A person subpoenaed is entitled to the same fees and mileage, if~~

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~~claimed, as a witness in the Third District Court of Salt Lake County, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.~~

~~Section 9. Section 31A-16-108.5 is enacted to read:~~

~~31A-16-108.5. Supervisory colleges:~~

~~(1) (a) For an insurer registered under Section 31A-16-105 and in accordance with Subsection (3), the commissioner may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include the following:~~

~~(i) initiating the establishment of a supervisory college;~~

~~(ii) clarifying the membership and participation of other supervisors in the supervisory college;~~

~~(iii) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;~~

~~(iv) coordinating the ongoing activities of the supervisory college, including:~~

~~(A) planning meetings;~~

~~(B) supervisory activities; and~~

~~(C) processes for information sharing; and~~

~~(v) establishing a crisis management plan;~~

~~(2) (a) A registered insurer subject to this section is liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with Subsection (3), including reasonable travel expenses.~~

~~(b) For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with supervision of the insurer or its affiliates and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.~~

~~(3) (a) The commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including:~~

~~(i) other state regulatory agencies;~~

~~(ii) federal regulatory agencies; or~~

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- ~~—— (iii) international regulatory agencies;~~
- ~~—— (b) The commissioner may enter into agreements in accordance with Section 31A-16-107.5 providing the basis for cooperation between the commissioner and other regulatory agencies, and the activities of the supervisory college, in order to assess:~~
 - ~~—— (i) the business strategy;~~
 - ~~—— (ii) financial position;~~
 - ~~—— (iii) legal and regulatory position;~~
 - ~~—— (iv) risk exposure; and~~
 - ~~—— (v) management and governance processes;~~
- ~~—— (c) Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.~~
- ~~—— Section 10. Section 31A-16-109 is amended to read:~~
- ~~—— 31A-16-109. Confidentiality of information obtained by commissioner:~~
 - ~~—— [All information] (1) Information, documents, and copies of these [which] that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made under Section [31A-16-108] 31A-16-107.5, and all information reported under Section 31A-16-105, is confidential. It is not subject to subpoena and may not be made public by the commissioner or any other person, except it may be provided to the insurance departments of other states, without the prior written consent of the insurer to which it pertains. The confidentiality of this section does not apply if the commissioner, after giving the insurer and its affiliates who would be affected by the disclosure, proper notice and an opportunity to be heard, and determines that the interests of policyholders, shareholders, or the public will be served by the publication of the information. In this situation, the commissioner may publish all or any part of the information in any manner [he] the commissioner considers appropriate.~~
 - ~~—— (2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom the documents, materials, or other information are shared pursuant to this chapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection (1).~~
 - ~~—— (3) (a) To assist in the performance of the commissioner's duties, the commissioner:~~

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~~—— (i) may share documents, materials, or other information, including the confidential documents, materials, or information subject to Subsection (1), with the following if the recipient agrees in writing to maintain the confidentiality status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality:~~

~~—— (A) other state, federal, and international regulatory agencies;~~

~~—— (B) the National Association of Insurance Commissioners and its affiliates and subsidiaries; and~~

~~—— (C) state, federal, and international law enforcement authorities, including members of a supervisory college described in Section 31A-16-108.5;~~

~~—— (ii) notwithstanding Subsection (1), may only share confidential documents, material, or information reported pursuant to Section 31A-16-105 with commissioners of states having statutes or regulations substantially similar to Subsection (1) and who have agreed in writing not to disclose the documents, material, or information;~~

~~—— (iii) may receive documents, materials, or information, including otherwise confidential documents, materials, or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential any document, material, or information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material, or information; and~~

~~—— (iv) shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this chapter consistent with this Subsection (3) that shall:~~

~~—— (A) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;~~

~~—— (B) specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter remains with the commissioner and the National Association of Insurance Commissioner's use of the~~

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~~information is subject to the direction of the commissioner;~~

~~—— (C) require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and~~

~~—— (D) require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter.~~

~~—— (4) The sharing of information by the commissioner pursuant to this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.~~

~~—— (5) A waiver of any applicable claim of confidentiality in the documents, materials, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection (3).~~

~~—— (6) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this chapter are:~~

~~—— (a) confidential, not public records, and not open to public inspection; and~~

~~—— (b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~—— Section 11. Section **31A-16-112** is enacted to read:~~

~~—— **31A-16-112. Sanctions:**~~

~~—— (1) (a) Notwithstanding Section 31A-2-308, the following sanctions apply:~~

~~—— (i) An insurer failing, without just cause, to file a registration statement required by this chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Fund.~~

~~—— (ii) The maximum penalty under this section is \$250,000.~~

~~—— (b) The commissioner may reduce the penalty if the insurer demonstrates to the~~

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commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

—— (2) A director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments that have not been properly reported or submitted pursuant to Subsection 31A-16-105(1), 31A-16-106(1)(b), or 31A-16-106(2), or that violates this chapter, shall pay, in the director's or officer's individual capacity, a civil forfeiture of not more than \$10,000 per violation, notwithstanding Section 31A-2-308, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

—— (3) Whenever it appears to the commissioner that any insurer subject to this chapter or a director, officer, employee, or agent of the insurer has engaged in any transaction or entered into a contract that is subject to Section 31A-16-106 and that would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contract and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.

—— (4) Whenever it appears to the commissioner that an insurer or any director, officer, employee, or agent of the insurer has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted by the Third District Court of Salt Lake County, against the insurer or the responsible director, officer, employee, or agent of the insurer. An insurer that willfully violates this chapter may be fined not more than \$250,000 notwithstanding Section 31A-2-308. An individual who willfully violates this chapter may be fined in the individual's individual capacity not more than \$100,000 notwithstanding Section 31A-2-308 and is guilty of a third-degree felony.

—— (5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the commissioner in the performances of the commissioner's duties under this chapter, is guilty of a third-degree felony. Any fines imposed

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~~shall be paid by the officer, director, or employee in the officer's, director's, or employee's individual capacity.~~

~~—— (6) Whenever it appears to the commissioner that a person has committed a violation of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with Section 31A-27-503.~~

~~—— Section 12. Section 31A-16-113 is enacted to read:~~

~~—— **31A-16-113. Receivership.**~~

~~—— Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in Section 31A-16-114 to take possession of the property of the domestic insurer and to conduct its business.~~

~~—— Section 13. Section 31A-16-114 is enacted to read:~~

~~—— **31A-16-114. Recovery.**~~

~~—— (1) If an order for liquidation or rehabilitation of a domestic insurer is entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer:~~

~~—— (a) from any parent corporation, holding company, or person or affiliate who otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock; or~~

~~—— (b) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to Subsection (1)(a) or this Subsection (1)(b) is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of Subsections (2), (3), and (4):~~

~~—— (2) A distribution may not be recovered if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.~~

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~~—— (3) A person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection (1) that the person received. A person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.~~

~~—— (4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.~~

~~—— (5) To the extent that any person liable under Subsection (3) is insolvent or otherwise fails to pay claims due from the person, its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.~~

~~—— Section 14. Section **31A-16-115** is enacted to read:~~

~~—— **31A-16-115. Revocation, suspension, or nonrenewal of insurer's license.**~~

~~—— Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.~~

~~—— Section 15. Section **31A-16-116** is enacted to read:~~

~~—— **31A-16-116. Rules and orders.**~~

~~—— The commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules necessary to carry out this chapter. The commissioner may issue orders as is necessary to carry out this chapter.~~

~~—— Section 16. Section **31A-16-117** is enacted to read:~~

~~—— **31A-16-117. Judicial review -- Mandamus.**~~

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~~—— (1) A person aggrieved by an act, determination, rule, or order or any other action of the commissioner pursuant to this chapter may seek judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.~~

~~—— (2) The filing of an appeal pursuant to this section shall stay the application of any rule, order, or other action of the commissioner to the appealing party unless the court, after giving party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.~~

~~—— (3) A person aggrieved by a failure of the commissioner to act or make a determination required by this chapter may petition the Third District Court of Salt Lake County for writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.~~

~~—— Section 17. Section **31A-16-118** is enacted to read:~~

~~—— **31A-16-118. Conflict with other laws.**~~

~~—— If any law or part of a law of this state is inconsistent with this chapter, this chapter governs.~~

~~—— Section 18. Section **31A-16-119** is enacted to read:~~

~~—— **31A-16-119. Severability.**~~

~~—— If any chapter, section, or subsection of this chapter or the application of any chapter, section, or subsection to any person or circumstance is held invalid, the remainder of the provisions of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.~~

~~—— Section 19. Section **31A-16a-101** is enacted to read:~~

~~**CHAPTER 16a. OWN RISK AND SOLVENCY ASSESSMENT ACT**~~

~~—— **31A-16a-101. Title -- Scope.**~~

~~—— (1) This chapter is known as the "Own Risk and Solvency Assessment Act."~~

~~—— (2) This chapter applies to an insurer domiciled in this state unless exempt pursuant to Section 31A-16a-106.~~

~~—— (3) An own risk and solvency assessment summary report is confidential pursuant to Section 31A-16a-108.~~

~~—— Section 20. Section **31A-16a-102** is enacted to read:~~

~~—— **31A-16a-102. Definitions.**~~

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~~—— (1) "Insurance group" means the insurers and affiliates included within an insurance holding company system as defined in Section 31A-1-301.~~

~~—— (2) "Insurer" has the same meaning as defined in Section 31A-1-301, except that it does not include an agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.~~

~~—— (3) "Own risk and solvency assessment" means a confidential internal assessment:~~

~~—— (a) appropriate to the nature, scale, and complexity of an insurer or insurance group;~~

~~—— (b) conducted by that insurer or insurance group; and~~

~~—— (c) including the material and relevant risks associated with the insurer's or insurance group's current business plan, and the sufficiency of capital resources to support those risks.~~

~~—— (4) "Own risk and solvency assessment guidance manual" means the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners.~~

~~—— (5) "Own risk and solvency assessment summary report" means a confidential high-level summary of an insurer's or insurance group's own risk and solvency assessment.~~

~~—— Section 21. Section 31A-16a-103 is enacted to read:~~

~~—— **31A-16a-103. Risk management framework.**~~

~~—— (1) An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.~~

~~—— (2) An insurer may satisfy Subsection (1) if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.~~

~~—— Section 22. Section 31A-16a-104 is enacted to read:~~

~~—— **31A-16a-104. Own risk and solvency assessment requirement.**~~

~~—— (1) (a) Subject to Section 31A-16a-106, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual.~~

~~—— (b) A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the National Association of Insurance Commissioners.~~

~~—— (2) The own risk and solvency assessment shall be conducted:~~

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- ~~—— (a) no less than annually; and~~
- ~~—— (b) at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.~~
- ~~—— Section 23. Section 31A-16a-105 is enacted to read:~~
- ~~—— 31A-16a-105. Own risk and solvency assessment summary report:~~
- ~~—— (1) Upon the commissioner's request, an insurer shall submit to the commissioner:~~
 - ~~—— (a) an own risk and solvency assessment summary report; or~~
 - ~~—— (b) any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual, applicable to the insurer, the insurance group of which it is a member, or both the insurer and insurance group.~~
- ~~—— (2) Notwithstanding a request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the one or more reports required by this section if the commissioner is the lead state commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.~~
- ~~—— (3) The commissioner may not request the one or more reports required by this section more than once each year.~~
- ~~—— (4) The one or more reports shall include a signature of the insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of the person's belief and knowledge that:~~
 - ~~—— (a) the insurer applies the enterprise risk management process described in the own risk and solvency assessment summary report; and~~
 - ~~—— (b) a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board of directors.~~
- ~~—— (5) An insurer may comply with Subsection (1) by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member, to the commissioner of another state, or to a supervisor or regulator of a foreign jurisdiction if:~~
 - ~~—— (a) the report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual; and~~

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~~—— (b) the report is written in a language other than English, it is accompanied by a translation of that report into the English language;~~

~~—— Section 24. Section **31A-16a-106** is enacted to read:~~

~~—— **31A-16a-106. Exemption.**~~

~~—— (1) An insurer shall be exempt from the requirements of this chapter, if:~~

~~—— (a) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and~~

~~—— (b) the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000;~~

~~—— (2) If an insurer qualifies for exemption pursuant to Subsection (1)(a), but the insurance group of which the insurer is a member does not qualify for exemption pursuant to Subsection (1)(b), the own risk and solvency assessment summary report that may be required pursuant to Section 31A-16a-105:~~

~~—— (a) shall include every insurer within the insurance group; or~~

~~—— (b) if more than one own risk and solvency assessment summary report is submitted for any combination of insurers, the reports shall include every insurer within the insurance group;~~

~~—— (3) If an insurer does not qualify for exemption pursuant to Subsection (1)(a), but the insurance group of which it is a member qualifies for exemption pursuant to Subsection (1)(b), then the only own risk and solvency assessment summary report that may be required pursuant to Section 31A-16a-105 is the report applicable to that insurer;~~

~~—— (4) An insurer that does not qualify for exemption pursuant to Subsection (1) may apply to the commissioner for a waiver from the requirements of this chapter;~~

~~—— (5) In deciding whether to grant the insurer's request for waiver, the commissioner will consider unique circumstances that may include factors such as:~~

~~—— (a) the type and volume of business written;~~

~~—— (b) ownership and organizational structure; and~~

~~—— (c) any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member;~~

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~~—— (6) If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner, as determined by procedures outlined in the Financial Analysis Handbook of the National Association of Insurance Commissioners, and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.~~

~~—— (7) Notwithstanding the exemptions stated in this section, the commissioner may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances, including:~~

~~—— (a) the insurer has a risk-based capital for company action level event as set forth in Section 31A-17-603;~~

~~—— (b) the insurer meets one or more of the standards of an insurer considered to be in hazardous financial condition or potentially hazardous financial condition, as defined by rule made under Subsection 31A-27a-101(3)(c);~~

~~—— (c) the insurer otherwise exhibits qualities of a troubled insurer as determined by the commissioner;~~

~~—— (d) the type and volume of business written;~~

~~—— (e) ownership and organizational structure; or~~

~~—— (f) federal agency requests and international supervisor requests;~~

~~—— (8) If an insurer that qualifies for an exemption pursuant to Subsection (1) subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this chapter.~~

~~—— Section 25. Section **31A-16a-107** is enacted to read:~~

~~—— **31A-16a-107. Contents of the own risk and solvency assessment summary report.**~~

~~—— (1) The own risk and solvency assessment summary report shall be prepared consistent with the own risk and solvency assessment guidance manual, subject to Subsection (3):~~

~~—— (2) Documentation supporting information shall be maintained and made available upon examination or upon request of the commissioner.~~

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~~—— (3) The review of the own risk and solvency assessment summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multi-state or global insurers and insurance groups.~~

~~—— Section 26. Section **31A-16a-108** is enacted to read:~~

~~—— **31A-16a-108. Confidentiality of information obtained by commissioner.**~~

~~—— (1) Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person under this chapter, are proprietary and contain trade secrets. These documents, materials, or other information are:~~

~~—— (a) confidential, not public records, and not open to public inspection; and~~

~~—— (b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~—— (2) The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.~~

~~—— (3) Other than under Subsection (2), the commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.~~

~~—— (4) Neither the commissioner nor any person who received documents, materials, or other own risk and solvency assessment related information, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection (1).~~

~~—— (5) To assist in the performance of the commissioner's regulatory duties, the commissioner:~~

~~—— (a) may, upon request, share documents, materials, or other own risk and solvency assessment related information, including the confidential documents, materials, or information subject to Subsection (1), including proprietary and trade secret documents and materials with:~~

~~—— (i) other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in Chapter 16, Insurance Holding Companies;~~

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~~—— (ii) the National Association of Insurance Commissioners; and~~
~~—— (iii) any third-party consultants designated by the commissioner;~~
~~—— (b) may not share the information described in Subsection (5)(a) unless the recipient of the information agrees in writing to:~~
~~—— (i) maintain the confidentiality status of the own risk and solvency assessment related documents, materials, or other information; and~~
~~—— (ii) state that it has the legal authority to maintain confidentiality;~~
~~—— (c) may receive documents from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college described in Chapter 16, Insurance Holding Companies, and from the National Association of Insurance Commissioners, materials or other own risk and solvency assessment related information, including:~~
~~—— (i) otherwise confidential documents, materials, or information; or~~
~~—— (ii) proprietary and trade-secret information or documents;~~
~~—— (d) shall maintain as confidential any documents, materials, or information received under Subsection (5)(c) with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material, or information;~~
~~—— (e) shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to this chapter consistent with this Subsection (5) that shall:~~
~~—— (i) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers;~~
~~—— (ii) provide that the recipient agrees in writing:~~
~~—— (A) to maintain the confidentiality status of the own risk and solvency assessment related documents, materials, or other information; and~~
~~—— (B) to verify the legal authority to maintain confidentiality;~~
~~—— (iii) specify that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter remains with the commissioner and the National Association of Insurance Commissioners' or a third-party~~

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~~consultant's use of the information is subject to the direction of the commissioner;~~

~~—— (iv) prohibit the National Association of Insurance Commissioners or third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;~~

~~—— (v) require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;~~

~~—— (vi) require the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter;~~
~~and~~

~~—— (vii) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent;~~

~~—— (6) The sharing of information and documents by the commissioner pursuant to this chapter may not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter;~~

~~—— (7) No waiver of any applicable claim of confidentiality in the documents, proprietary and trade-secret materials, or other own risk and solvency assessment related information shall occur as a result of disclosure of such own risk and solvency assessment related information or documents to the commissioner under this section or as a result of sharing as authorized in this chapter;~~

~~—— (8) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter are:~~

~~—— (a) confidential, not public records, and not open to public inspection; and~~

~~—— (b) not subject to Title 63G, Chapter 2, Government Records Access and Management~~

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Act.

~~Section 27. Section **31A-16a-109** is enacted to read:~~

~~**31A-16a-109. Sanctions.**~~

~~(1) An insurer failing, without just cause, to timely file the own risk and solvency assessment summary report as required in this chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each working day the own risk and solvency assessment summary report is late notwithstanding Section 31A-2-308.~~

~~(2) The penalty recovered under Subsection (1) shall be paid into the General Fund. The maximum penalty under this section is \$250,000 notwithstanding Section 31A-2-308. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.~~

~~Section 28. Section **31A-16a-110** is enacted to read:~~

~~**31A-16a-110. Severability.**~~

~~If any chapter, section, or subsection of this chapter or the application of any chapter, section, or subsection to any person or circumstance is held invalid, the remainder of the provisions of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.~~

~~Section 29}c), the cause of action accrues on a fidelity bond on the date the insurer first denies all or part of a claim made under the fidelity bond.~~

Section 36. Section **31A-22-612** is amended to read:

31A-22-612. Conversion privileges for insured former spouse.

(1) An accident and health insurance policy, which in addition to covering the insured also provides coverage to the spouse of the insured, may not contain a provision for termination of coverage of a spouse covered under the policy, except by entry of a valid decree of divorce or annulment between the parties.

(2) Every policy which contains this type of provision shall provide that upon the entry of the divorce decree the spouse is entitled to have issued an individual policy of accident and health insurance without evidence of insurability, upon application to the company and payment of the appropriate premium. The policy shall provide the coverage being issued which is most nearly similar to the terminated coverage. Probationary or waiting periods in the policy are considered satisfied to the extent the coverage was in force under the prior policy.

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(3) When the insurer receives actual notice that the coverage of a spouse is to be terminated because of a divorce or annulment, the insurer shall promptly provide the spouse written notification of the right to obtain individual coverage as provided in Subsection (2), the premium amounts required, and the manner, place, and time in which premiums may be paid. The premium is determined in accordance with the insurer's table of premium rates applicable to the age and class of risk of the persons to be covered and to the type and amount of coverage provided. If the spouse applies and tenders the first monthly premium to the insurer within 30 days after receiving the notice provided by this Subsection (3), the spouse shall receive individual coverage that commences immediately upon termination of coverage under the insured's policy.

(4) This section does not apply to accident and health insurance policies offered on a group blanket basis or a health benefit plan.

Section ~~30~~37. Section **31A-22-620** is amended to read:

31A-22-620. Medicare Supplement Insurance Minimum Standards Act.

(1) As used in this section:

(a) "Applicant" means:

(i) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(ii) in the case of a group Medicare supplement policy, the proposed certificate holder.

(b) "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

(c) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(d) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering, or issuing for delivery in this state, Medicare supplement policies or certificates.

(e) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(f) "Medicare Supplement Policy":

(i) means a group or individual policy of ~~[disability]~~ health insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42

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U.S.C. [~~Section~~] Sec. 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. [~~Section~~] Sec. 1395ss(g)(1), that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare; and

(ii) does not include Medicare Advantage plans established under Medicare Part C, outpatient prescription drug plans established under Medicare Part D, or any health care prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act.

(g) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(2) (a) Except as otherwise specifically provided, this section applies to:

(i) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this section;

(ii) all certificates issued under group Medicare supplement policies, that have been delivered or issued for delivery in this state on or after the effective date of this section; and

(iii) policies or certificates that were in force prior to the effective date of this section, with respect to requirements for benefits, claims payment, and policy reporting practice under Subsection (3)(d), and loss ratios under Subsection (4).

(b) This section does not apply to a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination of employers and labor unions, for employees or former employees or a combination of employees and former employees, or for members or former members of the labor organizations, or a combination of members and former members of labor organizations.

(c) This section does not prohibit, nor does it apply to insurance policies or health care benefit plans, including group conversion policies, provided to Medicare eligible persons that are not marketed or held out to be Medicare supplement policies or benefit plans.

(3) (a) A Medicare supplement policy or certificate in force in the state may not contain benefits that duplicate benefits provided by Medicare.

(b) Notwithstanding any other provision of law of this state, a Medicare supplement policy or certificate may not exclude or limit benefits for loss incurred more than six months

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from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than: "A condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage."

(c) The commissioner shall adopt rules to establish specific standards for policy provisions of Medicare supplement policies and certificates. The standards adopted shall be in addition to and in accordance with applicable laws of this state. A requirement of this title relating to minimum required policy benefits, other than the minimum standards contained in this section, may not apply to Medicare supplement policies and certificates. The standards may include:

- (i) terms of renewability;
- (ii) initial and subsequent conditions of eligibility;
- (iii) nonduplication of coverage;
- (iv) probationary periods;
- (v) benefit limitations, exceptions, and reductions;
- (vi) elimination periods;
- (vii) requirements for replacement;
- (viii) recurrent conditions; and
- (ix) definitions of terms.

(d) The commissioner shall adopt rules establishing minimum standards for benefits, claims payment, marketing practices, compensation arrangements, and reporting practices for Medicare supplement policies and certificates.

(e) The commissioner may adopt rules to conform Medicare supplement policies and certificates to the requirements of federal law and regulations, including:

- (i) requiring refunds or credits if the policies do not meet loss ratio requirements;
- (ii) establishing a uniform methodology for calculating and reporting loss ratios;
- (iii) assuring public access to policies, premiums, and loss ratio information of issuers of Medicare supplement insurance;
- (iv) establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases;
- (v) establishing a policy for holding public hearings prior to approval of premium

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increases;

- (vi) establishing standards for Medicare select policies and certificates; and
- (vii) nondiscrimination for genetic testing or genetic information.

(f) The commissioner may adopt rules that prohibit policy provisions not otherwise specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed to be insured under a Medicare supplement policy or certificate.

(4) Medicare supplement policies shall return to policyholders benefits that are reasonable in relation to the premium charged. The commissioner shall make rules to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service basis rather than on a reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices.

(5) (a) To provide for full and fair disclosure in the sale of Medicare supplement policies, a Medicare supplement policy or certificate may not be delivered in this state unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The commissioner shall prescribe the format and content of the outline of coverage required by Subsection (5)(a).

(c) For purposes of this section, "format" means style arrangements and overall appearance, including such items as the size, color, and prominence of type and arrangement of text and captions. The outline of coverage shall include:

- (i) a description of the principal benefits and coverage provided in the policy;
- (ii) a statement of the renewal provisions, including any reservation by the issuer of a right to change premiums; and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age; and

- (iii) a statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(d) The commissioner may make rules for captions or notice if the commissioner finds that the rules are:

- (i) in the public interest; and

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(ii) designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for Medicare, other than:

- (A) a medicare supplement policy; or
- (B) a disability income policy.

(e) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for Medicare, that is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the informational brochure be provided concurrently with delivery of the outline of coverage to any prospective insureds eligible for Medicare. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

(f) The commissioner may adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and health policies, subscriber contracts, or certificates by persons eligible for Medicare.

(6) Notwithstanding Subsection (1), Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached to the front page, stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

(7) Every issuer of Medicare supplement insurance policies or certificates in this state shall provide a copy of any Medicare supplement advertisement intended for use in this state, whether through written or broadcast medium, to the commissioner for review.

(8) The commissioner may adopt rules to conform Medicare and Medicare supplement policies and certificates to the marketing requirements of federal law and regulation.

Section ~~31~~38. Section **31A-23a-102** is amended to read:

31A-23a-102. Definitions.

As used in this chapter:

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(1) "Bail bond producer" is as defined in Section 31A-35-102.

(2) "Designated home state" means the state or territory of the United States or the District of Columbia:

(a) in which an insurance producer, limited lines producer, consultant, managing general agent, or reinsurance intermediary licensee does not maintain the licensee's principal:

(i) place of residence; or

(ii) place of business;

(b) if the resident state, territory, or District of Columbia of the licensee does not license for the line of authority sought, the licensee has qualified for the license as if the person were a resident in the state, territory, or District of Columbia described in Subsection (2)(a), including an applicable:

(i) examination requirement;

(ii) fingerprint background check requirement; and

(iii) continuing education requirement; and

(c) if the licensee has designated the state, territory, or District of Columbia as the designated home state.

~~[(2)]~~ (3) "Home state" means:

(a) a state or territory of the United States or the District of Columbia in which an insurance producer, limited lines producer, consultant, managing general agent, or reinsurance intermediary licensee:

~~[(a)]~~ (i) maintains the ~~[insurance producer's]~~ licensee's principal:

~~[(i)]~~ (A) place of residence; or

~~[(ii)]~~ (B) place of business; and

~~[(b)]~~ (ii) is licensed to act as ~~[an insurance producer]~~ a resident licensee; or

(b) if the resident state, territory, or the District of Columbia described in Subsection (3)(a) does not license for the line of authority sought, a state, territory, or the District of Columbia:

(i) in which the licensee is licensed;

(ii) in which the licensee is in good standing; and

(iii) that the licensee has designated as the licensee's designated home state.

~~[(3)]~~ (4) "Insurer" is as defined in Section 31A-1-301, except that the following

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persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

- (a) a risk retention group as defined in:
 - (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
 - (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
 - (iii) Chapter 15, Part 2, Risk Retention Groups Act;
- (b) a residual market pool;
- (c) a joint underwriting authority or association; and
- (d) a captive insurer.

~~[(4)]~~ (5) "License" is defined in Section 31A-1-301.

~~[(5)]~~ (6) (a) "Managing general agent" means a person that:

- (i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;
- (ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;
- (iii) produces and underwrites an amount of gross direct written premium equal to, or more than, 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year:

- (A) with or without the authority;
- (B) separately or together with an affiliate; and
- (C) directly or indirectly; and
- (iv) (A) adjusts or pays claims in excess of an amount determined by the

commissioner; or

- (B) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection ~~[(5)]~~ (6)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

- (i) an employee of the insurer;
- (ii) a United States manager of the United States branch of an alien insurer;
- (iii) an underwriting manager that, pursuant to contract:
 - (A) manages all the insurance operations of the insurer;
 - (B) is under common control with the insurer;
 - (C) is subject to Chapter 16, Insurance Holding Companies; and

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(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

~~[(6)]~~ (7) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning a substantive benefit, term, or condition of the contract if the person engaged in that act:

(a) sells insurance; or

(b) obtains insurance from insurers for purchasers.

~~[(7)]~~ (8) "Reinsurance intermediary" means:

(a) a reinsurance intermediary-broker; or

(b) a reinsurance intermediary-manager.

~~[(8)]~~ (9) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

~~[(9)]~~ (10) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection ~~[(9)]~~ (10)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a United States manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

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(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

~~[(10)]~~ (11) "Resident" is as defined by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(11)]~~ (12) "Search" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

~~[(12)]~~ (13) "Sell" means to exchange a contract of insurance:

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

~~[(13)]~~ (14) "Solicit" means:

(a) attempting to sell insurance;

(b) asking or urging a person to apply for:

(i) a particular kind of insurance; and

(ii) insurance from a particular insurance company;

(c) advertising insurance, including advertising for the purpose of obtaining leads for the sale of insurance; or

(d) holding oneself out as being in the insurance business.

~~[(14)]~~ (15) "Terminate" means:

(a) the cancellation of the relationship between:

(i) an individual licensee or agency licensee and a particular insurer; or

(ii) an individual licensee and a particular agency licensee; or

(b) the termination of:

(i) an individual licensee's or agency licensee's authority to transact insurance on behalf of a particular insurance company; or

(ii) an individual licensee's authority to transact insurance on behalf of a particular agency licensee.

~~[(15)]~~ (16) "Title marketing representative" means a person who:

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(a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(i) title insurance; or

(ii) escrow services; and

(b) does not have a search or escrow license as provided in Section 31A-23a-106.

~~[(16)]~~ (17) "Uniform application" means the version of the National Association of Insurance Commissioners' uniform application for resident and nonresident producer licensing at the time the application is filed.

~~[(17)]~~ (18) "Uniform business entity application" means the version of the National Association of Insurance Commissioners' uniform business entity application for resident and nonresident business entities at the time the application is filed.

Section ~~(32)~~39. Section **31A-23a-113** is amended to read:

31A-23a-113. License lapse and voluntary surrender.

(1) (a) A license issued under this chapter including a line of authority, shall lapse if the licensee fails to:

(i) pay when due a fee under Section 31A-3-103;

(ii) complete continuing education requirements under Section 31A-23a-202 before submitting the license renewal application;

(iii) submit a completed renewal application as required by Section 31A-23a-104;

(iv) submit additional documentation required to complete the licensing process as related to a specific license type or line of authority; or

(v) maintain an active license in a licensee's home state if the licensee is a nonresident licensee.

(b) (i) A licensee whose license lapses may request reinstatement of the license and line of authority no more than one year after the day on which the license lapses.

(ii) A licensee whose license lapses due to the following may request an action described in Subsection (1)(b)[(ii)](iii):

(A) military service;

(B) voluntary service for a period of time designated by the person for whom the licensee provides voluntary service; or

(C) some other extenuating circumstances, such as long-term medical disability.

~~[(ii)]~~ (iii) A licensee described in Subsection (1)(b)~~[(i)]~~(ii) may request:

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(A) reinstatement of the license and line of authority no later than one year after the day on which the license lapses; and

(B) waiver of any of the following imposed for failure to comply with renewal procedures:

- (I) an examination requirement;
- (II) reinstatement fees set under Section 31A-3-103;
- (III) continuing education requirements; or
- (IV) other sanction imposed for failure to comply with renewal procedures.

(2) If a license or line of authority issued under this chapter is voluntarily surrendered, the license or line of authority may be reinstated:

(a) during the license period in which the license or line of authority is voluntarily surrendered; and

(b) no later than one year after the day on which the license or line of authority is voluntarily surrendered.

Section ~~33~~40. Section **31A-23a-402** is amended to read:

31A-23a-402. Unfair marketing practices -- Communication -- Unfair discrimination -- Coercion or intimidation -- Restriction on choice.

(1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:

(A) a person who is or should be licensed under this title;

(B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and

(B) with intent to deceive a person examining it:

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- (I) filing a report;
- (II) making a false entry in a record; or
- (III) wilfully refraining from making a proper entry in a record.
- (iii) A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any name, advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency, including the Health Insurance Exchange, also called the "Utah Health Exchange[;]" or "Avenue H," created in Section 63M-1-2504, the Comprehensive Health Insurance Pool created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act:

- (I) is responsible for the insurance sales activities of the person;
- (II) stands behind the credit of the person;
- (III) guarantees any returns on insurance products of or sold by the person; or
- (IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that person is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:

(i) the licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer:

- (A) that the licensee represents; or
- (B) for whom the licensee processes claims; and

(ii) the cards, documents, signs, or advertisements are supplied or approved by that insurer.

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(2) (a) A title insurer, individual title insurance producer, or agency title insurance producer or any officer or employee of the title insurer, individual title insurance producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

- (i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;
- (ii) any special favor or advantage not generally available to others;
- (iii) any money or other consideration, except if approved under Section 31A-2-405; or
- (iv) material inducement.

(b) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.

(c) An insured or any other person connected, directly or indirectly, with the transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(a), including:

- (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;
- (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
- (iii) a builder;
- (iv) an attorney; or
- (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) (a) This Subsection (4) applies to:

- (i) a person who is or should be licensed under this title;

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(ii) an employee of that licensee or person who should be licensed;
(iii) a person whose primary interest is as a competitor of a person licensed under this title; and

(iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

(b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(i) tends to produce:

(A) an unreasonable restraint of the business of insurance; or

(B) a monopoly in that business; or

(ii) results in an applicant purchasing or replacing an insurance contract.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

(ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) (a) A person may not engage in an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by

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rule, after a finding that the method of competition, the act, or the practice:

- (i) is misleading;
- (ii) is deceptive;
- (iii) is unfairly discriminatory;
- (iv) provides an unfair inducement; or
- (v) unreasonably restrains competition.

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an unfair method of competition or unfair or deceptive act or practice after a finding that the method of competition, the act, or the practice:

- (i) is misleading;
- (ii) is deceptive;
- (iii) is unfairly discriminatory;
- (iv) provides an unfair inducement; or
- (v) unreasonably restrains competition.

Section ~~34~~41. Section **31A-23b-206** is amended to read:

31A-23b-206. Continuing education requirements.

(1) The commissioner shall, by rule, prescribe continuing education requirements for a navigator.

(2) (a) The commissioner may not require a degree from an institution of higher education as part of continuing education.

(b) The commissioner may state a continuing education requirement in terms of hours of instruction received in:

- (i) accident and health insurance;
- (ii) qualification for and enrollment in public programs;
- (iii) qualification for and enrollment in premium subsidies;
- (iv) cultural competency;
- (v) conflict of interest standards; and
- (vi) other exchange functions.

(3) (a) For a navigator line of authority, continuing education requirements shall require:

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(i) that a licensee complete 12 credit hours of continuing education for every one-year licensing period;

(ii) that at least two of the 12 credit hours described in Subsection (3)(a)(i) be ethics courses;

(iii) that at least one of the 12 credit hours described in Subsection (3)(a)(i) be training on defined contribution arrangements and the use of the small employer health insurance exchange; and

(iv) that a licensee complete the annual navigator training and certification program developed by the Centers for Medicare and Medicaid Services.

(b) For a certified application counselor, the continuing education requirements shall require:

(i) that a licensee complete six credit hours of continuing education for every one-year licensing period;

(ii) that at least two of the six credit hours described in Subsection (3)(b)(i) be on ethics courses;

(iii) that at least one of the six credit hours described in Subsection (3)(b)(i) be training on defined contribution arrangements and the use of the small employer health insurance exchange; and

(iv) that a licensee complete the annual certified application counselor training and certification program developed by the Centers for Medicare and Medicaid Services.

(c) An hour of continuing education in accordance with Subsections (3)(a)(i) and (b)(i) may be obtained through:

(i) classroom attendance;

(ii) home study;

(iii) watching a video recording; or

(iv) another method approved by rule.

(d) A licensee may obtain continuing education hours at any time during the one-year license period.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall, by rule, authorize one or more continuing education providers, including a state or national professional producer or consultant associations, to:

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(i) offer a qualified program on a geographically accessible basis; and
(ii) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(4) The commissioner shall approve a continuing education provider or a continuing education course that satisfies the requirements of this section.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall by rule establish the procedures for continuing education provider registration and course approval.

(6) This section applies only to a navigator who is a natural person.

(7) A navigator shall keep documentation of completing the continuing education requirements of this section for [~~two years~~] one year after the end of the [~~two-year~~] one-year licensing period to which the continuing education applies.

Section ~~35~~42. Section **31A-25-302.5** is enacted to read:

31A-25-302.5. Place of business and residence address.

(1) A third-party administrator licensed under this chapter shall register and maintain with the commissioner:

(a) the address and one or more telephone numbers of the licensee's principal place of business;

(b) a valid business email address at which the commissioner may contact the licensee;
and

(c) if the licensee is an individual, the licensee's residence address and telephone number.

(2) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:

(a) an address;

(b) a telephone number; or

(c) a business email address.

Section ~~36~~43. Section **31A-27a-116** is amended to read:

31A-27a-116. Financial reporting.

(1) (a) The receiver shall comply with all requirements for receivership financial reporting in this section and as may be specified by the commissioner by rule or ordered by the

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court within:

(i) 180 days after the day on which the receivership court enters an order of receivership; and

(ii) 45 days following each calendar quarter after the period specified in Subsection (1)(a)(i).

(b) The rule described in this Subsection (1) shall:

(i) comply with this section;

(ii) be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) require the receiver to file any financial report with the receivership court in addition to any other person specified in the rule.

(c) A financial report shall include, at a minimum, a statement of:

(i) the assets and liabilities of the insurer;

(ii) the changes in those assets and liabilities; and

(iii) all funds received or disbursed by the receiver during that reporting period.

(d) The receiver may qualify a financial report or provide notes to the financial statement for further explanation.

(e) The receivership court may order the receiver to provide any additional information as the receivership court considers appropriate.

(2) Each affected guaranty association shall file one or more reports with the liquidator:

(a) (i) within 180 days after the day on which the receivership court enters an order of liquidation; and

(ii) (A) within 45 days following each calendar quarter after the period described in Subsection (2)(a)(i); or

(B) at an interval:

(I) agreed to between the liquidator and the affected guaranty association; or

(II) required by the receivership court; and

(b) in no event less than annually.

(3) For good cause shown, the receivership court may grant:

(a) relief for an extension or modification of time to comply with Subsection (1) or (2);

or

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(b) such other relief as may be appropriate.

Section ~~{37}~~44. Section **31A-28-213** is amended to read:

31A-28-213. Miscellaneous provisions.

(1) (a) Any person who has a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy, other than a policy of an insolvent insurer that is also a covered claim, is required to first exhaust that person's right under that person's policy.

(b) Any amount payable on a covered claim under this part under an insurance policy is reduced by the amount of any recovery under the insurance policy described in Subsection (1)(a).

(c) (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall first seek recovery from the association of the place of residence of the insured.

(ii) If the person's claim is:

(A) a first-party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property; and

(B) a workers' compensation claim, the person shall seek recovery first from the association of the residence of the claimant.

(iii) Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

(2) An insurer may not exercise any right of subrogation against an insolvent insurer's insured if exercise of the right would require the insured, or a guaranty fund under ~~{Chapter 28, Guaranty Associations}~~this chapter, to pay an amount the insolvent insurer is obligated to pay under an insurance policy issued to the insured, except that an insurer may exercise a right of subrogation for the amount the subrogation claim exceeds the guaranty association obligation limitations.

~~{(2)}~~ (3) This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

~~{(3)}~~ (4) (a) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in

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carrying out the association's powers and duties under Section 31A-28-207. Records of these negotiations or meetings shall be made public only:

(i) upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the insolvent insurer;

(ii) the termination of the insolvency of the insurer; or

(iii) the order of a court of competent jurisdiction.

(b) This Subsection ~~[(3)]~~ (4) does not limit the duty of the association to render a report of its activities under Section 31A-28-214.

~~[(4)]~~ (5) For the purpose of carrying out its obligations under this part, the association is considered to be a creditor of the insolvent insurer, except to the extent of any amounts the association is entitled as subrogee under Section 31A-28-207.

~~[(5)]~~ (6) (a) Before the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including:

(i) the association;

(ii) the shareholders;

(iii) the policyowners of the insolvent insurer; and

(iv) any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer.

(b) In making the determination described in Subsection ~~[(5)]~~ (6)(a), the court shall consider the welfare of the policyholders of the continuing or successor insurer.

(c) A distribution to stockholders, if any, of an insolvent insurer may not be made until the total amount of valid claims of the association with interest on those claims for funds expended in carrying out its powers and duties under Section 31A-28-207 regarding this insurer have been fully recovered by the association.

~~[(6)]~~ (7) A rehabilitator, liquidator, or conservator appointed under any section of this part may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant to Section 31A-27a-502.

Section ~~338~~ 45. Section **31A-37-102** is amended to read:

31A-37-102. Definitions.

As used in this chapter:

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(1) "Affiliated company" means a business entity that because of common ownership, control, operation, or management is in the same corporate or limited liability company system as:

- (a) a parent;
- (b) an industrial insured; or
- (c) a member organization.

(2) "Alien captive insurance company" means an insurer:

- (a) formed to write insurance business for a parent or affiliate of the insurer; and
- (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or

regulatory standards:

- (i) on a business entity transacting the business of insurance in the alien jurisdiction;

and

- (ii) in a form acceptable to the commissioner.

(3) "Association" means a legal association of two or more persons that has been in continuous existence for at least one year if:

- (a) the association or its member organizations:

- (i) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

- (ii) have complete voting control over an association captive insurance company incorporated as a mutual insurer;

- (b) the association's member organizations collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

- (c) the association or its member organizations have complete voting control over an association captive insurance company formed as a limited liability company.

(4) "Association captive insurance company" means a business entity that insures risks of:

- (a) a member organization of the association;
- (b) an affiliate of a member organization of the association; and
- (c) the association.

(5) "Branch business" means an insurance business transacted by a branch captive insurance company in this state.

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(6) "Branch captive insurance company" means an alien captive insurance company that has a certificate of authority from the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(7) "Branch operation" means a business operation of a branch captive insurance company in this state.

(8) "Captive insurance company" means any of the following formed or holding a certificate of authority under this chapter:

- (a) a branch captive insurance company;
- (b) a pure captive insurance company;
- (c) an association captive insurance company;
- (d) a sponsored captive insurance company;
- (e) an industrial insured captive insurance company;
- ~~[(f) a captive reinsurance company;]~~
- ~~[(g)]~~ (f) a special purpose captive insurance company; or
- ~~[(h)]~~ (g) a special purpose financial captive insurance company.

~~[(9) "Captive reinsurance company" means a reinsurer that is:]~~

~~[(a) formed or has a certificate of authority pursuant to this chapter;]~~

~~[(b) wholly owned by a qualifying reinsurer parent company; and]~~

~~[(c) a stock corporation.]~~

~~[(11)]~~ (9) "Commissioner" means ~~[the]~~ Utah's Insurance Commissioner or the commissioner's designee.

(10) "Common ownership and control" means that two or more captive insurance companies are owned or controlled by the same person or group of persons as follows:

(a) in the case of a captive insurance company that is a stock corporation, the direct or indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

(b) in the case of a captive insurance company that is a mutual corporation, the direct or indirect ownership of 80% or more of the surplus and the voting power of the mutual corporation;

(c) in the case of a captive insurance company that is a limited liability company, the direct or indirect ownership by the same member or members of 80% or more of the membership interests in the limited liability company; or

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(d) in the case of a sponsored captive insurance company, a protected cell is a separate captive insurance company owned and controlled by the protected cell's participant, only if:

- (i) the participant is the only participant with respect to the protected cell; and
- (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored captive insurance company through common ownership and control.

~~[(12)]~~ (11) "Consolidated debt to total capital ratio" means the ratio of Subsection ~~[(12)]~~ (11)(a) to (b).

(a) This Subsection ~~[(12)]~~ (11)(a) is an amount equal to the sum of all debts and hybrid capital instruments including:

- (i) all borrowings from depository institutions;
- (ii) all senior debt;
- (iii) all subordinated debts;
- (iv) all trust preferred shares; and
- (v) all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.

(b) This Subsection ~~[(12)]~~ (11)(b) is an amount equal to the sum of:

- (i) total capital consisting of all debts and hybrid capital instruments as described in Subsection ~~[(12)]~~ (11)(a); and
- (ii) shareholders' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

~~[(13)]~~ (12) "Consolidated GAAP net worth" means the consolidated shareholders' or members' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

~~[(14)]~~ (13) "Controlled unaffiliated business" means a business entity:

- (a) (i) in the case of a pure captive insurance company, that is not in the corporate or limited liability company system of a parent or the parent's affiliate; or
- (ii) in the case of an industrial insured captive insurance company, that is not in the corporate or limited liability company system of an industrial insured or an affiliated company of the industrial insured;

(b) (i) in the case of a pure captive insurance company, that has a contractual relationship with a parent or affiliate; or

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(ii) in the case of an industrial insured captive insurance company, that has a contractual relationship with an industrial insured or an affiliated company of the industrial insured; and

(c) whose risks are managed by one of the following in accordance with Subsection 31A-37-106(1)(~~k~~)(j):

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company.

~~(15)~~ (14) "Department" means the Insurance Department.

~~(16)~~ (15) "Industrial insured" means an insured:

(a) that produces insurance:

(i) by the services of a full-time employee acting as a risk manager or insurance manager; or

(ii) using the services of a regularly and continuously qualified insurance consultant;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;

and

(c) that has at least 25 full-time employees.

~~(17)~~ (16) "Industrial insured captive insurance company" means a business entity that:

(a) insures risks of the industrial insureds that comprise the industrial insured group;

and

(b) may insure the risks of:

(i) an affiliated company of an industrial insured; or

(ii) a controlled unaffiliated business of:

(A) an industrial insured; or

(B) an affiliated company of an industrial insured.

~~(18)~~ (17) "Industrial insured group" means:

(a) a group of industrial insureds that collectively:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated or organized as a limited liability company as a stock insurer; or

(ii) have complete voting control over an industrial insured captive insurance company

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incorporated or organized as a limited liability company as a mutual insurer;

(b) a group that is:

(i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. ~~[Section]~~
Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and

(ii) taxable under this title as a:

(A) stock corporation; or

(B) mutual insurer; or

(c) a group that has complete voting control over an industrial captive insurance company formed as a limited liability company.

~~[(19)]~~ (18) "Member organization" means a person that belongs to an association.

~~[(20)]~~ (19) "Parent" means a person that directly or indirectly owns, controls, or holds with power to vote more than 50% of:

(a) the outstanding voting securities of a pure captive insurance company; or

(b) the pure captive insurance company, if the pure captive insurance company is formed as a limited liability company.

~~[(21)]~~ (20) "Participant" means an entity that is insured by a sponsored captive insurance company:

(a) if the losses of the participant are limited through a participant contract to the assets of a protected cell; and

(b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

(ii) the entity is an affiliate of an entity permitted to be a participant under Section 31A-37-403.

~~[(22)]~~ (21) "Participant contract" means a contract by which a sponsored captive insurance company:

(a) insures the risks of a participant; and

(b) limits the losses of the participant to the assets of a protected cell.

~~[(23)]~~ (22) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant.

~~[(24)]~~ (23) "Pure captive insurance company" means a business entity that insures risks of a parent or affiliate of the business entity.

~~[(25)] "Qualifying reinsurer parent company" means a reinsurer.]~~

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~~[(a) authorized to write reinsurance by this state; and]~~

~~[(b) that has:]~~

~~[(i) a consolidated GAAP net worth of not less than \$500,000,000; and]~~

~~[(ii) a consolidated debt to total capital ratio not greater than .50.]~~

~~[(26)]~~ (24) "Special purpose financial captive insurance company" is as defined in Section 31A-37a-102.

~~[(27)]~~ (25) "Sponsor" means an entity that:

(a) meets the requirements of Section 31A-37-402; and

(b) is approved by the commissioner to:

(i) provide all or part of the capital and surplus required by applicable law in an amount of not less than \$350,000, which amount the commissioner may increase by order if the commissioner considers it necessary; and

(ii) organize and operate a sponsored captive insurance company.

~~[(28)]~~ (26) "Sponsored captive insurance company" means a captive insurance company:

(a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(b) that is formed or holding a certificate of authority under this chapter;

(c) that insures the risks of a separate participant through the contract; and

(d) that segregates each participant's liability through one or more protected cells.

~~[(29)]~~ (27) "Treasury rates" means the United States Treasury strip asked yield as published in the Wall Street Journal as of a balance sheet date.

Section ~~(39)~~46. Section **31A-37-106** is amended to read:

31A-37-106. Authority to make rules -- Authority to issue orders.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules to:

(a) determine circumstances under which a branch captive insurance company is not required to be a pure captive insurance company;

(b) require a statement, document, or information that a captive insurance company shall provide to the commissioner to obtain a certificate of authority;

(c) determine a factor a captive insurance company shall provide evidence of under

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Subsection 31A-37-202(4)(c);

(d) prescribe one or more capital requirements for a captive insurance company in addition to those required under Section 31A-37-204 based on the type, volume, and nature of insurance business transacted by the captive insurance company;

~~[(e) establish:]~~

~~[(i) the amount of capital or surplus required to be retained under Subsection 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance company; or]~~

~~[(ii) a formula to determine the amount described in Subsection 31A-37-205(4);]~~

~~[(f)]~~ (e) waive or modify a requirement for public notice and hearing for the following by a captive insurance company:

(i) merger;

(ii) consolidation;

(iii) conversion;

(iv) mutualization; ~~[or]~~

(v) redomestication; or

(vi) acquisition;

~~[(g)]~~ (f) approve the use of one or more reliable methods of valuation and rating for:

(i) an association captive insurance company;

(ii) a sponsored captive insurance company; or

(iii) an industrial insured group;

~~[(h)]~~ (g) prohibit or limit an investment that threatens the solvency or liquidity of:

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company;

~~[(i)]~~ (h) determine the financial reports a sponsored captive insurance company shall annually file with the commissioner;

~~[(j)]~~ (i) prescribe the required forms and reports under Section 31A-37-501; and

~~[(k)]~~ (j) establish one or more standards to ensure that:

(i) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by a pure captive insurance company:

(A) a parent; or

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(B) an affiliated company of a parent; or

(ii) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by an industrial insured captive insurance company:

(A) an industrial insured; or

(B) an affiliated company of the industrial insured.

(2) Notwithstanding Subsection (1)~~[(k)](j)~~, until the commissioner adopts the rules authorized under Subsection (1)~~[(k)](j)~~, the commissioner may by temporary order grant authority to insure risks to:

(a) a pure captive insurance company; or

(b) an industrial insured captive insurance company.

(3) The commissioner may issue prohibitory, mandatory, and other orders relating to a captive insurance company as necessary to enable the commissioner to secure compliance with this chapter.

Section ~~40~~47. Section **31A-37-202** is amended to read:

31A-37-202. Permissive areas of insurance.

(1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation, certificate of organization, or charter, a captive insurance company may apply to the commissioner for a certificate of authority to do all insurance authorized by this title except workers' compensation insurance.

(b) Notwithstanding Subsection (1)(a):

(i) a pure captive insurance company may not insure a risk other than a risk of:

(A) its parent or affiliate;

(B) a controlled unaffiliated business; or

(C) a combination of Subsections (1)(b)(i)(A) and (B);

(ii) an association captive insurance company may not insure a risk other than a risk of:

(A) an affiliate;

(B) a member organization of its association; and

(C) an affiliate of a member organization of its association;

(iii) an industrial insured captive insurance company may not insure a risk other than a risk of:

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- (A) an industrial insured that is part of the industrial insured group;
- (B) an affiliate of an industrial insured that is part of the industrial insured group; and
- (C) a controlled unaffiliated business of:
 - (I) an industrial insured that is part of the industrial insured group; or
 - (II) an affiliate of an industrial insured that is part of the industrial insured group;
- (iv) a special purpose captive insurance company may only insure a risk of its parent;
- (v) a captive insurance company may not provide:
 - (A) personal motor vehicle insurance coverage;
 - (B) homeowner's insurance coverage; or
 - (C) a component of a coverage described in this Subsection (1)(b)(v); and
- (vi) a captive insurance company may not accept or cede reinsurance except as

provided in Section 31A-37-303.

(c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a special purpose captive insurance company may provide:

- (i) insurance;
- (ii) reinsurance; or
- (iii) both insurance and reinsurance.

(2) To conduct insurance business in this state a captive insurance company shall:

(a) obtain from the commissioner a certificate of authority authorizing it to conduct insurance business in this state;

(b) hold at least once each year in this state:

- (i) a board of directors meeting; ~~[or]~~
- (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting; or
- (iii) in the case of a limited liability company, a meeting of the managers;

(c) maintain in this state:

(i) the principal place of business of the captive insurance company; or

(ii) in the case of a branch captive insurance company, the principal place of business for the branch operations of the branch captive insurance company; and

(d) except as provided in Subsection (3), appoint a resident registered agent to accept service of process and to otherwise act on behalf of the captive insurance company in this state.

(3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company

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formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner is the agent of the captive insurance company upon whom process, notice, or demand may be served.

(4) (a) Before receiving a certificate of authority, a captive insurance company:

(i) formed as a corporation shall file with the commissioner:

(A) a certified copy of:

(I) articles of incorporation or the charter of the corporation; and

(II) bylaws of the corporation;

(B) a statement under oath of the president and secretary of the corporation showing the financial condition of the corporation; and

(C) any other statement or document required by the commissioner under Section 31A-37-106;

(ii) formed as a reciprocal shall:

(A) file with the commissioner:

(I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;

(II) a certified copy of the subscribers' agreement of the reciprocal;

(III) a statement under oath of the attorney-in-fact of the reciprocal showing the financial condition of the reciprocal; and

(IV) any other statement or document required by the commissioner under Section 31A-37-106; and

(B) submit to the commissioner for approval a description of the:

(I) coverages;

(II) deductibles;

(III) coverage limits;

(IV) rates; and

(V) any other information the commissioner requires under Section 31A-37-106[.]; and

(iii) formed as a limited liability company shall file with the commissioner:

(A) a certified copy of the certificate of organization and the operating agreement of the organization;

(B) a statement under oath of the president and secretary of the organization showing

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the financial condition of the organization:

(C) evidence that the limited liability company is manager-managed; and

(D) any other statement or document required by the commissioner under Section 31A-37-106.

(b) (i) If there is a subsequent material change in an item in the description required under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision to the description required under Subsection (4)(a)(ii)(B).

(ii) A reciprocal captive insurance company that is required to submit a revision under Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner approves a revision of the description.

(iii) A reciprocal captive insurance company shall inform the commissioner of a material change in a rate within 30 days of the adoption of the change.

(c) In addition to the information required by Subsection (4)(a), an applicant captive insurance company shall file with the commissioner evidence of:

(i) the amount and liquidity of the assets of the applicant captive insurance company relative to the risks to be assumed by the applicant captive insurance company;

(ii) the adequacy of the expertise, experience, and character of the person who will manage the applicant captive insurance company;

(iii) the overall soundness of the plan of operation of the applicant captive insurance company;

(iv) the adequacy of the loss prevention programs for the following of the applicant captive insurance company:

(A) a parent;

(B) a member organization; or

(C) an industrial insured; and

(v) any other factor the commissioner:

(A) adopts by rule under Section 31A-37-106; and

(B) considers relevant in ascertaining whether the applicant captive insurance company will be able to meet the policy obligations of the applicant captive insurance company.

(d) In addition to the information required by Subsections (4)(a), (b), and (c), an

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applicant sponsored captive insurance company shall file with the commissioner:

(i) a business plan at the level of detail required by the commissioner under Section 31A-37-106 demonstrating:

(A) the manner in which the applicant sponsored captive insurance company will account for the losses and expenses of each protected cell; and

(B) the manner in which the applicant sponsored captive insurance company will report to the commissioner the financial history, including losses and expenses, of each protected cell;

(ii) a statement acknowledging that the applicant sponsored captive insurance company will make all financial records of the applicant sponsored captive insurance company, including records pertaining to a protected cell, available for inspection or examination by the commissioner;

(iii) a contract or sample contract between the applicant sponsored captive insurance company and a participant; and

(iv) evidence that expenses will be allocated to each protected cell in an equitable manner.

(5) (a) Information submitted pursuant to Subsection (4) is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner may disclose information submitted pursuant to Subsection (4) to a public official having jurisdiction over the regulation of insurance in another state if:

(i) the public official receiving the information agrees in writing to maintain the confidentiality of the information; and

(ii) the laws of the state in which the public official serves require the information to be confidential.

(c) This Subsection (5) does not apply to information provided by an industrial insured captive insurance company insuring the risks of an industrial insured group.

(6) (a) A captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and 63J-1-504:

(i) a fee for examining, investigating, and processing, by a department employee, of an

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application for a certificate of authority made by a captive insurance company;

(ii) a fee for obtaining a certificate of authority for the year the captive insurance company is issued a certificate of authority by the department; and

(iii) a certificate of authority renewal fee.

(b) The commissioner may:

(i) assign a department employee or retain legal, financial, and examination services from outside the department to perform the services described in:

(A) Subsection (6)(a); and

(B) Section 31A-37-502; and

(ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the applicant captive insurance company.

(7) If the commissioner is satisfied that the documents and statements filed by the applicant captive insurance company comply with this chapter, the commissioner may grant a certificate of authority authorizing the company to do insurance business in this state.

(8) A certificate of authority granted under this section expires annually and shall be renewed by July 1 of each year.

Section ~~{41}~~48. Section **31A-37-204** is amended to read:

31A-37-204. Paid-in capital -- Other capital.

(1) (a) The commissioner may not issue a certificate of authority to a company described in Subsection (1)(c) unless the company possesses and thereafter maintains unimpaired paid-in capital and unimpaired paid-in surplus of:

(i) in the case of a pure captive insurance company, not less than [~~\$100,000~~] \$250,000;

(ii) in the case of an association captive insurance company incorporated as a stock insurer, not less than [~~\$400,000~~] \$750,000;

(iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than [~~\$200,000~~] \$700,000;

(iv) in the case of a sponsored captive insurance company, not less than [~~\$500,000~~] \$1,000,000 of which a minimum of \$350,000 is provided by the sponsor; or

(v) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured.

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(b) The paid-in capital and surplus required under this Subsection (1) may be in the form of:

- (i) (A) cash; or
- (B) cash equivalent; or
- (ii) an irrevocable letter of credit:
 - (A) issued by:
 - (I) a bank chartered by this state; or
 - (II) a member bank of the Federal Reserve System; and
 - (B) approved by the commissioner.
- (c) This Subsection (1) applies to:
 - (i) a pure captive insurance company;
 - (ii) a sponsored captive insurance company;
 - (iii) a special purpose captive insurance company;
 - (iv) an association captive insurance company incorporated as a stock insurer; or
 - (v) an industrial insured captive insurance company incorporated as a stock insurer.

(2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.

(b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:

- (i) cash; or
- (ii) an irrevocable letter of credit issued by:
 - (A) a bank chartered by this state; or
 - (B) a member bank of the Federal Reserve System.

(3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, shall, through its branch operations, establish and maintain a trust fund:

- (i) funded by an irrevocable letter of credit or other acceptable asset; and
- (ii) in the United States for the benefit of:
 - (A) United States policyholders; and
 - (B) United States ceding insurers under:
 - (I) insurance policies issued; or

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(II) reinsurance contracts issued or assumed.

(b) The amount of the security required under this Subsection (3) shall be no less than:

(i) the capital and surplus required by this chapter; and

(ii) the reserves on the insurance policies or reinsurance contracts, including:

(A) reserves for losses;

(B) allocated loss adjustment expenses;

(C) incurred but not reported losses; and

(D) unearned premiums with regard to business written through branch operations.

(c) Notwithstanding the other provisions of this Subsection (3), the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount as the security posted if the security remains posted with the reinsurer.

(4) (a) A captive insurance company may not pay the following without the prior approval of the commissioner:

(i) a dividend out of capital or surplus in excess of the limits under Section 16-10a-640; or

(ii) a distribution with respect to capital or surplus in excess of the limits under Section 16-10a-640.

(b) The commissioner shall condition approval of an ongoing plan for the payment of dividends or other distributions on the retention, at the time of each payment, of capital or surplus in excess of:

(i) amounts specified by the commissioner under Section 31A-37-106; or

(ii) determined in accordance with formulas approved by the commissioner under Section 31A-37-106.

(5) Notwithstanding Subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a certificate of authority unless the captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.

(6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based upon the type, volume, and nature of the insurance business transacted.

(b) The unimpaired paid-in surplus required under this Subsection (6) may be in the form of an irrevocable letter of credit issued by:

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(i) a bank chartered by this state; or

(ii) a member bank of the Federal Reserve System.

Section ~~{42}~~49. Section 31A-37-301 is amended to read:

31A-37-301. Incorporation -- Organization.

(1) A pure captive insurance company or a sponsored captive insurance company shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:

(a) divided into shares; and

(b) held by the stockholders of the pure captive insurance company or sponsored captive insurance company.

(2) A pure captive insurance company or a sponsored captive insurance company formed as a limited liability company shall be organized as a members interest insurer with the capital of the pure captive insurance company or sponsored captive insurance company:

(a) divided into interests; and

(b) held by the members of the pure captive insurance company or sponsored captive insurance company.

~~[(2)]~~ (3) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with the capital of the association captive insurance company or industrial insured captive insurance company:

(i) divided into shares; and

(ii) held by the stockholders of the association captive insurance company or industrial insured captive insurance company;

(b) incorporated as a mutual insurer without capital stock, with a governing body elected by the member organizations of the association captive insurance company or industrial insured captive insurance company; or

(c) organized as a reciprocal.

~~[(3)]~~ (4) A captive insurance company formed as a corporation may not have fewer than three incorporators of whom ~~[not fewer than two shall be residents]~~ one shall be a resident of this state.

(5) A captive insurance company formed as a limited liability company may not have

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fewer than three organizers of whom one shall be a resident of this state.

~~[(4)]~~ (6) (a) Before a captive insurance company formed as a corporation files the corporation's articles of incorporation with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the state.

(b) In considering a request for a certificate under Subsection ~~[(4)]~~ (6)(a), the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;
(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects that the commissioner considers advisable.

(7) (a) Before a captive insurance company formed as a limited liability company files the limited liability company's articles of organization with the Division of Corporations and Commercial Code, the limited liability company shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed limited liability company will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (7)(a) the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the managers;

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects that the commissioner considers advisable.

~~[(5)]~~ (8) (a) A captive insurance company formed as a corporation shall file with the Division of Corporations and Commercial Code:

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- (i) the captive insurance company's articles of incorporation;
- (ii) the certificate issued pursuant to Subsection [~~(4)~~] (6); and
- (iii) the fees required by the Division of Corporations and Commercial Code.

(b) The Division of Corporations and Commercial Code shall file both the articles of incorporation and the certificate described in Subsection [~~(4)~~] (6) for a captive insurance company that complies with this section.

(9) (a) A captive insurance company formed as a limited liability company shall file with the Division of Corporations and Commercial Code:

- (i) the captive insurance company's certificate of organization;
- (ii) the certificate issued pursuant to Subsection (7); and
- (iii) the fees required by the Division of Corporations and Commercial Code.

(b) The Division of Corporations and Commercial Code shall file both the certificate of organization and the certificate described in Subsection (7) for a captive insurance company that complies with this section.

[~~(6)~~] (10) (a) The organizers of a captive insurance company formed as a reciprocal insurer shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed association will promote the general good of the state.

(b) In considering a request for a certificate under Subsection [~~(6)~~] (10)(a), the commissioner shall consider:

- (i) the character, reputation, financial standing, and purposes of the incorporators;
- (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;
- (iii) any information in:
 - (A) the application for a certificate of authority; or
 - (B) the department's files; and
- (iv) other aspects that the commissioner considers advisable.

[~~(7)~~] (11) (a) An alien captive insurance company that has received a certificate of authority to act as a branch captive insurance company shall obtain from the commissioner a certificate finding that:

- (i) the home state of the alien captive insurance company imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the

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business of insurance in that state; and

(ii) after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, and other relevant information, the establishment and maintenance of the branch operations will promote the general good of the state.

(b) After the commissioner issues a certificate under Subsection ~~[(7)]~~ (11)(a) to an alien captive insurance company, the alien captive insurance company may register to do business in this state.

~~[(8) The capital stock of a captive insurance company incorporated as a stock insurer may not be issued at less than par value.]~~

~~[(9)]~~ (12) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.

(13) At least one of the managers of a limited liability company shall be a resident of this state.

~~[(10)]~~ (14) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.

~~[(11)]~~ (15) (a) A captive insurance company formed as a corporation under this chapter has the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter.

(b) If a conflict exists between a provision of the general corporation law and a provision of this chapter, this chapter shall control.

(c) Except as provided in Subsection ~~[(11)]~~ (15)(d), the provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.

(d) Notwithstanding Subsection ~~[(11)]~~ (15)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.

(e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.

(16) (a) A captive insurance company formed as a limited liability company under this

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chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405, as well as the applicable provisions in this chapter.

(b) If a conflict exists between a provision of the limited liability company law and a provision of this chapter, this chapter controls.

(c) The provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.

(d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.

(e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.

~~[(12)]~~ (17) (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.

(b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.

(c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.

(d) In addition to the provisions of this Subsection ~~[(12)]~~ (17), a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.

~~[(13)]~~ (18) (a) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may not authorize a quorum of a board of directors to consist of fewer than one-third of the fixed or prescribed number of directors as provided in Section 16-10a-824.

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(b) The certificate of organization of a captive insurance company formed as a limited liability company may not authorize a quorum of a board of managers to consist of fewer than one-third of the fixed or prescribed number of directors required in Section 16-10a-824.

Section ~~{43}~~50. Section **31A-37-302** is amended to read:

31A-37-302. Investment requirements.

(1) (a) Except as provided in Subsection (1)(b), an association captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in this title.

(b) Notwithstanding Subsection (1)(a) and any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating under Section 31A-37-106 for:

- (i) an association captive insurance company;
- (ii) a sponsored captive insurance company; or
- (iii) an industrial insured group.

(2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in this title.

(b) Notwithstanding Subsection (2)(a), the commissioner may, under Section 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

- (i) a pure captive insurance company; or
- (ii) an industrial insured captive insurance company.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may not make loans to:

- (A) the parent company of the captive insurance company; or
- (B) an affiliate of the captive insurance company.

(ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make loans to:

- (A) the parent company of the pure captive insurance company; or
- (B) an affiliate of the pure captive insurance company.

(b) A loan under Subsection (3)(a):

- (i) may be made only on the prior written approval of the commissioner; and

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(ii) shall be evidenced by a note in a form approved by the commissioner.

(c) A pure captive insurance company may not make a loan from~~[(i)]~~ the paid-in capital required under Subsection 31A-37-204(1)~~[-or]~~.

~~[(ii) the free surplus required under Subsection 31A-37-205(1).]~~

Section ~~{44}~~51. Section **31A-37-303** is amended to read:

31A-37-303. Reinsurance.

(1) A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded ~~[by any other insurer]~~ for the benefit of a parent, affiliate, or controlled unaffiliated business.

(2) (a) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404.

(b) Unless the reinsurer is in compliance with Section 31A-17-404, a captive insurance company may not take credit for:

- (i) reserves on risks ceded to a reinsurer; or
- (ii) portions of risks ceded to a reinsurer.

Section ~~{45}~~52. Section **31A-37-306** is amended to read:

31A-37-306. Conversion or merger.

(1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be:

- (a) converted to a reciprocal insurer in accordance with a plan and this section; or
- (b) merged with and into a reciprocal insurer in accordance with a plan and this

section.

(2) An association captive insurance company or industrial group formed as a limited liability company may be:

- (a) converted to a reciprocal insurer in accordance with a plan and this section; or
- (b) merged with and into a reciprocal insurer in accordance with a plan and this

section.

~~[(2)]~~ (3) A plan for a conversion or merger under this section:

(a) shall be fair and equitable to:

- (i) the shareholders, in the case of a stock insurer; ~~[or]~~
- (ii) the policyholders, in the case of a mutual insurer; and

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(iii) the members, in the case of a limited liability company insurer; and

(b) shall provide for the purchase of:

(i) the shares of any nonconsenting shareholder of a stock insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting shareholder; or

(ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting policyholder.

~~[(3)]~~ (4) In the case of a conversion authorized under Subsection (1) or (2):

(a) the conversion shall be accomplished under a reasonable plan and procedure that are approved by the commissioner;

(b) the commissioner may not approve the plan of conversion under this section unless the plan:

(i) satisfies Subsections ~~[(2)]~~ (3) and ~~[(6)]~~ (7);

(ii) provides for the conversion of existing stockholder ~~[or]~~, policyholder, or member interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder ~~[or]~~, policyholder, or member interests in the stock or mutual insurer or limited liability company; and

(iii) is approved:

(A) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; ~~[or]~~

(B) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or

(C) in the case of a limited liability company insurer, by a majority of the voting managers represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;

(c) the commissioner shall approve a plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with the standards under ~~[Subsection]~~ Section 31A-37-301~~[(4)]~~;

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(d) if the commissioner approves a plan of conversion, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact;

(e) upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and

(f) upon the effectiveness of the conversion:

(i) the corporate existence of the converting insurer shall cease; and

(ii) the resulting reciprocal insurer shall notify the Division of Corporations and Commercial Code of the conversion.

~~[(4)]~~ (5) A merger authorized under Subsection (1) ~~or (2)~~ shall be accomplished substantially in accordance with the procedures set forth in this title except that, solely for purposes of the merger:

(a) the plan or merger shall satisfy Subsection ~~[(2)]~~ (3);

(b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;

(c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;

(d) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are the president and secretary of the committee;

(e) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with the standards under ~~[Subsection]~~ Section 31A-37-301~~[(4)]~~;

(f) notwithstanding ~~[Sections]~~ Section 31A-37-204 ~~[and 31A-37-205]~~, the commissioner may permit the formation, without capital and surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged to facilitate a transaction under this section, if there is no more than one authorized insurance company surviving the merger; and

(g) an alien insurer may be a party to a merger authorized under Subsection (1) ~~or (2)~~ if:

(i) the requirements for the merger between a domestic and a foreign insurer under

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Chapter 16, Insurance Holding Companies, are applied to the merger; and

(ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding Companies.

~~[(5)]~~ (6) If the commissioner approves the articles of merger under this section:

(a) the commissioner shall endorse the commissioner's approval on the articles; and

(b) the surviving insurer shall present the name to the Division of Corporations and Commercial Code.

~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), a conversion authorized under Subsection (1) shall provide for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.

(b) Notwithstanding Subsection ~~[(6)]~~ (7)(a), the commissioner may waive or modify the requirements for the hearing.

(c) If a notice of hearing is required, but no hearing is requested, after notice has been given under Subsection ~~[(6)]~~ (7)(a), the commissioner may cancel the hearing.

Section ~~446~~ 53. Section **31A-37-401** is amended to read:

31A-37-401. Sponsored captive insurance companies -- Formation.

(1) One or more sponsors may form a sponsored captive insurance company under this chapter.

(2) A sponsored captive insurance company formed under this chapter may establish and maintain a protected cell to insure risks of a participant if:

(a) the shareholders of a sponsored captive insurance company are limited to:

(i) the participants of the sponsored captive insurance company; and

(ii) the sponsors of the sponsored captive insurance company;

(b) each protected cell is accounted for separately on the books and records of the sponsored cell captive insurance company to reflect:

(i) the financial condition of the individual protected cell;

(ii) the results of operations of ~~[the]~~ each individual protected cell;

(iii) the net income or loss of ~~[the]~~ each individual protected cell;

(iv) the dividends or other distributions to participants of ~~[the]~~ each individual protected cell; and

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- (v) other factors that may be:
 - (A) provided in the participant contract; or
 - (B) required by the commissioner;
- (c) the assets of a protected cell are not chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
- (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive insurance company between or among any of the protected cells of the sponsored captive insurance company without the consent of the protected cells;
- (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a protected cell to a sponsor or participant without the commissioner's approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
- (f) a sponsored captive insurance company annually files with the commissioner financial reports the commissioner requires under Section 31A-37-106, including accounting statements detailing the financial experience of each protected cell;
- (g) a sponsored captive insurance company notifies the commissioner in writing within 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or expense obligations of the protected cell;
- (h) a participant contract does not take effect without the commissioner's prior written approval; ~~and~~
- (i) the addition of each new protected cell and withdrawal of a participant of any existing protected cell does not take effect without the commissioner's prior written approval~~[-]; and~~
- (j) (i) a protected cell captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and 63J-1-504:
 - (A) a fee for examining, investigating, and processing by a department employee of an application for a certificate of authority made by a protected cell captive insurance company;
 - (B) a fee for obtaining a certificate of authority for the year the protected cell captive insurance company is issued a certificate of authority by the department; and
 - (C) a certificate of authority renewal fee; and

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(ii) a protected cell may be created by the sponsor or the sponsor may create a pooling insurance arrangement to provide for pooling of risks to allow for risk distribution upon written approval from every protected cell under the sponsor and written approval of the commissioner.

Section ~~47~~54. Section 31A-37-402 is amended to read:

31A-37-402. Sponsored captive insurance companies -- Certificate of authority mandatory.

(1) A sponsor of a sponsored captive insurance company shall be:

- (a) an insurer authorized or approved under the laws of a state;
- (b) a reinsurer authorized or approved under the laws of a state;
- (c) a captive insurance company holding a certificate of authority under this chapter;
- (d) an insurance holding company that:
 - (i) controls an insurer licensed pursuant to the laws of a state; and
 - (ii) is subject to registration pursuant to the holding company system of laws of the

state of domicile of the insurer described in Subsection (1)(d)(i); ~~[or]~~

(e) an approved captive management firm in Utah or its affiliates; or

~~[(e)]~~ (f) another person approved by the commissioner after finding that the approval of the person as a sponsor is not inconsistent with the purposes of this chapter.

(2) (a) The business written by a sponsored captive insurance company with respect to a protected cell shall be fronted by the sponsor insurance company through a controlled unaffiliated contract or an insurer that is:

(i) authorized or approved:

(A) under the laws of a state; or

(B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of a state;

(ii) reinsured by a reinsurer authorized or approved by this state; or

(iii) subject to Subsection (2)(b), secured by a trust fund:

(A) in the United States;

(B) for the benefit of policyholders and claimants; ~~[and]~~

(C) funded by an irrevocable letter of credit or other asset acceptable to the commissioner~~[-]; and~~

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(D) held by the sponsor as provided in Subsection 31A-17-404(1).

(b) (i) The amount of security provided by the trust fund described in Subsection (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund, including:

- (A) reserves for losses;
- (B) allocated loss adjustment expenses;
- (C) incurred but unreported losses; and
- (D) unearned premiums for business written through the participant's protected cell.

(ii) The commissioner may require the sponsored captive insurance company to increase the funding of a trust established pursuant to this Subsection (2).

(iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of credit, the letter of credit shall be established, issued, or confirmed by a bank that is:

- (A) chartered in this state;
- (B) a member of the federal reserve system; or
- (C) chartered by another state if that state-chartered bank is acceptable to the

commissioner.

(iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a form and upon terms approved by the commissioner.

(3) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

Section ~~48~~55. Section **31A-37-403** is amended to read:

31A-37-403. Participants in sponsored captive insurance companies.

(1) Any of the following may be a participant in a sponsored captive insurance company holding a certificate of authority under this chapter:

- (a) an association;
- (b) a corporation that is for profit or nonprofit;
- (c) a limited liability company;
- (d) a partnership;
- (e) a trust; or
- (f) any other business entity.

(2) A sponsor may be a participant in a sponsored captive insurance company.

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(3) A participant need not be:

- (a) a shareholder of the sponsored captive insurance company; or
- (b) an affiliate of the sponsored captive insurance company.

(4) A participant shall insure only the participant's own risks through a sponsored captive insurance company unless otherwise approved by the commissioner.

Section ~~49~~56. Section **31A-37-404** is amended to read:

31A-37-404. Discounting of loss and loss adjustment expense reserves.

(1) [~~The following~~] A sponsored captive insurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves[~~;~~].

~~[(a) a sponsored captive insurance company; and]~~

~~[(b) a captive reinsurance company.]~~

(2) (a) [~~The following~~] A sponsored captive insurance company shall annually file with the department an actuarial opinion provided by an independent actuary on loss and loss adjustment expense reserves[~~;~~].

~~[(i) a sponsored captive insurance company; and]~~

~~[(ii) a captive reinsurance company.]~~

(b) The independent actuary described in Subsection (2)(a) may not be an employee of:

- (i) the company filing the actuarial opinion; or
- (ii) an affiliate of the company filing the actuarial opinion.

(3) The commissioner may disallow the discounting of reserves by [~~the following~~] a sponsored captive insurance company if the sponsored captive insurance company violates this title[~~;~~].

~~[(a) a sponsored captive insurance company; or]~~

~~[(b) a captive reinsurance company.]~~

Section ~~50~~57. Section **31A-37-501** is amended to read:

31A-37-501. Reports to commissioner.

(1) A captive insurance company is not required to make a report except those provided in this chapter.

(2) (a) Before March 1 of each year, a captive insurance company shall submit to the commissioner a report of the financial condition of the captive insurance company, verified by

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oath of two of the executive officers of the captive insurance company.

(b) Except as provided in [~~Sections~~] Section 31A-37-204 [~~and 31A-37-205~~], a captive insurance company shall report:

(i) using generally accepted accounting principles, except to the extent that the commissioner requires, approves, or accepts the use of a statutory accounting principle;

(ii) using a useful or necessary modification or adaptation to an accounting principle that is required, approved, or accepted by the commissioner for the type of insurance and kind of insurer to be reported upon; and

(iii) supplemental or additional information required by the commissioner.

(c) Except as otherwise provided:

(i) a licensed captive insurance company shall file the report required by Section 31A-4-113; and

(ii) an industrial insured group shall comply with Section 31A-4-113.5.

(3) (a) A pure captive insurance company may make written application to file the required report on a fiscal year end that is consistent with the fiscal year of the parent company of the pure captive insurance company.

(b) If the commissioner grants an alternative reporting date for a pure captive insurance company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal year end.

(4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall file with the commissioner a copy of the reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two of the alien captive insurance company's executive officers.

(b) If the commissioner is satisfied that the annual report filed by the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the annual statement required for a captive insurance company under this section with respect to business written in the alien jurisdiction.

(c) A waiver by the commissioner under Subsection (4)(b):

(i) shall be in writing; and

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(ii) is subject to public inspection.

(5) Before March 1 of each year, a sponsored cell captive insurance company shall submit to the commissioner a consolidated report of the financial condition of each individual protected cell, including a financial statement for each protected cell.

Section ~~51~~58. Section **31A-37-502** is amended to read:

31A-37-502. Examination.

(1) (a) As provided in this section, the commissioner, or a person appointed by the commissioner, shall examine each captive insurance company in each [~~three-year~~] five-year period.

(b) The [~~three-year~~] five-year period described in Subsection (1)(a) shall be determined on the basis of [~~three~~] five full annual accounting periods of operation.

(c) The examination is to be made as of:

(i) December 31 of the full three-year period; or

(ii) the last day of the month of an annual accounting period authorized for a captive insurance company under this section.

(d) In addition to an examination required under this Subsection (1), the commissioner, or a person appointed by the commissioner may examine a captive insurance company whenever the commissioner determines it to be prudent.

(2) During an examination under this section the commissioner, or a person appointed by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance company to ascertain:

(a) the financial condition of the captive insurance company;

(b) the ability of the captive insurance company to fulfill the obligations of the captive insurance company; and

(c) whether the captive insurance company has complied with this chapter.

~~[(3) The commissioner upon application may enlarge the three-year period described in Subsection (1) to five years, if a captive insurance company is subject to a comprehensive annual audit during that period.]~~

~~[(a) of a scope satisfactory to the commissioner; and]~~

~~[(b) performed by independent auditors approved by the commissioner.]~~

~~[(4)]~~ (3) The commissioner may accept a comprehensive annual independent audit in

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lieu of an examination:

- (a) of a scope satisfactory to the commissioner; and
- (b) performed by an independent auditor approved by the commissioner.

~~[(5)]~~ (4) A captive insurance company that is inspected and examined under this section shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an inspection and examination.

Section ~~(52)~~ 59. Section **31A-37-505** is amended to read:

31A-37-505. Suspension or revocation -- Grounds.

(1) The commissioner may suspend or revoke the certificate of authority of a captive insurance company to conduct an insurance business in this state for:

- (a) insolvency or impairment of capital or surplus;
- (b) failure to meet the requirements of Section 31A-37-204 ~~[or 31A-37-205]~~;
- (c) refusal or failure to submit:
 - (i) an annual report required by Section 31A-37-501; or
 - (ii) any other report or statement required by law or by lawful order of the commissioner;
- (d) failure to comply with the charter, bylaws, or other organizational document of the captive insurance company;
- (e) failure to submit to:
 - (i) an examination under Section 31A-37-502; or
 - (ii) any legal obligation relative to an examination under Section 31A-37-502;
- (f) refusal or failure to pay the cost of examination under Section 31A-37-502;
- (g) use of methods that, although not otherwise specifically prohibited by law, render:
 - (i) the operation of the captive insurance company detrimental to the public or the policyholders of the captive insurance company; or
 - (ii) the condition of the captive insurance company unsound with respect to the public or to the policyholders of the captive insurance company; or
- (h) failure otherwise to comply with laws of this state.

(2) Notwithstanding any other provision of this title, if the commissioner finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in Subsection (1), the commissioner may suspend or revoke the certificate

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of authority of the captive insurance company if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company to revoke the certificate of authority.

Section ~~{53}~~60. Section **31A-43-301** is amended to read:

31A-43-301. Stop-loss insurance coverage standards.

(1) A small employer stop-loss insurance contract shall:

(a) be issued to the small employer to provide insurance to the group health benefit plan, not the employees of the small employer;

~~[(b) use a standard application form developed by the commissioner by administrative rule;]~~

~~[(c)]~~ (b) have a contract term with guaranteed rates for at least 12 months, without adjustment, unless there is a change in the benefits provided under the small employer's health plan during the contract period;

~~[(d)]~~ (c) include both a specific attachment point and an aggregate attachment point in a contract;

~~[(e)]~~ (d) align stop-loss plan benefit limitations and exclusions with a small employer's health plan benefit limitations and exclusions, including any annual or lifetime limits in the employer's health plan;

~~[(f)]~~ (e) have an annual specific attachment point that is at least \$10,000;

~~[(g)]~~ (f) have an annual aggregate attachment point that may not be less than 85% of expected claims;

~~[(h)]~~ (g) pay stop-loss claims:

(i) incurred during the contract period; and

(ii) paid within 12 months after the expiration date of the contract; and

~~[(i)]~~ (h) include provisions to cover incurred and unpaid stop-loss claims ~~[if a]~~ when the small [employer] employer's stop-loss plan terminates.

(2) A small employer stop-loss contract shall not:

(a) include lasering; and

(b) pay claims directly to an individual employee, member, or participant.

Section 61. Section **63I-2-231** is amended to read:

63I-2-231. Repeal dates, Title 31A.

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(1) Section 31A-22-315.5 is repealed July 1, 2016.

(2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed July 1, [2015] 2016.

Section ~~{54}~~62. Repealer.

This bill repeals:

Section 31A-37-205, Free surplus.

Section 31A-37-601, Incorporation of a captive reinsurance company.

Section 31A-37-602, Requirements of a captive reinsurance company.

Section 31A-37-603, Minimum capitalization or reserves for a captive reinsurance company.

Section 31A-37-604, Management of assets of a captive reinsurance company.

Section ~~{55}~~63. Effective date.

This bill takes effect on May 12, 2015, except:

(1) that the amendments in this bill to Section 31A-3-304 (Effective 07/01/15) take effect on July 1, 2015~~+~~

Legislative Review Note

~~as of 10-16-14 12:48 PM~~

~~Office of Legislative Research and General Counsel~~; and

(2) the enactment of the following sections in this bill take effect on January 1, 2017:

(a) Section 31A-16a-101;

(b) Section 31A-16a-102;

(c) Section 31A-16a-103;

(d) Section 31A-16a-104;

(e) Section 31A-16a-105;

(f) Section 31A-16a-106;

(g) Section 31A-16a-107;

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(h) Section 31A-16a-108;

(i) Section 31A-16a-109; and

(j) Section 31A-16a-110.