

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- 28 ▶ provides when a motor vehicle liability policy may be rescinded or cancelled;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 cancelled 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- 35 person's securities license is no longer active;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 ▶ amends training requirements for insurance producers related to the Health
- 42 Insurance Exchange;
- 43 ▶ requires insurers to have antifraud plans;
- 44 ▶ amends definitions related to captive insurers;
- 45 ▶ addresses the application of the Risk Retention Groups Act to captive insurers;
- 46 ▶ modifies provisions related to reinsurance and captive insurance companies;
- 47 ▶ amends reporting requirements for captive insurance companies;
- 48 ▶ clarifies timing of examinations of captive insurance companies;
- 49 ▶ addresses assessments related to title insurance;
- 50 ▶ modifies provisions related to the Title Insurance Recovery, Education, and
- 51 Research Fund Act;
- 52 ▶ modifies the repeal date for specified statutory provisions;
- 53 ▶ repeals provisions related to employee welfare funds and plans;
- 54 ▶ repeals provisions related to credit allowed a foreign ceding insurer;
- 55 ▶ makes technical and conforming amendments;
- 56 ▶ reauthorizes the Health Reform Task Force until December 30, 2017; and

57 ▶ amends the duties of the task force.

58 **Money Appropriated in this Bill:**

59 This bill appropriates in fiscal year 2016-2017:

60 ▶ To the Senate, as one-time appropriation:

61 • from the General Fund, \$13,000, to pay for the Health Reform Task Force; and

62 ▶ To the House of Representatives, as a one-time appropriation:

63 • from the General Fund, \$22,000, to pay for the Health Reform Task Force;

64 **Other Special Clauses:**

65 This bill provides a repeal date.

66 **Utah Code Sections Affected:**

67 AMENDS:

68 **13-51-108**, as enacted by Laws of Utah 2015, Chapter 244 and last amended by
69 Coordination Clause, Laws of Utah 2015, Chapter 244

70 **31A-1-301**, as last amended by Laws of Utah 2015, Chapters 244 and 330

71 **31A-2-208.5**, as enacted by Laws of Utah 1990, Chapter 129

72 **31A-2-212**, as last amended by Laws of Utah 2015, Chapter 283

73 **31A-2-309**, as last amended by Laws of Utah 2008, Chapter 257

74 **31A-6a-101**, as last amended by Laws of Utah 2015, Chapter 244

75 **31A-6a-104**, as last amended by Laws of Utah 2015, Chapter 244

76 **31A-15-202**, as last amended by Laws of Utah 2010, Chapter 324

77 **31A-15-203**, as last amended by Laws of Utah 2011, Chapter 297

78 **31A-15-204**, as last amended by Laws of Utah 2003, Chapter 298

79 **31A-15-208**, as last amended by Laws of Utah 2010, Chapter 10

80 **31A-15-209**, as enacted by Laws of Utah 1992, Chapter 258

81 **31A-15-212**, as last amended by Laws of Utah 2003, Chapter 298

82 **31A-17-404**, as last amended by Laws of Utah 2008, Chapter 257

83 **31A-17-404.1**, as enacted by Laws of Utah 2008, Chapter 257

84 **31A-17-404.3**, as enacted by Laws of Utah 2008, Chapter 257

85 **31A-22-202**, as enacted by Laws of Utah 1985, Chapter 242

86 **31A-22-603**, as last amended by Laws of Utah 2001, Chapter 116

87 **31A-22-715**, as last amended by Laws of Utah 2001, Chapter 116

- 88 **31A-22-1201**, as last amended by Laws of Utah 2008, Chapter 257
- 89 **31A-23a-111**, as last amended by Laws of Utah 2012, Chapter 253
- 90 **31A-23a-202**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 91 **31A-23a-206**, as last amended by Laws of Utah 2012, Chapter 253
- 92 **31A-23a-410**, as last amended by Laws of Utah 2009, Chapter 349
- 93 **31A-23a-501**, as last amended by Laws of Utah 2015, Chapter 195
- 94 **31A-23b-401**, as enacted by Laws of Utah 2013, Chapter 341
- 95 **31A-25-208**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 96 **31A-26-213**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 97 **31A-27a-601**, as enacted by Laws of Utah 2007, Chapter 309
- 98 **31A-27a-605**, as enacted by Laws of Utah 2007, Chapter 309
- 99 **31A-30-116**, as last amended by Laws of Utah 2015, Chapter 283
- 100 **31A-30-209**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 101 **31A-37-102**, as last amended by Laws of Utah 2015, Chapter 244
- 102 **31A-37-103**, as last amended by Laws of Utah 2011, Chapter 284
- 103 **31A-37-204**, as last amended by Laws of Utah 2015, Chapter 244
- 104 **31A-37-303**, as last amended by Laws of Utah 2015, Chapter 244
- 105 **31A-37-501**, as last amended by Laws of Utah 2015, Chapter 244
- 106 **31A-37-502**, as last amended by Laws of Utah 2015, Chapter 244
- 107 **31A-40-208**, as last amended by Laws of Utah 2012, Chapter 169
- 108 **31A-41-202**, as last amended by Laws of Utah 2015, Chapter 330
- 109 **31A-41-301**, as last amended by Laws of Utah 2012, Chapter 253
- 110 **31A-41-303**, as enacted by Laws of Utah 2008, Chapter 220
- 111 **63I-2-231**, as last amended by Laws of Utah 2015, Chapter 244

112 ENACTS:

- 113 **31A-15-206.5**, Utah Code Annotated 1953
- 114 **31A-15-213.5**, Utah Code Annotated 1953
- 115 **31A-31-112**, Utah Code Annotated 1953

116 REPEALS AND REENACTS:

- 117 **31A-41-302**, as enacted by Laws of Utah 2008, Chapter 220

118 REPEALS:

- 119 [31A-13-101](#), as last amended by Laws of Utah 1986, Chapter 204
- 120 [31A-13-102](#), as enacted by Laws of Utah 1985, Chapter 242
- 121 [31A-13-103](#), as last amended by Laws of Utah 1986, Chapter 204
- 122 [31A-13-104](#), as enacted by Laws of Utah 1985, Chapter 242
- 123 [31A-13-105](#), as enacted by Laws of Utah 1985, Chapter 242
- 124 [31A-13-106](#), as enacted by Laws of Utah 1985, Chapter 242
- 125 [31A-13-107](#), as last amended by Laws of Utah 2007, Chapter 309
- 126 [31A-13-108](#), as enacted by Laws of Utah 1985, Chapter 242
- 127 [31A-13-109](#), as last amended by Laws of Utah 1986, Chapter 204
- 128 [31A-17-404.2](#), as enacted by Laws of Utah 2008, Chapter 257

129 **Uncodified Material Affected:**
 130 ENACTS UNCODIFIED MATERIAL

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

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

134 **13-51-108. Insurance.**

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

138 (a) an acknowledgment that the transportation network driver is using the vehicle in
 139 connection with a transportation network company during a prearranged ride or that the
 140 transportation network driver is otherwise using the vehicle for a commercial purpose;

141 (b) liability coverage for a minimum amount of \$1,000,000 per occurrence;

142 (c) personal injury protection to the extent required under Sections [31A-22-306](#)
 143 through [31A-22-309](#);

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

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

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

149 (a) an acknowledgment that the transportation network driver is using the vehicle in

150 connection with a transportation network company during a waiting period or that the
151 transportation network driver is otherwise using the vehicle for a commercial purpose;

152 (b) liability coverage in a minimum amount, per occurrence, of:

153 (i) \$50,000 to any one individual;

154 (ii) \$100,000 to all individuals; and

155 (iii) \$30,000 for property damage;

156 (c) personal injury protection to the extent required under Sections 31A-22-306
157 through 31A-22-309;

158 (d) uninsured motorist coverage where required by Section 31A-22-305; and

159 (e) underinsured motorist coverage where required by Section 31A-22-305.3.

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

164 (a) an acknowledgment that the transportation network driver is using the vehicle in
165 connection with a transportation network company during a prearranged ride or waiting period,
166 or that the transportation network driver is otherwise using the vehicle for a commercial
167 purpose; and

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

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

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

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

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

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

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

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

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

186 (7) If a transportation network company does not purchase a policy that complies with
187 Subsections (1), (2), and (3) on behalf of a transportation network driver, the transportation
188 network company shall verify that the driver has purchased a policy that complies with
189 Subsections (1), (2), and (3).

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

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

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

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

195 (ii) a surplus lines insurer [~~licensed~~] eligible under Section [~~31A-23a-104~~]
196 [31A-15-103](#).

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

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

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

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

211 (b) Subsection (11)(a) does not apply to coverage a transportation network company

212 provides under Subsection [~~9~~] (10) in the event a transportation network driver's coverage
213 under Subsection (1) or (2) lapses or ceases to exist.

214 (12) A personal automobile insurer:

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

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

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

221 **31A-1-301. Definitions.**

222 As used in this title, unless otherwise specified:

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

225 (i) a medical condition including:

226 (A) a medical care expense; or

227 (B) the risk of disability;

228 (ii) accident; or

229 (iii) sickness.

230 (b) "Accident and health insurance":

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

232 (A) an income replacement contract;

233 (B) a health care contract;

234 (C) an expense reimbursement contract;

235 (D) a credit accident and health contract;

236 (E) a continuing care contract; and

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

238 (ii) may provide:

239 (A) hospital coverage;

240 (B) surgical coverage;

241 (C) medical coverage;

242 (D) loss of income coverage;

- 243 (E) prescription drug coverage;
- 244 (F) dental coverage; or
- 245 (G) vision coverage.
- 246 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 247 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 248 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 249 (3) "Administrator" is defined in Subsection (166).
- 250 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 251 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 252 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 253 ownership, if substantially the same group of individuals manage the corporations.
- 254 (6) "Agency" means:
- 255 (a) a person other than an individual, including a sole proprietorship by which an
- 256 individual does business under an assumed name; and
- 257 (b) an insurance organization licensed or required to be licensed under Section
- 258 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).
- 259 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 260 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 261 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 262 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 263 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 264 human life.
- 265 (10) "Application" means a document:
- 266 (a) (i) completed by an applicant to provide information about the risk to be insured;
- 267 and
- 268 (ii) that contains information that is used by the insurer to evaluate risk and decide
- 269 whether to:
- 270 (A) insure the risk under:
- 271 (I) the coverage as originally offered; or
- 272 (II) a modification of the coverage as originally offered; or
- 273 (B) decline to insure the risk; or

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

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

277 (a) the original articles;

278 (b) a special law;

279 (c) a charter;

280 (d) an amendment;

281 (e) restated articles;

282 (f) articles of merger or consolidation;

283 (g) a trust instrument;

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

285 and

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

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

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

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

293 (a) without individual underwriting or application; and

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

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

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

298 (a) that is open to the public;

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

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

301 (17) "Business entity" means:

302 (a) a corporation;

303 (b) an association;

304 (c) a partnership;

- 305 (d) a limited liability company;
- 306 (e) a limited liability partnership; or
- 307 (f) another legal entity.
- 308 (18) "Business of insurance" is defined in Subsection (89).
- 309 (19) "Business plan" means the information required to be supplied to the
- 310 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
- 311 when these subsections apply by reference under:
- 312 (a) Section 31A-7-201;
- 313 (b) Section 31A-8-205; or
- 314 (c) Subsection 31A-9-205(2).
- 315 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
- 316 corporation's affairs, however designated.
- 317 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
- 318 corporation.
- 319 (21) "Captive insurance company" means:
- 320 (a) an insurer:
- 321 (i) owned by another organization; and
- 322 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 323 affiliated company; or
- 324 (b) in the case of a group or association, an insurer:
- 325 (i) owned by the insureds; and
- 326 (ii) whose exclusive purpose is to insure risks of:
- 327 (A) a member organization;
- 328 (B) a group member; or
- 329 (C) an affiliate of:
- 330 (I) a member organization; or
- 331 (II) a group member.
- 332 (22) "Casualty insurance" means liability insurance.
- 333 (23) "Certificate" means evidence of insurance given to:
- 334 (a) an insured under a group insurance policy; or
- 335 (b) a third party.

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

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

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

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

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

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

347 (i) provides board and lodging;

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

349 (A) a personal service;

350 (B) a nursing service;

351 (C) a medical service; or

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

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

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

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

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

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

362 (i) by contract;

363 (ii) by common management;

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

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

366 (b) There is no presumption that an individual holding an official position with another

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

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

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

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

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

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

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

381 (i) a corporation doing business:

382 (A) as:

383 (I) an insurance producer;

384 (II) a surplus lines producer;

385 (III) a limited line producer;

386 (IV) a consultant;

387 (V) a managing general agent;

388 (VI) a reinsurance intermediary;

389 (VII) a third party administrator; or

390 (VIII) an adjuster; and

391 (B) under:

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

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

395 (III) Chapter 26, Insurance Adjusters; or

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

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

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

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

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

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

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

407 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
408 No. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No.
409 109-415.

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

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

415 (b) "Credit insurance" includes:

416 (i) credit accident and health insurance;

417 (ii) credit life insurance;

418 (iii) credit property insurance;

419 (iv) credit unemployment insurance;

420 (v) guaranteed automobile protection insurance;

421 (vi) involuntary unemployment insurance;

422 (vii) mortgage accident and health insurance;

423 (viii) mortgage guaranty insurance; and

424 (ix) mortgage life insurance.

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

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

428 (a) matured;

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

460 (C) organization.

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

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

464 (a) imposed by:

465 (i) statute;

466 (ii) rule; or

467 (iii) order; and

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

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

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

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

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

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

480 (a) perform the duties of:

481 (i) that individual's occupation; or

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

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

485 (i) eating;

486 (ii) toileting;

487 (iii) transferring;

488 (iv) bathing; or

489 (v) dressing.

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

- 491 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 492 (51) "Domiciliary state" means the state in which an insurer:
- 493 (a) is incorporated;
- 494 (b) is organized; or
- 495 (c) in the case of an alien insurer, enters into the United States.
- 496 (52) (a) "Eligible employee" means:
- 497 (i) an employee who:
- 498 (A) works on a full-time basis; and
- 499 (B) has a normal work week of 30 or more hours; or
- 500 (ii) a person described in Subsection (52)(b).
- 501 (b) "Eligible employee" includes[-];
- 502 (i) an owner who:
- 503 (A) works on a full-time basis; and
- 504 (B) has a normal work week of 30 or more hours; and
- 505 (ii) if the individual is included under a health benefit plan of a small employer:
- 506 [(i)] (A) a sole proprietor;
- 507 [(ii)] (B) a partner in a partnership; or
- 508 [(iii)] (C) an independent contractor.
- 509 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
- 510 (i) an individual who works on a temporary or substitute basis for a small employer;
- 511 (ii) an employer's spouse who does not meet the requirements of Subsection (52)(a)(i);
- 512 or
- 513 (iii) a dependent of an employer who does not meet the requirements of Subsection
- 514 (52)(a)(i).
- 515 (53) "Employee" means:
- 516 (a) an individual employed by an employer[-]; and
- 517 (b) an owner who meets the requirements of Subsection (52)(b)(i).
- 518 (54) "Employee benefits" means one or more benefits or services provided to:
- 519 (a) an employee; or
- 520 (b) a dependent of an employee.
- 521 (55) (a) "Employee welfare fund" means a fund:

- 522 (i) established or maintained, whether directly or through a trustee, by:
- 523 (A) one or more employers;
- 524 (B) one or more labor organizations; or
- 525 (C) a combination of employers and labor organizations; and
- 526 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 527 from investments of the fund:
- 528 (A) by or on behalf of an employer doing business in this state; or
- 529 (B) for the benefit of a person employed in this state.
- 530 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 531 revenues.
- 532 (56) "Endorsement" means a written agreement attached to a policy or certificate to
- 533 modify the policy or certificate coverage.
- 534 (57) "Enrollment date," with respect to a health benefit plan, means:
- 535 (a) the first day of coverage; or
- 536 (b) if there is a waiting period, the first day of the waiting period.
- 537 (58) "Enterprise risk" means an activity, circumstance, event, or series of events
- 538 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
- 539 material adverse effect upon the financial condition or liquidity of the insurer or its insurance
- 540 holding company system as a whole, including anything that would cause:
- 541 (a) the insurer's risk-based capital to fall into an action or control level as set forth in
- 542 Sections [31A-17-601](#) through [31A-17-613](#); or
- 543 (b) the insurer to be in hazardous financial condition set forth in Section [31A-27a-101](#).
- 544 (59) (a) "Escrow" means:
- 545 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
- 546 when a person not a party to the transaction, and neither having nor acquiring an interest in the
- 547 title, performs, in accordance with the written instructions or terms of the written agreement
- 548 between the parties to the transaction, any of the following actions:
- 549 (A) the explanation, holding, or creation of a document; or
- 550 (B) the receipt, deposit, and disbursement of money;
- 551 (ii) a settlement or closing involving:
- 552 (A) a mobile home;

- 553 (B) a grazing right;
- 554 (C) a water right; or
- 555 (D) other personal property authorized by the commissioner.
- 556 (b) "Escrow" does not include:
- 557 (i) the following notarial acts performed by a notary within the state:
- 558 (A) an acknowledgment;
- 559 (B) a copy certification;
- 560 (C) jurat; and
- 561 (D) an oath or affirmation;
- 562 (ii) the receipt or delivery of a document; or
- 563 (iii) the receipt of money for delivery to the escrow agent.
- 564 (60) "Escrow agent" means an agency title insurance producer meeting the
- 565 requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an
- 566 individual title insurance producer licensed with an escrow subline of authority.
- 567 (61) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
- 568 excluded.
- 569 (b) The items listed in a list using the term "excludes" are representative examples for
- 570 use in interpretation of this title.
- 571 (62) "Exclusion" means for the purposes of accident and health insurance that an
- 572 insurer does not provide insurance coverage, for whatever reason, for one of the following:
- 573 (a) a specific physical condition;
- 574 (b) a specific medical procedure;
- 575 (c) a specific disease or disorder; or
- 576 (d) a specific prescription drug or class of prescription drugs.
- 577 (63) "Expense reimbursement insurance" means insurance:
- 578 (a) written to provide a payment for an expense relating to hospital confinement
- 579 resulting from illness or injury; and
- 580 (b) written:
- 581 (i) as a daily limit for a specific number of days in a hospital; and
- 582 (ii) to have a one or two day waiting period following a hospitalization.
- 583 (64) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding

584 a position of public or private trust.

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

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

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

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

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

592 (B) rule.

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

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

597 (a) a policy;

598 (b) a rate;

599 (c) a form;

600 (d) a document;

601 (e) a plan;

602 (f) a manual;

603 (g) an application;

604 (h) a report;

605 (i) a certificate;

606 (j) an endorsement;

607 (k) an actuarial certification;

608 (l) a licensee annual statement;

609 (m) a licensee renewal application;

610 (n) an advertisement;

611 (o) a binder; or

612 (p) an outline of coverage.

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

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

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

618 (i) a policy;

619 (ii) a certificate;

620 (iii) an application;

621 (iv) an outline of coverage; or

622 (v) an endorsement.

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

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

628 (71) "General lines of authority" include:

629 (a) the general lines of insurance in Subsection (72);

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

631 (i) title examination, including authority to act as a title marketing representative;

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

633 (iii) title marketing representative only;

634 (c) surplus lines;

635 (d) workers' compensation; and

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

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

639 (a) accident and health;

640 (b) casualty;

641 (c) life;

642 (d) personal lines;

643 (e) property; and

644 (f) variable contracts, including variable life and annuity.

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

646 plan provides medical care:

- 647 (a) (i) to an employee; or
- 648 (ii) to a dependent of an employee; and

- 649 (b) (i) directly;
- 650 (ii) through insurance reimbursement; or
- 651 (iii) through another method.

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

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

656 in:

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

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

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

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

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

- 669 (A) a hospital confinement indemnity; or
- 670 (B) a limited benefit plan.

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

672 (i) provides benefits solely for:

- 673 (A) accident;
- 674 (B) dental;
- 675 (C) income replacement;
- 676 (D) long-term care;

- 677 (E) a Medicare supplement;
- 678 (F) a specified disease;
- 679 (G) vision; or
- 680 (H) a short-term limited duration; or
- 681 (ii) is offered and marketed as supplemental health insurance.
- 682 (77) "Health care" means any of the following intended for use in the diagnosis,
- 683 treatment, mitigation, or prevention of a human ailment or impairment:
 - 684 (a) a professional service;
 - 685 (b) a personal service;
 - 686 (c) a facility;
 - 687 (d) equipment;
 - 688 (e) a device;
 - 689 (f) supplies; or
 - 690 (g) medicine.
- 691 (78) (a) "Health care insurance" or "health insurance" means insurance providing:
 - 692 (i) a health care benefit; or
 - 693 (ii) payment of an incurred health care expense.
- 694 (b) "Health care insurance" or "health insurance" does not include accident and health
- 695 insurance providing a benefit for:
 - 696 (i) replacement of income;
 - 697 (ii) short-term accident;
 - 698 (iii) fixed indemnity;
 - 699 (iv) credit accident and health;
 - 700 (v) supplements to liability;
 - 701 (vi) workers' compensation;
 - 702 (vii) automobile medical payment;
 - 703 (viii) no-fault automobile;
 - 704 (ix) equivalent self-insurance; or
 - 705 (x) a type of accident and health insurance coverage that is a part of or attached to
 - 706 another type of policy.
- 707 (79) "Health Insurance Portability and Accountability Act" means the Health Insurance

708 Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.

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

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

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

715 (83) "Independently procured insurance" means insurance procured under Section
716 [31A-15-104](#).

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

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

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

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

721 (c) bailee liability;

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

724 (e) personal and commercial property floaters.

725 (86) "Insolvency" means that:

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

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

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

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

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

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

736 (b) "Insurance" includes:

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

- 739 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
740 business and not as merely incidental to a business transaction; and
- 741 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
742 but with a class of persons who have agreed to share the risk.
- 743 (88) "Insurance adjuster" means a person who directs or conducts the investigation,
744 negotiation, or settlement of a claim under an insurance policy other than life insurance or an
745 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 746 (89) "Insurance business" or "business of insurance" includes:
- 747 (a) providing health care insurance by an organization that is or is required to be
748 licensed under this title;
- 749 (b) providing a benefit to an employee in the event of a contingency not within the
750 control of the employee, in which the employee is entitled to the benefit as a right, which
751 benefit may be provided either:
- 752 (i) by a single employer or by multiple employer groups; or
753 (ii) through one or more trusts, associations, or other entities;
- 754 (c) providing an annuity:
- 755 (i) including an annuity issued in return for a gift; and
756 (ii) except an annuity provided by a person specified in Subsections [31A-22-1305\(2\)](#)
757 and (3);
- 758 (d) providing the characteristic services of a motor club as outlined in Subsection
759 (117);
- 760 (e) providing another person with insurance;
- 761 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
762 or surety, a contract or policy of title insurance;
- 763 (g) transacting or proposing to transact any phase of title insurance, including:
- 764 (i) solicitation;
765 (ii) negotiation preliminary to execution;
766 (iii) execution of a contract of title insurance;
767 (iv) insuring; and
768 (v) transacting matters subsequent to the execution of the contract and arising out of
769 the contract, including reinsurance;

770 (h) transacting or proposing a life settlement; and
771 (i) doing, or proposing to do, any business in substance equivalent to Subsections
772 (89)(a) through (h) in a manner designed to evade this title.
773 (90) "Insurance consultant" or "consultant" means a person who:
774 (a) advises another person about insurance needs and coverages;
775 (b) is compensated by the person advised on a basis not directly related to the insurance
776 placed; and
777 (c) except as provided in Section 31A-23a-501, is not compensated directly or
778 indirectly by an insurer or producer for advice given.
779 (91) "Insurance holding company system" means a group of two or more affiliated
780 persons, at least one of whom is an insurer.
781 (92) (a) "Insurance producer" or "producer" means a person licensed or required to be
782 licensed under the laws of this state to sell, solicit, or negotiate insurance.
783 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
784 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
785 insurer.
786 (ii) "Producer for the insurer" may be referred to as an "agent."
787 (c) (i) "Producer for the insured" means a producer who:
788 (A) is compensated directly and only by an insurance customer or an insured; and
789 (B) receives no compensation directly or indirectly from an insurer for selling,
790 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
791 insured.
792 (ii) "Producer for the insured" may be referred to as a "broker."
793 (93) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
794 promise in an insurance policy and includes:
795 (i) a policyholder;
796 (ii) a subscriber;
797 (iii) a member; and
798 (iv) a beneficiary.
799 (b) The definition in Subsection (93)(a):
800 (i) applies only to this title; and

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

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

804 (i) a fraternal benefit society;

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

806 [31A-22-1305\(2\)](#) and (3);

807 (iii) a motor club;

808 (iv) an employee welfare plan; and

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

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

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

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

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

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

818 (i) specific loan; or

819 (ii) credit transaction.

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

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

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

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

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

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

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

834 (b) through special enrollment.

835 (100) (a) Except for a retainer contract or legal assistance described in Section
836 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
837 specified legal expense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

862 (b) "Liability insurance" includes:

- 863 (i) vehicle liability insurance;
- 864 (ii) residential dwelling liability insurance; and
- 865 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
- 866 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
- 867 elevator, boiler, machinery, or apparatus.
- 868 (102) (a) "License" means authorization issued by the commissioner to engage in an
- 869 activity that is part of or related to the insurance business.
- 870 (b) "License" includes a certificate of authority issued to an insurer.
- 871 (103) (a) "Life insurance" means:
- 872 (i) insurance on a human life; and
- 873 (ii) insurance pertaining to or connected with human life.
- 874 (b) The business of life insurance includes:
- 875 (i) granting a death benefit;
- 876 (ii) granting an annuity benefit;
- 877 (iii) granting an endowment benefit;
- 878 (iv) granting an additional benefit in the event of death by accident;
- 879 (v) granting an additional benefit to safeguard the policy against lapse; and
- 880 (vi) providing an optional method of settlement of proceeds.
- 881 (104) "Limited license" means a license that:
- 882 (a) is issued for a specific product of insurance; and
- 883 (b) limits an individual or agency to transact only for that product or insurance.
- 884 (105) "Limited line credit insurance" includes the following forms of insurance:
- 885 (a) credit life;
- 886 (b) credit accident and health;
- 887 (c) credit property;
- 888 (d) credit unemployment;
- 889 (e) involuntary unemployment;
- 890 (f) mortgage life;
- 891 (g) mortgage guaranty;
- 892 (h) mortgage accident and health;
- 893 (i) guaranteed automobile protection; and

894 (j) another form of insurance offered in connection with an extension of credit that:
895 (i) is limited to partially or wholly extinguishing the credit obligation; and
896 (ii) the commissioner determines by rule should be designated as a form of limited line
897 credit insurance.

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

901 (107) "Limited line insurance" includes:

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

914 (108) "Limited lines authority" includes the lines of insurance listed in Subsection
915 (107).

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

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

- 920 (i) in a setting other than an acute care unit of a hospital;
- 921 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 922 (A) expenses incurred;
 - 923 (B) indemnity;
 - 924 (C) prepayment; or

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

- 956 (vi) income replacement or related asset-protection coverage;
- 957 (vii) accident only coverage;
- 958 (viii) coverage for a specified:
 - 959 (A) disease; or
 - 960 (B) accident;
- 961 (ix) limited benefit health coverage; or
- 962 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 963 lump sum payment:
 - 964 (A) if the following are not conditioned on the receipt of long-term care:
 - 965 (I) benefits; or
 - 966 (II) eligibility; and
 - 967 (B) the coverage is for one or more the following qualifying events:
 - 968 (I) terminal illness;
 - 969 (II) medical conditions requiring extraordinary medical intervention; or
 - 970 (III) permanent institutional confinement.
- 971 (111) "Medical malpractice insurance" means insurance against legal liability incident
- 972 to the practice and provision of a medical service other than the practice and provision of a
- 973 dental service.
- 974 (112) "Member" means a person having membership rights in an insurance
- 975 corporation.
- 976 (113) "Minimum capital" or "minimum required capital" means the capital that must be
- 977 constantly maintained by a stock insurance corporation as required by statute.
- 978 (114) "Mortgage accident and health insurance" means insurance offered in connection
- 979 with an extension of credit that provides indemnity for payments coming due on a mortgage
- 980 while the debtor has a disability.
- 981 (115) "Mortgage guaranty insurance" means surety insurance under which a mortgagee
- 982 or other creditor is indemnified against losses caused by the default of a debtor.
- 983 (116) "Mortgage life insurance" means insurance on the life of a debtor in connection
- 984 with an extension of credit that pays if the debtor dies.
- 985 (117) "Motor club" means a person:
- 986 (a) licensed under:

- 987 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
988 (ii) Chapter 11, Motor Clubs; or
989 (iii) Chapter 14, Foreign Insurers; and
990 (b) that promises for an advance consideration to provide for a stated period of time
991 one or more:
992 (i) legal services under Subsection 31A-11-102(1)(b);
993 (ii) bail services under Subsection 31A-11-102(1)(c); or
994 (iii) (A) trip reimbursement;
995 (B) towing services;
996 (C) emergency road services;
997 (D) stolen automobile services;
998 (E) a combination of the services listed in Subsections (117)(b)(iii)(A) through (D); or
999 (F) other services given in Subsections 31A-11-102(1)(b) through (f).
1000 (118) "Mutual" means a mutual insurance corporation.
1001 (119) "Network plan" means health care insurance:
1002 (a) that is issued by an insurer; and
1003 (b) under which the financing and delivery of medical care is provided, in whole or in
1004 part, through a defined set of providers under contract with the insurer, including the financing
1005 and delivery of an item paid for as medical care.
1006 (120) "Nonparticipating" means a plan of insurance under which the insured is not
1007 entitled to receive a dividend representing a share of the surplus of the insurer.
1008 (121) "Ocean marine insurance" means insurance against loss of or damage to:
1009 (a) ships or hulls of ships;
1010 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
1011 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
1012 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
1013 (c) earnings such as freight, passage money, commissions, or profits derived from
1014 transporting goods or people upon or across the oceans or inland waterways; or
1015 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
1016 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
1017 in connection with maritime activity.

- 1018 (122) "Order" means an order of the commissioner.
- 1019 (123) "Outline of coverage" means a summary that explains an accident and health
1020 insurance policy.
- 1021 (124) "Participating" means a plan of insurance under which the insured is entitled to
1022 receive a dividend representing a share of the surplus of the insurer.
- 1023 (125) "Participation," as used in a health benefit plan, means a requirement relating to
1024 the minimum percentage of eligible employees that must be enrolled in relation to the total
1025 number of eligible employees of an employer reduced by each eligible employee who
1026 voluntarily declines coverage under the plan because the employee:
- 1027 (a) has other group health care insurance coverage; or
 - 1028 (b) receives:
 - 1029 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
1030 Security Amendments of 1965; or
 - 1031 (ii) another government health benefit.
- 1032 (126) "Person" includes:
- 1033 (a) an individual;
 - 1034 (b) a partnership;
 - 1035 (c) a corporation;
 - 1036 (d) an incorporated or unincorporated association;
 - 1037 (e) a joint stock company;
 - 1038 (f) a trust;
 - 1039 (g) a limited liability company;
 - 1040 (h) a reciprocal;
 - 1041 (i) a syndicate; or
 - 1042 (j) another similar entity or combination of entities acting in concert.
- 1043 (127) "Personal lines insurance" means property and casualty insurance coverage sold
1044 for primarily noncommercial purposes to:
- 1045 (a) an individual; or
 - 1046 (b) a family.
- 1047 (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 1048 (129) "Plan year" means:

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

1080 policy.

1081 (134) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.
1082 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and
1083 related federal regulations and guidance.

1084 (135) "Preexisting condition," with respect to a health benefit plan:

1085 (a) means a condition that was present before the effective date of coverage, whether or
1086 not medical advice, diagnosis, care, or treatment was recommended or received before that day,
1087 and

1088 (b) does not include a condition indicated by genetic information unless an actual
1089 diagnosis of the condition by a physician has been made.

1090 (136) (a) "Premium" means the monetary consideration for an insurance policy.

1091 (b) "Premium" includes, however designated:

1092 (i) an assessment;

1093 (ii) a membership fee;

1094 (iii) a required contribution; or

1095 (iv) monetary consideration.

1096 (c) (i) "Premium" does not include consideration paid to a third party administrator for
1097 the third party administrator's services.

1098 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1099 insurance on the risks administered by the third party administrator.

1100 (137) "Principal officers" for a corporation means the officers designated under
1101 Subsection [31A-5-203\(3\)](#).

1102 (138) "Proceeding" includes an action or special statutory proceeding.

1103 (139) "Professional liability insurance" means insurance against legal liability incident
1104 to the practice of a profession and provision of a professional service.

1105 (140) (a) Except as provided in Subsection (140)(b), "property insurance" means
1106 insurance against loss or damage to real or personal property of every kind and any interest in
1107 that property:

1108 (i) from all hazards or causes; and

1109 (ii) against loss consequential upon the loss or damage including vehicle
1110 comprehensive and vehicle physical damage coverages.

- 1111 (b) "Property insurance" does not include:
- 1112 (i) inland marine insurance; and
- 1113 (ii) ocean marine insurance.
- 1114 (141) "Qualified long-term care insurance contract" or "federally tax qualified
- 1115 long-term care insurance contract" means:
- 1116 (a) an individual or group insurance contract that meets the requirements of Section
- 1117 7702B(b), Internal Revenue Code; or
- 1118 (b) the portion of a life insurance contract that provides long-term care insurance:
- 1119 (i) (A) by rider; or
- 1120 (B) as a part of the contract; and
- 1121 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
- 1122 Code.
- 1123 (142) "Qualified United States financial institution" means an institution that:
- 1124 (a) is:
- 1125 (i) organized under the laws of the United States or any state; or
- 1126 (ii) in the case of a United States office of a foreign banking organization, licensed
- 1127 under the laws of the United States or any state;
- 1128 (b) is regulated, supervised, and examined by a United States federal or state authority
- 1129 having regulatory authority over a bank or trust company; and
- 1130 (c) meets the standards of financial condition and standing that are considered
- 1131 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
- 1132 will be acceptable to the commissioner as determined by:
- 1133 (i) the commissioner by rule; or
- 1134 (ii) the Securities Valuation Office of the National Association of Insurance
- 1135 Commissioners.
- 1136 (143) (a) "Rate" means:
- 1137 (i) the cost of a given unit of insurance; or
- 1138 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
- 1139 expressed as:
- 1140 (A) a single number; or
- 1141 (B) a pure premium rate, adjusted before the application of individual risk variations

1142 based on loss or expense considerations to account for the treatment of:

1143 (I) expenses;

1144 (II) profit; and

1145 (III) individual insurer variation in loss experience.

1146 (b) "Rate" does not include a minimum premium.

1147 (144) (a) Except as provided in Subsection (144)(b), "rate service organization" means

1148 a person who assists an insurer in rate making or filing by:

1149 (i) collecting, compiling, and furnishing loss or expense statistics;

1150 (ii) recommending, making, or filing rates or supplementary rate information; or

1151 (iii) advising about rate questions, except as an attorney giving legal advice.

1152 (b) "Rate service organization" does not mean:

1153 (i) an employee of an insurer;

1154 (ii) a single insurer or group of insurers under common control;

1155 (iii) a joint underwriting group; or

1156 (iv) an individual serving as an actuarial or legal consultant.

1157 (145) "Rating manual" means any of the following used to determine initial and

1158 renewal policy premiums:

1159 (a) a manual of rates;

1160 (b) a classification;

1161 (c) a rate-related underwriting rule; and

1162 (d) a rating formula that describes steps, policies, and procedures for determining

1163 initial and renewal policy premiums.

1164 (146) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,

1165 or give, directly or indirectly:

1166 (i) a refund of premium or portion of premium;

1167 (ii) a refund of commission or portion of commission;

1168 (iii) a refund of all or a portion of a consultant fee; or

1169 (iv) providing services or other benefits not specified in an insurance or annuity

1170 contract.

1171 (b) "Rebate" does not include:

1172 (i) a refund due to termination or changes in coverage;

- 1173 (ii) a refund due to overcharges made in error by the licensee; or
- 1174 (iii) savings or wellness benefits as provided in the contract by the licensee.
- 1175 (147) "Received by the department" means:
- 1176 (a) the date delivered to and stamped received by the department, if delivered in
- 1177 person;
- 1178 (b) the post mark date, if delivered by mail;
- 1179 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1180 (d) the received date recorded on an item delivered, if delivered by:
- 1181 (i) facsimile;
- 1182 (ii) email; or
- 1183 (iii) another electronic method; or
- 1184 (e) a date specified in:
- 1185 (i) a statute;
- 1186 (ii) a rule; or
- 1187 (iii) an order.
- 1188 (148) "Reciprocal" or "interinsurance exchange" means an unincorporated association
- 1189 of persons:
- 1190 (a) operating through an attorney-in-fact common to all of the persons; and
- 1191 (b) exchanging insurance contracts with one another that provide insurance coverage
- 1192 on each other.
- 1193 (149) "Reinsurance" means an insurance transaction where an insurer, for
- 1194 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
- 1195 reinsurance transactions, this title sometimes refers to:
- 1196 (a) the insurer transferring the risk as the "ceding insurer"; and
- 1197 (b) the insurer assuming the risk as the:
- 1198 (i) "assuming insurer"; or
- 1199 (ii) "assuming reinsurer."
- 1200 (150) "Reinsurer" means a person licensed in this state as an insurer with the authority
- 1201 to assume reinsurance.
- 1202 (151) "Residential dwelling liability insurance" means insurance against liability
- 1203 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is

1204 a detached single family residence or multifamily residence up to four units.

1205 (152) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
1206 under a reinsurance contract.

1207 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1208 liability assumed under a reinsurance contract.

1209 (153) "Rider" means an endorsement to:

1210 (a) an insurance policy; or

1211 (b) an insurance certificate.

1212 [~~156~~] (154) "Secondary medical condition" means a complication related to an
1213 exclusion from coverage in accident and health insurance.

1214 [~~154~~] (155) (a) "Security" means a:

1215 (i) note;

1216 (ii) stock;

1217 (iii) bond;

1218 (iv) debenture;

1219 (v) evidence of indebtedness;

1220 (vi) certificate of interest or participation in a profit-sharing agreement;

1221 (vii) collateral-trust certificate;

1222 (viii) preorganization certificate or subscription;

1223 (ix) transferable share;

1224 (x) investment contract;

1225 (xi) voting trust certificate;

1226 (xii) certificate of deposit for a security;

1227 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
1228 payments out of production under such a title or lease;

1229 (xiv) commodity contract or commodity option;

1230 (xv) certificate of interest or participation in, temporary or interim certificate for,

1231 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
1232 in Subsections [~~154~~] (155)(a)(i) through (xiv); or

1233 (xvi) another interest or instrument commonly known as a security.

1234 (b) "Security" does not include:

1235 (i) any of the following under which an insurance company promises to pay money in a
1236 specific lump sum or periodically for life or some other specified period:

1237 (A) insurance;

1238 (B) an endowment policy; or

1239 (C) an annuity contract; or

1240 (ii) a burial certificate or burial contract.

1241 [~~(155)~~] (156) "Securityholder" means a specified person who owns a security of a
1242 person, including:

1243 (a) common stock;

1244 (b) preferred stock;

1245 (c) debt obligations; and

1246 (d) any other security convertible into or evidencing the right of any of the items listed
1247 in this Subsection [~~(155)~~] (156).

1248 (157) (a) "Self-insurance" means an arrangement under which a person provides for
1249 spreading its own risks by a systematic plan.

1250 (b) Except as provided in this Subsection (157), "self-insurance" does not include an
1251 arrangement under which a number of persons spread their risks among themselves.

1252 (c) "Self-insurance" includes:

1253 (i) an arrangement by which a governmental entity undertakes to indemnify an
1254 employee for liability arising out of the employee's employment; and

1255 (ii) an arrangement by which a person with a managed program of self-insurance and
1256 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1257 employees for liability or risk that is related to the relationship or employment.

1258 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1259 (158) "Sell" means to exchange a contract of insurance:

1260 (a) by any means;

1261 (b) for money or its equivalent; and

1262 (c) on behalf of an insurance company.

1263 (159) "Short-term care insurance" means an insurance policy or rider advertised,
1264 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,
1265 but that provides coverage for less than 12 consecutive months for each covered person.

1266 (160) "Significant break in coverage" means a period of 63 consecutive days during
1267 each of which an individual does not have creditable coverage.

1268 (161) (a) "Small employer" means, in connection with a health benefit plan and with
1269 respect to a calendar year and to a plan year, an employer who:

1270 ~~[(a)]~~ (i) employed at least one employee but not more than ~~[an average of]~~ 50 ~~[eligible]~~
1271 employees on business days during the preceding calendar year; and

1272 ~~[(b)]~~ (ii) employs at least one employee on the first day of the plan year.

1273 (b) The number of employees shall:

1274 (i) be determined using the method set forth in 26 U.S.C. Sec. 4980H(c)(2); and

1275 (ii) include an owner described in Subsection (52)(b)(i).

1276 (c) "Small employer" does not include a sole proprietor that does not employ at least
1277 one employee.

1278 (162) "Special enrollment period," in connection with a health benefit plan, has the
1279 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1280 Portability and Accountability Act.

1281 (163) (a) "Subsidiary" of a person means an affiliate controlled by that person either
1282 directly or indirectly through one or more affiliates or intermediaries.

1283 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1284 shares are owned by that person either alone or with its affiliates, except for the minimum
1285 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1286 others.

1287 (164) Subject to Subsection (87)(b), "surety insurance" includes:

1288 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1289 perform the principal's obligations to a creditor or other obligee;

1290 (b) bail bond insurance; and

1291 (c) fidelity insurance.

1292 (165) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
1293 liabilities.

1294 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1295 designated by the insurer or organization as permanent.

1296 (ii) Sections [31A-5-211](#), [31A-7-201](#), [31A-8-209](#), [31A-9-209](#), and [31A-14-205](#) require

1297 that insurers or organizations doing business in this state maintain specified minimum levels of
1298 permanent surplus.

1299 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1300 same as the minimum required capital requirement that applies to stock insurers.

1301 (c) "Excess surplus" means:

1302 (i) for a life insurer, accident and health insurer, health organization, or property and
1303 casualty insurer as defined in Section 31A-17-601, the lesser of:

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

1306 (I) 2.5; and

1307 (II) the sum of the insurer's or health organization's minimum capital or permanent
1308 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1309 (B) that amount of an insurer's or health organization's total adjusted capital that
1310 exceeds the product of:

1311 (I) 3.0; and

1312 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1313 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1314 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1315 (A) 1.5; and

1316 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1317 (166) "Third party administrator" or "administrator" means a person who collects
1318 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1319 the state in connection with insurance coverage, annuities, or service insurance coverage,
1320 except:

1321 (a) a union on behalf of its members;

1322 (b) a person administering a:

1323 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1324 1974;

1325 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1326 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1327 (c) an employer on behalf of the employer's employees or the employees of one or

1328 more of the subsidiary or affiliated corporations of the employer;

1329 (d) an insurer licensed under the following, but only for a line of insurance for which

1330 the insurer holds a license in this state:

1331 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1332 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

1333 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1334 (iv) Chapter 9, Insurance Fraternal; or

1335 (v) Chapter 14, Foreign Insurers;

1336 (e) a person:

1337 (i) licensed or exempt from licensing under:

1338 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

1339 Reinsurance Intermediaries; or

1340 (B) Chapter 26, Insurance Adjusters; and

1341 (ii) whose activities are limited to those authorized under the license the person holds

1342 or for which the person is exempt; or

1343 (f) an institution, bank, or financial institution:

1344 (i) that is:

1345 (A) an institution whose deposits and accounts are to any extent insured by a federal

1346 deposit insurance agency, including the Federal Deposit Insurance Corporation or National

1347 Credit Union Administration; or

1348 (B) a bank or other financial institution that is subject to supervision or examination by

1349 a federal or state banking authority; and

1350 (ii) that does not adjust claims without a third party administrator license.

1351 (167) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner

1352 of real or personal property or the holder of liens or encumbrances on that property, or others

1353 interested in the property against loss or damage suffered by reason of liens or encumbrances

1354 upon, defects in, or the unmarketability of the title to the property, or invalidity or

1355 unenforceability of any liens or encumbrances on the property.

1356 (168) "Total adjusted capital" means the sum of an insurer's or health organization's

1357 statutory capital and surplus as determined in accordance with:

1358 (a) the statutory accounting applicable to the annual financial statements required to be

1359 filed under Section 31A-4-113; and

1360 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1361 Section 31A-17-601.

1362 (169) (a) "Trustee" means "director" when referring to the board of directors of a
1363 corporation.

1364 (b) "Trustee," when used in reference to an employee welfare fund, means an
1365 individual, firm, association, organization, joint stock company, or corporation, whether acting
1366 individually or jointly and whether designated by that name or any other, that is charged with
1367 or has the overall management of an employee welfare fund.

1368 (170) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
1369 means an insurer:

1370 (i) not holding a valid certificate of authority to do an insurance business in this state;

1371 or

1372 (ii) transacting business not authorized by a valid certificate.

1373 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1374 (i) holding a valid certificate of authority to do an insurance business in this state; and

1375 (ii) transacting business as authorized by a valid certificate.

1376 (171) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1377 (172) "Vehicle liability insurance" means insurance against liability resulting from or
1378 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle
1379 comprehensive or vehicle physical damage coverage under Subsection (140).

1380 (173) "Voting security" means a security with voting rights, and includes a security
1381 convertible into a security with a voting right associated with the security.

1382 (174) "Waiting period" for a health benefit plan means the period that must pass before
1383 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
1384 benefit plan, can become effective.

1385 (175) "Workers' compensation insurance" means:

1386 (a) insurance for indemnification of an employer against liability for compensation
1387 based on:

1388 (i) a compensable accidental injury; and

1389 (ii) occupational disease disability;

1390 (b) employer's liability insurance incidental to workers' compensation insurance and
1391 written in connection with workers' compensation insurance; and

1392 (c) insurance assuring to a person entitled to workers' compensation benefits the
1393 compensation provided by law.

1394 Section 3. Section **31A-2-208.5** is amended to read:

1395 **31A-2-208.5. Comparison tables.**

1396 (1) (a) The commissioner shall annually publish a table comparing the rates charged by
1397 insurers for private passenger motor vehicle and homeowners insurance in this state.

1398 (b) The comparison shall list the top 20 insurers writing the greatest volume by
1399 premium dollar per calendar year and others requesting inclusion in the comparison.

1400 (c) The commissioner shall develop at least four hypothetical examples of risk in
1401 preparing the comparison.

1402 (2) In conjunction with the rate comparison described in Subsection (1), the
1403 commissioner shall publish:

1404 (a) a table listing, for each insurer compared, the ratio of [~~justified and questionable~~]
1405 confirmed complaints received by the department to the premium dollar amount written by the
1406 insurer; and

1407 (b) a table listing for each insurer the combined loss and expense ratio for the most
1408 current year available.

1409 (3) The department shall make copies of the tables available to the public at minimal or
1410 no cost.

1411 Section 4. Section **31A-2-212** is amended to read:

1412 **31A-2-212. Miscellaneous duties.**

1413 (1) Upon issuance of an order limiting, suspending, or revoking a person's authority to
1414 do business in Utah, and when the commissioner begins a proceeding against an insurer under
1415 Chapter 27a, Insurer Receivership Act, the commissioner:

1416 (a) shall notify by mail the producers of the person or insurer of whom the
1417 commissioner has record; and

1418 (b) may publish notice of the order or proceeding in any manner the commissioner
1419 considers necessary to protect the rights of the public.

1420 (2) When required for evidence in a legal proceeding, the commissioner shall furnish a

1421 certificate of authority of a licensee to transact the business of insurance in Utah on any
1422 particular date. The court or other officer shall receive the certificate of authority in lieu of the
1423 commissioner's testimony.

1424 (3) (a) On the request of an insurer authorized to do a surety business, the
1425 commissioner shall furnish a copy of the insurer's certificate of authority to a designated public
1426 officer in this state who requires that certificate of authority before accepting a bond.

1427 (b) The public officer described in Subsection (3)(a) shall file the certificate of
1428 authority furnished under Subsection (3)(a).

1429 (c) After a certified copy of a certificate of authority is furnished to a public officer, it
1430 is not necessary, while the certificate of authority remains effective, to attach a copy of it to any
1431 instrument of suretyship filed with that public officer.

1432 (d) Whenever the commissioner revokes the certificate of authority or begins a
1433 proceeding under Chapter 27a, Insurer Receivership Act, against an insurer authorized to do a
1434 surety business, the commissioner shall immediately give notice of that action to each public
1435 officer who is sent a certified copy under this Subsection (3).

1436 (4) (a) The commissioner shall immediately notify every judge and clerk of the courts
1437 of record in the state when:

1438 (i) an authorized insurer doing a surety business:

1439 (A) files a petition for receivership; or

1440 (B) is in receivership; or

1441 (ii) the commissioner has reason to believe that the authorized insurer doing surety
1442 business:

1443 (A) is in financial difficulty; or

1444 (B) has unreasonably failed to carry out any of its contracts.

1445 (b) Upon the receipt of the notice required by this Subsection (4), it is the duty of the
1446 judges and clerks to notify and require a person that files with the court a bond on which the
1447 authorized insurer doing surety business is surety to immediately file a new bond with a new
1448 surety.

1449 (5) (a) The commissioner shall report to the Legislature in accordance with Section
1450 [63N-11-106](#) [~~prior to~~] before adopting a rule authorized by Subsection (5)(b).

1451 (b) The commissioner shall require an insurer that issues, sells, renews, or offers health

1452 insurance coverage in this state to comply with ~~[the provisions of]~~ PPACA and administrative
1453 rules adopted by the commissioner related to regulation of health benefit plans, including:

- 1454 (i) lifetime and annual limits;
- 1455 (ii) prohibition of rescissions;
- 1456 (iii) coverage of preventive health services;
- 1457 (iv) coverage for a child or dependent;
- 1458 (v) pre-existing condition ~~[coverage for children]~~ limitations;
- 1459 (vi) insurer transparency of consumer information including plan disclosures, uniform
1460 coverage documents, and standard definitions;
- 1461 (vii) premium rate reviews;
- 1462 (viii) essential health benefits;
- 1463 (ix) provider choice;
- 1464 (x) waiting periods;
- 1465 (xi) appeals processes;
- 1466 (xii) rating restrictions;
- 1467 (xiii) uniform applications and notice provisions; ~~[and]~~
- 1468 (xiv) certification and regulation of qualified health plans~~[-];~~ and
- 1469 (xv) network adequacy standards.

1470 (c) The commissioner shall preserve state control over:

- 1471 (i) the health insurance market in the state;
- 1472 (ii) qualified health plans offered in the state; and
- 1473 (iii) the conduct of navigators, producers, and in-person assisters operating in the state.

1474 (d) If the state enters into an agreement with the United States Department of Health
1475 and Human Services in which the state operates health insurance plan management, the
1476 commissioner may:

- 1477 (i) for fiscal year 2014, hire one temporary and two permanent full-time employees to
1478 be funded through the department's existing budget; and
- 1479 (ii) for fiscal year 2015, hire two permanent full-time employees funded through the
1480 Insurance Department Restricted Account, subject to appropriations from the Legislature and
1481 approval by the governor.

1482 Section 5. Section **31A-2-309** is amended to read:

1483 **31A-2-309. Service of process through state officer.**

1484 (1) The commissioner, or the lieutenant governor when the subject proceeding is
1485 brought by the state, is the agent for receipt of service of a summons, notice, order, pleading, or
1486 other legal process relating to a Utah court or administrative agency upon the following:

1487 (a) an insurer authorized to do business in this state, while authorized to do business in
1488 this state, and thereafter in a proceeding arising from or related to a transaction having a
1489 connection with this state;

1490 (b) a surplus lines insurer for a proceeding arising out of a contract of insurance that is
1491 subject to the surplus lines law, or out of a certificate, cover note, or other confirmation of that
1492 type of insurance;

1493 (c) an unauthorized insurer or other person assisting an unauthorized insurer under
1494 Subsection 31A-15-102(1) by doing an act specified in Subsection 31A-15-102(2), for a
1495 proceeding arising out of a transaction that is subject to the unauthorized insurance law;

1496 (d) a nonresident producer, consultant, adjuster, or third party administrator, while
1497 authorized to do business in this state, and thereafter in a proceeding arising from or related to
1498 a transaction having a connection with this state; and

1499 (e) a reinsurer submitting to the commissioner's jurisdiction under Subsection
1500 31A-17-404~~(8)~~(9).

1501 (2) The following is considered to have irrevocably appointed the commissioner and
1502 lieutenant governor as that person's agents in accordance with Subsection (1):

1503 (a) a licensed insurer by applying for and receiving a certificate of authority;

1504 (b) a surplus lines insurer by entering into a contract subject to the surplus lines law;

1505 (c) an unauthorized insurer by doing in this state an act prohibited by Section
1506 31A-15-103; and

1507 (d) a nonresident producer, consultant, adjuster, and third party administrator.

1508 (3) The commissioner and lieutenant governor are also agents for an executor,
1509 administrator, personal representative, receiver, trustee, or other successor in interest of a
1510 person specified under Subsection (1).

1511 (4) A litigant serving process on the commissioner or lieutenant governor under this
1512 section shall pay the fee applicable under Section 31A-3-103.

1513 (5) The right to substituted service under this section does not limit the right to serve a

1514 summons, notice, order, pleading, demand, or other process upon a person in another manner
1515 provided by law.

1516 Section 6. Section **31A-6a-101** is amended to read:

1517 **31A-6a-101. Definitions.**

1518 (1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued
1519 by an insurance company that has complied with either Chapter 5, Domestic Stock and Mutual
1520 Insurance Corporations, or Chapter 14, Foreign Insurers, that undertakes to perform or provide
1521 repair or replacement service on goods or property, or indemnification for repair or
1522 replacement service, for the operational or structural failure of the goods or property due to a
1523 defect in materials, workmanship, or normal wear and tear.

1524 (2) "Nonmanufacturers' parts" means replacement parts not made for or by the original
1525 manufacturer of the goods commonly referred to as "after market parts."

1526 (3) (a) "Road hazard" means a hazard that is encountered while driving a motor
1527 vehicle.

1528 (b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic,
1529 curbs, or composite scraps.

1530 (4) (a) "Service contract" means a contract or agreement to perform or reimburse for
1531 the repair or maintenance of goods or property, for their operational or structural failure due to
1532 a defect in materials, workmanship, or normal wear and tear, with or without additional
1533 provision for incidental payment of indemnity under limited circumstances.

1534 (b) "Service contract" does not include mechanical breakdown insurance.

1535 (c) "Service contract" includes any contract or agreement to perform or reimburse the
1536 service contract holder for any one or more of the following services:

1537 (i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a
1538 result of coming into contact with a road hazard;

1539 (ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using
1540 the process of paintless dent removal without affecting the existing paint finish and without
1541 replacing vehicle body panels, sanding, bonding, or painting;

1542 (iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as
1543 a result of damage caused by a road hazard, that is primary to the coverage offered by the motor
1544 vehicle owner's motor vehicle insurance policy; or

1545 (iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes
1546 inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to
1547 only the replacement of a lost or stolen motor vehicle key or key-fob.

1548 (5) "Service contract holder" or "contract holder" means a person who purchases a
1549 service contract.

1550 (6) "Service contract provider" means a person who issues, makes, provides,
1551 administers, sells or offers to sell a service contract, or who is contractually obligated to
1552 provide service under a service contract.

1553 (7) "Service contract reimbursement policy" or "reimbursement insurance policy"
1554 means a policy of insurance providing coverage for all obligations and liabilities incurred by
1555 the service contract provider or warrantor under the terms of the service contract or vehicle
1556 protection product warranty issued by the provider or warrantor.

1557 (8) (a) "Vehicle protection product" means a device or system that is:

1558 (i) installed on or applied to a motor vehicle; and

1559 (ii) designed to prevent the theft of the vehicle.

1560 (b) "Vehicle protection product" includes:

1561 (i) a vehicle protection product warranty;

1562 (ii) an alarm system;

1563 (iii) a body part marking product;

1564 (iv) a steering lock;

1565 (v) a window etch product;

1566 (vi) a pedal and ignition lock;

1567 (vii) a fuel and ignition kill switch; and

1568 (viii) an electronic, radio, or satellite tracking device.

1569 (9) "Vehicle protection product warranty" means a written agreement by a warrantor
1570 that provides if the vehicle protection product fails to prevent the theft of the motor vehicle,
1571 that the warrantor will reimburse the warranty holder under the warranty in a fixed amount
1572 specified in the warranty, not to exceed \$5,000.

1573 (10) "Warrantor" means a person who is contractually obligated to the warranty holder
1574 under the terms of a vehicle protection product warranty.

1575 (11) "Warranty holder" means the person who purchases a vehicle protection product,

1576 any authorized transferee or assignee of the purchaser, or any other person legally assuming the
1577 purchaser's rights under the vehicle protection product warranty.

1578 Section 7. Section **31A-6a-104** is amended to read:

1579 **31A-6a-104. Required disclosures.**

1580 (1) A service contract reimbursement insurance policy insuring a service contract or a
1581 vehicle protection product warranty that is issued, sold, or offered for sale in this state shall
1582 conspicuously state that, upon failure of the service contract provider or warrantor to perform
1583 under the contract, the issuer of the policy shall:

1584 (a) pay on behalf of the service contract provider or warrantor any sums the service
1585 contract provider or warrantor is legally obligated to pay according to the service contract
1586 provider's or warrantor's contractual obligations under the service contract or a vehicle
1587 protection product warranty issued or sold by the service contract provider or warrantor; or

1588 (b) provide the service which the service contract provider is legally obligated to
1589 perform, according to the service contract provider's contractual obligations under the service
1590 contract issued or sold by the service contract provider.

1591 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless
1592 the service contract contains the following statements in substantially the following form:

1593 (i) "Obligations of the provider under this service contract are guaranteed under a
1594 service contract reimbursement insurance policy. Should the provider fail to pay or provide
1595 service on any claim within 60 days after proof of loss has been filed, the contract holder is
1596 entitled to make a claim directly against the Insurance Company."; and

1597 (ii) "This service contract or warranty is subject to limited regulation by the Utah
1598 Insurance Department. To file a complaint, contact the Utah Insurance Department."

1599 (iii) A service contract or reimbursement insurance policy may not be issued, sold, or
1600 offered for sale in this state unless the contract contains a statement in substantially the
1601 following form, "Coverage afforded under this contract is not guaranteed by the Property and
1602 Casualty Guaranty Association."

1603 (b) A vehicle protection product warranty may not be issued, sold, or offered for sale in
1604 this state unless the vehicle protection product warranty contains the following statements in
1605 substantially the following form:

1606 (i) "Obligations of the warrantor under this vehicle protection product warranty are

1607 guaranteed under a reimbursement insurance policy. Should the warrantor fail to pay on any
1608 claim within 60 days after proof of loss has been filed, the warranty holder is entitled to make a
1609 claim directly against the Insurance Company."; and

1610 (ii) "This vehicle protection product warranty is subject to limited regulation by the
1611 Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."

1612 ~~[(b) A service contract or reimbursement insurance policy may not be issued, sold, or~~
1613 ~~offered for sale in this state unless the contract contains a statement in substantially the~~
1614 ~~following form, "Coverage afforded under this contract is not guaranteed by the Property and~~
1615 ~~Casualty Guaranty Association."]~~

1616 (iii) A vehicle protection product warranty, or reimbursement insurance policy, may
1617 not be issued, sold, or offered for sale in this state unless the warranty contains a statement in
1618 substantially the following form, "Coverage afforded under this warranty is not guaranteed by
1619 the Property and Casualty Guaranty Association."

1620 (3) A service contract and a vehicle protection product warranty shall:

1621 (a) conspicuously state the name, address, and a toll free claims service telephone
1622 number of the reimbursement insurer;

1623 (b) (i) identify the service contract provider, the seller, and the service contract holder;
1624 or

1625 (ii) identify the warrantor, the seller, and the warranty holder;

1626 (c) conspicuously state the total purchase price and the terms under which the service
1627 contract or warranty is to be paid;

1628 (d) conspicuously state the existence of any deductible amount;

1629 (e) specify the merchandise, service to be provided, and any limitation, exception, or
1630 exclusion;

1631 (f) state a term, restriction, or condition governing the transferability of the service
1632 contract or warranty; and

1633 (g) state a term, restriction, or condition that governs cancellation of the service
1634 contract as provided in Sections [31A-21-303](#) through [31A-21-305](#) by either the contract holder
1635 or service contract provider.

1636 (4) If prior approval of repair work is required, a service contract shall conspicuously
1637 state the procedure for obtaining prior approval and for making a claim, including:

1638 (a) a toll free telephone number for claim service; and
1639 (b) a procedure for obtaining reimbursement for emergency repairs performed outside
1640 of normal business hours.

1641 (5) A preexisting condition clause in a service contract shall specifically state which
1642 preexisting condition is excluded from coverage.

1643 (6) (a) Except as provided in Subsection (6)(c), a service contract shall state the
1644 conditions upon which the use of a nonmanufacturers' part is allowed.

1645 (b) A condition described in Subsection (6)(a) shall comply with applicable state and
1646 federal laws.

1647 (c) This Subsection (6) does not apply to a home warranty contract.

1648 (7) This section applies to a vehicle protection product warranty, except for the
1649 requirements of ~~[Subsection]~~ Subsections (3)(d) and (g), (4), (5), and (6). The department may
1650 make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to
1651 implement the application of this section to a vehicle protection product warranty.

1652 (8) A vehicle protection product warranty shall contain a conspicuous statement in
1653 substantially the following form: "Purchase of this product is optional and is not required in
1654 order to finance, lease, or purchase a motor vehicle."

1655 Section 8. Section **31A-15-202** is amended to read:

1656 **31A-15-202. Definitions.**

1657 As used in this part:

1658 (1) ~~["Completed]~~ Notwithstanding Section [31A-1-301](#), "commissioner" means the
1659 insurance commissioner of Utah or the commissioner, director, or superintendent of insurance
1660 in another state.

1661 (2) (a) Subject to Subsection (2)(b), "completed operations liability" means liability[;
1662 including liability for activities which are completed or abandoned before the date of the
1663 occurrence giving rise to the liability,] arising out of the installation, maintenance, or repair of
1664 any product at a site ~~[which]~~ that is not owned or controlled by:

- 1665 ~~[(a)]~~ (i) any person who performs that work; or
- 1666 ~~[(b)]~~ (ii) any person who hires an independent contractor to perform that work.

1667 (b) "Completed operations liability" includes liability for an activity that is completed
1668 or abandoned before the date of the occurrence giving rise to the liability.

1669 ~~[(2)]~~ (3) "Domicile," for purposes of determining the state in which a purchasing group
1670 is domiciled, means:

1671 (a) for a corporation, the state in which the purchasing group is incorporated; and

1672 (b) for an unincorporated entity, the state of its principal place of business.

1673 ~~[(3)]~~ (4) "Hazardous financial condition" means that a risk retention group, based on its
1674 present or reasonably anticipated financial condition, although not yet financially impaired or
1675 insolvent, is unlikely to be able:

1676 (a) to meet obligations to policyholders with respect to known claims and reasonably
1677 anticipated claims; or

1678 (b) to pay other obligations in the normal course of business.

1679 ~~[(4)]~~ (5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus
1680 lines insurance, and any other arrangement for shifting and distributing risk which is
1681 determined to be insurance under the laws of this state.

1682 ~~[(5)]~~ (6) (a) "Liability" means legal liability for damages, including costs of defense,
1683 legal costs and fees, and other claims expenses because of injuries to other persons, damage to
1684 their property, or other damage or loss to other persons[;] resulting from or arising out of:

1685 (i) any business, whether profit or nonprofit ~~[business]~~, trade, product, services,
1686 including professional ~~[or other]~~ services, premises, or operations; or

1687 (ii) any activity of any state or local government or any agency or political subdivision
1688 of any state or local government.

1689 (b) "Liability" does not include personal risk liability and an employer's liability with
1690 respect to its employees other than legal liability under the Federal Employers' Liability Act, 45
1691 U.S.C. Sec. 51 et seq.

1692 ~~[(6)]~~ "NAIC" means the National Association of Insurance Commissioners.]

1693 (7) "Personal risk liability" means liability for damages because of injury to any person,
1694 damage to property, or other loss or damage resulting from any personal, familial, or household
1695 responsibilities or activities, rather than from responsibilities or activities referred to in
1696 Subsection ~~[(5)]~~ (6).

1697 (8) "Plan of operation" or ~~[a]~~ "feasibility study" means an analysis ~~[which]~~ that
1698 presents the expected activities and results of a risk retention group, including at a minimum:

1699 (a) information sufficient to verify that its members are engaged in businesses or

1700 activities similar or related with respect to the liability to which the members are exposed by
1701 virtue of any related, similar or common business, trade, product, services, premises or
1702 operations;

1703 (b) for each state in which it intends to operate, the coverages, deductibles, coverage
1704 limits, rates, and rating classification systems for each line of insurance the group intends to
1705 offer;

1706 (c) historical and expected loss experience of the proposed members and national
1707 experience of similar exposures to the extent that this experience is reasonably available;

1708 (d) pro forma financial statements and projections;

1709 (e) appropriate opinions by a qualified, independent casualty actuary, including a
1710 determination of minimum premium or participation levels required to commence operations
1711 and to prevent a hazardous financial condition;

1712 (f) identification of management, underwriting and claims procedures, marketing
1713 methods, managerial oversight methods, investment policies, and reinsurance agreements;

1714 (g) identification of each state in which the risk retention group has obtained, or sought
1715 to obtain, a charter and license, and a description of its status in each such state; and

1716 (h) any other matters required by the commissioner of the state in which the risk
1717 retention group is chartered for liability insurance companies authorized by the insurance laws
1718 of that state.

1719 (9) (a) "Product liability" means liability for damages because of any personal injury,
1720 death, emotional harm, consequential economic damage, or property damage, including
1721 damages resulting from the loss of use of property~~[, if the liability arises]~~ arising out of the
1722 manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.

1723 (b) "Product liability" does not include the liability of any person for those damages
1724 described in Subsection (9)(a) if the product involved was in the possession of the person when
1725 the incident giving rise to the claim occurred.

1726 (10) "Purchasing group" means any group ~~[which]~~ that:

1727 (a) has as one of its purposes the purchase of liability insurance on a group basis;

1728 (b) purchases liability insurance only for its group members and only to cover their
1729 similar or related liability exposure, as described in Subsection (10)(c);

1730 (c) is composed of members whose businesses or activities are similar or related with

1731 respect to the liability to which members are exposed by virtue of any related, similar, or
1732 common business, trade, products, services, premises, or operations; and

1733 (d) is domiciled in any state.

1734 (11) "Risk retention group" means any corporation or other limited liability
1735 association:

1736 (a) whose primary activity consists of assuming and spreading all, or any portion of,
1737 the liability exposure of its group members;

1738 (b) which is organized for the primary purpose of conducting the activity described
1739 under Subsection (11)(a);

1740 (c) [~~which~~] that:

1741 (i) is chartered and licensed as a liability insurance company and authorized to engage
1742 in the business of insurance under the laws of any state; or

1743 (ii) (A) before January 1, 1985, was chartered or licensed and authorized to engage in
1744 the business of insurance under the laws of Bermuda or the Cayman Islands and, before
1745 January 1, 1985, had certified to the insurance commissioner of at least one state that it
1746 satisfied the capitalization requirements of that state;

1747 (B) [~~however,~~] except that any [~~such~~] group as described in Subsection (11)(c)(ii)(A)
1748 shall be considered to be a risk retention group only if it has been engaged in business
1749 continuously since January 1, 1985, and only for the purpose of continuing to provide
1750 insurance to cover product liability or completed operations liability, as these terms were
1751 defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of
1752 the Liability Risk Retention Act of 1986;

1753 (d) [~~which~~] that does not exclude any person from membership in the group solely to
1754 provide for members of the group a competitive advantage over the excluded person;

1755 (e) [~~which~~] that:

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

1758 (ii) has as its sole owner an organization [~~which~~] that has as:

1759 (A) [~~has as~~] its members only persons who comprise the membership of the risk
1760 retention group; and

1761 (B) [~~has as~~] its owners only persons who comprise the membership of the risk retention

1762 group and who are provided insurance by the group;

1763 (f) whose members are engaged in businesses or activities similar or related with
1764 respect to the liability to which the members are exposed by virtue of any related, similar, or
1765 common business trade, products, services, premises or operations;

1766 (g) whose activities do not include providing insurance other than:

1767 (i) liability insurance for assuming and spreading all or any portion of the liability of its
1768 group members; and

1769 (ii) reinsurance with respect to the liability of any other risk retention group, or any
1770 members of the other group, which is engaged in businesses or activities so that the group or
1771 member meets the requirement described in Subsection (11)(f) for membership in the risk
1772 retention group which provides the reinsurance; and

1773 (h) the name of which includes the phrase "risk retention group."

1774 (12) "State" means:

1775 (a) a state of the United States; or

1776 (b) the District of Columbia.

1777 Section 9. Section **31A-15-203** is amended to read:

1778 **31A-15-203. Risk retention groups chartered in this state.**

1779 (1) As used in this section:

1780 (a) "Board of directors" or "board" means the governing body of the risk retention
1781 group elected by the shareholders or members to establish policy, elect or appoint officers and
1782 committees, and make other governing decisions.

1783 (b) "Director" means a natural person designated in the articles of the risk retention
1784 group, or designated, elected, or appointed by any other manner, name, or title to act as a
1785 director.

1786 [(+)] (2) (a) A risk retention group under this part shall be chartered and licensed to
1787 write only liability insurance pursuant to this part and, except as provided elsewhere in this
1788 part, shall comply with all of the laws, rules, and requirements that apply to liability insurers
1789 chartered and licensed in this state, and with Section **31A-15-204** to the extent the requirements
1790 are not a limitation on other laws, rules, or requirements of this state.

1791 (b) Notwithstanding any other provision to the contrary, all risk retention groups
1792 chartered in this state shall file with the commissioner and the National Association of

1793 Insurance Commissioners an annual statement [~~with the department and the NAIC~~] in a form
 1794 prescribed by the commissioner[;] and [~~completed in diskette form if required by the~~
 1795 ~~commissioner;~~] completed in accordance with the statement instructions and the [~~NAIC~~]
 1796 National Association of Insurance Commissioners Accounting Practices and Procedures
 1797 Manual.

1798 ~~[(2)]~~ (3) Before it may offer insurance in any state, each risk retention group shall also
 1799 submit for approval to the commissioner of this state a plan of operation or feasibility study.
 1800 The risk retention group shall submit an appropriate revision of the plan or study in the event of
 1801 any subsequent material change in any item of the plan of operation or feasibility study within
 1802 10 days of any [~~such~~] change. The group may not offer any additional kinds of liability
 1803 insurance, in this state or in any other state, until any revision of the plan or study is approved
 1804 by the commissioner.

1805 ~~[(3)]~~ (4) (a) At the time of filing its application for charter, the risk retention group
 1806 shall provide to the commissioner in summary form the following information:

- 1807 (i) the identity of the initial members of the group;
- 1808 (ii) the identity of those individuals who organized the group or who will provide
 1809 administrative services or otherwise influence or control the activities of the group;
- 1810 (iii) the amount and nature of initial capitalization;
- 1811 (iv) the coverages to be afforded; and
- 1812 (v) the states in which the group intends to operate.

1813 (b) Upon receipt of this information, the commissioner shall forward the information to
 1814 the [~~NAIC~~] National Association of Insurance Commissioners. Providing notification to the
 1815 [~~NAIC~~] National Association of Insurance Commissioners is in addition to, and may not be
 1816 sufficient to satisfy, the requirements of Section [31A-15-204](#) or any other sections of this part.

1817 (5) The governance standards for risk retention groups are as follows:

1818 (a) A risk retention group that exists as of May 10, 2016, shall be in compliance with
 1819 the governance standards described in this Subsection (5) by no later than May 10, 2017. A
 1820 risk retention group licensed on or after May 10, 2016, shall be in compliance with the
 1821 governance standards described in this Subsection (5) at the time of licensure.

1822 (b) The board of directors of a risk retention group shall have a majority of independent
 1823 directors. If the risk retention group is a reciprocal:

1824 (i) the attorney-in-fact is required to adhere to the same standards regarding
1825 independence of operation and governance as imposed on the risk retention group's board of
1826 directors and subscribers advisory committee under these standards; and

1827 (ii) to the extent permissible under state law, service providers of a reciprocal risk
1828 retention group shall contract with the risk retention group and not the attorney-in-fact.

1829 (c) A director does not qualify as independent unless the board of directors
1830 affirmatively determines that the director has no material relationship with the risk retention
1831 group. Each risk retention group shall disclose these determinations to its domestic regulator,
1832 at least annually. For this purpose, any person who is a direct or indirect owner of, or
1833 subscriber in, the risk retention group or is an officer, director, or employee of the owner and
1834 insured, is considered to be independent, unless some other position of the officer, director, or
1835 employee constitutes a material relationship, as contemplated by Section 3901(a)(4)(E)(ii) of
1836 the Liability Risk Retention Act.

1837 (d) Material relationship of a person with the risk retention group includes the
1838 following:

1839 (i) A material relationship exists if the person receives in any one 12-month period
1840 compensation or payment of any other item of value by the person, a member of the person's
1841 immediate family, or a business with which the person is affiliated, from the risk retention
1842 group or a consultant or service provider to the risk retention group is greater than the greater
1843 of the following as measured at the end of any fiscal quarter falling in the 12-month period:

1844 (A) 5% of the risk retention group's gross written premium for the 12-month period; or
1845 (B) 2% of the risk retention group's surplus.

1846 (ii) The person or immediate family member of the person is not independent until one
1847 year after the person's compensation from the risk retention group falls below the threshold
1848 outlined in Subsection (5)(d)(i).

1849 (iii) A material relationship exists if a director or an immediate family member of a
1850 director is affiliated with or employed in a professional capacity by a present or former internal
1851 or external auditor of the risk retention group.

1852 (iv) The director or immediate family member of a director described in Subsection
1853 (5)(d)(iii) is not independent until one year after the end of the affiliation, employment, or
1854 auditing relationship.

1855 (v) A material relationship exists if the director or immediate family member of a
1856 director who is employed as an executive officer of another company where any of the risk
1857 retention group's present executives serve on that other company's board of directors is not
1858 independent until one year after the end of the service or the employment relationship.

1859 (e) (i) The term of any material service provider contract with the risk retention group
1860 may not exceed five years. A material service provider contract, or its renewal, shall require
1861 the approval of the majority of the risk retention group's independent directors. The service
1862 provider contract is considered material if the amount to be paid for the contract is greater than
1863 or equal to the greater of:

1864 (A) 5% of the risk retention group's annual gross written premium; or

1865 (B) 2% of the risk retention group's surplus.

1866 (ii) For purposes of Subsection (5)(e)(i), "service provider" includes a captive manager,
1867 auditor, accountant, actuary, investment advisor, lawyer, managing general underwriter, or
1868 other party responsible for underwriting, determining rates, collecting premiums, adjusting and
1869 settling claims, or preparing financial statements. A reference to "lawyer" in this Subsection
1870 (5)(e)(ii) does not include defense counsel retained by the risk retention group to defend
1871 claims, unless the amount of fees paid to the lawyer is "material" as referenced in Section
1872 (5)(e)(i).

1873 (iii) A service provider contract meeting the definition of material relationship
1874 contained in Section (5)(d) may not be entered into unless the risk retention group has, at least
1875 30 days before entering into the service provider contract, notified the commissioner in writing
1876 of its intention to enter into the transaction and the commissioner has not disapproved it within
1877 the 30-day period.

1878 (iv) The risk retention group's board of directors shall have the right to terminate any
1879 service provider, audit contract, or actuarial contract at any time for cause after providing
1880 adequate notice as defined in the contract.

1881 (f) The risk retention group's board of directors shall adopt a written policy in the plan
1882 of operation as approved by the board that requires the board to:

1883 (i) assure that an owner of the risk retention group receive evidence of ownership
1884 interest;

1885 (ii) develop a set of governance standards applicable to the risk retention group;

1886 (iii) oversee the evaluation of the risk retention group's management including the
1887 performance of the captive manager, managing general underwriter, or one or more other
1888 parties responsible for underwriting, determining rates, collecting premiums, adjusting or
1889 settling claims, or preparing financial statements;
1890 (iv) review and approve the amount to be paid for all material service providers; and
1891 (v) review and approve at least annually:
1892 (A) the risk retention group's goals and objectives relevant to the compensation of
1893 officers and service providers;
1894 (B) the officers' and service providers' performance in light of those goals and
1895 objectives; and
1896 (C) the continued engagement of the officers and material service providers.
1897 (g) (i) A risk retention group shall have an audit committee composed of at least three
1898 independent board members as defined in Subsection (5)(c). A non-independent board
1899 member may participate in the activities of the audit committee, if invited by the members of
1900 the audit committee, but cannot be a member of the audit committee.
1901 (ii) The audit committee shall have a written charter that defines the audit committee's
1902 purpose, which, at a minimum, shall be to:
1903 (A) assist the board's oversight of the integrity of the financial statements, the
1904 compliance with legal and regulatory requirements, and the qualifications, independence, and
1905 performance of the independent auditor and actuary;
1906 (B) discuss the annual audited financial statements and quarterly financial statements
1907 with management;
1908 (C) discuss the annual audited financial statements with its independent auditor and, if
1909 advisable, discuss its quarterly financial statements with its independent auditor;
1910 (D) discuss policies with respect to risk assessment and risk management;
1911 (E) meet separately and periodically, either directly or through a designated
1912 representative of the committee, with management and the independent auditor;
1913 (F) review with the independent auditor any audit problems or difficulties and
1914 management's response;
1915 (G) set clear hiring policies of the risk retention group as to the hiring of employees or
1916 former employees of the independent auditor;

1917 (H) require the external auditor to rotate the lead or coordinating audit partner having
1918 primary responsibility for the risk retention group's audit as well as the audit partner
1919 responsible for reviewing that audit so that neither individual performs audit services for more
1920 than five consecutive fiscal years; and

1921 (I) report regularly to the board of directors.

1922 (iii) The domestic regulator may waive the requirement to establish an audit committee
1923 composed of independent board members if the risk retention group is able to demonstrate to
1924 the domestic regulator that it is impracticable to do so and the risk retention group's board of
1925 directors itself is otherwise able to accomplish the purposes of an audit committee, as described
1926 in this Section (5)(g).

1927 (h) The board of directors shall adopt and disclose governance standards, where
1928 "disclose" means making such information available through election, including posting the
1929 information on the risk retention group's website or other means, and providing such
1930 information to owners upon request, which shall include:

1931 (i) a process by which the directors are elected by the owners;

1932 (ii) director qualification standards;

1933 (iii) director responsibilities;

1934 (iv) director access to management and, as necessary and appropriate, independent
1935 advisors;

1936 (v) director compensation;

1937 (vi) director orientation and continuing education;

1938 (vii) the policies and procedures that are followed for management succession; and

1939 (viii) the policies and procedures that are followed for annual performance evaluation
1940 of the board.

1941 (i) The board of directors shall adopt and disclose a code of business conduct and
1942 ethics for directors, officers, and employees and promptly disclose to the board of directors any
1943 waivers of the code for directors or executive officers, which shall include the following topics:

1944 (i) conflicts of interest;

1945 (ii) matters covered under the corporate opportunities doctrine under the state of
1946 domicile;

1947 (iii) confidentiality;

1948 (iv) fair dealing;
1949 (v) protection and proper use of risk retention group assets;
1950 (vi) compliance with all applicable laws, rules, and regulations; and
1951 (vii) requiring the reporting of any illegal or unethical behavior that affects the
1952 operation of the risk retention group.
1953 (j) A captive manager, president, or chief executive officer of a risk retention group
1954 shall promptly notify the domestic regulator in writing if the captive manager, president, or
1955 chief executive officer becomes aware of any material non-compliance with any of the
1956 governance standards in this Subsection (5).
1957 Section 10. Section **31A-15-204** is amended to read:
1958 **31A-15-204. Risk retention groups not chartered in this state -- Designation of**
1959 **commissioner as agent -- Compliance with unfair claims settlement practices act --**
1960 **Deceptive, false, or fraudulent practices -- Examination regarding financial condition --**
1961 **Prohibitions -- Penalties -- Operation prior to enactment of this part.**
1962 (1) Risk retention groups chartered and licensed in other states and seeking to do
1963 business as a risk retention group in this state shall comply with the following:
1964 (a) Before offering insurance in this state a risk retention group shall submit to the
1965 commissioner:
1966 (i) a statement identifying the states in which the group is chartered and licensed as a
1967 liability insurance company, its charter date, its principal place of business, and any other
1968 information, including information on its membership, the commissioner may require to verify
1969 that the group is a qualified risk retention group as defined in [~~Subsection~~] Section
1970 31A-15-202~~[(H)]~~; and
1971 (ii) a copy of its plan of operations or feasibility study and revisions of the plan or
1972 study submitted to the state in which the risk retention group is chartered and licensed, except a
1973 plan or study is not required for any line or classification of liability insurance that:
1974 (A) was defined in the Product Liability Risk Retention Act of 1981 before October 27,
1975 1986; and
1976 (B) was offered before that date by any risk retention group that had been chartered
1977 and operating for not less than three years before that date.
1978 (b) The risk retention group shall submit to the commissioner a copy of any revision to

1979 its plan or study required by Subsection [31A-15-203](#)~~(2)~~(3) at the same time it submits the
1980 revision of its chartering state.

1981 (c) The risk retention group shall submit, on a form approved by the commissioner, a
1982 statement of registration and a notice designating the commissioner as agent for the purpose of
1983 receiving service of legal documents or process.

1984 (d) The risk retention group shall pay annual license fees required by Section
1985 [31A-3-103](#).

1986 (2) Any risk retention group doing business in this state shall submit to the
1987 commissioner:

1988 (a) a copy of the group's financial statement submitted to the state in which the risk
1989 retention group is chartered and licensed, which shall be certified by an independent public
1990 accountant and shall contain a statement of opinion on loss and loss adjustment expense
1991 reserves made by a member of the American Academy of Actuaries or a loss reserve specialist
1992 qualified under criteria approved by the commissioner;

1993 (b) a copy of each examination of the risk retention group as certified by the
1994 commissioner or public official conducting the examination;

1995 (c) if the commissioner requests, a copy of any information or document pertaining to
1996 any outside audit performed with respect to the risk retention group; and

1997 (d) any other information required to verify the group's continuing qualification as a
1998 risk retention group within the definition in [~~Subsection~~] Section [31A-15-202](#)~~(H)~~.

1999 (3) (a) Each risk retention group shall pay premium taxes and taxes on premiums of
2000 direct business for risks resident or located within this state, and shall report to the Utah State
2001 Tax Commission the net premiums written for risks resident or located within this state. Each
2002 risk retention group shall be subject to taxation, and any applicable fines and penalties related
2003 to taxation, on the same basis as a foreign admitted insurer.

2004 (b) To the extent licensed producers are utilized pursuant to Section [31A-15-212](#), they
2005 shall report to the commissioner the premiums for direct business for all risks resident or
2006 located within this state that the producers have placed with, or on behalf of, a risk retention
2007 group not chartered in this state.

2008 (c) To the extent that insurance producers are utilized pursuant to Section [31A-15-212](#)
2009 they shall keep a complete and separate record of all policies procured from each risk retention

2010 group. The record shall be open to examination by the commissioner, as provided under
2011 Section 31A-23a-412. These records shall include the following for each policy and each kind
2012 of insurance provided under each policy:

- 2013 (i) the limit of liability;
- 2014 (ii) the time period covered;
- 2015 (iii) the effective date;
- 2016 (iv) the name of the risk retention group that issued the policy;
- 2017 (v) the gross premium charged;
- 2018 (vi) the amount of any returned premiums; and
- 2019 (vii) additional information required by the insurance commissioner.

2020 (4) Each risk retention group and its agents and representatives shall comply with:

- 2021 (a) the Unfair Claims Settlement Practices Act, including Section 31A-15-207[~~], Title~~
2022 ~~31A,~~];
- 2023 (b) Chapter 26, Part 3, Claim Practices[~~],~~]; and
- 2024 (c) any other provision of law relating to claims settlement practices.

2025 (5) Each risk retention group shall comply with the laws of this state regarding
2026 deceptive, false, and fraudulent acts, practices regulated under [~~Title 31A,~~] Chapter 23a, Part 4,
2027 Marketing Practices, and any other provision of law relating to deceptive, false, or fraudulent
2028 practices. The commissioner may only obtain an injunction regarding the conduct described in
2029 this subsection from a court of competent jurisdiction.

2030 (6) If the commissioner of the jurisdiction in which the group is chartered and licensed
2031 has not initiated an examination or does not initiate an examination within 60 days after a
2032 request by the commissioner of this state, the risk retention group shall submit to an
2033 examination by the commissioner of this state to determine its financial condition. Any
2034 examination conducted under this subsection shall be coordinated to avoid unjustified
2035 repetition and shall be conducted in an expeditious manner and in accordance with the
2036 [~~NAIC's~~] National Association of Insurance Commissioner's Examiner Handbook.

2037 (7) Each application form for insurance from a risk retention group and each policy and
2038 certificate issued by a risk retention group shall contain the following notice in ten-point type
2039 on its front and declaration pages:

2040 "NOTICE

2041 This policy is issued by your risk retention group. Your risk retention group may not be
2042 subject to all of the insurance laws and regulations of your state. State insurance insolvency
2043 guaranty funds are not available for your risk retention group."

2044 (8) The following acts by a risk retention group are prohibited:

2045 (a) the solicitation or sale of insurance by a risk retention group to any person who is
2046 not eligible for membership in the group; and

2047 (b) the solicitation or sale of insurance by, or operation of, a risk retention group that is
2048 in hazardous financial condition or financially impaired.

2049 (9) A risk retention group may not do business in this state if an insurance company is
2050 directly or indirectly a member or owner of the risk retention group, unless all members of the
2051 group are insurance companies.

2052 (10) The terms of any insurance policy issued by a risk retention group may not
2053 provide, or be construed to provide, coverage prohibited generally by statute of this state or
2054 declared unlawful by the Utah Supreme Court.

2055 (11) A risk retention group not chartered in this state and doing business in this state
2056 shall comply with a lawful order issued in a voluntary dissolution proceeding or in a
2057 delinquency proceeding commenced by any state's insurance commissioner if there has been a
2058 finding of financial impairment after an examination under Subsection (6).

2059 (12) A risk retention group that violates any provision of this part is subject to fines
2060 and penalties applicable to licensed insurers generally, including revocation of its right to do
2061 business in this state.

2062 (13) In addition to complying with the requirements of this section, each risk retention
2063 group operating in this state before the effective date of this part shall comply with Subsection
2064 (1)(a) within 30 days after the effective date of this part.

2065 Section 11. Section **31A-15-206.5** is enacted to read:

2066 **31A-15-206.5. Countersignatures not required.**

2067 A policy of insurance issued to a risk retention group or any member of the risk
2068 retention group may not be required to be countersigned.

2069 Section 12. Section **31A-15-208** is amended to read:

2070 **31A-15-208. Purchasing groups -- Notice and registration requirements.**

2071 (1) A purchasing group that intends to do business in this state shall, [~~prior to~~] before

2072 doing business, furnish reasonable notice to the insurance commissioner in this state. The
2073 notice shall be on forms prescribed by the National Association of Insurance Commissioners
2074 and shall:

2075 (a) [~~identifying~~] identify the state in which the [~~purchasing~~] group is domiciled;

2076 (b) [~~identifying any state~~] identify the other states in which the [~~purchasing~~] group
2077 intends to do business;

2078 (c) [~~specifying~~] specify the lines and classifications of liability insurance that the
2079 [~~purchasing~~] group intends to purchase;

2080 (d) [~~identifying the insurers~~] identify the one or more insurance companies from which
2081 the group intends to purchase its insurance and the domicile of the insurers;

2082 (e) [~~specifying~~] specify the method by which, and [~~any~~] the one or more persons, if
2083 any, through whom, insurance will be offered to [~~group~~] its members whose risks are resident
2084 or located in this state;

2085 (f) [~~identifying~~] identify the principal place of business of the [~~purchasing~~] group; and

2086 (g) [~~providing any~~] provide any other information as may be required by the
2087 commissioner to verify that the [~~purchasing~~] group is a qualified "purchasing group," as
2088 defined in Section [31A-15-202](#).

2089 (2) A purchasing group shall notify the commissioner of a change in an item listed in
2090 Subsection (1) within 10 days of the change.

2091 (3) (a) A purchasing group shall annually register with the commissioner and pay a
2092 filing fee.

2093 (b) A purchasing group shall designate the commissioner as its agent solely for the
2094 purpose of receiving service of legal documents or process.

2095 (c) The registration and fee requirements of this Subsection (3) do not apply to a
2096 purchasing group that only purchases insurance that was authorized under the Product Liability
2097 Risk Retention Act of 1981, and that:

2098 (i) in any state of the United States:

2099 (A) was domiciled before April 1, 1986; and

2100 (B) is domiciled after October 27, 1986;

2101 (ii) (A) before October 27, 1986, purchased insurance from an insurer licensed in any
2102 state; and

2103 (B) since October 27, 1986, purchased its insurance from an insurer licensed in any
2104 state; or

2105 (iii) was a purchasing group under the requirements of the Product Liability Risk
2106 Retention Act of 1981 before October 27, 1986.

2107 (4) ~~[A]~~ Each purchasing group that is required to give notice under Subsection (1) shall
2108 also furnish the information required by the commissioner to:

- 2109 (a) verify that the entity qualifies as a purchasing group;
- 2110 (b) determine where the purchasing group is located; and
- 2111 (c) determine appropriate tax treatment of the purchasing group.

2112 Section 13. Section **31A-15-209** is amended to read:

2113 **31A-15-209. Restrictions on purchasing groups.**

2114 ~~[(1) A purchasing group which obtains liability insurance from an insurer not admitted
2115 in this state or from a risk retention group shall inform each of the group members which have
2116 a risk resident or located in this state that the risk is not protected by an insurance insolvency
2117 guaranty fund in this state, and that the risk retention group or insurer may not be subject to all
2118 insurance laws and regulations of this state.]~~

2119 (1) A purchasing group may not purchase insurance from a risk retention group that is
2120 not chartered in a state or from an insurer not admitted in the state in which the purchasing
2121 group is located, unless the purchase is effected through a licensed producer acting pursuant to
2122 the surplus lines laws and regulations of the state in which the purchasing group is located.

2123 (2) A purchasing group that obtains liability insurance from an insurer not admitted in
2124 this state or a risk retention group shall inform each of the members of the purchasing group or
2125 risk retention group that have a risk resident or located in this state that:

- 2126 (a) the risk is not protected by an insurance insolvency guaranty fund in this state; and
- 2127 (b) the risk retention group or insurer may not be subject to all insurance laws and
2128 regulations of this state.

2129 ~~[(2)]~~ (3) (a) A purchasing group may not purchase insurance providing for a deductible
2130 or self-insured retention applicable to the group as a whole~~[-however,]~~.

2131 (b) Notwithstanding Subsection (3)(a), coverage may provide for a deductible or
2132 self-insured retention applicable to individual members.

2133 ~~[(3)]~~ (4) Purchases of insurance by purchasing groups are subject to the same standards

2134 regarding aggregate limits which are applicable to all purchases of group insurance.

2135 Section 14. Section 31A-15-212 is amended to read:

2136 **31A-15-212. Duty of producers to obtain license -- Risk retention groups --**
2137 **Purchasing groups.**

2138 (1) A person may do the following only if ~~[he]~~ the person is licensed as an insurance
2139 ~~[agent or broker]~~ producer or is exempt from licensure under ~~[Title 31A,]~~ Chapter 23a,
2140 Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries:

2141 (a) solicit, negotiate, or procure liability insurance in this state from a risk retention
2142 group;

2143 (b) solicit, negotiate, or procure liability insurance in this state for a purchasing group
2144 from an authorized insurer or a risk retention group; and

2145 (c) solicit, negotiate, or procure liability insurance coverage in this state for any
2146 member of a purchasing group under a purchasing group's policy.

2147 ~~[(2) A person may solicit, negotiate, or procure liability insurance from an insurer not~~
2148 ~~authorized to do business in this state on behalf of a purchasing group located in this state only~~
2149 ~~if he is licensed as a surplus lines producer or is exempt from licensure under Title 31A,~~
2150 ~~Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance~~
2151 ~~Intermediaries.]~~

2152 ~~[(3) The requirement of residence in this state does not apply for purposes of acting as~~
2153 ~~a producer for a risk retention group or purchasing group under Subsections (1) and (2).]~~

2154 ~~[(4) On business placed with a risk retention group or written through a purchasing~~
2155 ~~group, each person licensed under this title shall provide to each prospective insured the notice~~
2156 ~~required by Subsection 31A-15-204(7) in the case of a risk retention group, and by Subsection~~
2157 ~~31A-15-209(1) in the case of a purchasing group.]~~

2158 ~~[(5) Solicitation for membership in a purchasing group is not of itself a solicitation for~~
2159 ~~insurance.]~~

2160 (2) (a) A person may not act or aid in any manner in soliciting, negotiating, or
2161 procuring liability insurance in this state for a purchasing group from an authorized insurer or a
2162 risk retention group chartered in a state unless that person is licensed as an insurance producer,
2163 or is exempt from licensure under Chapter 23a, Insurance Marketing - Licensing Producers,
2164 Consultants, and Reinsurance Intermediaries.

2165 (b) A person may not act or aid in any manner in soliciting, negotiating, or procuring
2166 liability insurance coverage in this state for any member of a purchasing group under a
2167 purchasing group's policy unless that person is licensed as an insurance producer, or is exempt
2168 from licensure under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,
2169 and Reinsurance Intermediaries.

2170 (c) A person may not act or aid in any manner in soliciting, negotiating, or procuring
2171 liability insurance from an insurer not authorized to do business in this state on behalf of a
2172 purchasing group located in this state unless that person is licensed as a surplus lines producer
2173 or excess lines producer or is exempt from licensure under Chapter 23a, Insurance Marketing -
2174 Licensing Producers, Consultants, and Reinsurance Intermediaries.

2175 (3) For purposes of acting as a producer for a risk retention group or purchasing group
2176 pursuant to Subsections (1) and (2), the requirement of residence in this state does not apply.

2177 (4) A person licensed pursuant to Chapter 23a, Insurance Marketing - Licensing
2178 Producers, Consultants, and Reinsurance Intermediaries, on business placed with a risk
2179 retention group or written through a purchasing group, shall inform each prospective insured of
2180 the provisions of the notice required by Subsection [31A-15-204\(7\)](#) in the case of a purchasing
2181 group.

2182 Section 15. Section **31A-15-213.5** is enacted to read:

2183 **31A-15-213.5. Rulemaking.**

2184 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2185 commissioner may make and from time to time amend rules relating to risk retention groups as
2186 may be necessary or desirable to carry out this part.

2187 Section 16. Section **31A-17-404** is amended to read:

2188 **31A-17-404. Credit allowed a domestic ceding insurer against reserves for**
2189 **reinsurance.**

2190 (1) A domestic ceding insurer is allowed credit for reinsurance as either an asset or a
2191 reduction from liability for reinsurance ceded only if the reinsurer meets the requirements of
2192 Subsection (3), (4), (5), (6), [or] (7), or (8), subject to the following:

2193 (a) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a
2194 kind or class of business that the assuming insurer is licensed or otherwise permitted to write or
2195 assume:

- 2196 (i) in its state of domicile; or
2197 (ii) in the case of a United States branch of an alien assuming insurer, in the state
2198 through which it is entered and licensed to transact insurance or reinsurance.
- 2199 (b) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of
2200 Subsection [~~(8)~~] (9) are met.
- 2201 (2) A domestic ceding insurer is allowed credit for reinsurance ceded:
2202 (a) only if the reinsurance is payable in a manner consistent with Section 31A-22-1201;
2203 (b) only to the extent that the accounting:
2204 (i) is consistent with the terms of the reinsurance contract; and
2205 (ii) clearly reflects:
2206 (A) the amount and nature of risk transferred; and
2207 (B) liability, including contingent liability, of the ceding insurer;
2208 (c) only to the extent the reinsurance contract shifts insurance policy risk from the
2209 ceding insurer to the assuming reinsurer in fact and not merely in form; and
2210 (d) only if the reinsurance contract contains a provision placing on the reinsurer the
2211 credit risk of all dealings with intermediaries regarding the reinsurance contract.
- 2212 (3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
2213 assuming insurer that is licensed to transact insurance or reinsurance in this state.
- 2214 (4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
2215 assuming insurer that is accredited by the commissioner as a reinsurer in this state.
- 2216 (b) An insurer is accredited as a reinsurer if the insurer:
2217 (i) files with the commissioner evidence of the insurer's submission to this state's
2218 jurisdiction;
2219 (ii) submits to the commissioner's authority to examine the insurer's books and records;
2220 (iii) (A) is licensed to transact insurance or reinsurance in at least one state; or
2221 (B) in the case of a United States branch of an alien assuming insurer, is entered
2222 through and licensed to transact insurance or reinsurance in at least one state;
2223 (iv) files annually with the commissioner a copy of the insurer's:
2224 (A) annual statement filed with the insurance department of its state of domicile; and
2225 (B) most recent audited financial statement; and
2226 (v) (A) (I) has not had its accreditation denied by the commissioner within 90 days of

2227 the day on which the insurer submits the information required by this Subsection (4); and

2228 (II) maintains a surplus with regard to policyholders in an amount not less than

2229 \$20,000,000; or

2230 (B) (I) has its accreditation approved by the commissioner; and

2231 (II) maintains a surplus with regard to policyholders in an amount less than

2232 \$20,000,000.

2233 (c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's

2234 accreditation is revoked by the commissioner after a notice and hearing.

2235 (5) (a) A domestic ceding insurer is allowed a credit if:

2236 (i) the reinsurance is ceded to an assuming insurer that is:

2237 (A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or

2238 (B) in the case of a United States branch of an alien assuming insurer, is entered

2239 through a state meeting the requirements of Subsection (5)(a)(ii);

2240 (ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for

2241 reinsurance substantially similar to those applicable under this section; and

2242 (iii) the assuming insurer or United States branch of an alien assuming insurer:

2243 (A) maintains a surplus with regard to policyholders in an amount not less than

2244 \$20,000,000; and

2245 (B) submits to the authority of the commissioner to examine its books and records.

2246 (b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded

2247 and assumed pursuant to a pooling arrangement among insurers in the same holding company

2248 system.

2249 (6) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an

2250 assuming insurer that maintains a trust fund:

2251 (i) created in accordance with rules made by the commissioner; and

2252 (ii) in a qualified United States financial institution for the payment of a valid claim of:

2253 (A) a United States ceding insurer of the assuming insurer;

2254 (B) an assign of the United States ceding insurer; and

2255 (C) a successor in interest to the United States ceding insurer.

2256 (b) To enable the commissioner to determine the sufficiency of the trust fund described

2257 in Subsection (6)(a), the assuming insurer shall:

- 2258 (i) report annually to the commissioner information substantially the same as that
2259 required to be reported on the National Association of Insurance Commissioners Annual
2260 Statement form by a licensed insurer; and
- 2261 (ii) (A) submit to examination of its books and records by the commissioner; and
2262 (B) pay the cost of an examination.
- 2263 (c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the
2264 form of the trust and any amendment to the trust is approved by:
- 2265 (A) the commissioner of the state where the trust is domiciled; or
2266 (B) the commissioner of another state who, pursuant to the terms of the trust
2267 instrument, accepts principal regulatory oversight of the trust.
- 2268 (ii) The form of the trust and an amendment to the trust shall be filed with the
2269 commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.
- 2270 (iii) The trust instrument shall provide that a contested claim is valid and enforceable
2271 upon the final order of a court of competent jurisdiction in the United States.
- 2272 (iv) The trust shall vest legal title to its assets in its one or more trustees for the benefit
2273 of:
- 2274 (A) a United States ceding insurer of the assuming insurer;
2275 (B) an assign of the United States ceding insurer; or
2276 (C) a successor in interest to the United States ceding insurer.
- 2277 (v) The trust and the assuming insurer are subject to examination as determined by the
2278 commissioner.
- 2279 (vi) The trust shall remain in effect for as long as the assuming insurer has an
2280 outstanding obligation due under a reinsurance agreement subject to the trust.
- 2281 (vii) No later than February 28 of each year, the trustee of the trust shall:
- 2282 (A) report to the commissioner in writing the balance of the trust;
2283 (B) list the trust's investments at the end of the preceding calendar year; and
2284 (C) (I) certify the date of termination of the trust, if so planned; or
2285 (II) certify that the trust will not expire prior to the following December 31.
- 2286 (d) The following requirements apply to the following categories of assuming insurer:
2287 (i) For a single assuming insurer:
2288 (A) the trust fund shall consist of funds in trust in an amount not less than the assuming

2289 insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and

2290 (B) the assuming insurer shall maintain a trusted surplus of not less than

2291 \$20,000,000[-], except as provided in Subsection (6)(d)(ii).

2292 (ii) (A) At any time after the assuming insurer has permanently discontinued
2293 underwriting new business secured by the trust for at least three full years, the commissioner
2294 with principal regulatory oversight of the trust may authorize a reduction in the required
2295 trusted surplus, but only after a finding, based on an assessment of the risk, that the new
2296 required surplus level is adequate for the protection of United States ceding insurers,
2297 policyholders, and claimants in light of reasonably foreseeable adverse loss development.

2298 (B) The risk assessment may involve an actuarial review, including an independent
2299 analysis of reserves and cash flows, and shall consider all material risk factors, including, when
2300 applicable, the lines of business involved, the stability of the incurred loss estimates, and the
2301 effect of the surplus requirements on the assuming insurer's liquidity or solvency.

2302 (C) The minimum required trusted surplus may not be reduced to an amount less than
2303 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States
2304 ceding insurers covered by the trust.

2305 ~~[(ii)]~~ (iii) For a group acting as assuming insurer, including incorporated and individual
2306 unincorporated underwriters:

2307 (A) for reinsurance ceded under a reinsurance agreement with an inception,
2308 amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusted
2309 account in an amount not less than the ~~[group's]~~ respective underwriters' several liabilities
2310 attributable to business ceded by the one or more United States domiciled ceding insurers to ~~[a~~
2311 ~~member]~~ an underwriter of the group;

2312 (B) for reinsurance ceded under a reinsurance agreement with an inception date on or
2313 before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the
2314 other provisions of this chapter, the trust shall consist of a trusted account in an amount not
2315 less than the ~~[group's]~~ respective underwriters' several insurance and reinsurance liabilities
2316 attributable to business written in the United States;

2317 (C) in addition to a trust described in Subsection (6)(d)~~[(ii)]~~(iii)(A) or (B), the group
2318 shall maintain in trust a trusted surplus of which \$100,000,000 is held jointly for the benefit of
2319 the one or more United States domiciled ceding insurers of a member of the group for all years

2320 of account;

2321 (D) the incorporated members of the group:

2322 (I) may not be engaged in a business other than underwriting as a member of the group;

2323 and

2324 (II) are subject to the same level of regulation and solvency control by the group's

2325 domiciliary regulator as are the unincorporated members; and

2326 (E) within 90 days after the day on which the group's financial statements are due to be
2327 filed with the group's domiciliary regulator, the group shall provide to the commissioner:

2328 (I) an annual certification by the group's domiciliary regulator of the solvency of each
2329 underwriter member; or

2330 (II) if a certification is unavailable, a financial statement, prepared by an independent
2331 public accountant, of each underwriter member of the group.

2332 [~~(iii)~~] (iv) For a group of incorporated underwriters under common administration, the
2333 group shall:

2334 (A) have continuously transacted an insurance business outside the United States for at
2335 least three years immediately preceding the day on which the group makes application for
2336 accreditation;

2337 (B) maintain aggregate policyholders' surplus of at least \$10,000,000,000;

2338 (C) maintain a trust fund in an amount not less than the group's several liabilities
2339 attributable to business ceded by the one or more United States domiciled ceding insurers to a
2340 member of the group pursuant to a reinsurance contract issued in the name of the group;

2341 (D) in addition to complying with the other provisions of this Subsection

2342 (6)(d)[~~(iii)~~](iv), maintain a joint trustee surplus of which \$100,000,000 is held jointly for the
2343 benefit of the one or more United States domiciled ceding insurers of a member of the group as
2344 additional security for these liabilities; and

2345 (E) within 90 days after the day on which the group's financial statements are due to be
2346 filed with the group's domiciliary regulator, make available to the commissioner:

2347 (I) an annual certification of each underwriter member's solvency by the member's
2348 domiciliary regulator; and

2349 (II) a financial statement of each underwriter member of the group prepared by an
2350 independent public accountant.

2351 (7) If reinsurance is ceded to an assuming insurer not meeting the requirements of
2352 Subsection (3), (4), (5), or (6), a domestic ceding insurer is allowed credit only as to the
2353 insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law
2354 or regulation of that jurisdiction.

2355 (8) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
2356 assuming insurer that secures its obligations in accordance with this Subsection (8):

2357 (a) The insurer shall be certified by the commissioner as a reinsurer in this state.

2358 (b) To be eligible for certification, the assuming insurer shall:

2359 (i) be domiciled and licensed to transact insurance or reinsurance in a qualified
2360 jurisdiction, as determined by the commissioner pursuant to Subsection (8)(d);

2361 (ii) maintain minimum capital and surplus, or its equivalent, in an amount to be
2362 determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter
2363 3, Utah Administrative Rulemaking Act;

2364 (iii) maintain financial strength ratings from two or more rating agencies considered
2365 acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter
2366 3, Utah Administrative Rulemaking Act;

2367 (iv) agree to:

2368 (A) submit to the jurisdiction of this state;

2369 (B) appoint the commissioner as its agent for service of process in this state;

2370 (C) provide security for 100% of the assuming insurer's liabilities attributable to
2371 reinsurance ceded by United States ceding insurers if it resists enforcement of a final United
2372 States judgment;

2373 (D) agree to meet applicable information filing requirements as determined by the
2374 commissioner including an application for certification, a renewal and on an ongoing basis; and

2375 (E) any other requirements for certification considered relevant by the commissioner.

2376 (c) An association, including incorporated and individual unincorporated underwriters,
2377 may be a certified reinsurer. To be eligible for certification, in addition to satisfying
2378 requirements of Subsections (8)(a) and (b), the association:

2379 (i) shall satisfy its minimum capital and surplus requirements through the capital and
2380 surplus equivalents, net of liabilities, of the association and its members, which shall include a
2381 joint central fund that may be applied to any unsatisfied obligation of the association or any of

2382 its members in an amount determined by the commissioner to provide adequate protection;
2383 (ii) may not have incorporated members of the association engaged in any business
2384 other than underwriting as a member of the association;
2385 (iii) shall be subject to the same level of regulation and solvency control of the
2386 incorporated members of the association by the association's domiciliary regulator as are the
2387 unincorporated members; and
2388 (iv) within 90 days after its financial statements are due to be filed with the
2389 association's domiciliary regulator provide:
2390 (A) to the commissioner an annual certification by the association's domiciliary
2391 regulator of the solvency of each underwriter member; or
2392 (B) if a certification is unavailable, financial statements prepared by independent
2393 public accountants, of each underwriter member of the association.
2394 (d) The commissioner shall create and publish a list of qualified jurisdictions under
2395 which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be
2396 considered for certification by the commissioner as a certified reinsurer.
2397 (i) To determine whether the domiciliary jurisdiction of a non-United States assuming
2398 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:
2399 (A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory
2400 system of the jurisdiction, both initially and on an ongoing basis;
2401 (B) shall consider the rights, the benefits, and the extent of reciprocal recognition
2402 afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the
2403 United States;
2404 (C) shall require the qualified jurisdiction to share information and cooperate with the
2405 commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and
2406 (D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has
2407 determined that the jurisdiction does not adequately and promptly enforce final United States
2408 judgments and arbitration awards.
2409 (ii) The commissioner may consider additional factors in determining a qualified
2410 jurisdiction.
2411 (iii) A list of qualified jurisdictions shall be published through the National
2412 Association of Insurance Commissioners' Committee Process and the commissioner shall:

- 2413 (A) consider this list in determining qualified jurisdictions; and
- 2414 (B) if the commissioner approves a jurisdiction as qualified that does not appear on the
- 2415 National Association of Insurance Commissioner's list of qualified jurisdictions, provide
- 2416 thoroughly documented justification in accordance with criteria to be developed by rule made
- 2417 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 2418 (iv) United States jurisdictions that meet the requirement for accreditation under the
- 2419 National Association of Insurance Commissioners' financial standards and accreditation
- 2420 program shall be recognized as qualified jurisdictions.
- 2421 (v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,
- 2422 the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.
- 2423 (e) The commissioner shall:
- 2424 (i) assign a rating to each certified reinsurer, giving due consideration to the financial
- 2425 strength ratings that have been assigned by rating agencies considered acceptable to the
- 2426 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 2427 Rulemaking Act; and
- 2428 (ii) publish a list of all certified reinsurers and their ratings.
- 2429 (f) A certified reinsurer shall secure obligations assumed from United States ceding
- 2430 insurers under this Subsection (8) at a level consistent with its rating, as specified in rules made
- 2431 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
- 2432 Rulemaking Act.
- 2433 (i) For a domestic ceding insurer to qualify for full financial statement credit for
- 2434 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a
- 2435 form acceptable to the commissioner and consistent with Section [31A-17-404.1](#), or in a
- 2436 multibeneficiary trust in accordance with Subsections (5), (6), and (7), except as otherwise
- 2437 provided in this Subsection (8).
- 2438 (ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to
- 2439 Subsections (5), (6), and (7), and chooses to secure its obligations incurred as a certified
- 2440 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate
- 2441 trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a
- 2442 certified reinsurer with reduced security as permitted by this Subsection (8) or comparable laws
- 2443 of other United States jurisdictions and for its obligations subject to Subsections (5), (6), and

2444 (7).

2445 (iii) It shall be a condition to the grant of certification under this Subsection (8) that the
2446 certified reinsurer shall have bound itself, by the language of the trust and agreement with the
2447 commissioner with principal regulatory oversight of the trust account, to fund, upon
2448 termination of the trust account, out of the remaining surplus of the trust, any deficiency of any
2449 other the trust account.

2450 (iv) The minimum trusteed surplus requirements provided in Subsections (5), (6), and
2451 (7) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer
2452 for the purpose of securing obligations incurred under this Subsection (8), except that the trust
2453 shall maintain a minimum trusteed surplus of \$10,000,000.

2454 (v) With respect to obligations incurred by a certified reinsurer under this Subsection
2455 (8), if the security is insufficient, the commissioner:

2456 (A) shall reduce the allowable credit by an amount proportionate to the deficiency; and

2457 (B) may impose further reductions in allowable credit upon finding that there is a
2458 material risk that the certified reinsurer's obligations will not be paid in full when due.

2459 (vi) For purposes of this Subsection (8), a certified reinsurer whose certification has
2460 been terminated for any reason shall be treated as a certified reinsurer required to secure 100%
2461 of its obligations.

2462 (A) As used in this Subsection (8), the term "terminated" refers to revocation,
2463 suspension, voluntary surrender, and inactive status.

2464 (B) If the commissioner continues to assign a higher rating as permitted by other
2465 provisions of this section, the requirement under this Subsection (8)(f)(vi) does not apply to a
2466 certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

2467 (g) If an applicant for certification has been certified as a reinsurer in a National
2468 Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:

2469 (i) defer to that jurisdiction's certification;

2470 (ii) defer to the rating assigned by that jurisdiction; and

2471 (iii) consider such reinsurer to be a certified reinsurer in this state.

2472 (h) (i) A certified reinsurer that ceases to assume new business in this state may request
2473 to maintain its certification in inactive status in order to continue to qualify for a reduction in
2474 security for its in-force business.

2475 (ii) An inactive certified reinsurer shall continue to comply with all applicable
2476 requirements of this Subsection (8).

2477 (iii) The commissioner shall assign a rating to a reinsurer that qualifies under this
2478 Subsection (8)(h), that takes into account, if relevant, the reasons why the reinsurer is not
2479 assuming new business.

2480 ~~[(8)]~~ (9) Reinsurance credit may not be allowed a domestic ceding insurer unless the
2481 assuming insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:

2482 (a) (i) being an admitted insurer; and

2483 (ii) submitting to jurisdiction under Section 31A-2-309;

2484 (b) having irrevocably appointed the commissioner as the domestic ceding insurer's
2485 agent for service of process in an action arising out of or in connection with the reinsurance,
2486 which appointment is made under Section 31A-2-309; or

2487 (c) agreeing in the reinsurance contract:

2488 (i) that if the assuming insurer fails to perform its obligations under the terms of the
2489 reinsurance contract, the assuming insurer, at the request of the ceding insurer, shall:

2490 (A) submit to the jurisdiction of a court of competent jurisdiction in a state of the
2491 United States;

2492 (B) comply with all requirements necessary to give the court jurisdiction; and

2493 (C) abide by the final decision of the court or of an appellate court in the event of an
2494 appeal; and

2495 (ii) to designate the commissioner or a specific attorney licensed to practice law in this
2496 state as its attorney upon whom may be served lawful process in an action, suit, or proceeding
2497 instituted by or on behalf of the ceding company.

2498 ~~[(9)]~~ (10) Submitting to the jurisdiction of Utah courts under Subsection ~~[(8)]~~ (9) does
2499 not override a duty or right of a party under the reinsurance contract, including a requirement
2500 that the parties arbitrate their disputes.

2501 ~~[(10)]~~ (11) If an assuming insurer does not meet the requirements of Subsection (3),
2502 (4), or (5), the credit permitted by Subsection (6) or (8) may not be allowed unless the
2503 assuming insurer agrees in the trust instrument to the following conditions:

2504 (a) (i) Notwithstanding any other provision in the trust instrument, if an event
2505 described in Subsection ~~[(10)]~~ (11)(a)(ii) occurs the trustee shall comply with:

- 2506 (A) an order of the commissioner with regulatory oversight over the trust; or
2507 (B) an order of a court of competent jurisdiction directing the trustee to transfer to the
2508 commissioner with regulatory oversight all of the assets of the trust fund.
- 2509 (ii) This Subsection [~~(10)~~] (11)(a) applies if:
- 2510 (A) the trust fund is inadequate because the trust contains an amount less than the
2511 amount required by Subsection (6)(d); or
- 2512 (B) the grantor of the trust is:
- 2513 (I) declared insolvent; or
- 2514 (II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the
2515 laws of its state or country of domicile.
- 2516 (b) The assets of a trust fund described in Subsection [~~(10)~~] (11)(a) shall be distributed
2517 by and a claim shall be filed with and valued by the commissioner with regulatory oversight in
2518 accordance with the laws of the state in which the trust is domiciled that are applicable to the
2519 liquidation of a domestic insurance company.
- 2520 (c) If the commissioner with regulatory oversight determines that the assets of the trust
2521 fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United
2522 States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be
2523 returned by the commissioner with regulatory oversight to the trustee for distribution in
2524 accordance with the trust instrument.
- 2525 (d) A grantor shall waive any right otherwise available to it under United States law
2526 that is inconsistent with this Subsection [~~(10)~~] (11).
- 2527 (12) If an accredited or certified reinsurer ceases to meet the requirements for
2528 accreditation or certification, the commissioner may suspend or revoke the reinsurer's
2529 accreditation or certification.
- 2530 (a) The commissioner shall give the reinsurer notice and opportunity for hearing.
- 2531 (b) The suspension or revocation may not take effect until after the commissioner's
2532 order after a hearing, unless:
- 2533 (i) the reinsurer waives its right to hearing;
- 2534 (ii) the commissioner's order is based on:
- 2535 (A) regulatory action by the reinsurer's domiciliary jurisdiction; or
- 2536 (B) the voluntary surrender or termination of the reinsurer's eligibility to transact

2537 insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state
2538 under Subsection (8)(g); or

2539 (iii) the commissioner's finding that an emergency requires immediate action and a
2540 court of competent jurisdiction has not stayed the commissioner's action.

2541 (c) While a reinsurer's accreditation or certification is suspended, no reinsurance
2542 contract issued or renewed after the effective date of the suspension qualifies for credit except
2543 to the extent that the reinsurer's obligations under the contract are secured in accordance with
2544 Section [31A-17-404.1](#).

2545 (d) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance
2546 may be granted after the effective date of the revocation except to the extent that the reinsurer's
2547 obligations under the contract are secured in accordance with Subsection (8)(f) or Section
2548 [31A-17-404.1](#).

2549 (13) (a) A ceding insurer shall take steps to manage its reinsurance recoverables
2550 proportionate to its own book of business.

2551 (b) (i) A domestic ceding insurer shall notify the commissioner within 30 days after
2552 reinsurance recoverables from any single assuming insurer, or group of affiliated assuming
2553 insurers:

2554 (A) exceeds 50% of the domestic ceding insurer's last reported surplus to
2555 policyholders; or

2556 (B) after it is determined that reinsurance recoverables from any single assuming
2557 insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding
2558 insurer's last reported surplus to policyholders.

2559 (ii) The notification required by Subsection (13)(b)(i) shall demonstrate that the
2560 exposure is safely managed by the domestic ceding insurer.

2561 (c) A ceding insurer shall take steps to diversify its reinsurance program.

2562 (d) (i) A domestic ceding insurer shall notify the commissioner within 30 days after
2563 ceding or being likely to cede more than 20% of the ceding insurer's gross written premium in
2564 the prior calendar year to any:

2565 (A) single assuming insurer; or

2566 (B) group of affiliated assuming insurers.

2567 (ii) The notification shall demonstrate that the exposure is safely managed by the

2568 domestic ceding insurer.

2569 Section 17. Section **31A-17-404.1** is amended to read:

2570 **31A-17-404.1. Asset or reduction from liability for reinsurance ceded by a**
2571 **domestic insurer to other assuming insurers.**

2572 (1) (a) An asset or a reduction from liability for reinsurance ceded by a domestic
2573 insurer to an assuming insurer that does not meet the requirements of Section **31A-17-404** is
2574 allowed in an amount not exceeding the liabilities carried by the ceding insurer.

2575 (b) A reduction described in Subsection (1)(a) shall be in the amount of funds held by
2576 or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

2577 (i) that are held:

2578 (A) under a reinsurance contract with the assuming insurer; and

2579 (B) as security for the payment of obligations under the reinsurance contract; and

2580 (ii) if the security is held:

2581 (A) in the United States subject to withdrawal solely by, and under the exclusive
2582 control of, the ceding insurer; or

2583 (B) in the case of a trust, in a qualified United States financial institution.

2584 (2) Security described in Subsection (1) may be in the form of:

2585 (a) cash;

2586 (b) a security:

2587 (i) listed by the Securities Valuation Office of the National Association of Insurance
2588 Commissioners, including those considered exempt from filing as defined by the Purposes and
2589 Procedures Manual of the Securities Valuation Office; and

2590 (ii) qualifying as an admitted asset;

2591 (c) subject to Subsection (3), a clean, irrevocable, unconditional letter of credit, issued
2592 or confirmed by a qualified United States financial institution:

2593 (i) effective no later than December 31 of the year for which the filing is being made;

2594 and

2595 (ii) in the possession of, or in trust for, the ceding [~~company~~] insurer on or before the
2596 filing date of its annual statement; or

2597 (d) another form of security acceptable to the commissioner.

2598 (3) Notwithstanding an issuing or confirming institution's subsequent failure to meet an

2599 applicable standard of acceptability, a letter of credit described in Subsection (2) that meets the
 2600 applicable standards of issuer acceptability as of the day on which it is issued or confirmed
 2601 shall continue to be acceptable as security until the sooner of the day on which the letter of
 2602 credit expires, is extended, is renewed, is modified, or is amended.

2603 Section 18. Section **31A-17-404.3** is amended to read:

2604 **31A-17-404.3. Rules.**

2605 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
 2606 this chapter, the commissioner may make rules prescribing:

2607 ~~[(1)]~~ (a) the form of a letter of credit required under this chapter;

2608 ~~[(2)]~~ (b) the requirements for a trust or trust instrument required by this chapter;

2609 ~~[(3)]~~ (c) the procedures for licensing and accrediting; ~~[and]~~

2610 ~~[(4)]~~ (d) minimum capital and surplus requirements[-];

2611 (e) additional requirements relating to calculation of credit allowed a domestic ceding
 2612 insurer against reserves for reinsurance under Section [31A-17-404](#); and

2613 (f) additional requirements relating to calculation of asset reduction from liability for
 2614 reinsurance ceded by a domestic insurer to other ceding insurers under Section [31A-17-404.1](#).

2615 (2) A rule made pursuant to Subsection (1)(e) or (1)(f) may apply to reinsurance
 2616 relating to:

2617 (a) a life insurance policy with guaranteed nonlevel gross premiums or guaranteed
 2618 nonlevel benefits;

2619 (b) a universal life insurance policy with provisions resulting in the ability of a
 2620 policyholder to keep a policy in force over a secondary guarantee period;

2621 (c) a variable annuity with guaranteed death or living benefits;

2622 (d) a long-term care insurance policy; or

2623 (e) such other life and health insurance or annuity product as to which the National
 2624 Association of Insurance Commissioners adopts model regulatory requirements with respect
 2625 for credit for reinsurance.

2626 (3) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may apply to a treaty
 2627 containing:

2628 (a) a policy issued on or after January 1, 2015; and

2629 (b) a policy issued before January 1, 2015, if risk pertaining to the policy is ceded in

2630 connection with the treaty, either in whole or in part, on or after January 1, 2015.

2631 (4) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may require the ceding
2632 insurer, in calculating the amounts or forms of security required to be held under rules made
2633 under this section, to use the Valuation Manual adopted by the National Association of
2634 Insurance Commissioners under Section 11B(1) of the National Association of Insurance
2635 Commissioners Standard Valuation Law, including all amendments adopted by the National
2636 Association of Insurance Commissioners and in effect on the date as of which the calculation is
2637 made, to the extent applicable.

2638 (5) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may not apply to cessions to
2639 an assuming insurer that:

2640 (a) is certified in this state or, if this state has not adopted provisions substantially
2641 equivalent to Section 2E of the Credit for Reinsurance Model Law, certified in a minimum of
2642 five other states; or

2643 (b) maintains at least \$250,000,000 in capital and surplus when determined in
2644 accordance with the National Association of Insurance Commissioners Accounting Practices
2645 and Procedures Manual, including all amendments thereto adopted by the National Association
2646 of Insurance Commissioners, excluding the impact of any permitted or prescribed practices and
2647 is:

2648 (i) licensed in at least 26 states; or

2649 (ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35
2650 states.

2651 (6) The authority to adopt rules pursuant to Subsection (1)(e) or (1)(f) does not
2652 otherwise limit the commissioner's general authority to make rules pursuant to Subsection (1).

2653 Section 19. Section **31A-22-202** is amended to read:

2654 **31A-22-202. Protection of third-party claimants.**

2655 (1) ~~No~~ An insurance contract insuring against loss or damage through legal liability
2656 for the bodily injury or death by accident of any person, or for damage to the property of any
2657 person, may not be retroactively abrogated to the detriment of any third-party claimant by any
2658 agreement between the insurer and insured after the occurrence of any injury, death, or damage
2659 for which the insured may be liable. This attempted abrogation is void.

2660 (2) A motor vehicle liability policy may be rescinded or cancelled as to an insured for

2661 fraud, material misrepresentation, or any reason allowable under the law.

2662 (3) A motor vehicle liability policy may not be rescinded for fraud or material
 2663 misrepresentation, as to minimum liability coverage limits under Section 31A-22-304, to the
 2664 detriment of a third party for a loss otherwise covered by the policy.

2665 Section 20. Section **31A-22-603** is amended to read:

2666 **31A-22-603. Persons insured under an individual accident and health policy.**

2667 A policy of individual accident and health insurance may insure only one person, except
 2668 that originally or by subsequent amendment, upon the application of an adult policyholder, a
 2669 policy may insure any two or more eligible members of the policyholder's family, including
 2670 ~~[husband, wife]~~ spouse, dependent children, and any other person dependent upon the
 2671 policyholder.

2672 Section 21. Section **31A-22-715** is amended to read:

2673 **31A-22-715. Alcohol and drug dependency treatment.**

2674 ~~(1) [Each group accident and health insurance policy shall contain an optional rider~~
 2675 ~~allowing certificate holders to obtain] An insurer offering a health benefit plan providing~~
 2676 ~~coverage for alcohol or drug dependency treatment [in programs] may require an inpatient~~
 2677 ~~facility to be licensed by:~~

2678 (a) (i) the Department of Human Services, under Title 62A, Chapter 2, Licensure of
 2679 Programs and Facilities~~[, inpatient hospitals accredited by the joint commission on the~~
 2680 ~~accreditation of hospitals, or facilities licensed by]; or~~

2681 (ii) the Department of Health~~[-]; or~~

2682 (b) for an inpatient facility located outside the state, a state agency similar to one
 2683 described in Subsection (1)(a).

2684 (2) For inpatient coverage provided pursuant to Subsection (1), an insurer may require
 2685 an inpatient facility to be accredited by the following:

2686 (a) the Joint Commission; and

2687 (b) one other nationally recognized accrediting agency.

2688 Section 22. Section **31A-22-1201** is amended to read:

2689 **31A-22-1201. Assumption agreement.**

2690 (1) Subject to Subsection (2), a credit for reinsurance ceded under Section
 2691 ~~31A-17-404~~[; or 31A-17-404.1~~[, or 31A-17-404.2,]~~ is not allowed unless, in addition to

2692 meeting the requirements of Section [31A-17-404](#)[;] or [31A-17-404.1](#)[, or ~~[31A-17-404.2](#)~~], the
2693 reinsurance agreement provides in substance that if the ceding insurer is insolvent, the
2694 reinsurance is payable by the assuming insurer:

2695 (a) on the basis of the liability of the ceding insurer under the contract or contracts
2696 reinsured;

2697 (b) without diminution because of the insolvency of the ceding insurer; and

2698 (c) directly to the ceding insurer or to its domiciliary liquidator or receiver.

2699 (2) Subsection (1) applies except if:

2700 (a) a contract specifically provides another payee of the insurance in the event of the
2701 insolvency of the ceding insurer; or

2702 (b) the assuming insurer, with the consent of the one or more direct insureds, assumes
2703 the policy obligations of the ceding insurer:

2704 (i) as direct obligations of the assuming insurer to the payees under the policies; and

2705 (ii) in substitution for the obligations of the ceding insurer to the payees.

2706 Section 23. Section **31A-23a-111** is amended to read:

2707 **31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
2708 **terminating a license -- Rulemaking for renewal or reinstatement.**

2709 (1) A license type issued under this chapter remains in force until:

2710 (a) revoked or suspended under Subsection (5);

2711 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2712 administrative action;

2713 (c) the licensee dies or is adjudicated incompetent as defined under:

2714 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2715 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2716 Minors;

2717 (d) lapsed under Section [31A-23a-113](#); or

2718 (e) voluntarily surrendered.

2719 (2) The following may be reinstated within one year after the day on which the license
2720 is no longer in force:

2721 (a) a lapsed license; or

2722 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may

2723 not be reinstated after the license period in which the license is voluntarily surrendered.

2724 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
2725 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2726 department from pursuing additional disciplinary or other action authorized under:

2727 (a) this title; or

2728 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2729 Administrative Rulemaking Act.

2730 (4) A line of authority issued under this chapter remains in force until:

2731 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;
2732 or

2733 (b) the supporting license type:

2734 (i) is revoked or suspended under Subsection (5);

2735 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
2736 administrative action;

2737 (iii) lapses under Section [31A-23a-113](#); or

2738 (iv) is voluntarily surrendered; or

2739 (c) the licensee dies or is adjudicated incompetent as defined under:

2740 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2741 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2742 Minors.

2743 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an
2744 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2745 commissioner may:

2746 (i) revoke:

2747 (A) a license; or

2748 (B) a line of authority;

2749 (ii) suspend for a specified period of 12 months or less:

2750 (A) a license; or

2751 (B) a line of authority;

2752 (iii) limit in whole or in part:

2753 (A) a license; or

- 2754 (B) a line of authority; or
- 2755 (iv) deny a license application.
- 2756 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 2757 commissioner finds that the licensee:
- 2758 (i) is unqualified for a license or line of authority under Section 31A-23a-104,
- 2759 31A-23a-105, or 31A-23a-107;
- 2760 (ii) violates:
- 2761 (A) an insurance statute;
- 2762 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 2763 (C) an order that is valid under Subsection 31A-2-201(4);
- 2764 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 2765 delinquency proceedings in any state;
- 2766 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 2767 days after the day on which the judgment became final;
- 2768 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 2769 admitted insurers;
- 2770 (vi) is affiliated with and under the same general management or interlocking
- 2771 directorate or ownership as another insurance producer that transacts business in this state
- 2772 without a license;
- 2773 (vii) refuses:
- 2774 (A) to be examined; or
- 2775 (B) to produce its accounts, records, and files for examination;
- 2776 (viii) has an officer who refuses to:
- 2777 (A) give information with respect to the insurance producer's affairs; or
- 2778 (B) perform any other legal obligation as to an examination;
- 2779 (ix) provides information in the license application that is:
- 2780 (A) incorrect;
- 2781 (B) misleading;
- 2782 (C) incomplete; or
- 2783 (D) materially untrue;
- 2784 (x) violates an insurance law, valid rule, or valid order of another [state's insurance

2785 ~~department]~~ regulatory agency in any jurisdiction;
2786 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
2787 (xii) improperly withholds, misappropriates, or converts money or properties received
2788 in the course of doing insurance business;
2789 (xiii) intentionally misrepresents the terms of an actual or proposed:
2790 (A) insurance contract;
2791 (B) application for insurance; or
2792 (C) life settlement;
2793 (xiv) is convicted of a felony;
2794 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
2795 (xvi) in the conduct of business in this state or elsewhere:
2796 (A) uses fraudulent, coercive, or dishonest practices; or
2797 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
2798 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in
2799 another state, province, district, or territory;
2800 (xviii) forges another's name to:
2801 (A) an application for insurance; or
2802 (B) a document related to an insurance transaction;
2803 (xix) improperly uses notes or another reference material to complete an examination
2804 for an insurance license;
2805 (xx) knowingly accepts insurance business from an individual who is not licensed;
2806 (xxi) fails to comply with an administrative or court order imposing a child support
2807 obligation;
2808 (xxii) fails to:
2809 (A) pay state income tax; or
2810 (B) comply with an administrative or court order directing payment of state income
2811 tax;
2812 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law
2813 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
2814 prohibited from engaging in the business of insurance; or
2815 (xxiv) engages in a method or practice in the conduct of business that endangers the

2816 legitimate interests of customers and the public.

2817 (c) For purposes of this section, if a license is held by an agency, both the agency itself
2818 and any individual designated under the license are considered to be the holders of the license.

2819 (d) If an individual designated under the agency license commits an act or fails to
2820 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
2821 the commissioner may suspend, revoke, or limit the license of:

2822 (i) the individual;

2823 (ii) the agency, if the agency:

2824 (A) is reckless or negligent in its supervision of the individual; or

2825 (B) knowingly participates in the act or failure to act that is the ground for suspending,
2826 revoking, or limiting the license; or

2827 (iii) (A) the individual; and

2828 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

2829 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
2830 without a license if:

2831 (a) the licensee's license is:

2832 (i) revoked;

2833 (ii) suspended;

2834 (iii) limited;

2835 (iv) surrendered in lieu of administrative action;

2836 (v) lapsed; or

2837 (vi) voluntarily surrendered; and

2838 (b) the licensee:

2839 (i) continues to act as a licensee; or

2840 (ii) violates the terms of the license limitation.

2841 (7) A licensee under this chapter shall immediately report to the commissioner:

2842 (a) a revocation, suspension, or limitation of the person's license in another state, the
2843 District of Columbia, or a territory of the United States;

2844 (b) the imposition of a disciplinary sanction imposed on that person by another state,
2845 the District of Columbia, or a territory of the United States; or

2846 (c) a judgment or injunction entered against that person on the basis of conduct

2847 involving:

2848 (i) fraud;

2849 (ii) deceit;

2850 (iii) misrepresentation; or

2851 (iv) a violation of an insurance law or rule.

2852 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
2853 license in lieu of administrative action may specify a time, not to exceed five years, within
2854 which the former licensee may not apply for a new license.

2855 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
2856 former licensee may not apply for a new license for five years from the day on which the order
2857 or agreement is made without the express approval by the commissioner.

2858 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2859 a license issued under this part if so ordered by a court.

2860 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
2861 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2862 Section 24. Section **31A-23a-202** is amended to read:

2863 **31A-23a-202. Continuing education requirements.**

2864 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing
2865 education requirements for a producer and a consultant.

2866 (2) (a) The commissioner may not state a continuing education requirement in terms of
2867 formal education.

2868 (b) The commissioner may state a continuing education requirement in terms of hours
2869 of insurance-related instruction received.

2870 (c) Insurance-related formal education may be a substitute, in whole or in part, for the
2871 hours required under Subsection (2)(b).

2872 (3) (a) The commissioner shall impose continuing education requirements in
2873 accordance with a two-year licensing period in which the licensee meets the requirements of
2874 this Subsection (3).

2875 (b) (i) Except as provided in this section, the continuing education requirements shall
2876 require:

2877 (A) that a licensee complete 24 credit hours of continuing education for every two-year

2878 licensing period;

2879 (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses;

2880 and

2881 (C) that the licensee complete at least half of the required hours through classroom
2882 hours of insurance-related instruction.

2883 (ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be
2884 obtained through:

2885 (A) classroom attendance;

2886 (B) home study;

2887 (C) watching a video recording;

2888 (D) experience credit; or

2889 (E) another method provided by rule.

2890 (iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), an individual title insurance
2891 producer is required to complete 12 credit hours of continuing education for every two-year
2892 licensing period, with 3 of the credit hours being ethics courses unless the individual title
2893 insurance producer is licensed in this state as an individual title insurance producer for 20 or
2894 more consecutive years.

2895 (B) If an individual title insurance producer is licensed in this state as an individual
2896 title insurance producer for 20 or more consecutive years, the individual title insurance
2897 producer is required to complete 6 credit hours of continuing education for every two-year
2898 licensing period, with 3 of the credit hours being ethics courses.

2899 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance
2900 producer is considered to have met the continuing education requirements imposed under
2901 Subsection (3)(b)(iii)(A) or (B) if at the time of license renewal the individual title insurance
2902 producer:

2903 (I) provides the department evidence that the individual title insurance producer is an
2904 active member in good standing with the Utah State Bar;

2905 (II) is in compliance with the continuing education requirements of the Utah State Bar;

2906 and

2907 (III) if requested by the department, provides the department evidence that the
2908 individual title insurance producer complied with the continuing education requirements of the

2909 Utah State Bar.

2910 (c) A licensee may obtain continuing education hours at any time during the two-year
2911 licensing period.

2912 (d) (i) A licensee is exempt from continuing education requirements under this section
2913 if:

2914 (A) the licensee was first licensed before December 31, 1982;

2915 (B) the license does not have a continuous lapse for a period of more than one year,
2916 except for a license for which the licensee has had an exemption approved before May 11,
2917 2011;

2918 (C) the licensee requests an exemption from the department; and

2919 (D) the department approves the exemption.

2920 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is
2921 not required to apply again for the exemption.

2922 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2923 commissioner shall, by rule:

2924 (i) publish a list of insurance professional designations whose continuing education
2925 requirements can be used to meet the requirements for continuing education under Subsection
2926 (3)(b);

2927 (ii) authorize a continuing education provider or a state or national professional
2928 producer or consultant association to:

2929 (A) offer a qualified program for a license type or line of authority on a geographically
2930 accessible basis; and

2931 (B) collect a reasonable fee for funding and administration of a continuing education
2932 program, subject to the review and approval of the commissioner; and

2933 (iii) provide that membership by a producer or consultant in a state or national
2934 professional producer or consultant association is considered a substitute for the equivalent of
2935 two hours for each year during which the producer or consultant is a member of the
2936 professional association, except that the commissioner may not give more than two hours of
2937 continuing education credit in a year regardless of the number of professional associations of
2938 which the producer or consultant is a member.

2939 (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a

2940 professional producer or consultant association program may be less for an association
2941 member, on the basis of the member's affiliation expense, but shall preserve the right of a
2942 nonmember to attend without affiliation.

2943 (4) The commissioner shall approve a continuing education provider or continuing
2944 education course that satisfies the requirements of this section.

2945 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2946 commissioner shall by rule set the processes and procedures for continuing education provider
2947 registration and course approval.

2948 (6) The requirements of this section apply only to a producer or consultant who is an
2949 individual.

2950 (7) A nonresident producer or consultant is considered to have satisfied this state's
2951 continuing education requirements if the nonresident producer or consultant satisfies the
2952 nonresident producer's or consultant's home state's continuing education requirements for a
2953 licensed insurance producer or consultant.

2954 (8) A producer or consultant subject to this section shall keep documentation of
2955 completing the continuing education requirements of this section for two years after the end of
2956 the two-year licensing period to which the continuing education applies.

2957 Section 25. Section **31A-23a-206** is amended to read:

2958 **31A-23a-206. Special requirements for variable contracts line of authority.**

2959 (1) Before applying for a variable contracts line of authority:

2960 (a) a producer shall be licensed under Section [61-1-3](#) as a:

2961 (i) broker-dealer; or

2962 (ii) broker-dealer agent; and

2963 (b) a consultant shall be licensed under Section [61-1-3](#) as an:

2964 (i) investment adviser; or

2965 (ii) investment adviser representative.

2966 (2) A producer's or consultant's variable contracts line of authority is [~~revoked~~]
2967 canceled on the day the producer's or consultant's securities related license under Section
2968 [61-1-3](#) is no longer [~~valid~~] active.

2969 Section 26. Section **31A-23a-410** is amended to read:

2970 **31A-23a-410. Insurer's liability if insured pays premium to a licensee or group**

2971 **policyholder.**

2972 (1) Subject to Subsections (2) and (5), as between the insurer and the insured, the
2973 insurer is considered to have received the premium and is liable to the insured for losses
2974 covered by the insurance and for any unearned premiums upon cancellation of the insurance if
2975 an insurer, including a surplus lines insurer:

2976 (a) assumes a risk; and

2977 (b) the premium for that insurance is received by:

2978 (i) a licensee who placed the insurance;

2979 (ii) a group policyholder;

2980 (iii) an employer who deducts part or all of the premium from an employee's wages or
2981 salary; or

2982 (iv) an employer who pays all or part of the premium for an employee.

2983 (2) Subsection (1) does not apply if:

2984 (a) the insured pays a licensee, knowing the licensee does not intend to submit the
2985 premium to the insurer; or

2986 (b) the insured has premium withheld from the insured's wages or salary knowing the
2987 employer does not intend to submit it to the insurer.

2988 (3) (a) In the case of [~~an employer~~] a group policyholder who has received the premium
2989 [~~by deducting all or part of it from the wages or salaries of the certificate holders~~], the insurer
2990 may terminate its liability by giving notice of coverage termination to:

2991 (i) the certificate holders;

2992 (ii) the policyholder; and

2993 (iii) the producer, if any, for the policy.

2994 (b) The insurer may not send the notice required by Subsection (3)(a) to a certificate
2995 holder before 20 days after the day on which premium is due and unpaid.

2996 (c) The liability of the insurer for the losses covered by the insurance terminates at the
2997 later of:

2998 (i) the last day of the coverage period for which premium has been [~~withheld~~] received
2999 by the [~~employer~~] group policyholder;

3000 (ii) 10 days after the date the insurer mails notice to the certificate holder that coverage
3001 has terminated; or

3002 (iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days
3003 from the last date for which premium is received.

3004 (4) Despite ~~[an employer's]~~ a group policyholder's collection of premium under
3005 Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the
3006 insurance to group policy certificate holders terminates upon the effective date of notice from
3007 the policyholder that:

3008 (a) coverage of a similar kind and quality has been obtained from another insurer; or

3009 (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage
3010 and has given the ~~[employees]~~ certificate holder's notice of the termination.

3011 (5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or
3012 ~~[employer]~~ group policyholder who received the premium and failed to forward it is obligated
3013 to the insurer for the entire unpaid premium due under the policy together with reasonable
3014 expenses of suit and reasonable attorney fees.

3015 (6) If, under an employee health insurance plan, an employee builds up credit for future
3016 coverage because the employee has not used the policy protection, or in some other way, the
3017 insurer is obligated to the employee for that future coverage earned while the policy was in full
3018 effect.

3019 (7) (a) Notwithstanding that an insurer is liable for losses as provided in this section,
3020 this section applies only to apportion the liability for the losses described in this section.

3021 (b) This section does not:

3022 (i) extend a policy or coverage beyond its date of termination; or

3023 (ii) alter or amend a provision of a policy.

3024 Section 27. Section **31A-23a-501** is amended to read:

3025 **31A-23a-501. Licensee compensation.**

3026 (1) As used in this section:

3027 (a) "Commission compensation" includes funds paid to or credited for the benefit of a
3028 licensee from:

3029 (i) commission amounts deducted from insurance premiums on insurance sold by or
3030 placed through the licensee;

3031 (ii) commission amounts received from an insurer or another licensee as a result of the
3032 sale or placement of insurance; or

3033 (iii) overrides, bonuses, contingent bonuses, or contingent commissions received from
3034 an insurer or another licensee as a result of the sale or placement of insurance.

3035 (b) (i) "Compensation from an insurer or third party administrator" means
3036 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,
3037 gifts, prizes, or any other form of valuable consideration:

3038 (A) whether or not payable pursuant to a written agreement; and

3039 (B) received from:

3040 (I) an insurer; or

3041 (II) a third party to the transaction for the sale or placement of insurance.

3042 (ii) "Compensation from an insurer or third party administrator" does not mean
3043 compensation from a customer that is:

3044 (A) a fee or pass-through costs as provided in Subsection (1)(e); or

3045 (B) a fee or amount collected by or paid to the producer that does not exceed an
3046 amount established by the commissioner by administrative rule.

3047 (c) (i) "Customer" means:

3048 (A) the person signing the application or submission for insurance; or

3049 (B) the authorized representative of the insured actually negotiating the placement of
3050 insurance with the producer.

3051 (ii) "Customer" does not mean a person who is a participant or beneficiary of:

3052 (A) an employee benefit plan; or

3053 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or
3054 negotiated by the producer or affiliate.

3055 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the
3056 benefit of a licensee other than commission compensation.

3057 (ii) "Noncommission compensation" does not include charges for pass-through costs
3058 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

3059 (e) "Pass-through costs" include:

3060 (i) costs for copying documents to be submitted to the insurer; and

3061 (ii) bank costs for processing cash or credit card payments.

3062 (2) A licensee may receive from an insured or from a person purchasing an insurance
3063 policy, noncommission compensation if the noncommission compensation is stated on a

3064 separate, written disclosure.

3065 (a) The disclosure required by this Subsection (2) shall:

3066 (i) include the signature of the insured or prospective insured acknowledging the
3067 noncommission compensation;

3068 (ii) clearly specify:

3069 (A) the amount of any known noncommission compensation; and

3070 (B) the type and amount, if known, of any potential and contingent noncommission
3071 compensation; and

3072 (iii) be provided to the insured or prospective insured before the performance of the
3073 service.

3074 (b) Noncommission compensation shall be:

3075 (i) limited to actual or reasonable expenses incurred for services; and

3076 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of
3077 business or for a specific service or services.

3078 (c) A copy of the signed disclosure required by this Subsection (2) shall be maintained
3079 by any licensee who collects or receives the noncommission compensation or any portion of
3080 the noncommission compensation.

3081 (d) All accounting records relating to noncommission compensation shall be
3082 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

3083 (3) (a) A licensee may receive noncommission compensation when acting as a
3084 producer for the insured in connection with the actual sale or placement of insurance if:

3085 (i) the producer and the insured have agreed on the producer's noncommission
3086 compensation; and

3087 (ii) the producer has disclosed to the insured the existence and source of any other
3088 compensation that accrues to the producer as a result of the transaction.

3089 (b) The disclosure required by this Subsection (3) shall:

3090 (i) include the signature of the insured or prospective insured acknowledging the
3091 noncommission compensation;

3092 (ii) clearly specify:

3093 (A) the amount of any known noncommission compensation;

3094 (B) the type and amount, if known, of any potential and contingent noncommission

3095 compensation; and

3096 (C) the existence and source of any other compensation; and

3097 (iii) be provided to the insured or prospective insured before the performance of the
3098 service.

3099 (c) The following additional noncommission compensation is authorized:

3100 (i) compensation received by a producer of a compensated corporate surety who under
3101 procedures approved by a rule or order of the commissioner is paid by surety bond principal
3102 debtors for extra services;

3103 (ii) compensation received by an insurance producer who is also licensed as a public
3104 adjuster under Section 31A-26-203, for services performed for an insured in connection with a
3105 claim adjustment, so long as the producer does not receive or is not promised compensation for
3106 aiding in the claim adjustment prior to the occurrence of the claim;

3107 (iii) compensation received by a consultant as a consulting fee, provided the consultant
3108 complies with the requirements of Section 31A-23a-401; or

3109 (iv) other compensation arrangements approved by the commissioner after a finding
3110 that they do not violate Section 31A-23a-401 and are not harmful to the public.

3111 (d) Subject to Section 31A-23a-402.5, a producer for the insured may receive
3112 compensation from an insured through an insurer, for the negotiation and sale of a health
3113 benefit plan, if there is a separate written agreement between the insured and the licensee for
3114 the compensation. An insurer who passes through the compensation from the insured to the
3115 licensee under this Subsection (3)(d) is not providing direct or indirect compensation or
3116 commission compensation to the licensee.

3117 (4) (a) For purposes of this Subsection (4):

3118 (i) "Large customer" means an employer who, with respect to a calendar year and to a
3119 plan year:

3120 (A) employed an average of at least 100 eligible employees on each business day
3121 during the preceding calendar year; and

3122 (B) employs at least two employees on the first day of the plan year.

3123 (ii) "Producer" includes:

3124 (A) a producer;

3125 (B) an affiliate of a producer; or

- 3126 (C) a consultant.
- 3127 (b) A producer may not accept or receive any compensation from an insurer or third
3128 party administrator for the initial placement of a health benefit plan, other than a hospital
3129 confinement indemnity policy, unless prior to a large customer's initial purchase of the health
3130 benefit plan the producer discloses in writing to the large customer that the producer will
3131 receive compensation from the insurer or third party administrator for the placement of
3132 insurance, including the amount or type of compensation known to the producer at the time of
3133 the disclosure.
- 3134 (c) A producer shall:
- 3135 (i) obtain the large customer's signed acknowledgment that the disclosure under
3136 Subsection (4)(b) was made to the large customer; or
- 3137 (ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to
3138 the large customer; and
- 3139 (B) keep the signed statement on file in the producer's office while the health benefit
3140 plan placed with the large customer is in force.
- 3141 (d) A licensee who collects or receives any part of the compensation from an insurer or
3142 third party administrator in a manner that facilitates an audit shall, while the health benefit plan
3143 placed with the large customer is in force, maintain a copy of:
- 3144 (i) the signed acknowledgment described in Subsection (4)(c)(i); or
3145 (ii) the signed statement described in Subsection (4)(c)(ii).
- 3146 (e) Subsection (4)(c) does not apply to:
- 3147 (i) a person licensed as a producer who acts only as an intermediary between an insurer
3148 and the customer's producer, including a managing general agent; or
- 3149 (ii) the placement of insurance in a secondary or residual market.
- 3150 (f) (i) A producer shall provide to a large customer listed in this Subsection (4)(f) an
3151 annual accounting, as defined by rule made by the department in accordance with Title 63G,
3152 Chapter 3, Utah Administrative Rulemaking Act, of all amounts the producer receives in
3153 commission compensation from an insurer or third party administrator as a result of the sale or
3154 placement of [~~insurance~~] a health benefit plan to a large customer that is:
- 3155 (A) the state;
- 3156 (B) a political subdivision or instrumentality of the state or a combination thereof

3157 primarily engaged in educational activities or the administration or servicing of educational
3158 activities, including the State Board of Education and its instrumentalities, an institution of
3159 higher education and its branches, a school district and its instrumentalities, a vocational and
3160 technical school, and an entity arising out of a consolidation agreement between entities
3161 described under this Subsection (4)(f)(i)(B);

3162 (C) a county, city, town, local district under Title 17B, Limited Purpose Local
3163 Government Entities - Local Districts, special service district under Title 17D, Chapter 1,
3164 Special Service District Act, an entity created by an interlocal cooperation agreement under
3165 Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated
3166 in statute as a political subdivision of the state; or

3167 (D) a quasi-public corporation, that has the same meaning as defined in Section
3168 [63E-1-102](#).

3169 (ii) The department shall pattern the annual accounting required by this Subsection
3170 (4)(f) on the insurance related information on Internal Revenue Service Form 5500 and its
3171 relevant attachments.

3172 (g) At the request of the department, a producer shall provide the department a copy of:

3173 (i) a disclosure required by this Subsection (4); or

3174 (ii) an Internal Revenue Service Form 5500 and its relevant attachments.

3175 (5) This section does not alter the right of any licensee to recover from an insured the
3176 amount of any premium due for insurance effected by or through that licensee or to charge a
3177 reasonable rate of interest upon past-due accounts.

3178 (6) This section does not apply to bail bond producers or bail enforcement agents as
3179 defined in Section [31A-35-102](#).

3180 (7) A licensee may not receive noncommission compensation from an insured or
3181 enrollee for providing a service or engaging in an act that is required to be provided or
3182 performed in order to receive commission compensation, except for the surplus lines
3183 transactions that do not receive commissions.

3184 Section 28. Section **31A-23b-401** is amended to read:

3185 **31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
3186 **terminating a license -- Rulemaking for renewal or reinstatement.**

3187 (1) A license as a navigator under this chapter remains in force until:

- 3188 (a) revoked or suspended under Subsection (4);
- 3189 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
- 3190 administrative action;
- 3191 (c) the licensee dies or is adjudicated incompetent as defined under:
- 3192 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- 3193 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
- 3194 Minors;
- 3195 (d) lapsed under this section; or
- 3196 (e) voluntarily surrendered.
- 3197 (2) The following may be reinstated within one year after the day on which the license
- 3198 is no longer in force:
- 3199 (a) a lapsed license; or
- 3200 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
- 3201 not be reinstated after the license period in which the license is voluntarily surrendered.
- 3202 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
- 3203 license, submission and acceptance of a voluntary surrender of a license does not prevent the
- 3204 department from pursuing additional disciplinary or other action authorized under:
- 3205 (a) this title; or
- 3206 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
- 3207 Administrative Rulemaking Act.
- 3208 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
- 3209 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
- 3210 commissioner may:
- 3211 (i) revoke a license;
- 3212 (ii) suspend a license for a specified period of 12 months or less;
- 3213 (iii) limit a license in whole or in part; or
- 3214 (iv) deny a license application.
- 3215 (b) The commissioner may take an action described in Subsection (4)(a) if the
- 3216 commissioner finds that the licensee:
- 3217 (i) is unqualified for a license under Section [31A-23b-204](#), [31A-23b-205](#), or
- 3218 [31A-23b-206](#);

- 3219 (ii) violated:
- 3220 (A) an insurance statute;
- 3221 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 3222 (C) an order that is valid under Subsection 31A-2-201(4);
- 3223 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 3224 delinquency proceedings in any state;
- 3225 (iv) failed to pay a final judgment rendered against the person in this state within 60
- 3226 days after the day on which the judgment became final;
- 3227 (v) refused:
- 3228 (A) to be examined; or
- 3229 (B) to produce its accounts, records, and files for examination;
- 3230 (vi) had an officer who refused to:
- 3231 (A) give information with respect to the navigator's affairs; or
- 3232 (B) perform any other legal obligation as to an examination;
- 3233 (vii) provided information in the license application that is:
- 3234 (A) incorrect;
- 3235 (B) misleading;
- 3236 (C) incomplete; or
- 3237 (D) materially untrue;
- 3238 (viii) violated an insurance law, valid rule, or valid order of another ~~[state's insurance~~
- 3239 ~~department]~~ regulatory agency in any jurisdiction;
- 3240 (ix) obtained or attempted to obtain a license through misrepresentation or fraud;
- 3241 (x) improperly withheld, misappropriated, or converted money or properties received
- 3242 in the course of doing insurance business;
- 3243 (xi) intentionally misrepresented the terms of an actual or proposed:
- 3244 (A) insurance contract;
- 3245 (B) application for insurance; or
- 3246 (C) application for public program;
- 3247 (xii) is convicted of a felony;
- 3248 (xiii) admitted or is found to have committed an insurance unfair trade practice or
- 3249 fraud;

- 3250 (xiv) in the conduct of business in this state or elsewhere:
- 3251 (A) used fraudulent, coercive, or dishonest practices; or
- 3252 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3253 (xv) had an insurance license, navigator license, or its equivalent, denied, suspended,
- 3254 or revoked in another state, province, district, or territory;
- 3255 (xvi) forged another's name to:
- 3256 (A) an application for insurance;
- 3257 (B) a document related to an insurance transaction;
- 3258 (C) a document related to an application for a public program; or
- 3259 (D) a document related to an application for premium subsidies;
- 3260 (xvii) improperly used notes or another reference material to complete an examination
- 3261 for a license;
- 3262 (xviii) knowingly accepted insurance business from an individual who is not licensed;
- 3263 (xix) failed to comply with an administrative or court order imposing a child support
- 3264 obligation;
- 3265 (xx) failed to:
- 3266 (A) pay state income tax; or
- 3267 (B) comply with an administrative or court order directing payment of state income
- 3268 tax;
- 3269 (xxi) violated or permitted others to violate the federal Violent Crime Control and Law
- 3270 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 3271 prohibited from engaging in the business of insurance; or
- 3272 (xxii) engaged in a method or practice in the conduct of business that endangered the
- 3273 legitimate interests of customers and the public.
- 3274 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 3275 and any individual designated under the license are considered to be the holders of the license.
- 3276 (d) If an individual designated under the agency license commits an act or fails to
- 3277 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
- 3278 the commissioner may suspend, revoke, or limit the license of:
- 3279 (i) the individual;
- 3280 (ii) the agency, if the agency:

- 3281 (A) is reckless or negligent in its supervision of the individual; or
- 3282 (B) knowingly participates in the act or failure to act that is the ground for suspending,
- 3283 revoking, or limiting the license; or
- 3284 (iii) (A) the individual; and
- 3285 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
- 3286 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
- 3287 without a license if:
- 3288 (a) the licensee's license is:
- 3289 (i) revoked;
- 3290 (ii) suspended;
- 3291 (iii) surrendered in lieu of administrative action;
- 3292 (iv) lapsed; or
- 3293 (v) voluntarily surrendered; and
- 3294 (b) the licensee:
- 3295 (i) continues to act as a licensee; or
- 3296 (ii) violates the terms of the license limitation.
- 3297 (6) A licensee under this chapter shall immediately report to the commissioner:
- 3298 (a) a revocation, suspension, or limitation of the person's license in another state, the
- 3299 District of Columbia, or a territory of the United States;
- 3300 (b) the imposition of a disciplinary sanction imposed on that person by another state,
- 3301 the District of Columbia, or a territory of the United States; or
- 3302 (c) a judgment or injunction entered against that person on the basis of conduct
- 3303 involving:
- 3304 (i) fraud;
- 3305 (ii) deceit;
- 3306 (iii) misrepresentation; or
- 3307 (iv) a violation of an insurance law or rule.
- 3308 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
- 3309 license in lieu of administrative action may specify a time, not to exceed five years, within
- 3310 which the former licensee may not apply for a new license.
- 3311 (b) If no time is specified in an order or agreement described in Subsection (7)(a), the

3312 former licensee may not apply for a new license for five years from the day on which the order
3313 or agreement is made without the express approval of the commissioner.

3314 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
3315 a license issued under this chapter if so ordered by a court.

3316 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
3317 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3318 Section 29. Section **31A-25-208** is amended to read:

3319 **31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
3320 **terminating a license -- Rulemaking for renewal and reinstatement.**

3321 (1) A license type issued under this chapter remains in force until:

3322 (a) revoked or suspended under Subsection (4);

3323 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
3324 administrative action;

3325 (c) the licensee dies or is adjudicated incompetent as defined under:

3326 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3327 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
3328 Minors;

3329 (d) lapsed under Section [31A-25-210](#); or

3330 (e) voluntarily surrendered.

3331 (2) The following may be reinstated within one year after the day on which the license
3332 is no longer in force:

3333 (a) a lapsed license; or

3334 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
3335 not be reinstated after the license period in which the license is voluntarily surrendered.

3336 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
3337 license, submission and acceptance of a voluntary surrender of a license does not prevent the
3338 department from pursuing additional disciplinary or other action authorized under:

3339 (a) this title; or

3340 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
3341 Administrative Rulemaking Act.

3342 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an

3343 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
3344 commissioner may:

- 3345 (i) revoke a license;
- 3346 (ii) suspend a license for a specified period of 12 months or less;
- 3347 (iii) limit a license in whole or in part; or
- 3348 (iv) deny a license application.

3349 (b) The commissioner may take an action described in Subsection (4)(a) if the
3350 commissioner finds that the licensee:

3351 (i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;

3352 (ii) has violated:

3353 (A) an insurance statute;

3354 (B) a rule that is valid under Subsection 31A-2-201(3); or

3355 (C) an order that is valid under Subsection 31A-2-201(4);

3356 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
3357 delinquency proceedings in any state;

3358 (iv) fails to pay a final judgment rendered against the person in this state within 60
3359 days after the day on which the judgment became final;

3360 (v) fails to meet the same good faith obligations in claims settlement that is required of
3361 admitted insurers;

3362 (vi) is affiliated with and under the same general management or interlocking
3363 directorate or ownership as another third party administrator that transacts business in this state
3364 without a license;

3365 (vii) refuses:

3366 (A) to be examined; or

3367 (B) to produce its accounts, records, and files for examination;

3368 (viii) has an officer who refuses to:

3369 (A) give information with respect to the third party administrator's affairs; or

3370 (B) perform any other legal obligation as to an examination;

3371 (ix) provides information in the license application that is:

3372 (A) incorrect;

3373 (B) misleading;

- 3374 (C) incomplete; or
- 3375 (D) materially untrue;
- 3376 (x) has violated an insurance law, valid rule, or valid order of another [~~state's insurance~~
- 3377 ~~department~~] regulatory agency in any jurisdiction;
- 3378 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3379 (xii) has improperly withheld, misappropriated, or converted money or properties
- 3380 received in the course of doing insurance business;
- 3381 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3382 (A) insurance contract; or
- 3383 (B) application for insurance;
- 3384 (xiv) has been convicted of a felony;
- 3385 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 3386 or fraud;
- 3387 (xvi) in the conduct of business in this state or elsewhere has:
- 3388 (A) used fraudulent, coercive, or dishonest practices; or
- 3389 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3390 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in
- 3391 any other state, province, district, or territory;
- 3392 (xviii) has forged another's name to:
- 3393 (A) an application for insurance; or
- 3394 (B) a document related to an insurance transaction;
- 3395 (xix) has improperly used notes or any other reference material to complete an
- 3396 examination for an insurance license;
- 3397 (xx) has knowingly accepted insurance business from an individual who is not
- 3398 licensed;
- 3399 (xxi) has failed to comply with an administrative or court order imposing a child
- 3400 support obligation;
- 3401 (xxii) has failed to:
- 3402 (A) pay state income tax; or
- 3403 (B) comply with an administrative or court order directing payment of state income
- 3404 tax;

3405 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
3406 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
3407 prohibited from engaging in the business of insurance; or

3408 (xxiv) has engaged in methods and practices in the conduct of business that endanger
3409 the legitimate interests of customers and the public.

3410 (c) For purposes of this section, if a license is held by an agency, both the agency itself
3411 and any individual designated under the license are considered to be the holders of the agency
3412 license.

3413 (d) If an individual designated under the agency license commits an act or fails to
3414 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
3415 the commissioner may suspend, revoke, or limit the license of:

3416 (i) the individual;

3417 (ii) the agency if the agency:

3418 (A) is reckless or negligent in its supervision of the individual; or

3419 (B) knowingly participated in the act or failure to act that is the ground for suspending,
3420 revoking, or limiting the license; or

3421 (iii) (A) the individual; and

3422 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

3423 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
3424 without a license if:

3425 (a) the licensee's license is:

3426 (i) revoked;

3427 (ii) suspended;

3428 (iii) limited;

3429 (iv) surrendered in lieu of administrative action;

3430 (v) lapsed; or

3431 (vi) voluntarily surrendered; and

3432 (b) the licensee:

3433 (i) continues to act as a licensee; or

3434 (ii) violates the terms of the license limitation.

3435 (6) A licensee under this chapter shall immediately report to the commissioner:

3436 (a) a revocation, suspension, or limitation of the person's license in any other state, the
3437 District of Columbia, or a territory of the United States;

3438 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
3439 the District of Columbia, or a territory of the United States; or

3440 (c) a judgment or injunction entered against the person on the basis of conduct
3441 involving:

3442 (i) fraud;

3443 (ii) deceit;

3444 (iii) misrepresentation; or

3445 (iv) a violation of an insurance law or rule.

3446 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
3447 license in lieu of administrative action may specify a time, not to exceed five years, within
3448 which the former licensee may not apply for a new license.

3449 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
3450 former licensee may not apply for a new license for five years from the day on which the order
3451 or agreement is made without the express approval of the commissioner.

3452 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
3453 a license issued under this part if so ordered by the court.

3454 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
3455 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3456 Section 30. Section 31A-26-213 is amended to read:

3457 **31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
3458 **terminating a license -- Rulemaking for renewal or reinstatement.**

3459 (1) A license type issued under this chapter remains in force until:

3460 (a) revoked or suspended under Subsection (5);

3461 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
3462 administrative action;

3463 (c) the licensee dies or is adjudicated incompetent as defined under:

3464 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3465 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
3466 Minors;

- 3467 (d) lapsed under Section 31A-26-214.5; or
3468 (e) voluntarily surrendered.
- 3469 (2) The following may be reinstated within one year after the day on which the license
3470 is no longer in force:
- 3471 (a) a lapsed license; or
3472 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
3473 not be reinstated after the license period in which it is voluntarily surrendered.
- 3474 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
3475 license, submission and acceptance of a voluntary surrender of a license does not prevent the
3476 department from pursuing additional disciplinary or other action authorized under:
- 3477 (a) this title; or
3478 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
3479 Administrative Rulemaking Act.
- 3480 (4) A license classification issued under this chapter remains in force until:
- 3481 (a) the qualifications pertaining to a license classification are no longer met by the
3482 licensee; or
3483 (b) the supporting license type:
3484 (i) is revoked or suspended under Subsection (5); or
3485 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
3486 administrative action.
- 3487 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an
3488 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
3489 commissioner may:
- 3490 (i) revoke:
3491 (A) a license; or
3492 (B) a license classification;
3493 (ii) suspend for a specified period of 12 months or less:
3494 (A) a license; or
3495 (B) a license classification;
3496 (iii) limit in whole or in part:
3497 (A) a license; or

- 3498 (B) a license classification; or
- 3499 (iv) deny a license application.
- 3500 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 3501 commissioner finds that the licensee:
- 3502 (i) is unqualified for a license or license classification under Section 31A-26-202,
- 3503 31A-26-203, 31A-26-204, or 31A-26-205;
- 3504 (ii) has violated:
- 3505 (A) an insurance statute;
- 3506 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 3507 (C) an order that is valid under Subsection 31A-2-201(4);
- 3508 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
- 3509 delinquency proceedings in any state;
- 3510 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 3511 days after the judgment became final;
- 3512 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 3513 admitted insurers;
- 3514 (vi) is affiliated with and under the same general management or interlocking
- 3515 directorate or ownership as another insurance adjuster that transacts business in this state
- 3516 without a license;
- 3517 (vii) refuses:
- 3518 (A) to be examined; or
- 3519 (B) to produce its accounts, records, and files for examination;
- 3520 (viii) has an officer who refuses to:
- 3521 (A) give information with respect to the insurance adjuster's affairs; or
- 3522 (B) perform any other legal obligation as to an examination;
- 3523 (ix) provides information in the license application that is:
- 3524 (A) incorrect;
- 3525 (B) misleading;
- 3526 (C) incomplete; or
- 3527 (D) materially untrue;
- 3528 (x) has violated an insurance law, valid rule, or valid order of another [state's insurance

3529 ~~department]~~ regulatory agency in any jurisdiction;
3530 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
3531 (xii) has improperly withheld, misappropriated, or converted money or properties
3532 received in the course of doing insurance business;
3533 (xiii) has intentionally misrepresented the terms of an actual or proposed:
3534 (A) insurance contract; or
3535 (B) application for insurance;
3536 (xiv) has been convicted of a felony;
3537 (xv) has admitted or been found to have committed an insurance unfair trade practice
3538 or fraud;
3539 (xvi) in the conduct of business in this state or elsewhere has:
3540 (A) used fraudulent, coercive, or dishonest practices; or
3541 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
3542 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
3543 any other state, province, district, or territory;
3544 (xviii) has forged another's name to:
3545 (A) an application for insurance; or
3546 (B) a document related to an insurance transaction;
3547 (xix) has improperly used notes or any other reference material to complete an
3548 examination for an insurance license;
3549 (xx) has knowingly accepted insurance business from an individual who is not
3550 licensed;
3551 (xxi) has failed to comply with an administrative or court order imposing a child
3552 support obligation;
3553 (xxii) has failed to:
3554 (A) pay state income tax; or
3555 (B) comply with an administrative or court order directing payment of state income
3556 tax;
3557 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
3558 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
3559 prohibited from engaging in the business of insurance; or

3560 (xxiv) has engaged in methods and practices in the conduct of business that endanger
3561 the legitimate interests of customers and the public.

3562 (c) For purposes of this section, if a license is held by an agency, both the agency itself
3563 and any individual designated under the license are considered to be the holders of the license.

3564 (d) If an individual designated under the agency license commits an act or fails to
3565 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
3566 the commissioner may suspend, revoke, or limit the license of:

3567 (i) the individual;

3568 (ii) the agency, if the agency:

3569 (A) is reckless or negligent in its supervision of the individual; or

3570 (B) knowingly participated in the act or failure to act that is the ground for suspending,
3571 revoking, or limiting the license; or

3572 (iii) (A) the individual; and

3573 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

3574 (6) A licensee under this chapter is subject to the penalties for conducting an insurance
3575 business without a license if:

3576 (a) the licensee's license is:

3577 (i) revoked;

3578 (ii) suspended;

3579 (iii) limited;

3580 (iv) surrendered in lieu of administrative action;

3581 (v) lapsed; or

3582 (vi) voluntarily surrendered; and

3583 (b) the licensee:

3584 (i) continues to act as a licensee; or

3585 (ii) violates the terms of the license limitation.

3586 (7) A licensee under this chapter shall immediately report to the commissioner:

3587 (a) a revocation, suspension, or limitation of the person's license in any other state, the
3588 District of Columbia, or a territory of the United States;

3589 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
3590 the District of Columbia, or a territory of the United States; or

3591 (c) a judgment or injunction entered against that person on the basis of conduct
3592 involving:

- 3593 (i) fraud;
- 3594 (ii) deceit;
- 3595 (iii) misrepresentation; or
- 3596 (iv) a violation of an insurance law or rule.

3597 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
3598 license in lieu of administrative action may specify a time not to exceed five years within
3599 which the former licensee may not apply for a new license.

3600 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
3601 former licensee may not apply for a new license for five years without the express approval of
3602 the commissioner.

3603 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
3604 a license issued under this part if so ordered by a court.

3605 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
3606 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3607 Section 31. Section **31A-27a-601** is amended to read:

3608 **31A-27a-601. Filing of claims.**

3609 (1) (a) Subject to the other provisions of this Subsection (1), proof of a claim shall be
3610 filed with the liquidator in the form required by Section [31A-27a-602](#) on or before the last day
3611 for filing specified in the notice required under Section [31A-27a-406](#).

3612 (b) The last day for filing specified in the notice may not be later than 18 months after
3613 the day on which the order of liquidation is entered unless the receivership court, for good
3614 cause shown, extends the time.

3615 (c) Proof of a claim for the following does not need to be filed unless the liquidator
3616 expressly requires filing of proof:

- 3617 (i) cash surrender value in life insurance and annuities;
- 3618 (ii) investment value in life insurance and annuities other than cash surrender value;

3619 and

3620 (iii) any other policy insuring the life of a person.

3621 (d) Only upon application of the liquidator, the receivership court may allow

3622 alternative procedures and requirements for the filing of proof of a claim or for allowing or
3623 proving a claim.

3624 (e) Upon application, if the receivership court dispenses with the requirements of filing
3625 a proof of claim by a person, class, or group of persons, a proof of claim for that person, class,
3626 or group is considered as being filed for all purposes, except that the receivership court's
3627 waiver of proof of claim requirements may not impact guaranty association proof of claim
3628 filing requirements or coverage determinations to the extent that the guaranty association
3629 statute or filing requirements are inconsistent with the receivership court's waiver of proof.

3630 (2) The liquidator may permit a claimant that makes a late filing to share ratably in
3631 distributions, whether past or future, as if the claim were not filed late, to the extent that the
3632 payment will not prejudice the orderly administration of the liquidation, under the following
3633 circumstances:

3634 (a) the eligibility to file a proof of claim was not known to the claimant, and the
3635 claimant files a proof of claim within 90 days after the day on which the claimant first learns of
3636 the eligibility;

3637 (b) (i) a transfer to a creditor is:

3638 (A) avoided under Section [31A-27a-503](#), [31A-27a-504](#), [31A-27a-506](#), or [31A-27a-507](#);

3639 or

3640 (B) voluntarily surrendered under Section [31A-27a-509](#); and

3641 (ii) the filing satisfies the conditions of Section [31A-27a-509](#); or

3642 (c) the valuation of security held by a secured creditor under Section [31A-27a-610](#)
3643 shows a deficiency and the claim for the deficiency is filed within 30 days after the valuation.

3644 (3) If a reinsurer's reinsurance contract terminates pursuant to Section [31A-27a-513](#):

3645 (a) a claim filed by the receiver which arises from the termination may not be
3646 considered late if the claim is filed within 90 days of the day on which the reinsurance contract
3647 terminates; and

3648 (b) the reinsurer shall receive a ratable share of distributions, whether past or future, as
3649 if the claim described in Subsection (3)(a) is not late.

3650 (4) Notwithstanding any other provision of this chapter, the liquidator may petition the
3651 receivership court, subject to Section [31A-27a-107](#), to set a date certain after which no further
3652 claims may be filed.

3653 (5) A Class 1 claim pursuant to Subsection 31A-27a-701(2)(a) is not subject to the
3654 claim filing provisions of this section.

3655 Section 32. Section 31A-27a-605 is amended to read:

3656 **31A-27a-605. Allowance of contingent and unliquidated claims.**

3657 (1) As used in this section, "claim" means a demand for payment pursuant to Section
3658 31A-27a-601 under the terms and conditions of a contract issued by the insurer as a result of a
3659 known accident, casualty, disaster, loss, event, or occurrence.

3660 (2) (a) A claim of an insured or third party may be allowed under Section

3661 31A-27a-603, regardless of the fact that it is contingent or unliquidated if:

3662 (i) any contingency is removed in accordance with Subsection (3); and

3663 (ii) the value of the claim is determined in accordance with Subsection (4).

3664 (b) A claim is contingent if:

3665 (i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or

3666 bonded against occurs on or before the date fixed under Section [31A-27a-601] 31A-27a-401;

3667 and

3668 (ii) the act or event triggering the insurer's obligation to pay has not occurred as of [the]

3669 that date [fixed under Section 31A-27a-401].

3670 (c) A claim is unliquidated if the insurer's obligation to pay is established, but the
3671 amount of the claim has not been determined.

3672 (3) (a) Unless the receivership court directs otherwise, a contingent claim may be
3673 allowed if:

3674 (i) the claimant presents proof of the insurer's obligation to pay reasonably satisfactory
3675 to the liquidator; or

3676 (ii) subject to Subsection (3)(b), the claim is based on a cause of action against an
3677 insured of the insurer, and:

3678 (A) it may be reasonably inferred from proof presented upon the claim that the
3679 claimant would be able to obtain a judgment; and

3680 (B) the person furnishes suitable proof.

3681 (b) A contingent claim may not be allowed under Subsection (3)(a)(ii)(B) if the

3682 receivership court for good cause shown shall otherwise direct that no further valid claims can

3683 be made against the insurer arising out of the cause of action other than those already

3684 presented.

3685 (4) (a) An unliquidated claim may be allowed if its amount has been determined.

3686 (b) If the amount of an unliquidated claim filed pursuant to Section [31A-27a-601](#)
3687 remains undetermined, the valuation of the unliquidated claim may be made by estimate
3688 whenever the liquidator determines that:

3689 (i) liquidation of the claim would unduly delay the administration of the liquidation
3690 proceeding; or

3691 (ii) the administrative expense of processing and adjudicating the claim or group of
3692 claims of a similar type would be unduly excessive when compared with the property that is
3693 estimated to be available for distribution with respect to the claim.

3694 (c) Any estimate shall be based on an accepted method of valuing a claim with
3695 reasonable certainty at the claim's net present value, such as an actuarial evaluation.

3696 (5) (a) Notwithstanding the other provisions of this section, a claim for the value or
3697 breach of a life insurance policy, disability income insurance policy, long-term care insurance
3698 policy, or annuity may not result in or serve as the basis of any liability of a reinsurer of the
3699 insurer.

3700 (b) A reinsurer's liability to the insurer shall be determined exclusively on the basis of
3701 its contracts of reinsurance and Section [31A-27a-513](#).

3702 (6) (a) The liquidator may petition the receivership court to set a date certain before
3703 which all claims under this section shall be final.

3704 (b) In addition to the notice requirements of Section [31A-27a-107](#), the liquidator shall
3705 give notice of the filing of the petition to all claimants with claims that remain contingent or
3706 unliquidated under this section.

3707 Section 33. Section **31A-30-116** is amended to read:

3708 **31A-30-116. Essential health benefits.**

3709 (1) For purposes of this section, the [~~"Affordable Care Act" is as~~] PPACA means the
3710 same as that term is defined in Section [~~31A-2-212~~] [31A-1-301](#) and includes federal rules
3711 related to the offering of essential health benefits.

3712 (2) The state chooses to designate its own essential health benefits rather than accept a
3713 federal determination of the essential health benefits required to be offered in the individual
3714 and small group market for plans renewed or offered on or after January 1, 2014.

3715 (3) (a) Subject to Subsections (3)(b) and (c), to the extent required by the [~~Affordable~~
 3716 ~~Care Act~~] PPACA, and after considering public testimony, the Legislature's Health System
 3717 Reform Task Force shall recommend to the commissioner, no later than September 1, 2012, a
 3718 benchmark plan for the state's essential health benefits based on:

3719 (i) the largest plan by enrollment in any of the three largest small employer group
 3720 insurance products in the state's small employer group market;

3721 (ii) any of the largest three state employee health benefit plans by enrollment;

3722 (iii) the largest insured commercial non-Medicaid health maintenance organization
 3723 operating in the state; or

3724 (iv) other benchmarks required or permitted by the [~~Affordable Care Act~~] PPACA.

3725 (b) Notwithstanding the provisions of Subsection 63N-11-106(2), based on the
 3726 recommendation of the task force under Subsection (3)(a), and within 30 days of the task force
 3727 recommendation, the commissioner shall adopt an emergency administrative rule that
 3728 designates the essential health benefits that shall be included in a plan offered or renewed on or
 3729 after January 1, 2014, in the small employer group and individual markets.

3730 (c) The essential health benefit plan:

3731 (i) shall not include a state mandate if the inclusion of the state mandate would require
 3732 the state to contribute to premium subsidies under the [~~Affordable Care Act~~] PPACA; and

3733 (ii) may add benefits in addition to the benefits included in a benchmark plan described
 3734 in Subsection (3)(b) if the additional benefits are mandated under the [~~Affordable Care Act~~]
 3735 PPACA.

3736 Section 34. Section **31A-30-209** is amended to read:

3737 **31A-30-209. Insurance producers and the Health Insurance Exchange.**

3738 (1) A producer may be listed on the Health Insurance Exchange as a credentialed
 3739 producer if the producer is designated as a credentialed agent for the Health Insurance
 3740 Exchange in accordance with Subsection (2).

3741 (2) A producer whose license under this title authorizes the producer to sell accident
 3742 and health insurance may be credentialed by the Health Insurance Exchange and may sell any
 3743 product on the Health Insurance Exchange, if the producer:

3744 (a) is an appointed producer with:

3745 (i) all carriers that offer a plan in the defined contribution market on the Health

3746 Insurance Exchange; and

3747 (ii) at least one carrier that offers a dental plan on the Health Insurance Exchange; and

3748 (b) completes each year the Health Insurance Exchange training [~~that includes training~~
3749 ~~on premium assistance programs~~].

3750 (3) A carrier shall appoint a producer to sell the carrier's products in the defined
3751 contribution arrangement market of the Health Insurance Exchange, within 30 days of the
3752 notice required in Subsection (3)(b), if:

3753 (a) the producer is currently appointed by a majority of the carriers in the Health
3754 Insurance Exchange to sell products either outside or inside of the Health Insurance Exchange;
3755 and

3756 (b) the producer informs the carrier that the producer is:

3757 (i) applying to be appointed to the defined contribution arrangement market in the
3758 Health Insurance Exchange;

3759 (ii) appointed by a majority of the carriers in the defined contribution arrangement
3760 market in the Health Insurance Exchange;

3761 (iii) willing to complete training regarding the carrier's products offered on the defined
3762 contribution arrangement market in the Health Insurance Exchange; and

3763 (iv) willing to sign the contracts and business associate's agreements that the carrier
3764 requires for appointed producers in the Health Insurance Exchange.

3765 Section 35. Section **31A-31-112** is enacted to read:

3766 **31A-31-112. Insurance antifraud plan.**

3767 (1) An insurer, as defined in Section 31A-31-102, shall prepare, implement, and
3768 maintain an insurance antifraud plan for its operations in this state.

3769 (2) The insurance antifraud plan required by Subsection (1) shall outline specific
3770 procedures, actions, and safeguards that include how the authorized insurer or health
3771 maintenance organization will do each of the following:

3772 (a) detect, investigate, and prevent all forms of insurance fraud, including:

3773 (i) fraud involving its employees or agents;

3774 (ii) fraud resulting from misrepresentations in the application, renewal, or rating of
3775 insurance policies;

3776 (iii) fraudulent claims; and

- 3777 (iv) breach of security of its data processing systems;
- 3778 (b) educate employees of fraud detection and the insurance antifraud plan;
- 3779 (c) provide for fraud investigations, whether through the use of internal fraud
- 3780 investigators or third-party contractors;
- 3781 (d) report a suspected fraudulent insurance act, as described in Section [31A-31-103](#), to
- 3782 the department as required by Section [31A-31-110](#); and
- 3783 (e) pursue restitution for financial loss caused by insurance fraud.
- 3784 (3) The commissioner may investigate and examine the records and operations of
- 3785 authorized insurers and health maintenance organizations to determine if they have
- 3786 implemented and complied with the insurance antifraud plan.
- 3787 (4) The commissioner may:
- 3788 (a) direct any modification to the insurance antifraud plan necessary to comply with the
- 3789 requirements of this section; and
- 3790 (b) require action to remedy substantial noncompliance with the insurance antifraud
- 3791 plan.

3792 Section 36. Section **31A-37-102** is amended to read:

3793 **31A-37-102. Definitions.**

3794 As used in this chapter:

- 3795 (1) "Affiliated company" means a business entity that because of common ownership,
- 3796 control, operation, or management is in the same corporate or limited liability company system
- 3797 as:
- 3798 (a) a parent;
- 3799 (b) an industrial insured; or
- 3800 (c) a member organization.
- 3801 (2) "Alien captive insurance company" means an insurer:
- 3802 (a) formed to write insurance business for a parent or affiliate of the insurer; and
- 3803 (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes
- 3804 statutory or regulatory standards:
- 3805 (i) on a business entity transacting the business of insurance in the alien jurisdiction;
- 3806 and
- 3807 (ii) in a form acceptable to the commissioner.

- 3808 (3) "Association" means a legal association of two or more persons that has been in
3809 continuous existence for at least one year if:
- 3810 (a) the association or its member organizations:
- 3811 (i) own, control, or hold with power to vote all of the outstanding voting securities of
3812 an association captive insurance company incorporated as a stock insurer; or
- 3813 (ii) have complete voting control over an association captive insurance company
3814 incorporated as a mutual insurer;
- 3815 (b) the association's member organizations collectively constitute all of the subscribers
3816 of an association captive insurance company formed as a reciprocal insurer; or
- 3817 (c) the association or its member organizations have complete voting control over an
3818 association captive insurance company formed as a limited liability company.
- 3819 (4) "Association captive insurance company" means a business entity that insures risks
3820 of:
- 3821 (a) a member organization of the association;
- 3822 (b) an affiliate of a member organization of the association; and
- 3823 (c) the association.
- 3824 (5) "Branch business" means an insurance business transacted by a branch captive
3825 insurance company in this state.
- 3826 (6) "Branch captive insurance company" means an alien captive insurance company
3827 that has a certificate of authority from the commissioner to transact the business of insurance in
3828 this state through a ~~[business unit with a principal place of business in]~~ captive insurance
3829 company that is domiciled outside of this state.
- 3830 (7) "Branch operation" means a business operation of a branch captive insurance
3831 company in this state.
- 3832 (8) "Captive insurance company" means any of the following formed or holding a
3833 certificate of authority under this chapter:
- 3834 (a) a branch captive insurance company;
- 3835 (b) a pure captive insurance company;
- 3836 (c) an association captive insurance company;
- 3837 (d) a sponsored captive insurance company;
- 3838 (e) an industrial insured captive insurance company, including an industrial insured

3839 captive insurance company formed as a risk retention group captive in this state pursuant to the
3840 provisions of the Federal Liability Risk Retention Act of 1986;

3841 (f) a special purpose captive insurance company; or

3842 (g) a special purpose financial captive insurance company.

3843 (9) "Commissioner" means Utah's Insurance Commissioner or the commissioner's
3844 designee.

3845 (10) "Common ownership and control" means that two or more captive insurance
3846 companies are owned or controlled by the same person or group of persons as follows:

3847 (a) in the case of a captive insurance company that is a stock corporation, the direct or
3848 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

3849 (b) in the case of a captive insurance company that is a mutual corporation, the direct
3850 or indirect ownership of 80% or more of the surplus and the voting power of the mutual
3851 corporation;

3852 (c) in the case of a captive insurance company that is a limited liability company, the
3853 direct or indirect ownership by the same member or members of 80% or more of the
3854 membership interests in the limited liability company; or

3855 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
3856 captive insurance company owned and controlled by the protected cell's participant, only if:

3857 (i) the participant is the only participant with respect to the protected cell; and

3858 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
3859 captive insurance company through common ownership and control.

3860 (11) "Consolidated debt to total capital ratio" means the ratio of Subsection (11)(a) to
3861 (b).

3862 (a) This Subsection (11)(a) is an amount equal to the sum of all debts and hybrid
3863 capital instruments including:

3864 (i) all borrowings from depository institutions;

3865 (ii) all senior debt;

3866 (iii) all subordinated debts;

3867 (iv) all trust preferred shares; and

3868 (v) all other hybrid capital instruments that are not included in the determination of
3869 consolidated GAAP net worth issued and outstanding.

3870 (b) This Subsection (11)(b) is an amount equal to the sum of:
3871 (i) total capital consisting of all debts and hybrid capital instruments as described in
3872 Subsection (11)(a); and
3873 (ii) shareholders' equity determined in accordance with generally accepted accounting
3874 principles for reporting to the United States Securities and Exchange Commission.
3875 (12) "Consolidated GAAP net worth" means the consolidated shareholders' or
3876 members' equity determined in accordance with generally accepted accounting principles for
3877 reporting to the United States Securities and Exchange Commission.
3878 (13) "Controlled unaffiliated business" means a business entity:
3879 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or
3880 limited liability company system of a parent or the parent's affiliate; or
3881 (ii) in the case of an industrial insured captive insurance company, that is not in the
3882 corporate or limited liability company system of an industrial insured or an affiliated company
3883 of the industrial insured;
3884 (b) (i) in the case of a pure captive insurance company, that has a contractual
3885 relationship with a parent or affiliate; or
3886 (ii) in the case of an industrial insured captive insurance company, that has a
3887 contractual relationship with an industrial insured or an affiliated company of the industrial
3888 insured; and
3889 (c) whose risks are managed by one of the following in accordance with Subsection
3890 [31A-37-106\(1\)\(j\)](#):
3891 (i) a pure captive insurance company; or
3892 (ii) an industrial insured captive insurance company.
3893 (14) "Department" means the Insurance Department.
3894 (15) "Industrial insured" means an insured:
3895 (a) that produces insurance:
3896 (i) by the services of a full-time employee acting as a risk manager or insurance
3897 manager; or
3898 (ii) using the services of a regularly and continuously qualified insurance consultant;
3899 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
3900 and

- 3901 (c) that has at least 25 full-time employees.
- 3902 (16) "Industrial insured captive insurance company" means a business entity that:
- 3903 (a) insures risks of the industrial insureds that comprise the industrial insured group;
- 3904 and
- 3905 (b) may insure the risks of:
- 3906 (i) an affiliated company of an industrial insured; or
- 3907 (ii) a controlled unaffiliated business of:
- 3908 (A) an industrial insured; or
- 3909 (B) an affiliated company of an industrial insured.
- 3910 (17) "Industrial insured group" means:
- 3911 (a) a group of industrial insureds that collectively:
- 3912 (i) own, control, or hold with power to vote all of the outstanding voting securities of
- 3913 an industrial insured captive insurance company incorporated or organized as a limited liability
- 3914 company as a stock insurer; or
- 3915 (ii) have complete voting control over an industrial insured captive insurance company
- 3916 incorporated or organized as a limited liability company as a mutual insurer;
- 3917 (b) a group that is:
- 3918 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901
- 3919 et seq., as amended, as a corporation or other limited liability association; and
- 3920 (ii) taxable under this title as a:
- 3921 (A) stock corporation; or
- 3922 (B) mutual insurer; or
- 3923 (c) a group that has complete voting control over an industrial captive insurance
- 3924 company formed as a limited liability company.
- 3925 (18) "Member organization" means a person that belongs to an association.
- 3926 (19) "Parent" means a person that directly or indirectly owns, controls, or holds with
- 3927 power to vote more than 50% of:
- 3928 (a) the outstanding voting securities of a pure captive insurance company; or
- 3929 (b) the pure captive insurance company, if the pure captive insurance company is
- 3930 formed as a limited liability company.
- 3931 (20) "Participant" means an entity that is insured by a sponsored captive insurance

3932 company:

3933 (a) if the losses of the participant are limited through a participant contract to the assets
3934 of a protected cell; and

3935 (b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

3936 (ii) the entity is an affiliate of an entity permitted to be a participant under Section
3937 31A-37-403.

3938 (21) "Participant contract" means a contract by which a sponsored captive insurance
3939 company:

3940 (a) insures the risks of a participant; and

3941 (b) limits the losses of the participant to the assets of a protected cell.

3942 (22) "Protected cell" means a separate account established and maintained by a
3943 sponsored captive insurance company for one participant.

3944 (23) "Pure captive insurance company" means a business entity that insures risks of a
3945 parent or affiliate of the business entity.

3946 (24) "Special purpose financial captive insurance company" is as defined in Section
3947 31A-37a-102.

3948 (25) "Sponsor" means an entity that:

3949 (a) meets the requirements of Section 31A-37-402; and

3950 (b) is approved by the commissioner to:

3951 (i) provide all or part of the capital and surplus required by applicable law in an amount
3952 of not less than \$350,000, which amount the commissioner may increase by order if the
3953 commissioner considers it necessary; and

3954 (ii) organize and operate a sponsored captive insurance company.

3955 (26) "Sponsored captive insurance company" means a captive insurance company:

3956 (a) in which the minimum capital and surplus required by applicable law is provided by
3957 one or more sponsors;

3958 (b) that is formed or holding a certificate of authority under this chapter;

3959 (c) that insures the risks of a separate participant through the contract; and

3960 (d) that segregates each participant's liability through one or more protected cells.

3961 (27) "Treasury rates" means the United States Treasury strip asked yield as published
3962 in the Wall Street Journal as of a balance sheet date.

3963 Section 37. Section **31A-37-103** is amended to read:

3964 **31A-37-103. Chapter exclusivity.**

3965 (1) Except as provided in Subsections (2) and (3) or otherwise provided in this chapter,
3966 a provision of this title other than this chapter does not apply to a captive insurance company.

3967 (2) To the extent that a provision of the following does not contradict this chapter, the
3968 provision applies to a captive insurance company that receives a certificate of authority under
3969 this chapter:

3970 (a) Chapter 2, Administration of the Insurance Laws;

3971 (b) Chapter 4, Insurers in General;

3972 (c) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

3973 (d) Chapter 14, Foreign Insurers;

3974 (e) Chapter 16, Insurance Holding Companies;

3975 (f) Chapter 17, Determination of Financial Condition;

3976 (g) Chapter 18, Investments;

3977 (h) Chapter 19a, Utah Rate Regulation Act;

3978 (i) Chapter 27, Delinquency Administrative Action Provisions; and

3979 (j) Chapter 27a, Insurer Receivership Act.

3980 (3) In addition to this chapter, and subject to Section **31A-37a-103**:

3981 (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to
3982 a special purpose financial captive insurance company; and

3983 (b) for purposes of a special purpose financial captive insurance company, a reference
3984 in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial
3985 Captive Insurance Company Act.

3986 (4) In addition to this chapter, an industrial group captive insurance company formed
3987 as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to
3988 the extent that this chapter is silent regarding regulation of risk retention groups conducting
3989 business in the state.

3990 Section 38. Section **31A-37-204** is amended to read:

3991 **31A-37-204. Paid-in capital -- Other capital.**

3992 (1) (a) The commissioner may not issue a certificate of authority to a company
3993 described in Subsection (1)(c) unless the company possesses and thereafter maintains

- 3994 unimpaired paid-in capital and unimpaired paid-in surplus of:
- 3995 (i) in the case of a pure captive insurance company, not less than \$250,000;
- 3996 (ii) in the case of an association captive insurance company incorporated as a stock
3997 insurer, not less than \$750,000;
- 3998 (iii) in the case of an industrial insured captive insurance company incorporated as a
3999 stock insurer, not less than \$700,000;
- 4000 (iv) in the case of a sponsored captive insurance company, not less than \$1,000,000, of
4001 which a minimum of \$350,000 is provided by the sponsor; or
- 4002 (v) in the case of a special purpose captive insurance company, an amount determined
4003 by the commissioner after giving due consideration to the company's business plan, feasibility
4004 study, and pro-formas, including the nature of the risks to be insured.
- 4005 (b) The paid-in capital and surplus required under this Subsection (1) may be in the
4006 form of:
- 4007 (i) (A) cash; or
- 4008 (B) cash equivalent; [~~or~~]
- 4009 (ii) an irrevocable letter of credit:
- 4010 (A) issued by:
- 4011 (I) a bank chartered by this state; or
- 4012 (II) a member bank of the Federal Reserve System; and
- 4013 (B) approved by the commissioner[~~;~~]; or
- 4014 (iii) marketable securities as determined by Subsections [31A-18-105\(1\)](#) and (6).
- 4015 (c) This Subsection (1) applies to:
- 4016 (i) a pure captive insurance company;
- 4017 (ii) a sponsored captive insurance company;
- 4018 (iii) a special purpose captive insurance company;
- 4019 (iv) an association captive insurance company incorporated as a stock insurer; or
- 4020 (v) an industrial insured captive insurance company incorporated as a stock insurer.
- 4021 (2) (a) The commissioner may, under Section [31A-37-106](#), prescribe additional capital
4022 based on the type, volume, and nature of insurance business transacted.
- 4023 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the
4024 form of:

- 4025 (i) cash; [or]
- 4026 (ii) an irrevocable letter of credit issued by:
- 4027 (A) a bank chartered by this state; or
- 4028 (B) a member bank of the Federal Reserve System[-]; or
- 4029 (iii) marketable securities as determined by Subsections [31A-18-105\(1\)](#) and (6).
- 4030 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as
- 4031 security for the payment of liabilities attributable to branch operations, shall, through its branch
- 4032 operations, establish and maintain a trust fund:
- 4033 (i) funded by an irrevocable letter of credit or other acceptable asset; and
- 4034 (ii) in the United States for the benefit of:
- 4035 (A) United States policyholders; and
- 4036 (B) United States ceding insurers under:
- 4037 (I) insurance policies issued; or
- 4038 (II) reinsurance contracts issued or assumed.
- 4039 (b) The amount of the security required under this Subsection (3) shall be no less than:
- 4040 (i) the capital and surplus required by this chapter; and
- 4041 (ii) the reserves on the insurance policies or reinsurance contracts, including:
- 4042 (A) reserves for losses;
- 4043 (B) allocated loss adjustment expenses;
- 4044 (C) incurred but not reported losses; and
- 4045 (D) unearned premiums with regard to business written through branch operations.
- 4046 (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may
- 4047 permit a branch captive insurance company that is required to post security for loss reserves on
- 4048 branch business by its reinsurer to reduce the funds in the trust account required by this section
- 4049 by the same amount as the security posted if the security remains posted with the reinsurer.
- 4050 (4) (a) A captive insurance company may not pay the following without the prior
- 4051 approval of the commissioner:
- 4052 (i) a dividend out of capital or surplus in excess of the limits under Section
- 4053 [16-10a-640](#); or
- 4054 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
- 4055 [16-10a-640](#).

4056 (b) The commissioner shall condition approval of an ongoing plan for the payment of
4057 dividends or other distributions on the retention, at the time of each payment, of capital or
4058 surplus in excess of:

- 4059 (i) amounts specified by the commissioner under Section [31A-37-106](#); or
- 4060 (ii) determined in accordance with formulas approved by the commissioner under
4061 Section [31A-37-106](#).

4062 (5) Notwithstanding Subsection (1), a captive insurance company organized as a
4063 reciprocal insurer under this chapter may not be issued a certificate of authority unless the
4064 captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.

4065 (6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based
4066 upon the type, volume, and nature of the insurance business transacted.

4067 (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the
4068 form of an irrevocable letter of credit issued by:

- 4069 (i) a bank chartered by this state; or
- 4070 (ii) a member bank of the Federal Reserve System.

4071 Section 39. Section **31A-37-303** is amended to read:

4072 **31A-37-303. Reinsurance.**

4073 (1) A captive insurance company may provide reinsurance, as authorized in this title,
4074 on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.

4075 (2) (a) A captive insurance company may take credit for reserves on risks or portions of
4076 risks ceded to reinsurers if the captive insurance company complies with Section [31A-17-404](#),
4077 [31A-17-404.1](#), [31A-17-404.3](#), or [31A-17-404.4](#) or if the captive insurance company complies
4078 with other requirements as the commissioner may establish by rule made in accordance with
4079 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4080 (b) Unless the reinsurer is in compliance with Section [31A-17-404](#), [31A-17-404.1](#),
4081 [31A-17-404.3](#), or [31A-17-404.4](#) or a rule adopted under Subsection (2)(a), a captive insurance
4082 company may not take credit for:

- 4083 (i) reserves on risks ceded to a reinsurer; or
- 4084 (ii) portions of risks ceded to a reinsurer.

4085 Section 40. Section **31A-37-501** is amended to read:

4086 **31A-37-501. Reports to commissioner.**

4087 (1) A captive insurance company is not required to make a report except those
4088 provided in this chapter.

4089 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the
4090 commissioner a report of the financial condition of the captive insurance company, verified by
4091 oath of ~~two~~ one of the executive officers of the captive insurance company.

4092 (b) Except as provided in Section 31A-37-204, a captive insurance company shall
4093 report:

4094 (i) using generally accepted accounting principles, except to the extent that the
4095 commissioner requires, approves, or accepts the use of a statutory accounting principle;

4096 (ii) using a useful or necessary modification or adaptation to an accounting principle
4097 that is required, approved, or accepted by the commissioner for the type of insurance and kind
4098 of insurer to be reported upon; and

4099 (iii) supplemental or additional information required by the commissioner.

4100 (c) Except as otherwise provided:

4101 (i) a licensed captive insurance company shall file the report required by Section
4102 31A-4-113; and

4103 (ii) an industrial insured group shall comply with Section 31A-4-113.5.

4104 (3) (a) A pure captive insurance company may make written application to file the
4105 required report on a fiscal year end that is consistent with the fiscal year of the parent company
4106 of the pure captive insurance company.

4107 (b) If the commissioner grants an alternative reporting date for a pure captive insurance
4108 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal
4109 year end.

4110 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall
4111 file with the commissioner a copy of the reports and statements required to be filed under the
4112 laws of the jurisdiction in which the alien captive insurance company is formed, verified by
4113 oath by two of the alien captive insurance company's executive officers.

4114 (b) If the commissioner is satisfied that the annual report filed by the alien captive
4115 insurance company in the jurisdiction in which the alien captive insurance company is formed
4116 provides adequate information concerning the financial condition of the alien captive insurance
4117 company, the commissioner may waive the requirement for completion of the annual statement

4118 required for a captive insurance company under this section with respect to business written in
4119 the alien or foreign jurisdiction.

4120 (c) A waiver by the commissioner under Subsection (4)(b):

4121 (i) shall be in writing; and

4122 (ii) is subject to public inspection.

4123 (5) Before March 1 of each year, a sponsored cell captive insurance company shall
4124 submit to the commissioner a consolidated report of the financial condition of each individual
4125 protected cell, including a financial statement for each protected cell.

4126 Section 41. Section **31A-37-502** is amended to read:

4127 **31A-37-502. Examination.**

4128 (1) (a) As provided in this section, the commissioner, or a person appointed by the
4129 commissioner, shall examine each captive insurance company in each five-year period.

4130 (b) The five-year period described in Subsection (1)(a) shall be determined on the basis
4131 of five full annual accounting periods of operation.

4132 (c) The examination is to be made as of:

4133 (i) December 31 of the full [~~three-year~~] five-year period; or

4134 (ii) the last day of the month of an annual accounting period authorized for a captive
4135 insurance company under this section.

4136 (d) In addition to an examination required under this Subsection (1), the commissioner,
4137 or a person appointed by the commissioner may examine a captive insurance company
4138 whenever the commissioner determines it to be prudent.

4139 (2) During an examination under this section the commissioner, or a person appointed
4140 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance
4141 company to ascertain:

4142 (a) the financial condition of the captive insurance company;

4143 (b) the ability of the captive insurance company to fulfill the obligations of the captive
4144 insurance company; and

4145 (c) whether the captive insurance company has complied with this chapter.

4146 (3) The commissioner may accept a comprehensive annual independent audit in lieu of
4147 an examination:

4148 (a) of a scope satisfactory to the commissioner; and

4149 (b) performed by an independent auditor approved by the commissioner.

4150 (4) A captive insurance company that is inspected and examined under this section
4151 shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an
4152 inspection and examination.

4153 Section 42. Section 31A-40-208 is amended to read:

4154 **31A-40-208. Benefit plan.**

4155 (1) A client and a professional employer organization licensed under this chapter shall
4156 each be considered an employer for purposes of sponsoring a retirement or welfare benefit plan
4157 for a covered employee.

4158 (2) (a) A fully insured welfare benefit plan offered to a covered employee of a single
4159 professional employer organization licensed under this chapter[-(a)] is to be treated as a single
4160 employer welfare benefit plan for purposes of this title and rules made under this title[;].

4161 [~~(b) may not be considered an employer welfare fund or plan, as described in Section~~
4162 ~~31A-13-101; and]~~

4163 [(~~e~~)] (b) The single professional employer organization that sponsors the fully insured
4164 welfare plan is exempt from the registration requirements under this title for:

4165 (i) an insurance provider; or

4166 (ii) an employer welfare fund or plan.

4167 (3) For purposes of Chapter 30, Individual, Small Employer, and Group Health
4168 Insurance Act:

4169 (a) a professional employer organization licensed under this chapter is considered the
4170 employer of a covered employee; and

4171 (b) all covered employees of one or more clients participating in a health benefit plan
4172 sponsored by a single professional employer organization licensed under this chapter are
4173 considered employees of that professional employer organization.

4174 (4) A professional employer organization licensed under this chapter may offer to a
4175 covered employee a health benefit plan that is not fully insured by an authorized insurer, only
4176 if:

4177 (a) the professional employer organization has operated as a professional employer
4178 organization for at least one year before the day on which the professional employer
4179 organization offers the health benefit plan; and

- 4180 (b) the health benefit plan:
- 4181 (i) is administered by a third-party administrator licensed to do business in this state;
- 4182 (ii) holds all assets of the health benefit plan, including participant contributions, in a
4183 trust account;
- 4184 (iii) has and maintains reserves that are sound for the health benefit plan as determined
4185 by an actuary who:
- 4186 (A) uses generally accepted actuarial standards of practice; and
- 4187 (B) is an independent qualified actuary, including not being an employee or covered
4188 employee of the professional employer organization;
- 4189 (iv) provides written notice to a covered employee participating in the health benefit
4190 plan that the health benefit plan is self-insured or is not fully insured;
- 4191 (v) consents to an audit:
- 4192 (A) on a random basis; or
- 4193 (B) upon a finding of a reasonable need by the commissioner; and
- 4194 (vi) provides for continuation of coverage in compliance with Section [31A-22-722](#).
- 4195 (5) The cost of an audit described in Subsection (4)(b)(v) shall be paid by the
4196 sponsoring professional employer organization.
- 4197 (6) A plan of a professional employer organization described in Subsection (4) that is
4198 not fully insured:
- 4199 (a) is subject to the requirements of this section; and
- 4200 (b) is not subject to another licensure or approval requirement of this title.
- 4201 Section 43. Section ~~31A-41-202~~ is amended to read:
- 4202 **31A-41-202. Assessments.**
- 4203 (1) [~~Beginning January 1, 2009, an~~] An agency title insurance producer licensed under
4204 this title shall pay an annual assessment determined by the commission by rule made in
4205 accordance with Section [31A-2-404](#), except that the annual assessment:
- 4206 (a) may not exceed \$1,000; and
- 4207 (b) shall be determined on the basis of title insurance premium volume.
- 4208 (2) [~~Beginning January 1, 2009, an~~] An individual who applies for a license or renewal
4209 of a license as an individual title insurance producer, shall pay in addition to any other fee
4210 required by this title, an assessment not to exceed \$20, as determined by the commission by

4211 rule made in accordance with Section 31A-2-404, except that if the individual holds more than
4212 one license, the total of all assessments under this Subsection (2) may not exceed \$20 in a
4213 fiscal year.

4214 (3) (a) To be licensed as an agency title insurance producer [~~on or after July 1, 2008~~], a
4215 person shall pay to the department an assessment of \$1,000 before the day on which the person
4216 is licensed as a title insurance agency.

4217 (b) (i) [~~By no later than July 15, 2008, the~~] The department shall assess on [~~an~~] a
4218 licensed agency title insurance producer [~~licensed as of June 30, 2008;~~] an amount equal to the
4219 greater of:

4220 (A) \$1,000; or

4221 (B) subject to Subsection (3)(b)(ii), 2% of the balance [~~as of December 31, 2007;~~] in
4222 the agency title insurance producer's reserve account described in Subsection 31A-23a-204(3).

4223 (ii) The department may assess on an agency title insurance producer an amount less
4224 than 2% of the balance described in Subsection (3)(b)(i)(B) if:

4225 (A) before issuing the assessments under this Subsection (3)(b) the department
4226 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

4227 (B) the amount assessed on the agency title insurance producer is not less than \$1,000;
4228 and

4229 (C) the department reduces the assessment in a proportionate amount for agency title
4230 insurance producers assessed on the basis of the 2% of the balance described in Subsection
4231 (3)(b)(i)(B).

4232 (iii) An agency title insurance producer assessed under this Subsection (3)(b) shall pay
4233 the assessment by no later than August 1 [~~, 2008~~].

4234 (4) The department may not assess a title insurance licensee an assessment for
4235 purposes of the fund if that assessment is not expressly provided for in this section.

4236 Section 44. Section 31A-41-301 is amended to read:

4237 **31A-41-301. Procedure for making a claim against the fund.**

4238 [~~(1) (a) To bring a claim against the fund a person shall notify the department within 30~~
4239 ~~business days of the day on which the person files an action against a title insurance licensee~~
4240 ~~alleging the following related to a title insurance transaction:]~~

4241 [~~(i) fraud;~~]

4242 ~~[(ii) misrepresentation; or]~~
4243 ~~[(iii) deceit.]~~
4244 ~~[(b) The notification required by Subsection (1)(a) shall be:]~~
4245 ~~[(i) in writing; and]~~
4246 ~~[(ii) signed by the person who provides the notice.]~~
4247 ~~[(c) Within 30 days of the day on which the department receives a notice under~~
4248 ~~Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).]~~
4249 ~~[(2) (a) Subject to the other provisions in this section, a person who provides the notice~~
4250 ~~required under Subsection (1) may maintain a claim against the fund if:]~~
4251 ~~[(i) in an action described in Subsection (1), the person obtains a final judgment in a~~
4252 ~~court of competent jurisdiction in this state against a title insurance licensee;]~~
4253 ~~[(ii) all proceedings including appeals related to the final judgment described in~~
4254 ~~Subsection (2)(a)(i) are at an end; and]~~
4255 ~~[(iii) the person files a verified petition in the court where the judgment is entered for~~
4256 ~~an order directing payment from the fund for the uncollected actual damages included in the~~
4257 ~~judgment and unpaid;]~~
4258 ~~[(b) A court may not direct the payment from the fund of:]~~
4259 ~~[(i) punitive damages;]~~
4260 ~~[(ii) attorney fees;]~~
4261 ~~[(iii) interest; or]~~
4262 ~~[(iv) court costs.]~~
4263 ~~[(c) Regardless of the number of claimants or parcels of real estate involved in a single~~
4264 ~~real estate transaction, the liability of the fund may not exceed:]~~
4265 ~~[(i) \$15,000 for a single real estate transaction; or]~~
4266 ~~[(ii) \$50,000 for all transactions of a title insurance license.]~~
4267 ~~[(d) A person shall:]~~
4268 ~~[(i) serve the verified petition required by Subsection (2)(a) on the department; and]~~
4269 ~~[(ii) file an affidavit of service with the court.]~~
4270 ~~[(3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days~~
4271 ~~after the day on which the department is served.]~~
4272 ~~[(b) The person who files the petition may recover from the fund only if the person~~

4273 ~~shows all of the following:]~~

4274 (1) To recover from the fund, a person shall:

4275 (a) obtain a final judgment against a title insurance licensee establishing that fraud,
4276 misrepresentation, or deceit by the licensee in a real estate transaction proximately caused

4277 economic harm to the person; and

4278 (b) apply to the department to receive compensation for the economic harm from the
4279 fund.

4280 (2) An application under Subsection (1)(b) shall establish all of the following:

4281 ~~[(i)]~~ (a) the [person] applicant is not a spouse of the judgment debtor or the personal
4282 representative of the spouse;

4283 ~~[(ii)] the person complied with this chapter;]~~

4284 ~~[(iii)]~~ (b) the [person] applicant has obtained a final judgment in accordance with [this
4285 section indicating the amount of the judgment awarded] Subsections (1)(a) and (3);

4286 ~~[(iv)]~~ (c) [the] an amount is still [owing] owed on the judgment at the date of the
4287 [petition] application;

4288 ~~[(v)]~~ (d) the [person] applicant has had a writ of execution issued under the judgment,
4289 and the officer executing the writ has returned showing that:

4290 ~~[(A)]~~ (i) no property subject to execution in satisfaction of the judgment could be
4291 found; or

4292 ~~[(B)]~~ (ii) the amount realized upon the execution levied against the property of the
4293 judgment debtor is insufficient to satisfy the judgment;

4294 ~~[(vi)]~~ (e) the [person] applicant has made reasonable searches and inquiries to ascertain
4295 whether the judgment debtor has any interest in property, real or personal, that may satisfy the
4296 judgment; and

4297 ~~[(vii)]~~ (f) the [person] applicant has exercised reasonable diligence to secure payment
4298 of the judgment from the assets of the judgment debtor.

4299 ~~[(4) If the person described in Subsection (3) satisfies the court that it is not practicable~~
4300 ~~for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through~~
4301 ~~(vii), the court may waive those requirements.]~~

4302 ~~[(5) (a) A judgment that is the basis for a claim against the fund may not have been~~
4303 ~~discharged in bankruptcy.]~~

4304 ~~[(b) If a bankruptcy proceeding is still open or is commenced during the pendency of~~
4305 ~~the claim, the person bringing a claim against the fund shall obtain an order from the~~
4306 ~~bankruptcy court declaring the judgement and debt to be nondischargeable.]~~

4307 (3) (a) A final judgment under Subsection (1)(a) does not include a default judgment
4308 entered against a title insurance licensee. If grounds exist for a default judgment against a title
4309 insurance licensee, the requirement of a final judgment may be satisfied by complying with
4310 Section 31A-41-302.

4311 (b) A final judgment under Subsection (1)(a) does not include a judgment that is
4312 discharged in bankruptcy. If a bankruptcy proceeding is open or is commenced during the
4313 pendency of an application under Subsection (1)(b) before the department or the court, the
4314 applicant shall obtain an order from the bankruptcy court declaring the judgment and debt to be
4315 non-dischargeable.

4316 (4) The department may hold a hearing on the application filed pursuant to Subsection
4317 (2). The hearing shall be an informal adjudicative proceeding under Title 63G, Chapter 4,
4318 Administrative Procedures Act, with rights of appeal as provided in Title 63G, Chapter 4,
4319 Administrative Procedures Act.

4320 Section 45. Section 31A-41-302 is repealed and reenacted to read:

4321 **31A-41-302. Department may defend action in which title insurance licensee does**
4322 **not appear or defend.**

4323 (1) In a lawsuit alleging that fraud, misrepresentation, or deceit by a title insurance
4324 licensee in a real estate transaction proximately caused economic harm, if grounds arise for the
4325 entry of a default judgment against the title insurance licensee, the plaintiff may petition the
4326 court to join the department as a defendant in the lawsuit.

4327 (2) After being served, the department may appear, conduct discovery, and otherwise
4328 defend against any claim asserted against the title insurance licensee for which the fund may be
4329 liable under this part. A judgment under this Subsection (2) may not be issued against the
4330 department.

4331 Section 46. Section 31A-41-303 is amended to read:

4332 **31A-41-303. Determination and amount of fund liability.**

4333 (1) Subject to the requirements of this part, if the [court] department determines that a
4334 claim should be levied against the fund, the [court] department shall enter an order [directing

4335 ~~the department to pay from the fund]~~ that the fund pay that portion of the petitioner's judgment
4336 that is [payable] eligible for payment from the fund.

4337 (2) A payment from the fund may not compensate for punitive damages, attorney fees,
4338 interest, or court costs.

4339 (3) Regardless of the number of claimants or parcels of real estate involved in a single
4340 transaction, the liability of the fund may not exceed:

4341 (a) \$15,000 for a single real estate transaction; or

4342 (b) \$50,000 for all transactions of a title insurance licensee.

4343 Section 47. Section **63I-2-231** is amended to read:

4344 **63I-2-231. Repeal dates, Title 31A.**

4345 (1) Section 31A-22-315.5 is repealed July 1, [~~2016~~] 2019.

4346 (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed [~~July 1,~~
4347 ~~2016~~] December 31, 2018.

4348 Section 48. **Health Reform Task Force -- Creation -- Membership -- Interim rules**
4349 **followed -- Compensation -- Staff.**

4350 (1) There is created the Health Reform Task Force consisting of the following 11
4351 members:

4352 (a) four members of the Senate appointed by the president of the Senate, no more than
4353 three of whom may be from the same political party; and

4354 (b) seven members of the House of Representatives appointed by the speaker of the
4355 House of Representatives, no more than five of whom may be from the same political party.

4356 (2) (a) The president of the Senate shall designate a member of the Senate appointed
4357 under Subsection (1)(a) as a cochair of the task force.

4358 (b) The speaker of the House of Representatives shall designate a member of the House
4359 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

4360 (3) In conducting its business, the task force shall comply with the rules of legislative
4361 interim committees.

4362 (4) Salaries and expenses of the members of the task force shall be paid in accordance
4363 with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

4364 (5) The Office of Legislative Research and General Counsel shall provide staff support
4365 to the task force.

4366 Section 49. **Duties -- Interim Report.**

4367 (1) The task force shall review and make recommendations on the following issues:

4368 (a) substance abuse and mental health;

4369 (b) telehealth services;

4370 (c) health professional licensing;

4371 (d) regulation of health maintenance organizations and preferred provider

4372 organizations;

4373 (e) balanced billing for covered medical services;

4374 (f) re-codification of the health insurance related parts of Title 31A, Insurance Code;

4375 and

4376 (g) the state Medicaid program.

4377 (2) A final report, including any proposed legislation, shall be presented to the

4378 Business and Labor Interim Committee before November 30, 2016.

4379 Section 50. **Repealer.**

4380 This bill repeals:

4381 Section **31A-13-101, Scope.**

4382 Section **31A-13-102, Regulation in general.**

4383 Section **31A-13-103, Registration.**

4384 Section **31A-13-104, Commissioner to file information.**

4385 Section **31A-13-105, Reports to employers and employees.**

4386 Section **31A-13-106, Annual accounting by insurance companies, service plans,**

4387 **and corporate trustees and agents.**

4388 Section **31A-13-107, Commissioner's remedies.**

4389 Section **31A-13-108, Investments.**

4390 Section **31A-13-109, Political activities.**

4391 Section **31A-17-404.2, Credit allowed a foreign ceding insurer.**

4392 Section 51. **Appropriation.**

4393 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for

4394 the fiscal year beginning July 1, 2016, and ending June 30, 2017, the following sums of money

4395 are appropriated from resources not otherwise appropriated, or reduced from amounts

4396 previously appropriated, out of the funds or accounts indicated. These sums of money are in

4397	<u>addition to amounts previously appropriated for fiscal year 2016-2017.</u>	
4398	<u>To Legislature - Senate</u>	
4399	<u>From General Fund, one-time</u>	<u>\$13,000</u>
4400	<u>Schedule of Programs:</u>	
4401	<u>Administration</u>	<u>\$13,000</u>
4402	<u>To Legislature - House of Representatives</u>	
4403	<u>From General Fund, one-time</u>	<u>\$22,000</u>
4404	<u>Schedule of Programs:</u>	
4405	<u>Administration</u>	<u>\$22,000</u>
4406	Section 52. Repeal date.	
4407	<u>Uncodified Sections 48 and 49 that create the Health Reform Task Force are repealed</u>	
4408	<u>December 30, 2016.</u>	