

INSURANCE REVISIONS

2016 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 provisions related to insurance.

Highlighted Provisions:

This bill:

- ▶ corrects citations;
- ▶ amends definitions;
- ▶ modifies language related to comparison tables;
- ▶ addresses compliance with PPACA and administrative rules;
- ▶ addresses application of vehicle protection product warranties under the statute;
- ▶ modifies the Risk Retention Groups Act, including:
 - amending definitions;
 - imposing requirements on risk retention groups chartered in this state;
 - providing that countersignatures are not required;
 - addressing purchasing groups;
 - addressing the role of producers; and
 - granting rulemaking authority;
- ▶ addresses credit allowed a domestic ceding insurer against reserves for reinsurance;
- ▶ lists in what form security may be in for purposes of asset or reduction from liability



28 for reinsurance ceded by a domestic insurer to another assuming insurer;

28a **Ĥ→ ▶ addresses rulemaking authority of the commissioner; ←Ĥ**

29 ▶ provides ~~Ĥ→ [when the liability of insurer under a motor vehicle liability possibility~~
 30 ~~becomes absolute]~~ **when a motor vehicle liability policy may be rescinded or cancelled** ←Ĥ ;

31 ▶ modifies reference to husband and wife;

32 ▶ addresses insurance for alcohol and drug dependency treatment;

33 ▶ provides that violation of an order by a regulatory agency in any jurisdiction may be
 34 grounds for discipline;

35 ▶ addresses continuing education requirements;

36 ▶ provides that a person's variable contracts line of authority is canceled when that
 37 person's securities license is no longer active;

38 ▶ addresses insurer's liability if the insured pays a premium to a licensee or group
 39 policyholder;

39a **Ĥ→ ▶ addresses exemption from claims filing requirements; ←Ĥ**

40 ▶ modifies citations related to allowance of contingent and unliquidated claims;

41 ▶ modifies disclosure requirements when a policy or contract is not covered by a
 42 guarantee association;

43 ▶ amends training requirements for insurance producers related to the Health
 44 Insurance Exchange;

45 ▶ requires insurers to have antifraud plans;

46 ▶ modifies minimum financial requirements for bail bond surety company license;

47 ▶ amends definitions related to captive insurers;

48 ▶ addresses the application of the Risk Retention Groups Act to captive insurers;

49 **Ĥ→ [~~→ addresses capital requirements for captive insurers;~~] ←Ĥ**

50 ▶ modifies provisions related to reinsurance and captive insurance companies;

51 ▶ amends reporting requirements for captive insurance companies;

52 ▶ clarifies timing of examinations of captive insurance companies;

53 ▶ addresses assessments related to title insurance;

54 ▶ modifies provisions related to the Title Insurance Recovery, Education, and
 55 Research Fund Act;

56 ▶ modifies the repeal date for ~~Ĥ→ [a]~~ ←Ĥ specified ~~Ĥ→ [section]~~ **statutory**
 56a **provisions** ←Ĥ ;

57 ▶ repeals provisions related to employee welfare funds and plans;

58 ▶ repeals provisions related to credit allowed a foreign ceding insurer; and

59 ▶ makes technical and conforming amendments.

60 **Money Appropriated in this Bill:**

61 None

62 **Other Special Clauses:**

63 None

64 **Utah Code Sections Affected:**

65 AMENDS:

66 **13-51-108**, as enacted by Laws of Utah 2015, Chapter 244 and last amended by
67 Coordination Clause, Laws of Utah 2015, Chapter 244

68 **31A-1-301**, as last amended by Laws of Utah 2015, Chapters 244 and 330

69 **31A-2-208.5**, as enacted by Laws of Utah 1990, Chapter 129

70 **31A-2-212**, as last amended by Laws of Utah 2015, Chapter 283

71 **31A-2-309**, as last amended by Laws of Utah 2008, Chapter 257

72 **31A-6a-101**, as last amended by Laws of Utah 2015, Chapter 244

73 **31A-6a-104**, as last amended by Laws of Utah 2015, Chapter 244

74 **31A-15-202**, as last amended by Laws of Utah 2010, Chapter 324

75 **31A-15-203**, as last amended by Laws of Utah 2011, Chapter 297

76 **31A-15-204**, as last amended by Laws of Utah 2003, Chapter 298

77 **31A-15-208**, as last amended by Laws of Utah 2010, Chapter 10

78 **31A-15-209**, as enacted by Laws of Utah 1992, Chapter 258

79 **31A-15-212**, as last amended by Laws of Utah 2003, Chapter 298

80 **31A-17-404**, as last amended by Laws of Utah 2008, Chapter 257

81 **31A-17-404.1**, as enacted by Laws of Utah 2008, Chapter 257

81a ~~31A-17-404.3~~, as enacted by Laws of Utah 2008, Chapter 257

82 **31A-22-202**, as enacted by Laws of Utah 1985, Chapter 242

83 **31A-22-603**, as last amended by Laws of Utah 2001, Chapter 116

84 **31A-22-715**, as last amended by Laws of Utah 2001, Chapter 116

85 **31A-22-1201**, as last amended by Laws of Utah 2008, Chapter 257

86 **31A-23a-111**, as last amended by Laws of Utah 2012, Chapter 253

87 **31A-23a-202**, as last amended by Laws of Utah 2014, Chapters 290 and 300

88 **31A-23a-206**, as last amended by Laws of Utah 2012, Chapter 253

89 **31A-23a-410**, as last amended by Laws of Utah 2009, Chapter 349

- 90 **31A-23b-401**, as enacted by Laws of Utah 2013, Chapter 341
- 91 **31A-25-208**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 92 **31A-26-213**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 92a **Ĥ→ 31A-27a-601, as enacted by Laws of Utah 2007, Chapter 309 ←Ĥ**
- 93 **31A-27a-605**, as enacted by Laws of Utah 2007, Chapter 309
- 94 **31A-28-119**, as last amended by Laws of Utah 2010, Chapter 292
- 95 **31A-30-116**, as last amended by Laws of Utah 2015, Chapter 283
- 96 **31A-30-209**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 97 **31A-35-404**, as last amended by Laws of Utah 2000, Chapter 259
- 98 **31A-37-102**, as last amended by Laws of Utah 2015, Chapter 244
- 99 **31A-37-103**, as last amended by Laws of Utah 2011, Chapter 284
- 100 **31A-37-204**, as last amended by Laws of Utah 2015, Chapter 244
- 101 **31A-37-303**, as last amended by Laws of Utah 2015, Chapter 244
- 102 **31A-37-501**, as last amended by Laws of Utah 2015, Chapter 244
- 103 **31A-37-502**, as last amended by Laws of Utah 2015, Chapter 244
- 104 **31A-40-208**, as last amended by Laws of Utah 2012, Chapter 169
- 105 **31A-41-202**, as last amended by Laws of Utah 2015, Chapter 330
- 106 **31A-41-301**, as last amended by Laws of Utah 2012, Chapter 253
- 107 **31A-41-303**, as enacted by Laws of Utah 2008, Chapter 220
- 108 **63I-2-231**, as last amended by Laws of Utah 2015, Chapter 244

ENACTS:

- 110 **31A-15-206.5**, Utah Code Annotated 1953
- 111 **31A-15-213.5**, Utah Code Annotated 1953
- 112 **31A-31-112**, Utah Code Annotated 1953

REPEALS AND REENACTS:

- 114 **31A-41-302**, as enacted by Laws of Utah 2008, Chapter 220

REPEALS:

- 116 **31A-13-101**, as last amended by Laws of Utah 1986, Chapter 204
- 117 **31A-13-102**, as enacted by Laws of Utah 1985, Chapter 242
- 118 **31A-13-103**, as last amended by Laws of Utah 1986, Chapter 204
- 119 **31A-13-104**, as enacted by Laws of Utah 1985, Chapter 242
- 120 **31A-13-105**, as enacted by Laws of Utah 1985, Chapter 242

- 121 [31A-13-106](#), as enacted by Laws of Utah 1985, Chapter 242
- 122 [31A-13-107](#), as last amended by Laws of Utah 2007, Chapter 309
- 123 [31A-13-108](#), as enacted by Laws of Utah 1985, Chapter 242
- 124 [31A-13-109](#), as last amended by Laws of Utah 1986, Chapter 204
- 125 [31A-17-404.2](#), as enacted by Laws of Utah 2008, Chapter 257

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

128 Section 1. Section **13-51-108** is amended to read:

129 **13-51-108. Insurance.**

130 (1) A transportation network company or a transportation network driver shall maintain
131 insurance that covers, on a primary basis, a transportation network driver's use of a vehicle
132 during a prearranged ride and that includes:

- 133 (a) an acknowledgment that the transportation network driver is using the vehicle in
134 connection with a transportation network company during a prearranged ride or that the
135 transportation network driver is otherwise using the vehicle for a commercial purpose;
- 136 (b) liability coverage for a minimum amount of \$1,000,000 per occurrence;
- 137 (c) personal injury protection to the extent required under Sections [31A-22-306](#)
138 through [31A-22-309](#);
- 139 (d) uninsured motorist coverage where required by Section [31A-22-305](#); and
- 140 (e) underinsured motorist coverage where required by Section [31A-22-305.3](#).

141 (2) A transportation network company or a transportation network driver shall maintain
142 insurance that covers, on a primary basis, a transportation network driver's use of a vehicle
143 during a waiting period and that includes:

- 144 (a) an acknowledgment that the transportation network driver is using the vehicle in
145 connection with a transportation network company during a waiting period or that the
146 transportation network driver is otherwise using the vehicle for a commercial purpose;
- 147 (b) liability coverage in a minimum amount, per occurrence, of:
- 148 (i) \$50,000 to any one individual;
- 149 (ii) \$100,000 to all individuals; and
- 150 (iii) \$30,000 for property damage;
- 151 (c) personal injury protection to the extent required under Sections [31A-22-306](#)

152 through [31A-22-309](#);

153 (d) uninsured motorist coverage where required by Section [31A-22-305](#); and

154 (e) underinsured motorist coverage where required by Section [31A-22-305.3](#).

155 (3) A transportation network company or a transportation network driver shall maintain
156 comprehensive and collision insurance that covers, on a primary or contingent basis, a
157 transportation network driver's use of a vehicle while providing transportation network
158 services, and that includes:

159 (a) an acknowledgment that the transportation network driver is using the vehicle in
160 connection with a transportation network company during a prearranged ride or waiting period,
161 or that the transportation network driver is otherwise using the vehicle for a commercial
162 purpose; and

163 (b) coverage limits that are at least equal to such coverage limits, if any, for the
164 personal automobile insurance maintained by the vehicle's owner and reported to the
165 transportation network company.

166 (4) A transportation network company and a transportation network driver may satisfy
167 the requirements of Subsections (1), (2), and (3) by:

168 (a) the transportation network driver purchasing coverage that complies with
169 Subsections (1), (2), and (3);

170 (b) the transportation network company purchasing, on the transportation network
171 driver's behalf, coverage that complies with Subsections (1), (2), and (3); or

172 (c) a combination of Subsections (4)(a) and (b).

173 (5) An insurer may offer to a transportation network driver a personal automobile
174 liability insurance policy, or an amendment or endorsement to a personal automobile liability
175 policy, that:

176 (a) covers a private passenger motor vehicle while used to provide transportation
177 network services; and

178 (b) satisfies the coverage requirements described in Subsection (1), (2), or (3).

179 (6) Nothing in this section requires a personal automobile insurance policy to provide
180 coverage while a driver is providing transportation network services.

181 (7) If a transportation network company does not purchase a policy that complies with
182 Subsections (1), (2), and (3) on behalf of a transportation network driver, the transportation

183 network company shall verify that the driver has purchased a policy that complies with
 184 Subsections (1), (2), and (3).

185 (8) An insurance policy that a transportation network company or a transportation
 186 network driver maintains under Subsection (1) or (2):

187 (a) satisfies the security requirements of Section [41-12a-301](#); and

188 (b) may, along with insurance maintained under Subsection (3), be placed with:

189 (i) an insurer that is certified under Section [31A-4-103](#); or

190 (ii) a surplus lines insurer ~~that is licensed~~ **eligible** under Section
 190a ~~[31A-23a-104]~~ [31A-15-103](#).

191 (9) An insurer that provides coverage for a transportation network driver explicitly for
 192 the transportation network driver's transportation network services under Subsection (1) or (2)
 193 shall have the duty to defend a liability claim arising from an occurrence while the
 194 transportation network driver is providing transportation network services.

195 (10) (a) If insurance a transportation network driver maintains under Subsection (1),
 196 (2), or (3) lapses or ceases to exist, a transportation network company shall provide coverage
 197 complying with Subsection (1), (2), or (3) beginning with the first dollar of a claim.

198 (b) Subsection (10)(a) does not apply to comprehensive or collision insurance
 199 otherwise required under Subsection (3) if, at the time of a claim for damage to a vehicle being
 200 used to provide transportation network services, there is no outstanding lien on the vehicle.

201 (11) (a) An insurance policy that a transportation network company or transportation
 202 network driver maintains under Subsection (1) or (2) may not provide that coverage is
 203 dependent on a transportation network driver's personal automobile insurance policy first
 204 denying a claim.

205 (b) Subsection (11)(a) does not apply to coverage a transportation network company
 206 provides under Subsection ~~(9)~~ **(10)** in the event a transportation network driver's
 206a coverage under

207 Subsection (1) or (2) lapses or ceases to exist.

208 (12) A personal automobile insurer:

209 (a) notwithstanding Section [31A-22-302](#), may offer a personal automobile liability
 210 policy that excludes coverage for a loss that arises from the use of the insured vehicle to
 211 provide transportation network services; and

212 (b) does not have the duty to defend or indemnify a loss if an exclusion described in
 213 Subsection (12)(a) excludes coverage according to the policy's terms.

214 Section 2. Section 31A-1-301 is amended to read:

215 **31A-1-301. Definitions.**

216 As used in this title, unless otherwise specified:

217 (1) (a) "Accident and health insurance" means insurance to provide protection against

218 economic losses resulting from:

219 (i) a medical condition including:

220 (A) a medical care expense; or

221 (B) the risk of disability;

222 (ii) accident; or

223 (iii) sickness.

224 (b) "Accident and health insurance":

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

226 (A) an income replacement contract;

227 (B) a health care contract;

228 (C) an expense reimbursement contract;

229 (D) a credit accident and health contract;

230 (E) a continuing care contract; and

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

232 (ii) may provide:

233 (A) hospital coverage;

234 (B) surgical coverage;

235 (C) medical coverage;

236 (D) loss of income coverage;

237 (E) prescription drug coverage;

238 (F) dental coverage; or

239 (G) vision coverage.

240 (c) "Accident and health insurance" does not include workers' compensation insurance.

241 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title

242 63G, Chapter 3, Utah Administrative Rulemaking Act.

243 (3) "Administrator" is defined in Subsection (166).

244 (4) "Adult" means an individual who has attained the age of at least 18 years.

245 (5) "Affiliate" means a person who controls, is controlled by, or is under common
246 control with, another person. A corporation is an affiliate of another corporation, regardless of
247 ownership, if substantially the same group of individuals manage the corporations.

248 (6) "Agency" means:

249 (a) a person other than an individual, including a sole proprietorship by which an
250 individual does business under an assumed name; and

251 (b) an insurance organization licensed or required to be licensed under Section
252 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).

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

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

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

259 (10) "Application" means a document:

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

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

264 (A) insure the risk under:

265 (I) the coverage as originally offered; or

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

267 (B) decline to insure the risk; or

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

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

271 (a) the original articles;

272 (b) a special law;

273 (c) a charter;

274 (d) an amendment;

275 (e) restated articles;

- 276 (f) articles of merger or consolidation;
- 277 (g) a trust instrument;
- 278 (h) another constitutive document for a trust or other entity that is not a corporation;
- 279 and
- 280 (i) an amendment to an item listed in Subsections (11)(a) through (h).
- 281 (12) "Bail bond insurance" means a guarantee that a person will attend court when
- 282 required, up to and including surrender of the person in execution of a sentence imposed under
- 283 Subsection 77-20-7(1), as a condition to the release of that person from confinement.
- 284 (13) "Binder" means the same as that term is defined in Section 31A-21-102.
- 285 (14) "Blanket insurance policy" means a group policy covering a defined class of
- 286 persons:
- 287 (a) without individual underwriting or application; and
- 288 (b) that is determined by definition without designating each person covered.
- 289 (15) "Board," "board of trustees," or "board of directors" means the group of persons
- 290 with responsibility over, or management of, a corporation, however designated.
- 291 (16) "Bona fide office" means a physical office in this state:
- 292 (a) that is open to the public;
- 293 (b) that is staffed during regular business hours on regular business days; and
- 294 (c) at which the public may appear in person to obtain services.
- 295 (17) "Business entity" means:
- 296 (a) a corporation;
- 297 (b) an association;
- 298 (c) a partnership;
- 299 (d) a limited liability company;
- 300 (e) a limited liability partnership; or
- 301 (f) another legal entity.
- 302 (18) "Business of insurance" is defined in Subsection (89).
- 303 (19) "Business plan" means the information required to be supplied to the
- 304 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
- 305 when these subsections apply by reference under:
- 306 (a) Section 31A-7-201;

- 307 (b) Section 31A-8-205; or
- 308 (c) Subsection 31A-9-205(2).
- 309 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
- 310 corporation's affairs, however designated.
- 311 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
- 312 corporation.
- 313 (21) "Captive insurance company" means:
- 314 (a) an insurer:
- 315 (i) owned by another organization; and
- 316 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 317 affiliated company; or
- 318 (b) in the case of a group or association, an insurer:
- 319 (i) owned by the insureds; and
- 320 (ii) whose exclusive purpose is to insure risks of:
- 321 (A) a member organization;
- 322 (B) a group member; or
- 323 (C) an affiliate of:
- 324 (I) a member organization; or
- 325 (II) a group member.
- 326 (22) "Casualty insurance" means liability insurance.
- 327 (23) "Certificate" means evidence of insurance given to:
- 328 (a) an insured under a group insurance policy; or
- 329 (b) a third party.
- 330 (24) "Certificate of authority" is included within the term "license."
- 331 (25) "Claim," unless the context otherwise requires, means a request or demand on an
- 332 insurer for payment of a benefit according to the terms of an insurance policy.
- 333 (26) "Claims-made coverage" means an insurance contract or provision limiting
- 334 coverage under a policy insuring against legal liability to claims that are first made against the
- 335 insured while the policy is in force.
- 336 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 337 commissioner.

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

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

341 (i) provides board and lodging;

342 (ii) provides one or more of the following:

343 (A) a personal service;

344 (B) a nursing service;

345 (C) a medical service; or

346 (D) any other health-related service; and

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

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

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

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

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

356 (i) by contract;

357 (ii) by common management;

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

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

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

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

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

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

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

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

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

375 (i) a corporation doing business:

376 (A) as:

377 (I) an insurance producer;

378 (II) a surplus lines producer;

379 (III) a limited line producer;

380 (IV) a consultant;

381 (V) a managing general agent;

382 (VI) a reinsurance intermediary;

383 (VII) a third party administrator; or

384 (VIII) an adjuster; and

385 (B) under:

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

387 Reinsurance Intermediaries;

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

389 (III) Chapter 26, Insurance Adjusters; or

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

391 Holding Companies.

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

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

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

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

398 (i) the Primary Care Network Program under a Medicaid primary care network

399 demonstration waiver obtained subject to Section [26-18-3](#);

400 (ii) the Children's Health Insurance Program under Section [26-40-106](#); or
401 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
402 No. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No.
403 109-415.

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

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

409 (b) "Credit insurance" includes:

- 410 (i) credit accident and health insurance;
- 411 (ii) credit life insurance;
- 412 (iii) credit property insurance;
- 413 (iv) credit unemployment insurance;
- 414 (v) guaranteed automobile protection insurance;
- 415 (vi) involuntary unemployment insurance;
- 416 (vii) mortgage accident and health insurance;
- 417 (viii) mortgage guaranty insurance; and
- 418 (ix) mortgage life insurance.

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

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

- 422 (a) matured;
- 423 (b) unmatured;
- 424 (c) liquidated;
- 425 (d) unliquidated;
- 426 (e) secured;
- 427 (f) unsecured;
- 428 (g) absolute;
- 429 (h) fixed; or
- 430 (i) contingent.

- 431 (39) "Credit property insurance" means insurance:
432 (a) offered in connection with an extension of credit; and
433 (b) that protects the property until the debt is paid.
- 434 (40) "Credit unemployment insurance" means insurance:
435 (a) offered in connection with an extension of credit; and
436 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
437 (i) specific loan; or
438 (ii) credit transaction.
- 439 (41) (a) "Crop insurance" means insurance providing protection against damage to
440 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
441 disease, or other yield-reducing conditions or perils that is:
442 (i) provided by the private insurance market; or
443 (ii) subsidized by the Federal Crop Insurance Corporation.
444 (b) "Crop insurance" includes multiperil crop insurance.
- 445 (42) (a) "Customer service representative" means a person that provides an insurance
446 service and insurance product information:
447 (i) for the customer service representative's:
448 (A) producer;
449 (B) surplus lines producer; or
450 (C) consultant employer; and
451 (ii) to the customer service representative's employer's:
452 (A) customer;
453 (B) client; or
454 (C) organization.
455 (b) A customer service representative may only operate within the scope of authority of
456 the customer service representative's producer, surplus lines producer, or consultant employer.
- 457 (43) "Deadline" means a final date or time:
458 (a) imposed by:
459 (i) statute;
460 (ii) rule; or
461 (iii) order; and

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

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

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

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

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

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

474 (a) perform the duties of:

475 (i) that individual's occupation; or

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

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

479 (i) eating;

480 (ii) toileting;

481 (iii) transferring;

482 (iv) bathing; or

483 (v) dressing.

484 (49) "Disability income insurance" is defined in Subsection (80).

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

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

487 (a) is incorporated;

488 (b) is organized; or

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

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

491 (i) an employee who:

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

- 493 (B) has a normal work week of 30 or more hours; or
- 494 (ii) a person described in Subsection (52)(b).
- 495 (b) "Eligible employee" includes ~~H~~→ [s] :
- 495a **(i) an owner who:**
- 495b **(A) works on a full-time basis; and**
- 495c **(B) has a normal work week of 30 or more hours; and**
- 495d **(ii) ←H** if the individual is included under a health benefit
- 496 plan of a small employer:
- 497 ~~H~~→ [(+)] **(A) ←H** a sole proprietor;
- 498 ~~H~~→ [(+)] **(B) ←H** a partner in a partnership; or
- 499 ~~H~~→ [(+)] **(C) ←H** an independent contractor.
- 500 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
- 501 (i) an individual who works on a temporary or substitute basis for a small employer;
- 502 (ii) an employer's spouse ~~H~~→ **who does not meet the requirements of Subsection**
- 502a **(52)(a)(i) ←H** ; or
- 503 (iii) a dependent of an employer ~~H~~→ **who does not meet the requirements of Subsection**
- 503a **(52)(a)(i) ←H** .
- 504 (53) "Employee" means ~~H~~→ :
- 504a **(a) ←H** an individual employed by an employer ~~H~~→ [-] ; **and**
- 504b **(b) an owner who meets the requirements of Subsection (52)(b)(i). ←H**
- 505 (54) "Employee benefits" means one or more benefits or services provided to:
- 506 (a) an employee; or
- 507 (b) a dependent of an employee.
- 508 (55) (a) "Employee welfare fund" means a fund:
- 509 (i) established or maintained, whether directly or through a trustee, by:
- 510 (A) one or more employers;
- 511 (B) one or more labor organizations; or
- 512 (C) a combination of employers and labor organizations; and
- 513 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 514 from investments of the fund:
- 515 (A) by or on behalf of an employer doing business in this state; or
- 516 (B) for the benefit of a person employed in this state.
- 517 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 518 revenues.

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

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

522 (a) the first day of coverage; or

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

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

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

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

531 (59) (a) "Escrow" means:

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

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

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

538 (ii) a settlement or closing involving:

539 (A) a mobile home;

540 (B) a grazing right;

541 (C) a water right; or

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

543 (b) "Escrow" does not include:

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

545 (A) an acknowledgment;

546 (B) a copy certification;

547 (C) jurat; and

548 (D) an oath or affirmation;

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

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

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

554 (61) (a) "Excludes" is not exhaustive and does not mean that another thing is not also

555 excluded.

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

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

560 (a) a specific physical condition;

561 (b) a specific medical procedure;

562 (c) a specific disease or disorder; or

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

564 (63) "Expense reimbursement insurance" means insurance:

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

567 (b) written:

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

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

570 (64) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
571 a position of public or private trust.

572 (65) (a) "Filed" means that a filing is:

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

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

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

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

579 (B) rule.

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

582 (66) "Filing," when used as a noun, means an item required to be filed with the
583 department including:

584 (a) a policy;

585 (b) a rate;

- 586 (c) a form;
 - 587 (d) a document;
 - 588 (e) a plan;
 - 589 (f) a manual;
 - 590 (g) an application;
 - 591 (h) a report;
 - 592 (i) a certificate;
 - 593 (j) an endorsement;
 - 594 (k) an actuarial certification;
 - 595 (l) a licensee annual statement;
 - 596 (m) a licensee renewal application;
 - 597 (n) an advertisement;
 - 598 (o) a binder; or
 - 599 (p) an outline of coverage.
- 600 (67) "First party insurance" means an insurance policy or contract in which the insurer
601 agrees to pay a claim submitted to it by the insured for the insured's losses.
- 602 (68) "Foreign insurer" means an insurer domiciled outside of this state, including an
603 alien insurer.
- 604 (69) (a) "Form" means one of the following prepared for general use:
- 605 (i) a policy;
 - 606 (ii) a certificate;
 - 607 (iii) an application;
 - 608 (iv) an outline of coverage; or
 - 609 (v) an endorsement.
- 610 (b) "Form" does not include a document specially prepared for use in an individual
611 case.
- 612 (70) "Franchise insurance" means an individual insurance policy provided through a
613 mass marketing arrangement involving a defined class of persons related in some way other
614 than through the purchase of insurance.
- 615 (71) "General lines of authority" include:
- 616 (a) the general lines of insurance in Subsection (72);

- 617 (b) title insurance under one of the following sublines of authority:
- 618 (i) title examination, including authority to act as a title marketing representative;
- 619 (ii) escrow, including authority to act as a title marketing representative; and
- 620 (iii) title marketing representative only;
- 621 (c) surplus lines;
- 622 (d) workers' compensation; and
- 623 (e) another line of insurance that the commissioner considers necessary to recognize in
- 624 the public interest.

625 (72) "General lines of insurance" include:

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

632 (73) "Group health plan" means an employee welfare benefit plan to the extent that the

633 plan provides medical care:

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

639 (74) (a) "Group insurance policy" means a policy covering a group of persons that is

640 issued:

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

643 in:

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

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

647 dependent.

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

651 (76) (a) Except as provided in Subsection (76)(b), "health benefit plan" means a policy
652 or certificate that:

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

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

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

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

- 671 (a) a professional service;
- 672 (b) a personal service;
- 673 (c) a facility;
- 674 (d) equipment;
- 675 (e) a device;
- 676 (f) supplies; or
- 677 (g) medicine.

678 (78) (a) "Health care insurance" or "health insurance" means insurance providing:

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

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

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

693 another type of policy.

694 (79) "Health Insurance Portability and Accountability Act" means the Health Insurance
695 Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.

696 (80) "Income replacement insurance" or "disability income insurance" means insurance
697 written to provide payments to replace income lost from accident or sickness.

698 (81) "Indemnity" means the payment of an amount to offset all or part of an insured
699 loss.

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

702 (83) "Independently procured insurance" means insurance procured under Section
703 [31A-15-104](#).

704 (84) "Individual" means a natural person.

705 (85) "Inland marine insurance" includes insurance covering:

- 706 (a) property in transit on or over land;
- 707 (b) property in transit over water by means other than boat or ship;
- 708 (c) bailee liability;
- 709 (d) fixed transportation property such as bridges, electric transmission systems, radio

- 710 and television transmission towers and tunnels; and
- 711 (e) personal and commercial property floaters.
- 712 (86) "Insolvency" means that:
- 713 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
- 714 obligations mature;
- 715 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
- 716 RBC under Subsection 31A-17-601(8)(c); or
- 717 (c) an insurer is determined to be hazardous under this title.
- 718 (87) (a) "Insurance" means:
- 719 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
- 720 persons to one or more other persons; or
- 721 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
- 722 group of persons that includes the person seeking to distribute that person's risk.
- 723 (b) "Insurance" includes:
- 724 (i) a risk distributing arrangement providing for compensation or replacement for
- 725 damages or loss through the provision of a service or a benefit in kind;
- 726 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
- 727 business and not as merely incidental to a business transaction; and
- 728 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
- 729 but with a class of persons who have agreed to share the risk.
- 730 (88) "Insurance adjuster" means a person who directs or conducts the investigation,
- 731 negotiation, or settlement of a claim under an insurance policy other than life insurance or an
- 732 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 733 (89) "Insurance business" or "business of insurance" includes:
- 734 (a) providing health care insurance by an organization that is or is required to be
- 735 licensed under this title;
- 736 (b) providing a benefit to an employee in the event of a contingency not within the
- 737 control of the employee, in which the employee is entitled to the benefit as a right, which
- 738 benefit may be provided either:
- 739 (i) by a single employer or by multiple employer groups; or
- 740 (ii) through one or more trusts, associations, or other entities;

- 741 (c) providing an annuity:
- 742 (i) including an annuity issued in return for a gift; and
- 743 (ii) except an annuity provided by a person specified in Subsections [31A-22-1305\(2\)](#)
- 744 and (3);
- 745 (d) providing the characteristic services of a motor club as outlined in Subsection
- 746 (117);
- 747 (e) providing another person with insurance;
- 748 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 749 or surety, a contract or policy of title insurance;
- 750 (g) transacting or proposing to transact any phase of title insurance, including:
- 751 (i) solicitation;
- 752 (ii) negotiation preliminary to execution;
- 753 (iii) execution of a contract of title insurance;
- 754 (iv) insuring; and
- 755 (v) transacting matters subsequent to the execution of the contract and arising out of
- 756 the contract, including reinsurance;
- 757 (h) transacting or proposing a life settlement; and
- 758 (i) doing, or proposing to do, any business in substance equivalent to Subsections
- 759 (89)(a) through (h) in a manner designed to evade this title.
- 760 (90) "Insurance consultant" or "consultant" means a person who:
- 761 (a) advises another person about insurance needs and coverages;
- 762 (b) is compensated by the person advised on a basis not directly related to the insurance
- 763 placed; and
- 764 (c) except as provided in Section [31A-23a-501](#), is not compensated directly or
- 765 indirectly by an insurer or producer for advice given.
- 766 (91) "Insurance holding company system" means a group of two or more affiliated
- 767 persons, at least one of whom is an insurer.
- 768 (92) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 769 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 770 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
- 771 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that

772 insurer.

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

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

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

776 (B) receives no compensation directly or indirectly from an insurer for selling,

777 soliciting, or negotiating an insurance product of that insurer to an insurance customer or

778 insured.

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

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

782 (i) a policyholder;

783 (ii) a subscriber;

784 (iii) a member; and

785 (iv) a beneficiary.

786 (b) The definition in Subsection (93)(a):

787 (i) applies only to this title; and

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

790 (94) (a) "Insurer" means a person doing an insurance business as a principal including:

791 (i) a fraternal benefit society;

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

793 [31A-22-1305](#)(2) and (3);

794 (iii) a motor club;

795 (iv) an employee welfare plan; and

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

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

800 (95) "Interinsurance exchange" is defined in Subsection (148).

801 (96) "Involuntary unemployment insurance" means insurance:

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

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

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

807 (97) (a) "Large employer," in connection with a health benefit plan, means an employer
808 who, with respect to a calendar year and to a plan year:

809 ~~[(a)]~~ (i) employed an average of at least 51 ~~[eligible]~~ employees on ~~[each]~~ business
810 ~~[day]~~ days during the preceding calendar year; and

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

813 (b) The number of employees shall be determined using the method set forth in 26
814 U.S.C. Sec. 4980H(c)(2).

815 (98) "Late enrollee," with respect to an employer health benefit plan, means an
816 individual whose enrollment is a late enrollment.

817 (99) "Late enrollment," with respect to an employer health benefit plan, means
818 enrollment of an individual other than:

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

821 (b) through special enrollment.

822 (100) (a) Except for a retainer contract or legal assistance described in Section
823 [31A-1-103](#), "legal expense insurance" means insurance written to indemnify or pay for a
824 specified legal expense.

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

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

829 (101) (a) "Liability insurance" means insurance against liability:

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

832 (A) Subsection (111) for medical malpractice insurance;

833 (B) Subsection (139) for professional liability insurance; and

- 834 (C) Subsection (175) for workers' compensation insurance;
- 835 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
- 836 insured who is injured, irrespective of legal liability of the insured, when issued with or
- 837 supplemental to insurance against legal liability for the death, injury, or disability of a human
- 838 being, exclusive of the coverages under:
- 839 (A) Subsection (111) for medical malpractice insurance;
- 840 (B) Subsection (139) for professional liability insurance; and
- 841 (C) Subsection (175) for workers' compensation insurance;
- 842 (iii) for loss or damage to property resulting from an accident to or explosion of a
- 843 boiler, pipe, pressure container, machinery, or apparatus;
- 844 (iv) for loss or damage to property caused by:
- 845 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
- 846 (B) water entering through a leak or opening in a building; or
- 847 (v) for other loss or damage properly the subject of insurance not within another kind
- 848 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.
- 849 (b) "Liability insurance" includes:
- 850 (i) vehicle liability insurance;
- 851 (ii) residential dwelling liability insurance; and
- 852 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
- 853 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
- 854 elevator, boiler, machinery, or apparatus.
- 855 (102) (a) "License" means authorization issued by the commissioner to engage in an
- 856 activity that is part of or related to the insurance business.
- 857 (b) "License" includes a certificate of authority issued to an insurer.
- 858 (103) (a) "Life insurance" means:
- 859 (i) insurance on a human life; and
- 860 (ii) insurance pertaining to or connected with human life.
- 861 (b) The business of life insurance includes:
- 862 (i) granting a death benefit;
- 863 (ii) granting an annuity benefit;
- 864 (iii) granting an endowment benefit;

- 865 (iv) granting an additional benefit in the event of death by accident;
- 866 (v) granting an additional benefit to safeguard the policy against lapse; and
- 867 (vi) providing an optional method of settlement of proceeds.
- 868 (104) "Limited license" means a license that:
- 869 (a) is issued for a specific product of insurance; and
- 870 (b) limits an individual or agency to transact only for that product or insurance.
- 871 (105) "Limited line credit insurance" includes the following forms of insurance:
- 872 (a) credit life;
- 873 (b) credit accident and health;
- 874 (c) credit property;
- 875 (d) credit unemployment;
- 876 (e) involuntary unemployment;
- 877 (f) mortgage life;
- 878 (g) mortgage guaranty;
- 879 (h) mortgage accident and health;
- 880 (i) guaranteed automobile protection; and
- 881 (j) another form of insurance offered in connection with an extension of credit that:
- 882 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 883 (ii) the commissioner determines by rule should be designated as a form of limited line
- 884 credit insurance.
- 885 (106) "Limited line credit insurance producer" means a person who sells, solicits, or
- 886 negotiates one or more forms of limited line credit insurance coverage to an individual through
- 887 a master, corporate, group, or individual policy.
- 888 (107) "Limited line insurance" includes:
- 889 (a) bail bond;
- 890 (b) limited line credit insurance;
- 891 (c) legal expense insurance;
- 892 (d) motor club insurance;
- 893 (e) car rental related insurance;
- 894 (f) travel insurance;
- 895 (g) crop insurance;

896 (h) self-service storage insurance;
897 (i) guaranteed asset protection waiver;
898 (j) portable electronics insurance; and
899 (k) another form of limited insurance that the commissioner determines by rule should
900 be designated a form of limited line insurance.

901 (108) "Limited lines authority" includes the lines of insurance listed in Subsection
902 (107).

903 (109) "Limited lines producer" means a person who sells, solicits, or negotiates limited
904 lines insurance.

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

- 907 (i) in a setting other than an acute care unit of a hospital;
- 908 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 909 (A) expenses incurred;
 - 910 (B) indemnity;
 - 911 (C) prepayment; or
 - 912 (D) another method;
- 913 (iii) for one or more necessary or medically necessary services that are:
 - 914 (A) diagnostic;
 - 915 (B) preventative;
 - 916 (C) therapeutic;
 - 917 (D) rehabilitative;
 - 918 (E) maintenance; or
 - 919 (F) personal care; and
- 920 (iv) that may be issued by:
 - 921 (A) an insurer;
 - 922 (B) a fraternal benefit society;
 - 923 (C) (I) a nonprofit health hospital; and
 - 924 (II) a medical service corporation;
 - 925 (D) a prepaid health plan;
 - 926 (E) a health maintenance organization; or

927 (F) an entity similar to the entities described in Subsections (110)(a)(iv)(A) through (E)
928 to the extent that the entity is otherwise authorized to issue life or health care insurance.

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

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

931 (A) a group or individual annuity or rider; or

932 (B) a life insurance policy or rider;

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

934 (A) cognitive impairment; or

935 (B) functional capacity; or

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

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

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

939 (ii) basic hospital expense coverage;

940 (iii) basic medical/surgical expense coverage;

941 (iv) hospital confinement indemnity coverage;

942 (v) major medical expense coverage;

943 (vi) income replacement or related asset-protection coverage;

944 (vii) accident only coverage;

945 (viii) coverage for a specified:

946 (A) disease; or

947 (B) accident;

948 (ix) limited benefit health coverage; or

949 (x) a life insurance policy that accelerates the death benefit to provide the option of a
950 lump sum payment:

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

952 (I) benefits; or

953 (II) eligibility; and

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

955 (I) terminal illness;

956 (II) medical conditions requiring extraordinary medical intervention; or

957 (III) permanent institutional confinement.

958 (111) "Medical malpractice insurance" means insurance against legal liability incident
959 to the practice and provision of a medical service other than the practice and provision of a
960 dental service.

961 (112) "Member" means a person having membership rights in an insurance
962 corporation.

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

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

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

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

972 (117) "Motor club" means a person:

973 (a) licensed under:

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

975 (ii) Chapter 11, Motor Clubs; or

976 (iii) Chapter 14, Foreign Insurers; and

977 (b) that promises for an advance consideration to provide for a stated period of time

978 one or more:

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

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

981 (iii) (A) trip reimbursement;

982 (B) towing services;

983 (C) emergency road services;

984 (D) stolen automobile services;

985 (E) a combination of the services listed in Subsections (117)(b)(iii)(A) through (D); or

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

987 (118) "Mutual" means a mutual insurance corporation.

988 (119) "Network plan" means health care insurance:

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

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

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

995 (121) "Ocean marine insurance" means insurance against loss of or damage to:

996 (a) ships or hulls of ships;

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

1000 (c) earnings such as freight, passage money, commissions, or profits derived from
1001 transporting goods or people upon or across the oceans or inland waterways; or

1002 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
1003 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
1004 in connection with maritime activity.

1005 (122) "Order" means an order of the commissioner.

1006 (123) "Outline of coverage" means a summary that explains an accident and health
1007 insurance policy.

1008 (124) "Participating" means a plan of insurance under which the insured is entitled to
1009 receive a dividend representing a share of the surplus of the insurer.

1010 (125) "Participation," as used in a health benefit plan, means a requirement relating to
1011 the minimum percentage of eligible employees that must be enrolled in relation to the total
1012 number of eligible employees of an employer reduced by each eligible employee who
1013 voluntarily declines coverage under the plan because the employee:

1014 (a) has other group health care insurance coverage; or

1015 (b) receives:

1016 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
1017 Security Amendments of 1965; or

1018 (ii) another government health benefit.

1019 (126) "Person" includes:

- 1020 (a) an individual;
- 1021 (b) a partnership;
- 1022 (c) a corporation;
- 1023 (d) an incorporated or unincorporated association;
- 1024 (e) a joint stock company;
- 1025 (f) a trust;
- 1026 (g) a limited liability company;
- 1027 (h) a reciprocal;
- 1028 (i) a syndicate; or
- 1029 (j) another similar entity or combination of entities acting in concert.
- 1030 (127) "Personal lines insurance" means property and casualty insurance coverage sold
- 1031 for primarily noncommercial purposes to:
 - 1032 (a) an individual; or
 - 1033 (b) a family.
- 1034 (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 1035 (129) "Plan year" means:
 - 1036 (a) the year that is designated as the plan year in:
 - 1037 (i) the plan document of a group health plan; or
 - 1038 (ii) a summary plan description of a group health plan;
 - 1039 (b) if the plan document or summary plan description does not designate a plan year or
 - 1040 there is no plan document or summary plan description:
 - 1041 (i) the year used to determine deductibles or limits;
 - 1042 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 1043 or
- 1044 (iii) the employer's taxable year if:
 - 1045 (A) the plan does not impose deductibles or limits on a yearly basis; and
 - 1046 (B) (I) the plan is not insured; or
 - 1047 (II) the insurance policy is not renewed on an annual basis; or
 - 1048 (c) in a case not described in Subsection (129)(a) or (b), the calendar year.
- 1049 (130) (a) "Policy" means a document, including an attached endorsement or application
- 1050 that:

- 1051 (i) purports to be an enforceable contract; and
- 1052 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 1053 (b) "Policy" includes a service contract issued by:
- 1054 (i) a motor club under Chapter 11, Motor Clubs;
- 1055 (ii) a service contract provided under Chapter 6a, Service Contracts; and
- 1056 (iii) a corporation licensed under:
- 1057 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 1058 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
- 1059 (c) "Policy" does not include:
- 1060 (i) a certificate under a group insurance contract; or
- 1061 (ii) a document that does not purport to have legal effect.
- 1062 (131) "Policyholder" means a person who controls a policy, binder, or oral contract by
- 1063 ownership, premium payment, or otherwise.
- 1064 (132) "Policy illustration" means a presentation or depiction that includes
- 1065 nonguaranteed elements of a policy of life insurance over a period of years.
- 1066 (133) "Policy summary" means a synopsis describing the elements of a life insurance
- 1067 policy.
- 1068 (134) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.
- 1069 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and
- 1070 related federal regulations and guidance.
- 1071 (135) "Preexisting condition," with respect to a health benefit plan:
- 1072 (a) means a condition that was present before the effective date of coverage, whether or
- 1073 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
- 1074 and
- 1075 (b) does not include a condition indicated by genetic information unless an actual
- 1076 diagnosis of the condition by a physician has been made.
- 1077 (136) (a) "Premium" means the monetary consideration for an insurance policy.
- 1078 (b) "Premium" includes, however designated:
- 1079 (i) an assessment;
- 1080 (ii) a membership fee;
- 1081 (iii) a required contribution; or

- 1082 (iv) monetary consideration.
- 1083 (c) (i) "Premium" does not include consideration paid to a third party administrator for
1084 the third party administrator's services.
- 1085 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1086 insurance on the risks administered by the third party administrator.
- 1087 (137) "Principal officers" for a corporation means the officers designated under
1088 Subsection [31A-5-203\(3\)](#).
- 1089 (138) "Proceeding" includes an action or special statutory proceeding.
- 1090 (139) "Professional liability insurance" means insurance against legal liability incident
1091 to the practice of a profession and provision of a professional service.
- 1092 (140) (a) Except as provided in Subsection (140)(b), "property insurance" means
1093 insurance against loss or damage to real or personal property of every kind and any interest in
1094 that property:
- 1095 (i) from all hazards or causes; and
- 1096 (ii) against loss consequential upon the loss or damage including vehicle
1097 comprehensive and vehicle physical damage coverages.
- 1098 (b) "Property insurance" does not include:
- 1099 (i) inland marine insurance; and
- 1100 (ii) ocean marine insurance.
- 1101 (141) "Qualified long-term care insurance contract" or "federally tax qualified
1102 long-term care insurance contract" means:
- 1103 (a) an individual or group insurance contract that meets the requirements of Section
1104 7702B(b), Internal Revenue Code; or
- 1105 (b) the portion of a life insurance contract that provides long-term care insurance:
- 1106 (i) (A) by rider; or
- 1107 (B) as a part of the contract; and
- 1108 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1109 Code.
- 1110 (142) "Qualified United States financial institution" means an institution that:
- 1111 (a) is:
- 1112 (i) organized under the laws of the United States or any state; or

1113 (ii) in the case of a United States office of a foreign banking organization, licensed
1114 under the laws of the United States or any state;

1115 (b) is regulated, supervised, and examined by a United States federal or state authority
1116 having regulatory authority over a bank or trust company; and

1117 (c) meets the standards of financial condition and standing that are considered
1118 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1119 will be acceptable to the commissioner as determined by:

1120 (i) the commissioner by rule; or
1121 (ii) the Securities Valuation Office of the National Association of Insurance
1122 Commissioners.

1123 (143) (a) "Rate" means:

1124 (i) the cost of a given unit of insurance; or
1125 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
1126 expressed as:

1127 (A) a single number; or
1128 (B) a pure premium rate, adjusted before the application of individual risk variations
1129 based on loss or expense considerations to account for the treatment of:

1130 (I) expenses;
1131 (II) profit; and
1132 (III) individual insurer variation in loss experience.

1133 (b) "Rate" does not include a minimum premium.

1134 (144) (a) Except as provided in Subsection (144)(b), "rate service organization" means
1135 a person who assists an insurer in rate making or filing by:

1136 (i) collecting, compiling, and furnishing loss or expense statistics;
1137 (ii) recommending, making, or filing rates or supplementary rate information; or
1138 (iii) advising about rate questions, except as an attorney giving legal advice.

1139 (b) "Rate service organization" does not mean:

1140 (i) an employee of an insurer;
1141 (ii) a single insurer or group of insurers under common control;
1142 (iii) a joint underwriting group; or
1143 (iv) an individual serving as an actuarial or legal consultant.

- 1144 (145) "Rating manual" means any of the following used to determine initial and
1145 renewal policy premiums:
- 1146 (a) a manual of rates;
 - 1147 (b) a classification;
 - 1148 (c) a rate-related underwriting rule; and
 - 1149 (d) a rating formula that describes steps, policies, and procedures for determining
1150 initial and renewal policy premiums.
- 1151 (146) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,
1152 or give, directly or indirectly:
- 1153 (i) a refund of premium or portion of premium;
 - 1154 (ii) a refund of commission or portion of commission;
 - 1155 (iii) a refund of all or a portion of a consultant fee; or
 - 1156 (iv) providing services or other benefits not specified in an insurance or annuity
1157 contract.
- 1158 (b) "Rebate" does not include:
- 1159 (i) a refund due to termination or changes in coverage;
 - 1160 (ii) a refund due to overcharges made in error by the licensee; or
 - 1161 (iii) savings or wellness benefits as provided in the contract by the licensee.
- 1162 (147) "Received by the department" means:
- 1163 (a) the date delivered to and stamped received by the department, if delivered in
1164 person;
 - 1165 (b) the post mark date, if delivered by mail;
 - 1166 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
 - 1167 (d) the received date recorded on an item delivered, if delivered by:
 - 1168 (i) facsimile;
 - 1169 (ii) email; or
 - 1170 (iii) another electronic method; or
 - 1171 (e) a date specified in:
 - 1172 (i) a statute;
 - 1173 (ii) a rule; or
 - 1174 (iii) an order.

1175 (148) "Reciprocal" or "interinsurance exchange" means an unincorporated association
1176 of persons:

1177 (a) operating through an attorney-in-fact common to all of the persons; and

1178 (b) exchanging insurance contracts with one another that provide insurance coverage
1179 on each other.

1180 (149) "Reinsurance" means an insurance transaction where an insurer, for
1181 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1182 reinsurance transactions, this title sometimes refers to:

1183 (a) the insurer transferring the risk as the "ceding insurer"; and

1184 (b) the insurer assuming the risk as the:

1185 (i) "assuming insurer"; or

1186 (ii) "assuming reinsurer."

1187 (150) "Reinsurer" means a person licensed in this state as an insurer with the authority
1188 to assume reinsurance.

1189 (151) "Residential dwelling liability insurance" means insurance against liability
1190 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
1191 a detached single family residence or multifamily residence up to four units.

1192 (152) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
1193 under a reinsurance contract.

1194 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1195 liability assumed under a reinsurance contract.

1196 (153) "Rider" means an endorsement to:

1197 (a) an insurance policy; or

1198 (b) an insurance certificate.

1199 [~~156~~] (154) "Secondary medical condition" means a complication related to an
1200 exclusion from coverage in accident and health insurance.

1201 [~~154~~] (155) (a) "Security" means a:

1202 (i) note;

1203 (ii) stock;

1204 (iii) bond;

1205 (iv) debenture;

- 1206 (v) evidence of indebtedness;
- 1207 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1208 (vii) collateral-trust certificate;
- 1209 (viii) preorganization certificate or subscription;
- 1210 (ix) transferable share;
- 1211 (x) investment contract;
- 1212 (xi) voting trust certificate;
- 1213 (xii) certificate of deposit for a security;
- 1214 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1215 payments out of production under such a title or lease;
- 1216 (xiv) commodity contract or commodity option;
- 1217 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1218 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1219 in Subsections [~~(154)~~] (155)(a)(i) through (xiv); or
- 1220 (xvi) another interest or instrument commonly known as a security.
- 1221 (b) "Security" does not include:
- 1222 (i) any of the following under which an insurance company promises to pay money in a
- 1223 specific lump sum or periodically for life or some other specified period:
- 1224 (A) insurance;
- 1225 (B) an endowment policy; or
- 1226 (C) an annuity contract; or
- 1227 (ii) a burial certificate or burial contract.
- 1228 [~~(155)~~] (156) "Securityholder" means a specified person who owns a security of a
- 1229 person, including:
- 1230 (a) common stock;
- 1231 (b) preferred stock;
- 1232 (c) debt obligations; and
- 1233 (d) any other security convertible into or evidencing the right of any of the items listed
- 1234 in this Subsection [~~(155)~~] (156).
- 1235 (157) (a) "Self-insurance" means an arrangement under which a person provides for
- 1236 spreading its own risks by a systematic plan.

1237 (b) Except as provided in this Subsection (157), "self-insurance" does not include an
1238 arrangement under which a number of persons spread their risks among themselves.

1239 (c) "Self-insurance" includes:

1240 (i) an arrangement by which a governmental entity undertakes to indemnify an
1241 employee for liability arising out of the employee's employment; and

1242 (ii) an arrangement by which a person with a managed program of self-insurance and
1243 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1244 employees for liability or risk that is related to the relationship or employment.

1245 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1246 (158) "Sell" means to exchange a contract of insurance:

1247 (a) by any means;

1248 (b) for money or its equivalent; and

1249 (c) on behalf of an insurance company.

1250 (159) "Short-term care insurance" means an insurance policy or rider advertised,
1251 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,
1252 but that provides coverage for less than 12 consecutive months for each covered person.

1253 (160) "Significant break in coverage" means a period of 63 consecutive days during
1254 each of which an individual does not have creditable coverage.

1255 (161) (a) "Small employer" means, in connection with a health benefit plan and with
1256 respect to a calendar year and to a plan year ~~to~~ ~~an employer who~~ :

1257 ~~[(a)]~~ (i) ~~to~~ an employer who ~~to~~ employed at least one employee but not more than ~~an~~
1257a ~~average of~~ 50 ~~eligible~~

1258 employees on business days during the preceding calendar year; and

1259 ~~[(b)]~~ (ii) employs at least one employee on the first day of the plan year.

1260 (b) The number of employees shall ~~to~~ :

1260a (i) ~~to~~ be determined using the method set forth in 26

1261 U.S.C. Sec. 4980H(c)(2) to ; and

1261a (ii) include an owner described in Subsection (52)(b)(i) to .

1262 (162) "Special enrollment period," in connection with a health benefit plan, has the
1263 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1264 Portability and Accountability Act.

1265 (163) (a) "Subsidiary" of a person means an affiliate controlled by that person either
1266 directly or indirectly through one or more affiliates or intermediaries.

1267 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting

1268 shares are owned by that person either alone or with its affiliates, except for the minimum
1269 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1270 others.

1271 (164) Subject to Subsection (87)(b), "surety insurance" includes:

1272 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1273 perform the principal's obligations to a creditor or other obligee;

1274 (b) bail bond insurance; and

1275 (c) fidelity insurance.

1276 (165) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
1277 liabilities.

1278 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1279 designated by the insurer or organization as permanent.

1280 (ii) Sections [31A-5-211](#), [31A-7-201](#), [31A-8-209](#), [31A-9-209](#), and [31A-14-205](#) require
1281 that insurers or organizations doing business in this state maintain specified minimum levels of
1282 permanent surplus.

1283 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1284 same as the minimum required capital requirement that applies to stock insurers.

1285 (c) "Excess surplus" means:

1286 (i) for a life insurer, accident and health insurer, health organization, or property and
1287 casualty insurer as defined in Section [31A-17-601](#), the lesser of:

1288 (A) that amount of an insurer's or health organization's total adjusted capital that
1289 exceeds the product of:

1290 (I) 2.5; and

1291 (II) the sum of the insurer's or health organization's minimum capital or permanent
1292 surplus required under Section [31A-5-211](#), [31A-9-209](#), or [31A-14-205](#); or

1293 (B) that amount of an insurer's or health organization's total adjusted capital that
1294 exceeds the product of:

1295 (I) 3.0; and

1296 (II) the authorized control level RBC as defined in Subsection [31A-17-601\(8\)\(a\)](#); and

1297 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1298 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1299 (A) 1.5; and
1300 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
1301 (166) "Third party administrator" or "administrator" means a person who collects
1302 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1303 the state in connection with insurance coverage, annuities, or service insurance coverage,
1304 except:
1305 (a) a union on behalf of its members;
1306 (b) a person administering a:
1307 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1308 1974;
1309 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
1310 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
1311 (c) an employer on behalf of the employer's employees or the employees of one or
1312 more of the subsidiary or affiliated corporations of the employer;
1313 (d) an insurer licensed under the following, but only for a line of insurance for which
1314 the insurer holds a license in this state:
1315 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
1316 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
1317 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
1318 (iv) Chapter 9, Insurance Fraternal; or
1319 (v) Chapter 14, Foreign Insurers;
1320 (e) a person:
1321 (i) licensed or exempt from licensing under:
1322 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
1323 Reinsurance Intermediaries; or
1324 (B) Chapter 26, Insurance Adjusters; and
1325 (ii) whose activities are limited to those authorized under the license the person holds
1326 or for which the person is exempt; or
1327 (f) an institution, bank, or financial institution:
1328 (i) that is:
1329 (A) an institution whose deposits and accounts are to any extent insured by a federal

1330 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
1331 Credit Union Administration; or

1332 (B) a bank or other financial institution that is subject to supervision or examination by
1333 a federal or state banking authority; and

1334 (ii) that does not adjust claims without a third party administrator license.

1335 (167) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner
1336 of real or personal property or the holder of liens or encumbrances on that property, or others
1337 interested in the property against loss or damage suffered by reason of liens or encumbrances
1338 upon, defects in, or the unmarketability of the title to the property, or invalidity or
1339 unenforceability of any liens or encumbrances on the property.

1340 (168) "Total adjusted capital" means the sum of an insurer's or health organization's
1341 statutory capital and surplus as determined in accordance with:

1342 (a) the statutory accounting applicable to the annual financial statements required to be
1343 filed under Section [31A-4-113](#); and

1344 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1345 Section [31A-17-601](#).

1346 (169) (a) "Trustee" means "director" when referring to the board of directors of a
1347 corporation.

1348 (b) "Trustee," when used in reference to an employee welfare fund, means an
1349 individual, firm, association, organization, joint stock company, or corporation, whether acting
1350 individually or jointly and whether designated by that name or any other, that is charged with
1351 or has the overall management of an employee welfare fund.

1352 (170) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
1353 means an insurer:

1354 (i) not holding a valid certificate of authority to do an insurance business in this state;
1355 or

1356 (ii) transacting business not authorized by a valid certificate.

1357 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1358 (i) holding a valid certificate of authority to do an insurance business in this state; and

1359 (ii) transacting business as authorized by a valid certificate.

1360 (171) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1361 (172) "Vehicle liability insurance" means insurance against liability resulting from or
1362 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle
1363 comprehensive or vehicle physical damage coverage under Subsection (140).

1364 (173) "Voting security" means a security with voting rights, and includes a security
1365 convertible into a security with a voting right associated with the security.

1366 (174) "Waiting period" for a health benefit plan means the period that must pass before
1367 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
1368 benefit plan, can become effective.

1369 (175) "Workers' compensation insurance" means:

1370 (a) insurance for indemnification of an employer against liability for compensation
1371 based on:

1372 (i) a compensable accidental injury; and

1373 (ii) occupational disease disability;

1374 (b) employer's liability insurance incidental to workers' compensation insurance and
1375 written in connection with workers' compensation insurance; and

1376 (c) insurance assuring to a person entitled to workers' compensation benefits the
1377 compensation provided by law.

1378 Section 3. Section **31A-2-208.5** is amended to read:

1379 **31A-2-208.5. Comparison tables.**

1380 (1) (a) The commissioner shall annually publish a table comparing the rates charged by
1381 insurers for private passenger motor vehicle and homeowners insurance in this state.

1382 (b) The comparison shall list the top 20 insurers writing the greatest volume by
1383 premium dollar per calendar year and others requesting inclusion in the comparison.

1384 (c) The commissioner shall develop at least four hypothetical examples of risk in
1385 preparing the comparison.

1386 (2) In conjunction with the rate comparison described in Subsection (1), the
1387 commissioner shall publish:

1388 (a) a table listing, for each insurer compared, the ratio of [~~justified and questionable~~
1389 confirmed complaints received by the department to the premium dollar amount written by the
1390 insurer; and

1391 (b) a table listing for each insurer the combined loss and expense ratio for the most

1392 current year available.

1393 (3) The department shall make copies of the tables available to the public at minimal or
1394 no cost.

1395 Section 4. Section **31A-2-212** is amended to read:

1396 **31A-2-212. Miscellaneous duties.**

1397 (1) Upon issuance of an order limiting, suspending, or revoking a person's authority to
1398 do business in Utah, and when the commissioner begins a proceeding against an insurer under
1399 Chapter 27a, Insurer Receivership Act, the commissioner:

1400 (a) shall notify by mail the producers of the person or insurer of whom the
1401 commissioner has record; and

1402 (b) may publish notice of the order or proceeding in any manner the commissioner
1403 considers necessary to protect the rights of the public.

1404 (2) When required for evidence in a legal proceeding, the commissioner shall furnish a
1405 certificate of authority of a licensee to transact the business of insurance in Utah on any
1406 particular date. The court or other officer shall receive the certificate of authority in lieu of the
1407 commissioner's testimony.

1408 (3) (a) On the request of an insurer authorized to do a surety business, the
1409 commissioner shall furnish a copy of the insurer's certificate of authority to a designated public
1410 officer in this state who requires that certificate of authority before accepting a bond.

1411 (b) The public officer described in Subsection (3)(a) shall file the certificate of
1412 authority furnished under Subsection (3)(a).

1413 (c) After a certified copy of a certificate of authority is furnished to a public officer, it
1414 is not necessary, while the certificate of authority remains effective, to attach a copy of it to any
1415 instrument of suretyship filed with that public officer.

1416 (d) Whenever the commissioner revokes the certificate of authority or begins a
1417 proceeding under Chapter 27a, Insurer Receivership Act, against an insurer authorized to do a
1418 surety business, the commissioner shall immediately give notice of that action to each public
1419 officer who is sent a certified copy under this Subsection (3).

1420 (4) (a) The commissioner shall immediately notify every judge and clerk of the courts
1421 of record in the state when:

1422 (i) an authorized insurer doing a surety business:

- 1423 (A) files a petition for receivership; or
- 1424 (B) is in receivership; or
- 1425 (ii) the commissioner has reason to believe that the authorized insurer doing surety
- 1426 business:
- 1427 (A) is in financial difficulty; or
- 1428 (B) has unreasonably failed to carry out any of its contracts.
- 1429 (b) Upon the receipt of the notice required by this Subsection (4), it is the duty of the
- 1430 judges and clerks to notify and require a person that files with the court a bond on which the
- 1431 authorized insurer doing surety business is surety to immediately file a new bond with a new
- 1432 surety.
- 1433 (5) (a) The commissioner shall report to the Legislature in accordance with Section
- 1434 [63N-11-106](#) [~~prior to~~] before adopting a rule authorized by Subsection (5)(b).
- 1435 (b) The commissioner shall require an insurer that issues, sells, renews, or offers health
- 1436 insurance coverage in this state to comply with [~~the provisions of~~] PPACA and administrative
- 1437 rules adopted by the commissioner related to regulation of health benefit plans, including:
- 1438 (i) lifetime and annual limits;
- 1439 (ii) prohibition of rescissions;
- 1440 (iii) coverage of preventive health services;
- 1441 (iv) coverage for a child or dependent;
- 1442 (v) pre-existing condition [~~coverage for children~~] limitations;
- 1443 (vi) insurer transparency of consumer information including plan disclosures, uniform
- 1444 coverage documents, and standard definitions;
- 1445 (vii) premium rate reviews;
- 1446 (viii) essential health benefits;
- 1447 (ix) provider choice;
- 1448 (x) waiting periods;
- 1449 (xi) appeals processes;
- 1450 (xii) rating restrictions;
- 1451 (xiii) uniform applications and notice provisions; [~~and~~]
- 1452 (xiv) certification and regulation of qualified health plans[~~;~~]; and
- 1453 (xv) network adequacy standards.

1454 (c) The commissioner shall preserve state control over:
1455 (i) the health insurance market in the state;
1456 (ii) qualified health plans offered in the state; and
1457 (iii) the conduct of navigators, producers, and in-person assisters operating in the state.

1458 (d) If the state enters into an agreement with the United States Department of Health
1459 and Human Services in which the state operates health insurance plan management, the
1460 commissioner may:

1461 (i) for fiscal year 2014, hire one temporary and two permanent full-time employees to
1462 be funded through the department's existing budget; and

1463 (ii) for fiscal year 2015, hire two permanent full-time employees funded through the
1464 Insurance Department Restricted Account, subject to appropriations from the Legislature and
1465 approval by the governor.

1466 Section 5. Section **31A-2-309** is amended to read:

1467 **31A-2-309. Service of process through state officer.**

1468 (1) The commissioner, or the lieutenant governor when the subject proceeding is
1469 brought by the state, is the agent for receipt of service of a summons, notice, order, pleading, or
1470 other legal process relating to a Utah court or administrative agency upon the following:

1471 (a) an insurer authorized to do business in this state, while authorized to do business in
1472 this state, and thereafter in a proceeding arising from or related to a transaction having a
1473 connection with this state;

1474 (b) a surplus lines insurer for a proceeding arising out of a contract of insurance that is
1475 subject to the surplus lines law, or out of a certificate, cover note, or other confirmation of that
1476 type of insurance;

1477 (c) an unauthorized insurer or other person assisting an unauthorized insurer under
1478 Subsection [31A-15-102\(1\)](#) by doing an act specified in Subsection [31A-15-102\(2\)](#), for a
1479 proceeding arising out of a transaction that is subject to the unauthorized insurance law;

1480 (d) a nonresident producer, consultant, adjuster, or third party administrator, while
1481 authorized to do business in this state, and thereafter in a proceeding arising from or related to
1482 a transaction having a connection with this state; and

1483 (e) a reinsurer submitting to the commissioner's jurisdiction under Subsection
1484 [31A-17-404~~\(8\)~~\(9\)](#).

1485 (2) The following is considered to have irrevocably appointed the commissioner and
1486 lieutenant governor as that person's agents in accordance with Subsection (1):

- 1487 (a) a licensed insurer by applying for and receiving a certificate of authority;
- 1488 (b) a surplus lines insurer by entering into a contract subject to the surplus lines law;
- 1489 (c) an unauthorized insurer by doing in this state an act prohibited by Section
1490 31A-15-103; and

1491 (d) a nonresident producer, consultant, adjuster, and third party administrator.

1492 (3) The commissioner and lieutenant governor are also agents for an executor,
1493 administrator, personal representative, receiver, trustee, or other successor in interest of a
1494 person specified under Subsection (1).

1495 (4) A litigant serving process on the commissioner or lieutenant governor under this
1496 section shall pay the fee applicable under Section 31A-3-103.

1497 (5) The right to substituted service under this section does not limit the right to serve a
1498 summons, notice, order, pleading, demand, or other process upon a person in another manner
1499 provided by law.

1500 Section 6. Section 31A-6a-101 is amended to read:

1501 **31A-6a-101. Definitions.**

1502 (1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued
1503 by an insurance company that has complied with either Chapter 5, Domestic Stock and Mutual
1504 Insurance Corporations, or Chapter 14, Foreign Insurers, that undertakes to perform or provide
1505 repair or replacement service on goods or property, or indemnification for repair or
1506 replacement service, for the operational or structural failure of the goods or property due to a
1507 defect in materials, workmanship, or normal wear and tear.

1508 (2) "Nonmanufacturers' parts" means replacement parts not made for or by the original
1509 manufacturer of the goods commonly referred to as "after market parts."

1510 (3) (a) "Road hazard" means a hazard that is encountered while driving a motor
1511 vehicle.

1512 (b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic,
1513 curbs, or composite scraps.

1514 (4) (a) "Service contract" means a contract or agreement to perform or reimburse for
1515 the repair or maintenance of goods or property, for their operational or structural failure due to

1516 a defect in materials, workmanship, or normal wear and tear, with or without additional
1517 provision for incidental payment of indemnity under limited circumstances.

1518 (b) "Service contract" does not include mechanical breakdown insurance.

1519 (c) "Service contract" includes any contract or agreement to perform or reimburse the
1520 service contract holder for any one or more of the following services:

1521 (i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a
1522 result of coming into contact with a road hazard;

1523 (ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using
1524 the process of paintless dent removal without affecting the existing paint finish and without
1525 replacing vehicle body panels, sanding, bonding, or painting;

1526 (iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as
1527 a result of damage caused by a road hazard, that is primary to the coverage offered by the motor
1528 vehicle owner's motor vehicle insurance policy; or

1529 (iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes
1530 inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to
1531 only the replacement of a lost or stolen motor vehicle key or key-fob.

1532 (5) "Service contract holder" or "contract holder" means a person who purchases a
1533 service contract.

1534 (6) "Service contract provider" means a person who issues, makes, provides,
1535 administers, sells or offers to sell a service contract, or who is contractually obligated to
1536 provide service under a service contract.

1537 (7) "Service contract reimbursement policy" or "reimbursement insurance policy"
1538 means a policy of insurance providing coverage for all obligations and liabilities incurred by
1539 the service contract provider or warrantor under the terms of the service contract or vehicle
1540 protection product warranty issued by the provider or warrantor.

1541 (8) (a) "Vehicle protection product" means a device or system that is:

1542 (i) installed on or applied to a motor vehicle; and

1543 (ii) designed to prevent the theft of the vehicle.

1544 (b) "Vehicle protection product" includes:

1545 (i) a vehicle protection product warranty;

1546 (ii) an alarm system;

- 1547 (iii) a body part marking product;
- 1548 (iv) a steering lock;
- 1549 (v) a window etch product;
- 1550 (vi) a pedal and ignition lock;
- 1551 (vii) a fuel and ignition kill switch; and
- 1552 (viii) an electronic, radio, or satellite tracking device.

1553 (9) "Vehicle protection product warranty" means a written agreement by a warrantor
1554 that provides if the vehicle protection product fails to prevent the theft of the motor vehicle,
1555 that the warrantor will reimburse the warranty holder under the warranty in a fixed amount
1556 specified in the warranty, not to exceed \$5,000.

1557 (10) "Warrantor" means a person who is contractually obligated to the warranty holder
1558 under the terms of a vehicle protection product warranty.

1559 (11) "Warranty holder" means the person who purchases a vehicle protection product,
1560 any authorized transferee or assignee of the purchaser, or any other person legally assuming the
1561 purchaser's rights under the vehicle protection product warranty.

1562 Section 7. Section **31A-6a-104** is amended to read:

1563 **31A-6a-104. Required disclosures.**

1564 (1) A service contract reimbursement insurance policy insuring a service contract or a
1565 vehicle protection product warranty that is issued, sold, or offered for sale in this state shall
1566 conspicuously state that, upon failure of the service contract provider or warrantor to perform
1567 under the contract, the issuer of the policy shall:

1568 (a) pay on behalf of the service contract provider or warrantor any sums the service
1569 contract provider or warrantor is legally obligated to pay according to the service contract
1570 provider's or warrantor's contractual obligations under the service contract or a vehicle
1571 protection product warranty issued or sold by the service contract provider or warrantor; or

1572 (b) provide the service which the service contract provider is legally obligated to
1573 perform, according to the service contract provider's contractual obligations under the service
1574 contract issued or sold by the service contract provider.

1575 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless
1576 the service contract contains the following statements in substantially the following form:

1577 (i) "Obligations of the provider under this service contract are guaranteed under a

1578 service contract reimbursement insurance policy. Should the provider fail to pay or provide
1579 service on any claim within 60 days after proof of loss has been filed, the contract holder is
1580 entitled to make a claim directly against the Insurance Company."; and

1581 (ii) "This service contract or warranty is subject to limited regulation by the Utah
1582 Insurance Department. To file a complaint, contact the Utah Insurance Department."

1583 (iii) A service contract or reimbursement insurance policy may not be issued, sold, or
1584 offered for sale in this state unless the contract contains a statement in substantially the
1585 following form, "Coverage afforded under this contract is not guaranteed by the Property and
1586 Casualty Guaranty Association."

1587 (b) A vehicle protection product warranty may not be issued, sold, or offered for sale in
1588 this state unless the vehicle protection product warranty contains the following statements in
1589 substantially the following form:

1590 (i) "Obligations of the warrantor under this vehicle protection product warranty are
1591 guaranteed under a reimbursement insurance policy. Should the warrantor fail to pay on any
1592 claim within 60 days after proof of loss has been filed, the warranty holder is entitled to make a
1593 claim directly against the Insurance Company."; and

1594 (ii) "This vehicle protection product warranty is subject to limited regulation by the
1595 Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."

1596 [~~(b) A service contract or reimbursement insurance policy may not be issued, sold, or~~
1597 ~~offered for sale in this state unless the contract contains a statement in substantially the~~
1598 ~~following form, "Coverage afforded under this contract is not guaranteed by the Property and~~
1599 ~~Casualty Guaranty Association."]~~

1600 (iii) A vehicle protection product warranty, or reimbursement insurance policy, may
1601 not be issued, sold, or offered for sale in this state unless the warranty contains a statement in
1602 substantially the following form, "Coverage afforded under this warranty is not guaranteed by
1603 the Property and Casualty Guaranty Association."

1604 (3) A service contract and a vehicle protection product warranty shall:

1605 (a) conspicuously state the name, address, and a toll free claims service telephone
1606 number of the reimbursement insurer;

1607 (b) (i) identify the service contract provider, the seller, and the service contract holder;
1608 or

- 1609 (ii) identify the warrantor, the seller, and the warranty holder;
- 1610 (c) conspicuously state the total purchase price and the terms under which the service
- 1611 contract or warranty is to be paid;
- 1612 (d) conspicuously state the existence of any deductible amount;
- 1613 (e) specify the merchandise, service to be provided, and any limitation, exception, or
- 1614 exclusion;
- 1615 (f) state a term, restriction, or condition governing the transferability of the service
- 1616 contract or warranty; and
- 1617 (g) state a term, restriction, or condition that governs cancellation of the service
- 1618 contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder
- 1619 or service contract provider.
- 1620 (4) If prior approval of repair work is required, a service contract shall conspicuously
- 1621 state the procedure for obtaining prior approval and for making a claim, including:
- 1622 (a) a toll free telephone number for claim service; and
- 1623 (b) a procedure for obtaining reimbursement for emergency repairs performed outside
- 1624 of normal business hours.
- 1625 (5) A preexisting condition clause in a service contract shall specifically state which
- 1626 preexisting condition is excluded from coverage.
- 1627 (6) (a) Except as provided in Subsection (6)(c), a service contract shall state the
- 1628 conditions upon which the use of a nonmanufacturers' part is allowed.
- 1629 (b) A condition described in Subsection (6)(a) shall comply with applicable state and
- 1630 federal laws.
- 1631 (c) This Subsection (6) does not apply to a home warranty contract.
- 1632 (7) This section applies to a vehicle protection product warranty, except for the
- 1633 requirements of [~~Subsection~~] Subsections (3)(d) and (g), (4), (5), and (6). The department may
- 1634 make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to
- 1635 implement the application of this section to a vehicle protection product warranty.
- 1636 (8) A vehicle protection product warranty shall contain a conspicuous statement in
- 1637 substantially the following form: "Purchase of this product is optional and is not required in
- 1638 order to finance, lease, or purchase a motor vehicle."
- 1639 Section 8. Section 31A-15-202 is amended to read:

1640 **31A-15-202. Definitions.**

1641 As used in this part:

1642 (1) [~~"Completed~~] Notwithstanding Section 31A-1-301, "commissioner" means the
 1643 insurance commissioner of Utah or the commissioner, director, or superintendent of insurance
 1644 in another state.

1645 (2) (a) Subject to Subsection (2)(b), "completed operations liability" means liability[;
 1646 including liability for activities which are completed or abandoned before the date of the
 1647 occurrence giving rise to the liability;] arising out of the installation, maintenance, or repair of
 1648 any product at a site [~~which~~] that is not owned or controlled by:

1649 [~~(a)~~] (i) any person who performs that work; or1650 [~~(b)~~] (ii) any person who hires an independent contractor to perform that work.

1651 (b) "Completed operations liability" includes liability for an activity that is completed
 1652 or abandoned before the date of the occurrence giving rise to the liability.

1653 [~~(2)~~] (3) "Domicile," for purposes of determining the state in which a purchasing group
 1654 is domiciled, means:

1655 (a) for a corporation, the state in which the purchasing group is incorporated; and

1656 (b) for an unincorporated entity, the state of its principal place of business.

1657 [~~(3)~~] (4) "Hazardous financial condition" means that a risk retention group, based on its
 1658 present or reasonably anticipated financial condition, although not yet financially impaired or
 1659 insolvent, is unlikely to be able:

1660 (a) to meet obligations to policyholders with respect to known claims and reasonably
 1661 anticipated claims; or

1662 (b) to pay other obligations in the normal course of business.

1663 [~~(4)~~] (5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus
 1664 lines insurance, and any other arrangement for shifting and distributing risk which is
 1665 determined to be insurance under the laws of this state.

1666 [~~(5)~~] (6) (a) "Liability" means legal liability for damages, including costs of defense,
 1667 legal costs and fees, and other claims expenses because of injuries to other persons, damage to
 1668 their property, or other damage or loss to other persons[;] resulting from or arising out of:

1669 (i) any business, whether profit or nonprofit [~~business~~], trade, product, services,
 1670 including professional [~~or other~~] services, premises, or operations; or

1671 (ii) any activity of any state or local government or any agency or political subdivision
1672 of any state or local government.

1673 (b) "Liability" does not include personal risk liability and an employer's liability with
1674 respect to its employees other than legal liability under the Federal Employers' Liability Act, 45
1675 U.S.C. Sec. 51 et seq.

1676 [~~(6) "NAIC" means the National Association of Insurance Commissioners.~~]

1677 (7) "Personal risk liability" means liability for damages because of injury to any person,
1678 damage to property, or other loss or damage resulting from any personal, familial, or household
1679 responsibilities or activities, rather than from responsibilities or activities referred to in
1680 Subsection [~~(5)~~] (6).

1681 (8) "Plan of operation" or [a] "feasibility study" means an analysis [~~which~~] that
1682 presents the expected activities and results of a risk retention group, including at a minimum:

1683 (a) information sufficient to verify that its members are engaged in businesses or
1684 activities similar or related with respect to the liability to which the members are exposed by
1685 virtue of any related, similar or common business, trade, product, services, premises or
1686 operations;

1687 (b) for each state in which it intends to operate, the coverages, deductibles, coverage
1688 limits, rates, and rating classification systems for each line of insurance the group intends to
1689 offer;

1690 (c) historical and expected loss experience of the proposed members and national
1691 experience of similar exposures to the extent that this experience is reasonably available;

1692 (d) pro forma financial statements and projections;

1693 (e) appropriate opinions by a qualified, independent casualty actuary, including a
1694 determination of minimum premium or participation levels required to commence operations
1695 and to prevent a hazardous financial condition;

1696 (f) identification of management, underwriting and claims procedures, marketing
1697 methods, managerial oversight methods, investment policies, and reinsurance agreements;

1698 (g) identification of each state in which the risk retention group has obtained, or sought
1699 to obtain, a charter and license, and a description of its status in each such state; and

1700 (h) any other matters required by the commissioner of the state in which the risk
1701 retention group is chartered for liability insurance companies authorized by the insurance laws

1702 of that state.

1703 (9) (a) "Product liability" means liability for damages because of any personal injury,
1704 death, emotional harm, consequential economic damage, or property damage, including
1705 damages resulting from the loss of use of property[~~if the liability arises~~] arising out of the
1706 manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.

1707 (b) "Product liability" does not include the liability of any person for those damages
1708 described in Subsection (9)(a) if the product involved was in the possession of the person when
1709 the incident giving rise to the claim occurred.

1710 (10) "Purchasing group" means any group [~~which~~] that:

1711 (a) has as one of its purposes the purchase of liability insurance on a group basis;

1712 (b) purchases liability insurance only for its group members and only to cover their
1713 similar or related liability exposure, as described in Subsection (10)(c);

1714 (c) is composed of members whose businesses or activities are similar or related with
1715 respect to the liability to which members are exposed by virtue of any related, similar, or
1716 common business, trade, products, services, premises, or operations; and

1717 (d) is domiciled in any state.

1718 (11) "Risk retention group" means any corporation or other limited liability
1719 association:

1720 (a) whose primary activity consists of assuming and spreading all, or any portion of,
1721 the liability exposure of its group members;

1722 (b) which is organized for the primary purpose of conducting the activity described
1723 under Subsection (11)(a);

1724 (c) [~~which~~] that:

1725 (i) is chartered and licensed as a liability insurance company and authorized to engage
1726 in the business of insurance under the laws of any state; or

1727 (ii) (A) before January 1, 1985, was chartered or licensed and authorized to engage in
1728 the business of insurance under the laws of Bermuda or the Cayman Islands and, before
1729 January 1, 1985, had certified to the insurance commissioner of at least one state that it
1730 satisfied the capitalization requirements of that state;

1731 (B) [~~however,~~] except that any [~~such~~] group as described in Subsection (11)(c)(ii)(A)
1732 shall be considered to be a risk retention group only if it has been engaged in business

1733 continuously since January 1, 1985, and only for the purpose of continuing to provide
1734 insurance to cover product liability or completed operations liability, as these terms were
1735 defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of
1736 the Liability Risk Retention Act of 1986;

1737 (d) [~~which~~] that does not exclude any person from membership in the group solely to
1738 provide for members of the group a competitive advantage over the excluded person;

1739 (e) [~~which~~] that:

1740 (i) has as its owners only persons who comprise the membership of the risk retention
1741 group and who are provided insurance by the group; or

1742 (ii) has as its sole owner an organization [~~which~~] that has as:

1743 (A) [~~has as~~] its members only persons who comprise the membership of the risk
1744 retention group; and

1745 (B) [~~has as~~] its owners only persons who comprise the membership of the risk retention
1746 group and who are provided insurance by the group;

1747 (f) whose members are engaged in businesses or activities similar or related with
1748 respect to the liability to which the members are exposed by virtue of any related, similar, or
1749 common business trade, products, services, premises or operations;

1750 (g) whose activities do not include providing insurance other than:

1751 (i) liability insurance for assuming and spreading all or any portion of the liability of its
1752 group members; and

1753 (ii) reinsurance with respect to the liability of any other risk retention group, or any
1754 members of the other group, which is engaged in businesses or activities so that the group or
1755 member meets the requirement described in Subsection (11)(f) for membership in the risk
1756 retention group which provides the reinsurance; and

1757 (h) the name of which includes the phrase "risk retention group."

1758 (12) "State" means:

1759 (a) a state of the United States; or

1760 (b) the District of Columbia.

1761 Section 9. Section **31A-15-203** is amended to read:

1762 **31A-15-203. Risk retention groups chartered in this state.**

1763 (1) As used in this section:

1764 (a) "Board of directors" or "board" means the governing body of the risk retention
1765 group elected by the shareholders or members to establish policy, elect or appoint officers and
1766 committees, and make other governing decisions.

1767 (b) "Director" means a natural person designated in the articles of the risk retention
1768 group, or designated, elected, or appointed by any other manner, name, or title to act as a
1769 director.

1770 ~~[(1)]~~ (2) (a) A risk retention group under this part shall be chartered and licensed to
1771 write only liability insurance pursuant to this part and, except as provided elsewhere in this
1772 part, shall comply with all of the laws, rules, and requirements that apply to liability insurers
1773 chartered and licensed in this state, and with Section 31A-15-204 to the extent the requirements
1774 are not a limitation on other laws, rules, or requirements of this state.

1775 (b) Notwithstanding any other provision to the contrary, all risk retention groups
1776 chartered in this state shall file with the commissioner and the National Association of
1777 Insurance Commissioners an annual statement [~~with the department and the NAIC~~] in a form
1778 prescribed by the commissioner[;] and [~~completed in diskette form if required by the~~
1779 ~~commissioner;~~] completed in accordance with the statement instructions and the [~~NAIC~~]
1780 National Association of Insurance Commissioners Accounting Practices and Procedures
1781 Manual.

1782 ~~[(2)]~~ (3) Before it may offer insurance in any state, each risk retention group shall also
1783 submit for approval to the commissioner of this state a plan of operation or feasibility study.
1784 The risk retention group shall submit an appropriate revision of the plan or study in the event of
1785 any subsequent material change in any item of the plan of operation or feasibility study within
1786 10 days of any [~~such~~] change. The group may not offer any additional kinds of liability
1787 insurance, in this state or in any other state, until any revision of the plan or study is approved
1788 by the commissioner.

1789 ~~[(3)]~~ (4) (a) At the time of filing its application for charter, the risk retention group
1790 shall provide to the commissioner in summary form the following information:

1791 (i) the identity of the initial members of the group;

1792 (ii) the identity of those individuals who organized the group or who will provide
1793 administrative services or otherwise influence or control the activities of the group;

1794 (iii) the amount and nature of initial capitalization;

1795 (iv) the coverages to be afforded; and

1796 (v) the states in which the group intends to operate.

1797 (b) Upon receipt of this information, the commissioner shall forward the information to
1798 the ~~[NAIC]~~ National Association of Insurance Commissioners. Providing notification to the
1799 ~~[NAIC]~~ National Association of Insurance Commissioners is in addition to, and may not be
1800 sufficient to satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

1801 (5) The governance standards for risk retention groups are as follows:

1802 (a) A risk retention group that exists as of May 10, 2016, shall be in compliance with
1803 the governance standards described in this Subsection (5) by no later than May 10, 2017. A
1804 risk retention group licensed on or after May 10, 2016, shall be in compliance with the
1805 governance standards described in this Subsection (5) at the time of licensure.

1806 (b) The board of directors of a risk retention group shall have a majority of independent
1807 directors. If the risk retention group is a reciprocal:

1808 (i) the attorney-in-fact is required to adhere to the same standards regarding
1809 independence of operation and governance as imposed on the risk retention group's board of
1810 directors and subscribers advisory committee under these standards; and

1811 (ii) to the extent permissible under state law, service providers of a reciprocal risk
1812 retention group shall contract with the risk retention group and not the attorney-in-fact.

1813 (c) A director does not qualify as independent unless the board of directors
1814 affirmatively determines that the director has no material relationship with the risk retention
1815 group. Each risk retention group shall disclose these determinations to its domestic regulator,
1816 at least annually. For this purpose, any person who is a direct or indirect owner of, or
1817 subscriber in, the risk retention group or is an officer, director, or employee of the owner and
1818 insured, is considered to be independent, unless some other position of the officer, director, or
1819 employee constitutes a material relationship, as contemplated by Section 3901(a)(4)(E)(ii) of
1820 the Liability Risk Retention Act.

1821 (d) Material relationship of a person with the risk retention group includes the
1822 following:

1823 (i) A material relationship exists if the person receives in any one 12-month period
1824 compensation or payment of any other item of value by the person, a member of the person's
1825 immediate family, or a business with which the person is affiliated, from the risk retention

1826 group or a consultant or service provider to the risk retention group is greater than the greater
1827 of the following as measured at the end of any fiscal quarter falling in the 12-month period:

1828 (A) 5% of the risk retention group's gross written premium for the 12-month period; or

1829 (B) 2% of the risk retention group's surplus.

1830 (ii) The person or immediate family member of the person is not independent until one
1831 year after the person's compensation from the risk retention group falls below the threshold
1832 outlined in Subsection (5)(d)(i).

1833 (iii) A material relationship exists if a director or an immediate family member of a
1834 director is affiliated with or employed in a professional capacity by a present or former internal
1835 or external auditor of the risk retention group.

1836 (iv) The director or immediate family member of a director described in Subsection
1837 (5)(d)(iii) is not independent until one year after the end of the affiliation, employment, or
1838 auditing relationship.

1839 (v) A material relationship exists if the director or immediate family member of a
1840 director who is employed as an executive officer of another company where any of the risk
1841 retention group's present executives serve on that other company's board of directors is not
1842 independent until one year after the end of the service or the employment relationship.

1843 (e) (i) The term of any material service provider contract with the risk retention group
1844 may not exceed five years. A material service provider contract, or its renewal, shall require
1845 the approval of the majority of the risk retention group's independent directors. The service
1846 provider contract is considered material if the amount to be paid for the contract is greater than
1847 or equal to the greater of:

1848 (A) 5% of the risk retention group's annual gross written premium; or

1849 (B) 2% of the risk retention group's surplus.

1850 (ii) For purposes of Subsection (5)(e)(i), "service provider" includes a captive manager,
1851 auditor, accountant, actuary, investment advisor, lawyer, managing general underwriter, or
1852 other party responsible for underwriting, determining rates, collecting premiums, adjusting and
1853 settling claims, or preparing financial statements. A reference to "lawyer" in this Subsection
1854 (5)(e)(ii) does not include defense counsel retained by the risk retention group to defend
1855 claims, unless the amount of fees paid to the lawyer is "material" as referenced in Section
1856 (5)(e)(i).

1857 (iii) A service provider contract meeting the definition of material relationship
1858 contained in Section (5)(d) may not be entered into unless the risk retention group has, at least
1859 30 days before entering into the service provider contract, notified the commissioner in writing
1860 of its intention to enter into the transaction and the commissioner has not disapproved it within
1861 the 30-day period.

1862 (iv) The risk retention group's board of directors shall have the right to terminate any
1863 service provider, audit contract, or actuarial contract at any time for cause after providing
1864 adequate notice as defined in the contract.

1865 (f) The risk retention group's board of directors shall adopt a written policy in the plan
1866 of operation as approved by the board that requires the board to:

1867 (i) assure that an owner of the risk retention group receive evidence of ownership
1868 interest;

1869 (ii) develop a set of governance standards applicable to the risk retention group;

1870 (iii) oversee the evaluation of the risk retention group's management including the
1871 performance of the captive manager, managing general underwriter, or one or more other
1872 parties responsible for underwriting, determining rates, collecting premiums, adjusting or
1873 settling claims, or preparing financial statements;

1874 (iv) review and approve the amount to be paid for all material service providers; and

1875 (v) review and approve at least annually:

1876 (A) the risk retention group's goals and objectives relevant to the compensation of
1877 officers and service providers;

1878 (B) the officers' and service providers' performance in light of those goals and
1879 objectives; and

1880 (C) the continued engagement of the officers and material service providers.

1881 (g) (i) A risk retention group shall have an audit committee composed of at least three
1882 independent board members as defined in Subsection (5)(c). A non-independent board
1883 member may participate in the activities of the audit committee, if invited by the members of
1884 the audit committee, but cannot be a member of the audit committee.

1885 (ii) The audit committee shall have a written charter that defines the audit committee's
1886 purpose, which, at a minimum, shall be to:

1887 (A) assist the board's oversight of the integrity of the financial statements, the

1888 compliance with legal and regulatory requirements, and the qualifications, independence, and
1889 performance of the independent auditor and actuary;

1890 (B) discuss the annual audited financial statements and quarterly financial statements
1891 with management;

1892 (C) discuss the annual audited financial statements with its independent auditor and, if
1893 advisable, discuss its quarterly financial statements with its independent auditor;

1894 (D) discuss policies with respect to risk assessment and risk management;

1895 (E) meet separately and periodically, either directly or through a designated
1896 representative of the committee, with management and the independent auditor;

1897 (F) review with the independent auditor any audit problems or difficulties and
1898 management's response;

1899 (G) set clear hiring policies of the risk retention group as to the hiring of employees or
1900 former employees of the independent auditor;

1901 (H) require the external auditor to rotate the lead or coordinating audit partner having
1902 primary responsibility for the risk retention group's audit as well as the audit partner
1903 responsible for reviewing that audit so that neither individual performs audit services for more
1904 than five consecutive fiscal years; and

1905 (I) report regularly to the board of directors.

1906 (iii) The domestic regulator may waive the requirement to establish an audit committee
1907 composed of independent board members if the risk retention group is able to demonstrate to
1908 the domestic regulator that it is impracticable to do so and the risk retention group's board of
1909 directors itself is otherwise able to accomplish the purposes of an audit committee, as described
1910 in this Section (5)(g).

1911 (h) The board of directors shall adopt and disclose governance standards, where
1912 "disclose" means making such information available through election, including posting the
1913 information on the risk retention group's website or other means, and providing such
1914 information to owners upon request, which shall include:

1915 (i) a process by which the directors are elected by the owners;

1916 (ii) director qualification standards;

1917 (iii) director responsibilities;

1918 (iv) director access to management and, as necessary and appropriate, independent

1919 advisors;
 1920 (v) director compensation;
 1921 (vi) director orientation and continuing education;
 1922 (vii) the policies and procedures that are followed for management succession; and
 1923 (viii) the policies and procedures that are followed for annual performance evaluation
 1924 of the board.

1925 (i) The board of directors shall adopt and disclose a code of business conduct and
 1926 ethics for directors, officers, and employees and promptly disclose to the board of directors any
 1927 waivers of the code for directors or executive officers, which shall include the following topics:

1928 (i) conflicts of interest;
 1929 (ii) matters covered under the corporate opportunities doctrine under the state of
 1930 domicile;

1931 (iii) confidentiality;

1932 (iv) fair dealing;

1933 (v) protection and proper use of risk retention group assets;

1934 (vi) compliance with all applicable laws, rules, and regulations; and

1935 (vii) requiring the reporting of any illegal or unethical behavior that affects the
 1936 operation of the risk retention group.

1937 (j) A captive manager, president, or chief executive officer of a risk retention group
 1938 shall promptly notify the domestic regulator in writing if the captive manager, president, or
 1939 chief executive officer becomes aware of any material non-compliance with any of the
 1940 governance standards in this Subsection (5).

1941 Section 10. Section **31A-15-204** is amended to read:

1942 **31A-15-204. Risk retention groups not chartered in this state -- Designation of**
 1943 **commissioner as agent -- Compliance with unfair claims settlement practices act --**
 1944 **Deceptive, false, or fraudulent practices -- Examination regarding financial condition --**
 1945 **Prohibitions -- Penalties -- Operation prior to enactment of this part.**

1946 (1) Risk retention groups chartered and licensed in other states and seeking to do
 1947 business as a risk retention group in this state shall comply with the following:

1948 (a) Before offering insurance in this state a risk retention group shall submit to the
 1949 commissioner:

1950 (i) a statement identifying the states in which the group is chartered and licensed as a
1951 liability insurance company, its charter date, its principal place of business, and any other
1952 information, including information on its membership, the commissioner may require to verify
1953 that the group is a qualified risk retention group as defined in [~~Subsection~~] Section
1954 31A-15-202~~(11)~~; and

1955 (ii) a copy of its plan of operations or feasibility study and revisions of the plan or
1956 study submitted to the state in which the risk retention group is chartered and licensed, except a
1957 plan or study is not required for any line or classification of liability insurance that:

1958 (A) was defined in the Product Liability Risk Retention Act of 1981 before October 27,
1959 1986; and

1960 (B) was offered before that date by any risk retention group that had been chartered
1961 and operating for not less than three years before that date.

1962 (b) The risk retention group shall submit to the commissioner a copy of any revision to
1963 its plan or study required by Subsection 31A-15-203~~(2)~~(3) at the same time it submits the
1964 revision of its chartering state.

1965 (c) The risk retention group shall submit, on a form approved by the commissioner, a
1966 statement of registration and a notice designating the commissioner as agent for the purpose of
1967 receiving service of legal documents or process.

1968 (d) The risk retention group shall pay annual license fees required by Section
1969 31A-3-103.

1970 (2) Any risk retention group doing business in this state shall submit to the
1971 commissioner:

1972 (a) a copy of the group's financial statement submitted to the state in which the risk
1973 retention group is chartered and licensed, which shall be certified by an independent public
1974 accountant and shall contain a statement of opinion on loss and loss adjustment expense
1975 reserves made by a member of the American Academy of Actuaries or a loss reserve specialist
1976 qualified under criteria approved by the commissioner;

1977 (b) a copy of each examination of the risk retention group as certified by the
1978 commissioner or public official conducting the examination;

1979 (c) if the commissioner requests, a copy of any information or document pertaining to
1980 any outside audit performed with respect to the risk retention group; and

1981 (d) any other information required to verify the group's continuing qualification as a
1982 risk retention group within the definition in [~~Subsection~~] Section 31A-15-202[~~(H)~~].

1983 (3) (a) Each risk retention group shall pay premium taxes and taxes on premiums of
1984 direct business for risks resident or located within this state, and shall report to the Utah State
1985 Tax Commission the net premiums written for risks resident or located within this state. Each
1986 risk retention group shall be subject to taxation, and any applicable fines and penalties related
1987 to taxation, on the same basis as a foreign admitted insurer.

1988 (b) To the extent licensed producers are utilized pursuant to Section 31A-15-212, they
1989 shall report to the commissioner the premiums for direct business for all risks resident or
1990 located within this state that the producers have placed with, or on behalf of, a risk retention
1991 group not chartered in this state.

1992 (c) To the extent that insurance producers are utilized pursuant to Section 31A-15-212
1993 they shall keep a complete and separate record of all policies procured from each risk retention
1994 group. The record shall be open to examination by the commissioner, as provided under
1995 Section 31A-23a-412. These records shall include the following for each policy and each kind
1996 of insurance provided under each policy:

- 1997 (i) the limit of liability;
- 1998 (ii) the time period covered;
- 1999 (iii) the effective date;
- 2000 (iv) the name of the risk retention group that issued the policy;
- 2001 (v) the gross premium charged;
- 2002 (vi) the amount of any returned premiums; and
- 2003 (vii) additional information required by the insurance commissioner.

2004 (4) Each risk retention group and its agents and representatives shall comply with:

2005 (a) the Unfair Claims Settlement Practices Act, including Section 31A-15-207[~~, Title~~
2006 31A];

2007 (b) Chapter 26, Part 3, Claim Practices[~~;~~]; and

2008 (c) any other provision of law relating to claims settlement practices.

2009 (5) Each risk retention group shall comply with the laws of this state regarding
2010 deceptive, false, and fraudulent acts, practices regulated under [~~Title 31A,~~] Chapter 23a, Part 4,
2011 Marketing Practices, and any other provision of law relating to deceptive, false, or fraudulent

2012 practices. The commissioner may only obtain an injunction regarding the conduct described in
2013 this subsection from a court of competent jurisdiction.

2014 (6) If the commissioner of the jurisdiction in which the group is chartered and licensed
2015 has not initiated an examination or does not initiate an examination within 60 days after a
2016 request by the commissioner of this state, the risk retention group shall submit to an
2017 examination by the commissioner of this state to determine its financial condition. Any
2018 examination conducted under this subsection shall be coordinated to avoid unjustified
2019 repetition and shall be conducted in an expeditious manner and in accordance with the
2020 [NAIC's] National Association of Insurance Commissioner's Examiner Handbook.

2021 (7) Each application form for insurance from a risk retention group and each policy and
2022 certificate issued by a risk retention group shall contain the following notice in ten-point type
2023 on its front and declaration pages:

2024 "NOTICE

2025 This policy is issued by your risk retention group. Your risk retention group may not be
2026 subject to all of the insurance laws and regulations of your state. State insurance insolvency
2027 guaranty funds are not available for your risk retention group."

2028 (8) The following acts by a risk retention group are prohibited:

2029 (a) the solicitation or sale of insurance by a risk retention group to any person who is
2030 not eligible for membership in the group; and

2031 (b) the solicitation or sale of insurance by, or operation of, a risk retention group that is
2032 in hazardous financial condition or financially impaired.

2033 (9) A risk retention group may not do business in this state if an insurance company is
2034 directly or indirectly a member or owner of the risk retention group, unless all members of the
2035 group are insurance companies.

2036 (10) The terms of any insurance policy issued by a risk retention group may not
2037 provide, or be construed to provide, coverage prohibited generally by statute of this state or
2038 declared unlawful by the Utah Supreme Court.

2039 (11) A risk retention group not chartered in this state and doing business in this state
2040 shall comply with a lawful order issued in a voluntary dissolution proceeding or in a
2041 delinquency proceeding commenced by any state's insurance commissioner if there has been a
2042 finding of financial impairment after an examination under Subsection (6).

2043 (12) A risk retention group that violates any provision of this part is subject to fines
2044 and penalties applicable to licensed insurers generally, including revocation of its right to do
2045 business in this state.

2046 (13) In addition to complying with the requirements of this section, each risk retention
2047 group operating in this state before the effective date of this part shall comply with Subsection
2048 (1)(a) within 30 days after the effective date of this part.

2049 Section 11. Section **31A-15-206.5** is enacted to read:

2050 **31A-15-206.5. Countersignatures not required.**

2051 A policy of insurance issued to a risk retention group or any member of the risk
2052 retention group may not be required to be countersigned.

2053 Section 12. Section **31A-15-208** is amended to read:

2054 **31A-15-208. Purchasing groups -- Notice and registration requirements.**

2055 (1) A purchasing group that intends to do business in this state shall, [~~prior to~~] before
2056 doing business, furnish reasonable notice to the insurance commissioner in this state. The
2057 notice shall be on forms prescribed by the National Association of Insurance Commissioners
2058 and shall:

2059 (a) [~~identifying~~] identify the state in which the [~~purchasing~~] group is domiciled;

2060 (b) [~~identifying any state~~] identify the other states in which the [~~purchasing~~] group
2061 intends to do business;

2062 (c) [~~specifying~~] specify the lines and classifications of liability insurance that the
2063 [~~purchasing~~] group intends to purchase;

2064 (d) [~~identifying the insurers~~] identify the one or more insurance companies from which
2065 the group intends to purchase its insurance and the domicile of the insurers;

2066 (e) [~~specifying~~] specify the method by which, and [~~any~~] the one or more persons, if
2067 any, through whom, insurance will be offered to [group] its members whose risks are resident
2068 or located in this state;

2069 (f) [~~identifying~~] identify the principal place of business of the [~~purchasing~~] group; and

2070 (g) [~~providing any~~] provide any other information as may be required by the
2071 commissioner to verify that the [~~purchasing~~] group is a qualified "purchasing group," as
2072 defined in Section [31A-15-202](#).

2073 (2) A purchasing group shall notify the commissioner of a change in an item listed in

2074 Subsection (1) within 10 days of the change.

2075 (3) (a) A purchasing group shall annually register with the commissioner and pay a
2076 filing fee.

2077 (b) A purchasing group shall designate the commissioner as its agent solely for the
2078 purpose of receiving service of legal documents or process.

2079 (c) The registration and fee requirements of this Subsection (3) do not apply to a
2080 purchasing group that only purchases insurance that was authorized under the Product Liability
2081 Risk Retention Act of 1981, and that:

2082 (i) in any state of the United States:

2083 (A) was domiciled before April 1, 1986; and

2084 (B) is domiciled after October 27, 1986;

2085 (ii) (A) before October 27, 1986, purchased insurance from an insurer licensed in any
2086 state; and

2087 (B) since October 27, 1986, purchased its insurance from an insurer licensed in any
2088 state; or

2089 (iii) was a purchasing group under the requirements of the Product Liability Risk
2090 Retention Act of 1981 before October 27, 1986.

2091 (4) ~~[A]~~ Each purchasing group that is required to give notice under Subsection (1) shall
2092 also furnish the information required by the commissioner to:

2093 (a) verify that the entity qualifies as a purchasing group;

2094 (b) determine where the purchasing group is located; and

2095 (c) determine appropriate tax treatment of the purchasing group.

2096 Section 13. Section ~~31A-15-209~~ is amended to read:

2097 **31A-15-209. Restrictions on purchasing groups.**

2098 ~~[(1) A purchasing group which obtains liability insurance from an insurer not admitted
2099 in this state or from a risk retention group shall inform each of the group members which have
2100 a risk resident or located in this state that the risk is not protected by an insurance insolvency
2101 guaranty fund in this state, and that the risk retention group or insurer may not be subject to all
2102 insurance laws and regulations of this state.]~~

2103 (1) A purchasing group may not purchase insurance from a risk retention group that is
2104 not chartered in a state or from an insurer not admitted in the state in which the purchasing

2105 group is located, unless the purchase is effected through a licensed producer acting pursuant to
2106 the surplus lines laws and regulations of the state in which the purchasing group is located.

2107 (2) A purchasing group that obtains liability insurance from an insurer not admitted in
2108 this state or a risk retention group shall inform each of the members of the purchasing group or
2109 risk retention group that have a risk resident or located in this state that:

- 2110 (a) the risk is not protected by an insurance insolvency guaranty fund in this state; and
- 2111 (b) the risk retention group or insurer may not be subject to all insurance laws and
2112 regulations of this state.

2113 ~~[(2)]~~ (3) (a) A purchasing group may not purchase insurance providing for a deductible
2114 or self-insured retention applicable to the group as a whole~~[-however,].~~

2115 (b) Notwithstanding Subsection (3)(a), coverage may provide for a deductible or
2116 self-insured retention applicable to individual members.

2117 ~~[(3)]~~ (4) Purchases of insurance by purchasing groups are subject to the same standards
2118 regarding aggregate limits which are applicable to all purchases of group insurance.

2119 Section 14. Section **31A-15-212** is amended to read:

2120 **31A-15-212. Duty of producers to obtain license -- Risk retention groups --**
2121 **Purchasing groups.**

2122 (1) A person may do the following only if ~~[he]~~ the person is licensed as an insurance
2123 ~~[agent or broker]~~ producer or is exempt from licensure under ~~[Title 31A,]~~ Chapter 23a,
2124 Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries:

- 2125 (a) solicit, negotiate, or procure liability insurance in this state from a risk retention
2126 group;
- 2127 (b) solicit, negotiate, or procure liability insurance in this state for a purchasing group
2128 from an authorized insurer or a risk retention group; and
- 2129 (c) solicit, negotiate, or procure liability insurance coverage in this state for any
2130 member of a purchasing group under a purchasing group's policy.

2131 ~~[(2) A person may solicit, negotiate, or procure liability insurance from an insurer not~~
2132 ~~authorized to do business in this state on behalf of a purchasing group located in this state only~~
2133 ~~if he is licensed as a surplus lines producer or is exempt from licensure under Title 31A,~~
2134 ~~Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance~~
2135 ~~Intermediaries.]~~

2136 ~~[(3) The requirement of residence in this state does not apply for purposes of acting as~~
2137 ~~a producer for a risk retention group or purchasing group under Subsections (1) and (2).]~~

2138 ~~[(4) On business placed with a risk retention group or written through a purchasing~~
2139 ~~group, each person licensed under this title shall provide to each prospective insured the notice~~
2140 ~~required by Subsection [31A-15-204](#)(7) in the case of a risk retention group, and by Subsection~~
2141 ~~[31A-15-209](#)(1) in the case of a purchasing group.]~~

2142 ~~[(5) Solicitation for membership in a purchasing group is not of itself a solicitation for~~
2143 ~~insurance.]~~

2144 (2) (a) A person may not act or aid in any manner in soliciting, negotiating, or
2145 procuring liability insurance in this state for a purchasing group from an authorized insurer or a
2146 risk retention group chartered in a state unless that person is licensed as an insurance producer,
2147 or is exempt from licensure under Chapter 23a, Insurance Marketing - Licensing Producers,
2148 Consultants, and Reinsurance Intermediaries.

2149 (b) A person may not act or aid in any manner in soliciting, negotiating, or procuring
2150 liability insurance coverage in this state for any member of a purchasing group under a
2151 purchasing group's policy unless that person is licensed as an insurance producer, or is exempt
2152 from licensure under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,
2153 and Reinsurance Intermediaries.

2154 (c) A person may not act or aid in any manner in soliciting, negotiating, or procuring
2155 liability insurance from an insurer not authorized to do business in this state on behalf of a
2156 purchasing group located in this state unless that person is licensed as a surplus lines producer
2157 or excess lines producer or is exempt from licensure under Chapter 23a, Insurance Marketing -
2158 Licensing Producers, Consultants, and Reinsurance Intermediaries.

2159 (3) For purposes of acting as a producer for a risk retention group or purchasing group
2160 pursuant to Subsections (1) and (2), the requirement of residence in this state does not apply.

2161 (4) A person licensed pursuant to Chapter 23a, Insurance Marketing - Licensing
2162 Producers, Consultants, and Reinsurance Intermediaries, on business placed with a risk
2163 retention group or written through a purchasing group, shall inform each prospective insured of
2164 the provisions of the notice required by Subsection [31A-15-204](#)(7) in the case of a purchasing
2165 group.

2166 Section 15. Section **31A-15-213.5** is enacted to read:

2167 **31A-15-213.5. Rulemaking.**

2168 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2169 commissioner may make and from time to time amend rules relating to risk retention groups as
2170 may be necessary or desirable to carry out this part.

2171 Section 16. Section **31A-17-404** is amended to read:

2172 **31A-17-404. Credit allowed a domestic ceding insurer against reserves for**
2173 **reinsurance.**

2174 (1) A domestic ceding insurer is allowed credit for reinsurance as either an asset or a
2175 reduction from liability for reinsurance ceded only if the reinsurer meets the requirements of
2176 Subsection (3), (4), (5), (6), [~~or~~] (7), or (8), subject to the following:

2177 (a) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a
2178 kind or class of business that the assuming insurer is licensed or otherwise permitted to write or
2179 assume:

2180 (i) in its state of domicile; or

2181 (ii) in the case of a United States branch of an alien assuming insurer, in the state
2182 through which it is entered and licensed to transact insurance or reinsurance.

2183 (b) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of
2184 Subsection [~~(8)~~] (9) are met.

2185 (2) A domestic ceding insurer is allowed credit for reinsurance ceded:

2186 (a) only if the reinsurance is payable in a manner consistent with Section [31A-22-1201](#);

2187 (b) only to the extent that the accounting:

2188 (i) is consistent with the terms of the reinsurance contract; and

2189 (ii) clearly reflects:

2190 (A) the amount and nature of risk transferred; and

2191 (B) liability, including contingent liability, of the ceding insurer;

2192 (c) only to the extent the reinsurance contract shifts insurance policy risk from the
2193 ceding insurer to the assuming reinsurer in fact and not merely in form; and

2194 (d) only if the reinsurance contract contains a provision placing on the reinsurer the
2195 credit risk of all dealings with intermediaries regarding the reinsurance contract.

2196 (3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
2197 assuming insurer that is licensed to transact insurance or reinsurance in this state.

- 2198 (4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
2199 assuming insurer that is accredited by the commissioner as a reinsurer in this state.
- 2200 (b) An insurer is accredited as a reinsurer if the insurer:
- 2201 (i) files with the commissioner evidence of the insurer's submission to this state's
2202 jurisdiction;
- 2203 (ii) submits to the commissioner's authority to examine the insurer's books and records;
- 2204 (iii) (A) is licensed to transact insurance or reinsurance in at least one state; or
2205 (B) in the case of a United States branch of an alien assuming insurer, is entered
2206 through and licensed to transact insurance or reinsurance in at least one state;
- 2207 (iv) files annually with the commissioner a copy of the insurer's:
- 2208 (A) annual statement filed with the insurance department of its state of domicile; and
2209 (B) most recent audited financial statement; and
- 2210 (v) (A) (I) has not had its accreditation denied by the commissioner within 90 days of
2211 the day on which the insurer submits the information required by this Subsection (4); and
2212 (II) maintains a surplus with regard to policyholders in an amount not less than
2213 \$20,000,000; or
- 2214 (B) (I) has its accreditation approved by the commissioner; and
2215 (II) maintains a surplus with regard to policyholders in an amount less than
2216 \$20,000,000.
- 2217 (c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's
2218 accreditation is revoked by the commissioner after a notice and hearing.
- 2219 (5) (a) A domestic ceding insurer is allowed a credit if:
- 2220 (i) the reinsurance is ceded to an assuming insurer that is:
- 2221 (A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or
2222 (B) in the case of a United States branch of an alien assuming insurer, is entered
2223 through a state meeting the requirements of Subsection (5)(a)(ii);
- 2224 (ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for
2225 reinsurance substantially similar to those applicable under this section; and
- 2226 (iii) the assuming insurer or United States branch of an alien assuming insurer:
- 2227 (A) maintains a surplus with regard to policyholders in an amount not less than
2228 \$20,000,000; and

2229 (B) submits to the authority of the commissioner to examine its books and records.

2230 (b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded
2231 and assumed pursuant to a pooling arrangement among insurers in the same holding company
2232 system.

2233 (6) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
2234 assuming insurer that maintains a trust fund:

2235 (i) created in accordance with rules made by the commissioner; and

2236 (ii) in a qualified United States financial institution for the payment of a valid claim of:

2237 (A) a United States ceding insurer of the assuming insurer;

2238 (B) an assign of the United States ceding insurer; and

2239 (C) a successor in interest to the United States ceding insurer.

2240 (b) To enable the commissioner to determine the sufficiency of the trust fund described
2241 in Subsection (6)(a), the assuming insurer shall:

2242 (i) report annually to the commissioner information substantially the same as that
2243 required to be reported on the National Association of Insurance Commissioners Annual
2244 Statement form by a licensed insurer; and

2245 (ii) (A) submit to examination of its books and records by the commissioner; and

2246 (B) pay the cost of an examination.

2247 (c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the
2248 form of the trust and any amendment to the trust is approved by:

2249 (A) the commissioner of the state where the trust is domiciled; or

2250 (B) the commissioner of another state who, pursuant to the terms of the trust
2251 instrument, accepts principal regulatory oversight of the trust.

2252 (ii) The form of the trust and an amendment to the trust shall be filed with the
2253 commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.

2254 (iii) The trust instrument shall provide that a contested claim is valid and enforceable
2255 upon the final order of a court of competent jurisdiction in the United States.

2256 (iv) The trust shall vest legal title to its assets in its one or more trustees for the benefit
2257 of:

2258 (A) a United States ceding insurer of the assuming insurer;

2259 (B) an assign of the United States ceding insurer; or

- 2260 (C) a successor in interest to the United States ceding insurer.
- 2261 (v) The trust and the assuming insurer are subject to examination as determined by the
2262 commissioner.
- 2263 (vi) The trust shall remain in effect for as long as the assuming insurer has an
2264 outstanding obligation due under a reinsurance agreement subject to the trust.
- 2265 (vii) No later than February 28 of each year, the trustee of the trust shall:
- 2266 (A) report to the commissioner in writing the balance of the trust;
- 2267 (B) list the trust's investments at the end of the preceding calendar year; and
- 2268 (C) (I) certify the date of termination of the trust, if so planned; or
- 2269 (II) certify that the trust will not expire prior to the following December 31.
- 2270 (d) The following requirements apply to the following categories of assuming insurer:
- 2271 (i) For a single assuming insurer:
- 2272 (A) the trust fund shall consist of funds in trust in an amount not less than the assuming
2273 insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and
- 2274 (B) the assuming insurer shall maintain a trusteed surplus of not less than
2275 \$20,000,000[-], except as provided in Subsection (6)(d)(ii).
- 2276 (ii) (A) At any time after the assuming insurer has permanently discontinued
2277 underwriting new business secured by the trust for at least three full years, the commissioner
2278 with principal regulatory oversight of the trust may authorize a reduction in the required
2279 trusteed surplus, but only after a finding, based on an assessment of the risk, that the new
2280 required surplus level is adequate for the protection of United States ceding insurers,
2281 policyholders, and claimants in light of reasonably foreseeable adverse loss development.
- 2282 (B) The risk assessment may involve an actuarial review, including an independent
2283 analysis of reserves and cash flows, and shall consider all material risk factors, including, when
2284 applicable, the lines of business involved, the stability of the incurred loss estimates, and the
2285 effect of the surplus requirements on the assuming insurer's liquidity or solvency.
- 2286 (C) The minimum required trusteed surplus may not be reduced to an amount less than
2287 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States
2288 ceding insurers covered by the trust.
- 2289 [~~(ii)~~] (iii) For a group acting as assuming insurer, including incorporated and individual
2290 unincorporated underwriters:

2291 (A) for reinsurance ceded under a reinsurance agreement with an inception,
2292 amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trustee
2293 account in an amount not less than the ~~[group's]~~ respective underwriters' several liabilities
2294 attributable to business ceded by the one or more United States domiciled ceding insurers to [~~a~~
2295 ~~member~~] an underwriter of the group;

2296 (B) for reinsurance ceded under a reinsurance agreement with an inception date on or
2297 before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the
2298 other provisions of this chapter, the trust shall consist of a trustee account in an amount not
2299 less than the ~~[group's]~~ respective underwriters' several insurance and reinsurance liabilities
2300 attributable to business written in the United States;

2301 (C) in addition to a trust described in Subsection (6)(d)~~[(ii)]~~[(iii)](A) or (B), the group
2302 shall maintain in trust a trustee surplus of which \$100,000,000 is held jointly for the benefit of
2303 the one or more United States domiciled ceding insurers of a member of the group for all years
2304 of account;

2305 (D) the incorporated members of the group:

2306 (I) may not be engaged in a business other than underwriting as a member of the group;
2307 and

2308 (II) are subject to the same level of regulation and solvency control by the group's
2309 domiciliary regulator as are the unincorporated members; and

2310 (E) within 90 days after the day on which the group's financial statements are due to be
2311 filed with the group's domiciliary regulator, the group shall provide to the commissioner:

2312 (I) an annual certification by the group's domiciliary regulator of the solvency of each
2313 underwriter member; or

2314 (II) if a certification is unavailable, a financial statement, prepared by an independent
2315 public accountant, of each underwriter member of the group.

2316 ~~[(iii)]~~ (iv) For a group of incorporated underwriters under common administration, the
2317 group shall:

2318 (A) have continuously transacted an insurance business outside the United States for at
2319 least three years immediately preceding the day on which the group makes application for
2320 accreditation;

2321 (B) maintain aggregate policyholders' surplus of at least \$10,000,000,000;

2322 (C) maintain a trust fund in an amount not less than the group's several liabilities
2323 attributable to business ceded by the one or more United States domiciled ceding insurers to a
2324 member of the group pursuant to a reinsurance contract issued in the name of the group;

2325 (D) in addition to complying with the other provisions of this Subsection
2326 (6)(d)~~(iii)~~(iv), maintain a joint trusteed surplus of which \$100,000,000 is held jointly for the
2327 benefit of the one or more United States domiciled ceding insurers of a member of the group as
2328 additional security for these liabilities; and

2329 (E) within 90 days after the day on which the group's financial statements are due to be
2330 filed with the group's domiciliary regulator, make available to the commissioner:

2331 (I) an annual certification of each underwriter member's solvency by the member's
2332 domiciliary regulator; and

2333 (II) a financial statement of each underwriter member of the group prepared by an
2334 independent public accountant.

2335 (7) If reinsurance is ceded to an assuming insurer not meeting the requirements of
2336 Subsection (3), (4), (5), or (6), a domestic ceding insurer is allowed credit only as to the
2337 insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law
2338 or regulation of that jurisdiction.

2339 (8) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
2340 assuming insurer that secures its obligations in accordance with this Subsection (8):

2341 (a) The insurer shall be certified by the commissioner as a reinsurer in this state.

2342 (b) To be eligible for certification, the assuming insurer shall:

2343 (i) be domiciled and licensed to transact insurance or reinsurance in a qualified
2344 jurisdiction, as determined by the commissioner pursuant to Subsection (8)(d);

2345 (ii) maintain minimum capital and surplus, or its equivalent, in an amount to be
2346 determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter
2347 3, Utah Administrative Rulemaking Act;

2348 (iii) maintain financial strength ratings from two or more rating agencies considered
2349 acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter
2350 3, Utah Administrative Rulemaking Act;

2351 (iv) agree to:

2352 (A) submit to the jurisdiction of this state;

2353 (B) appoint the commissioner as its agent for service of process in this state;
2354 (C) provide security for 100% of the assuming insurer's liabilities attributable to
2355 reinsurance ceded by United States ceding insurers if it resists enforcement of a final United
2356 States judgment;
2357 (D) agree to meet applicable information filing requirements as determined by the
2358 commissioner including an application for certification, a renewal and on an ongoing basis; and
2359 (E) any other requirements for certification considered relevant by the commissioner.
2360 (c) An association, including incorporated and individual unincorporated underwriters,
2361 may be a certified reinsurer. To be eligible for certification, in addition to satisfying
2362 requirements of Subsections (8)(a) and (b), the association:
2363 (i) shall satisfy its minimum capital and surplus requirements through the capital and
2364 surplus equivalents, net of liabilities, of the association and its members, which shall include a
2365 joint central fund that may be applied to any unsatisfied obligation of the association or any of
2366 its members in an amount determined by the commissioner to provide adequate protection;
2367 (ii) may not have incorporated members of the association engaged in any business
2368 other than underwriting as a member of the association;
2369 (iii) shall be subject to the same level of regulation and solvency control of the
2370 incorporated members of the association by the association's domiciliary regulator as are the
2371 unincorporated members; and
2372 (iv) within 90 days after its financial statements are due to be filed with the
2373 association's domiciliary regulator provide:
2374 (A) to the commissioner an annual certification by the association's domiciliary
2375 regulator of the solvency of each underwriter member; or
2376 (B) if a certification is unavailable, financial statements prepared by independent
2377 public accountants, of each underwriter member of the association.
2378 (d) The commissioner shall create and publish a list of qualified jurisdictions under
2379 which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be
2380 considered for certification by the commissioner as a certified reinsurer.
2381 (i) To determine whether the domiciliary jurisdiction of a non-United States assuming
2382 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:
2383 (A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory

2384 system of the jurisdiction, both initially and on an ongoing basis;

2385 (B) shall consider the rights, the benefits, and the extent of reciprocal recognition
2386 afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the
2387 United States;

2388 (C) shall require the qualified jurisdiction to share information and cooperate with the
2389 commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and

2390 (D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has
2391 determined that the jurisdiction does not adequately and promptly enforce final United States
2392 judgments and arbitration awards.

2393 (ii) The commissioner may consider additional factors in determining a qualified
2394 jurisdiction.

2395 (iii) A list of qualified jurisdictions shall be published through the National
2396 Association of Insurance Commissioners' Committee Process and the commissioner shall:

2397 (A) consider this list in determining qualified jurisdictions; and

2398 (B) if the commissioner approves a jurisdiction as qualified that does not appear on the
2399 National Association of Insurance Commissioner's list of qualified jurisdictions, provide
2400 thoroughly documented justification in accordance with criteria to be developed by rule made
2401 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2402 (iv) United States jurisdictions that meet the requirement for accreditation under the
2403 National Association of Insurance Commissioners' financial standards and accreditation
2404 program shall be recognized as qualified jurisdictions.

2405 (v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,
2406 the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

2407 (e) The commissioner shall:

2408 (i) assign a rating to each certified reinsurer, giving due consideration to the financial
2409 strength ratings that have been assigned by rating agencies considered acceptable to the
2410 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
2411 Rulemaking Act; and

2412 (ii) publish a list of all certified reinsurers and their ratings.

2413 (f) A certified reinsurer shall secure obligations assumed from United States ceding
2414 insurers under this Subsection (8) at a level consistent with its rating, as specified in rules made

2415 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
2416 Rulemaking Act.

2417 (i) For a domestic ceding insurer to qualify for full financial statement credit for
2418 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a
2419 form acceptable to the commissioner and consistent with Section [31A-17-404.1](#), or in a
2420 multibeneficiary trust in accordance with Subsections (5), (6), and (7), except as otherwise
2421 provided in this Subsection (8).

2422 (ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to
2423 Subsections (5), (6), and (7), and chooses to secure its obligations incurred as a certified
2424 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate
2425 trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a
2426 certified reinsurer with reduced security as permitted by this Subsection (8) or comparable laws
2427 of other United States jurisdictions and for its obligations subject to Subsections (5), (6), and
2428 (7).

2429 (iii) It shall be a condition to the grant of certification under this Subsection (8) that the
2430 certified reinsurer shall have bound itself, by the language of the trust and agreement with the
2431 commissioner with principal regulatory oversight of the trust account, to fund, upon
2432 termination of the trust account, out of the remaining surplus of the trust, any deficiency of any
2433 other the trust account.

2434 (iv) The minimum trustee surplus requirements provided in Subsections (5), (6), and
2435 (7) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer
2436 for the purpose of securing obligations incurred under this Subsection (8), except that the trust
2437 shall maintain a minimum trustee surplus of \$10,000,000.

2438 (v) With respect to obligations incurred by a certified reinsurer under this Subsection
2439 (8), if the security is insufficient, the commissioner:

2440 (A) shall reduce the allowable credit by an amount proportionate to the deficiency; and

2441 (B) may impose further reductions in allowable credit upon finding that there is a
2442 material risk that the certified reinsurer's obligations will not be paid in full when due.

2443 (vi) For purposes of this Subsection (8), a certified reinsurer whose certification has
2444 been terminated for any reason shall be treated as a certified reinsurer required to secure 100%
2445 of its obligations.

2446 (A) As used in this Subsection (8), the term "terminated" refers to revocation,
2447 suspension, voluntary surrender, and inactive status.

2448 (B) If the commissioner continues to assign a higher rating as permitted by other
2449 provisions of this section, the requirement under this Subsection (8)(f)(vi) does not apply to a
2450 certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

2451 (g) If an applicant for certification has been certified as a reinsurer in a National
2452 Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:

2453 (i) defer to that jurisdiction's certification;

2454 (ii) defer to the rating assigned by that jurisdiction; and

2455 (iii) consider such reinsurer to be a certified reinsurer in this state.

2456 (h) (i) A certified reinsurer that ceases to assume new business in this state may request
2457 to maintain its certification in inactive status in order to continue to qualify for a reduction in
2458 security for its in-force business.

2459 (ii) An inactive certified reinsurer shall continue to comply with all applicable
2460 requirements of this Subsection (8).

2461 (iii) The commissioner shall assign a rating to a reinsurer that qualifies under this
2462 Subsection (8)(h), that takes into account, if relevant, the reasons why the reinsurer is not
2463 assuming new business.

2464 ~~[(8)]~~ (9) Reinsurance credit may not be allowed a domestic ceding insurer unless the
2465 assuming insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:

2466 (a) (i) being an admitted insurer; and

2467 (ii) submitting to jurisdiction under Section 31A-2-309;

2468 (b) having irrevocably appointed the commissioner as the domestic ceding insurer's
2469 agent for service of process in an action arising out of or in connection with the reinsurance,
2470 which appointment is made under Section 31A-2-309; or

2471 (c) agreeing in the reinsurance contract:

2472 (i) that if the assuming insurer fails to perform its obligations under the terms of the
2473 reinsurance contract, the assuming insurer, at the request of the ceding insurer, shall:

2474 (A) submit to the jurisdiction of a court of competent jurisdiction in a state of the
2475 United States;

2476 (B) comply with all requirements necessary to give the court jurisdiction; and

2477 (C) abide by the final decision of the court or of an appellate court in the event of an
2478 appeal; and

2479 (ii) to designate the commissioner or a specific attorney licensed to practice law in this
2480 state as its attorney upon whom may be served lawful process in an action, suit, or proceeding
2481 instituted by or on behalf of the ceding company.

2482 ~~[(9)]~~ (10) Submitting to the jurisdiction of Utah courts under Subsection ~~[(8)]~~ (9) does
2483 not override a duty or right of a party under the reinsurance contract, including a requirement
2484 that the parties arbitrate their disputes.

2485 ~~[(10)]~~ (11) If an assuming insurer does not meet the requirements of Subsection (3),
2486 (4), or (5), the credit permitted by Subsection (6) or (8) may not be allowed unless the
2487 assuming insurer agrees in the trust instrument to the following conditions:

2488 (a) (i) Notwithstanding any other provision in the trust instrument, if an event
2489 described in Subsection ~~[(10)]~~ (11)(a)(ii) occurs the trustee shall comply with:

2490 (A) an order of the commissioner with regulatory oversight over the trust; or

2491 (B) an order of a court of competent jurisdiction directing the trustee to transfer to the
2492 commissioner with regulatory oversight all of the assets of the trust fund.

2493 (ii) This Subsection ~~[(10)]~~ (11)(a) applies if:

2494 (A) the trust fund is inadequate because the trust contains an amount less than the
2495 amount required by Subsection (6)(d); or

2496 (B) the grantor of the trust is:

2497 (I) declared insolvent; or

2498 (II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the
2499 laws of its state or country of domicile.

2500 (b) The assets of a trust fund described in Subsection ~~[(10)]~~ (11)(a) shall be distributed
2501 by and a claim shall be filed with and valued by the commissioner with regulatory oversight in
2502 accordance with the laws of the state in which the trust is domiciled that are applicable to the
2503 liquidation of a domestic insurance company.

2504 (c) If the commissioner with regulatory oversight determines that the assets of the trust
2505 fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United
2506 States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be
2507 returned by the commissioner with regulatory oversight to the trustee for distribution in

2508 accordance with the trust instrument.

2509 (d) A grantor shall waive any right otherwise available to it under United States law
2510 that is inconsistent with this Subsection [~~(10)~~] (11).

2511 (12) If an accredited or certified reinsurer ceases to meet the requirements for
2512 accreditation or certification, the commissioner may suspend or revoke the reinsurer's
2513 accreditation or certification.

2514 (a) The commissioner shall give the reinsurer notice and opportunity for hearing.

2515 (b) The suspension or revocation may not take effect until after the commissioner's
2516 order after a hearing, unless:

2517 (i) the reinsurer waives its right to hearing;

2518 (ii) the commissioner's order is based on:

2519 (A) regulatory action by the reinsurer's domiciliary jurisdiction; or

2520 (B) the voluntary surrender or termination of the reinsurer's eligibility to transact
2521 insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state
2522 under Subsection (8)(g); or

2523 (iii) the commissioner's finding that an emergency requires immediate action and a
2524 court of competent jurisdiction has not stayed the commissioner's action.

2525 (c) While a reinsurer's accreditation or certification is suspended, no reinsurance
2526 contract issued or renewed after the effective date of the suspension qualifies for credit except
2527 to the extent that the reinsurer's obligations under the contract are secured in accordance with
2528 Section [31A-17-404.1](#).

2529 (d) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance
2530 may be granted after the effective date of the revocation except to the extent that the reinsurer's
2531 obligations under the contract are secured in accordance with Subsection (8)(f) or Section
2532 [31A-17-404.1](#).

2533 (13) (a) A ceding insurer shall take steps to manage its reinsurance recoverables
2534 proportionate to its own book of business.

2535 (b) (i) A domestic ceding insurer shall notify the commissioner within 30 days after
2536 reinsurance recoverables from any single assuming insurer, or group of affiliated assuming
2537 insurers:

2538 (A) exceeds 50% of the domestic ceding insurer's last reported surplus to

2539 policyholders; or

2540 (B) after it is determined that reinsurance recoverables from any single assuming
2541 insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding
2542 insurer's last reported surplus to policyholders.

2543 (ii) The notification required by Subsection (13)(b)(i) shall demonstrate that the
2544 exposure is safely managed by the domestic ceding insurer.

2545 (c) A ceding insurer shall take steps to diversify its reinsurance program.

2546 (d) (i) A domestic ceding insurer shall notify the commissioner within 30 days after
2547 ceding or being likely to cede more than 20% of the ceding insurer's gross written premium in
2548 the prior calendar year to any:

2549 (A) single assuming insurer; or

2550 (B) group of affiliated assuming insurers.

2551 (ii) The notification shall demonstrate that the exposure is safely managed by the
2552 domestic ceding insurer.

2553 Section 17. Section **31A-17-404.1** is amended to read:

2554 **31A-17-404.1. Asset or reduction from liability for reinsurance ceded by a**
2555 **domestic insurer to other assuming insurers.**

2556 (1) (a) An asset or a reduction from liability for reinsurance ceded by a domestic
2557 insurer to an assuming insurer that does not meet the requirements of Section **31A-17-404** is
2558 allowed in an amount not exceeding the liabilities carried by the ceding insurer.

2559 (b) A reduction described in Subsection (1)(a) shall be in the amount of funds held by
2560 or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

2561 (i) that are held:

2562 (A) under a reinsurance contract with the assuming insurer; and

2563 (B) as security for the payment of obligations under the reinsurance contract; and

2564 (ii) if the security is held:

2565 (A) in the United States subject to withdrawal solely by, and under the exclusive
2566 control of, the ceding insurer; or

2567 (B) in the case of a trust, in a qualified United States financial institution.

2568 (2) Security described in Subsection (1) may be in the form of:

2569 (a) cash;

2570 (b) a security:
 2571 (i) listed by the Securities Valuation Office of the National Association of Insurance
 2572 Commissioners, including those considered exempt from filing as defined by the Purposes and
 2573 Procedures Manual of the Securities Valuation Office; and
 2574 (ii) qualifying as an admitted asset;
 2575 (c) subject to Subsection (3), a clean, irrevocable, unconditional letter of credit, issued
 2576 or confirmed by a qualified United States financial institution:

2577 (i) effective no later than December 31 of the year for which the filing is being made;
 2578 and

2579 (ii) in the possession of, or in trust for, the ceding [~~company~~] insurer on or before the
 2580 filing date of its annual statement; or

2581 (d) another form of security acceptable to the commissioner.

2582 (3) Notwithstanding an issuing or confirming institution's subsequent failure to meet an
 2583 applicable standard of acceptability, a letter of credit described in Subsection (2) that meets the
 2584 applicable standards of issuer acceptability as of the day on which it is issued or confirmed
 2585 shall continue to be acceptable as security until the sooner of the day on which the letter of
 2586 credit expires, is extended, is renewed, is modified, or is amended.

2586a **Ĥ→ Section 18. Section 31A-17-404.3 is amended to read: ←Ĥ**

2586b **31A-17-404.3. Rules.**

2586c **Ĥ→ (1) ←Ĥ** In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
 2586d this chapter, the commissioner may make rules prescribing:

2586e **Ĥ→ [(1)] (a) ←Ĥ** the form of a letter of credit required under this chapter;

2586f **Ĥ→ [(2)] (b) ←Ĥ** the requirements for a trust or trust instrument required by this chapter;

2586g **Ĥ→ [(3)] (c) ←Ĥ** the procedures for licensing and accrediting; **Ĥ→ [and**

2586h **———— [(4)] (d) ←Ĥ** minimum capital and surplus requirements **Ĥ→ [;]** ;

2586i **(e) additional requirements relating to calculation of credit allowed a domestic ceding insurer**
 2586j **against reserves for reinsurance under Section 31A-17-404; and**

2586k **(f) additional requirements relating to calculation of asset reduction from liability for**
 2586l **reinsurance ceded by a domestic insurer to other ceding insurers under Section 31A-17-404.1.**

2586m **(2) A rule made pursuant to Subsection (1)(e) or (f) may apply to reinsurance relating to:**

2586n **(a) a life insurance policy with guaranteed nonlevel gross premiums or guaranteed nonlevel**
 2586o **benefits;**

2586p **(b) a universal life insurance policy with provisions resulting in the ability of a policyholder to**
 2586q **keep a policy in force over a secondary guarantee period;**

2586r **(c) a variable annuity with guaranteed death or living benefits;**

2586s (d) a long-term care insurance policy; or
 2586t (e) such other life and health insurance or annuity product as to which the National Association
 2586u of Insurance Commissioners adopts model regulatory requirements with respect for credit for
 2586v reinsurance.

2586w (3) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may apply to a treaty containing:
 2586x (a) a policy issued on or after January 1, 2015;
 2586y (b) a policy issued before January 1, 2015, if risk pertaining to the policy is ceded in connection
 2586z with the treaty, either in whole or in part, on or after January 1, 2015.

2586aa (4) A rule adopted pursuant Subsection (1)(e) or (1)(f) may require the ceding insurer, in
 2586ab calculating the amounts or forms of security required to be held under rules made under this section,
 2586ac to use the Valuation Manual adopted by the National Association of Insurance Commissioners under
 2586ad Section 11B(1) of the National Association of Insurance Commissioners Standard Valuation Law,
 2586ae including all amendments adopted by the National Association of Insurance Commissioners and in
 2586af effect on the date as of which the calculation is made, to the extent applicable.

2586ag (5) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may not apply to cessions to an
 2586ah assuming insurer that:

2586ai (a) is certified in this state or, if this state has not adopted provisions substantially equivalent to
 2586aj Section 2E of the Credit for Reinsurance Model Law, certified in a minimum of five other states; or

2586ak (b) maintains at least \$250,000,000 in capital and surplus when determined in accordance with
 2586al the National Association of Insurance Commissioners Accounting Practices and Procedures Manual,
 2586am including all amendments thereto adopted by the National Association of Insurance Commissioners,
 2586an excluding the impact of any permitted or prescribed practices and is:

2586ao (i) licensed in at least 26 states; or

2586ap (ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

2586aq (6) The authority to adopt rules pursuant to Subsection (1)(e) or (1)(f) does not otherwise limit
 2586ar the commissioner's general authority to make rules pursuant to Subsection (1). ←Ĥ

2587 Section 18. Section 31A-22-202 is amended to read:

2588 **31A-22-202. Protection of third-party claimants.**

2589 (1) [No] An insurance contract insuring against loss or damage through legal liability
 2590 for the bodily injury or death by accident of any person, or for damage to the property of any
 2591 person, may not be retroactively abrogated to the detriment of any third-party claimant by any
 2592 agreement between the insurer and insured after the occurrence of any injury, death, or damage
 2593 for which the insured may be liable. This attempted abrogation is void.

2594 Ĥ→ ~~(2) The liability of an insurer under a motor vehicle liability policy becomes absolute~~
 2595 ~~when injury or damage covered by the motor vehicle liability policy occurs. The policy may~~
 2596 ~~not be rescinded or canceled as to that liability to the detriment of a third party.]~~

2596a **(2) A motor vehicle liability policy may be rescinded or cancelled as to an insured for**
2596b **fraud, material misrepresentation, or any reason allowable under the law.**

2596c **(3) A motor vehicle liability policy may not be rescinded for fraud or material**
2596d **misrepresentation, as to minimum liability coverage limits under Section 31A-22-304, to the**
2596e **detriment of a third-party for a loss otherwise covered by the policy.** ←^H

2597 Section 19. Section 31A-22-603 is amended to read:

2598 **31A-22-603. Persons insured under an individual accident and health policy.**

2599 A policy of individual accident and health insurance may insure only one person, except
2600 that originally or by subsequent amendment, upon the application of an adult policyholder, a

2601 policy may insure any two or more eligible members of the policyholder's family, including
2602 [~~husband, wife~~] spouse, dependent children, and any other person dependent upon the
2603 policyholder.

2604 Section 20. Section **31A-22-715** is amended to read:

2605 **31A-22-715. Alcohol and drug dependency treatment.**

2606 (1) [Each group accident and health insurance policy shall contain an optional rider
2607 allowing certificate holders to obtain] An insurer offering a health benefit plan providing
2608 coverage for alcohol or drug dependency treatment [in programs] may require an inpatient
2609 facility to be licensed by:

2610 (a) (i) the Department of Human Services, under Title 62A, Chapter 2, Licensure of
2611 Programs and Facilities[; inpatient hospitals accredited by the joint commission on the
2612 accreditation of hospitals, or facilities licensed by]; or

2613 (ii) the Department of Health[;]; or

2614 (b) for an inpatient facility located outside the state, a state agency similar to one
2615 described in Subsection (1)(a).

2616 (2) For inpatient coverage provided pursuant to Subsection (1), an insurer may require
2617 an inpatient facility to be accredited by the following:

2618 (a) the Joint Commission; and

2619 (b) one other nationally recognized accrediting agency.

2620 Section 21. Section **31A-22-1201** is amended to read:

2621 **31A-22-1201. Assumption agreement.**

2622 (1) Subject to Subsection (2), a credit for reinsurance ceded under Section
2623 ~~31A-17-404[;]~~ or 31A-17-404.1[;] ~~or 31A-17-404.2[;]~~ is not allowed unless, in addition to
2624 meeting the requirements of Section ~~31A-17-404[;]~~ or 31A-17-404.1[;] ~~or 31A-17-404.2[;]~~, the
2625 reinsurance agreement provides in substance that if the ceding insurer is insolvent, the
2626 reinsurance is payable by the assuming insurer:

2627 (a) on the basis of the liability of the ceding insurer under the contract or contracts
2628 reinsured;

2629 (b) without diminution because of the insolvency of the ceding insurer; and

2630 (c) directly to the ceding insurer or to its domiciliary liquidator or receiver.

2631 (2) Subsection (1) applies except if:

2632 (a) a contract specifically provides another payee of the insurance in the event of the
2633 insolvency of the ceding insurer; or

2634 (b) the assuming insurer, with the consent of the one or more direct insureds, assumes
2635 the policy obligations of the ceding insurer:

2636 (i) as direct obligations of the assuming insurer to the payees under the policies; and

2637 (ii) in substitution for the obligations of the ceding insurer to the payees.

2638 Section 22. Section **31A-23a-111** is amended to read:

2639 **31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
2640 **terminating a license -- Rulemaking for renewal or reinstatement.**

2641 (1) A license type issued under this chapter remains in force until:

2642 (a) revoked or suspended under Subsection (5);

2643 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2644 administrative action;

2645 (c) the licensee dies or is adjudicated incompetent as defined under:

2646 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2647 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2648 Minors;

2649 (d) lapsed under Section [31A-23a-113](#); or

2650 (e) voluntarily surrendered.

2651 (2) The following may be reinstated within one year after the day on which the license
2652 is no longer in force:

2653 (a) a lapsed license; or

2654 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
2655 not be reinstated after the license period in which the license is voluntarily surrendered.

2656 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
2657 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2658 department from pursuing additional disciplinary or other action authorized under:

2659 (a) this title; or

2660 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2661 Administrative Rulemaking Act.

2662 (4) A line of authority issued under this chapter remains in force until:

2663 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

2664 or

2665 (b) the supporting license type:

2666 (i) is revoked or suspended under Subsection (5);

2667 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
2668 administrative action;

2669 (iii) lapses under Section 31A-23a-113; or

2670 (iv) is voluntarily surrendered; or

2671 (c) the licensee dies or is adjudicated incompetent as defined under:

2672 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2673 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2674 Minors.

2675 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an
2676 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2677 commissioner may:

2678 (i) revoke:

2679 (A) a license; or

2680 (B) a line of authority;

2681 (ii) suspend for a specified period of 12 months or less:

2682 (A) a license; or

2683 (B) a line of authority;

2684 (iii) limit in whole or in part:

2685 (A) a license; or

2686 (B) a line of authority; or

2687 (iv) deny a license application.

2688 (b) The commissioner may take an action described in Subsection (5)(a) if the
2689 commissioner finds that the licensee:

2690 (i) is unqualified for a license or line of authority under Section 31A-23a-104,
2691 31A-23a-105, or 31A-23a-107;

2692 (ii) violates:

2693 (A) an insurance statute;

- 2694 (B) a rule that is valid under Subsection 31A-2-201(3); or
2695 (C) an order that is valid under Subsection 31A-2-201(4);
2696 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
2697 delinquency proceedings in any state;
2698 (iv) fails to pay a final judgment rendered against the person in this state within 60
2699 days after the day on which the judgment became final;
2700 (v) fails to meet the same good faith obligations in claims settlement that is required of
2701 admitted insurers;
2702 (vi) is affiliated with and under the same general management or interlocking
2703 directorate or ownership as another insurance producer that transacts business in this state
2704 without a license;
2705 (vii) refuses:
2706 (A) to be examined; or
2707 (B) to produce its accounts, records, and files for examination;
2708 (viii) has an officer who refuses to:
2709 (A) give information with respect to the insurance producer's affairs; or
2710 (B) perform any other legal obligation as to an examination;
2711 (ix) provides information in the license application that is:
2712 (A) incorrect;
2713 (B) misleading;
2714 (C) incomplete; or
2715 (D) materially untrue;
2716 (x) violates an insurance law, valid rule, or valid order of another [state's insurance
2717 department] regulatory agency in any jurisdiction;
2718 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
2719 (xii) improperly withholds, misappropriates, or converts money or properties received
2720 in the course of doing insurance business;
2721 (xiii) intentionally misrepresents the terms of an actual or proposed:
2722 (A) insurance contract;
2723 (B) application for insurance; or
2724 (C) life settlement;

- 2725 (xiv) is convicted of a felony;
- 2726 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
- 2727 (xvi) in the conduct of business in this state or elsewhere:
- 2728 (A) uses fraudulent, coercive, or dishonest practices; or
- 2729 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
- 2730 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in
- 2731 another state, province, district, or territory;
- 2732 (xviii) forges another's name to:
- 2733 (A) an application for insurance; or
- 2734 (B) a document related to an insurance transaction;
- 2735 (xix) improperly uses notes or another reference material to complete an examination
- 2736 for an insurance license;
- 2737 (xx) knowingly accepts insurance business from an individual who is not licensed;
- 2738 (xxi) fails to comply with an administrative or court order imposing a child support
- 2739 obligation;
- 2740 (xxii) fails to:
- 2741 (A) pay state income tax; or
- 2742 (B) comply with an administrative or court order directing payment of state income
- 2743 tax;
- 2744 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law
- 2745 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 2746 prohibited from engaging in the business of insurance; or
- 2747 (xxiv) engages in a method or practice in the conduct of business that endangers the
- 2748 legitimate interests of customers and the public.
- 2749 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 2750 and any individual designated under the license are considered to be the holders of the license.
- 2751 (d) If an individual designated under the agency license commits an act or fails to
- 2752 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
- 2753 the commissioner may suspend, revoke, or limit the license of:
- 2754 (i) the individual;
- 2755 (ii) the agency, if the agency:

- 2756 (A) is reckless or negligent in its supervision of the individual; or
2757 (B) knowingly participates in the act or failure to act that is the ground for suspending,
2758 revoking, or limiting the license; or
2759 (iii) (A) the individual; and
2760 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
2761 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
2762 without a license if:
2763 (a) the licensee's license is:
2764 (i) revoked;
2765 (ii) suspended;
2766 (iii) limited;
2767 (iv) surrendered in lieu of administrative action;
2768 (v) lapsed; or
2769 (vi) voluntarily surrendered; and
2770 (b) the licensee:
2771 (i) continues to act as a licensee; or
2772 (ii) violates the terms of the license limitation.
2773 (7) A licensee under this chapter shall immediately report to the commissioner:
2774 (a) a revocation, suspension, or limitation of the person's license in another state, the
2775 District of Columbia, or a territory of the United States;
2776 (b) the imposition of a disciplinary sanction imposed on that person by another state,
2777 the District of Columbia, or a territory of the United States; or
2778 (c) a judgment or injunction entered against that person on the basis of conduct
2779 involving:
2780 (i) fraud;
2781 (ii) deceit;
2782 (iii) misrepresentation; or
2783 (iv) a violation of an insurance law or rule.
2784 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
2785 license in lieu of administrative action may specify a time, not to exceed five years, within
2786 which the former licensee may not apply for a new license.

2787 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
2788 former licensee may not apply for a new license for five years from the day on which the order
2789 or agreement is made without the express approval by the commissioner.

2790 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2791 a license issued under this part if so ordered by a court.

2792 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
2793 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2794 Section 23. Section **31A-23a-202** is amended to read:

2795 **31A-23a-202. Continuing education requirements.**

2796 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing
2797 education requirements for a producer and a consultant.

2798 (2) (a) The commissioner may not state a continuing education requirement in terms of
2799 formal education.

2800 (b) The commissioner may state a continuing education requirement in terms of hours
2801 of insurance-related instruction received.

2802 (c) Insurance-related formal education may be a substitute, in whole or in part, for the
2803 hours required under Subsection (2)(b).

2804 (3) (a) The commissioner shall impose continuing education requirements in
2805 accordance with a two-year licensing period in which the licensee meets the requirements of
2806 this Subsection (3).

2807 (b) (i) Except as provided in this section, the continuing education requirements shall
2808 require:

2809 (A) that a licensee complete 24 credit hours of continuing education for every two-year
2810 licensing period;

2811 (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses;
2812 and

2813 (C) that the licensee complete at least half of the required hours through classroom
2814 hours of insurance-related instruction.

2815 (ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be
2816 obtained through:

2817 (A) classroom attendance;

- 2818 (B) home study;
- 2819 (C) watching a video recording;
- 2820 (D) experience credit; or
- 2821 (E) another method provided by rule.
- 2822 (iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), an individual title insurance
- 2823 producer is required to complete 12 credit hours of continuing education for every two-year
- 2824 licensing period, with 3 of the credit hours being ethics courses unless the individual title
- 2825 insurance producer is licensed in this state as an individual title insurance producer for 20 or
- 2826 more consecutive years.
- 2827 (B) If an individual title insurance producer is licensed in this state as an individual
- 2828 title insurance producer for 20 or more consecutive years, the individual title insurance
- 2829 producer is required to complete 6 credit hours of continuing education for every two-year
- 2830 licensing period, with 3 of the credit hours being ethics courses.
- 2831 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance
- 2832 producer is considered to have met the continuing education requirements imposed under
- 2833 Subsection (3)(b)(iii)(A) or (B) if at the time of license renewal the individual title insurance
- 2834 producer:
- 2835 (I) provides the department evidence that the individual title insurance producer is an
- 2836 active member in good standing with the Utah State Bar;
- 2837 (II) is in compliance with the continuing education requirements of the Utah State Bar;
- 2838 and
- 2839 (III) if requested by the department, provides the department evidence that the
- 2840 individual title insurance producer complied with the continuing education requirements of the
- 2841 Utah State Bar.
- 2842 (c) A licensee may obtain continuing education hours at any time during the two-year
- 2843 licensing period.
- 2844 (d) (i) A licensee is exempt from continuing education requirements under this section
- 2845 if:
- 2846 (A) the licensee was first licensed before December 31, 1982;
- 2847 (B) the license does not have a continuous lapse for a period of more than one year,
- 2848 except for a license for which the licensee has had an exemption approved before May 11,

2849 2011;

2850 (C) the licensee requests an exemption from the department; and

2851 (D) the department approves the exemption.

2852 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is
2853 not required to apply again for the exemption.

2854 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2855 commissioner shall, by rule:

2856 (i) publish a list of insurance professional designations whose continuing education
2857 requirements can be used to meet the requirements for continuing education under Subsection
2858 (3)(b);

2859 (ii) authorize a continuing education provider or a state or national professional
2860 producer or consultant association to:

2861 (A) offer a qualified program for a license type or line of authority on a geographically
2862 accessible basis; and

2863 (B) collect a reasonable fee for funding and administration of a continuing education
2864 program, subject to the review and approval of the commissioner; and

2865 (iii) provide that membership by a producer or consultant in a state or national
2866 professional producer or consultant association is considered a substitute for the equivalent of
2867 two hours for each year during which the producer or consultant is a member of the
2868 professional association, except that the commissioner may not give more than two hours of
2869 continuing education credit in a year regardless of the number of professional associations of
2870 which the producer or consultant is a member.

2871 (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a
2872 professional producer or consultant association program may be less for an association
2873 member, on the basis of the member's affiliation expense, but shall preserve the right of a
2874 nonmember to attend without affiliation.

2875 (4) The commissioner shall approve a continuing education provider or continuing
2876 education course that satisfies the requirements of this section.

2877 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2878 commissioner shall by rule set the processes and procedures for continuing education provider
2879 registration and course approval.

2880 (6) The requirements of this section apply only to a producer or consultant who is an
2881 individual.

2882 (7) A nonresident producer or consultant is considered to have satisfied this state's
2883 continuing education requirements if the nonresident producer or consultant satisfies the
2884 nonresident producer's or consultant's home state's continuing education requirements for a
2885 licensed insurance producer or consultant.

2886 (8) A producer or consultant subject to this section shall keep documentation of
2887 completing the continuing education requirements of this section for two years after the end of
2888 the two-year licensing period to which the continuing education applies.

2889 Section 24. Section **31A-23a-206** is amended to read:

2890 **31A-23a-206. Special requirements for variable contracts line of authority.**

2891 (1) Before applying for a variable contracts line of authority:

2892 (a) a producer shall be licensed under Section **61-1-3** as a:

2893 (i) broker-dealer; or

2894 (ii) broker-dealer agent; and

2895 (b) a consultant shall be licensed under Section **61-1-3** as an:

2896 (i) investment adviser; or

2897 (ii) investment adviser representative.

2898 (2) A producer's or consultant's variable contracts line of authority is [~~revoked~~]
2899 canceled on the day the producer's or consultant's securities related license under Section
2900 **61-1-3** is no longer [~~valid~~] active.

2901 Section 25. Section **31A-23a-410** is amended to read:

2902 **31A-23a-410. Insurer's liability if insured pays premium to a licensee or group**
2903 **policyholder.**

2904 (1) Subject to Subsections (2) and (5), as between the insurer and the insured, the
2905 insurer is considered to have received the premium and is liable to the insured for losses
2906 covered by the insurance and for any unearned premiums upon cancellation of the insurance if
2907 an insurer, including a surplus lines insurer:

2908 (a) assumes a risk; and

2909 (b) the premium for that insurance is received by:

2910 (i) a licensee who placed the insurance;

- 2911 (ii) a group policyholder;
- 2912 (iii) an employer who deducts part or all of the premium from an employee's wages or
- 2913 salary; or
- 2914 (iv) an employer who pays all or part of the premium for an employee.
- 2915 (2) Subsection (1) does not apply if:
- 2916 (a) the insured pays a licensee, knowing the licensee does not intend to submit the
- 2917 premium to the insurer; or
- 2918 (b) the insured has premium withheld from the insured's wages or salary knowing the
- 2919 employer does not intend to submit it to the insurer.
- 2920 (3) (a) In the case of [~~an employer~~] a group policyholder who has received the premium
- 2921 [~~by deducting all or part of it from the wages or salaries of the certificate holders~~], the insurer
- 2922 may terminate its liability by giving notice of coverage termination to:
- 2923 (i) the certificate holders;
- 2924 (ii) the policyholder; and
- 2925 (iii) the producer, if any, for the policy.
- 2926 (b) The insurer may not send the notice required by Subsection (3)(a) to a certificate
- 2927 holder before 20 days after the day on which premium is due and unpaid.
- 2928 (c) The liability of the insurer for the losses covered by the insurance terminates at the
- 2929 later of:
- 2930 (i) the last day of the coverage period for which premium has been [~~withheld~~] received
- 2931 by the [~~employer~~] group policyholder;
- 2932 (ii) 10 days after the date the insurer mails notice to the certificate holder that coverage
- 2933 has terminated; or
- 2934 (iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days
- 2935 from the last date for which premium is received.
- 2936 (4) Despite [~~an employer's~~] a group policyholder's collection of premium under
- 2937 Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the
- 2938 insurance to group policy certificate holders terminates upon the effective date of notice from
- 2939 the policyholder that:
- 2940 (a) coverage of a similar kind and quality has been obtained from another insurer; or
- 2941 (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage

2942 and has given the [employees] certificate holder's notice of the termination.

2943 (5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or
2944 [employer] group policyholder who received the premium and failed to forward it is obligated
2945 to the insurer for the entire unpaid premium due under the policy together with reasonable
2946 expenses of suit and reasonable attorney fees.

2947 (6) If, under an employee health insurance plan, an employee builds up credit for future
2948 coverage because the employee has not used the policy protection, or in some other way, the
2949 insurer is obligated to the employee for that future coverage earned while the policy was in full
2950 effect.

2951 (7) (a) Notwithstanding that an insurer is liable for losses as provided in this section,
2952 this section applies only to apportion the liability for the losses described in this section.

2953 (b) This section does not:

2954 (i) extend a policy or coverage beyond its date of termination; or

2955 (ii) alter or amend a provision of a policy.

2956 Section 26. Section **31A-23b-401** is amended to read:

2957 **31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
2958 **terminating a license -- Rulemaking for renewal or reinstatement.**

2959 (1) A license as a navigator under this chapter remains in force until:

2960 (a) revoked or suspended under Subsection (4);

2961 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2962 administrative action;

2963 (c) the licensee dies or is adjudicated incompetent as defined under:

2964 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2965 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2966 Minors;

2967 (d) lapsed under this section; or

2968 (e) voluntarily surrendered.

2969 (2) The following may be reinstated within one year after the day on which the license
2970 is no longer in force:

2971 (a) a lapsed license; or

2972 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may

2973 not be reinstated after the license period in which the license is voluntarily surrendered.

2974 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
2975 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2976 department from pursuing additional disciplinary or other action authorized under:

2977 (a) this title; or

2978 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2979 Administrative Rulemaking Act.

2980 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
2981 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2982 commissioner may:

2983 (i) revoke a license;

2984 (ii) suspend a license for a specified period of 12 months or less;

2985 (iii) limit a license in whole or in part; or

2986 (iv) deny a license application.

2987 (b) The commissioner may take an action described in Subsection (4)(a) if the
2988 commissioner finds that the licensee:

2989 (i) is unqualified for a license under Section [31A-23b-204](#), [31A-23b-205](#), or
2990 [31A-23b-206](#);

2991 (ii) violated:

2992 (A) an insurance statute;

2993 (B) a rule that is valid under Subsection [31A-2-201\(3\)](#); or

2994 (C) an order that is valid under Subsection [31A-2-201\(4\)](#);

2995 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
2996 delinquency proceedings in any state;

2997 (iv) failed to pay a final judgment rendered against the person in this state within 60
2998 days after the day on which the judgment became final;

2999 (v) refused:

3000 (A) to be examined; or

3001 (B) to produce its accounts, records, and files for examination;

3002 (vi) had an officer who refused to:

3003 (A) give information with respect to the navigator's affairs; or

- 3004 (B) perform any other legal obligation as to an examination;
- 3005 (vii) provided information in the license application that is:
- 3006 (A) incorrect;
- 3007 (B) misleading;
- 3008 (C) incomplete; or
- 3009 (D) materially untrue;
- 3010 (viii) violated an insurance law, valid rule, or valid order of another ~~[state's insurance~~
- 3011 ~~department]~~ regulatory agency in any jurisdiction;
- 3012 (ix) obtained or attempted to obtain a license through misrepresentation or fraud;
- 3013 (x) improperly withheld, misappropriated, or converted money or properties received
- 3014 in the course of doing insurance business;
- 3015 (xi) intentionally misrepresented the terms of an actual or proposed:
- 3016 (A) insurance contract;
- 3017 (B) application for insurance; or
- 3018 (C) application for public program;
- 3019 (xii) is convicted of a felony;
- 3020 (xiii) admitted or is found to have committed an insurance unfair trade practice or
- 3021 fraud;
- 3022 (xiv) in the conduct of business in this state or elsewhere:
- 3023 (A) used fraudulent, coercive, or dishonest practices; or
- 3024 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3025 (xv) had an insurance license, navigator license, or its equivalent, denied, suspended,
- 3026 or revoked in another state, province, district, or territory;
- 3027 (xvi) forged another's name to:
- 3028 (A) an application for insurance;
- 3029 (B) a document related to an insurance transaction;
- 3030 (C) a document related to an application for a public program; or
- 3031 (D) a document related to an application for premium subsidies;
- 3032 (xvii) improperly used notes or another reference material to complete an examination
- 3033 for a license;
- 3034 (xviii) knowingly accepted insurance business from an individual who is not licensed;

3035 (xix) failed to comply with an administrative or court order imposing a child support
3036 obligation;

3037 (xx) failed to:

3038 (A) pay state income tax; or

3039 (B) comply with an administrative or court order directing payment of state income
3040 tax;

3041 (xxi) violated or permitted others to violate the federal Violent Crime Control and Law
3042 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
3043 prohibited from engaging in the business of insurance; or

3044 (xxii) engaged in a method or practice in the conduct of business that endangered the
3045 legitimate interests of customers and the public.

3046 (c) For purposes of this section, if a license is held by an agency, both the agency itself
3047 and any individual designated under the license are considered to be the holders of the license.

3048 (d) If an individual designated under the agency license commits an act or fails to
3049 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
3050 the commissioner may suspend, revoke, or limit the license of:

3051 (i) the individual;

3052 (ii) the agency, if the agency:

3053 (A) is reckless or negligent in its supervision of the individual; or

3054 (B) knowingly participates in the act or failure to act that is the ground for suspending,
3055 revoking, or limiting the license; or

3056 (iii) (A) the individual; and

3057 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

3058 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
3059 without a license if:

3060 (a) the licensee's license is:

3061 (i) revoked;

3062 (ii) suspended;

3063 (iii) surrendered in lieu of administrative action;

3064 (iv) lapsed; or

3065 (v) voluntarily surrendered; and

- 3066 (b) the licensee:
- 3067 (i) continues to act as a licensee; or
- 3068 (ii) violates the terms of the license limitation.
- 3069 (6) A licensee under this chapter shall immediately report to the commissioner:
- 3070 (a) a revocation, suspension, or limitation of the person's license in another state, the
- 3071 District of Columbia, or a territory of the United States;
- 3072 (b) the imposition of a disciplinary sanction imposed on that person by another state,
- 3073 the District of Columbia, or a territory of the United States; or
- 3074 (c) a judgment or injunction entered against that person on the basis of conduct
- 3075 involving:
- 3076 (i) fraud;
- 3077 (ii) deceit;
- 3078 (iii) misrepresentation; or
- 3079 (iv) a violation of an insurance law or rule.
- 3080 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
- 3081 license in lieu of administrative action may specify a time, not to exceed five years, within
- 3082 which the former licensee may not apply for a new license.
- 3083 (b) If no time is specified in an order or agreement described in Subsection (7)(a), the
- 3084 former licensee may not apply for a new license for five years from the day on which the order
- 3085 or agreement is made without the express approval of the commissioner.
- 3086 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 3087 a license issued under this chapter if so ordered by a court.
- 3088 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
- 3089 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3090 Section 27. Section **31A-25-208** is amended to read:
- 3091 **31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
- 3092 **terminating a license -- Rulemaking for renewal and reinstatement.**
- 3093 (1) A license type issued under this chapter remains in force until:
- 3094 (a) revoked or suspended under Subsection (4);
- 3095 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
- 3096 administrative action;

- 3097 (c) the licensee dies or is adjudicated incompetent as defined under:
3098 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
3099 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
3100 Minors;
3101 (d) lapsed under Section [31A-25-210](#); or
3102 (e) voluntarily surrendered.
3103 (2) The following may be reinstated within one year after the day on which the license
3104 is no longer in force:
3105 (a) a lapsed license; or
3106 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
3107 not be reinstated after the license period in which the license is voluntarily surrendered.
3108 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
3109 license, submission and acceptance of a voluntary surrender of a license does not prevent the
3110 department from pursuing additional disciplinary or other action authorized under:
3111 (a) this title; or
3112 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
3113 Administrative Rulemaking Act.
3114 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
3115 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
3116 commissioner may:
3117 (i) revoke a license;
3118 (ii) suspend a license for a specified period of 12 months or less;
3119 (iii) limit a license in whole or in part; or
3120 (iv) deny a license application.
3121 (b) The commissioner may take an action described in Subsection (4)(a) if the
3122 commissioner finds that the licensee:
3123 (i) is unqualified for a license under Section [31A-25-202](#), [31A-25-203](#), or [31A-25-204](#);
3124 (ii) has violated:
3125 (A) an insurance statute;
3126 (B) a rule that is valid under Subsection [31A-2-201](#)(3); or
3127 (C) an order that is valid under Subsection [31A-2-201](#)(4);

- 3128 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
3129 delinquency proceedings in any state;
- 3130 (iv) fails to pay a final judgment rendered against the person in this state within 60
3131 days after the day on which the judgment became final;
- 3132 (v) fails to meet the same good faith obligations in claims settlement that is required of
3133 admitted insurers;
- 3134 (vi) is affiliated with and under the same general management or interlocking
3135 directorate or ownership as another third party administrator that transacts business in this state
3136 without a license;
- 3137 (vii) refuses:
- 3138 (A) to be examined; or
3139 (B) to produce its accounts, records, and files for examination;
- 3140 (viii) has an officer who refuses to:
- 3141 (A) give information with respect to the third party administrator's affairs; or
3142 (B) perform any other legal obligation as to an examination;
- 3143 (ix) provides information in the license application that is:
- 3144 (A) incorrect;
3145 (B) misleading;
3146 (C) incomplete; or
3147 (D) materially untrue;
- 3148 (x) has violated an insurance law, valid rule, or valid order of another [~~state's insurance~~
3149 ~~department~~] regulatory agency in any jurisdiction;
- 3150 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3151 (xii) has improperly withheld, misappropriated, or converted money or properties
3152 received in the course of doing insurance business;
- 3153 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3154 (A) insurance contract; or
3155 (B) application for insurance;
- 3156 (xiv) has been convicted of a felony;
- 3157 (xv) has admitted or been found to have committed an insurance unfair trade practice
3158 or fraud;

- 3159 (xvi) in the conduct of business in this state or elsewhere has:
- 3160 (A) used fraudulent, coercive, or dishonest practices; or
- 3161 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3162 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in
- 3163 any other state, province, district, or territory;
- 3164 (xviii) has forged another's name to:
- 3165 (A) an application for insurance; or
- 3166 (B) a document related to an insurance transaction;
- 3167 (xix) has improperly used notes or any other reference material to complete an
- 3168 examination for an insurance license;
- 3169 (xx) has knowingly accepted insurance business from an individual who is not
- 3170 licensed;
- 3171 (xxi) has failed to comply with an administrative or court order imposing a child
- 3172 support obligation;
- 3173 (xxii) has failed to:
- 3174 (A) pay state income tax; or
- 3175 (B) comply with an administrative or court order directing payment of state income
- 3176 tax;
- 3177 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
- 3178 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 3179 prohibited from engaging in the business of insurance; or
- 3180 (xxiv) has engaged in methods and practices in the conduct of business that endanger
- 3181 the legitimate interests of customers and the public.
- 3182 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 3183 and any individual designated under the license are considered to be the holders of the agency
- 3184 license.
- 3185 (d) If an individual designated under the agency license commits an act or fails to
- 3186 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
- 3187 the commissioner may suspend, revoke, or limit the license of:
- 3188 (i) the individual;
- 3189 (ii) the agency if the agency:

- 3190 (A) is reckless or negligent in its supervision of the individual; or
3191 (B) knowingly participated in the act or failure to act that is the ground for suspending,
3192 revoking, or limiting the license; or
3193 (iii) (A) the individual; and
3194 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
3195 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
3196 without a license if:
3197 (a) the licensee's license is:
3198 (i) revoked;
3199 (ii) suspended;
3200 (iii) limited;
3201 (iv) surrendered in lieu of administrative action;
3202 (v) lapsed; or
3203 (vi) voluntarily surrendered; and
3204 (b) the licensee:
3205 (i) continues to act as a licensee; or
3206 (ii) violates the terms of the license limitation.
3207 (6) A licensee under this chapter shall immediately report to the commissioner:
3208 (a) a revocation, suspension, or limitation of the person's license in any other state, the
3209 District of Columbia, or a territory of the United States;
3210 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
3211 the District of Columbia, or a territory of the United States; or
3212 (c) a judgment or injunction entered against the person on the basis of conduct
3213 involving:
3214 (i) fraud;
3215 (ii) deceit;
3216 (iii) misrepresentation; or
3217 (iv) a violation of an insurance law or rule.
3218 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
3219 license in lieu of administrative action may specify a time, not to exceed five years, within
3220 which the former licensee may not apply for a new license.

3221 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
3222 former licensee may not apply for a new license for five years from the day on which the order
3223 or agreement is made without the express approval of the commissioner.

3224 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
3225 a license issued under this part if so ordered by the court.

3226 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
3227 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
3228 Section 28. Section 31A-26-213 is amended to read:

3229 **31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
3230 **terminating a license -- Rulemaking for renewal or reinstatement.**

3231 (1) A license type issued under this chapter remains in force until:

3232 (a) revoked or suspended under Subsection (5);

3233 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
3234 administrative action;

3235 (c) the licensee dies or is adjudicated incompetent as defined under:

3236 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3237 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
3238 Minors;

3239 (d) lapsed under Section 31A-26-214.5; or

3240 (e) voluntarily surrendered.

3241 (2) The following may be reinstated within one year after the day on which the license
3242 is no longer in force:

3243 (a) a lapsed license; or

3244 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
3245 not be reinstated after the license period in which it is voluntarily surrendered.

3246 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
3247 license, submission and acceptance of a voluntary surrender of a license does not prevent the
3248 department from pursuing additional disciplinary or other action authorized under:

3249 (a) this title; or

3250 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
3251 Administrative Rulemaking Act.

- 3252 (4) A license classification issued under this chapter remains in force until:
- 3253 (a) the qualifications pertaining to a license classification are no longer met by the
- 3254 licensee; or
- 3255 (b) the supporting license type:
- 3256 (i) is revoked or suspended under Subsection (5); or
- 3257 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
- 3258 administrative action.
- 3259 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an
- 3260 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
- 3261 commissioner may:
- 3262 (i) revoke:
- 3263 (A) a license; or
- 3264 (B) a license classification;
- 3265 (ii) suspend for a specified period of 12 months or less:
- 3266 (A) a license; or
- 3267 (B) a license classification;
- 3268 (iii) limit in whole or in part:
- 3269 (A) a license; or
- 3270 (B) a license classification; or
- 3271 (iv) deny a license application.
- 3272 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 3273 commissioner finds that the licensee:
- 3274 (i) is unqualified for a license or license classification under Section [31A-26-202](#),
- 3275 [31A-26-203](#), [31A-26-204](#), or [31A-26-205](#);
- 3276 (ii) has violated:
- 3277 (A) an insurance statute;
- 3278 (B) a rule that is valid under Subsection [31A-2-201\(3\)](#); or
- 3279 (C) an order that is valid under Subsection [31A-2-201\(4\)](#);
- 3280 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
- 3281 delinquency proceedings in any state;
- 3282 (iv) fails to pay a final judgment rendered against the person in this state within 60

- 3283 days after the judgment became final;
- 3284 (v) fails to meet the same good faith obligations in claims settlement that is required of
3285 admitted insurers;
- 3286 (vi) is affiliated with and under the same general management or interlocking
3287 directorate or ownership as another insurance adjuster that transacts business in this state
3288 without a license;
- 3289 (vii) refuses:
- 3290 (A) to be examined; or
3291 (B) to produce its accounts, records, and files for examination;
- 3292 (viii) has an officer who refuses to:
- 3293 (A) give information with respect to the insurance adjuster's affairs; or
3294 (B) perform any other legal obligation as to an examination;
- 3295 (ix) provides information in the license application that is:
- 3296 (A) incorrect;
3297 (B) misleading;
3298 (C) incomplete; or
3299 (D) materially untrue;
- 3300 (x) has violated an insurance law, valid rule, or valid order of another [~~state's insurance~~
3301 ~~department~~] regulatory agency in any jurisdiction;
- 3302 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3303 (xii) has improperly withheld, misappropriated, or converted money or properties
3304 received in the course of doing insurance business;
- 3305 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3306 (A) insurance contract; or
3307 (B) application for insurance;
- 3308 (xiv) has been convicted of a felony;
- 3309 (xv) has admitted or been found to have committed an insurance unfair trade practice
3310 or fraud;
- 3311 (xvi) in the conduct of business in this state or elsewhere has:
- 3312 (A) used fraudulent, coercive, or dishonest practices; or
3313 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

- 3314 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
3315 any other state, province, district, or territory;
- 3316 (xviii) has forged another's name to:
3317 (A) an application for insurance; or
3318 (B) a document related to an insurance transaction;
- 3319 (xix) has improperly used notes or any other reference material to complete an
3320 examination for an insurance license;
- 3321 (xx) has knowingly accepted insurance business from an individual who is not
3322 licensed;
- 3323 (xxi) has failed to comply with an administrative or court order imposing a child
3324 support obligation;
- 3325 (xxii) has failed to:
3326 (A) pay state income tax; or
3327 (B) comply with an administrative or court order directing payment of state income
3328 tax;
- 3329 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
3330 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
3331 prohibited from engaging in the business of insurance; or
- 3332 (xxiv) has engaged in methods and practices in the conduct of business that endanger
3333 the legitimate interests of customers and the public.
- 3334 (c) For purposes of this section, if a license is held by an agency, both the agency itself
3335 and any individual designated under the license are considered to be the holders of the license.
- 3336 (d) If an individual designated under the agency license commits an act or fails to
3337 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
3338 the commissioner may suspend, revoke, or limit the license of:
- 3339 (i) the individual;
3340 (ii) the agency, if the agency:
3341 (A) is reckless or negligent in its supervision of the individual; or
3342 (B) knowingly participated in the act or failure to act that is the ground for suspending,
3343 revoking, or limiting the license; or
3344 (iii) (A) the individual; and

- 3345 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- 3346 (6) A licensee under this chapter is subject to the penalties for conducting an insurance
- 3347 business without a license if:
 - 3348 (a) the licensee's license is:
 - 3349 (i) revoked;
 - 3350 (ii) suspended;
 - 3351 (iii) limited;
 - 3352 (iv) surrendered in lieu of administrative action;
 - 3353 (v) lapsed; or
 - 3354 (vi) voluntarily surrendered; and
 - 3355 (b) the licensee:
 - 3356 (i) continues to act as a licensee; or
 - 3357 (ii) violates the terms of the license limitation.
- 3358 (7) A licensee under this chapter shall immediately report to the commissioner:
 - 3359 (a) a revocation, suspension, or limitation of the person's license in any other state, the
 - 3360 District of Columbia, or a territory of the United States;
 - 3361 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
 - 3362 the District of Columbia, or a territory of the United States; or
 - 3363 (c) a judgment or injunction entered against that person on the basis of conduct
 - 3364 involving:
 - 3365 (i) fraud;
 - 3366 (ii) deceit;
 - 3367 (iii) misrepresentation; or
 - 3368 (iv) a violation of an insurance law or rule.
- 3369 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
- 3370 license in lieu of administrative action may specify a time not to exceed five years within
- 3371 which the former licensee may not apply for a new license.
 - 3372 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
 - 3373 former licensee may not apply for a new license for five years without the express approval of
 - 3374 the commissioner.
- 3375 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of

3376 a license issued under this part if so ordered by a court.

3377 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
3378 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3378a **Ĥ→ Section 31. Section 31A-27A-601 is amended to read: ←Ĥ**

3378b **31A-27a-601. Filing of claims.**

3378c (1) (a) Subject to the other provisions of this Subsection (1), proof of a claim shall be filed with the
3378d liquidator in the form required by Section 31A-27a-602 on or before the last day for filing specified in the
3378e notice required under Section 31A-27a-406.

3378f (b) The last day for filing specified in the notice may not be later than 18 months after the day on
3378g which the order of liquidation is entered unless the receivership court, for good cause shown, extends the
3378h time.

3378i (c) Proof of a claim for the following does not need to be filed unless the liquidator expressly
3378j requires filing of proof:

3378k (i) cash surrender value in life insurance and annuities;

3378l (ii) investment value in life insurance and annuities other than cash surrender value; and

3378m (iii) any other policy insuring the life of a person.

3378n (d) Only upon application of the liquidator, the receivership court may allow alternative procedures
3378o and requirements for the filing of proof of a claim or for allowing or proving a claim.

3378p (e) Upon application, if the receivership court dispenses with the requirements of filing a proof of
3378q claim by a person, class, or group of persons, a proof of claim for that person, class, or group is considered as
3378r being filed for all purposes, except that the receivership court's waiver of proof of claim requirements may
3378s not impact guaranty association proof of claim filing requirements or coverage determinations to the extent
3378t that the guaranty association statute or filing requirements are inconsistent with the receivership court's
3378u waiver of proof.

3378v (2) The liquidator may permit a claimant that makes a late filing to share ratably in distributions,
3378w whether past or future, as if the claim were not filed late, to the extent that the payment will not prejudice the
3378x orderly administration of the liquidation, under the following circumstances:

3378y (a) the eligibility to file a proof of claim was not known to the claimant, and the claimant files a
3378z proof of claim within 90 days after the day on which the claimant first learns of the eligibility;

3378aa (b) (i) a transfer to a creditor is:

3378ab (A) avoided under Section 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507; or

3378ac (B) voluntarily surrendered under Section 31A-27a-509; and

3378ad (ii) the filing satisfies the conditions of Section 31A-27a-509; or

3378ae (c) the valuation of security held by a secured creditor under Section 31A-27a-610 shows a
3378af deficiency and the claim for the deficiency is filed within 30 days after the valuation.

3378ag (3) If a reinsurer's reinsurance contract terminates pursuant to Section 31A-27a-513:

3378ah (a) a claim filed by the receiver which arises from the termination may not be considered late if

3378ai the claim is filed within 90 days of the day on which the reinsurance contract terminates; and

3378aj (b) the reinsurer shall receive a ratable share of distributions, whether past or future, as if the claim
3378ak described in Subsection (3)(a) is not late.

3378al (4) Notwithstanding any other provision of this chapter, the liquidator may petition the receivership
3378am court, subject to Section 31A-27a-107, to set a date certain after which no further claims may be filed.

3378an **Ĥ→ (5) A Class 1 claim pursuant to Subsection 31A-27a-701(2)(a) is not subject to the claim filing**
3378ao **provisions of this section.** ←Ĥ

3379 Section 29. Section **31A-27a-605** is amended to read:

3380 **31A-27a-605. Allowance of contingent and unliquidated claims.**

3381 (1) As used in this section, "claim" means a demand for payment pursuant to Section
3382 [31A-27a-601](#) under the terms and conditions of a contract issued by the insurer as a result of a
3383 known accident, casualty, disaster, loss, event, or occurrence.

3384 (2) (a) A claim of an insured or third party may be allowed under Section
3385 [31A-27a-603](#), regardless of the fact that it is contingent or unliquidated if:

3386 (i) any contingency is removed in accordance with Subsection (3); and

3387 (ii) the value of the claim is determined in accordance with Subsection (4).

3388 (b) A claim is contingent if:

3389 (i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or
3390 bonded against occurs on or before the date fixed under Section [~~31A-27a-601~~] [31A-27a-401](#);
3391 and

3392 (ii) the act or event triggering the insurer's obligation to pay has not occurred as of [~~the~~]
3393 that date [~~fixed under Section 31A-27a-401~~].

3394 (c) A claim is unliquidated if the insurer's obligation to pay is established, but the
3395 amount of the claim has not been determined.

3396 (3) (a) Unless the receivership court directs otherwise, a contingent claim may be
3397 allowed if:

3398 (i) the claimant presents proof of the insurer's obligation to pay reasonably satisfactory
3399 to the liquidator; or

3400 (ii) subject to Subsection (3)(b), the claim is based on a cause of action against an
3401 insured of the insurer, and:

3402 (A) it may be reasonably inferred from proof presented upon the claim that the
3403 claimant would be able to obtain a judgment; and

3404 (B) the person furnishes suitable proof.

3405 (b) A contingent claim may not be allowed under Subsection (3)(a)(ii)(B) if the
3406 receivership court for good cause shown shall otherwise direct that no further valid claims can

3407 be made against the insurer arising out of the cause of action other than those already
3408 presented.

3409 (4) (a) An unliquidated claim may be allowed if its amount has been determined.

3410 (b) If the amount of an unliquidated claim filed pursuant to Section 31A-27a-601
3411 remains undetermined, the valuation of the unliquidated claim may be made by estimate
3412 whenever the liquidator determines that:

3413 (i) liquidation of the claim would unduly delay the administration of the liquidation
3414 proceeding; or

3415 (ii) the administrative expense of processing and adjudicating the claim or group of
3416 claims of a similar type would be unduly excessive when compared with the property that is
3417 estimated to be available for distribution with respect to the claim.

3418 (c) Any estimate shall be based on an accepted method of valuing a claim with
3419 reasonable certainty at the claim's net present value, such as an actuarial evaluation.

3420 (5) (a) Notwithstanding the other provisions of this section, a claim for the value or
3421 breach of a life insurance policy, disability income insurance policy, long-term care insurance
3422 policy, or annuity may not result in or serve as the basis of any liability of a reinsurer of the
3423 insurer.

3424 (b) A reinsurer's liability to the insurer shall be determined exclusively on the basis of
3425 its contracts of reinsurance and Section 31A-27a-513.

3426 (6) (a) The liquidator may petition the receivership court to set a date certain before
3427 which all claims under this section shall be final.

3428 (b) In addition to the notice requirements of Section 31A-27a-107, the liquidator shall
3429 give notice of the filing of the petition to all claimants with claims that remain contingent or
3430 unliquidated under this section.

3431 Section 30. Section 31A-28-119 is amended to read:

3432 **31A-28-119. Prohibited advertisement of the association -- Notice to owners of**
3433 **policies and contracts.**

3434 (1) (a) Except as provided in Subsection (1)(b), a person, including an insurer, agent, or
3435 affiliate of an insurer may not make, publish, disseminate, circulate, or place before the public,
3436 or cause directly or indirectly to be made, published, disseminated, circulated, or placed before
3437 the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular,

3438 pamphlet, letter, or poster, or over a radio station or television station, or in any other way, any
3439 advertisement, announcement, or statement written or oral, that uses the existence of the
3440 association for the purpose of sales, solicitation, or inducement to purchase any form of
3441 insurance.

3442 (b) Notwithstanding Subsection (1)(a), this section does not apply to:

3443 (i) the association; or

3444 (ii) another entity that does not sell or solicit insurance.

3445 (2) (a) The association shall:

3446 (i) have a summary document describing the general purposes and current limitations
3447 of this part that complies with Subsection (3); and

3448 (ii) submit the summary document described in Subsection (2)(a)(i) to the
3449 commissioner for approval.

3450 (b) An insurer may not deliver a policy or contract to a policy or contract owner unless
3451 the summary document is also delivered to the policy or contract owner before, or at the time
3452 of, delivery of the policy or contract.

3453 (c) The summary document shall be available upon request by a policy owner.

3454 (d) The distribution, delivery, or contents or interpretation of the summary document
3455 does not guarantee that:

3456 (i) the policy or the contract is covered in the event of the impairment or insolvency of
3457 a member insurer; or

3458 (ii) the owner of the policy or contract is covered in the event of the impairment or
3459 insolvency of a member insurer.

3460 (e) The summary document shall be revised by the association as amendments to this
3461 part may require.

3462 (f) Failure to receive the summary document as required in Subsection (2)(b) does not
3463 give the owner of a policy or contract, certificate holder, or insured any greater rights than
3464 those stated in this part.

3465 (3) (a) The summary document described in Subsection (2) shall contain a clear and
3466 conspicuous disclaimer on its face.

3467 (b) The commissioner shall, by rule, establish the form and content of the disclaimer
3468 described in Subsection (3)(a), except that the disclaimer shall:

- 3469 (i) state the name and address of:
3470 (A) the association; and
3471 (B) the department;
- 3472 (ii) prominently warn a policy or contract owner that:
3473 (A) the association may not cover the policy or contract; or
3474 (B) if coverage is available, it is:
3475 (I) subject to substantial limitations and exclusions; and
3476 (II) conditioned on continued residence in the state;
- 3477 (iii) state the types of policies or contracts for which the association will provide
3478 coverage;
- 3479 (iv) state that the insurer and its agents are prohibited by law from using the existence
3480 of the association for the purpose of sales, solicitation, or inducement to purchase any form of
3481 insurance;
- 3482 (v) state that the policy or contract owner should not rely on coverage under the
3483 association when selecting an insurer;
- 3484 (vi) explain the rights available and procedures for filing a complaint to allege a
3485 violation of this part; and
- 3486 (vii) provide other information as directed by the commissioner including sources for
3487 information about the financial condition of insurers provided that the information:
3488 (A) is not proprietary; and
3489 (B) is subject to disclosure under public records laws.
- 3490 (4) ~~[(a) An insurer or agent may not deliver a]~~ A policy or contract described in
3491 Subsection [31A-28-103\(2\)\(a\)](#) and wholly excluded under Subsection [31A-28-103\(2\)\(b\)\(i\)](#) from
3492 coverage under this part ~~[unless the insurer or agent, prior to or at the time of delivery, gives~~
3493 ~~the policy or contract holder a separate written notice that]~~ shall clearly and conspicuously
3494 ~~[discloses]~~ disclose on the cover or face page that the policy or contract is not covered by the
3495 association.
- 3496 ~~[(b) The commissioner shall by rule specify the form and content of the notice required~~
3497 ~~by Subsection (4)(a).]~~
- 3498 (5) A member insurer shall retain evidence of compliance with Subsection (2) for the
3499 later of:

- 3500 (a) three years; or
- 3501 (b) until the conclusion of the next market conduct examination by the department of
- 3502 insurance where the member insurer is domiciled.

3503 Section 31. Section **31A-30-116** is amended to read:

3504 **31A-30-116. Essential health benefits.**

3505 (1) For purposes of this section, the [~~"Affordable Care Act" is as~~] PPACA means the

3506 same as that term is defined in Section [~~31A-2-212~~] 31A-1-301 and includes federal rules

3507 related to the offering of essential health benefits.

3508 (2) The state chooses to designate its own essential health benefits rather than accept a

3509 federal determination of the essential health benefits required to be offered in the individual

3510 and small group market for plans renewed or offered on or after January 1, 2014.

3511 (3) (a) Subject to Subsections (3)(b) and (c), to the extent required by the [~~Affordable~~

3512 ~~Care Act~~] PPACA, and after considering public testimony, the Legislature's Health System

3513 Reform Task Force shall recommend to the commissioner, no later than September 1, 2012, a

3514 benchmark plan for the state's essential health benefits based on:

- 3515 (i) the largest plan by enrollment in any of the three largest small employer group
- 3516 insurance products in the state's small employer group market;
- 3517 (ii) any of the largest three state employee health benefit plans by enrollment;
- 3518 (iii) the largest insured commercial non-Medicaid health maintenance organization
- 3519 operating in the state; or

3520 (iv) other benchmarks required or permitted by the [~~Affordable Care Act~~] PPACA.

3521 (b) Notwithstanding the provisions of Subsection 63N-11-106(2), based on the

3522 recommendation of the task force under Subsection (3)(a), and within 30 days of the task force

3523 recommendation, the commissioner shall adopt an emergency administrative rule that

3524 designates the essential health benefits that shall be included in a plan offered or renewed on or

3525 after January 1, 2014, in the small employer group and individual markets.

3526 (c) The essential health benefit plan:

3527 (i) shall not include a state mandate if the inclusion of the state mandate would require

3528 the state to contribute to premium subsidies under the [~~Affordable Care Act~~] PPACA; and

3529 (ii) may add benefits in addition to the benefits included in a benchmark plan described

3530 in Subsection (3)(b) if the additional benefits are mandated under the [~~Affordable Care Act~~]

3531 PPACA.

3532 Section 32. Section **31A-30-209** is amended to read:

3533 **31A-30-209. Insurance producers and the Health Insurance Exchange.**

3534 (1) A producer may be listed on the Health Insurance Exchange as a credentialed
3535 producer if the producer is designated as a credentialed agent for the Health Insurance
3536 Exchange in accordance with Subsection (2).

3537 (2) A producer whose license under this title authorizes the producer to sell accident
3538 and health insurance may be credentialed by the Health Insurance Exchange and may sell any
3539 product on the Health Insurance Exchange, if the producer:

3540 (a) is an appointed producer with:

3541 (i) all carriers that offer a plan in the defined contribution market on the Health
3542 Insurance Exchange; and

3543 (ii) at least one carrier that offers a dental plan on the Health Insurance Exchange; and

3544 (b) completes each year the Health Insurance Exchange training [~~that includes training~~
3545 ~~on premium assistance programs~~].

3546 (3) A carrier shall appoint a producer to sell the carrier's products in the defined
3547 contribution arrangement market of the Health Insurance Exchange, within 30 days of the
3548 notice required in Subsection (3)(b), if:

3549 (a) the producer is currently appointed by a majority of the carriers in the Health
3550 Insurance Exchange to sell products either outside or inside of the Health Insurance Exchange;
3551 and

3552 (b) the producer informs the carrier that the producer is:

3553 (i) applying to be appointed to the defined contribution arrangement market in the
3554 Health Insurance Exchange;

3555 (ii) appointed by a majority of the carriers in the defined contribution arrangement
3556 market in the Health Insurance Exchange;

3557 (iii) willing to complete training regarding the carrier's products offered on the defined
3558 contribution arrangement market in the Health Insurance Exchange; and

3559 (iv) willing to sign the contracts and business associate's agreements that the carrier
3560 requires for appointed producers in the Health Insurance Exchange.

3561 Section 33. Section **31A-31-112** is enacted to read:

3562 **31A-31-112. Insurance antifraud plan.**

3563 (1) An insurer, as defined in Section [31A-31-102](#), shall prepare, implement, and
3564 maintain an insurance antifraud plan for its operations in this state.

3565 (2) The insurance antifraud plan required by Subsection (1) shall outline specific
3566 procedures, actions, and safeguards that include how the authorized insurer or health
3567 maintenance organization will do each of the following:

3568 (a) detect, investigate, and prevent all forms of insurance fraud, including:

3569 (i) fraud involving its employees or agents;

3570 (ii) fraud resulting from misrepresentations in the application, renewal, or rating of
3571 insurance policies;

3572 (iii) fraudulent claims; and

3573 (iv) breach of security of its data processing systems;

3574 (b) educate employees of fraud detection and the insurance antifraud plan;

3575 (c) provide for fraud investigations, whether through the use of internal fraud
3576 investigators or third-party contractors;

3577 (d) report a suspected fraudulent insurance act, as described in Section [31A-31-103](#), to
3578 the department as required by Section [31A-31-110](#); and

3579 (e) pursue restitution for financial loss caused by insurance fraud.

3580 (3) The commissioner may investigate and examine the records and operations of
3581 authorized insurers and health maintenance organizations to determine if they have
3582 implemented and complied with the insurance antifraud plan.

3583 (4) The commissioner may:

3584 (a) direct any modification to the insurance antifraud plan necessary to comply with the
3585 requirements of this section; and

3586 (b) require action to remedy substantial noncompliance with the insurance antifraud
3587 plan.

3588 Section 34. Section **31A-35-404** is amended to read:

3589 **31A-35-404. Minimum financial requirements for bail bond surety company**
3590 **license.**

3591 (1) (a) A bail bond surety company that pledges the assets of a letter of credit from a
3592 Utah depository institution in connection with a judicial proceeding shall maintain an

3593 irrevocable letter of credit with a minimum face value of \$300,000 assigned to the state from a
3594 Utah depository institution.

3595 (b) Notwithstanding Subsection (1)(a), a bail bond surety company described in
3596 Subsection (1)(a) that is licensed under this chapter as of December 31, 1999, shall maintain an
3597 irrevocable letter of credit with a minimum face value of \$250,000 assigned to the state from a
3598 Utah depository institution.

3599 (2) (a) A bail bond surety company that pledges personal or real property, or both, as
3600 security for a bail bond in connection with a judicial proceeding shall maintain:

3601 (i) (A) a current year financial statement:

3602 (I) reviewed by a certified public accountant; and

3603 (II) showing a net worth of at least \$300,000, at least \$100,000 of which is in liquid
3604 assets; or

3605 (B) notwithstanding Subsection (2)(a)(i), if the bail bond surety company is licensed
3606 under this chapter as of December 31, 1999, a current financial statement:

3607 (I) reviewed by a certified public accountant; and

3608 (II) showing a net worth of at least \$250,000, at least \$50,000 of which is in liquid
3609 assets;

3610 (ii) a copy of the applicant's federal and state income tax return for the preceding two
3611 years; and

3612 (iii) for each parcel of real property owned by the applicant and included in net worth
3613 calculations:

3614 (A) a title letter; and

3615 (B) an appraisal dated not more than [~~two years prior to~~] six months before the date of
3616 application.

3617 (b) For purposes of this Subsection (2), only real or personal property located in Utah
3618 may be included in the net worth of the bail bond surety company.

3619 (3) A bail bond surety company shall maintain a qualifying power of attorney issued by
3620 a surety insurer:

3621 (a) if the bail bond surety company is the agent of the surety insurer; and

3622 (b) the surety insurer:

3623 (i) issues bail bonds;

- 3624 (ii) is in good standing in its state of domicile; and
- 3625 (iii) is granted a certificate to write bail bonds in Utah.
- 3626 (4) The commissioner may revoke the license of a bail bond surety company that fails
- 3627 to maintain the minimum financial requirements required under this section.
- 3628 (5) The commissioner may set by rule the limits on the aggregate amounts of bail
- 3629 bonds issued by a bail bond surety company.

3630 Section 35. Section **31A-37-102** is amended to read:

3631 **31A-37-102. Definitions.**

3632 As used in this chapter:

3633 (1) "Affiliated company" means a business entity that because of common ownership,

3634 control, operation, or management is in the same corporate or limited liability company system

3635 as:

- 3636 (a) a parent;
- 3637 (b) an industrial insured; or
- 3638 (c) a member organization.

3639 (2) "Alien captive insurance company" means an insurer:

- 3640 (a) formed to write insurance business for a parent or affiliate of the insurer; and
- 3641 (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes
- 3642 statutory or regulatory standards:

- 3643 (i) on a business entity transacting the business of insurance in the alien jurisdiction;
- 3644 and
- 3645 (ii) in a form acceptable to the commissioner.

3646 (3) "Association" means a legal association of two or more persons that has been in

3647 continuous existence for at least one year if:

- 3648 (a) the association or its member organizations:
- 3649 (i) own, control, or hold with power to vote all of the outstanding voting securities of
- 3650 an association captive insurance company incorporated as a stock insurer; or

- 3651 (ii) have complete voting control over an association captive insurance company
- 3652 incorporated as a mutual insurer;

- 3653 (b) the association's member organizations collectively constitute all of the subscribers
- 3654 of an association captive insurance company formed as a reciprocal insurer; or

3655 (c) the association or its member organizations have complete voting control over an
3656 association captive insurance company formed as a limited liability company.

3657 (4) "Association captive insurance company" means a business entity that insures risks
3658 of:

3659 (a) a member organization of the association;

3660 (b) an affiliate of a member organization of the association; and

3661 (c) the association.

3662 (5) "Branch business" means an insurance business transacted by a branch captive
3663 insurance company in this state.

3664 (6) "Branch captive insurance company" means an alien captive insurance company
3665 that has a certificate of authority from the commissioner to transact the business of insurance in
3666 this state through a [~~business unit with a principal place of business in~~] captive insurance
3667 company that is domiciled outside of this state.

3668 (7) "Branch operation" means a business operation of a branch captive insurance
3669 company in this state.

3670 (8) "Captive insurance company" means any of the following formed or holding a
3671 certificate of authority under this chapter:

3672 (a) a branch captive insurance company;

3673 (b) a pure captive insurance company;

3674 (c) an association captive insurance company;

3675 (d) a sponsored captive insurance company;

3676 (e) an industrial insured captive insurance company, including an industrial insured
3677 captive insurance company formed as a risk retention group captive in this state pursuant to the
3678 provisions of the Federal Liability Risk Retention Act of 1986;

3679 (f) a special purpose captive insurance company; or

3680 (g) a special purpose financial captive insurance company.

3681 (9) "Commissioner" means Utah's Insurance Commissioner or the commissioner's
3682 designee.

3683 (10) "Common ownership and control" means that two or more captive insurance
3684 companies are owned or controlled by the same person or group of persons as follows:

3685 (a) in the case of a captive insurance company that is a stock corporation, the direct or

3686 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

3687 (b) in the case of a captive insurance company that is a mutual corporation, the direct
3688 or indirect ownership of 80% or more of the surplus and the voting power of the mutual
3689 corporation;

3690 (c) in the case of a captive insurance company that is a limited liability company, the
3691 direct or indirect ownership by the same member or members of 80% or more of the
3692 membership interests in the limited liability company; or

3693 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
3694 captive insurance company owned and controlled by the protected cell's participant, only if:

3695 (i) the participant is the only participant with respect to the protected cell; and

3696 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
3697 captive insurance company through common ownership and control.

3698 (11) "Consolidated debt to total capital ratio" means the ratio of Subsection (11)(a) to
3699 (b).

3700 (a) This Subsection (11)(a) is an amount equal to the sum of all debts and hybrid
3701 capital instruments including:

3702 (i) all borrowings from depository institutions;

3703 (ii) all senior debt;

3704 (iii) all subordinated debts;

3705 (iv) all trust preferred shares; and

3706 (v) all other hybrid capital instruments that are not included in the determination of
3707 consolidated GAAP net worth issued and outstanding.

3708 (b) This Subsection (11)(b) is an amount equal to the sum of:

3709 (i) total capital consisting of all debts and hybrid capital instruments as described in
3710 Subsection (11)(a); and

3711 (ii) shareholders' equity determined in accordance with generally accepted accounting
3712 principles for reporting to the United States Securities and Exchange Commission.

3713 (12) "Consolidated GAAP net worth" means the consolidated shareholders' or
3714 members' equity determined in accordance with generally accepted accounting principles for
3715 reporting to the United States Securities and Exchange Commission.

3716 (13) "Controlled unaffiliated business" means a business entity:

- 3717 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or
3718 limited liability company system of a parent or the parent's affiliate; or
- 3719 (ii) in the case of an industrial insured captive insurance company, that is not in the
3720 corporate or limited liability company system of an industrial insured or an affiliated company
3721 of the industrial insured;
- 3722 (b) (i) in the case of a pure captive insurance company, that has a contractual
3723 relationship with a parent or affiliate; or
- 3724 (ii) in the case of an industrial insured captive insurance company, that has a
3725 contractual relationship with an industrial insured or an affiliated company of the industrial
3726 insured; and
- 3727 (c) whose risks are managed by one of the following in accordance with Subsection
3728 [31A-37-106\(1\)\(j\)](#):
- 3729 (i) a pure captive insurance company; or
- 3730 (ii) an industrial insured captive insurance company.
- 3731 (14) "Department" means the Insurance Department.
- 3732 (15) "Industrial insured" means an insured:
- 3733 (a) that produces insurance:
- 3734 (i) by the services of a full-time employee acting as a risk manager or insurance
3735 manager; or
- 3736 (ii) using the services of a regularly and continuously qualified insurance consultant;
- 3737 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
- 3738 and
- 3739 (c) that has at least 25 full-time employees.
- 3740 (16) "Industrial insured captive insurance company" means a business entity that:
- 3741 (a) insures risks of the industrial insureds that comprise the industrial insured group;
- 3742 and
- 3743 (b) may insure the risks of:
- 3744 (i) an affiliated company of an industrial insured; or
- 3745 (ii) a controlled unaffiliated business of:
- 3746 (A) an industrial insured; or
- 3747 (B) an affiliated company of an industrial insured.

- 3748 (17) "Industrial insured group" means:
- 3749 (a) a group of industrial insureds that collectively:
- 3750 (i) own, control, or hold with power to vote all of the outstanding voting securities of
- 3751 an industrial insured captive insurance company incorporated or organized as a limited liability
- 3752 company as a stock insurer; or
- 3753 (ii) have complete voting control over an industrial insured captive insurance company
- 3754 incorporated or organized as a limited liability company as a mutual insurer;
- 3755 (b) a group that is:
- 3756 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901
- 3757 et seq., as amended, as a corporation or other limited liability association; and
- 3758 (ii) taxable under this title as a:
- 3759 (A) stock corporation; or
- 3760 (B) mutual insurer; or
- 3761 (c) a group that has complete voting control over an industrial captive insurance
- 3762 company formed as a limited liability company.
- 3763 (18) "Member organization" means a person that belongs to an association.
- 3764 (19) "Parent" means a person that directly or indirectly owns, controls, or holds with
- 3765 power to vote more than 50% of:
- 3766 (a) the outstanding voting securities of a pure captive insurance company; or
- 3767 (b) the pure captive insurance company, if the pure captive insurance company is
- 3768 formed as a limited liability company.
- 3769 (20) "Participant" means an entity that is insured by a sponsored captive insurance
- 3770 company:
- 3771 (a) if the losses of the participant are limited through a participant contract to the assets
- 3772 of a protected cell; and
- 3773 (b)(i) the entity is permitted to be a participant under Section [31A-37-403](#); or
- 3774 (ii) the entity is an affiliate of an entity permitted to be a participant under Section
- 3775 [31A-37-403](#).
- 3776 (21) "Participant contract" means a contract by which a sponsored captive insurance
- 3777 company:
- 3778 (a) insures the risks of a participant; and

3779 (b) limits the losses of the participant to the assets of a protected cell.

3780 (22) "Protected cell" means a separate account established and maintained by a
3781 sponsored captive insurance company for one participant.

3782 (23) "Pure captive insurance company" means a business entity that insures risks of a
3783 parent or affiliate of the business entity.

3784 (24) "Special purpose financial captive insurance company" is as defined in Section
3785 [31A-37a-102](#).

3786 (25) "Sponsor" means an entity that:

3787 (a) meets the requirements of Section [31A-37-402](#); and

3788 (b) is approved by the commissioner to:

3789 (i) provide all or part of the capital and surplus required by applicable law in an amount
3790 of not less than $\hat{H} \rightarrow \{H\} \$350,000 \{H\} [\underline{\$250,000}] \leftarrow \hat{H}$, which amount the commissioner may
3790a increase by order if
3791 the commissioner considers it necessary; and

3792 (ii) organize and operate a sponsored captive insurance company.

3793 (26) "Sponsored captive insurance company" means a captive insurance company:

3794 (a) in which the minimum capital and surplus required by applicable law is provided by
3795 one or more sponsors;

3796 (b) that is formed or holding a certificate of authority under this chapter;

3797 (c) that insures the risks of a separate participant through the contract; and

3798 (d) that segregates each participant's liability through one or more protected cells.

3799 (27) "Treasury rates" means the United States Treasury strip asked yield as published
3800 in the Wall Street Journal as of a balance sheet date.

3801 Section 36. Section **31A-37-103** is amended to read:

3802 **31A-37-103. Chapter exclusivity.**

3803 (1) Except as provided in Subsections (2) and (3) or otherwise provided in this chapter,
3804 a provision of this title other than this chapter does not apply to a captive insurance company.

3805 (2) To the extent that a provision of the following does not contradict this chapter, the
3806 provision applies to a captive insurance company that receives a certificate of authority under
3807 this chapter:

3808 (a) Chapter 2, Administration of the Insurance Laws;

3809 (b) Chapter 4, Insurers in General;

- 3810 (c) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 3811 (d) Chapter 14, Foreign Insurers;
- 3812 (e) Chapter 16, Insurance Holding Companies;
- 3813 (f) Chapter 17, Determination of Financial Condition;
- 3814 (g) Chapter 18, Investments;
- 3815 (h) Chapter 19a, Utah Rate Regulation Act;
- 3816 (i) Chapter 27, Delinquency Administrative Action Provisions; and
- 3817 (j) Chapter 27a, Insurer Receivership Act.
- 3818 (3) In addition to this chapter, and subject to Section 31A-37a-103:
- 3819 (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to
- 3820 a special purpose financial captive insurance company; and
- 3821 (b) for purposes of a special purpose financial captive insurance company, a reference
- 3822 in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial
- 3823 Captive Insurance Company Act.
- 3824 (4) In addition to this chapter, an industrial group captive insurance company formed
- 3825 as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to
- 3826 the extent that this chapter is silent regarding regulation of risk retention groups conducting
- 3827 business in the state.
- 3828 Section 37. Section 31A-37-204 is amended to read:
- 3829 **31A-37-204. Paid-in capital -- Other capital.**
- 3830 (1) (a) The commissioner may not issue a certificate of authority to a company
- 3831 described in Subsection (1)(c) unless the company possesses and thereafter maintains
- 3832 unimpaired paid-in capital and unimpaired paid-in surplus of:
- 3833 (i) in the case of a pure captive insurance company, not less than \$250,000;
- 3834 (ii) in the case of an association captive insurance company incorporated as a stock
- 3835 insurer, not less than \$750,000;
- 3836 (iii) in the case of an industrial insured captive insurance company incorporated as a
- 3837 stock insurer, not less than \$700,000;
- 3838 (iv) in the case of a sponsored captive insurance company, not less than \$1,000,000, of
- 3839 which a minimum of ~~Ĥ~~ → [H] \$350,000 [H] ~~[\$250,000]~~ ← ~~Ĥ~~ is provided by the sponsor; or
- 3840 (v) in the case of a special purpose captive insurance company, an amount determined

3841 by the commissioner after giving due consideration to the company's business plan, feasibility
3842 study, and pro-formas, including the nature of the risks to be insured.

3843 (b) The paid-in capital and surplus required under this Subsection (1) may be in the
3844 form of:

3845 (i) (A) cash; or

3846 (B) cash equivalent; [~~or~~]

3847 (ii) an irrevocable letter of credit:

3848 (A) issued by:

3849 (I) a bank chartered by this state; or

3850 (II) a member bank of the Federal Reserve System; and

3851 (B) approved by the commissioner[-]; or

3852 (iii) marketable securities as determined by Subsections [31A-18-105\(1\)](#) and (6).

3853 (c) This Subsection (1) applies to:

3854 (i) a pure captive insurance company;

3855 (ii) a sponsored captive insurance company;

3856 (iii) a special purpose captive insurance company;

3857 (iv) an association captive insurance company incorporated as a stock insurer; or

3858 (v) an industrial insured captive insurance company incorporated as a stock insurer.

3859 (2) (a) The commissioner may, under Section [31A-37-106](#), prescribe additional capital
3860 based on the type, volume, and nature of insurance business transacted.

3861 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the
3862 form of:

3863 (i) cash; [~~or~~]

3864 (ii) an irrevocable letter of credit issued by:

3865 (A) a bank chartered by this state; or

3866 (B) a member bank of the Federal Reserve System[-]; or

3867 (iii) marketable securities as determined by Subsections [31A-18-105\(1\)](#) and (6).

3868 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as
3869 security for the payment of liabilities attributable to branch operations, shall, through its branch
3870 operations, establish and maintain a trust fund:

3871 (i) funded by an irrevocable letter of credit or other acceptable asset; and

3872 (ii) in the United States for the benefit of:
3873 (A) United States policyholders; and
3874 (B) United States ceding insurers under:
3875 (I) insurance policies issued; or
3876 (II) reinsurance contracts issued or assumed.
3877 (b) The amount of the security required under this Subsection (3) shall be no less than:
3878 (i) the capital and surplus required by this chapter; and
3879 (ii) the reserves on the insurance policies or reinsurance contracts, including:
3880 (A) reserves for losses;
3881 (B) allocated loss adjustment expenses;
3882 (C) incurred but not reported losses; and
3883 (D) unearned premiums with regard to business written through branch operations.
3884 (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may
3885 permit a branch captive insurance company that is required to post security for loss reserves on
3886 branch business by its reinsurer to reduce the funds in the trust account required by this section
3887 by the same amount as the security posted if the security remains posted with the reinsurer.
3888 (4) (a) A captive insurance company may not pay the following without the prior
3889 approval of the commissioner:
3890 (i) a dividend out of capital or surplus in excess of the limits under Section
3891 16-10a-640; or
3892 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
3893 16-10a-640.
3894 (b) The commissioner shall condition approval of an ongoing plan for the payment of
3895 dividends or other distributions on the retention, at the time of each payment, of capital or
3896 surplus in excess of:
3897 (i) amounts specified by the commissioner under Section 31A-37-106; or
3898 (ii) determined in accordance with formulas approved by the commissioner under
3899 Section 31A-37-106.
3900 (5) Notwithstanding Subsection (1), a captive insurance company organized as a
3901 reciprocal insurer under this chapter may not be issued a certificate of authority unless the
3902 captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.

3903 (6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based
3904 upon the type, volume, and nature of the insurance business transacted.

3905 (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the
3906 form of an irrevocable letter of credit issued by:

3907 (i) a bank chartered by this state; or

3908 (ii) a member bank of the Federal Reserve System.

3909 Section 38. Section **31A-37-303** is amended to read:

3910 **31A-37-303. Reinsurance.**

3911 (1) A captive insurance company may provide reinsurance, as authorized in this title,
3912 on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.

3913 (2) (a) A captive insurance company may take credit for reserves on risks or portions of
3914 risks ceded to reinsurers if the captive insurance company complies with Section [31A-17-404](#),
3915 [31A-17-404.1](#), [31A-17-404.3](#), or [31A-17-404.4](#) or if the captive insurance company complies
3916 with other requirements as the commissioner may establish by rule made in accordance with
3917 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3918 (b) Unless the reinsurer is in compliance with Section [31A-17-404](#), [31A-17-404.1](#),
3919 [31A-17-404.3](#), or [31A-17-404.4](#) or a rule adopted under Subsection (2)(a), a captive insurance
3920 company may not take credit for:

3921 (i) reserves on risks ceded to a reinsurer; or

3922 (ii) portions of risks ceded to a reinsurer.

3923 Section 39. Section **31A-37-501** is amended to read:

3924 **31A-37-501. Reports to commissioner.**

3925 (1) A captive insurance company is not required to make a report except those
3926 provided in this chapter.

3927 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the
3928 commissioner a report of the financial condition of the captive insurance company, verified by
3929 oath of [~~two~~] one of the executive officers of the captive insurance company.

3930 (b) Except as provided in Section [31A-37-204](#), a captive insurance company shall
3931 report:

3932 (i) using generally accepted accounting principles, except to the extent that the
3933 commissioner requires, approves, or accepts the use of a statutory accounting principle;

3934 (ii) using a useful or necessary modification or adaptation to an accounting principle
3935 that is required, approved, or accepted by the commissioner for the type of insurance and kind
3936 of insurer to be reported upon; and

3937 (iii) supplemental or additional information required by the commissioner.

3938 (c) Except as otherwise provided:

3939 (i) a licensed captive insurance company shall file the report required by Section
3940 31A-4-113; and

3941 (ii) an industrial insured group shall comply with Section 31A-4-113.5.

3942 (3) (a) A pure captive insurance company may make written application to file the
3943 required report on a fiscal year end that is consistent with the fiscal year of the parent company
3944 of the pure captive insurance company.

3945 (b) If the commissioner grants an alternative reporting date for a pure captive insurance
3946 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal
3947 year end.

3948 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall
3949 file with the commissioner a copy of the reports and statements required to be filed under the
3950 laws of the jurisdiction in which the alien captive insurance company is formed, verified by
3951 oath by two of the alien captive insurance company's executive officers.

3952 (b) If the commissioner is satisfied that the annual report filed by the alien captive
3953 insurance company in the jurisdiction in which the alien captive insurance company is formed
3954 provides adequate information concerning the financial condition of the alien captive insurance
3955 company, the commissioner may waive the requirement for completion of the annual statement
3956 required for a captive insurance company under this section with respect to business written in
3957 the alien or foreign jurisdiction.

3958 (c) A waiver by the commissioner under Subsection (4)(b):

3959 (i) shall be in writing; and

3960 (ii) is subject to public inspection.

3961 (5) Before March 1 of each year, a sponsored cell captive insurance company shall
3962 submit to the commissioner a consolidated report of the financial condition of each individual
3963 protected cell, including a financial statement for each protected cell.

3964 Section 40. Section 31A-37-502 is amended to read:

3965 **31A-37-502. Examination.**

3966 (1) (a) As provided in this section, the commissioner, or a person appointed by the
3967 commissioner, shall examine each captive insurance company in each five-year period.

3968 (b) The five-year period described in Subsection (1)(a) shall be determined on the basis
3969 of five full annual accounting periods of operation.

3970 (c) The examination is to be made as of:

3971 (i) December 31 of the full [~~three-year~~] five-year period; or

3972 (ii) the last day of the month of an annual accounting period authorized for a captive
3973 insurance company under this section.

3974 (d) In addition to an examination required under this Subsection (1), the commissioner,
3975 or a person appointed by the commissioner may examine a captive insurance company
3976 whenever the commissioner determines it to be prudent.

3977 (2) During an examination under this section the commissioner, or a person appointed
3978 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance
3979 company to ascertain:

3980 (a) the financial condition of the captive insurance company;

3981 (b) the ability of the captive insurance company to fulfill the obligations of the captive
3982 insurance company; and

3983 (c) whether the captive insurance company has complied with this chapter.

3984 (3) The commissioner may accept a comprehensive annual independent audit in lieu of
3985 an examination:

3986 (a) of a scope satisfactory to the commissioner; and

3987 (b) performed by an independent auditor approved by the commissioner.

3988 (4) A captive insurance company that is inspected and examined under this section
3989 shall pay, as provided in Subsection [31A-37-202\(6\)\(b\)](#), the expenses and charges of an
3990 inspection and examination.

3991 Section 41. Section **31A-40-208** is amended to read:

3992 **31A-40-208. Benefit plan.**

3993 (1) A client and a professional employer organization licensed under this chapter shall
3994 each be considered an employer for purposes of sponsoring a retirement or welfare benefit plan
3995 for a covered employee.

3996 (2) (a) A fully insured welfare benefit plan offered to a covered employee of a single
3997 professional employer organization licensed under this chapter[~~-(a)~~] is to be treated as a single
3998 employer welfare benefit plan for purposes of this title and rules made under this title[~~;~~].

3999 [~~(b) may not be considered an employer welfare fund or plan, as described in Section~~
4000 ~~31A-13-101, and]~~

4001 [(~~e~~)] (b) The single professional employer organization that sponsors the fully insured
4002 welfare plan is exempt from the registration requirements under this title for:

4003 (i) an insurance provider; or

4004 (ii) an employer welfare fund or plan.

4005 (3) For purposes of Chapter 30, Individual, Small Employer, and Group Health
4006 Insurance Act:

4007 (a) a professional employer organization licensed under this chapter is considered the
4008 employer of a covered employee; and

4009 (b) all covered employees of one or more clients participating in a health benefit plan
4010 sponsored by a single professional employer organization licensed under this chapter are
4011 considered employees of that professional employer organization.

4012 (4) A professional employer organization licensed under this chapter may offer to a
4013 covered employee a health benefit plan that is not fully insured by an authorized insurer, only
4014 if:

4015 (a) the professional employer organization has operated as a professional employer
4016 organization for at least one year before the day on which the professional employer
4017 organization offers the health benefit plan; and

4018 (b) the health benefit plan:

4019 (i) is administered by a third-party administrator licensed to do business in this state;

4020 (ii) holds all assets of the health benefit plan, including participant contributions, in a
4021 trust account;

4022 (iii) has and maintains reserves that are sound for the health benefit plan as determined
4023 by an actuary who:

4024 (A) uses generally accepted actuarial standards of practice; and

4025 (B) is an independent qualified actuary, including not being an employee or covered
4026 employee of the professional employer organization;

4027 (iv) provides written notice to a covered employee participating in the health benefit
4028 plan that the health benefit plan is self-insured or is not fully insured;

4029 (v) consents to an audit:

4030 (A) on a random basis; or

4031 (B) upon a finding of a reasonable need by the commissioner; and

4032 (vi) provides for continuation of coverage in compliance with Section 31A-22-722.

4033 (5) The cost of an audit described in Subsection (4)(b)(v) shall be paid by the
4034 sponsoring professional employer organization.

4035 (6) A plan of a professional employer organization described in Subsection (4) that is
4036 not fully insured:

4037 (a) is subject to the requirements of this section; and

4038 (b) is not subject to another licensure or approval requirement of this title.

4039 Section 42. Section 31A-41-202 is amended to read:

4040 **31A-41-202. Assessments.**

4041 (1) [~~Beginning January 1, 2009, an~~] An agency title insurance producer licensed under
4042 this title shall pay an annual assessment determined by the commission by rule made in
4043 accordance with Section 31A-2-404, except that the annual assessment:

4044 (a) may not exceed \$1,000; and

4045 (b) shall be determined on the basis of title insurance premium volume.

4046 (2) [~~Beginning January 1, 2009, an~~] An individual who applies for a license or renewal
4047 of a license as an individual title insurance producer, shall pay in addition to any other fee
4048 required by this title, an assessment not to exceed \$20, as determined by the commission by
4049 rule made in accordance with Section 31A-2-404, except that if the individual holds more than
4050 one license, the total of all assessments under this Subsection (2) may not exceed \$20 in a
4051 fiscal year.

4052 (3) (a) To be licensed as an agency title insurance producer [~~on or after July 1, 2008~~], a
4053 person shall pay to the department an assessment of \$1,000 before the day on which the person
4054 is licensed as a title insurance agency.

4055 (b) (i) [~~By no later than July 15, 2008, the~~] The department shall assess on [~~an~~] a
4056 licensed agency title insurance producer [~~licensed as of June 30, 2008;~~] an amount equal to the
4057 greater of:

- 4058 (A) \$1,000; or
- 4059 (B) subject to Subsection (3)(b)(ii), 2% of the balance [~~as of December 31, 2007;~~] in
- 4060 the agency title insurance producer's reserve account described in Subsection 31A-23a-204(3).
- 4061 (ii) The department may assess on an agency title insurance producer an amount less
- 4062 than 2% of the balance described in Subsection (3)(b)(i)(B) if:
- 4063 (A) before issuing the assessments under this Subsection (3)(b) the department
- 4064 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;
- 4065 (B) the amount assessed on the agency title insurance producer is not less than \$1,000;
- 4066 and
- 4067 (C) the department reduces the assessment in a proportionate amount for agency title
- 4068 insurance producers assessed on the basis of the 2% of the balance described in Subsection
- 4069 (3)(b)(i)(B).
- 4070 (iii) An agency title insurance producer assessed under this Subsection (3)(b) shall pay
- 4071 the assessment by no later than August 1 [~~, 2008~~].
- 4072 (4) The department may not assess a title insurance licensee an assessment for
- 4073 purposes of the fund if that assessment is not expressly provided for in this section.

4074 Section 43. Section 31A-41-301 is amended to read:

4075 **31A-41-301. Procedure for making a claim against the fund.**

4076 [~~(1)(a) To bring a claim against the fund a person shall notify the department within 30~~
4077 ~~business days of the day on which the person files an action against a title insurance licensee~~
4078 ~~alleging the following related to a title insurance transaction:]~~

4079 [~~(i) fraud;~~]

4080 [~~(ii) misrepresentation; or~~]

4081 [~~(iii) deceit.]~~

4082 [~~(b) The notification required by Subsection (1)(a) shall be:]~~

4083 [~~(i) in writing; and~~]

4084 [~~(ii) signed by the person who provides the notice.]~~

4085 [~~(c) Within 30 days of the day on which the department receives a notice under~~
4086 ~~Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).]~~

4087 [(2)(a) Subject to the other provisions in this section, a person who provides the notice
4088 required under Subsection (1) may maintain a claim against the fund if:]

4089 ~~[(i) in an action described in Subsection (1), the person obtains a final judgment in a~~
4090 ~~court of competent jurisdiction in this state against a title insurance licensee;]~~

4091 ~~[(ii) all proceedings including appeals related to the final judgment described in~~
4092 ~~Subsection (2)(a)(i) are at an end; and]~~

4093 ~~[(iii) the person files a verified petition in the court where the judgment is entered for~~
4094 ~~an order directing payment from the fund for the uncollected actual damages included in the~~
4095 ~~judgment and unpaid;]~~

4096 ~~[(b) A court may not direct the payment from the fund of:]~~

4097 ~~[(i) punitive damages;]~~

4098 ~~[(ii) attorney fees;]~~

4099 ~~[(iii) interest; or]~~

4100 ~~[(iv) court costs;]~~

4101 ~~[(c) Regardless of the number of claimants or parcels of real estate involved in a single~~
4102 ~~real estate transaction, the liability of the fund may not exceed:]~~

4103 ~~[(i) \$15,000 for a single real estate transaction; or]~~

4104 ~~[(ii) \$50,000 for all transactions of a title insurance license;]~~

4105 ~~[(d) A person shall:]~~

4106 ~~[(i) serve the verified petition required by Subsection (2)(a) on the department; and]~~

4107 ~~[(ii) file an affidavit of service with the court;]~~

4108 ~~[(3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days~~
4109 ~~after the day on which the department is served;]~~

4110 ~~[(b) The person who files the petition may recover from the fund only if the person~~
4111 ~~shows all of the following:]~~

4112 (1) To recover from the fund, a person shall:

4113 (a) obtain a final judgment against a title insurance licensee establishing that fraud,
4114 misrepresentation, or deceit by the licensee in a real estate transaction proximately caused
4115 economic harm to the person; and

4116 (b) apply to the department to receive compensation for the economic harm from the
4117 fund.

4118 (2) An application under Subsection (1)(b) shall establish all of the following:

4119 ~~[(i)]~~ (a) the [person] applicant is not a spouse of the judgment debtor or the personal

4120 representative of the spouse;

4121 ~~[(ii) the person complied with this chapter;]~~

4122 ~~[(iii) (b) the [person] applicant has obtained a final judgment in accordance with [this~~
4123 ~~section indicating the amount of the judgment awarded] Subsections (1)(a) and (3);~~

4124 ~~[(iv) (c) [the] an amount is still [owing] owed on the judgment at the date of the~~
4125 ~~[petition] application;~~

4126 ~~[(v) (d) the [person] applicant has had a writ of execution issued under the judgment,~~
4127 ~~and the officer executing the writ has returned showing that:~~

4128 ~~[(A) (i) no property subject to execution in satisfaction of the judgment could be~~
4129 ~~found; or~~

4130 ~~[(B) (ii) the amount realized upon the execution levied against the property of the~~
4131 ~~judgment debtor is insufficient to satisfy the judgment;~~

4132 ~~[(vi) (e) the [person] applicant has made reasonable searches and inquiries to ascertain~~
4133 ~~whether the judgment debtor has any interest in property, real or personal, that may satisfy the~~
4134 ~~judgment; and~~

4135 ~~[(vii) (f) the [person] applicant has exercised reasonable diligence to secure payment~~
4136 ~~of the judgment from the assets of the judgment debtor.~~

4137 ~~[(4) If the person described in Subsection (3) satisfies the court that it is not practicable~~
4138 ~~for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through~~
4139 ~~(vii), the court may waive those requirements.]~~

4140 ~~[(5) (a) A judgment that is the basis for a claim against the fund may not have been~~
4141 ~~discharged in bankruptcy.]~~

4142 ~~[(b) If a bankruptcy proceeding is still open or is commenced during the pendency of~~
4143 ~~the claim, the person bringing a claim against the fund shall obtain an order from the~~
4144 ~~bankruptcy court declaring the judgement and debt to be nondischargeable.]~~

4145 (3) (a) A final judgment under Subsection (1)(a) does not include a default judgment
4146 entered against a title insurance licensee. If grounds exist for a default judgment against a title
4147 insurance licensee, the requirement of a final judgment may be satisfied by complying with
4148 Section [31A-41-302](#).

4149 (b) A final judgment under Subsection (1)(a) does not include a judgment that is
4150 discharged in bankruptcy. If a bankruptcy proceeding is open or is commenced during the

4151 pendency of an application under Subsection (1)(b) before the department or the court, the
4152 applicant shall obtain an order from the bankruptcy court declaring the judgment and debt to be
4153 non-dischargeable.

4154 (4) The department may hold a hearing on the application filed pursuant to Subsection
4155 (2). The hearing shall be an informal adjudicative proceeding under Title 63G, Chapter 4,
4156 Administrative Procedures Act, with rights of appeal as provided in Title 63G, Chapter 4,
4157 Administrative Procedures Act.

4158 Section 44. Section 31A-41-302 is repealed and reenacted to read:

4159 **31A-41-302. Department may defend action in which title insurance licensee does**
4160 **not appear or defend.**

4161 (1) In a lawsuit alleging that fraud, misrepresentation, or deceit by a title insurance
4162 licensee in a real estate transaction proximately caused economic harm, if grounds arise for the
4163 entry of a default judgment against the title insurance licensee, the plaintiff may petition the
4164 court to join the department as a defendant in the lawsuit.

4165 (2) After being served, the department may appear, conduct discovery, and otherwise
4166 defend against any claim asserted against the title insurance licensee for which the fund may be
4167 liable under this part. A judgment under this Subsection (2) may not be issued against the
4168 department.

4169 Section 45. Section 31A-41-303 is amended to read:

4170 **31A-41-303. Determination and amount of fund liability.**

4171 (1) Subject to the requirements of this part, if the [court] department determines that a
4172 claim should be levied against the fund, the [court] department shall enter an order [directing
4173 the department to pay from the fund] that the fund pay that portion of the petitioner's judgment
4174 that is [payable] eligible for payment from the fund.

4175 (2) A payment from the fund may not compensate for punitive damages, attorney fees,
4176 interest, or court costs.

4177 (3) Regardless of the number of claimants or parcels of real estate involved in a single
4178 transaction, the liability of the fund may not exceed:

4179 (a) \$15,000 for a single real estate transaction; or

4180 (b) \$50,000 for all transactions of a title insurance licensee.

4181 Section 46. Section 63I-2-231 is amended to read:

4182 **63I-2-231. Repeal dates, Title 31A.**

4183 (1) Section **31A-22-315.5** is repealed July 1, [~~2016~~] ~~H~~→ **[2021] 2019** ←~~H~~ .

4184 (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed ~~H~~→ **[July 1,**
4185 **2016] December 31, 2018** ←~~H~~ .

4186 Section 47. **Repealer.**

4187 This bill repeals:

4188 Section **31A-13-101**, **Scope.**

4189 Section **31A-13-102**, **Regulation in general.**

4190 Section **31A-13-103**, **Registration.**

4191 Section **31A-13-104**, **Commissioner to file information.**

4192 Section **31A-13-105**, **Reports to employers and employees.**

4193 Section **31A-13-106**, **Annual accounting by insurance companies, service plans,**
4194 **and corporate trustees and agents.**

4195 Section **31A-13-107**, **Commissioner's remedies.**

4196 Section **31A-13-108**, **Investments.**

4197 Section **31A-13-109**, **Political activities.**

4198 Section **31A-17-404.2**, **Credit allowed a foreign ceding insurer.**

Legislative Review Note
Office of Legislative Research and General Counsel