

**Representative James A. Dunnigan** proposes the following substitute bill:

**INSURANCE REVISIONS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Curtis S. Bramble

---

---

**LONG TITLE**

**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



- 26 for reinsurance ceded by a domestic insurer to another assuming insurer;
- 27       ▶ addresses rulemaking authority of the commissioner;
- 28       ▶ provides when a motor vehicle liability policy may be rescinded or cancelled;
- 29       ▶ modifies reference to husband and wife;
- 30       ▶ addresses insurance for alcohol and drug dependency treatment;
- 31       ▶ provides that violation of an order by a regulatory agency in any jurisdiction may be
- 32 grounds for discipline;
- 33       ▶ addresses continuing education requirements;
- 34       ▶ provides that a person's variable contracts line of authority is canceled when that
- 35 person's securities license is no longer active;
- 36       ▶ addresses insurer's liability if the insured pays a premium to a licensee or group
- 37 policyholder;
- 38       ▶ addresses licensee compensation disclosures;
- 39       ▶ addresses exemption from claims filing requirements;
- 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       ▶ amends definitions related to captive insurers;
- 47       ▶ addresses the application of the Risk Retention Groups Act to captive insurers;
- 48       ▶ modifies provisions related to reinsurance and captive insurance companies;
- 49       ▶ amends reporting requirements for captive insurance companies;
- 50       ▶ clarifies timing of examinations of captive insurance companies;
- 51       ▶ addresses assessments related to title insurance;
- 52       ▶ modifies provisions related to the Title Insurance Recovery, Education, and
- 53 Research Fund Act;
- 54       ▶ modifies the repeal date for specified statutory provisions;
- 55       ▶ repeals provisions related to employee welfare funds and plans;
- 56       ▶ repeals provisions related to credit allowed a foreign ceding insurer; and

57           ▶ makes technical and conforming amendments.

58 **Money Appropriated in this Bill:**

59           None

60 **Other Special Clauses:**

61           None

62 **Utah Code Sections Affected:**

63 AMENDS:

64           **13-51-108**, as enacted by Laws of Utah 2015, Chapter 244 and last amended by  
65 Coordination Clause, Laws of Utah 2015, Chapter 244

66           **31A-1-301**, as last amended by Laws of Utah 2015, Chapters 244 and 330

67           **31A-2-208.5**, as enacted by Laws of Utah 1990, Chapter 129

68           **31A-2-212**, as last amended by Laws of Utah 2015, Chapter 283

69           **31A-2-309**, as last amended by Laws of Utah 2008, Chapter 257

70           **31A-6a-101**, as last amended by Laws of Utah 2015, Chapter 244

71           **31A-6a-104**, as last amended by Laws of Utah 2015, Chapter 244

72           **31A-15-202**, as last amended by Laws of Utah 2010, Chapter 324

73           **31A-15-203**, as last amended by Laws of Utah 2011, Chapter 297

74           **31A-15-204**, as last amended by Laws of Utah 2003, Chapter 298

75           **31A-15-208**, as last amended by Laws of Utah 2010, Chapter 10

76           **31A-15-209**, as enacted by Laws of Utah 1992, Chapter 258

77           **31A-15-212**, as last amended by Laws of Utah 2003, Chapter 298

78           **31A-17-404**, as last amended by Laws of Utah 2008, Chapter 257

79           **31A-17-404.1**, as enacted by Laws of Utah 2008, Chapter 257

80           **31A-17-404.3**, as enacted by Laws of Utah 2008, Chapter 257

81           **31A-22-202**, as enacted by Laws of Utah 1985, Chapter 242

82           **31A-22-603**, as last amended by Laws of Utah 2001, Chapter 116

83           **31A-22-715**, as last amended by Laws of Utah 2001, Chapter 116

84           **31A-22-1201**, as last amended by Laws of Utah 2008, Chapter 257

85           **31A-23a-111**, as last amended by Laws of Utah 2012, Chapter 253

86           **31A-23a-202**, as last amended by Laws of Utah 2014, Chapters 290 and 300

87           **31A-23a-206**, as last amended by Laws of Utah 2012, Chapter 253

- 88            **31A-23a-410**, as last amended by Laws of Utah 2009, Chapter 349
- 89            **31A-23a-501**, as last amended by Laws of Utah 2015, Chapter 195
- 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
- 93            **31A-27a-601**, as enacted by Laws of Utah 2007, Chapter 309
- 94            **31A-27a-605**, as enacted by Laws of Utah 2007, Chapter 309
- 95            **31A-28-119**, as last amended by Laws of Utah 2010, Chapter 292
- 96            **31A-30-116**, as last amended by Laws of Utah 2015, Chapter 283
- 97            **31A-30-209**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 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

109 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

113 REPEALS AND REENACTS:

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

115 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 [~~licensed~~] eligible under Section [~~31A-23a-104~~]

191 [31A-15-103](#).

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

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

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

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

206 (b) Subsection (11)(a) does not apply to coverage a transportation network company  
207 provides under Subsection [~~(9)~~] (10) in the event a transportation network driver's coverage  
208 under Subsection (1) or (2) lapses or ceases to exist.

209 (12) A personal automobile insurer:

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

212 provide transportation network services; and

213 (b) does not have the duty to defend or indemnify a loss if an exclusion described in

214 Subsection (12)(a) excludes coverage according to the policy's terms.

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

216 **31A-1-301. Definitions.**

217 As used in this title, unless otherwise specified:

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

220 (i) a medical condition including:

221 (A) a medical care expense; or

222 (B) the risk of disability;

223 (ii) accident; or

224 (iii) sickness.

225 (b) "Accident and health insurance":

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

227 (A) an income replacement contract;

228 (B) a health care contract;

229 (C) an expense reimbursement contract;

230 (D) a credit accident and health contract;

231 (E) a continuing care contract; and

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

233 (ii) may provide:

234 (A) hospital coverage;

235 (B) surgical coverage;

236 (C) medical coverage;

237 (D) loss of income coverage;

238 (E) prescription drug coverage;

239 (F) dental coverage; or

240 (G) vision coverage.

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

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



243 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

249 (6) "Agency" means:

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

252 (b) an insurance organization licensed or required to be licensed under Section  
253 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).

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

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

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

260 (10) "Application" means a document:

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

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

265 (A) insure the risk under:

266 (I) the coverage as originally offered; or

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

268 (B) decline to insure the risk; or

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

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

272 (a) the original articles;

273 (b) a special law;

- 274 (c) a charter;
- 275 (d) an amendment;
- 276 (e) restated articles;
- 277 (f) articles of merger or consolidation;
- 278 (g) a trust instrument;
- 279 (h) another constitutive document for a trust or other entity that is not a corporation;

280 and

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

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

285 (13) "Binder" means the same as that term is defined in Section [31A-21-102](#).

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

- 288 (a) without individual underwriting or application; and

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

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

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

- 293 (a) that is open to the public;

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

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

296 (17) "Business entity" means:

- 297 (a) a corporation;

- 298 (b) an association;

- 299 (c) a partnership;

- 300 (d) a limited liability company;

- 301 (e) a limited liability partnership; or

- 302 (f) another legal entity.

303 (18) "Business of insurance" is defined in Subsection (89).

304 (19) "Business plan" means the information required to be supplied to the

305 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required  
306 when these subsections apply by reference under:

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

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

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

314 (21) "Captive insurance company" means:

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

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

- 320 (i) owned by the insureds; and
- 321 (ii) whose exclusive purpose is to insure risks of:
  - 322 (A) a member organization;
  - 323 (B) a group member; or
  - 324 (C) an affiliate of:
    - 325 (I) a member organization; or
    - 326 (II) a group member.

327 (22) "Casualty insurance" means liability insurance.

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

- 329 (a) an insured under a group insurance policy; or
- 330 (b) a third party.

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

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

334 (26) "Claims-made coverage" means an insurance contract or provision limiting  
335 coverage under a policy insuring against legal liability to claims that are first made against the

336 insured while the policy is in force.

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

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

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

342 (i) provides board and lodging;

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

344 (A) a personal service;

345 (B) a nursing service;

346 (C) a medical service; or

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

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

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

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

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

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

357 (i) by contract;

358 (ii) by common management;

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

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

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

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

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

367 voting securities of another person.

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

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

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

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

376 (i) a corporation doing business:

377 (A) as:

378 (I) an insurance producer;

379 (II) a surplus lines producer;

380 (III) a limited line producer;

381 (IV) a consultant;

382 (V) a managing general agent;

383 (VI) a reinsurance intermediary;

384 (VII) a third party administrator; or

385 (VIII) an adjuster; and

386 (B) under:

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

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

390 (III) Chapter 26, Insurance Adjusters; or

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

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

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

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

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

398 such as:

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

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

402 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.  
403 No. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No.  
404 109-415.

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

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

410 (b) "Credit insurance" includes:

411 (i) credit accident and health insurance;

412 (ii) credit life insurance;

413 (iii) credit property insurance;

414 (iv) credit unemployment insurance;

415 (v) guaranteed automobile protection insurance;

416 (vi) involuntary unemployment insurance;

417 (vii) mortgage accident and health insurance;

418 (viii) mortgage guaranty insurance; and

419 (ix) mortgage life insurance.

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

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

423 (a) matured;

424 (b) unmatured;

425 (c) liquidated;

426 (d) unliquidated;

427 (e) secured;

428 (f) unsecured;

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

- 460 (i) statute;
- 461 (ii) rule; or
- 462 (iii) order; and
- 463 (b) by which a required filing or payment must be received by the department.
- 464 (44) "Deemer clause" means a provision under this title under which upon the
- 465 occurrence of a condition precedent, the commissioner is considered to have taken a specific
- 466 action. If the statute so provides, a condition precedent may be the commissioner's failure to
- 467 take a specific action.
- 468 (45) "Degree of relationship" means the number of steps between two persons
- 469 determined by counting the generations separating one person from a common ancestor and
- 470 then counting the generations to the other person.
- 471 (46) "Department" means the Insurance Department.
- 472 (47) "Director" means a member of the board of directors of a corporation.
- 473 (48) "Disability" means a physiological or psychological condition that partially or
- 474 totally limits an individual's ability to:
- 475 (a) perform the duties of:
- 476 (i) that individual's occupation; or
- 477 (ii) an occupation for which the individual is reasonably suited by education, training,
- 478 or experience; or
- 479 (b) perform two or more of the following basic activities of daily living:
- 480 (i) eating;
- 481 (ii) toileting;
- 482 (iii) transferring;
- 483 (iv) bathing; or
- 484 (v) dressing.
- 485 (49) "Disability income insurance" is defined in Subsection (80).
- 486 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 487 (51) "Domiciliary state" means the state in which an insurer:
- 488 (a) is incorporated;
- 489 (b) is organized; or
- 490 (c) in the case of an alien insurer, enters into the United States.



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

522 from investments of the fund:

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

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

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

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

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

530 (a) the first day of coverage; or

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

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

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

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

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

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

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

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

546 (ii) a settlement or closing involving:

547 (A) a mobile home;

548 (B) a grazing right;

549 (C) a water right; or

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

551 (b) "Escrow" does not include:

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

553 (A) an acknowledgment;

554 (B) a copy certification;

555 (C) jurat; and

556 (D) an oath or affirmation;

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

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

559 (60) "Escrow agent" means an agency title insurance producer meeting the

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

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

562 (61) (a) "Excludes" is not exhaustive and does not mean that another thing is not also  
563 excluded.

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

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

568 (a) a specific physical condition;

569 (b) a specific medical procedure;

570 (c) a specific disease or disorder; or

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

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

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

575 (b) written:

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

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

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

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

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

583 (ii) received by the department within the time period provided in applicable statute,

584 rule, or filing order; and

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

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

587 (B) rule.

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

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

592 (a) a policy;

593 (b) a rate;

594 (c) a form;

595 (d) a document;

596 (e) a plan;

597 (f) a manual;

598 (g) an application;

599 (h) a report;

600 (i) a certificate;

601 (j) an endorsement;

602 (k) an actuarial certification;

603 (l) a licensee annual statement;

604 (m) a licensee renewal application;

605 (n) an advertisement;

606 (o) a binder; or

607 (p) an outline of coverage.

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

610 (68) "Foreign insurer" means an insurer domiciled outside of this state, including an  
611 alien insurer.

612 (69) (a) "Form" means one of the following prepared for general use:

613 (i) a policy;

614 (ii) a certificate;

- 615 (iii) an application;
- 616 (iv) an outline of coverage; or
- 617 (v) an endorsement.
- 618 (b) "Form" does not include a document specially prepared for use in an individual
- 619 case.
- 620 (70) "Franchise insurance" means an individual insurance policy provided through a
- 621 mass marketing arrangement involving a defined class of persons related in some way other
- 622 than through the purchase of insurance.
- 623 (71) "General lines of authority" include:
- 624 (a) the general lines of insurance in Subsection (72);
- 625 (b) title insurance under one of the following sublines of authority:
- 626 (i) title examination, including authority to act as a title marketing representative;
- 627 (ii) escrow, including authority to act as a title marketing representative; and
- 628 (iii) title marketing representative only;
- 629 (c) surplus lines;
- 630 (d) workers' compensation; and
- 631 (e) another line of insurance that the commissioner considers necessary to recognize in
- 632 the public interest.
- 633 (72) "General lines of insurance" include:
- 634 (a) accident and health;
- 635 (b) casualty;
- 636 (c) life;
- 637 (d) personal lines;
- 638 (e) property; and
- 639 (f) variable contracts, including variable life and annuity.
- 640 (73) "Group health plan" means an employee welfare benefit plan to the extent that the
- 641 plan provides medical care:
- 642 (a) (i) to an employee; or
- 643 (ii) to a dependent of an employee; and
- 644 (b) (i) directly;
- 645 (ii) through insurance reimbursement; or

646 (iii) through another method.

647 (74) (a) "Group insurance policy" means a policy covering a group of persons that is  
648 issued:

649 (i) to a policyholder on behalf of the group; and

650 (ii) for the benefit of a member of the group who is selected under a procedure defined  
651 in:

652 (A) the policy; or

653 (B) an agreement that is collateral to the policy.

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

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

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

661 (i) provides health care insurance;

662 (ii) provides major medical expense insurance; or

663 (iii) is offered as a substitute for hospital or medical expense insurance, such as:

664 (A) a hospital confinement indemnity; or

665 (B) a limited benefit plan.

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

667 (i) provides benefits solely for:

668 (A) accident;

669 (B) dental;

670 (C) income replacement;

671 (D) long-term care;

672 (E) a Medicare supplement;

673 (F) a specified disease;

674 (G) vision; or

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

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

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

- 679 (a) a professional service;
- 680 (b) a personal service;
- 681 (c) a facility;
- 682 (d) equipment;
- 683 (e) a device;
- 684 (f) supplies; or
- 685 (g) medicine.

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

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

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

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

701 another type of policy.

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

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

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

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

710 (83) "Independently procured insurance" means insurance procured under Section  
711 31A-15-104.

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

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

714 (a) property in transit on or over land;

715 (b) property in transit over water by means other than boat or ship;

716 (c) bailee liability;

717 (d) fixed transportation property such as bridges, electric transmission systems, radio  
718 and television transmission towers and tunnels; and

719 (e) personal and commercial property floaters.

720 (86) "Insolvency" means that:

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

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

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

726 (87) (a) "Insurance" means:

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

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

731 (b) "Insurance" includes:

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

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

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

738 (88) "Insurance adjuster" means a person who directs or conducts the investigation,



739 negotiation, or settlement of a claim under an insurance policy other than life insurance or an  
740 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

741 (89) "Insurance business" or "business of insurance" includes:

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

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

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

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

749 (c) providing an annuity:

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

751 (ii) except an annuity provided by a person specified in Subsections [31A-22-1305\(2\)](#)

752 and (3);

753 (d) providing the characteristic services of a motor club as outlined in Subsection  
754 (117);

755 (e) providing another person with insurance;

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

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

759 (i) solicitation;

760 (ii) negotiation preliminary to execution;

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

762 (iv) insuring; and

763 (v) transacting matters subsequent to the execution of the contract and arising out of  
764 the contract, including reinsurance;

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

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

768 (90) "Insurance consultant" or "consultant" means a person who:

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

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

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

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

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

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

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

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

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

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

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

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

790 (i) a policyholder;

791 (ii) a subscriber;

792 (iii) a member; and

793 (iv) a beneficiary.

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

795 (i) applies only to this title; and

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

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

799 (i) a fraternal benefit society;

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

801 31A-22-1305(2) and (3);  
802 (iii) a motor club;  
803 (iv) an employee welfare plan; and  
804 (v) a person purporting or intending to do an insurance business as a principal on that  
805 person's own account.  
806 (b) "Insurer" does not include a governmental entity to the extent the governmental  
807 entity is engaged in an activity described in Section 31A-12-107.  
808 (95) "Interinsurance exchange" is defined in Subsection (148).  
809 (96) "Involuntary unemployment insurance" means insurance:  
810 (a) offered in connection with an extension of credit; and  
811 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
812 coming due on a:  
813 (i) specific loan; or  
814 (ii) credit transaction.  
815 (97) (a) "Large employer," in connection with a health benefit plan, means an employer  
816 who, with respect to a calendar year and to a plan year:  
817 ~~[(a)]~~ (i) employed an average of at least 51 ~~[eligible]~~ employees on ~~[each]~~ business  
818 ~~[day]~~ days during the preceding calendar year; and  
819 ~~[(b)]~~ (ii) employs at least ~~[two employees]~~ one employee on the first day of the plan  
820 year.  
821 (b) The number of employees shall be determined using the method set forth in 26  
822 U.S.C. Sec. 4980H(c)(2).  
823 (98) "Late enrollee," with respect to an employer health benefit plan, means an  
824 individual whose enrollment is a late enrollment.  
825 (99) "Late enrollment," with respect to an employer health benefit plan, means  
826 enrollment of an individual other than:  
827 (a) on the earliest date on which coverage can become effective for the individual  
828 under the terms of the plan; or  
829 (b) through special enrollment.  
830 (100) (a) Except for a retainer contract or legal assistance described in Section  
831 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a

832 specified legal expense.

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

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

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

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

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

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

842 (C) Subsection (175) for workers' compensation insurance;

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

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

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

849 (C) Subsection (175) for workers' compensation insurance;

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

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

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

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

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

857 (b) "Liability insurance" includes:

858 (i) vehicle liability insurance;

859 (ii) residential dwelling liability insurance; and

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

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

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

866 (103) (a) "Life insurance" means:

867 (i) insurance on a human life; and

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

869 (b) The business of life insurance includes:

870 (i) granting a death benefit;

871 (ii) granting an annuity benefit;

872 (iii) granting an endowment benefit;

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

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

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

876 (104) "Limited license" means a license that:

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

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

879 (105) "Limited line credit insurance" includes the following forms of insurance:

880 (a) credit life;

881 (b) credit accident and health;

882 (c) credit property;

883 (d) credit unemployment;

884 (e) involuntary unemployment;

885 (f) mortgage life;

886 (g) mortgage guaranty;

887 (h) mortgage accident and health;

888 (i) guaranteed automobile protection; and

889 (j) another form of insurance offered in connection with an extension of credit that:

890 (i) is limited to partially or wholly extinguishing the credit obligation; and

891 (ii) the commissioner determines by rule should be designated as a form of limited line  
892 credit insurance.

893 (106) "Limited line credit insurance producer" means a person who sells, solicits, or

894 negotiates one or more forms of limited line credit insurance coverage to an individual through  
895 a master, corporate, group, or individual policy.

896 (107) "Limited line insurance" includes:

897 (a) bail bond;

898 (b) limited line credit insurance;

899 (c) legal expense insurance;

900 (d) motor club insurance;

901 (e) car rental related insurance;

902 (f) travel insurance;

903 (g) crop insurance;

904 (h) self-service storage insurance;

905 (i) guaranteed asset protection waiver;

906 (j) portable electronics insurance; and

907 (k) another form of limited insurance that the commissioner determines by rule should  
908 be designated a form of limited line insurance.

909 (108) "Limited lines authority" includes the lines of insurance listed in Subsection  
910 (107).

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

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

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

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

917 (A) expenses incurred;

918 (B) indemnity;

919 (C) prepayment; or

920 (D) another method;

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

922 (A) diagnostic;

923 (B) preventative;

924 (C) therapeutic;

- 925 (D) rehabilitative;
- 926 (E) maintenance; or
- 927 (F) personal care; and
- 928 (iv) that may be issued by:
- 929 (A) an insurer;
- 930 (B) a fraternal benefit society;
- 931 (C) (I) a nonprofit health hospital; and
- 932 (II) a medical service corporation;
- 933 (D) a prepaid health plan;
- 934 (E) a health maintenance organization; or
- 935 (F) an entity similar to the entities described in Subsections (110)(a)(iv)(A) through (E)
- 936 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 937 (b) "Long-term care insurance" includes:
- 938 (i) any of the following that provide directly or supplement long-term care insurance:
- 939 (A) a group or individual annuity or rider; or
- 940 (B) a life insurance policy or rider;
- 941 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 942 (A) cognitive impairment; or
- 943 (B) functional capacity; or
- 944 (iii) a qualified long-term care insurance contract.
- 945 (c) "Long-term care insurance" does not include:
- 946 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 947 (ii) basic hospital expense coverage;
- 948 (iii) basic medical/surgical expense coverage;
- 949 (iv) hospital confinement indemnity coverage;
- 950 (v) major medical expense coverage;
- 951 (vi) income replacement or related asset-protection coverage;
- 952 (vii) accident only coverage;
- 953 (viii) coverage for a specified:
- 954 (A) disease; or
- 955 (B) accident;

956 (ix) limited benefit health coverage; or  
957 (x) a life insurance policy that accelerates the death benefit to provide the option of a  
958 lump sum payment:

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

960 (I) benefits; or

961 (II) eligibility; and

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

963 (I) terminal illness;

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

965 (III) permanent institutional confinement.

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

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

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

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

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

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

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

981 (a) licensed under:

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

983 (ii) Chapter 11, Motor Clubs; or

984 (iii) Chapter 14, Foreign Insurers; and

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



- 987 (i) legal services under Subsection 31A-11-102(1)(b);
- 988 (ii) bail services under Subsection 31A-11-102(1)(c); or
- 989 (iii) (A) trip reimbursement;
- 990 (B) towing services;
- 991 (C) emergency road services;
- 992 (D) stolen automobile services;
- 993 (E) a combination of the services listed in Subsections (117)(b)(iii)(A) through (D); or
- 994 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

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

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

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

998 (b) under which the financing and delivery of medical care is provided, in whole or in  
999 part, through a defined set of providers under contract with the insurer, including the financing  
1000 and delivery of an item paid for as medical care.

1001 (120) "Nonparticipating" means a plan of insurance under which the insured is not  
1002 entitled to receive a dividend representing a share of the surplus of the insurer.

1003 (121) "Ocean marine insurance" means insurance against loss of or damage to:

1004 (a) ships or hulls of ships;

1005 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,  
1006 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia  
1007 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

1008 (c) earnings such as freight, passage money, commissions, or profits derived from  
1009 transporting goods or people upon or across the oceans or inland waterways; or

1010 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,  
1011 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons  
1012 in connection with maritime activity.

1013 (122) "Order" means an order of the commissioner.

1014 (123) "Outline of coverage" means a summary that explains an accident and health  
1015 insurance policy.

1016 (124) "Participating" means a plan of insurance under which the insured is entitled to  
1017 receive a dividend representing a share of the surplus of the insurer.

1018 (125) "Participation," as used in a health benefit plan, means a requirement relating to  
1019 the minimum percentage of eligible employees that must be enrolled in relation to the total  
1020 number of eligible employees of an employer reduced by each eligible employee who  
1021 voluntarily declines coverage under the plan because the employee:

1022 (a) has other group health care insurance coverage; or

1023 (b) receives:

1024 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social  
1025 Security Amendments of 1965; or

1026 (ii) another government health benefit.

1027 (126) "Person" includes:

1028 (a) an individual;

1029 (b) a partnership;

1030 (c) a corporation;

1031 (d) an incorporated or unincorporated association;

1032 (e) a joint stock company;

1033 (f) a trust;

1034 (g) a limited liability company;

1035 (h) a reciprocal;

1036 (i) a syndicate; or

1037 (j) another similar entity or combination of entities acting in concert.

1038 (127) "Personal lines insurance" means property and casualty insurance coverage sold  
1039 for primarily noncommercial purposes to:

1040 (a) an individual; or

1041 (b) a family.

1042 (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

1043 (129) "Plan year" means:

1044 (a) the year that is designated as the plan year in:

1045 (i) the plan document of a group health plan; or

1046 (ii) a summary plan description of a group health plan;

1047 (b) if the plan document or summary plan description does not designate a plan year or

1048 there is no plan document or summary plan description:

- 1049 (i) the year used to determine deductibles or limits;
- 1050 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 1051 or
- 1052 (iii) the employer's taxable year if:
  - 1053 (A) the plan does not impose deductibles or limits on a yearly basis; and
  - 1054 (B) (I) the plan is not insured; or
  - 1055 (II) the insurance policy is not renewed on an annual basis; or
- 1056 (c) in a case not described in Subsection (129)(a) or (b), the calendar year.
- 1057 (130) (a) "Policy" means a document, including an attached endorsement or application
- 1058 that:
  - 1059 (i) purports to be an enforceable contract; and
  - 1060 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 1061 (b) "Policy" includes a service contract issued by:
  - 1062 (i) a motor club under Chapter 11, Motor Clubs;
  - 1063 (ii) a service contract provided under Chapter 6a, Service Contracts; and
  - 1064 (iii) a corporation licensed under:
    - 1065 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
    - 1066 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
  - 1067 (c) "Policy" does not include:
    - 1068 (i) a certificate under a group insurance contract; or
    - 1069 (ii) a document that does not purport to have legal effect.
- 1070 (131) "Policyholder" means a person who controls a policy, binder, or oral contract by
- 1071 ownership, premium payment, or otherwise.
- 1072 (132) "Policy illustration" means a presentation or depiction that includes
- 1073 nonguaranteed elements of a policy of life insurance over a period of years.
- 1074 (133) "Policy summary" means a synopsis describing the elements of a life insurance
- 1075 policy.
- 1076 (134) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.
- 1077 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and
- 1078 related federal regulations and guidance.
- 1079 (135) "Preexisting condition," with respect to a health benefit plan:

1080 (a) means a condition that was present before the effective date of coverage, whether or  
1081 not medical advice, diagnosis, care, or treatment was recommended or received before that day;  
1082 and

1083 (b) does not include a condition indicated by genetic information unless an actual  
1084 diagnosis of the condition by a physician has been made.

1085 (136) (a) "Premium" means the monetary consideration for an insurance policy.

1086 (b) "Premium" includes, however designated:

1087 (i) an assessment;

1088 (ii) a membership fee;

1089 (iii) a required contribution; or

1090 (iv) monetary consideration.

1091 (c) (i) "Premium" does not include consideration paid to a third party administrator for  
1092 the third party administrator's services.

1093 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for  
1094 insurance on the risks administered by the third party administrator.

1095 (137) "Principal officers" for a corporation means the officers designated under  
1096 Subsection [31A-5-203\(3\)](#).

1097 (138) "Proceeding" includes an action or special statutory proceeding.

1098 (139) "Professional liability insurance" means insurance against legal liability incident  
1099 to the practice of a profession and provision of a professional service.

1100 (140) (a) Except as provided in Subsection (140)(b), "property insurance" means  
1101 insurance against loss or damage to real or personal property of every kind and any interest in  
1102 that property:

1103 (i) from all hazards or causes; and

1104 (ii) against loss consequential upon the loss or damage including vehicle  
1105 comprehensive and vehicle physical damage coverages.

1106 (b) "Property insurance" does not include:

1107 (i) inland marine insurance; and

1108 (ii) ocean marine insurance.

1109 (141) "Qualified long-term care insurance contract" or "federally tax qualified  
1110 long-term care insurance contract" means:

1111 (a) an individual or group insurance contract that meets the requirements of Section  
1112 7702B(b), Internal Revenue Code; or

1113 (b) the portion of a life insurance contract that provides long-term care insurance:

1114 (i) (A) by rider; or

1115 (B) as a part of the contract; and

1116 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue  
1117 Code.

1118 (142) "Qualified United States financial institution" means an institution that:

1119 (a) is:

1120 (i) organized under the laws of the United States or any state; or

1121 (ii) in the case of a United States office of a foreign banking organization, licensed  
1122 under the laws of the United States or any state;

1123 (b) is regulated, supervised, and examined by a United States federal or state authority  
1124 having regulatory authority over a bank or trust company; and

1125 (c) meets the standards of financial condition and standing that are considered  
1126 necessary and appropriate to regulate the quality of a financial institution whose letters of credit  
1127 will be acceptable to the commissioner as determined by:

1128 (i) the commissioner by rule; or

1129 (ii) the Securities Valuation Office of the National Association of Insurance  
1130 Commissioners.

1131 (143) (a) "Rate" means:

1132 (i) the cost of a given unit of insurance; or

1133 (ii) for property or casualty insurance, that cost of insurance per exposure unit either  
1134 expressed as:

1135 (A) a single number; or

1136 (B) a pure premium rate, adjusted before the application of individual risk variations  
1137 based on loss or expense considerations to account for the treatment of:

1138 (I) expenses;

1139 (II) profit; and

1140 (III) individual insurer variation in loss experience.

1141 (b) "Rate" does not include a minimum premium.

1142 (144) (a) Except as provided in Subsection (144)(b), "rate service organization" means  
1143 a person who assists an insurer in rate making or filing by:

- 1144 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1145 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1146 (iii) advising about rate questions, except as an attorney giving legal advice.

1147 (b) "Rate service organization" does not mean:

- 1148 (i) an employee of an insurer;
- 1149 (ii) a single insurer or group of insurers under common control;
- 1150 (iii) a joint underwriting group; or
- 1151 (iv) an individual serving as an actuarial or legal consultant.

1152 (145) "Rating manual" means any of the following used to determine initial and  
1153 renewal policy premiums:

- 1154 (a) a manual of rates;
- 1155 (b) a classification;
- 1156 (c) a rate-related underwriting rule; and
- 1157 (d) a rating formula that describes steps, policies, and procedures for determining  
1158 initial and renewal policy premiums.

1159 (146) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,  
1160 or give, directly or indirectly:

- 1161 (i) a refund of premium or portion of premium;
- 1162 (ii) a refund of commission or portion of commission;
- 1163 (iii) a refund of all or a portion of a consultant fee; or
- 1164 (iv) providing services or other benefits not specified in an insurance or annuity  
1165 contract.

1166 (b) "Rebate" does not include:

- 1167 (i) a refund due to termination or changes in coverage;
- 1168 (ii) a refund due to overcharges made in error by the licensee; or
- 1169 (iii) savings or wellness benefits as provided in the contract by the licensee.

1170 (147) "Received by the department" means:

- 1171 (a) the date delivered to and stamped received by the department, if delivered in  
1172 person;

- 1173 (b) the post mark date, if delivered by mail;
- 1174 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1175 (d) the received date recorded on an item delivered, if delivered by:

- 1176 (i) facsimile;
- 1177 (ii) email; or
- 1178 (iii) another electronic method; or

1179 (e) a date specified in:

- 1180 (i) a statute;
- 1181 (ii) a rule; or
- 1182 (iii) an order.

1183 (148) "Reciprocal" or "interinsurance exchange" means an unincorporated association  
1184 of persons:

- 1185 (a) operating through an attorney-in-fact common to all of the persons; and
- 1186 (b) exchanging insurance contracts with one another that provide insurance coverage  
1187 on each other.

1188 (149) "Reinsurance" means an insurance transaction where an insurer, for  
1189 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to  
1190 reinsurance transactions, this title sometimes refers to:

- 1191 (a) the insurer transferring the risk as the "ceding insurer"; and
- 1192 (b) the insurer assuming the risk as the:
  - 1193 (i) "assuming insurer"; or
  - 1194 (ii) "assuming reinsurer."

1195 (150) "Reinsurer" means a person licensed in this state as an insurer with the authority  
1196 to assume reinsurance.

1197 (151) "Residential dwelling liability insurance" means insurance against liability  
1198 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is  
1199 a detached single family residence or multifamily residence up to four units.

1200 (152) (a) "Retrocession" means reinsurance with another insurer of a liability assumed  
1201 under a reinsurance contract.

1202 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a  
1203 liability assumed under a reinsurance contract.

- 1204 (153) "Rider" means an endorsement to:
- 1205 (a) an insurance policy; or
- 1206 (b) an insurance certificate.
- 1207 [~~(156)~~] (154) "Secondary medical condition" means a complication related to an
- 1208 exclusion from coverage in accident and health insurance.
- 1209 [~~(154)~~] (155) (a) "Security" means a:
- 1210 (i) note;
- 1211 (ii) stock;
- 1212 (iii) bond;
- 1213 (iv) debenture;
- 1214 (v) evidence of indebtedness;
- 1215 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1216 (vii) collateral-trust certificate;
- 1217 (viii) preorganization certificate or subscription;
- 1218 (ix) transferable share;
- 1219 (x) investment contract;
- 1220 (xi) voting trust certificate;
- 1221 (xii) certificate of deposit for a security;
- 1222 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1223 payments out of production under such a title or lease;
- 1224 (xiv) commodity contract or commodity option;
- 1225 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1226 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1227 in Subsections [~~(154)~~] (155)(a)(i) through (xiv); or
- 1228 (xvi) another interest or instrument commonly known as a security.
- 1229 (b) "Security" does not include:
- 1230 (i) any of the following under which an insurance company promises to pay money in a
- 1231 specific lump sum or periodically for life or some other specified period:
- 1232 (A) insurance;
- 1233 (B) an endowment policy; or
- 1234 (C) an annuity contract; or



- 1235 (ii) a burial certificate or burial contract.
- 1236 ~~[(155)]~~ (156) "Securityholder" means a specified person who owns a security of a  
1237 person, including:
- 1238 (a) common stock;
- 1239 (b) preferred stock;
- 1240 (c) debt obligations; and
- 1241 (d) any other security convertible into or evidencing the right of any of the items listed  
1242 in this Subsection ~~[(155)]~~ (156).
- 1243 (157) (a) "Self-insurance" means an arrangement under which a person provides for  
1244 spreading its own risks by a systematic plan.
- 1245 (b) Except as provided in this Subsection (157), "self-insurance" does not include an  
1246 arrangement under which a number of persons spread their risks among themselves.
- 1247 (c) "Self-insurance" includes:
- 1248 (i) an arrangement by which a governmental entity undertakes to indemnify an  
1249 employee for liability arising out of the employee's employment; and
- 1250 (ii) an arrangement by which a person with a managed program of self-insurance and  
1251 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or  
1252 employees for liability or risk that is related to the relationship or employment.
- 1253 (d) "Self-insurance" does not include an arrangement with an independent contractor.
- 1254 (158) "Sell" means to exchange a contract of insurance:
- 1255 (a) by any means;
- 1256 (b) for money or its equivalent; and
- 1257 (c) on behalf of an insurance company.
- 1258 (159) "Short-term care insurance" means an insurance policy or rider advertised,  
1259 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,  
1260 but that provides coverage for less than 12 consecutive months for each covered person.
- 1261 (160) "Significant break in coverage" means a period of 63 consecutive days during  
1262 each of which an individual does not have creditable coverage.
- 1263 (161) (a) "Small employer" means, in connection with a health benefit plan and with  
1264 respect to a calendar year and to a plan year, an employer who:
- 1265 ~~[(a)]~~ (i) employed at least one employee but not more than ~~[an average of]~~ 50 ~~[eligible]~~

1266 employees on business days during the preceding calendar year; and

1267 ~~(b)~~ (ii) employs at least one employee on the first day of the plan year.

1268 (b) The number of employees shall:

1269 (i) be determined using the method set forth in 26 U.S.C. Sec. 4980H(c)(2); and

1270 (ii) include an owner described in Subsection (52)(b)(i).

1271 (c) "Small employer" does not include a sole proprietor that does not employ at least  
1272 one employee.

1273 (162) "Special enrollment period," in connection with a health benefit plan, has the  
1274 same meaning as provided in federal regulations adopted pursuant to the Health Insurance  
1275 Portability and Accountability Act.

1276 (163) (a) "Subsidiary" of a person means an affiliate controlled by that person either  
1277 directly or indirectly through one or more affiliates or intermediaries.

1278 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting  
1279 shares are owned by that person either alone or with its affiliates, except for the minimum  
1280 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
1281 others.

1282 (164) Subject to Subsection (87)(b), "surety insurance" includes:

1283 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or  
1284 perform the principal's obligations to a creditor or other obligee;

1285 (b) bail bond insurance; and

1286 (c) fidelity insurance.

1287 (165) (a) "Surplus" means the excess of assets over the sum of paid-in capital and  
1288 liabilities.

1289 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is  
1290 designated by the insurer or organization as permanent.

1291 (ii) Sections [31A-5-211](#), [31A-7-201](#), [31A-8-209](#), [31A-9-209](#), and [31A-14-205](#) require  
1292 that insurers or organizations doing business in this state maintain specified minimum levels of  
1293 permanent surplus.

1294 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the  
1295 same as the minimum required capital requirement that applies to stock insurers.

1296 (c) "Excess surplus" means:

1297 (i) for a life insurer, accident and health insurer, health organization, or property and  
1298 casualty insurer as defined in Section 31A-17-601, the lesser of:

1299 (A) that amount of an insurer's or health organization's total adjusted capital that  
1300 exceeds the product of:

1301 (I) 2.5; and

1302 (II) the sum of the insurer's or health organization's minimum capital or permanent  
1303 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1304 (B) that amount of an insurer's or health organization's total adjusted capital that  
1305 exceeds the product of:

1306 (I) 3.0; and

1307 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1308 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer  
1309 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1310 (A) 1.5; and

1311 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1312 (166) "Third party administrator" or "administrator" means a person who collects  
1313 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of  
1314 the state in connection with insurance coverage, annuities, or service insurance coverage,  
1315 except:

1316 (a) a union on behalf of its members;

1317 (b) a person administering a:

1318 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1319 1974;

1320 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1321 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1322 (c) an employer on behalf of the employer's employees or the employees of one or  
1323 more of the subsidiary or affiliated corporations of the employer;

1324 (d) an insurer licensed under the following, but only for a line of insurance for which  
1325 the insurer holds a license in this state:

1326 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1327 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

- 1328 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1329 (iv) Chapter 9, Insurance Fraternal; or
- 1330 (v) Chapter 14, Foreign Insurers;
- 1331 (e) a person:
- 1332 (i) licensed or exempt from licensing under:
- 1333 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 1334 Reinsurance Intermediaries; or
- 1335 (B) Chapter 26, Insurance Adjusters; and
- 1336 (ii) whose activities are limited to those authorized under the license the person holds
- 1337 or for which the person is exempt; or
- 1338 (f) an institution, bank, or financial institution:
- 1339 (i) that is:
- 1340 (A) an institution whose deposits and accounts are to any extent insured by a federal
- 1341 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
- 1342 Credit Union Administration; or
- 1343 (B) a bank or other financial institution that is subject to supervision or examination by
- 1344 a federal or state banking authority; and
- 1345 (ii) that does not adjust claims without a third party administrator license.
- 1346 (167) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner
- 1347 of real or personal property or the holder of liens or encumbrances on that property, or others
- 1348 interested in the property against loss or damage suffered by reason of liens or encumbrances
- 1349 upon, defects in, or the unmarketability of the title to the property, or invalidity or
- 1350 unenforceability of any liens or encumbrances on the property.
- 1351 (168) "Total adjusted capital" means the sum of an insurer's or health organization's
- 1352 statutory capital and surplus as determined in accordance with:
- 1353 (a) the statutory accounting applicable to the annual financial statements required to be
- 1354 filed under Section [31A-4-113](#); and
- 1355 (b) another item provided by the RBC instructions, as RBC instructions is defined in
- 1356 Section [31A-17-601](#).
- 1357 (169) (a) "Trustee" means "director" when referring to the board of directors of a
- 1358 corporation.

1359 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1360 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1361 individually or jointly and whether designated by that name or any other, that is charged with  
1362 or has the overall management of an employee welfare fund.

1363 (170) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"  
1364 means an insurer:

1365 (i) not holding a valid certificate of authority to do an insurance business in this state;  
1366 or

1367 (ii) transacting business not authorized by a valid certificate.

1368 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1369 (i) holding a valid certificate of authority to do an insurance business in this state; and

1370 (ii) transacting business as authorized by a valid certificate.

1371 (171) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1372 (172) "Vehicle liability insurance" means insurance against liability resulting from or  
1373 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle  
1374 comprehensive or vehicle physical damage coverage under Subsection (140).

1375 (173) "Voting security" means a security with voting rights, and includes a security  
1376 convertible into a security with a voting right associated with the security.

1377 (174) "Waiting period" for a health benefit plan means the period that must pass before  
1378 coverage for an individual, who is otherwise eligible to enroll under the terms of the health  
1379 benefit plan, can become effective.

1380 (175) "Workers' compensation insurance" means:

1381 (a) insurance for indemnification of an employer against liability for compensation  
1382 based on:

1383 (i) a compensable accidental injury; and

1384 (ii) occupational disease disability;

1385 (b) employer's liability insurance incidental to workers' compensation insurance and  
1386 written in connection with workers' compensation insurance; and

1387 (c) insurance assuring to a person entitled to workers' compensation benefits the  
1388 compensation provided by law.

1389 Section 3. Section **31A-2-208.5** is amended to read:

1390           **31A-2-208.5. Comparison tables.**

1391           (1) (a) The commissioner shall annually publish a table comparing the rates charged by  
1392 insurers for private passenger motor vehicle and homeowners insurance in this state.

1393           (b) The comparison shall list the top 20 insurers writing the greatest volume by  
1394 premium dollar per calendar year and others requesting inclusion in the comparison.

1395           (c) The commissioner shall develop at least four hypothetical examples of risk in  
1396 preparing the comparison.

1397           (2) In conjunction with the rate comparison described in Subsection (1), the  
1398 commissioner shall publish:

1399           (a) a table listing, for each insurer compared, the ratio of [~~justified and questionable~~  
1400 confirmed complaints received by the department to the premium dollar amount written by the  
1401 insurer; and

1402           (b) a table listing for each insurer the combined loss and expense ratio for the most  
1403 current year available.

1404           (3) The department shall make copies of the tables available to the public at minimal or  
1405 no cost.

1406           Section 4. Section **31A-2-212** is amended to read:

1407           **31A-2-212. Miscellaneous duties.**

1408           (1) Upon issuance of an order limiting, suspending, or revoking a person's authority to  
1409 do business in Utah, and when the commissioner begins a proceeding against an insurer under  
1410 Chapter 27a, Insurer Receivership Act, the commissioner:

1411           (a) shall notify by mail the producers of the person or insurer of whom the  
1412 commissioner has record; and

1413           (b) may publish notice of the order or proceeding in any manner the commissioner  
1414 considers necessary to protect the rights of the public.

1415           (2) When required for evidence in a legal proceeding, the commissioner shall furnish a  
1416 certificate of authority of a licensee to transact the business of insurance in Utah on any  
1417 particular date. The court or other officer shall receive the certificate of authority in lieu of the  
1418 commissioner's testimony.

1419           (3) (a) On the request of an insurer authorized to do a surety business, the  
1420 commissioner shall furnish a copy of the insurer's certificate of authority to a designated public

1421 officer in this state who requires that certificate of authority before accepting a bond.

1422 (b) The public officer described in Subsection (3)(a) shall file the certificate of  
1423 authority furnished under Subsection (3)(a).

1424 (c) After a certified copy of a certificate of authority is furnished to a public officer, it  
1425 is not necessary, while the certificate of authority remains effective, to attach a copy of it to any  
1426 instrument of suretyship filed with that public officer.

1427 (d) Whenever the commissioner revokes the certificate of authority or begins a  
1428 proceeding under Chapter 27a, Insurer Receivership Act, against an insurer authorized to do a  
1429 surety business, the commissioner shall immediately give notice of that action to each public  
1430 officer who is sent a certified copy under this Subsection (3).

1431 (4) (a) The commissioner shall immediately notify every judge and clerk of the courts  
1432 of record in the state when:

1433 (i) an authorized insurer doing a surety business:

1434 (A) files a petition for receivership; or

1435 (B) is in receivership; or

1436 (ii) the commissioner has reason to believe that the authorized insurer doing surety  
1437 business:

1438 (A) is in financial difficulty; or

1439 (B) has unreasonably failed to carry out any of its contracts.

1440 (b) Upon the receipt of the notice required by this Subsection (4), it is the duty of the  
1441 judges and clerks to notify and require a person that files with the court a bond on which the  
1442 authorized insurer doing surety business is surety to immediately file a new bond with a new  
1443 surety.

1444 (5) (a) The commissioner shall report to the Legislature in accordance with Section  
1445 [63N-11-106](#) ~~[prior to]~~ before adopting a rule authorized by Subsection (5)(b).

1446 (b) The commissioner shall require an insurer that issues, sells, renews, or offers health  
1447 insurance coverage in this state to comply with ~~[the provisions of]~~ PPACA and administrative  
1448 rules adopted by the commissioner related to regulation of health benefit plans, including:

1449 (i) lifetime and annual limits;

1450 (ii) prohibition of rescissions;

1451 (iii) coverage of preventive health services;

- 1452 (iv) coverage for a child or dependent;
- 1453 (v) pre-existing condition [~~coverage for children~~] limitations;
- 1454 (vi) insurer transparency of consumer information including plan disclosures, uniform
- 1455 coverage documents, and standard definitions;
- 1456 (vii) premium rate reviews;
- 1457 (viii) essential health benefits;
- 1458 (ix) provider choice;
- 1459 (x) waiting periods;
- 1460 (xi) appeals processes;
- 1461 (xii) rating restrictions;
- 1462 (xiii) uniform applications and notice provisions; [~~and~~]
- 1463 (xiv) certification and regulation of qualified health plans[-]; and
- 1464 (xv) network adequacy standards.
- 1465 (c) The commissioner shall preserve state control over:
- 1466 (i) the health insurance market in the state;
- 1467 (ii) qualified health plans offered in the state; and
- 1468 (iii) the conduct of navigators, producers, and in-person assisters operating in the state.
- 1469 (d) If the state enters into an agreement with the United States Department of Health
- 1470 and Human Services in which the state operates health insurance plan management, the
- 1471 commissioner may:
- 1472 (i) for fiscal year 2014, hire one temporary and two permanent full-time employees to
- 1473 be funded through the department's existing budget; and
- 1474 (ii) for fiscal year 2015, hire two permanent full-time employees funded through the
- 1475 Insurance Department Restricted Account, subject to appropriations from the Legislature and
- 1476 approval by the governor.
- 1477 Section 5. Section **31A-2-309** is amended to read:
- 1478 **31A-2-309. Service of process through state officer.**
- 1479 (1) The commissioner, or the lieutenant governor when the subject proceeding is
- 1480 brought by the state, is the agent for receipt of service of a summons, notice, order, pleading, or
- 1481 other legal process relating to a Utah court or administrative agency upon the following:
- 1482 (a) an insurer authorized to do business in this state, while authorized to do business in



1483 this state, and thereafter in a proceeding arising from or related to a transaction having a  
1484 connection with this state;

1485 (b) a surplus lines insurer for a proceeding arising out of a contract of insurance that is  
1486 subject to the surplus lines law, or out of a certificate, cover note, or other confirmation of that  
1487 type of insurance;

1488 (c) an unauthorized insurer or other person assisting an unauthorized insurer under  
1489 Subsection 31A-15-102(1) by doing an act specified in Subsection 31A-15-102(2), for a  
1490 proceeding arising out of a transaction that is subject to the unauthorized insurance law;

1491 (d) a nonresident producer, consultant, adjuster, or third party administrator, while  
1492 authorized to do business in this state, and thereafter in a proceeding arising from or related to  
1493 a transaction having a connection with this state; and

1494 (e) a reinsurer submitting to the commissioner's jurisdiction under Subsection  
1495 31A-17-404~~(8)~~(9).

1496 (2) The following is considered to have irrevocably appointed the commissioner and  
1497 lieutenant governor as that person's agents in accordance with Subsection (1):

1498 (a) a licensed insurer by applying for and receiving a certificate of authority;

1499 (b) a surplus lines insurer by entering into a contract subject to the surplus lines law;

1500 (c) an unauthorized insurer by doing in this state an act prohibited by Section  
1501 31A-15-103; and

1502 (d) a nonresident producer, consultant, adjuster, and third party administrator.

1503 (3) The commissioner and lieutenant governor are also agents for an executor,  
1504 administrator, personal representative, receiver, trustee, or other successor in interest of a  
1505 person specified under Subsection (1).

1506 (4) A litigant serving process on the commissioner or lieutenant governor under this  
1507 section shall pay the fee applicable under Section 31A-3-103.

1508 (5) The right to substituted service under this section does not limit the right to serve a  
1509 summons, notice, order, pleading, demand, or other process upon a person in another manner  
1510 provided by law.

1511 Section 6. Section 31A-6a-101 is amended to read:

1512 **31A-6a-101. Definitions.**

1513 (1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued

1514 by an insurance company that has complied with either Chapter 5, Domestic Stock and Mutual  
1515 Insurance Corporations, or Chapter 14, Foreign Insurers, that undertakes to perform or provide  
1516 repair or replacement service on goods or property, or indemnification for repair or  
1517 replacement service, for the operational or structural failure of the goods or property due to a  
1518 defect in materials, workmanship, or normal wear and tear.

1519 (2) "Nonmanufacturers' parts" means replacement parts not made for or by the original  
1520 manufacturer of the goods commonly referred to as "after market parts."

1521 (3) (a) "Road hazard" means a hazard that is encountered while driving a motor  
1522 vehicle.

1523 (b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic,  
1524 curbs, or composite scraps.

1525 (4) (a) "Service contract" means a contract or agreement to perform or reimburse for  
1526 the repair or maintenance of goods or property, for their operational or structural failure due to  
1527 a defect in materials, workmanship, or normal wear and tear, with or without additional  
1528 provision for incidental payment of indemnity under limited circumstances.

1529 (b) "Service contract" does not include mechanical breakdown insurance.

1530 (c) "Service contract" includes any contract or agreement to perform or reimburse the  
1531 service contract holder for any one or more of the following services:

1532 (i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a  
1533 result of coming into contact with a road hazard;

1534 (ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using  
1535 the process of paintless dent removal without affecting the existing paint finish and without  
1536 replacing vehicle body panels, sanding, bonding, or painting;

1537 (iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as  
1538 a result of damage caused by a road hazard, that is primary to the coverage offered by the motor  
1539 vehicle owner's motor vehicle insurance policy; or

1540 (iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes  
1541 inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to  
1542 only the replacement of a lost or stolen motor vehicle key or key-fob.

1543 (5) "Service contract holder" or "contract holder" means a person who purchases a  
1544 service contract.

1545 (6) "Service contract provider" means a person who issues, makes, provides,  
1546 administers, sells or offers to sell a service contract, or who is contractually obligated to  
1547 provide service under a service contract.

1548 (7) "Service contract reimbursement policy" or "reimbursement insurance policy"  
1549 means a policy of insurance providing coverage for all obligations and liabilities incurred by  
1550 the service contract provider or warrantor under the terms of the service contract or vehicle  
1551 protection product warranty issued by the provider or warrantor.

1552 (8) (a) "Vehicle protection product" means a device or system that is:

1553 (i) installed on or applied to a motor vehicle; and

1554 (ii) designed to prevent the theft of the vehicle.

1555 (b) "Vehicle protection product" includes:

1556 (i) a vehicle protection product warranty;

1557 (ii) an alarm system;

1558 (iii) a body part marking product;

1559 (iv) a steering lock;

1560 (v) a window etch product;

1561 (vi) a pedal and ignition lock;

1562 (vii) a fuel and ignition kill switch; and

1563 (viii) an electronic, radio, or satellite tracking device.

1564 (9) "Vehicle protection product warranty" means a written agreement by a warrantor  
1565 that provides if the vehicle protection product fails to prevent the theft of the motor vehicle,  
1566 that the warrantor will reimburse the warranty holder under the warranty in a fixed amount  
1567 specified in the warranty, not to exceed \$5,000.

1568 (10) "Warrantor" means a person who is contractually obligated to the warranty holder  
1569 under the terms of a vehicle protection product warranty.

1570 (11) "Warranty holder" means the person who purchases a vehicle protection product,  
1571 any authorized transferee or assignee of the purchaser, or any other person legally assuming the  
1572 purchaser's rights under the vehicle protection product warranty.

1573 Section 7. Section **31A-6a-104** is amended to read:

1574 **31A-6a-104. Required disclosures.**

1575 (1) A service contract reimbursement insurance policy insuring a service contract or a

1576 vehicle protection product warranty that is issued, sold, or offered for sale in this state shall  
1577 conspicuously state that, upon failure of the service contract provider or warrantor to perform  
1578 under the contract, the issuer of the policy shall:

1579 (a) pay on behalf of the service contract provider or warrantor any sums the service  
1580 contract provider or warrantor is legally obligated to pay according to the service contract  
1581 provider's or warrantor's contractual obligations under the service contract or a vehicle  
1582 protection product warranty issued or sold by the service contract provider or warrantor; or

1583 (b) provide the service which the service contract provider is legally obligated to  
1584 perform, according to the service contract provider's contractual obligations under the service  
1585 contract issued or sold by the service contract provider.

1586 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless  
1587 the service contract contains the following statements in substantially the following form:

1588 (i) "Obligations of the provider under this service contract are guaranteed under a  
1589 service contract reimbursement insurance policy. Should the provider fail to pay or provide  
1590 service on any claim within 60 days after proof of loss has been filed, the contract holder is  
1591 entitled to make a claim directly against the Insurance Company."; and

1592 (ii) "This service contract or warranty is subject to limited regulation by the Utah  
1593 Insurance Department. To file a complaint, contact the Utah Insurance Department."

1594 (iii) A service contract or reimbursement insurance policy may not be issued, sold, or  
1595 offered for sale in this state unless the contract contains a statement in substantially the  
1596 following form, "Coverage afforded under this contract is not guaranteed by the Property and  
1597 Casualty Guaranty Association."

1598 (b) A vehicle protection product warranty may not be issued, sold, or offered for sale in  
1599 this state unless the vehicle protection product warranty contains the following statements in  
1600 substantially the following form:

1601 (i) "Obligations of the warrantor under this vehicle protection product warranty are  
1602 guaranteed under a reimbursement insurance policy. Should the warrantor fail to pay on any  
1603 claim within 60 days after proof of loss has been filed, the warranty holder is entitled to make a  
1604 claim directly against the Insurance Company."; and

1605 (ii) "This vehicle protection product warranty is subject to limited regulation by the  
1606 Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."

1607 ~~[(b) A service contract or reimbursement insurance policy may not be issued, sold, or~~  
1608 ~~offered for sale in this state unless the contract contains a statement in substantially the~~  
1609 ~~following form, "Coverage afforded under this contract is not guaranteed by the Property and~~  
1610 ~~Casualty Guaranty Association."]~~

1611 (iii) A vehicle protection product warranty, or reimbursement insurance policy, may  
1612 not be issued, sold, or offered for sale in this state unless the warranty contains a statement in  
1613 substantially the following form, "Coverage afforded under this warranty is not guaranteed by  
1614 the Property and Casualty Guaranty Association."

1615 (3) A service contract and a vehicle protection product warranty shall:

1616 (a) conspicuously state the name, address, and a toll free claims service telephone  
1617 number of the reimbursement insurer;

1618 (b) (i) identify the service contract provider, the seller, and the service contract holder;

1619 or

1620 (ii) identify the warrantor, the seller, and the warranty holder;

1621 (c) conspicuously state the total purchase price and the terms under which the service  
1622 contract or warranty is to be paid;

1623 (d) conspicuously state the existence of any deductible amount;

1624 (e) specify the merchandise, service to be provided, and any limitation, exception, or  
1625 exclusion;

1626 (f) state a term, restriction, or condition governing the transferability of the service  
1627 contract or warranty; and

1628 (g) state a term, restriction, or condition that governs cancellation of the service  
1629 contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder  
1630 or service contract provider.

1631 (4) If prior approval of repair work is required, a service contract shall conspicuously  
1632 state the procedure for obtaining prior approval and for making a claim, including:

1633 (a) a toll free telephone number for claim service; and

1634 (b) a procedure for obtaining reimbursement for emergency repairs performed outside  
1635 of normal business hours.

1636 (5) A preexisting condition clause in a service contract shall specifically state which  
1637 preexisting condition is excluded from coverage.

1638 (6) (a) Except as provided in Subsection (6)(c), a service contract shall state the  
1639 conditions upon which the use of a nonmanufacturers' part is allowed.

1640 (b) A condition described in Subsection (6)(a) shall comply with applicable state and  
1641 federal laws.

1642 (c) This Subsection (6) does not apply to a home warranty contract.

1643 (7) This section applies to a vehicle protection product warranty, except for the  
1644 requirements of ~~[Subsection]~~ Subsections (3)(d) and (g), (4), (5), and (6). The department may  
1645 make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to  
1646 implement the application of this section to a vehicle protection product warranty.

1647 (8) A vehicle protection product warranty shall contain a conspicuous statement in  
1648 substantially the following form: "Purchase of this product is optional and is not required in  
1649 order to finance, lease, or purchase a motor vehicle."

1650 Section 8. Section **31A-15-202** is amended to read:

1651 **31A-15-202. Definitions.**

1652 As used in this part:

1653 (1) ~~["Completed]~~ Notwithstanding Section 31A-1-301, "commissioner" means the  
1654 insurance commissioner of Utah or the commissioner, director, or superintendent of insurance  
1655 in another state.

1656 (2) (a) Subject to Subsection (2)(b), "completed operations liability" means liability[;  
1657 including liability for activities which are completed or abandoned before the date of the  
1658 occurrence giving rise to the liability;] arising out of the installation, maintenance, or repair of  
1659 any product at a site ~~[which]~~ that is not owned or controlled by:

1660 ~~[(a)]~~ (i) any person who performs that work; or

1661 ~~[(b)]~~ (ii) any person who hires an independent contractor to perform that work.

1662 (b) "Completed operations liability" includes liability for an activity that is completed  
1663 or abandoned before the date of the occurrence giving rise to the liability.

1664 ~~[(2)]~~ (3) "Domicile," for purposes of determining the state in which a purchasing group  
1665 is domiciled, means:

1666 (a) for a corporation, the state in which the purchasing group is incorporated; and

1667 (b) for an unincorporated entity, the state of its principal place of business.

1668 ~~[(3)]~~ (4) "Hazardous financial condition" means that a risk retention group, based on its

1669 present or reasonably anticipated financial condition, although not yet financially impaired or  
1670 insolvent, is unlikely to be able:

1671 (a) to meet obligations to policyholders with respect to known claims and reasonably  
1672 anticipated claims; or

1673 (b) to pay other obligations in the normal course of business.

1674 ~~[(4)]~~ (5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus  
1675 lines insurance, and any other arrangement for shifting and distributing risk which is  
1676 determined to be insurance under the laws of this state.

1677 ~~[(5)]~~ (6) (a) "Liability" means legal liability for damages, including costs of defense,  
1678 legal costs and fees, and other claims expenses because of injuries to other persons, damage to  
1679 their property, or other damage or loss to other persons~~;~~ resulting from or arising out of:

1680 (i) any business, whether profit or nonprofit ~~[business]~~, trade, product, services,  
1681 including professional ~~[or other]~~ services, premises, or operations; or

1682 (ii) any activity of any state or local government or any agency or political subdivision  
1683 of any state or local government.

1684 (b) "Liability" does not include personal risk liability and an employer's liability with  
1685 respect to its employees other than legal liability under the Federal Employers' Liability Act, 45  
1686 U.S.C. Sec. 51 et seq.

1687 ~~[(6) "NAIC" means the National Association of Insurance Commissioners.]~~

1688 (7) "Personal risk liability" means liability for damages because of injury to any person,  
1689 damage to property, or other loss or damage resulting from any personal, familial, or household  
1690 responsibilities or activities, rather than from responsibilities or activities referred to in  
1691 Subsection ~~[(5)]~~ (6).

1692 (8) "Plan of operation" or ~~[a]~~ "feasibility study" means an analysis ~~[which]~~ that  
1693 presents the expected activities and results of a risk retention group, including at a minimum:

1694 (a) information sufficient to verify that its members are engaged in businesses or  
1695 activities similar or related with respect to the liability to which the members are exposed by  
1696 virtue of any related, similar or common business, trade, product, services, premises or  
1697 operations;

1698 (b) for each state in which it intends to operate, the coverages, deductibles, coverage  
1699 limits, rates, and rating classification systems for each line of insurance the group intends to

1700 offer;

1701 (c) historical and expected loss experience of the proposed members and national  
1702 experience of similar exposures to the extent that this experience is reasonably available;

1703 (d) pro forma financial statements and projections;

1704 (e) appropriate opinions by a qualified, independent casualty actuary, including a  
1705 determination of minimum premium or participation levels required to commence operations  
1706 and to prevent a hazardous financial condition;

1707 (f) identification of management, underwriting and claims procedures, marketing  
1708 methods, managerial oversight methods, investment policies, and reinsurance agreements;

1709 (g) identification of each state in which the risk retention group has obtained, or sought  
1710 to obtain, a charter and license, and a description of its status in each such state; and

1711 (h) any other matters required by the commissioner of the state in which the risk  
1712 retention group is chartered for liability insurance companies authorized by the insurance laws  
1713 of that state.

1714 (9) (a) "Product liability" means liability for damages because of any personal injury,  
1715 death, emotional harm, consequential economic damage, or property damage, including  
1716 damages resulting from the loss of use of property[~~if the liability arises~~] arising out of the  
1717 manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.

1718 (b) "Product liability" does not include the liability of any person for those damages  
1719 described in Subsection (9)(a) if the product involved was in the possession of the person when  
1720 the incident giving rise to the claim occurred.

1721 (10) "Purchasing group" means any group [~~which~~] that:

1722 (a) has as one of its purposes the purchase of liability insurance on a group basis;

1723 (b) purchases liability insurance only for its group members and only to cover their  
1724 similar or related liability exposure, as described in Subsection (10)(c);

1725 (c) is composed of members whose businesses or activities are similar or related with  
1726 respect to the liability to which members are exposed by virtue of any related, similar, or  
1727 common business, trade, products, services, premises, or operations; and

1728 (d) is domiciled in any state.

1729 (11) "Risk retention group" means any corporation or other limited liability  
1730 association:



1731 (a) whose primary activity consists of assuming and spreading all, or any portion of,  
1732 the liability exposure of its group members;

1733 (b) which is organized for the primary purpose of conducting the activity described  
1734 under Subsection (11)(a);

1735 (c) [~~which~~] that:

1736 (i) is chartered and licensed as a liability insurance company and authorized to engage  
1737 in the business of insurance under the laws of any state; or

1738 (ii) (A) before January 1, 1985, was chartered or licensed and authorized to engage in  
1739 the business of insurance under the laws of Bermuda or the Cayman Islands and, before  
1740 January 1, 1985, had certified to the insurance commissioner of at least one state that it  
1741 satisfied the capitalization requirements of that state;

1742 (B) [~~however,~~] except that any [~~such~~] group as described in Subsection (11)(c)(ii)(A)  
1743 shall be considered to be a risk retention group only if it has been engaged in business  
1744 continuously since January 1, 1985, and only for the purpose of continuing to provide  
1745 insurance to cover product liability or completed operations liability, as these terms were  
1746 defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of  
1747 the Liability Risk Retention Act of 1986;

1748 (d) [~~which~~] that does not exclude any person from membership in the group solely to  
1749 provide for members of the group a competitive advantage over the excluded person;

1750 (e) [~~which~~] that:

1751 (i) has as its owners only persons who comprise the membership of the risk retention  
1752 group and who are provided insurance by the group; or

1753 (ii) has as its sole owner an organization [~~which~~] that has as:

1754 (A) [~~has as~~] its members only persons who comprise the membership of the risk  
1755 retention group; and

1756 (B) [~~has as~~] its owners only persons who comprise the membership of the risk retention  
1757 group and who are provided insurance by the group;

1758 (f) whose members are engaged in businesses or activities similar or related with  
1759 respect to the liability to which the members are exposed by virtue of any related, similar, or  
1760 common business trade, products, services, premises or operations;

1761 (g) whose activities do not include providing insurance other than:

1762 (i) liability insurance for assuming and spreading all or any portion of the liability of its  
1763 group members; and

1764 (ii) reinsurance with respect to the liability of any other risk retention group, or any  
1765 members of the other group, which is engaged in businesses or activities so that the group or  
1766 member meets the requirement described in Subsection (11)(f) for membership in the risk  
1767 retention group which provides the reinsurance; and

1768 (h) the name of which includes the phrase "risk retention group."

1769 (12) "State" means:

1770 (a) a state of the United States; or

1771 (b) the District of Columbia.

1772 Section 9. Section **31A-15-203** is amended to read:

1773 **31A-15-203. Risk retention groups chartered in this state.**

1774 (1) As used in this section:

1775 (a) "Board of directors" or "board" means the governing body of the risk retention  
1776 group elected by the shareholders or members to establish policy, elect or appoint officers and  
1777 committees, and make other governing decisions.

1778 (b) "Director" means a natural person designated in the articles of the risk retention  
1779 group, or designated, elected, or appointed by any other manner, name, or title to act as a  
1780 director.

1781 ~~[(+)]~~ (2) (a) A risk retention group under this part shall be chartered and licensed to  
1782 write only liability insurance pursuant to this part and, except as provided elsewhere in this  
1783 part, shall comply with all of the laws, rules, and requirements that apply to liability insurers  
1784 chartered and licensed in this state, and with Section **31A-15-204** to the extent the requirements  
1785 are not a limitation on other laws, rules, or requirements of this state.

1786 (b) Notwithstanding any other provision to the contrary, all risk retention groups  
1787 chartered in this state shall file with the commissioner and the National Association of  
1788 Insurance Commissioners an annual statement [~~with the department and the NAIC~~] in a form  
1789 prescribed by the commissioner[;] and [~~completed in diskette form if required by the~~  
1790 ~~commissioner;~~] completed in accordance with the statement instructions and the [~~NAIC~~]  
1791 National Association of Insurance Commissioners Accounting Practices and Procedures  
1792 Manual.

1793           ~~[(2)]~~ (3) Before it may offer insurance in any state, each risk retention group shall also  
1794 submit for approval to the commissioner of this state a plan of operation or feasibility study.  
1795 The risk retention group shall submit an appropriate revision of the plan or study in the event of  
1796 any subsequent material change in any item of the plan of operation or feasibility study within  
1797 10 days of any [~~such~~] change. The group may not offer any additional kinds of liability  
1798 insurance, in this state or in any other state, until any revision of the plan or study is approved  
1799 by the commissioner.

1800           ~~[(3)]~~ (4) (a) At the time of filing its application for charter, the risk retention group  
1801 shall provide to the commissioner in summary form the following information:

1802           (i) the identity of the initial members of the group;

1803           (ii) the identity of those individuals who organized the group or who will provide  
1804 administrative services or otherwise influence or control the activities of the group;

1805           (iii) the amount and nature of initial capitalization;

1806           (iv) the coverages to be afforded; and

1807           (v) the states in which the group intends to operate.

1808           (b) Upon receipt of this information, the commissioner shall forward the information to  
1809 the [~~NAIC~~] National Association of Insurance Commissioners. Providing notification to the  
1810 [~~NAIC~~] National Association of Insurance Commissioners is in addition to, and may not be  
1811 sufficient to satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

1812           (5) The governance standards for risk retention groups are as follows:

1813           (a) A risk retention group that exists as of May 10, 2016, shall be in compliance with  
1814 the governance standards described in this Subsection (5) by no later than May 10, 2017. A  
1815 risk retention group licensed on or after May 10, 2016, shall be in compliance with the  
1816 governance standards described in this Subsection (5) at the time of licensure.

1817           (b) The board of directors of a risk retention group shall have a majority of independent  
1818 directors. If the risk retention group is a reciprocal:

1819           (i) the attorney-in-fact is required to adhere to the same standards regarding  
1820 independence of operation and governance as imposed on the risk retention group's board of  
1821 directors and subscribers advisory committee under these standards; and

1822           (ii) to the extent permissible under state law, service providers of a reciprocal risk  
1823 retention group shall contract with the risk retention group and not the attorney-in-fact.

1824 (c) A director does not qualify as independent unless the board of directors  
1825 affirmatively determines that the director has no material relationship with the risk retention  
1826 group. Each risk retention group shall disclose these determinations to its domestic regulator,  
1827 at least annually. For this purpose, any person who is a direct or indirect owner of, or  
1828 subscriber in, the risk retention group or is an officer, director, or employee of the owner and  
1829 insured, is considered to be independent, unless some other position of the officer, director, or  
1830 employee constitutes a material relationship, as contemplated by Section 3901(a)(4)(E)(ii) of  
1831 the Liability Risk Retention Act.

1832 (d) Material relationship of a person with the risk retention group includes the  
1833 following:

1834 (i) A material relationship exists if the person receives in any one 12-month period  
1835 compensation or payment of any other item of value by the person, a member of the person's  
1836 immediate family, or a business with which the person is affiliated, from the risk retention  
1837 group or a consultant or service provider to the risk retention group is greater than the greater  
1838 of the following as measured at the end of any fiscal quarter falling in the 12-month period:

1839 (A) 5% of the risk retention group's gross written premium for the 12-month period; or

1840 (B) 2% of the risk retention group's surplus.

1841 (ii) The person or immediate family member of the person is not independent until one  
1842 year after the person's compensation from the risk retention group falls below the threshold  
1843 outlined in Subsection (5)(d)(i).

1844 (iii) A material relationship exists if a director or an immediate family member of a  
1845 director is affiliated with or employed in a professional capacity by a present or former internal  
1846 or external auditor of the risk retention group.

1847 (iv) The director or immediate family member of a director described in Subsection  
1848 (5)(d)(iii) is not independent until one year after the end of the affiliation, employment, or  
1849 auditing relationship.

1850 (v) A material relationship exists if the director or immediate family member of a  
1851 director who is employed as an executive officer of another company where any of the risk  
1852 retention group's present executives serve on that other company's board of directors is not  
1853 independent until one year after the end of the service or the employment relationship.

1854 (e) (i) The term of any material service provider contract with the risk retention group

1855 may not exceed five years. A material service provider contract, or its renewal, shall require  
1856 the approval of the majority of the risk retention group's independent directors. The service  
1857 provider contract is considered material if the amount to be paid for the contract is greater than  
1858 or equal to the greater of:

1859 (A) 5% of the risk retention group's annual gross written premium; or

1860 (B) 2% of the risk retention group's surplus.

1861 (ii) For purposes of Subsection (5)(e)(i), "service provider" includes a captive manager,  
1862 auditor, accountant, actuary, investment advisor, lawyer, managing general underwriter, or  
1863 other party responsible for underwriting, determining rates, collecting premiums, adjusting and  
1864 settling claims, or preparing financial statements. A reference to "lawyer" in this Subsection  
1865 (5)(e)(ii) does not include defense counsel retained by the risk retention group to defend  
1866 claims, unless the amount of fees paid to the lawyer is "material" as referenced in Section  
1867 (5)(e)(i).

1868 (iii) A service provider contract meeting the definition of material relationship  
1869 contained in Section (5)(d) may not be entered into unless the risk retention group has, at least  
1870 30 days before entering into the service provider contract, notified the commissioner in writing  
1871 of its intention to enter into the transaction and the commissioner has not disapproved it within  
1872 the 30-day period.

1873 (iv) The risk retention group's board of directors shall have the right to terminate any  
1874 service provider, audit contract, or actuarial contract at any time for cause after providing  
1875 adequate notice as defined in the contract.

1876 (f) The risk retention group's board of directors shall adopt a written policy in the plan  
1877 of operation as approved by the board that requires the board to:

1878 (i) assure that an owner of the risk retention group receive evidence of ownership  
1879 interest;

1880 (ii) develop a set of governance standards applicable to the risk retention group;

1881 (iii) oversee the evaluation of the risk retention group's management including the  
1882 performance of the captive manager, managing general underwriter, or one or more other  
1883 parties responsible for underwriting, determining rates, collecting premiums, adjusting or  
1884 settling claims, or preparing financial statements;

1885 (iv) review and approve the amount to be paid for all material service providers; and

- 1886 (v) review and approve at least annually:
- 1887 (A) the risk retention group's goals and objectives relevant to the compensation of
- 1888 officers and service providers;
- 1889 (B) the officers' and service providers' performance in light of those goals and
- 1890 objectives; and
- 1891 (C) the continued engagement of the officers and material service providers.
- 1892 (g) (i) A risk retention group shall have an audit committee composed of at least three
- 1893 independent board members as defined in Subsection (5)(c). A non-independent board
- 1894 member may participate in the activities of the audit committee, if invited by the members of
- 1895 the audit committee, but cannot be a member of the audit committee.
- 1896 (ii) The audit committee shall have a written charter that defines the audit committee's
- 1897 purpose, which, at a minimum, shall be to:
- 1898 (A) assist the board's oversight of the integrity of the financial statements, the
- 1899 compliance with legal and regulatory requirements, and the qualifications, independence, and
- 1900 performance of the independent auditor and actuary;
- 1901 (B) discuss the annual audited financial statements and quarterly financial statements
- 1902 with management;
- 1903 (C) discuss the annual audited financial statements with its independent auditor and, if
- 1904 advisable, discuss its quarterly financial statements with its independent auditor;
- 1905 (D) discuss policies with respect to risk assessment and risk management;
- 1906 (E) meet separately and periodically, either directly or through a designated
- 1907 representative of the committee, with management and the independent auditor;
- 1908 (F) review with the independent auditor any audit problems or difficulties and
- 1909 management's response;
- 1910 (G) set clear hiring policies of the risk retention group as to the hiring of employees or
- 1911 former employees of the independent auditor;
- 1912 (H) require the external auditor to rotate the lead or coordinating audit partner having
- 1913 primary responsibility for the risk retention group's audit as well as the audit partner
- 1914 responsible for reviewing that audit so that neither individual performs audit services for more
- 1915 than five consecutive fiscal years; and
- 1916 (I) report regularly to the board of directors.

1917 (iii) The domestic regulator may waive the requirement to establish an audit committee  
1918 composed of independent board members if the risk retention group is able to demonstrate to  
1919 the domestic regulator that it is impracticable to do so and the risk retention group's board of  
1920 directors itself is otherwise able to accomplish the purposes of an audit committee, as described  
1921 in this Section (5)(g).

1922 (h) The board of directors shall adopt and disclose governance standards, where  
1923 "disclose" means making such information available through election, including posting the  
1924 information on the risk retention group's website or other means, and providing such  
1925 information to owners upon request, which shall include:

1926 (i) a process by which the directors are elected by the owners;

1927 (ii) director qualification standards;

1928 (iii) director responsibilities;

1929 (iv) director access to management and, as necessary and appropriate, independent  
1930 advisors;

1931 (v) director compensation;

1932 (vi) director orientation and continuing education;

1933 (vii) the policies and procedures that are followed for management succession; and

1934 (viii) the policies and procedures that are followed for annual performance evaluation  
1935 of the board.

1936 (i) The board of directors shall adopt and disclose a code of business conduct and  
1937 ethics for directors, officers, and employees and promptly disclose to the board of directors any  
1938 waivers of the code for directors or executive officers, which shall include the following topics:

1939 (i) conflicts of interest;

1940 (ii) matters covered under the corporate opportunities doctrine under the state of  
1941 domicile;

1942 (iii) confidentiality;

1943 (iv) fair dealing;

1944 (v) protection and proper use of risk retention group assets;

1945 (vi) compliance with all applicable laws, rules, and regulations; and

1946 (vii) requiring the reporting of any illegal or unethical behavior that affects the  
1947 operation of the risk retention group.

1948            (j) A captive manager, president, or chief executive officer of a risk retention group  
1949 shall promptly notify the domestic regulator in writing if the captive manager, president, or  
1950 chief executive officer becomes aware of any material non-compliance with any of the  
1951 governance standards in this Subsection (5).

1952            Section 10. Section **31A-15-204** is amended to read:

1953            **31A-15-204. Risk retention groups not chartered in this state -- Designation of**  
1954 **commissioner as agent -- Compliance with unfair claims settlement practices act --**  
1955 **Deceptive, false, or fraudulent practices -- Examination regarding financial condition --**  
1956 **Prohibitions -- Penalties -- Operation prior to enactment of this part.**

1957            (1) Risk retention groups chartered and licensed in other states and seeking to do  
1958 business as a risk retention group in this state shall comply with the following:

1959            (a) Before offering insurance in this state a risk retention group shall submit to the  
1960 commissioner:

1961            (i) a statement identifying the states in which the group is chartered and licensed as a  
1962 liability insurance company, its charter date, its principal place of business, and any other  
1963 information, including information on its membership, the commissioner may require to verify  
1964 that the group is a qualified risk retention group as defined in [~~Subsection~~] Section  
1965 31A-15-202~~[(11)]~~; and

1966            (ii) a copy of its plan of operations or feasibility study and revisions of the plan or  
1967 study submitted to the state in which the risk retention group is chartered and licensed, except a  
1968 plan or study is not required for any line or classification of liability insurance that:

1969            (A) was defined in the Product Liability Risk Retention Act of 1981 before October 27,  
1970 1986; and

1971            (B) was offered before that date by any risk retention group that had been chartered  
1972 and operating for not less than three years before that date.

1973            (b) The risk retention group shall submit to the commissioner a copy of any revision to  
1974 its plan or study required by Subsection 31A-15-203~~[(2)]~~(3) at the same time it submits the  
1975 revision of its chartering state.

1976            (c) The risk retention group shall submit, on a form approved by the commissioner, a  
1977 statement of registration and a notice designating the commissioner as agent for the purpose of  
1978 receiving service of legal documents or process.



1979 (d) The risk retention group shall pay annual license fees required by Section  
1980 31A-3-103.

1981 (2) Any risk retention group doing business in this state shall submit to the  
1982 commissioner:

1983 (a) a copy of the group's financial statement submitted to the state in which the risk  
1984 retention group is chartered and licensed, which shall be certified by an independent public  
1985 accountant and shall contain a statement of opinion on loss and loss adjustment expense  
1986 reserves made by a member of the American Academy of Actuaries or a loss reserve specialist  
1987 qualified under criteria approved by the commissioner;

1988 (b) a copy of each examination of the risk retention group as certified by the  
1989 commissioner or public official conducting the examination;

1990 (c) if the commissioner requests, a copy of any information or document pertaining to  
1991 any outside audit performed with respect to the risk retention group; and

1992 (d) any other information required to verify the group's continuing qualification as a  
1993 risk retention group within the definition in [~~Subsection~~] Section 31A-15-202[(H)].

1994 (3) (a) Each risk retention group shall pay premium taxes and taxes on premiums of  
1995 direct business for risks resident or located within this state, and shall report to the Utah State  
1996 Tax Commission the net premiums written for risks resident or located within this state. Each  
1997 risk retention group shall be subject to taxation, and any applicable fines and penalties related  
1998 to taxation, on the same basis as a foreign admitted insurer.

1999 (b) To the extent licensed producers are utilized pursuant to Section 31A-15-212, they  
2000 shall report to the commissioner the premiums for direct business for all risks resident or  
2001 located within this state that the producers have placed with, or on behalf of, a risk retention  
2002 group not chartered in this state.

2003 (c) To the extent that insurance producers are utilized pursuant to Section 31A-15-212  
2004 they shall keep a complete and separate record of all policies procured from each risk retention  
2005 group. The record shall be open to examination by the commissioner, as provided under  
2006 Section 31A-23a-412. These records shall include the following for each policy and each kind  
2007 of insurance provided under each policy:

2008 (i) the limit of liability;

2009 (ii) the time period covered;

- 2010 (iii) the effective date;
- 2011 (iv) the name of the risk retention group that issued the policy;
- 2012 (v) the gross premium charged;
- 2013 (vi) the amount of any returned premiums; and
- 2014 (vii) additional information required by the insurance commissioner.
- 2015 (4) Each risk retention group and its agents and representatives shall comply with:
- 2016 (a) the Unfair Claims Settlement Practices Act, including Section 31A-15-207[; Title
- 2017 31A,];
- 2018 (b) Chapter 26, Part 3, Claim Practices[;]; and
- 2019 (c) any other provision of law relating to claims settlement practices.
- 2020 (5) Each risk retention group shall comply with the laws of this state regarding
- 2021 deceptive, false, and fraudulent acts, practices regulated under [~~Title 31A,~~] Chapter 23a, Part 4,
- 2022 Marketing Practices, and any other provision of law relating to deceptive, false, or fraudulent
- 2023 practices. The commissioner may only obtain an injunction regarding the conduct described in
- 2024 this subsection from a court of competent jurisdiction.
- 2025 (6) If the commissioner of the jurisdiction in which the group is chartered and licensed
- 2026 has not initiated an examination or does not initiate an examination within 60 days after a
- 2027 request by the commissioner of this state, the risk retention group shall submit to an
- 2028 examination by the commissioner of this state to determine its financial condition. Any
- 2029 examination conducted under this subsection shall be coordinated to avoid unjustified
- 2030 repetition and shall be conducted in an expeditious manner and in accordance with the
- 2031 [~~NAIC's~~] National Association of Insurance Commissioner's Examiner Handbook.
- 2032 (7) Each application form for insurance from a risk retention group and each policy and
- 2033 certificate issued by a risk retention group shall contain the following notice in ten-point type
- 2034 on its front and declaration pages:
- 2035 "NOTICE
- 2036 This policy is issued by your risk retention group. Your risk retention group may not be
- 2037 subject to all of the insurance laws and regulations of your state. State insurance insolvency
- 2038 guaranty funds are not available for your risk retention group."
- 2039 (8) The following acts by a risk retention group are prohibited:
- 2040 (a) the solicitation or sale of insurance by a risk retention group to any person who is

2041 not eligible for membership in the group; and

2042 (b) the solicitation or sale of insurance by, or operation of, a risk retention group that is  
2043 in hazardous financial condition or financially impaired.

2044 (9) A risk retention group may not do business in this state if an insurance company is  
2045 directly or indirectly a member or owner of the risk retention group, unless all members of the  
2046 group are insurance companies.

2047 (10) The terms of any insurance policy issued by a risk retention group may not  
2048 provide, or be construed to provide, coverage prohibited generally by statute of this state or  
2049 declared unlawful by the Utah Supreme Court.

2050 (11) A risk retention group not chartered in this state and doing business in this state  
2051 shall comply with a lawful order issued in a voluntary dissolution proceeding or in a  
2052 delinquency proceeding commenced by any state's insurance commissioner if there has been a  
2053 finding of financial impairment after an examination under Subsection (6).

2054 (12) A risk retention group that violates any provision of this part is subject to fines  
2055 and penalties applicable to licensed insurers generally, including revocation of its right to do  
2056 business in this state.

2057 (13) In addition to complying with the requirements of this section, each risk retention  
2058 group operating in this state before the effective date of this part shall comply with Subsection  
2059 (1)(a) within 30 days after the effective date of this part.

2060 Section 11. Section **31A-15-206.5** is enacted to read:

2061 **31A-15-206.5. Countersignatures not required.**

2062 A policy of insurance issued to a risk retention group or any member of the risk  
2063 retention group may not be required to be countersigned.

2064 Section 12. Section **31A-15-208** is amended to read:

2065 **31A-15-208. Purchasing groups -- Notice and registration requirements.**

2066 (1) A purchasing group that intends to do business in this state shall, [~~prior to~~] before  
2067 doing business, furnish reasonable notice to the insurance commissioner in this state. The  
2068 notice shall be on forms prescribed by the National Association of Insurance Commissioners  
2069 and shall:

2070 (a) [~~identifying~~] identify the state in which the [~~purchasing~~] group is domiciled;

2071 (b) [~~identifying any state~~] identify the other states in which the [~~purchasing~~] group

2072 intends to do business;

2073 (c) [~~specifying~~] specify the lines and classifications of liability insurance that the  
2074 [~~purchasing~~] group intends to purchase;

2075 (d) [~~identifying the insurers~~] identify the one or more insurance companies from which  
2076 the group intends to purchase its insurance and the domicile of the insurers;

2077 (e) [~~specifying~~] specify the method by which, and [~~any~~] the one or more persons, if  
2078 any, through whom, insurance will be offered to [~~group~~] its members whose risks are resident  
2079 or located in this state;

2080 (f) [~~identifying~~] identify the principal place of business of the [~~purchasing~~] group; and

2081 (g) [~~providing any~~] provide any other information as may be required by the  
2082 commissioner to verify that the [~~purchasing~~] group is a qualified "purchasing group," as  
2083 defined in Section 31A-15-202.

2084 (2) A purchasing group shall notify the commissioner of a change in an item listed in  
2085 Subsection (1) within 10 days of the change.

2086 (3) (a) A purchasing group shall annually register with the commissioner and pay a  
2087 filing fee.

2088 (b) A purchasing group shall designate the commissioner as its agent solely for the  
2089 purpose of receiving service of legal documents or process.

2090 (c) The registration and fee requirements of this Subsection (3) do not apply to a  
2091 purchasing group that only purchases insurance that was authorized under the Product Liability  
2092 Risk Retention Act of 1981, and that:

2093 (i) in any state of the United States:

2094 (A) was domiciled before April 1, 1986; and

2095 (B) is domiciled after October 27, 1986;

2096 (ii) (A) before October 27, 1986, purchased insurance from an insurer licensed in any  
2097 state; and

2098 (B) since October 27, 1986, purchased its insurance from an insurer licensed in any  
2099 state; or

2100 (iii) was a purchasing group under the requirements of the Product Liability Risk  
2101 Retention Act of 1981 before October 27, 1986.

2102 (4) [~~A~~] Each purchasing group that is required to give notice under Subsection (1) shall

2103 also furnish the information required by the commissioner to:

- 2104 (a) verify that the entity qualifies as a purchasing group;  
 2105 (b) determine where the purchasing group is located; and  
 2106 (c) determine appropriate tax treatment of the purchasing group.

2107 Section 13. Section **31A-15-209** is amended to read:

2108 **31A-15-209. Restrictions on purchasing groups.**

2109 ~~[(1) A purchasing group which obtains liability insurance from an insurer not admitted~~  
 2110 ~~in this state or from a risk retention group shall inform each of the group members which have~~  
 2111 ~~a risk resident or located in this state that the risk is not protected by an insurance insolvency~~  
 2112 ~~guaranty fund in this state, and that the risk retention group or insurer may not be subject to all~~  
 2113 ~~insurance laws and regulations of this state.]~~

2114 (1) A purchasing group may not purchase insurance from a risk retention group that is  
 2115 not chartered in a state or from an insurer not admitted in the state in which the purchasing  
 2116 group is located, unless the purchase is effected through a licensed producer acting pursuant to  
 2117 the surplus lines laws and regulations of the state in which the purchasing group is located.

2118 (2) A purchasing group that obtains liability insurance from an insurer not admitted in  
 2119 this state or a risk retention group shall inform each of the members of the purchasing group or  
 2120 risk retention group that have a risk resident or located in this state that:

- 2121 (a) the risk is not protected by an insurance insolvency guaranty fund in this state; and  
 2122 (b) the risk retention group or insurer may not be subject to all insurance laws and  
 2123 regulations of this state.

2124 ~~[(2)]~~ (3) (a) A purchasing group may not purchase insurance providing for a deductible  
 2125 or self-insured retention applicable to the group as a whole[; however,].

2126 (b) Notwithstanding Subsection (3)(a), coverage may provide for a deductible or  
 2127 self-insured retention applicable to individual members.

2128 ~~[(3)]~~ (4) Purchases of insurance by purchasing groups are subject to the same standards  
 2129 regarding aggregate limits which are applicable to all purchases of group insurance.

2130 Section 14. Section **31A-15-212** is amended to read:

2131 **31A-15-212. Duty of producers to obtain license -- Risk retention groups --**  
 2132 **Purchasing groups.**

2133 (1) A person may do the following only if ~~[he]~~ the person is licensed as an insurance

2134 [~~agent or broker~~] producer or is exempt from licensure under [~~Title 31A,~~] Chapter 23a,  
2135 Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries:

2136 (a) solicit, negotiate, or procure liability insurance in this state from a risk retention  
2137 group;

2138 (b) solicit, negotiate, or procure liability insurance in this state for a purchasing group  
2139 from an authorized insurer or a risk retention group; and

2140 (c) solicit, negotiate, or procure liability insurance coverage in this state for any  
2141 member of a purchasing group under a purchasing group's policy.

2142 [~~(2) A person may solicit, negotiate, or procure liability insurance from an insurer not  
2143 authorized to do business in this state on behalf of a purchasing group located in this state only  
2144 if he is licensed as a surplus lines producer or is exempt from licensure under Title 31A,  
2145 Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance  
2146 Intermediaries.]~~

2147 [~~(3) The requirement of residence in this state does not apply for purposes of acting as  
2148 a producer for a risk retention group or purchasing group under Subsections (1) and (2).]~~

2149 [~~(4) On business placed with a risk retention group or written through a purchasing  
2150 group, each person licensed under this title shall provide to each prospective insured the notice  
2151 required by Subsection 31A-15-204(7) in the case of a risk retention group, and by Subsection  
2152 31A-15-209(1) in the case of a purchasing group.]~~

2153 [~~(5) Solicitation for membership in a purchasing group is not of itself a solicitation for  
2154 insurance.]~~

2155 (2) (a) A person may not act or aid in any manner in soliciting, negotiating, or  
2156 procuring liability insurance in this state for a purchasing group from an authorized insurer or a  
2157 risk retention group chartered in a state unless that person is licensed as an insurance producer,  
2158 or is exempt from licensure under Chapter 23a, Insurance Marketing - Licensing Producers,  
2159 Consultants, and Reinsurance Intermediaries.

2160 (b) A person may not act or aid in any manner in soliciting, negotiating, or procuring  
2161 liability insurance coverage in this state for any member of a purchasing group under a  
2162 purchasing group's policy unless that person is licensed as an insurance producer, or is exempt  
2163 from licensure under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,  
2164 and Reinsurance Intermediaries.

2165 (c) A person may not act or aid in any manner in soliciting, negotiating, or procuring  
 2166 liability insurance from an insurer not authorized to do business in this state on behalf of a  
 2167 purchasing group located in this state unless that person is licensed as a surplus lines producer  
 2168 or excess lines producer or is exempt from licensure under Chapter 23a, Insurance Marketing -  
 2169 Licensing Producers, Consultants, and Reinsurance Intermediaries.

2170 (3) For purposes of acting as a producer for a risk retention group or purchasing group  
 2171 pursuant to Subsections (1) and (2), the requirement of residence in this state does not apply.

2172 (4) A person licensed pursuant to Chapter 23a, Insurance Marketing - Licensing  
 2173 Producers, Consultants, and Reinsurance Intermediaries, on business placed with a risk  
 2174 retention group or written through a purchasing group, shall inform each prospective insured of  
 2175 the provisions of the notice required by Subsection [31A-15-204\(7\)](#) in the case of a purchasing  
 2176 group.

2177 Section 15. Section **31A-15-213.5** is enacted to read:

2178 **31A-15-213.5. Rulemaking.**

2179 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
 2180 commissioner may make and from time to time amend rules relating to risk retention groups as  
 2181 may be necessary or desirable to carry out this part.

2182 Section 16. Section **31A-17-404** is amended to read:

2183 **31A-17-404. Credit allowed a domestic ceding insurer against reserves for**  
 2184 **reinsurance.**

2185 (1) A domestic ceding insurer is allowed credit for reinsurance as either an asset or a  
 2186 reduction from liability for reinsurance ceded only if the reinsurer meets the requirements of  
 2187 Subsection (3), (4), (5), (6), ~~or~~ (7), or (8), subject to the following:

2188 (a) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a  
 2189 kind or class of business that the assuming insurer is licensed or otherwise permitted to write or  
 2190 assume:

2191 (i) in its state of domicile; or

2192 (ii) in the case of a United States branch of an alien assuming insurer, in the state  
 2193 through which it is entered and licensed to transact insurance or reinsurance.

2194 (b) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of  
 2195 Subsection ~~[(8)]~~ (9) are met.

- 2196 (2) A domestic ceding insurer is allowed credit for reinsurance ceded:
- 2197 (a) only if the reinsurance is payable in a manner consistent with Section 31A-22-1201;
- 2198 (b) only to the extent that the accounting:
- 2199 (i) is consistent with the terms of the reinsurance contract; and
- 2200 (ii) clearly reflects:
- 2201 (A) the amount and nature of risk transferred; and
- 2202 (B) liability, including contingent liability, of the ceding insurer;
- 2203 (c) only to the extent the reinsurance contract shifts insurance policy risk from the
- 2204 ceding insurer to the assuming reinsurer in fact and not merely in form; and
- 2205 (d) only if the reinsurance contract contains a provision placing on the reinsurer the
- 2206 credit risk of all dealings with intermediaries regarding the reinsurance contract.
- 2207 (3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
- 2208 assuming insurer that is licensed to transact insurance or reinsurance in this state.
- 2209 (4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
- 2210 assuming insurer that is accredited by the commissioner as a reinsurer in this state.
- 2211 (b) An insurer is accredited as a reinsurer if the insurer:
- 2212 (i) files with the commissioner evidence of the insurer's submission to this state's
- 2213 jurisdiction;
- 2214 (ii) submits to the commissioner's authority to examine the insurer's books and records;
- 2215 (iii) (A) is licensed to transact insurance or reinsurance in at least one state; or
- 2216 (B) in the case of a United States branch of an alien assuming insurer, is entered
- 2217 through and licensed to transact insurance or reinsurance in at least one state;
- 2218 (iv) files annually with the commissioner a copy of the insurer's:
- 2219 (A) annual statement filed with the insurance department of its state of domicile; and
- 2220 (B) most recent audited financial statement; and
- 2221 (v) (A) (I) has not had its accreditation denied by the commissioner within 90 days of
- 2222 the day on which the insurer submits the information required by this Subsection (4); and
- 2223 (II) maintains a surplus with regard to policyholders in an amount not less than
- 2224 \$20,000,000; or
- 2225 (B) (I) has its accreditation approved by the commissioner; and
- 2226 (II) maintains a surplus with regard to policyholders in an amount less than



2227 \$20,000,000.

2228 (c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's  
2229 accreditation is revoked by the commissioner after a notice and hearing.

2230 (5) (a) A domestic ceding insurer is allowed a credit if:

2231 (i) the reinsurance is ceded to an assuming insurer that is:

2232 (A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or

2233 (B) in the case of a United States branch of an alien assuming insurer, is entered  
2234 through a state meeting the requirements of Subsection (5)(a)(ii);

2235 (ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for  
2236 reinsurance substantially similar to those applicable under this section; and

2237 (iii) the assuming insurer or United States branch of an alien assuming insurer:

2238 (A) maintains a surplus with regard to policyholders in an amount not less than  
2239 \$20,000,000; and

2240 (B) submits to the authority of the commissioner to examine its books and records.

2241 (b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded  
2242 and assumed pursuant to a pooling arrangement among insurers in the same holding company  
2243 system.

2244 (6) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an  
2245 assuming insurer that maintains a trust fund:

2246 (i) created in accordance with rules made by the commissioner; and

2247 (ii) in a qualified United States financial institution for the payment of a valid claim of:

2248 (A) a United States ceding insurer of the assuming insurer;

2249 (B) an assign of the United States ceding insurer; and

2250 (C) a successor in interest to the United States ceding insurer.

2251 (b) To enable the commissioner to determine the sufficiency of the trust fund described  
2252 in Subsection (6)(a), the assuming insurer shall:

2253 (i) report annually to the commissioner information substantially the same as that  
2254 required to be reported on the National Association of Insurance Commissioners Annual  
2255 Statement form by a licensed insurer; and

2256 (ii) (A) submit to examination of its books and records by the commissioner; and

2257 (B) pay the cost of an examination.

2258 (c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the  
2259 form of the trust and any amendment to the trust is approved by:

2260 (A) the commissioner of the state where the trust is domiciled; or

2261 (B) the commissioner of another state who, pursuant to the terms of the trust  
2262 instrument, accepts principal regulatory oversight of the trust.

2263 (ii) The form of the trust and an amendment to the trust shall be filed with the  
2264 commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.

2265 (iii) The trust instrument shall provide that a contested claim is valid and enforceable  
2266 upon the final order of a court of competent jurisdiction in the United States.

2267 (iv) The trust shall vest legal title to its assets in its one or more trustees for the benefit  
2268 of:

2269 (A) a United States ceding insurer of the assuming insurer;

2270 (B) an assign of the United States ceding insurer; or

2271 (C) a successor in interest to the United States ceding insurer.

2272 (v) The trust and the assuming insurer are subject to examination as determined by the  
2273 commissioner.

2274 (vi) The trust shall remain in effect for as long as the assuming insurer has an  
2275 outstanding obligation due under a reinsurance agreement subject to the trust.

2276 (vii) No later than February 28 of each year, the trustee of the trust shall:

2277 (A) report to the commissioner in writing the balance of the trust;

2278 (B) list the trust's investments at the end of the preceding calendar year; and

2279 (C) (I) certify the date of termination of the trust, if so planned; or

2280 (II) certify that the trust will not expire prior to the following December 31.

2281 (d) The following requirements apply to the following categories of assuming insurer:

2282 (i) For a single assuming insurer:

2283 (A) the trust fund shall consist of funds in trust in an amount not less than the assuming  
2284 insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and

2285 (B) the assuming insurer shall maintain a trusteed surplus of not less than

2286 \$20,000,000[-], except as provided in Subsection (6)(d)(ii).

2287 (ii) (A) At any time after the assuming insurer has permanently discontinued

2288 underwriting new business secured by the trust for at least three full years, the commissioner

2289 with principal regulatory oversight of the trust may authorize a reduction in the required  
2290 trusteed surplus, but only after a finding, based on an assessment of the risk, that the new  
2291 required surplus level is adequate for the protection of United States ceding insurers,  
2292 policyholders, and claimants in light of reasonably foreseeable adverse loss development.

2293 (B) The risk assessment may involve an actuarial review, including an independent  
2294 analysis of reserves and cash flows, and shall consider all material risk factors, including, when  
2295 applicable, the lines of business involved, the stability of the incurred loss estimates, and the  
2296 effect of the surplus requirements on the assuming insurer's liquidity or solvency.

2297 (C) The minimum required trusteed surplus may not be reduced to an amount less than  
2298 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States  
2299 ceding insurers covered by the trust.

2300 [(ii)] (iii) For a group acting as assuming insurer, including incorporated and individual  
2301 unincorporated underwriters:

2302 (A) for reinsurance ceded under a reinsurance agreement with an inception,  
2303 amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed  
2304 account in an amount not less than the [group's] respective underwriters' several liabilities  
2305 attributable to business ceded by the one or more United States domiciled ceding insurers to [a  
2306 member] an underwriter of the group;

2307 (B) for reinsurance ceded under a reinsurance agreement with an inception date on or  
2308 before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the  
2309 other provisions of this chapter, the trust shall consist of a trusteed account in an amount not  
2310 less than the [group's] respective underwriters' several insurance and reinsurance liabilities  
2311 attributable to business written in the United States;

2312 (C) in addition to a trust described in Subsection (6)(d)[(ii)](iii)(A) or (B), the group  
2313 shall maintain in trust a trusteed surplus of which \$100,000,000 is held jointly for the benefit of  
2314 the one or more United States domiciled ceding insurers of a member of the group for all years  
2315 of account;

2316 (D) the incorporated members of the group:

2317 (I) may not be engaged in a business other than underwriting as a member of the group;  
2318 and

2319 (II) are subject to the same level of regulation and solvency control by the group's

2320 domiciliary regulator as are the unincorporated members; and

2321 (E) within 90 days after the day on which the group's financial statements are due to be  
2322 filed with the group's domiciliary regulator, the group shall provide to the commissioner:

2323 (I) an annual certification by the group's domiciliary regulator of the solvency of each  
2324 underwriter member; or

2325 (II) if a certification is unavailable, a financial statement, prepared by an independent  
2326 public accountant, of each underwriter member of the group.

2327 [~~(iii)~~] (iv) For a group of incorporated underwriters under common administration, the  
2328 group shall:

2329 (A) have continuously transacted an insurance business outside the United States for at  
2330 least three years immediately preceding the day on which the group makes application for  
2331 accreditation;

2332 (B) maintain aggregate policyholders' surplus of at least \$10,000,000,000;

2333 (C) maintain a trust fund in an amount not less than the group's several liabilities  
2334 attributable to business ceded by the one or more United States domiciled ceding insurers to a  
2335 member of the group pursuant to a reinsurance contract issued in the name of the group;

2336 (D) in addition to complying with the other provisions of this Subsection  
2337 (6)(d)[~~(iii)~~](iv), maintain a joint trusted surplus of which \$100,000,000 is held jointly for the  
2338 benefit of the one or more United States domiciled ceding insurers of a member of the group as  
2339 additional security for these liabilities; and

2340 (E) within 90 days after the day on which the group's financial statements are due to be  
2341 filed with the group's domiciliary regulator, make available to the commissioner:

2342 (I) an annual certification of each underwriter member's solvency by the member's  
2343 domiciliary regulator; and

2344 (II) a financial statement of each underwriter member of the group prepared by an  
2345 independent public accountant.

2346 (7) If reinsurance is ceded to an assuming insurer not meeting the requirements of  
2347 Subsection (3), (4), (5), or (6), a domestic ceding insurer is allowed credit only as to the  
2348 insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law  
2349 or regulation of that jurisdiction.

2350 (8) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an

2351 assuming insurer that secures its obligations in accordance with this Subsection (8):

2352 (a) The insurer shall be certified by the commissioner as a reinsurer in this state.

2353 (b) To be eligible for certification, the assuming insurer shall:

2354 (i) be domiciled and licensed to transact insurance or reinsurance in a qualified

2355 jurisdiction, as determined by the commissioner pursuant to Subsection (8)(d);

2356 (ii) maintain minimum capital and surplus, or its equivalent, in an amount to be

2357 determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter

2358 3, Utah Administrative Rulemaking Act;

2359 (iii) maintain financial strength ratings from two or more rating agencies considered

2360 acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter

2361 3, Utah Administrative Rulemaking Act;

2362 (iv) agree to:

2363 (A) submit to the jurisdiction of this state;

2364 (B) appoint the commissioner as its agent for service of process in this state;

2365 (C) provide security for 100% of the assuming insurer's liabilities attributable to

2366 reinsurance ceded by United States ceding insurers if it resists enforcement of a final United

2367 States judgment;

2368 (D) agree to meet applicable information filing requirements as determined by the

2369 commissioner including an application for certification, a renewal and on an ongoing basis; and

2370 (E) any other requirements for certification considered relevant by the commissioner.

2371 (c) An association, including incorporated and individual unincorporated underwriters,

2372 may be a certified reinsurer. To be eligible for certification, in addition to satisfying

2373 requirements of Subsections (8)(a) and (b), the association:

2374 (i) shall satisfy its minimum capital and surplus requirements through the capital and

2375 surplus equivalents, net of liabilities, of the association and its members, which shall include a

2376 joint central fund that may be applied to any unsatisfied obligation of the association or any of

2377 its members in an amount determined by the commissioner to provide adequate protection;

2378 (ii) may not have incorporated members of the association engaged in any business

2379 other than underwriting as a member of the association;

2380 (iii) shall be subject to the same level of regulation and solvency control of the

2381 incorporated members of the association by the association's domiciliary regulator as are the

2382 unincorporated members; and

2383 (iv) within 90 days after its financial statements are due to be filed with the  
2384 association's domiciliary regulator provide:

2385 (A) to the commissioner an annual certification by the association's domiciliary  
2386 regulator of the solvency of each underwriter member; or

2387 (B) if a certification is unavailable, financial statements prepared by independent  
2388 public accountants, of each underwriter member of the association.

2389 (d) The commissioner shall create and publish a list of qualified jurisdictions under  
2390 which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be  
2391 considered for certification by the commissioner as a certified reinsurer.

2392 (i) To determine whether the domiciliary jurisdiction of a non-United States assuming  
2393 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:

2394 (A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory  
2395 system of the jurisdiction, both initially and on an ongoing basis;

2396 (B) shall consider the rights, the benefits, and the extent of reciprocal recognition  
2397 afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the  
2398 United States;

2399 (C) shall require the qualified jurisdiction to share information and cooperate with the  
2400 commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and

2401 (D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has  
2402 determined that the jurisdiction does not adequately and promptly enforce final United States  
2403 judgments and arbitration awards.

2404 (ii) The commissioner may consider additional factors in determining a qualified  
2405 jurisdiction.

2406 (iii) A list of qualified jurisdictions shall be published through the National  
2407 Association of Insurance Commissioners' Committee Process and the commissioner shall:

2408 (A) consider this list in determining qualified jurisdictions; and

2409 (B) if the commissioner approves a jurisdiction as qualified that does not appear on the  
2410 National Association of Insurance Commissioner's list of qualified jurisdictions, provide  
2411 thoroughly documented justification in accordance with criteria to be developed by rule made  
2412 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2413 (iv) United States jurisdictions that meet the requirement for accreditation under the  
2414 National Association of Insurance Commissioners' financial standards and accreditation  
2415 program shall be recognized as qualified jurisdictions.

2416 (v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,  
2417 the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

2418 (e) The commissioner shall:

2419 (i) assign a rating to each certified reinsurer, giving due consideration to the financial  
2420 strength ratings that have been assigned by rating agencies considered acceptable to the  
2421 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
2422 Rulemaking Act; and

2423 (ii) publish a list of all certified reinsurers and their ratings.

2424 (f) A certified reinsurer shall secure obligations assumed from United States ceding  
2425 insurers under this Subsection (8) at a level consistent with its rating, as specified in rules made  
2426 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative  
2427 Rulemaking Act.

2428 (i) For a domestic ceding insurer to qualify for full financial statement credit for  
2429 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a  
2430 form acceptable to the commissioner and consistent with Section [31A-17-404.1](#), or in a  
2431 multibeneficiary trust in accordance with Subsections (5), (6), and (7), except as otherwise  
2432 provided in this Subsection (8).

2433 (ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to  
2434 Subsections (5), (6), and (7), and chooses to secure its obligations incurred as a certified  
2435 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate  
2436 trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a  
2437 certified reinsurer with reduced security as permitted by this Subsection (8) or comparable laws  
2438 of other United States jurisdictions and for its obligations subject to Subsections (5), (6), and  
2439 (7).

2440 (iii) It shall be a condition to the grant of certification under this Subsection (8) that the  
2441 certified reinsurer shall have bound itself, by the language of the trust and agreement with the  
2442 commissioner with principal regulatory oversight of the trust account, to fund, upon  
2443 termination of the trust account, out of the remaining surplus of the trust, any deficiency of any

2444 other the trust account.

2445 (iv) The minimum trustee surplus requirements provided in Subsections (5), (6), and  
2446 (7) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer  
2447 for the purpose of securing obligations incurred under this Subsection (8), except that the trust  
2448 shall maintain a minimum trustee surplus of \$10,000,000.

2449 (v) With respect to obligations incurred by a certified reinsurer under this Subsection  
2450 (8), if the security is insufficient, the commissioner:

2451 (A) shall reduce the allowable credit by an amount proportionate to the deficiency; and

2452 (B) may impose further reductions in allowable credit upon finding that there is a  
2453 material risk that the certified reinsurer's obligations will not be paid in full when due.

2454 (vi) For purposes of this Subsection (8), a certified reinsurer whose certification has  
2455 been terminated for any reason shall be treated as a certified reinsurer required to secure 100%  
2456 of its obligations.

2457 (A) As used in this Subsection (8), the term "terminated" refers to revocation,  
2458 suspension, voluntary surrender, and inactive status.

2459 (B) If the commissioner continues to assign a higher rating as permitted by other  
2460 provisions of this section, the requirement under this Subsection (8)(f)(vi) does not apply to a  
2461 certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

2462 (g) If an applicant for certification has been certified as a reinsurer in a National  
2463 Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:

2464 (i) defer to that jurisdiction's certification;

2465 (ii) defer to the rating assigned by that jurisdiction; and

2466 (iii) consider such reinsurer to be a certified reinsurer in this state.

2467 (h) (i) A certified reinsurer that ceases to assume new business in this state may request  
2468 to maintain its certification in inactive status in order to continue to qualify for a reduction in  
2469 security for its in-force business.

2470 (ii) An inactive certified reinsurer shall continue to comply with all applicable  
2471 requirements of this Subsection (8).

2472 (iii) The commissioner shall assign a rating to a reinsurer that qualifies under this  
2473 Subsection (8)(h), that takes into account, if relevant, the reasons why the reinsurer is not  
2474 assuming new business.



2475           ~~[(8)]~~ (9) Reinsurance credit may not be allowed a domestic ceding insurer unless the  
2476 assuming insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:

2477           (a) (i) being an admitted insurer; and

2478           (ii) submitting to jurisdiction under Section 31A-2-309;

2479           (b) having irrevocably appointed the commissioner as the domestic ceding insurer's  
2480 agent for service of process in an action arising out of or in connection with the reinsurance,  
2481 which appointment is made under Section 31A-2-309; or

2482           (c) agreeing in the reinsurance contract:

2483           (i) that if the assuming insurer fails to perform its obligations under the terms of the  
2484 reinsurance contract, the assuming insurer, at the request of the ceding insurer, shall:

2485           (A) submit to the jurisdiction of a court of competent jurisdiction in a state of the  
2486 United States;

2487           (B) comply with all requirements necessary to give the court jurisdiction; and

2488           (C) abide by the final decision of the court or of an appellate court in the event of an  
2489 appeal; and

2490           (ii) to designate the commissioner or a specific attorney licensed to practice law in this  
2491 state as its attorney upon whom may be served lawful process in an action, suit, or proceeding  
2492 instituted by or on behalf of the ceding company.

2493           ~~[(9)]~~ (10) Submitting to the jurisdiction of Utah courts under Subsection ~~[(8)]~~ (9) does  
2494 not override a duty or right of a party under the reinsurance contract, including a requirement  
2495 that the parties arbitrate their disputes.

2496           ~~[(10)]~~ (11) If an assuming insurer does not meet the requirements of Subsection (3),  
2497 (4), or (5), the credit permitted by Subsection (6) or (8) may not be allowed unless the  
2498 assuming insurer agrees in the trust instrument to the following conditions:

2499           (a) (i) Notwithstanding any other provision in the trust instrument, if an event  
2500 described in Subsection ~~[(10)]~~ (11)(a)(ii) occurs the trustee shall comply with:

2501           (A) an order of the commissioner with regulatory oversight over the trust; or

2502           (B) an order of a court of competent jurisdiction directing the trustee to transfer to the  
2503 commissioner with regulatory oversight all of the assets of the trust fund.

2504           (ii) This Subsection ~~[(10)]~~ (11)(a) applies if:

2505           (A) the trust fund is inadequate because the trust contains an amount less than the

2506 amount required by Subsection (6)(d); or

2507 (B) the grantor of the trust is:

2508 (I) declared insolvent; or

2509 (II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the  
2510 laws of its state or country of domicile.

2511 (b) The assets of a trust fund described in Subsection [~~(10)~~] (11)(a) shall be distributed  
2512 by and a claim shall be filed with and valued by the commissioner with regulatory oversight in  
2513 accordance with the laws of the state in which the trust is domiciled that are applicable to the  
2514 liquidation of a domestic insurance company.

2515 (c) If the commissioner with regulatory oversight determines that the assets of the trust  
2516 fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United  
2517 States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be  
2518 returned by the commissioner with regulatory oversight to the trustee for distribution in  
2519 accordance with the trust instrument.

2520 (d) A grantor shall waive any right otherwise available to it under United States law  
2521 that is inconsistent with this Subsection [~~(10)~~] (11).

2522 (12) If an accredited or certified reinsurer ceases to meet the requirements for  
2523 accreditation or certification, the commissioner may suspend or revoke the reinsurer's  
2524 accreditation or certification.

2525 (a) The commissioner shall give the reinsurer notice and opportunity for hearing.

2526 (b) The suspension or revocation may not take effect until after the commissioner's  
2527 order after a hearing, unless:

2528 (i) the reinsurer waives its right to hearing;

2529 (ii) the commissioner's order is based on:

2530 (A) regulatory action by the reinsurer's domiciliary jurisdiction; or

2531 (B) the voluntary surrender or termination of the reinsurer's eligibility to transact  
2532 insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state  
2533 under Subsection (8)(g); or

2534 (iii) the commissioner's finding that an emergency requires immediate action and a  
2535 court of competent jurisdiction has not stayed the commissioner's action.

2536 (c) While a reinsurer's accreditation or certification is suspended, no reinsurance

2537 contract issued or renewed after the effective date of the suspension qualifies for credit except  
2538 to the extent that the reinsurer's obligations under the contract are secured in accordance with  
2539 Section [31A-17-404.1](#).

2540 (d) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance  
2541 may be granted after the effective date of the revocation except to the extent that the reinsurer's  
2542 obligations under the contract are secured in accordance with Subsection (8)(f) or Section  
2543 [31A-17-404.1](#).

2544 (13) (a) A ceding insurer shall take steps to manage its reinsurance recoverables  
2545 proportionate to its own book of business.

2546 (b) (i) A domestic ceding insurer shall notify the commissioner within 30 days after  
2547 reinsurance recoverables from any single assuming insurer, or group of affiliated assuming  
2548 insurers:

2549 (A) exceeds 50% of the domestic ceding insurer's last reported surplus to  
2550 policyholders; or

2551 (B) after it is determined that reinsurance recoverables from any single assuming  
2552 insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding  
2553 insurer's last reported surplus to policyholders.

2554 (ii) The notification required by Subsection (13)(b)(i) shall demonstrate that the  
2555 exposure is safely managed by the domestic ceding insurer.

2556 (c) A ceding insurer shall take steps to diversify its reinsurance program.

2557 (d) (i) A domestic ceding insurer shall notify the commissioner within 30 days after  
2558 ceding or being likely to cede more than 20% of the ceding insurer's gross written premium in  
2559 the prior calendar year to any:

2560 (A) single assuming insurer; or

2561 (B) group of affiliated assuming insurers.

2562 (ii) The notification shall demonstrate that the exposure is safely managed by the  
2563 domestic ceding insurer.

2564 Section 17. Section **31A-17-404.1** is amended to read:

2565 **31A-17-404.1. Asset or reduction from liability for reinsurance ceded by a**  
2566 **domestic insurer to other assuming insurers.**

2567 (1) (a) An asset or a reduction from liability for reinsurance ceded by a domestic

2568 insurer to an assuming insurer that does not meet the requirements of Section 31A-17-404 is  
2569 allowed in an amount not exceeding the liabilities carried by the ceding insurer.

2570 (b) A reduction described in Subsection (1)(a) shall be in the amount of funds held by  
2571 or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

2572 (i) that are held:

2573 (A) under a reinsurance contract with the assuming insurer; and

2574 (B) as security for the payment of obligations under the reinsurance contract; and

2575 (ii) if the security is held:

2576 (A) in the United States subject to withdrawal solely by, and under the exclusive  
2577 control of, the ceding insurer; or

2578 (B) in the case of a trust, in a qualified United States financial institution.

2579 (2) Security described in Subsection (1) may be in the form of:

2580 (a) cash;

2581 (b) a security:

2582 (i) listed by the Securities Valuation Office of the National Association of Insurance

2583 Commissioners, including those considered exempt from filing as defined by the Purposes and

2584 Procedures Manual of the Securities Valuation Office; and

2585 (ii) qualifying as an admitted asset;

2586 (c) subject to Subsection (3), a clean, irrevocable, unconditional letter of credit, issued  
2587 or confirmed by a qualified United States financial institution:

2588 (i) effective no later than December 31 of the year for which the filing is being made;

2589 and

2590 (ii) in the possession of, or in trust for, the ceding [~~company~~] insurer on or before the  
2591 filing date of its annual statement; or

2592 (d) another form of security acceptable to the commissioner.

2593 (3) Notwithstanding an issuing or confirming institution's subsequent failure to meet an

2594 applicable standard of acceptability, a letter of credit described in Subsection (2) that meets the

2595 applicable standards of issuer acceptability as of the day on which it is issued or confirmed

2596 shall continue to be acceptable as security until the sooner of the day on which the letter of

2597 credit expires, is extended, is renewed, is modified, or is amended.

2598 Section 18. Section 31A-17-404.3 is amended to read:

2599 **31A-17-404.3. Rules.**

2600 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
2601 this chapter, the commissioner may make rules prescribing:

2602 [~~1~~] (a) the form of a letter of credit required under this chapter;

2603 [~~2~~] (b) the requirements for a trust or trust instrument required by this chapter;

2604 [~~3~~] (c) the procedures for licensing and accrediting; [~~and~~]

2605 [~~4~~] (d) minimum capital and surplus requirements[-];

2606 (e) additional requirements relating to calculation of credit allowed a domestic ceding  
2607 insurer against reserves for reinsurance under Section 31A-17-404; and

2608 (f) additional requirements relating to calculation of asset reduction from liability for  
2609 reinsurance ceded by a domestic insurer to other ceding insurers under Section 31A-17-404.1.

2610 (2) A rule made pursuant to Subsection (1)(e) or (f) may apply to reinsurance relating  
2611 to:

2612 (a) a life insurance policy with guaranteed nonlevel gross premiums or guaranteed  
2613 nonlevel benefits;

2614 (b) a universal life insurance policy with provisions resulting in the ability of a  
2615 policyholder to keep a policy in force over a secondary guarantee period;

2616 (c) a variable annuity with guaranteed death or living benefits;

2617 (d) a long-term care insurance policy; or

2618 (e) such other life and health insurance or annuity product as to which the National  
2619 Association of Insurance Commissioners adopts model regulatory requirements with respect  
2620 for credit for reinsurance.

2621 (3) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may apply to a treaty  
2622 containing:

2623 (a) a policy issued on or after January 1, 2015;

2624 (b) a policy issued before January 1, 2015, if risk pertaining to the policy is ceded in  
2625 connection with the treaty, either in whole or in part, on or after January 1, 2015.

2626 (4) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may require the ceding  
2627 insurer, in calculating the amounts or forms of security required to be held under rules made  
2628 under this section, to use the Valuation Manual adopted by the National Association of  
2629 Insurance Commissioners under Section 11B(1) of the National Association of Insurance

2630 Commissioners Standard Valuation Law, including all amendments adopted by the National  
2631 Association of Insurance Commissioners and in effect on the date as of which the calculation is  
2632 made, to the extent applicable.

2633 (5) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may not apply to cessions to  
2634 an assuming insurer that:

2635 (a) is certified in this state or, if this state has not adopted provisions substantially  
2636 equivalent to Section 2E of the Credit for Reinsurance Model Law, certified in a minimum of  
2637 five other states; or

2638 (b) maintains at least \$250,000,000 in capital and surplus when determined in  
2639 accordance with the National Association of Insurance Commissioners Accounting Practices  
2640 and Procedures Manual, including all amendments thereto adopted by the National Association  
2641 of Insurance Commissioners, excluding the impact of any permitted or prescribed practices and  
2642 is:

2643 (i) licensed in at least 26 states; or

2644 (ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35  
2645 states.

2646 (6) The authority to adopt rules pursuant to Subsection (1)(e) or (1)(f) does not  
2647 otherwise limit the commissioner's general authority to make rules pursuant to Subsection (1).

2648 Section 19. Section **31A-22-202** is amended to read:

2649 **31A-22-202. Protection of third-party claimants.**

2650 (1) ~~No~~ An insurance contract insuring against loss or damage through legal liability  
2651 for the bodily injury or death by accident of any person, or for damage to the property of any  
2652 person, may not be retroactively abrogated to the detriment of any third-party claimant by any  
2653 agreement between the insurer and insured after the occurrence of any injury, death, or damage  
2654 for which the insured may be liable. This attempted abrogation is void.

2655 (2) A motor vehicle liability policy may be rescinded or cancelled as to an insured for  
2656 fraud, material misrepresentation, or any reason allowable under the law.

2657 (3) A motor vehicle liability policy may not be rescinded for fraud or material  
2658 misrepresentation, as to minimum liability coverage limits under Section [31A-22-304](#), to the  
2659 detriment of a third-party for a loss otherwise covered by the policy.

2660 Section 20. Section **31A-22-603** is amended to read:

2661 **31A-22-603. Persons insured under an individual accident and health policy.**

2662 A policy of individual accident and health insurance may insure only one person, except  
2663 that originally or by subsequent amendment, upon the application of an adult policyholder, a  
2664 policy may insure any two or more eligible members of the policyholder's family, including  
2665 ~~[husband, wife]~~ spouse, dependent children, and any other person dependent upon the  
2666 policyholder.

2667 Section 21. Section **31A-22-715** is amended to read:

2668 **31A-22-715. Alcohol and drug dependency treatment.**

2669 ~~(1) [Each group accident and health insurance policy shall contain an optional rider~~  
2670 ~~allowing certificate holders to obtain] An insurer offering a health benefit plan providing~~  
2671 ~~coverage for alcohol or drug dependency treatment [in programs] may require an inpatient~~  
2672 ~~facility to be licensed by:~~

2673 ~~(a) (i) the Department of Human Services, under Title 62A, Chapter 2, Licensure of~~  
2674 ~~Programs and Facilities[; inpatient hospitals accredited by the joint commission on the~~  
2675 ~~accreditation of hospitals, or facilities licensed by]; or~~

2676 ~~(ii) the Department of Health[;]; or~~

2677 ~~(b) for an inpatient facility located outside the state, a state agency similar to one~~  
2678 ~~described in Subsection (1)(a).~~

2679 ~~(2) For inpatient coverage provided pursuant to Subsection (1), an insurer may require~~  
2680 ~~an inpatient facility to be accredited by the following:~~

2681 ~~(a) the Joint Commission; and~~

2682 ~~(b) one other nationally recognized accrediting agency.~~

2683 Section 22. Section **31A-22-1201** is amended to read:

2684 **31A-22-1201. Assumption agreement.**

2685 (1) Subject to Subsection (2), a credit for reinsurance ceded under Section  
2686 ~~31A-17-404[;] or 31A-17-404.1[; or 31A-17-404.2;] is not allowed unless, in addition to~~  
2687 ~~meeting the requirements of Section 31A-17-404[;] or 31A-17-404.1[; or 31A-17-404.2;], the~~  
2688 ~~reinsurance agreement provides in substance that if the ceding insurer is insolvent, the~~  
2689 ~~reinsurance is payable by the assuming insurer:~~

2690 (a) on the basis of the liability of the ceding insurer under the contract or contracts  
2691 reinsured;

- 2692 (b) without diminution because of the insolvency of the ceding insurer; and
- 2693 (c) directly to the ceding insurer or to its domiciliary liquidator or receiver.
- 2694 (2) Subsection (1) applies except if:
- 2695 (a) a contract specifically provides another payee of the insurance in the event of the
- 2696 insolvency of the ceding insurer; or
- 2697 (b) the assuming insurer, with the consent of the one or more direct insureds, assumes
- 2698 the policy obligations of the ceding insurer:
- 2699 (i) as direct obligations of the assuming insurer to the payees under the policies; and
- 2700 (ii) in substitution for the obligations of the ceding insurer to the payees.

2701 Section 23. Section **31A-23a-111** is amended to read:

2702 **31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
2703 **terminating a license -- Rulemaking for renewal or reinstatement.**

- 2704 (1) A license type issued under this chapter remains in force until:
- 2705 (a) revoked or suspended under Subsection (5);
- 2706 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
- 2707 administrative action;
- 2708 (c) the licensee dies or is adjudicated incompetent as defined under:
- 2709 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- 2710 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
- 2711 Minors;
- 2712 (d) lapsed under Section [31A-23a-113](#); or
- 2713 (e) voluntarily surrendered.
- 2714 (2) The following may be reinstated within one year after the day on which the license
- 2715 is no longer in force:
- 2716 (a) a lapsed license; or
- 2717 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
- 2718 not be reinstated after the license period in which the license is voluntarily surrendered.
- 2719 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
- 2720 license, submission and acceptance of a voluntary surrender of a license does not prevent the
- 2721 department from pursuing additional disciplinary or other action authorized under:
- 2722 (a) this title; or



2723 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
2724 Administrative Rulemaking Act.

2725 (4) A line of authority issued under this chapter remains in force until:  
2726 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;  
2727 or  
2728 (b) the supporting license type:  
2729 (i) is revoked or suspended under Subsection (5);  
2730 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of  
2731 administrative action;  
2732 (iii) lapses under Section [31A-23a-113](#); or  
2733 (iv) is voluntarily surrendered; or  
2734 (c) the licensee dies or is adjudicated incompetent as defined under:  
2735 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or  
2736 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
2737 Minors.

2738 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an  
2739 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
2740 commissioner may:  
2741 (i) revoke:  
2742 (A) a license; or  
2743 (B) a line of authority;  
2744 (ii) suspend for a specified period of 12 months or less:  
2745 (A) a license; or  
2746 (B) a line of authority;  
2747 (iii) limit in whole or in part:  
2748 (A) a license; or  
2749 (B) a line of authority; or  
2750 (iv) deny a license application.

2751 (b) The commissioner may take an action described in Subsection (5)(a) if the  
2752 commissioner finds that the licensee:  
2753 (i) is unqualified for a license or line of authority under Section [31A-23a-104](#),

- 2754 31A-23a-105, or 31A-23a-107;
- 2755 (ii) violates:
- 2756 (A) an insurance statute;
- 2757 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 2758 (C) an order that is valid under Subsection 31A-2-201(4);
- 2759 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 2760 delinquency proceedings in any state;
- 2761 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 2762 days after the day on which the judgment became final;
- 2763 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 2764 admitted insurers;
- 2765 (vi) is affiliated with and under the same general management or interlocking
- 2766 directorate or ownership as another insurance producer that transacts business in this state
- 2767 without a license;
- 2768 (vii) refuses:
- 2769 (A) to be examined; or
- 2770 (B) to produce its accounts, records, and files for examination;
- 2771 (viii) has an officer who refuses to:
- 2772 (A) give information with respect to the insurance producer's affairs; or
- 2773 (B) perform any other legal obligation as to an examination;
- 2774 (ix) provides information in the license application that is:
- 2775 (A) incorrect;
- 2776 (B) misleading;
- 2777 (C) incomplete; or
- 2778 (D) materially untrue;
- 2779 (x) violates an insurance law, valid rule, or valid order of another [~~state's insurance~~
- 2780 ~~department~~] regulatory agency in any jurisdiction;
- 2781 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
- 2782 (xii) improperly withholds, misappropriates, or converts money or properties received
- 2783 in the course of doing insurance business;
- 2784 (xiii) intentionally misrepresents the terms of an actual or proposed:

- 2785 (A) insurance contract;
- 2786 (B) application for insurance; or
- 2787 (C) life settlement;
- 2788 (xiv) is convicted of a felony;
- 2789 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
- 2790 (xvi) in the conduct of business in this state or elsewhere:
  - 2791 (A) uses fraudulent, coercive, or dishonest practices; or
  - 2792 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
- 2793 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in
- 2794 another state, province, district, or territory;
- 2795 (xviii) forges another's name to:
  - 2796 (A) an application for insurance; or
  - 2797 (B) a document related to an insurance transaction;
- 2798 (xix) improperly uses notes or another reference material to complete an examination
- 2799 for an insurance license;
- 2800 (xx) knowingly accepts insurance business from an individual who is not licensed;
- 2801 (xxi) fails to comply with an administrative or court order imposing a child support
- 2802 obligation;
- 2803 (xxii) fails to:
  - 2804 (A) pay state income tax; or
  - 2805 (B) comply with an administrative or court order directing payment of state income
  - 2806 tax;
- 2807 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law
- 2808 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 2809 prohibited from engaging in the business of insurance; or
- 2810 (xxiv) engages in a method or practice in the conduct of business that endangers the
- 2811 legitimate interests of customers and the public.
- 2812 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 2813 and any individual designated under the license are considered to be the holders of the license.
- 2814 (d) If an individual designated under the agency license commits an act or fails to
- 2815 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,

2816 the commissioner may suspend, revoke, or limit the license of:

2817 (i) the individual;

2818 (ii) the agency, if the agency:

2819 (A) is reckless or negligent in its supervision of the individual; or

2820 (B) knowingly participates in the act or failure to act that is the ground for suspending,

2821 revoking, or limiting the license; or

2822 (iii) (A) the individual; and

2823 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

2824 (6) A licensee under this chapter is subject to the penalties for acting as a licensee

2825 without a license if:

2826 (a) the licensee's license is:

2827 (i) revoked;

2828 (ii) suspended;

2829 (iii) limited;

2830 (iv) surrendered in lieu of administrative action;

2831 (v) lapsed; or

2832 (vi) voluntarily surrendered; and

2833 (b) the licensee:

2834 (i) continues to act as a licensee; or

2835 (ii) violates the terms of the license limitation.

2836 (7) A licensee under this chapter shall immediately report to the commissioner:

2837 (a) a revocation, suspension, or limitation of the person's license in another state, the

2838 District of Columbia, or a territory of the United States;

2839 (b) the imposition of a disciplinary sanction imposed on that person by another state,

2840 the District of Columbia, or a territory of the United States; or

2841 (c) a judgment or injunction entered against that person on the basis of conduct

2842 involving:

2843 (i) fraud;

2844 (ii) deceit;

2845 (iii) misrepresentation; or

2846 (iv) a violation of an insurance law or rule.

2847 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a  
2848 license in lieu of administrative action may specify a time, not to exceed five years, within  
2849 which the former licensee may not apply for a new license.

2850 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the  
2851 former licensee may not apply for a new license for five years from the day on which the order  
2852 or agreement is made without the express approval by the commissioner.

2853 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
2854 a license issued under this part if so ordered by a court.

2855 (10) The commissioner shall by rule prescribe the license renewal and reinstatement  
2856 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2857 Section 24. Section **31A-23a-202** is amended to read:

2858 **31A-23a-202. Continuing education requirements.**

2859 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing  
2860 education requirements for a producer and a consultant.

2861 (2) (a) The commissioner may not state a continuing education requirement in terms of  
2862 formal education.

2863 (b) The commissioner may state a continuing education requirement in terms of hours  
2864 of insurance-related instruction received.

2865 (c) Insurance-related formal education may be a substitute, in whole or in part, for the  
2866 hours required under Subsection (2)(b).

2867 (3) (a) The commissioner shall impose continuing education requirements in  
2868 accordance with a two-year licensing period in which the licensee meets the requirements of  
2869 this Subsection (3).

2870 (b) (i) Except as provided in this section, the continuing education requirements shall  
2871 require:

2872 (A) that a licensee complete 24 credit hours of continuing education for every two-year  
2873 licensing period;

2874 (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses;  
2875 and

2876 (C) that the licensee complete at least half of the required hours through classroom  
2877 hours of insurance-related instruction.

2878 (ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be  
2879 obtained through:

- 2880 (A) classroom attendance;
- 2881 (B) home study;
- 2882 (C) watching a video recording;
- 2883 (D) experience credit; or
- 2884 (E) another method provided by rule.

2885 (iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), an individual title insurance  
2886 producer is required to complete 12 credit hours of continuing education for every two-year  
2887 licensing period, with 3 of the credit hours being ethics courses unless the individual title  
2888 insurance producer is licensed in this state as an individual title insurance producer for 20 or  
2889 more consecutive years.

2890 (B) If an individual title insurance producer is licensed in this state as an individual  
2891 title insurance producer for 20 or more consecutive years, the individual title insurance  
2892 producer is required to complete 6 credit hours of continuing education for every two-year  
2893 licensing period, with 3 of the credit hours being ethics courses.

2894 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance  
2895 producer is considered to have met the continuing education requirements imposed under  
2896 Subsection (3)(b)(iii)(A) or (B) if at the time of license renewal the individual title insurance  
2897 producer:

2898 (I) provides the department evidence that the individual title insurance producer is an  
2899 active member in good standing with the Utah State Bar;

2900 (II) is in compliance with the continuing education requirements of the Utah State Bar;  
2901 and

2902 (III) if requested by the department, provides the department evidence that the  
2903 individual title insurance producer complied with the continuing education requirements of the  
2904 Utah State Bar.

2905 (c) A licensee may obtain continuing education hours at any time during the two-year  
2906 licensing period.

2907 (d) (i) A licensee is exempt from continuing education requirements under this section  
2908 if:

2909 (A) the licensee was first licensed before December 31, 1982;  
2910 (B) the license does not have a continuous lapse for a period of more than one year,  
2911 except for a license for which the licensee has had an exemption approved before May 11,  
2912 2011;  
2913 (C) the licensee requests an exemption from the department; and  
2914 (D) the department approves the exemption.  
2915 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is  
2916 not required to apply again for the exemption.  
2917 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2918 commissioner shall, by rule:  
2919 (i) publish a list of insurance professional designations whose continuing education  
2920 requirements can be used to meet the requirements for continuing education under Subsection  
2921 (3)(b);  
2922 (ii) authorize a continuing education provider or a state or national professional  
2923 producer or consultant association to:  
2924 (A) offer a qualified program for a license type or line of authority on a geographically  
2925 accessible basis; and  
2926 (B) collect a reasonable fee for funding and administration of a continuing education  
2927 program, subject to the review and approval of the commissioner; and  
2928 (iii) provide that membership by a producer or consultant in a state or national  
2929 professional producer or consultant association is considered a substitute for the equivalent of  
2930 two hours for each year during which the producer or consultant is a member of the  
2931 professional association, except that the commissioner may not give more than two hours of  
2932 continuing education credit in a year regardless of the number of professional associations of  
2933 which the producer or consultant is a member.  
2934 (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a  
2935 professional producer or consultant association program may be less for an association  
2936 member, on the basis of the member's affiliation expense, but shall preserve the right of a  
2937 nonmember to attend without affiliation.  
2938 (4) The commissioner shall approve a continuing education provider or continuing  
2939 education course that satisfies the requirements of this section.

2940 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2941 commissioner shall by rule set the processes and procedures for continuing education provider  
2942 registration and course approval.

2943 (6) The requirements of this section apply only to a producer or consultant who is an  
2944 individual.

2945 (7) A nonresident producer or consultant is considered to have satisfied this state's  
2946 continuing education requirements if the nonresident producer or consultant satisfies the  
2947 nonresident producer's or consultant's home state's continuing education requirements for a  
2948 licensed insurance producer or consultant.

2949 (8) A producer or consultant subject to this section shall keep documentation of  
2950 completing the continuing education requirements of this section for two years after the end of  
2951 the two-year licensing period to which the continuing education applies.

2952 Section 25. Section **31A-23a-206** is amended to read:

2953 **31A-23a-206. Special requirements for variable contracts line of authority.**

2954 (1) Before applying for a variable contracts line of authority:

2955 (a) a producer shall be licensed under Section **61-1-3** as a:

2956 (i) broker-dealer; or

2957 (ii) broker-dealer agent; and

2958 (b) a consultant shall be licensed under Section **61-1-3** as an:

2959 (i) investment adviser; or

2960 (ii) investment adviser representative.

2961 (2) A producer's or consultant's variable contracts line of authority is [~~revoked~~]  
2962 canceled on the day the producer's or consultant's securities related license under Section  
2963 **61-1-3** is no longer [~~valid~~] active.

2964 Section 26. Section **31A-23a-410** is amended to read:

2965 **31A-23a-410. Insurer's liability if insured pays premium to a licensee or group**  
2966 **policyholder.**

2967 (1) Subject to Subsections (2) and (5), as between the insurer and the insured, the  
2968 insurer is considered to have received the premium and is liable to the insured for losses  
2969 covered by the insurance and for any unearned premiums upon cancellation of the insurance if  
2970 an insurer, including a surplus lines insurer:



- 2971 (a) assumes a risk; and
- 2972 (b) the premium for that insurance is received by:
- 2973 (i) a licensee who placed the insurance;
- 2974 (ii) a group policyholder;
- 2975 (iii) an employer who deducts part or all of the premium from an employee's wages or
- 2976 salary; or
- 2977 (iv) an employer who pays all or part of the premium for an employee.
- 2978 (2) Subsection (1) does not apply if:
- 2979 (a) the insured pays a licensee, knowing the licensee does not intend to submit the
- 2980 premium to the insurer; or
- 2981 (b) the insured has premium withheld from the insured's wages or salary knowing the
- 2982 employer does not intend to submit it to the insurer.
- 2983 (3) (a) In the case of ~~[an employer]~~ a group policyholder who has received the premium
- 2984 ~~[by deducting all or part of it from the wages or salaries of the certificate holders]~~, the insurer
- 2985 may terminate its liability by giving notice of coverage termination to:
- 2986 (i) the certificate holders;
- 2987 (ii) the policyholder; and
- 2988 (iii) the producer, if any, for the policy.
- 2989 (b) The insurer may not send the notice required by Subsection (3)(a) to a certificate
- 2990 holder before 20 days after the day on which premium is due and unpaid.
- 2991 (c) The liability of the insurer for the losses covered by the insurance terminates at the
- 2992 later of:
- 2993 (i) the last day of the coverage period for which premium has been ~~[withheld]~~ received
- 2994 by the ~~[employer]~~ group policyholder;
- 2995 (ii) 10 days after the date the insurer mails notice to the certificate holder that coverage
- 2996 has terminated; or
- 2997 (iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days
- 2998 from the last date for which premium is received.
- 2999 (4) Despite ~~[an employer's]~~ a group policyholder's collection of premium under
- 3000 Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the
- 3001 insurance to group policy certificate holders terminates upon the effective date of notice from

3002 the policyholder that:

3003 (a) coverage of a similar kind and quality has been obtained from another insurer; or

3004 (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage  
3005 and has given the [~~employees~~] certificate holder's notice of the termination.

3006 (5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or  
3007 [~~employer~~] group policyholder who received the premium and failed to forward it is obligated  
3008 to the insurer for the entire unpaid premium due under the policy together with reasonable  
3009 expenses of suit and reasonable attorney fees.

3010 (6) If, under an employee health insurance plan, an employee builds up credit for future  
3011 coverage because the employee has not used the policy protection, or in some other way, the  
3012 insurer is obligated to the employee for that future coverage earned while the policy was in full  
3013 effect.

3014 (7) (a) Notwithstanding that an insurer is liable for losses as provided in this section,  
3015 this section applies only to apportion the liability for the losses described in this section.

3016 (b) This section does not:

3017 (i) extend a policy or coverage beyond its date of termination; or

3018 (ii) alter or amend a provision of a policy.

3019 Section 27. Section **31A-23a-501** is amended to read:

3020 **31A-23a-501. Licensee compensation.**

3021 (1) As used in this section:

3022 (a) "Commission compensation" includes funds paid to or credited for the benefit of a  
3023 licensee from:

3024 (i) commission amounts deducted from insurance premiums on insurance sold by or  
3025 placed through the licensee;

3026 (ii) commission amounts received from an insurer or another licensee as a result of the  
3027 sale or placement of insurance; or

3028 (iii) overrides, bonuses, contingent bonuses, or contingent commissions received from  
3029 an insurer or another licensee as a result of the sale or placement of insurance.

3030 (b) (i) "Compensation from an insurer or third party administrator" means  
3031 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,  
3032 gifts, prizes, or any other form of valuable consideration:

- 3033 (A) whether or not payable pursuant to a written agreement; and
- 3034 (B) received from:
  - 3035 (I) an insurer; or
  - 3036 (II) a third party to the transaction for the sale or placement of insurance.
- 3037 (ii) "Compensation from an insurer or third party administrator" does not mean
- 3038 compensation from a customer that is:
  - 3039 (A) a fee or pass-through costs as provided in Subsection (1)(e); or
  - 3040 (B) a fee or amount collected by or paid to the producer that does not exceed an
  - 3041 amount established by the commissioner by administrative rule.
- 3042 (c) (i) "Customer" means:
  - 3043 (A) the person signing the application or submission for insurance; or
  - 3044 (B) the authorized representative of the insured actually negotiating the placement of
  - 3045 insurance with the producer.
- 3046 (ii) "Customer" does not mean a person who is a participant or beneficiary of:
  - 3047 (A) an employee benefit plan; or
  - 3048 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or
  - 3049 negotiated by the producer or affiliate.
- 3050 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the
- 3051 benefit of a licensee other than commission compensation.
- 3052 (ii) "Noncommission compensation" does not include charges for pass-through costs
- 3053 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.
- 3054 (e) "Pass-through costs" include:
  - 3055 (i) costs for copying documents to be submitted to the insurer; and
  - 3056 (ii) bank costs for processing cash or credit card payments.
- 3057 (2) A licensee may receive from an insured or from a person purchasing an insurance
- 3058 policy, noncommission compensation if the noncommission compensation is stated on a
- 3059 separate, written disclosure.
  - 3060 (a) The disclosure required by this Subsection (2) shall:
    - 3061 (i) include the signature of the insured or prospective insured acknowledging the
    - 3062 noncommission compensation;
    - 3063 (ii) clearly specify:

- 3064 (A) the amount of any known noncommission compensation; and  
3065 (B) the type and amount, if known, of any potential and contingent noncommission  
3066 compensation; and  
3067 (iii) be provided to the insured or prospective insured before the performance of the  
3068 service.
- 3069 (b) Noncommission compensation shall be:  
3070 (i) limited to actual or reasonable expenses incurred for services; and  
3071 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of  
3072 business or for a specific service or services.
- 3073 (c) A copy of the signed disclosure required by this Subsection (2) shall be maintained  
3074 by any licensee who collects or receives the noncommission compensation or any portion of  
3075 the noncommission compensation.
- 3076 (d) All accounting records relating to noncommission compensation shall be  
3077 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.
- 3078 (3) (a) A licensee may receive noncommission compensation when acting as a  
3079 producer for the insured in connection with the actual sale or placement of insurance if:  
3080 (i) the producer and the insured have agreed on the producer's noncommission  
3081 compensation; and  
3082 (ii) the producer has disclosed to the insured the existence and source of any other  
3083 compensation that accrues to the producer as a result of the transaction.
- 3084 (b) The disclosure required by this Subsection (3) shall:  
3085 (i) include the signature of the insured or prospective insured acknowledging the  
3086 noncommission compensation;  
3087 (ii) clearly specify:  
3088 (A) the amount of any known noncommission compensation;  
3089 (B) the type and amount, if known, of any potential and contingent noncommission  
3090 compensation; and  
3091 (C) the existence and source of any other compensation; and  
3092 (iii) be provided to the insured or prospective insured before the performance of the  
3093 service.
- 3094 (c) The following additional noncommission compensation is authorized:

3095 (i) compensation received by a producer of a compensated corporate surety who under  
3096 procedures approved by a rule or order of the commissioner is paid by surety bond principal  
3097 debtors for extra services;

3098 (ii) compensation received by an insurance producer who is also licensed as a public  
3099 adjuster under Section 31A-26-203, for services performed for an insured in connection with a  
3100 claim adjustment, so long as the producer does not receive or is not promised compensation for  
3101 aiding in the claim adjustment prior to the occurrence of the claim;

3102 (iii) compensation received by a consultant as a consulting fee, provided the consultant  
3103 complies with the requirements of Section 31A-23a-401; or

3104 (iv) other compensation arrangements approved by the commissioner after a finding  
3105 that they do not violate Section 31A-23a-401 and are not harmful to the public.

3106 (d) Subject to Section 31A-23a-402.5, a producer for the insured may receive  
3107 compensation from an insured through an insurer, for the negotiation and sale of a health  
3108 benefit plan, if there is a separate written agreement between the insured and the licensee for  
3109 the compensation. An insurer who passes through the compensation from the insured to the  
3110 licensee under this Subsection (3)(d) is not providing direct or indirect compensation or  
3111 commission compensation to the licensee.

3112 (4) (a) For purposes of this Subsection (4):

3113 (i) "Large customer" means an employer who, with respect to a calendar year and to a  
3114 plan year:

3115 (A) employed an average of at least 100 eligible employees on each business day  
3116 during the preceding calendar year; and

3117 (B) employs at least two employees on the first day of the plan year.

3118 (ii) "Producer" includes:

3119 (A) a producer;

3120 (B) an affiliate of a producer; or

3121 (C) a consultant.

3122 (b) A producer may not accept or receive any compensation from an insurer or third  
3123 party administrator for the initial placement of a health benefit plan, other than a hospital  
3124 confinement indemnity policy, unless prior to a large customer's initial purchase of the health  
3125 benefit plan the producer discloses in writing to the large customer that the producer will

3126 receive compensation from the insurer or third party administrator for the placement of  
3127 insurance, including the amount or type of compensation known to the producer at the time of  
3128 the disclosure.

3129 (c) A producer shall:

3130 (i) obtain the large customer's signed acknowledgment that the disclosure under  
3131 Subsection (4)(b) was made to the large customer; or

3132 (ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to  
3133 the large customer; and

3134 (B) keep the signed statement on file in the producer's office while the health benefit  
3135 plan placed with the large customer is in force.

3136 (d) A licensee who collects or receives any part of the compensation from an insurer or  
3137 third party administrator in a manner that facilitates an audit shall, while the health benefit plan  
3138 placed with the large customer is in force, maintain a copy of:

3139 (i) the signed acknowledgment described in Subsection (4)(c)(i); or

3140 (ii) the signed statement described in Subsection (4)(c)(ii).

3141 (e) Subsection (4)(c) does not apply to:

3142 (i) a person licensed as a producer who acts only as an intermediary between an insurer  
3143 and the customer's producer, including a managing general agent; or

3144 (ii) the placement of insurance in a secondary or residual market.

3145 (f) (i) A producer shall provide to a large customer listed in this Subsection (4)(f) an  
3146 annual accounting, as defined by rule made by the department in accordance with Title 63G,  
3147 Chapter 3, Utah Administrative Rulemaking Act, of all amounts the producer receives in  
3148 commission compensation from an insurer or third party administrator as a result of the sale or  
3149 placement of [~~insurance~~] a health benefit plan to a large customer that is:

3150 (A) the state;

3151 (B) a political subdivision or instrumentality of the state or a combination thereof  
3152 primarily engaged in educational activities or the administration or servicing of educational  
3153 activities, including the State Board of Education and its instrumentalities, an institution of  
3154 higher education and its branches, a school district and its instrumentalities, a vocational and  
3155 technical school, and an entity arising out of a consolidation agreement between entities  
3156 described under this Subsection (4)(f)(i)(B);

3157 (C) a county, city, town, local district under Title 17B, Limited Purpose Local  
3158 Government Entities - Local Districts, special service district under Title 17D, Chapter 1,  
3159 Special Service District Act, an entity created by an interlocal cooperation agreement under  
3160 Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated  
3161 in statute as a political subdivision of the state; or

3162 (D) a quasi-public corporation, that has the same meaning as defined in Section  
3163 [63E-1-102](#).

3164 (ii) The department shall pattern the annual accounting required by this Subsection  
3165 (4)(f) on the insurance related information on Internal Revenue Service Form 5500 and its  
3166 relevant attachments.

3167 (g) At the request of the department, a producer shall provide the department a copy of:

3168 (i) a disclosure required by this Subsection (4); or

3169 (ii) an Internal Revenue Service Form 5500 and its relevant attachments.

3170 (5) This section does not alter the right of any licensee to recover from an insured the  
3171 amount of any premium due for insurance effected by or through that licensee or to charge a  
3172 reasonable rate of interest upon past-due accounts.

3173 (6) This section does not apply to bail bond producers or bail enforcement agents as  
3174 defined in Section [31A-35-102](#).

3175 (7) A licensee may not receive noncommission compensation from an insured or  
3176 enrollee for providing a service or engaging in an act that is required to be provided or  
3177 performed in order to receive commission compensation, except for the surplus lines  
3178 transactions that do not receive commissions.

3179 Section 28. Section [31A-23b-401](#) is amended to read:

3180 **[31A-23b-401](#). Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
3181 **terminating a license -- Rulemaking for renewal or reinstatement.**

3182 (1) A license as a navigator under this chapter remains in force until:

3183 (a) revoked or suspended under Subsection (4);

3184 (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
3185 administrative action;

3186 (c) the licensee dies or is adjudicated incompetent as defined under:

3187 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

- 3188 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
3189 Minors;
- 3190 (d) lapsed under this section; or  
3191 (e) voluntarily surrendered.
- 3192 (2) The following may be reinstated within one year after the day on which the license  
3193 is no longer in force:
- 3194 (a) a lapsed license; or  
3195 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
3196 not be reinstated after the license period in which the license is voluntarily surrendered.
- 3197 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
3198 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
3199 department from pursuing additional disciplinary or other action authorized under:
- 3200 (a) this title; or  
3201 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
3202 Administrative Rulemaking Act.
- 3203 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an  
3204 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
3205 commissioner may:
- 3206 (i) revoke a license;  
3207 (ii) suspend a license for a specified period of 12 months or less;  
3208 (iii) limit a license in whole or in part; or  
3209 (iv) deny a license application.
- 3210 (b) The commissioner may take an action described in Subsection (4)(a) if the  
3211 commissioner finds that the licensee:
- 3212 (i) is unqualified for a license under Section [31A-23b-204](#), [31A-23b-205](#), or  
3213 [31A-23b-206](#);
- 3214 (ii) violated:
- 3215 (A) an insurance statute;  
3216 (B) a rule that is valid under Subsection [31A-2-201\(3\)](#); or  
3217 (C) an order that is valid under Subsection [31A-2-201\(4\)](#);
- 3218 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other



- 3219 delinquency proceedings in any state;
- 3220 (iv) failed to pay a final judgment rendered against the person in this state within 60
- 3221 days after the day on which the judgment became final;
- 3222 (v) refused:
- 3223 (A) to be examined; or
- 3224 (B) to produce its accounts, records, and files for examination;
- 3225 (vi) had an officer who refused to:
- 3226 (A) give information with respect to the navigator's affairs; or
- 3227 (B) perform any other legal obligation as to an examination;
- 3228 (vii) provided information in the license application that is:
- 3229 (A) incorrect;
- 3230 (B) misleading;
- 3231 (C) incomplete; or
- 3232 (D) materially untrue;
- 3233 (viii) violated an insurance law, valid rule, or valid order of another [~~state's insurance~~
- 3234 ~~department~~] regulatory agency in any jurisdiction;
- 3235 (ix) obtained or attempted to obtain a license through misrepresentation or fraud;
- 3236 (x) improperly withheld, misappropriated, or converted money or properties received
- 3237 in the course of doing insurance business;
- 3238 (xi) intentionally misrepresented the terms of an actual or proposed:
- 3239 (A) insurance contract;
- 3240 (B) application for insurance; or
- 3241 (C) application for public program;
- 3242 (xii) is convicted of a felony;
- 3243 (xiii) admitted or is found to have committed an insurance unfair trade practice or
- 3244 fraud;
- 3245 (xiv) in the conduct of business in this state or elsewhere:
- 3246 (A) used fraudulent, coercive, or dishonest practices; or
- 3247 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3248 (xv) had an insurance license, navigator license, or its equivalent, denied, suspended,
- 3249 or revoked in another state, province, district, or territory;

- 3250 (xvi) forged another's name to:
- 3251 (A) an application for insurance;
- 3252 (B) a document related to an insurance transaction;
- 3253 (C) a document related to an application for a public program; or
- 3254 (D) a document related to an application for premium subsidies;
- 3255 (xvii) improperly used notes or another reference material to complete an examination
- 3256 for a license;
- 3257 (xviii) knowingly accepted insurance business from an individual who is not licensed;
- 3258 (xix) failed to comply with an administrative or court order imposing a child support
- 3259 obligation;
- 3260 (xx) failed to:
- 3261 (A) pay state income tax; or
- 3262 (B) comply with an administrative or court order directing payment of state income
- 3263 tax;
- 3264 (xxi) violated or permitted others to violate the federal Violent Crime Control and Law
- 3265 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 3266 prohibited from engaging in the business of insurance; or
- 3267 (xxii) engaged in a method or practice in the conduct of business that endangered the
- 3268 legitimate interests of customers and the public.
- 3269 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 3270 and any individual designated under the license are considered to be the holders of the license.
- 3271 (d) If an individual designated under the agency license commits an act or fails to
- 3272 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
- 3273 the commissioner may suspend, revoke, or limit the license of:
- 3274 (i) the individual;
- 3275 (ii) the agency, if the agency:
- 3276 (A) is reckless or negligent in its supervision of the individual; or
- 3277 (B) knowingly participates in the act or failure to act that is the ground for suspending,
- 3278 revoking, or limiting the license; or
- 3279 (iii) (A) the individual; and
- 3280 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

3281 (5) A licensee under this chapter is subject to the penalties for acting as a licensee  
3282 without a license if:

3283 (a) the licensee's license is:

3284 (i) revoked;

3285 (ii) suspended;

3286 (iii) surrendered in lieu of administrative action;

3287 (iv) lapsed; or

3288 (v) voluntarily surrendered; and

3289 (b) the licensee:

3290 (i) continues to act as a licensee; or

3291 (ii) violates the terms of the license limitation.

3292 (6) A licensee under this chapter shall immediately report to the commissioner:

3293 (a) a revocation, suspension, or limitation of the person's license in another state, the  
3294 District of Columbia, or a territory of the United States;

3295 (b) the imposition of a disciplinary sanction imposed on that person by another state,  
3296 the District of Columbia, or a territory of the United States; or

3297 (c) a judgment or injunction entered against that person on the basis of conduct  
3298 involving:

3299 (i) fraud;

3300 (ii) deceit;

3301 (iii) misrepresentation; or

3302 (iv) a violation of an insurance law or rule.

3303 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a  
3304 license in lieu of administrative action may specify a time, not to exceed five years, within  
3305 which the former licensee may not apply for a new license.

3306 (b) If no time is specified in an order or agreement described in Subsection (7)(a), the  
3307 former licensee may not apply for a new license for five years from the day on which the order  
3308 or agreement is made without the express approval of the commissioner.

3309 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
3310 a license issued under this chapter if so ordered by a court.

3311 (9) The commissioner shall by rule prescribe the license renewal and reinstatement

3312 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3313 Section 29. Section **31A-25-208** is amended to read:

3314 **31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
3315 **terminating a license -- Rulemaking for renewal and reinstatement.**

3316 (1) A license type issued under this chapter remains in force until:

3317 (a) revoked or suspended under Subsection (4);

3318 (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
3319 administrative action;

3320 (c) the licensee dies or is adjudicated incompetent as defined under:

3321 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3322 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
3323 Minors;

3324 (d) lapsed under Section [31A-25-210](#); or

3325 (e) voluntarily surrendered.

3326 (2) The following may be reinstated within one year after the day on which the license  
3327 is no longer in force:

3328 (a) a lapsed license; or

3329 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
3330 not be reinstated after the license period in which the license is voluntarily surrendered.

3331 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
3332 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
3333 department from pursuing additional disciplinary or other action authorized under:

3334 (a) this title; or

3335 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
3336 Administrative Rulemaking Act.

3337 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an  
3338 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
3339 commissioner may:

3340 (i) revoke a license;

3341 (ii) suspend a license for a specified period of 12 months or less;

3342 (iii) limit a license in whole or in part; or

- 3343 (iv) deny a license application.
- 3344 (b) The commissioner may take an action described in Subsection (4)(a) if the  
3345 commissioner finds that the licensee:
- 3346 (i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;  
3347 (ii) has violated:
- 3348 (A) an insurance statute;  
3349 (B) a rule that is valid under Subsection 31A-2-201(3); or  
3350 (C) an order that is valid under Subsection 31A-2-201(4);
- 3351 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other  
3352 delinquency proceedings in any state;
- 3353 (iv) fails to pay a final judgment rendered against the person in this state within 60  
3354 days after the day on which the judgment became final;
- 3355 (v) fails to meet the same good faith obligations in claims settlement that is required of  
3356 admitted insurers;
- 3357 (vi) is affiliated with and under the same general management or interlocking  
3358 directorate or ownership as another third party administrator that transacts business in this state  
3359 without a license;
- 3360 (vii) refuses:
- 3361 (A) to be examined; or  
3362 (B) to produce its accounts, records, and files for examination;
- 3363 (viii) has an officer who refuses to:
- 3364 (A) give information with respect to the third party administrator's affairs; or  
3365 (B) perform any other legal obligation as to an examination;
- 3366 (ix) provides information in the license application that is:
- 3367 (A) incorrect;  
3368 (B) misleading;  
3369 (C) incomplete; or  
3370 (D) materially untrue;
- 3371 (x) has violated an insurance law, valid rule, or valid order of another [state's insurance  
3372 department] regulatory agency in any jurisdiction;
- 3373 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

- 3374 (xii) has improperly withheld, misappropriated, or converted money or properties  
3375 received in the course of doing insurance business;
- 3376 (xiii) has intentionally misrepresented the terms of an actual or proposed:  
3377 (A) insurance contract; or  
3378 (B) application for insurance;
- 3379 (xiv) has been convicted of a felony;
- 3380 (xv) has admitted or been found to have committed an insurance unfair trade practice  
3381 or fraud;
- 3382 (xvi) in the conduct of business in this state or elsewhere has:  
3383 (A) used fraudulent, coercive, or dishonest practices; or  
3384 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3385 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in  
3386 any other state, province, district, or territory;
- 3387 (xviii) has forged another's name to:  
3388 (A) an application for insurance; or  
3389 (B) a document related to an insurance transaction;
- 3390 (xix) has improperly used notes or any other reference material to complete an  
3391 examination for an insurance license;
- 3392 (xx) has knowingly accepted insurance business from an individual who is not  
3393 licensed;
- 3394 (xxi) has failed to comply with an administrative or court order imposing a child  
3395 support obligation;
- 3396 (xxii) has failed to:  
3397 (A) pay state income tax; or  
3398 (B) comply with an administrative or court order directing payment of state income  
3399 tax;
- 3400 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and  
3401 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is  
3402 prohibited from engaging in the business of insurance; or
- 3403 (xxiv) has engaged in methods and practices in the conduct of business that endanger  
3404 the legitimate interests of customers and the public.

3405 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
3406 and any individual designated under the license are considered to be the holders of the agency  
3407 license.

3408 (d) If an individual designated under the agency license commits an act or fails to  
3409 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
3410 the commissioner may suspend, revoke, or limit the license of:

3411 (i) the individual;

3412 (ii) the agency if the agency:

3413 (A) is reckless or negligent in its supervision of the individual; or

3414 (B) knowingly participated in the act or failure to act that is the ground for suspending,  
3415 revoking, or limiting the license; or

3416 (iii) (A) the individual; and

3417 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

3418 (5) A licensee under this chapter is subject to the penalties for acting as a licensee  
3419 without a license if:

3420 (a) the licensee's license is:

3421 (i) revoked;

3422 (ii) suspended;

3423 (iii) limited;

3424 (iv) surrendered in lieu of administrative action;

3425 (v) lapsed; or

3426 (vi) voluntarily surrendered; and

3427 (b) the licensee:

3428 (i) continues to act as a licensee; or

3429 (ii) violates the terms of the license limitation.

3430 (6) A licensee under this chapter shall immediately report to the commissioner:

3431 (a) a revocation, suspension, or limitation of the person's license in any other state, the  
3432 District of Columbia, or a territory of the United States;

3433 (b) the imposition of a disciplinary sanction imposed on that person by any other state,  
3434 the District of Columbia, or a territory of the United States; or

3435 (c) a judgment or injunction entered against the person on the basis of conduct

3436 involving:

3437 (i) fraud;

3438 (ii) deceit;

3439 (iii) misrepresentation; or

3440 (iv) a violation of an insurance law or rule.

3441 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a  
3442 license in lieu of administrative action may specify a time, not to exceed five years, within  
3443 which the former licensee may not apply for a new license.

3444 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the  
3445 former licensee may not apply for a new license for five years from the day on which the order  
3446 or agreement is made without the express approval of the commissioner.

3447 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
3448 a license issued under this part if so ordered by the court.

3449 (9) The commissioner shall by rule prescribe the license renewal and reinstatement  
3450 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3451 Section 30. Section **31A-26-213** is amended to read:

3452 **31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
3453 **terminating a license -- Rulemaking for renewal or reinstatement.**

3454 (1) A license type issued under this chapter remains in force until:

3455 (a) revoked or suspended under Subsection (5);

3456 (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
3457 administrative action;

3458 (c) the licensee dies or is adjudicated incompetent as defined under:

3459 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3460 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
3461 Minors;

3462 (d) lapsed under Section [31A-26-214.5](#); or

3463 (e) voluntarily surrendered.

3464 (2) The following may be reinstated within one year after the day on which the license  
3465 is no longer in force:

3466 (a) a lapsed license; or



3467 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
3468 not be reinstated after the license period in which it is voluntarily surrendered.

3469 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
3470 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
3471 department from pursuing additional disciplinary or other action authorized under:

3472 (a) this title; or

3473 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
3474 Administrative Rulemaking Act.

3475 (4) A license classification issued under this chapter remains in force until:

3476 (a) the qualifications pertaining to a license classification are no longer met by the  
3477 licensee; or

3478 (b) the supporting license type:

3479 (i) is revoked or suspended under Subsection (5); or

3480 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of  
3481 administrative action.

3482 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an  
3483 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
3484 commissioner may:

3485 (i) revoke:

3486 (A) a license; or

3487 (B) a license classification;

3488 (ii) suspend for a specified period of 12 months or less:

3489 (A) a license; or

3490 (B) a license classification;

3491 (iii) limit in whole or in part:

3492 (A) a license; or

3493 (B) a license classification; or

3494 (iv) deny a license application.

3495 (b) The commissioner may take an action described in Subsection (5)(a) if the  
3496 commissioner finds that the licensee:

3497 (i) is unqualified for a license or license classification under Section [31A-26-202](#),

- 3498 31A-26-203, 31A-26-204, or 31A-26-205;
- 3499 (ii) has violated:
- 3500 (A) an insurance statute;
- 3501 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 3502 (C) an order that is valid under Subsection 31A-2-201(4);
- 3503 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
- 3504 delinquency proceedings in any state;
- 3505 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 3506 days after the judgment became final;
- 3507 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 3508 admitted insurers;
- 3509 (vi) is affiliated with and under the same general management or interlocking
- 3510 directorate or ownership as another insurance adjuster that transacts business in this state
- 3511 without a license;
- 3512 (vii) refuses:
- 3513 (A) to be examined; or
- 3514 (B) to produce its accounts, records, and files for examination;
- 3515 (viii) has an officer who refuses to:
- 3516 (A) give information with respect to the insurance adjuster's affairs; or
- 3517 (B) perform any other legal obligation as to an examination;
- 3518 (ix) provides information in the license application that is:
- 3519 (A) incorrect;
- 3520 (B) misleading;
- 3521 (C) incomplete; or
- 3522 (D) materially untrue;
- 3523 (x) has violated an insurance law, valid rule, or valid order of another [state's insurance
- 3524 department] regulatory agency in any jurisdiction;
- 3525 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3526 (xii) has improperly withheld, misappropriated, or converted money or properties
- 3527 received in the course of doing insurance business;
- 3528 (xiii) has intentionally misrepresented the terms of an actual or proposed:

- 3529 (A) insurance contract; or
- 3530 (B) application for insurance;
- 3531 (xiv) has been convicted of a felony;
- 3532 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 3533 or fraud;
- 3534 (xvi) in the conduct of business in this state or elsewhere has:
  - 3535 (A) used fraudulent, coercive, or dishonest practices; or
  - 3536 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3537 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
- 3538 any other state, province, district, or territory;
- 3539 (xviii) has forged another's name to:
  - 3540 (A) an application for insurance; or
  - 3541 (B) a document related to an insurance transaction;
- 3542 (xix) has improperly used notes or any other reference material to complete an
- 3543 examination for an insurance license;
- 3544 (xx) has knowingly accepted insurance business from an individual who is not
- 3545 licensed;
- 3546 (xxi) has failed to comply with an administrative or court order imposing a child
- 3547 support obligation;
- 3548 (xxii) has failed to:
  - 3549 (A) pay state income tax; or
  - 3550 (B) comply with an administrative or court order directing payment of state income
  - 3551 tax;
- 3552 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
- 3553 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 3554 prohibited from engaging in the business of insurance; or
- 3555 (xxiv) has engaged in methods and practices in the conduct of business that endanger
- 3556 the legitimate interests of customers and the public.
- 3557 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 3558 and any individual designated under the license are considered to be the holders of the license.
- 3559 (d) If an individual designated under the agency license commits an act or fails to

3560 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
3561 the commissioner may suspend, revoke, or limit the license of:

3562 (i) the individual;

3563 (ii) the agency, if the agency:

3564 (A) is reckless or negligent in its supervision of the individual; or

3565 (B) knowingly participated in the act or failure to act that is the ground for suspending,  
3566 revoking, or limiting the license; or

3567 (iii) (A) the individual; and

3568 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

3569 (6) A licensee under this chapter is subject to the penalties for conducting an insurance  
3570 business without a license if:

3571 (a) the licensee's license is:

3572 (i) revoked;

3573 (ii) suspended;

3574 (iii) limited;

3575 (iv) surrendered in lieu of administrative action;

3576 (v) lapsed; or

3577 (vi) voluntarily surrendered; and

3578 (b) the licensee:

3579 (i) continues to act as a licensee; or

3580 (ii) violates the terms of the license limitation.

3581 (7) A licensee under this chapter shall immediately report to the commissioner:

3582 (a) a revocation, suspension, or limitation of the person's license in any other state, the  
3583 District of Columbia, or a territory of the United States;

3584 (b) the imposition of a disciplinary sanction imposed on that person by any other state,  
3585 the District of Columbia, or a territory of the United States; or

3586 (c) a judgment or injunction entered against that person on the basis of conduct  
3587 involving:

3588 (i) fraud;

3589 (ii) deceit;

3590 (iii) misrepresentation; or

3591 (iv) a violation of an insurance law or rule.

3592 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a  
3593 license in lieu of administrative action may specify a time not to exceed five years within  
3594 which the former licensee may not apply for a new license.

3595 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the  
3596 former licensee may not apply for a new license for five years without the express approval of  
3597 the commissioner.

3598 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
3599 a license issued under this part if so ordered by a court.

3600 (10) The commissioner shall by rule prescribe the license renewal and reinstatement  
3601 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3602 Section 31. Section **31A-27a-601** is amended to read:

3603 **31A-27a-601. Filing of claims.**

3604 (1) (a) Subject to the other provisions of this Subsection (1), proof of a claim shall be  
3605 filed with the liquidator in the form required by Section [31A-27a-602](#) on or before the last day  
3606 for filing specified in the notice required under Section [31A-27a-406](#).

3607 (b) The last day for filing specified in the notice may not be later than 18 months after  
3608 the day on which the order of liquidation is entered unless the receivership court, for good  
3609 cause shown, extends the time.

3610 (c) Proof of a claim for the following does not need to be filed unless the liquidator  
3611 expressly requires filing of proof:

3612 (i) cash surrender value in life insurance and annuities;

3613 (ii) investment value in life insurance and annuities other than cash surrender value;

3614 and

3615 (iii) any other policy insuring the life of a person.

3616 (d) Only upon application of the liquidator, the receivership court may allow  
3617 alternative procedures and requirements for the filing of proof of a claim or for allowing or  
3618 proving a claim.

3619 (e) Upon application, if the receivership court dispenses with the requirements of filing  
3620 a proof of claim by a person, class, or group of persons, a proof of claim for that person, class,  
3621 or group is considered as being filed for all purposes, except that the receivership court's

3622 waiver of proof of claim requirements may not impact guaranty association proof of claim  
3623 filing requirements or coverage determinations to the extent that the guaranty association  
3624 statute or filing requirements are inconsistent with the receivership court's waiver of proof.

3625 (2) The liquidator may permit a claimant that makes a late filing to share ratably in  
3626 distributions, whether past or future, as if the claim were not filed late, to the extent that the  
3627 payment will not prejudice the orderly administration of the liquidation, under the following  
3628 circumstances:

3629 (a) the eligibility to file a proof of claim was not known to the claimant, and the  
3630 claimant files a proof of claim within 90 days after the day on which the claimant first learns of  
3631 the eligibility;

3632 (b) (i) a transfer to a creditor is:

3633 (A) avoided under Section 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507;

3634 or

3635 (B) voluntarily surrendered under Section 31A-27a-509; and

3636 (ii) the filing satisfies the conditions of Section 31A-27a-509; or

3637 (c) the valuation of security held by a secured creditor under Section 31A-27a-610  
3638 shows a deficiency and the claim for the deficiency is filed within 30 days after the valuation.

3639 (3) If a reinsurer's reinsurance contract terminates pursuant to Section 31A-27a-513:

3640 (a) a claim filed by the receiver which arises from the termination may not be  
3641 considered late if the claim is filed within 90 days of the day on which the reinsurance contract  
3642 terminates; and

3643 (b) the reinsurer shall receive a ratable share of distributions, whether past or future, as  
3644 if the claim described in Subsection (3)(a) is not late.

3645 (4) Notwithstanding any other provision of this chapter, the liquidator may petition the  
3646 receivership court, subject to Section 31A-27a-107, to set a date certain after which no further  
3647 claims may be filed.

3648 (5) A Class 1 claim pursuant to Subsection 31A-27a-701(2)(a) is not subject to the  
3649 claim filing provisions of this section.

3650 Section 32. Section 31A-27a-605 is amended to read:

3651 **31A-27a-605. Allowance of contingent and unliquidated claims.**

3652 (1) As used in this section, "claim" means a demand for payment pursuant to Section

3653 31A-27a-601 under the terms and conditions of a contract issued by the insurer as a result of a  
3654 known accident, casualty, disaster, loss, event, or occurrence.

3655 (2) (a) A claim of an insured or third party may be allowed under Section  
3656 31A-27a-603, regardless of the fact that it is contingent or unliquidated if:

3657 (i) any contingency is removed in accordance with Subsection (3); and

3658 (ii) the value of the claim is determined in accordance with Subsection (4).

3659 (b) A claim is contingent if:

3660 (i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or  
3661 bonded against occurs on or before the date fixed under Section [~~31A-27a-601~~] 31A-27a-401;  
3662 and

3663 (ii) the act or event triggering the insurer's obligation to pay has not occurred as of [~~the~~]  
3664 that date [~~fixed under Section 31A-27a-401~~].

3665 (c) A claim is unliquidated if the insurer's obligation to pay is established, but the  
3666 amount of the claim has not been determined.

3667 (3) (a) Unless the receivership court directs otherwise, a contingent claim may be  
3668 allowed if:

3669 (i) the claimant presents proof of the insurer's obligation to pay reasonably satisfactory  
3670 to the liquidator; or

3671 (ii) subject to Subsection (3)(b), the claim is based on a cause of action against an  
3672 insured of the insurer, and:

3673 (A) it may be reasonably inferred from proof presented upon the claim that the  
3674 claimant would be able to obtain a judgment; and

3675 (B) the person furnishes suitable proof.

3676 (b) A contingent claim may not be allowed under Subsection (3)(a)(ii)(B) if the  
3677 receivership court for good cause shown shall otherwise direct that no further valid claims can  
3678 be made against the insurer arising out of the cause of action other than those already  
3679 presented.

3680 (4) (a) An unliquidated claim may be allowed if its amount has been determined.

3681 (b) If the amount of an unliquidated claim filed pursuant to Section 31A-27a-601  
3682 remains undetermined, the valuation of the unliquidated claim may be made by estimate  
3683 whenever the liquidator determines that:

3684 (i) liquidation of the claim would unduly delay the administration of the liquidation  
3685 proceeding; or

3686 (ii) the administrative expense of processing and adjudicating the claim or group of  
3687 claims of a similar type would be unduly excessive when compared with the property that is  
3688 estimated to be available for distribution with respect to the claim.

3689 (c) Any estimate shall be based on an accepted method of valuing a claim with  
3690 reasonable certainty at the claim's net present value, such as an actuarial evaluation.

3691 (5) (a) Notwithstanding the other provisions of this section, a claim for the value or  
3692 breach of a life insurance policy, disability income insurance policy, long-term care insurance  
3693 policy, or annuity may not result in or serve as the basis of any liability of a reinsurer of the  
3694 insurer.

3695 (b) A reinsurer's liability to the insurer shall be determined exclusively on the basis of  
3696 its contracts of reinsurance and Section 31A-27a-513.

3697 (6) (a) The liquidator may petition the receivership court to set a date certain before  
3698 which all claims under this section shall be final.

3699 (b) In addition to the notice requirements of Section 31A-27a-107, the liquidator shall  
3700 give notice of the filing of the petition to all claimants with claims that remain contingent or  
3701 unliquidated under this section.

3702 Section 33. Section 31A-28-119 is amended to read:

3703 **31A-28-119. Prohibited advertisement of the association -- Notice to owners of**  
3704 **policies and contracts.**

3705 (1) (a) Except as provided in Subsection (1)(b), a person, including an insurer, agent, or  
3706 affiliate of an insurer may not make, publish, disseminate, circulate, or place before the public,  
3707 or cause directly or indirectly to be made, published, disseminated, circulated, or placed before  
3708 the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular,  
3709 pamphlet, letter, or poster, or over a radio station or television station, or in any other way, any  
3710 advertisement, announcement, or statement written or oral, that uses the existence of the  
3711 association for the purpose of sales, solicitation, or inducement to purchase any form of  
3712 insurance.

3713 (b) Notwithstanding Subsection (1)(a), this section does not apply to:

3714 (i) the association; or



- 3715 (ii) another entity that does not sell or solicit insurance.
- 3716 (2) (a) The association shall:
- 3717 (i) have a summary document describing the general purposes and current limitations
- 3718 of this part that complies with Subsection (3); and
- 3719 (ii) submit the summary document described in Subsection (2)(a)(i) to the
- 3720 commissioner for approval.
- 3721 (b) An insurer may not deliver a policy or contract to a policy or contract owner unless
- 3722 the summary document is also delivered to the policy or contract owner before, or at the time
- 3723 of, delivery of the policy or contract.
- 3724 (c) The summary document shall be available upon request by a policy owner.
- 3725 (d) The distribution, delivery, or contents or interpretation of the summary document
- 3726 does not guarantee that:
- 3727 (i) the policy or the contract is covered in the event of the impairment or insolvency of
- 3728 a member insurer; or
- 3729 (ii) the owner of the policy or contract is covered in the event of the impairment or
- 3730 insolvency of a member insurer.
- 3731 (e) The summary document shall be revised by the association as amendments to this
- 3732 part may require.
- 3733 (f) Failure to receive the summary document as required in Subsection (2)(b) does not
- 3734 give the owner of a policy or contract, certificate holder, or insured any greater rights than
- 3735 those stated in this part.
- 3736 (3) (a) The summary document described in Subsection (2) shall contain a clear and
- 3737 conspicuous disclaimer on its face.
- 3738 (b) The commissioner shall, by rule, establish the form and content of the disclaimer
- 3739 described in Subsection (3)(a), except that the disclaimer shall:
- 3740 (i) state the name and address of:
- 3741 (A) the association; and
- 3742 (B) the department;
- 3743 (ii) prominently warn a policy or contract owner that:
- 3744 (A) the association may not cover the policy or contract; or
- 3745 (B) if coverage is available, it is:

- 3746 (I) subject to substantial limitations and exclusions; and  
3747 (II) conditioned on continued residence in the state;  
3748 (iii) state the types of policies or contracts for which the association will provide  
3749 coverage;  
3750 (iv) state that the insurer and its agents are prohibited by law from using the existence  
3751 of the association for the purpose of sales, solicitation, or inducement to purchase any form of  
3752 insurance;  
3753 (v) state that the policy or contract owner should not rely on coverage under the  
3754 association when selecting an insurer;  
3755 (vi) explain the rights available and procedures for filing a complaint to allege a  
3756 violation of this part; and  
3757 (vii) provide other information as directed by the commissioner including sources for  
3758 information about the financial condition of insurers provided that the information:  
3759 (A) is not proprietary; and  
3760 (B) is subject to disclosure under public records laws.  
3761 (4) ~~[(a) An insurer or agent may not deliver a]~~ A policy or contract described in  
3762 Subsection [31A-28-103\(2\)\(a\)](#) and wholly excluded under Subsection [31A-28-103\(2\)\(b\)\(i\)](#) from  
3763 coverage under this part ~~[unless the insurer or agent, prior to or at the time of delivery, gives~~  
3764 ~~the policy or contract holder a separate written notice that]~~ shall clearly and conspicuously  
3765 ~~[discloses]~~ disclose on the cover or face page that the policy or contract is not covered by the  
3766 association.  
3767 ~~[(b) The commissioner shall by rule specify the form and content of the notice required~~  
3768 ~~by Subsection (4)(a).]~~  
3769 (5) A member insurer shall retain evidence of compliance with Subsection (2) for the  
3770 later of:  
3771 (a) three years; or  
3772 (b) until the conclusion of the next market conduct examination by the department of  
3773 insurance where the member insurer is domiciled.  
3774 Section 34. Section **31A-30-116** is amended to read:  
3775 **31A-30-116. Essential health benefits.**  
3776 (1) For purposes of this section, the ~~["Affordable Care Act" is as]~~ PPACA means the

3777 same as that term is defined in Section [31A-2-212] 31A-1-301 and includes federal rules  
3778 related to the offering of essential health benefits.

3779 (2) The state chooses to designate its own essential health benefits rather than accept a  
3780 federal determination of the essential health benefits required to be offered in the individual  
3781 and small group market for plans renewed or offered on or after January 1, 2014.

3782 (3) (a) Subject to Subsections (3)(b) and (c), to the extent required by the [~~Affordable~~  
3783 ~~Care Act~~] PPACA, and after considering public testimony, the Legislature's Health System  
3784 Reform Task Force shall recommend to the commissioner, no later than September 1, 2012, a  
3785 benchmark plan for the state's essential health benefits based on:

3786 (i) the largest plan by enrollment in any of the three largest small employer group  
3787 insurance products in the state's small employer group market;

3788 (ii) any of the largest three state employee health benefit plans by enrollment;

3789 (iii) the largest insured commercial non-Medicaid health maintenance organization  
3790 operating in the state; or

3791 (iv) other benchmarks required or permitted by the [~~Affordable Care Act~~] PPACA.

3792 (b) Notwithstanding the provisions of Subsection 63N-11-106(2), based on the  
3793 recommendation of the task force under Subsection (3)(a), and within 30 days of the task force  
3794 recommendation, the commissioner shall adopt an emergency administrative rule that  
3795 designates the essential health benefits that shall be included in a plan offered or renewed on or  
3796 after January 1, 2014, in the small employer group and individual markets.

3797 (c) The essential health benefit plan:

3798 (i) shall not include a state mandate if the inclusion of the state mandate would require  
3799 the state to contribute to premium subsidies under the [~~Affordable Care Act~~] PPACA; and

3800 (ii) may add benefits in addition to the benefits included in a benchmark plan described  
3801 in Subsection (3)(b) if the additional benefits are mandated under the [~~Affordable Care Act~~]  
3802 PPACA.

3803 Section 35. Section **31A-30-209** is amended to read:

3804 **31A-30-209. Insurance producers and the Health Insurance Exchange.**

3805 (1) A producer may be listed on the Health Insurance Exchange as a credentialed  
3806 producer if the producer is designated as a credentialed agent for the Health Insurance  
3807 Exchange in accordance with Subsection (2).

3808 (2) A producer whose license under this title authorizes the producer to sell accident  
3809 and health insurance may be credentialed by the Health Insurance Exchange and may sell any  
3810 product on the Health Insurance Exchange, if the producer:

3811 (a) is an appointed producer with:

3812 (i) all carriers that offer a plan in the defined contribution market on the Health  
3813 Insurance Exchange; and

3814 (ii) at least one carrier that offers a dental plan on the Health Insurance Exchange; and

3815 (b) completes each year the Health Insurance Exchange training [~~that includes training~~  
3816 ~~on premium assistance programs~~].

3817 (3) A carrier shall appoint a producer to sell the carrier's products in the defined  
3818 contribution arrangement market of the Health Insurance Exchange, within 30 days of the  
3819 notice required in Subsection (3)(b), if:

3820 (a) the producer is currently appointed by a majority of the carriers in the Health  
3821 Insurance Exchange to sell products either outside or inside of the Health Insurance Exchange;  
3822 and

3823 (b) the producer informs the carrier that the producer is:

3824 (i) applying to be appointed to the defined contribution arrangement market in the  
3825 Health Insurance Exchange;

3826 (ii) appointed by a majority of the carriers in the defined contribution arrangement  
3827 market in the Health Insurance Exchange;

3828 (iii) willing to complete training regarding the carrier's products offered on the defined  
3829 contribution arrangement market in the Health Insurance Exchange; and

3830 (iv) willing to sign the contracts and business associate's agreements that the carrier  
3831 requires for appointed producers in the Health Insurance Exchange.

3832 Section 36. Section **31A-31-112** is enacted to read:

3833 **31A-31-112. Insurance antifraud plan.**

3834 (1) An insurer, as defined in Section 31A-31-102, shall prepare, implement, and  
3835 maintain an insurance antifraud plan for its operations in this state.

3836 (2) The insurance antifraud plan required by Subsection (1) shall outline specific  
3837 procedures, actions, and safeguards that include how the authorized insurer or health  
3838 maintenance organization will do each of the following:

- 3839           (a) detect, investigate, and prevent all forms of insurance fraud, including:  
3840           (i) fraud involving its employees or agents;  
3841           (ii) fraud resulting from misrepresentations in the application, renewal, or rating of  
3842 insurance policies;  
3843           (iii) fraudulent claims; and  
3844           (iv) breach of security of its data processing systems;  
3845           (b) educate employees of fraud detection and the insurance antifraud plan;  
3846           (c) provide for fraud investigations, whether through the use of internal fraud  
3847 investigators or third-party contractors;  
3848           (d) report a suspected fraudulent insurance act, as described in Section [31A-31-103](#), to  
3849 the department as required by Section [31A-31-110](#); and  
3850           (e) pursue restitution for financial loss caused by insurance fraud.  
3851           (3) The commissioner may investigate and examine the records and operations of  
3852 authorized insurers and health maintenance organizations to determine if they have  
3853 implemented and complied with the insurance antifraud plan.  
3854           (4) The commissioner may:  
3855           (a) direct any modification to the insurance antifraud plan necessary to comply with the  
3856 requirements of this section; and  
3857           (b) require action to remedy substantial noncompliance with the insurance antifraud  
3858 plan.  
3859           Section 37. Section **31A-37-102** is amended to read:  
3860           **31A-37-102. Definitions.**  
3861           As used in this chapter:  
3862           (1) "Affiliated company" means a business entity that because of common ownership,  
3863 control, operation, or management is in the same corporate or limited liability company system  
3864 as:  
3865           (a) a parent;  
3866           (b) an industrial insured; or  
3867           (c) a member organization.  
3868           (2) "Alien captive insurance company" means an insurer:  
3869           (a) formed to write insurance business for a parent or affiliate of the insurer; and

3870 (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes  
3871 statutory or regulatory standards:

3872 (i) on a business entity transacting the business of insurance in the alien jurisdiction;  
3873 and

3874 (ii) in a form acceptable to the commissioner.

3875 (3) "Association" means a legal association of two or more persons that has been in  
3876 continuous existence for at least one year if:

3877 (a) the association or its member organizations:

3878 (i) own, control, or hold with power to vote all of the outstanding voting securities of  
3879 an association captive insurance company incorporated as a stock insurer; or

3880 (ii) have complete voting control over an association captive insurance company  
3881 incorporated as a mutual insurer;

3882 (b) the association's member organizations collectively constitute all of the subscribers  
3883 of an association captive insurance company formed as a reciprocal insurer; or

3884 (c) the association or its member organizations have complete voting control over an  
3885 association captive insurance company formed as a limited liability company.

3886 (4) "Association captive insurance company" means a business entity that insures risks  
3887 of:

3888 (a) a member organization of the association;

3889 (b) an affiliate of a member organization of the association; and

3890 (c) the association.

3891 (5) "Branch business" means an insurance business transacted by a branch captive  
3892 insurance company in this state.

3893 (6) "Branch captive insurance company" means an alien captive insurance company  
3894 that has a certificate of authority from the commissioner to transact the business of insurance in  
3895 this state through a [~~business unit with a principal place of business in~~] captive insurance  
3896 company that is domiciled outside of this state.

3897 (7) "Branch operation" means a business operation of a branch captive insurance  
3898 company in this state.

3899 (8) "Captive insurance company" means any of the following formed or holding a  
3900 certificate of authority under this chapter:

- 3901 (a) a branch captive insurance company;
- 3902 (b) a pure captive insurance company;
- 3903 (c) an association captive insurance company;
- 3904 (d) a sponsored captive insurance company;
- 3905 (e) an industrial insured captive insurance company, including an industrial insured
- 3906 captive insurance company formed as a risk retention group captive in this state pursuant to the
- 3907 provisions of the Federal Liability Risk Retention Act of 1986;
- 3908 (f) a special purpose captive insurance company; or
- 3909 (g) a special purpose financial captive insurance company.
- 3910 (9) "Commissioner" means Utah's Insurance Commissioner or the commissioner's
- 3911 designee.
- 3912 (10) "Common ownership and control" means that two or more captive insurance
- 3913 companies are owned or controlled by the same person or group of persons as follows:
- 3914 (a) in the case of a captive insurance company that is a stock corporation, the direct or
- 3915 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;
- 3916 (b) in the case of a captive insurance company that is a mutual corporation, the direct
- 3917 or indirect ownership of 80% or more of the surplus and the voting power of the mutual
- 3918 corporation;
- 3919 (c) in the case of a captive insurance company that is a limited liability company, the
- 3920 direct or indirect ownership by the same member or members of 80% or more of the
- 3921 membership interests in the limited liability company; or
- 3922 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
- 3923 captive insurance company owned and controlled by the protected cell's participant, only if:
- 3924 (i) the participant is the only participant with respect to the protected cell; and
- 3925 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
- 3926 captive insurance company through common ownership and control.
- 3927 (11) "Consolidated debt to total capital ratio" means the ratio of Subsection (11)(a) to
- 3928 (b).
- 3929 (a) This Subsection (11)(a) is an amount equal to the sum of all debts and hybrid
- 3930 capital instruments including:
- 3931 (i) all borrowings from depository institutions;

- 3932 (ii) all senior debt;
- 3933 (iii) all subordinated debts;
- 3934 (iv) all trust preferred shares; and
- 3935 (v) all other hybrid capital instruments that are not included in the determination of
- 3936 consolidated GAAP net worth issued and outstanding.
- 3937 (b) This Subsection (11)(b) is an amount equal to the sum of:
- 3938 (i) total capital consisting of all debts and hybrid capital instruments as described in
- 3939 Subsection (11)(a); and
- 3940 (ii) shareholders' equity determined in accordance with generally accepted accounting
- 3941 principles for reporting to the United States Securities and Exchange Commission.
- 3942 (12) "Consolidated GAAP net worth" means the consolidated shareholders' or
- 3943 members' equity determined in accordance with generally accepted accounting principles for
- 3944 reporting to the United States Securities and Exchange Commission.
- 3945 (13) "Controlled unaffiliated business" means a business entity:
- 3946 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or
- 3947 limited liability company system of a parent or the parent's affiliate; or
- 3948 (ii) in the case of an industrial insured captive insurance company, that is not in the
- 3949 corporate or limited liability company system of an industrial insured or an affiliated company
- 3950 of the industrial insured;
- 3951 (b) (i) in the case of a pure captive insurance company, that has a contractual
- 3952 relationship with a parent or affiliate; or
- 3953 (ii) in the case of an industrial insured captive insurance company, that has a
- 3954 contractual relationship with an industrial insured or an affiliated company of the industrial
- 3955 insured; and
- 3956 (c) whose risks are managed by one of the following in accordance with Subsection
- 3957 [31A-37-106\(1\)\(j\)](#):
- 3958 (i) a pure captive insurance company; or
- 3959 (ii) an industrial insured captive insurance company.
- 3960 (14) "Department" means the Insurance Department.
- 3961 (15) "Industrial insured" means an insured:
- 3962 (a) that produces insurance:



- 3963 (i) by the services of a full-time employee acting as a risk manager or insurance  
3964 manager; or
- 3965 (ii) using the services of a regularly and continuously qualified insurance consultant;  
3966 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;  
3967 and
- 3968 (c) that has at least 25 full-time employees.
- 3969 (16) "Industrial insured captive insurance company" means a business entity that:
- 3970 (a) insures risks of the industrial insureds that comprise the industrial insured group;  
3971 and
- 3972 (b) may insure the risks of:
- 3973 (i) an affiliated company of an industrial insured; or  
3974 (ii) a controlled unaffiliated business of:
- 3975 (A) an industrial insured; or  
3976 (B) an affiliated company of an industrial insured.
- 3977 (17) "Industrial insured group" means:
- 3978 (a) a group of industrial insureds that collectively:
- 3979 (i) own, control, or hold with power to vote all of the outstanding voting securities of  
3980 an industrial insured captive insurance company incorporated or organized as a limited liability  
3981 company as a stock insurer; or
- 3982 (ii) have complete voting control over an industrial insured captive insurance company  
3983 incorporated or organized as a limited liability company as a mutual insurer;
- 3984 (b) a group that is:
- 3985 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901  
3986 et seq., as amended, as a corporation or other limited liability association; and
- 3987 (ii) taxable under this title as a:
- 3988 (A) stock corporation; or  
3989 (B) mutual insurer; or
- 3990 (c) a group that has complete voting control over an industrial captive insurance  
3991 company formed as a limited liability company.
- 3992 (18) "Member organization" means a person that belongs to an association.
- 3993 (19) "Parent" means a person that directly or indirectly owns, controls, or holds with

3994 power to vote more than 50% of:

3995 (a) the outstanding voting securities of a pure captive insurance company; or

3996 (b) the pure captive insurance company, if the pure captive insurance company is  
3997 formed as a limited liability company.

3998 (20) "Participant" means an entity that is insured by a sponsored captive insurance  
3999 company:

4000 (a) if the losses of the participant are limited through a participant contract to the assets  
4001 of a protected cell; and

4002 (b)(i) the entity is permitted to be a participant under Section [31A-37-403](#); or

4003 (ii) the entity is an affiliate of an entity permitted to be a participant under Section  
4004 [31A-37-403](#).

4005 (21) "Participant contract" means a contract by which a sponsored captive insurance  
4006 company:

4007 (a) insures the risks of a participant; and

4008 (b) limits the losses of the participant to the assets of a protected cell.

4009 (22) "Protected cell" means a separate account established and maintained by a  
4010 sponsored captive insurance company for one participant.

4011 (23) "Pure captive insurance company" means a business entity that insures risks of a  
4012 parent or affiliate of the business entity.

4013 (24) "Special purpose financial captive insurance company" is as defined in Section  
4014 [31A-37a-102](#).

4015 (25) "Sponsor" means an entity that:

4016 (a) meets the requirements of Section [31A-37-402](#); and

4017 (b) is approved by the commissioner to:

4018 (i) provide all or part of the capital and surplus required by applicable law in an amount  
4019 of not less than \$350,000, which amount the commissioner may increase by order if the  
4020 commissioner considers it necessary; and

4021 (ii) organize and operate a sponsored captive insurance company.

4022 (26) "Sponsored captive insurance company" means a captive insurance company:

4023 (a) in which the minimum capital and surplus required by applicable law is provided by  
4024 one or more sponsors;

- 4025 (b) that is formed or holding a certificate of authority under this chapter;  
4026 (c) that insures the risks of a separate participant through the contract; and  
4027 (d) that segregates each participant's liability through one or more protected cells.

4028 (27) "Treasury rates" means the United States Treasury strip asked yield as published  
4029 in the Wall Street Journal as of a balance sheet date.

4030 Section 38. Section **31A-37-103** is amended to read:

4031 **31A-37-103. Chapter exclusivity.**

4032 (1) Except as provided in Subsections (2) and (3) or otherwise provided in this chapter,  
4033 a provision of this title other than this chapter does not apply to a captive insurance company.

4034 (2) To the extent that a provision of the following does not contradict this chapter, the  
4035 provision applies to a captive insurance company that receives a certificate of authority under  
4036 this chapter:

- 4037 (a) Chapter 2, Administration of the Insurance Laws;  
4038 (b) Chapter 4, Insurers in General;  
4039 (c) Chapter 5, Domestic Stock and Mutual Insurance Corporations;  
4040 (d) Chapter 14, Foreign Insurers;  
4041 (e) Chapter 16, Insurance Holding Companies;  
4042 (f) Chapter 17, Determination of Financial Condition;  
4043 (g) Chapter 18, Investments;  
4044 (h) Chapter 19a, Utah Rate Regulation Act;  
4045 (i) Chapter 27, Delinquency Administrative Action Provisions; and  
4046 (j) Chapter 27a, Insurer Receivership Act.

4047 (3) In addition to this chapter, and subject to Section [31A-37a-103](#):

4048 (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to  
4049 a special purpose financial captive insurance company; and

4050 (b) for purposes of a special purpose financial captive insurance company, a reference  
4051 in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial  
4052 Captive Insurance Company Act.

4053 (4) In addition to this chapter, an industrial group captive insurance company formed  
4054 as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to  
4055 the extent that this chapter is silent regarding regulation of risk retention groups conducting

4056 business in the state.

4057 Section 39. Section **31A-37-204** is amended to read:

4058 **31A-37-204. Paid-in capital -- Other capital.**

4059 (1) (a) The commissioner may not issue a certificate of authority to a company  
4060 described in Subsection (1)(c) unless the company possesses and thereafter maintains  
4061 unimpaired paid-in capital and unimpaired paid-in surplus of:

4062 (i) in the case of a pure captive insurance company, not less than \$250,000;

4063 (ii) in the case of an association captive insurance company incorporated as a stock  
4064 insurer, not less than \$750,000;

4065 (iii) in the case of an industrial insured captive insurance company incorporated as a  
4066 stock insurer, not less than \$700,000;

4067 (iv) in the case of a sponsored captive insurance company, not less than \$1,000,000, of  
4068 which a minimum of \$350,000 is provided by the sponsor; or

4069 (v) in the case of a special purpose captive insurance company, an amount determined  
4070 by the commissioner after giving due consideration to the company's business plan, feasibility  
4071 study, and pro-formas, including the nature of the risks to be insured.

4072 (b) The paid-in capital and surplus required under this Subsection (1) may be in the  
4073 form of:

4074 (i) (A) cash; or

4075 (B) cash equivalent; [~~or~~]

4076 (ii) an irrevocable letter of credit:

4077 (A) issued by:

4078 (I) a bank chartered by this state; or

4079 (II) a member bank of the Federal Reserve System; and

4080 (B) approved by the commissioner[~~;~~]; or

4081 (iii) marketable securities as determined by Subsections [31A-18-105\(1\)](#) and (6).

4082 (c) This Subsection (1) applies to:

4083 (i) a pure captive insurance company;

4084 (ii) a sponsored captive insurance company;

4085 (iii) a special purpose captive insurance company;

4086 (iv) an association captive insurance company incorporated as a stock insurer; or

- 4087 (v) an industrial insured captive insurance company incorporated as a stock insurer.
- 4088 (2) (a) The commissioner may, under Section [31A-37-106](#), prescribe additional capital  
4089 based on the type, volume, and nature of insurance business transacted.
- 4090 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the  
4091 form of:
- 4092 (i) cash; [~~or~~]
- 4093 (ii) an irrevocable letter of credit issued by:
- 4094 (A) a bank chartered by this state; or
- 4095 (B) a member bank of the Federal Reserve System[~~;~~]; or
- 4096 (iii) marketable securities as determined by Subsections [31A-18-105\(1\)](#) and [\(6\)](#).
- 4097 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as  
4098 security for the payment of liabilities attributable to branch operations, shall, through its branch  
4099 operations, establish and maintain a trust fund:
- 4100 (i) funded by an irrevocable letter of credit or other acceptable asset; and
- 4101 (ii) in the United States for the benefit of:
- 4102 (A) United States policyholders; and
- 4103 (B) United States ceding insurers under:
- 4104 (I) insurance policies issued; or
- 4105 (II) reinsurance contracts issued or assumed.
- 4106 (b) The amount of the security required under this Subsection (3) shall be no less than:
- 4107 (i) the capital and surplus required by this chapter; and
- 4108 (ii) the reserves on the insurance policies or reinsurance contracts, including:
- 4109 (A) reserves for losses;
- 4110 (B) allocated loss adjustment expenses;
- 4111 (C) incurred but not reported losses; and
- 4112 (D) unearned premiums with regard to business written through branch operations.
- 4113 (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may  
4114 permit a branch captive insurance company that is required to post security for loss reserves on  
4115 branch business by its reinsurer to reduce the funds in the trust account required by this section  
4116 by the same amount as the security posted if the security remains posted with the reinsurer.
- 4117 (4) (a) A captive insurance company may not pay the following without the prior

4118 approval of the commissioner:

4119 (i) a dividend out of capital or surplus in excess of the limits under Section

4120 [16-10a-640](#); or

4121 (ii) a distribution with respect to capital or surplus in excess of the limits under Section

4122 [16-10a-640](#).

4123 (b) The commissioner shall condition approval of an ongoing plan for the payment of  
4124 dividends or other distributions on the retention, at the time of each payment, of capital or  
4125 surplus in excess of:

4126 (i) amounts specified by the commissioner under Section [31A-37-106](#); or

4127 (ii) determined in accordance with formulas approved by the commissioner under  
4128 Section [31A-37-106](#).

4129 (5) Notwithstanding Subsection (1), a captive insurance company organized as a  
4130 reciprocal insurer under this chapter may not be issued a certificate of authority unless the  
4131 captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.

4132 (6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based  
4133 upon the type, volume, and nature of the insurance business transacted.

4134 (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the  
4135 form of an irrevocable letter of credit issued by:

4136 (i) a bank chartered by this state; or

4137 (ii) a member bank of the Federal Reserve System.

4138 Section 40. Section **31A-37-303** is amended to read:

4139 **31A-37-303. Reinsurance.**

4140 (1) A captive insurance company may provide reinsurance, as authorized in this title,  
4141 on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.

4142 (2) (a) A captive insurance company may take credit for reserves on risks or portions of  
4143 risks ceded to reinsurers if the captive insurance company complies with Section [31A-17-404](#),  
4144 [31A-17-404.1](#), [31A-17-404.3](#), or [31A-17-404.4](#) or if the captive insurance company complies  
4145 with other requirements as the commissioner may establish by rule made in accordance with  
4146 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4147 (b) Unless the reinsurer is in compliance with Section [31A-17-404](#), [31A-17-404.1](#),  
4148 [31A-17-404.3](#), or [31A-17-404.4](#) or a rule adopted under Subsection (2)(a), a captive insurance

4149 company may not take credit for:

4150 (i) reserves on risks ceded to a reinsurer; or

4151 (ii) portions of risks ceded to a reinsurer.

4152 Section 41. Section **31A-37-501** is amended to read:

4153 **31A-37-501. Reports to commissioner.**

4154 (1) A captive insurance company is not required to make a report except those  
4155 provided in this chapter.

4156 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the  
4157 commissioner a report of the financial condition of the captive insurance company, verified by  
4158 oath of ~~two~~ one of the executive officers of the captive insurance company.

4159 (b) Except as provided in Section [31A-37-204](#), a captive insurance company shall  
4160 report:

4161 (i) using generally accepted accounting principles, except to the extent that the  
4162 commissioner requires, approves, or accepts the use of a statutory accounting principle;

4163 (ii) using a useful or necessary modification or adaptation to an accounting principle  
4164 that is required, approved, or accepted by the commissioner for the type of insurance and kind  
4165 of insurer to be reported upon; and

4166 (iii) supplemental or additional information required by the commissioner.

4167 (c) Except as otherwise provided:

4168 (i) a licensed captive insurance company shall file the report required by Section  
4169 [31A-4-113](#); and

4170 (ii) an industrial insured group shall comply with Section [31A-4-113.5](#).

4171 (3) (a) A pure captive insurance company may make written application to file the  
4172 required report on a fiscal year end that is consistent with the fiscal year of the parent company  
4173 of the pure captive insurance company.

4174 (b) If the commissioner grants an alternative reporting date for a pure captive insurance  
4175 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal  
4176 year end.

4177 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall  
4178 file with the commissioner a copy of the reports and statements required to be filed under the  
4179 laws of the jurisdiction in which the alien captive insurance company is formed, verified by

4180 oath by two of the alien captive insurance company's executive officers.

4181 (b) If the commissioner is satisfied that the annual report filed by the alien captive  
4182 insurance company in the jurisdiction in which the alien captive insurance company is formed  
4183 provides adequate information concerning the financial condition of the alien captive insurance  
4184 company, the commissioner may waive the requirement for completion of the annual statement  
4185 required for a captive insurance company under this section with respect to business written in  
4186 the alien or foreign jurisdiction.

4187 (c) A waiver by the commissioner under Subsection (4)(b):

4188 (i) shall be in writing; and

4189 (ii) is subject to public inspection.

4190 (5) Before March 1 of each year, a sponsored cell captive insurance company shall  
4191 submit to the commissioner a consolidated report of the financial condition of each individual  
4192 protected cell, including a financial statement for each protected cell.

4193 Section 42. Section **31A-37-502** is amended to read:

4194 **31A-37-502. Examination.**

4195 (1) (a) As provided in this section, the commissioner, or a person appointed by the  
4196 commissioner, shall examine each captive insurance company in each five-year period.

4197 (b) The five-year period described in Subsection (1)(a) shall be determined on the basis  
4198 of five full annual accounting periods of operation.

4199 (c) The examination is to be made as of:

4200 (i) December 31 of the full [~~three-year~~] five-year period; or

4201 (ii) the last day of the month of an annual accounting period authorized for a captive  
4202 insurance company under this section.

4203 (d) In addition to an examination required under this Subsection (1), the commissioner,  
4204 or a person appointed by the commissioner may examine a captive insurance company  
4205 whenever the commissioner determines it to be prudent.

4206 (2) During an examination under this section the commissioner, or a person appointed  
4207 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance  
4208 company to ascertain:

4209 (a) the financial condition of the captive insurance company;

4210 (b) the ability of the captive insurance company to fulfill the obligations of the captive



4211 insurance company; and

4212 (c) whether the captive insurance company has complied with this chapter.

4213 (3) The commissioner may accept a comprehensive annual independent audit in lieu of  
4214 an examination:

4215 (a) of a scope satisfactory to the commissioner; and

4216 (b) performed by an independent auditor approved by the commissioner.

4217 (4) A captive insurance company that is inspected and examined under this section  
4218 shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an  
4219 inspection and examination.

4220 Section 43. Section 31A-40-208 is amended to read:

4221 **31A-40-208. Benefit plan.**

4222 (1) A client and a professional employer organization licensed under this chapter shall  
4223 each be considered an employer for purposes of sponsoring a retirement or welfare benefit plan  
4224 for a covered employee.

4225 (2) (a) A fully insured welfare benefit plan offered to a covered employee of a single  
4226 professional employer organization licensed under this chapter[~~-(a)~~] is to be treated as a single  
4227 employer welfare benefit plan for purposes of this title and rules made under this title[~~;~~].

4228 [~~(b) may not be considered an employer welfare fund or plan, as described in Section~~  
4229 ~~31A-13-101; and]~~

4230 [(~~e~~)] (b) The single professional employer organization that sponsors the fully insured  
4231 welfare plan is exempt from the registration requirements under this title for:

4232 (i) an insurance provider; or

4233 (ii) an employer welfare fund or plan.

4234 (3) For purposes of Chapter 30, Individual, Small Employer, and Group Health  
4235 Insurance Act:

4236 (a) a professional employer organization licensed under this chapter is considered the  
4237 employer of a covered employee; and

4238 (b) all covered employees of one or more clients participating in a health benefit plan  
4239 sponsored by a single professional employer organization licensed under this chapter are  
4240 considered employees of that professional employer organization.

4241 (4) A professional employer organization licensed under this chapter may offer to a

4242 covered employee a health benefit plan that is not fully insured by an authorized insurer, only  
4243 if:

4244 (a) the professional employer organization has operated as a professional employer  
4245 organization for at least one year before the day on which the professional employer  
4246 organization offers the health benefit plan; and

4247 (b) the health benefit plan:

4248 (i) is administered by a third-party administrator licensed to do business in this state;

4249 (ii) holds all assets of the health benefit plan, including participant contributions, in a  
4250 trust account;

4251 (iii) has and maintains reserves that are sound for the health benefit plan as determined  
4252 by an actuary who:

4253 (A) uses generally accepted actuarial standards of practice; and

4254 (B) is an independent qualified actuary, including not being an employee or covered  
4255 employee of the professional employer organization;

4256 (iv) provides written notice to a covered employee participating in the health benefit  
4257 plan that the health benefit plan is self-insured or is not fully insured;

4258 (v) consents to an audit:

4259 (A) on a random basis; or

4260 (B) upon a finding of a reasonable need by the commissioner; and

4261 (vi) provides for continuation of coverage in compliance with Section [31A-22-722](#).

4262 (5) The cost of an audit described in Subsection (4)(b)(v) shall be paid by the  
4263 sponsoring professional employer organization.

4264 (6) A plan of a professional employer organization described in Subsection (4) that is  
4265 not fully insured:

4266 (a) is subject to the requirements of this section; and

4267 (b) is not subject to another licensure or approval requirement of this title.

4268 Section 44. Section **31A-41-202** is amended to read:

4269 **31A-41-202. Assessments.**

4270 (1) [~~Beginning January 1, 2009, an~~ An agency title insurance producer licensed under  
4271 this title shall pay an annual assessment determined by the commission by rule made in  
4272 accordance with Section [31A-2-404](#), except that the annual assessment:

4273 (a) may not exceed \$1,000; and

4274 (b) shall be determined on the basis of title insurance premium volume.

4275 (2) [~~Beginning January 1, 2009, an~~] An individual who applies for a license or renewal  
4276 of a license as an individual title insurance producer, shall pay in addition to any other fee  
4277 required by this title, an assessment not to exceed \$20, as determined by the commission by  
4278 rule made in accordance with Section [31A-2-404](#), except that if the individual holds more than  
4279 one license, the total of all assessments under this Subsection (2) may not exceed \$20 in a  
4280 fiscal year.

4281 (3) (a) To be licensed as an agency title insurance producer [~~on or after July 1, 2008~~], a  
4282 person shall pay to the department an assessment of \$1,000 before the day on which the person  
4283 is licensed as a title insurance agency.

4284 (b) (i) [~~By no later than July 15, 2008, the~~] The department shall assess on [~~an~~] a  
4285 licensed agency title insurance producer [~~licensed as of June 30, 2008;~~] an amount equal to the  
4286 greater of:

4287 (A) \$1,000; or

4288 (B) subject to Subsection (3)(b)(ii), 2% of the balance [~~as of December 31, 2007;~~] in  
4289 the agency title insurance producer's reserve account described in Subsection [31A-23a-204](#)(3).

4290 (ii) The department may assess on an agency title insurance producer an amount less  
4291 than 2% of the balance described in Subsection (3)(b)(i)(B) if:

4292 (A) before issuing the assessments under this Subsection (3)(b) the department  
4293 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

4294 (B) the amount assessed on the agency title insurance producer is not less than \$1,000;  
4295 and

4296 (C) the department reduces the assessment in a proportionate amount for agency title  
4297 insurance producers assessed on the basis of the 2% of the balance described in Subsection  
4298 (3)(b)(i)(B).

4299 (iii) An agency title insurance producer assessed under this Subsection (3)(b) shall pay  
4300 the assessment by no later than August 1 [~~, 2008~~].

4301 (4) The department may not assess a title insurance licensee an assessment for  
4302 purposes of the fund if that assessment is not expressly provided for in this section.

4303 Section 45. Section **31A-41-301** is amended to read:

4304           **31A-41-301. Procedure for making a claim against the fund.**  
4305           ~~[(1) (a) To bring a claim against the fund a person shall notify the department within 30~~  
4306 ~~business days of the day on which the person files an action against a title insurance licensee~~  
4307 ~~alleging the following related to a title insurance transaction:]~~  
4308           ~~[(i) fraud;]~~  
4309           ~~[(ii) misrepresentation; or]~~  
4310           ~~[(iii) deceit.]~~  
4311           ~~[(b) The notification required by Subsection (1)(a) shall be:]~~  
4312           ~~[(i) in writing; and]~~  
4313           ~~[(ii) signed by the person who provides the notice.]~~  
4314           ~~[(c) Within 30 days of the day on which the department receives a notice under~~  
4315 ~~Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).]~~  
4316           ~~[(2) (a) Subject to the other provisions in this section, a person who provides the notice~~  
4317 ~~required under Subsection (1) may maintain a claim against the fund if:]~~  
4318           ~~[(i) in an action described in Subsection (1), the person obtains a final judgment in a~~  
4319 ~~court of competent jurisdiction in this state against a title insurance licensee;]~~  
4320           ~~[(ii) all proceedings including appeals related to the final judgment described in~~  
4321 ~~Subsection (2)(a)(i) are at an end; and]~~  
4322           ~~[(iii) the person files a verified petition in the court where the judgment is entered for~~  
4323 ~~an order directing payment from the fund for the uncollected actual damages included in the~~  
4324 ~~judgment and unpaid.]~~  
4325           ~~[(b) A court may not direct the payment from the fund of:]~~  
4326           ~~[(i) punitive damages;]~~  
4327           ~~[(ii) attorney fees;]~~  
4328           ~~[(iii) interest; or]~~  
4329           ~~[(iv) court costs.]~~  
4330           ~~[(c) Regardless of the number of claimants or parcels of real estate involved in a single~~  
4331 ~~real estate transaction, the liability of the fund may not exceed:]~~  
4332           ~~[(i) \$15,000 for a single real estate transaction; or]~~  
4333           ~~[(ii) \$50,000 for all transactions of a title insurance license.]~~  
4334           ~~[(d) A person shall:]~~

4335 ~~[(i) serve the verified petition required by Subsection (2)(a) on the department; and]~~

4336 ~~[(ii) file an affidavit of service with the court.]~~

4337 ~~[(3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days~~  
4338 ~~after the day on which the department is served.]~~

4339 ~~[(b) The person who files the petition may recover from the fund only if the person~~  
4340 ~~shows all of the following:]~~

4341 (1) To recover from the fund, a person shall:

4342 (a) obtain a final judgment against a title insurance licensee establishing that fraud,  
4343 misrepresentation, or deceit by the licensee in a real estate transaction proximately caused  
4344 economic harm to the person; and

4345 (b) apply to the department to receive compensation for the economic harm from the  
4346 fund.

4347 (2) An application under Subsection (1)(b) shall establish all of the following:

4348 ~~[(i)]~~ (a) the [person] applicant is not a spouse of the judgment debtor or the personal  
4349 representative of the spouse;

4350 ~~[(ii) the person complied with this chapter;]~~

4351 ~~[(iii)]~~ (b) the [person] applicant has obtained a final judgment in accordance with [this  
4352 section indicating the amount of the judgment awarded] Subsections (1)(a) and (3);

4353 ~~[(iv)]~~ (c) [the] an amount is still [owing] owed on the judgment at the date of the  
4354 [petition] application;

4355 ~~[(v)]~~ (d) the [person] applicant has had a writ of execution issued under the judgment,  
4356 and the officer executing the writ has returned showing that:

4357 ~~[(A)]~~ (i) no property subject to execution in satisfaction of the judgment could be  
4358 found; or

4359 ~~[(B)]~~ (ii) the amount realized upon the execution levied against the property of the  
4360 judgment debtor is insufficient to satisfy the judgment;

4361 ~~[(vi)]~~ (e) the [person] applicant has made reasonable searches and inquiries to ascertain  
4362 whether the judgment debtor has any interest in property, real or personal, that may satisfy the  
4363 judgment; and

4364 ~~[(vii)]~~ (f) the [person] applicant has exercised reasonable diligence to secure payment  
4365 of the judgment from the assets of the judgment debtor.

4366 ~~[(4) If the person described in Subsection (3) satisfies the court that it is not practicable~~  
4367 ~~for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through~~  
4368 ~~(vii), the court may waive those requirements.]~~

4369 ~~[(5) (a) A judgment that is the basis for a claim against the fund may not have been~~  
4370 ~~discharged in bankruptcy.]~~

4371 ~~[(b) If a bankruptcy proceeding is still open or is commenced during the pendency of~~  
4372 ~~the claim, the person bringing a claim against the fund shall obtain an order from the~~  
4373 ~~bankruptcy court declaring the judgement and debt to be nondischargeable.]~~

4374 (3) (a) A final judgment under Subsection (1)(a) does not include a default judgment  
4375 entered against a title insurance licensee. If grounds exist for a default judgment against a title  
4376 insurance licensee, the requirement of a final judgment may be satisfied by complying with  
4377 Section [31A-41-302](#).

4378 (b) A final judgment under Subsection (1)(a) does not include a judgment that is  
4379 discharged in bankruptcy. If a bankruptcy proceeding is open or is commenced during the  
4380 pendency of an application under Subsection (1)(b) before the department or the court, the  
4381 applicant shall obtain an order from the bankruptcy court declaring the judgment and debt to be  
4382 non-dischargeable.

4383 (4) The department may hold a hearing on the application filed pursuant to Subsection  
4384 (2). The hearing shall be an informal adjudicative proceeding under Title 63G, Chapter 4,  
4385 Administrative Procedures Act, with rights of appeal as provided in Title 63G, Chapter 4,  
4386 Administrative Procedures Act.

4387 Section 46. Section [31A-41-302](#) is repealed and reenacted to read:

4388 **31A-41-302. Department may defend action in which title insurance licensee does**  
4389 **not appear or defend.**

4390 (1) In a lawsuit alleging that fraud, misrepresentation, or deceit by a title insurance  
4391 licensee in a real estate transaction proximately caused economic harm, if grounds arise for the  
4392 entry of a default judgment against the title insurance licensee, the plaintiff may petition the  
4393 court to join the department as a defendant in the lawsuit.

4394 (2) After being served, the department may appear, conduct discovery, and otherwise  
4395 defend against any claim asserted against the title insurance licensee for which the fund may be  
4396 liable under this part. A judgment under this Subsection (2) may not be issued against the

4397 department.

4398 Section 47. Section **31A-41-303** is amended to read:

4399 **31A-41-303. Determination and amount of fund liability.**

4400 (1) Subject to the requirements of this part, if the [~~court~~] department determines that a  
4401 claim should be levied against the fund, the [~~court~~] department shall enter an order [~~directing~~  
4402 ~~the department to pay from the fund~~] that the fund pay that portion of the petitioner's judgment  
4403 that is [~~payable~~] eligible for payment from the fund.

4404 (2) A payment from the fund may not compensate for punitive damages, attorney fees,  
4405 interest, or court costs.

4406 (3) Regardless of the number of claimants or parcels of real estate involved in a single  
4407 transaction, the liability of the fund may not exceed:

4408 (a) \$15,000 for a single real estate transaction; or

4409 (b) \$50,000 for all transactions of a title insurance licensee.

4410 Section 48. Section **63I-2-231** is amended to read:

4411 **63I-2-231. Repeal dates, Title 31A.**

4412 (1) Section **31A-22-315.5** is repealed July 1, [~~2016~~] 2019.

4413 (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed [~~July 1,~~  
4414 ~~2016~~] December 31, 2018.

4415 Section 49. **Repealer.**

4416 This bill repeals:

4417 Section **31A-13-101, Scope.**

4418 Section **31A-13-102, Regulation in general.**

4419 Section **31A-13-103, Registration.**

4420 Section **31A-13-104, Commissioner to file information.**

4421 Section **31A-13-105, Reports to employers and employees.**

4422 Section **31A-13-106, Annual accounting by insurance companies, service plans,**  
4423 **and corporate trustees and agents.**

4424 Section **31A-13-107, Commissioner's remedies.**

4425 Section **31A-13-108, Investments.**

4426 Section **31A-13-109, Political activities.**

4427 Section **31A-17-404.2, Credit allowed a foreign ceding insurer.**