HB0036S02 compared with HB0036S01

~~{deleted text}~~ shows text that was in HB0036S01 but was deleted in HB0036S02.

inserted text shows text that was not in HB0036S01 but was inserted into HB0036S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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 for reinsurance ceded by a domestic insurer to another assuming insurer;
- addresses rulemaking authority of the commissioner;
- provides when a motor vehicle liability policy may be rescinded or cancelled;
- modifies reference to husband and wife;
- addresses insurance for alcohol and drug dependency treatment;
- provides that violation of an order by a regulatory agency in any jurisdiction may be grounds for discipline;
- addresses continuing education requirements;
- provides that a person's variable contracts line of authority is ~~{canceled}~~cancelled when that person's securities license is no longer active;
- addresses insurer's liability if the insured pays a premium to a licensee or group policyholder;
- addresses licensee compensation disclosures;
- addresses exemption from claims filing requirements;
- modifies citations related to allowance of contingent and unliquidated claims;
- ~~{~~ ~~modifies disclosure requirements when a policy or contract is not covered by a guarantee association;~~
- ~~}~~ amends training requirements for insurance producers related to the Health Insurance Exchange;
- requires insurers to have antifraud plans;
- amends definitions related to captive insurers;
- addresses the application of the Risk Retention Groups Act to captive insurers;
- modifies provisions related to reinsurance and captive insurance companies;
- amends reporting requirements for captive insurance companies;
- clarifies timing of examinations of captive insurance companies;

- addresses assessments related to title insurance;
- modifies provisions related to the Title Insurance Recovery, Education, and Research Fund Act;
- modifies the repeal date for specified statutory provisions;
- repeals provisions related to employee welfare funds and plans;
- repeals provisions related to credit allowed a foreign ceding insurer;~~{ and}~~
- makes technical and conforming amendments~~{.~~

~~}~~;

- reauthorizes the Health Reform Task Force until December 30, 2017; and
- amends the duties of the task force.

Money Appropriated in this Bill:

~~{None}~~This bill appropriates in fiscal year 2016-2017:

- To the Senate, as one-time appropriation:
  - from the General Fund, $13,000, to pay for the Health Reform Task Force; and
- To the House of Representatives, as a one-time appropriation:
  - from the General Fund, $22,000, to pay for the Health Reform Task Force;

Other Special Clauses:

~~{ None}~~ This bill provides a repeal date.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31A-23a-501, as last amended by Laws of Utah 2015, Chapter 195

31A-23b-401, as enacted by Laws of Utah 2013, Chapter 341

31A-25-208, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-26-213, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-27a-601, as enacted by Laws of Utah 2007, Chapter 309

31A-27a-605, as enacted by Laws of Utah 2007, Chapter 309

~~{~~ ~~**31A-28-119**, as last amended by Laws of Utah 2010, Chapter 292~~

~~}~~ **31A-30-116**, as last amended by Laws of Utah 2015, Chapter 283

31A-30-209, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-37-102, as last amended by Laws of Utah 2015, Chapter 244

31A-37-103, as last amended by Laws of Utah 2011, Chapter 284

31A-37-204, as last amended by Laws of Utah 2015, Chapter 244

31A-37-303, as last amended by Laws of Utah 2015, Chapter 244

31A-37-501, as last amended by Laws of Utah 2015, Chapter 244

31A-37-502, as last amended by Laws of Utah 2015, Chapter 244

31A-40-208, as last amended by Laws of Utah 2012, Chapter 169

31A-41-202, as last amended by Laws of Utah 2015, Chapter 330

31A-41-301, as last amended by Laws of Utah 2012, Chapter 253

31A-41-303, as enacted by Laws of Utah 2008, Chapter 220

63I-2-231, as last amended by Laws of Utah 2015, Chapter 244

ENACTS:

31A-15-206.5, Utah Code Annotated 1953

31A-15-213.5, Utah Code Annotated 1953

31A-31-112, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

REPEALS:

31A-13-101, as last amended by Laws of Utah 1986, Chapter 204

31A-13-102, as enacted by Laws of Utah 1985, Chapter 242

31A-13-103, as last amended by Laws of Utah 1986, Chapter 204

31A-13-104, as enacted by Laws of Utah 1985, Chapter 242

31A-13-105, as enacted by Laws of Utah 1985, Chapter 242

31A-13-106, as enacted by Laws of Utah 1985, Chapter 242

31A-13-107, as last amended by Laws of Utah 2007, Chapter 309

31A-13-108, as enacted by Laws of Utah 1985, Chapter 242

31A-13-109, as last amended by Laws of Utah 1986, Chapter 204

31A-17-404.2, as enacted by Laws of Utah 2008, Chapter 257

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

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

13-51-108. Insurance.

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

(a) an acknowledgment that the transportation network driver is using the vehicle in connection with a transportation network company during a prearranged ride or that the

transportation network driver is otherwise using the vehicle for a commercial purpose;

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

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

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

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

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

(a) an acknowledgment that the transportation network driver is using the vehicle in connection with a transportation network company during a waiting period or that the transportation network driver is otherwise using the vehicle for a commercial purpose;

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

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

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

(iii) $30,000 for property damage;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) satisfies the security requirements of Section 41-12a-301; and

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

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

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

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

(10) (a) If insurance a transportation network driver maintains under Subsection (1),

(2), or (3) lapses or ceases to exist, a transportation network company shall provide coverage complying with Subsection (1), (2), or (3) beginning with the first dollar of a claim.

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

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

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

(12) A personal automobile insurer:

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

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

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

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

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

(i) a medical condition including:

(A) a medical care expense; or

(B) the risk of disability;

(ii) accident; or

(iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

(A) an income replacement contract;

(B) a health care contract;

(C) an expense reimbursement contract;

(D) a credit accident and health contract;

(E) a continuing care contract; and

(F) a long-term care contract; and

(ii) may provide:

(A) hospital coverage;

(B) surgical coverage;

(C) medical coverage;

(D) loss of income coverage;

(E) prescription drug coverage;

(F) dental coverage; or

(G) vision coverage.

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

(2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

(6) "Agency" means:

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

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

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

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

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

human life.

(10) "Application" means a document:

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

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

(A) insure the risk under:

(I) the coverage as originally offered; or

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

(B) decline to insure the risk; or

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

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

(a) the original articles;

(b) a special law;

(c) a charter;

(d) an amendment;

(e) restated articles;

(f) articles of merger or consolidation;

(g) a trust instrument;

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

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

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

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

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

(a) without individual underwriting or application; and

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

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

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

(a) that is open to the public;

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

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

(17) "Business entity" means:

(a) a corporation;

(b) an association;

(c) a partnership;

(d) a limited liability company;

(e) a limited liability partnership; or

(f) another legal entity.

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

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

(a) Section 31A-7-201;

(b) Section 31A-8-205; or

(c) Subsection 31A-9-205(2).

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

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

(21) "Captive insurance company" means:

(a) an insurer:

(i) owned by another organization; and

(ii) whose exclusive purpose is to insure risks of the parent organization and an affiliated company; or

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

(i) owned by the insureds; and

(ii) whose exclusive purpose is to insure risks of:

(A) a member organization;

(B) a group member; or

(C) an affiliate of:

(I) a member organization; or

(II) a group member.

(22) "Casualty insurance" means liability insurance.

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

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

(b) a third party.

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

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

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

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

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

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

(i) provides board and lodging;

(ii) provides one or more of the following:

(A) a personal service;

(B) a nursing service;

(C) a medical service; or

(D) any other health-related service; and

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

(A) for the life of the insured; or

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

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

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

(i) by contract;

(ii) by common management;

(iii) through the ownership of voting securities; or

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

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

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

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

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

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

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

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

(i) a corporation doing business:

(A) as:

(I) an insurance producer;

(II) a surplus lines producer;

(III) a limited line producer;

(IV) a consultant;

(V) a managing general agent;

(VI) a reinsurance intermediary;

(VII) a third party administrator; or

(VIII) an adjuster; and

(B) under:

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

(II) Chapter 25, Third Party Administrators; or

(III) Chapter 26, Insurance Adjusters; or

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

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

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

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

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

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

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

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

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

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

(b) "Credit insurance" includes:

(i) credit accident and health insurance;

(ii) credit life insurance;

(iii) credit property insurance;

(iv) credit unemployment insurance;

(v) guaranteed automobile protection insurance;

(vi) involuntary unemployment insurance;

(vii) mortgage accident and health insurance;

(viii) mortgage guaranty insurance; and

(ix) mortgage life insurance.

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

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

(a) matured;

(b) unmatured;

(c) liquidated;

(d) unliquidated;

(e) secured;

(f) unsecured;

(g) absolute;

(h) fixed; or

(i) contingent.

(39) "Credit property insurance" means insurance:

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

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

(40) "Credit unemployment insurance" means insurance:

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

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

(i) specific loan; or

(ii) credit transaction.

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

(i) provided by the private insurance market; or

(ii) subsidized by the Federal Crop Insurance Corporation.

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

(42) (a) "Customer service representative" means a person that provides an insurance service and insurance product information:

(i) for the customer service representative's:

(A) producer;

(B) surplus lines producer; or

(C) consultant employer; and

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

(A) customer;

(B) client; or

(C) organization.

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

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

(a) imposed by:

(i) statute;

(ii) rule; or

(iii) order; and

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

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

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

(46) "Department" means the Insurance Department.

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

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

(a) perform the duties of:

(i) that individual's occupation; or

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

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

(i) eating;

(ii) toileting;

(iii) transferring;

(iv) bathing; or

(v) dressing.

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

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

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

(a) is incorporated;

(b) is organized; or

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

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

(i) an employee who:

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

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

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

(b) "Eligible employee" includes[;]:

(i) an owner who:

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

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

(ii) if the individual is included under a health benefit plan of a small employer:

[~~(i)~~] (A) a sole proprietor;

[~~(ii)~~] (B) a partner in a partnership; or

[~~(iii)~~] (C) an independent contractor.

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

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

(ii) an employer's spouse who does not meet the requirements of Subsection (52)(a)(i);

or

(iii) a dependent of an employer who does not meet the requirements of Subsection (52)(a)(i).

(53) "Employee" means:

(a) an individual employed by an employer[.]; and

(b) an owner who meets the requirements of Subsection (52)(b)(i).

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

(a) an employee; or

(b) a dependent of an employee.

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

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

(A) one or more employers;

(B) one or more labor organizations; or

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

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

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

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

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

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

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

(a) the first day of coverage; or

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

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

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

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

(59) (a) "Escrow" means:

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

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

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

(ii) a settlement or closing involving:

(A) a mobile home;

(B) a grazing right;

(C) a water right; or

(D) other personal property authorized by the commissioner.

(b) "Escrow" does not include:

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

(A) an acknowledgment;

(B) a copy certification;

(C) jurat; and

(D) an oath or affirmation;

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

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

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

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

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

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

(a) a specific physical condition;

(b) a specific medical procedure;

(c) a specific disease or disorder; or

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

(63) "Expense reimbursement insurance" means insurance:

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

(b) written:

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

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

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

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

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

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

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

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

(B) rule.

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

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

(a) a policy;

(b) a rate;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application;

(h) a report;

(i) a certificate;

(j) an endorsement;

(k) an actuarial certification;

(l) a licensee annual statement;

(m) a licensee renewal application;

(n) an advertisement;

(o) a binder; or

(p) an outline of coverage.

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

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

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

(i) a policy;

(ii) a certificate;

(iii) an application;

(iv) an outline of coverage; or

(v) an endorsement.

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

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

(71) "General lines of authority" include:

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

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

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

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

(iii) title marketing representative only;

(c) surplus lines;

(d) workers' compensation; and

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

(72) "General lines of insurance" include:

(a) accident and health;

(b) casualty;

(c) life;

(d) personal lines;

(e) property; and

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

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

(a) (i) to an employee; or

(ii) to a dependent of an employee; and

(b) (i) directly;

(ii) through insurance reimbursement; or

(iii) through another method.

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

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

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

(A) the policy; or

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

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

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

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

(i) provides health care insurance;

(ii) provides major medical expense insurance; or

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

(A) a hospital confinement indemnity; or

(B) a limited benefit plan.

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

(i) provides benefits solely for:

(A) accident;

(B) dental;

(C) income replacement;

(D) long-term care;

(E) a Medicare supplement;

(F) a specified disease;

(G) vision; or

(H) a short-term limited duration; or

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

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

(a) a professional service;

(b) a personal service;

(c) a facility;

(d) equipment;

(e) a device;

(f) supplies; or

(g) medicine.

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

(i) a health care benefit; or

(ii) payment of an incurred health care expense.

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

(i) replacement of income;

(ii) short-term accident;

(iii) fixed indemnity;

(iv) credit accident and health;

(v) supplements to liability;

(vi) workers' compensation;

(vii) automobile medical payment;

(viii) no-fault automobile;

(ix) equivalent self-insurance; or

(x) a type of accident and health insurance coverage that is a part of or attached to another type of policy.

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

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

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

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

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

(84) "Individual" means a natural person.

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

(a) property in transit on or over land;

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

(c) bailee liability;

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

(e) personal and commercial property floaters.

(86) "Insolvency" means that:

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

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level

RBC under Subsection 31A-17-601(8)(c); or

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

(87) (a) "Insurance" means:

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

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

(b) "Insurance" includes:

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

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

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

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

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

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

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

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

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

(c) providing an annuity:

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

(ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2) and (3);

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

(e) providing another person with insurance;

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

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

(i) solicitation;

(ii) negotiation preliminary to execution;

(iii) execution of a contract of title insurance;

(iv) insuring; and

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

(h) transacting or proposing a life settlement; and

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

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

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

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

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

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

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

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

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

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

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

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

insured.

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

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

(i) a policyholder;

(ii) a subscriber;

(iii) a member; and

(iv) a beneficiary.

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

(i) applies only to this title; and

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

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

(i) a fraternal benefit society;

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

(iii) a motor club;

(iv) an employee welfare plan; and

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

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

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

(96) "Involuntary unemployment insurance" means insurance:

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

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

(i) specific loan; or

(ii) credit transaction.

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

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

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

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

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

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

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

(b) through special enrollment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Liability insurance" includes:

(i) vehicle liability insurance;

(ii) residential dwelling liability insurance; and

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

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

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

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

(i) insurance on a human life; and

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

(b) The business of life insurance includes:

(i) granting a death benefit;

(ii) granting an annuity benefit;

(iii) granting an endowment benefit;

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

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

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

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

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

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

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

(a) credit life;

(b) credit accident and health;

(c) credit property;

(d) credit unemployment;

(e) involuntary unemployment;

(f) mortgage life;

(g) mortgage guaranty;

(h) mortgage accident and health;

(i) guaranteed automobile protection; and

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

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

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

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

(107) "Limited line insurance" includes:

(a) bail bond;

(b) limited line credit insurance;

(c) legal expense insurance;

(d) motor club insurance;

(e) car rental related insurance;

(f) travel insurance;

(g) crop insurance;

(h) self-service storage insurance;

(i) guaranteed asset protection waiver;

(j) portable electronics insurance; and

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

(108) "Limited lines authority" includes the lines of insurance listed in Subsection

(107).

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

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

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

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

(A) expenses incurred;

(B) indemnity;

(C) prepayment; or

(D) another method;

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

(A) diagnostic;

(B) preventative;

(C) therapeutic;

(D) rehabilitative;

(E) maintenance; or

(F) personal care; and

(iv) that may be issued by:

(A) an insurer;

(B) a fraternal benefit society;

(C) (I) a nonprofit health hospital; and

(II) a medical service corporation;

(D) a prepaid health plan;

(E) a health maintenance organization; or

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

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

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

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

(B) a life insurance policy or rider;

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

(A) cognitive impairment; or

(B) functional capacity; or

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

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

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

(ii) basic hospital expense coverage;

(iii) basic medical/surgical expense coverage;

(iv) hospital confinement indemnity coverage;

(v) major medical expense coverage;

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

(vii) accident only coverage;

(viii) coverage for a specified:

(A) disease; or

(B) accident;

(ix) limited benefit health coverage; or

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

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

(I) benefits; or

(II) eligibility; and

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

(I) terminal illness;

(II) medical conditions requiring extraordinary medical intervention; or

(III) permanent institutional confinement.

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

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

(113) "Minimum capital" or "minimum required capital" means the capital that must be

constantly maintained by a stock insurance corporation as required by statute.

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

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

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

(117) "Motor club" means a person:

(a) licensed under:

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

(ii) Chapter 11, Motor Clubs; or

(iii) Chapter 14, Foreign Insurers; and

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

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

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

(iii) (A) trip reimbursement;

(B) towing services;

(C) emergency road services;

(D) stolen automobile services;

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

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

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

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

(a) that is issued by an insurer; and

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

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

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

(a) ships or hulls of ships;

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

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

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

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

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

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

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

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

(b) receives:

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

(ii) another government health benefit.

(126) "Person" includes:

(a) an individual;

(b) a partnership;

(c) a corporation;

(d) an incorporated or unincorporated association;

(e) a joint stock company;

(f) a trust;

(g) a limited liability company;

(h) a reciprocal;

(i) a syndicate; or

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

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

(a) an individual; or

(b) a family.

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

(129) "Plan year" means:

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

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

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

(b) if the plan document or summary plan description does not designate a plan year or there is no plan document or summary plan description:

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

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

(iii) the employer's taxable year if:

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

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

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

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

(130) (a) "Policy" means a document, including an attached endorsement or application that:

(i) purports to be an enforceable contract; and

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

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

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

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

(iii) a corporation licensed under:

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

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

(c) "Policy" does not include:

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

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

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

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

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

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

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

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

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

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

(b) "Premium" includes, however designated:

(i) an assessment;

(ii) a membership fee;

(iii) a required contribution; or

(iv) monetary consideration.

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

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

(137) "Principal officers" for a corporation means the officers designated under

Subsection 31A-5-203(3).

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

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

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

(i) from all hazards or causes; and

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

(b) "Property insurance" does not include:

(i) inland marine insurance; and

(ii) ocean marine insurance.

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

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

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

(i) (A) by rider; or

(B) as a part of the contract; and

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

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

(a) is:

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

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

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

(c) meets the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of a financial institution whose letters of credit

will be acceptable to the commissioner as determined by:

(i) the commissioner by rule; or

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

(143) (a) "Rate" means:

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

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

(A) a single number; or

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

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

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

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

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

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

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

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

(i) an employee of an insurer;

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

(iii) a joint underwriting group; or

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

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

(a) a manual of rates;

(b) a classification;

(c) a rate-related underwriting rule; and

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

initial and renewal policy premiums.

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

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

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

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

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

(b) "Rebate" does not include:

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

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

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

(147) "Received by the department" means:

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

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

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

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

(i) facsimile;

(ii) email; or

(iii) another electronic method; or

(e) a date specified in:

(i) a statute;

(ii) a rule; or

(iii) an order.

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

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

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

(149) "Reinsurance" means an insurance transaction where an insurer, for

consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

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

(b) the insurer assuming the risk as the:

(i) "assuming insurer"; or

(ii) "assuming reinsurer."

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

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

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

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

(153) "Rider" means an endorsement to:

(a) an insurance policy; or

(b) an insurance certificate.

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

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

(i) note;

(ii) stock;

(iii) bond;

(iv) debenture;

(v) evidence of indebtedness;

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

(vii) collateral-trust certificate;

(viii) preorganization certificate or subscription;

(ix) transferable share;

(x) investment contract;

(xi) voting trust certificate;

(xii) certificate of deposit for a security;

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

(xiv) commodity contract or commodity option;

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections [~~(154)~~] (155)(a)(i) through (xiv); or

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

(b) "Security" does not include:

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

(A) insurance;

(B) an endowment policy; or

(C) an annuity contract; or

(ii) a burial certificate or burial contract.

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

(a) common stock;

(b) preferred stock;

(c) debt obligations; and

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

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

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

(c) "Self-insurance" includes:

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

(ii) an arrangement by which a person with a managed program of self-insurance and

risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk that is related to the relationship or employment.

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

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

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

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

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

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

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

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

(b) The number of employees shall:

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

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

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

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

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

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

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

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

(b) bail bond insurance; and

(c) fidelity insurance.

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

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

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

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

(c) "Excess surplus" means:

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

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

(I) 2.5; and

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

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

(I) 3.0; and

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

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

(A) 1.5; and

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

(166) "Third party administrator" or "administrator" means a person who collects

charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person administering a:

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

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

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

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

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

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

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

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

(iv) Chapter 9, Insurance Fraternals; or

(v) Chapter 14, Foreign Insurers;

(e) a person:

(i) licensed or exempt from licensing under:

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

(B) Chapter 26, Insurance Adjusters; and

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

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

(i) that is:

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

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

a federal or state banking authority; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(175) "Workers' compensation insurance" means:

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

(i) a compensable accidental injury; and

(ii) occupational disease disability;

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

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

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

31A-2-208.5. Comparison tables.

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

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

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

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

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

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

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

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

31A-2-212. Miscellaneous duties.

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

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

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

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

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

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

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

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

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

(i) an authorized insurer doing a surety business:

(A) files a petition for receivership; or

(B) is in receivership; or

(ii) the commissioner has reason to believe that the authorized insurer doing surety

business:

(A) is in financial difficulty; or

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

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

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

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

(i) lifetime and annual limits;

(ii) prohibition of rescissions;

(iii) coverage of preventive health services;

(iv) coverage for a child or dependent;

(v) pre-existing condition [~~coverage for children~~] limitations;

(vi) insurer transparency of consumer information including plan disclosures, uniform coverage documents, and standard definitions;

(vii) premium rate reviews;

(viii) essential health benefits;

(ix) provider choice;

(x) waiting periods;

(xi) appeals processes;

(xii) rating restrictions;

(xiii) uniform applications and notice provisions; [~~and~~]

(xiv) certification and regulation of qualified health plans[~~.~~]; and

(xv) network adequacy standards.

(c) The commissioner shall preserve state control over:

(i) the health insurance market in the state;

(ii) qualified health plans offered in the state; and

(iii) the conduct of navigators, producers, and in-person assisters operating in the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31A-6a-101. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Vehicle protection product" includes:

(i) a vehicle protection product warranty;

(ii) an alarm system;

(iii) a body part marking product;

(iv) a steering lock;

(v) a window etch product;

(vi) a pedal and ignition lock;

(vii) a fuel and ignition kill switch; and

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

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

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

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

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

31A-6a-104. Required disclosures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31A-15-202. Definitions.

As used in this part:

(1) [~~"Completed~~] Notwithstanding Section 31A-1-301, "commissioner" means the

insurance commissioner of Utah or the commissioner, director, or superintendent of insurance in another state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Liability" does not include personal risk liability and an employer's liability with

respect to its employees other than legal liability under the Federal Employers' Liability Act, 45 U.S.C. Sec. 51 et seq.

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

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

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

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

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

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

(d) pro forma financial statements and projections;

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

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

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

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

(9) (a) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including

damages resulting from the loss of use of property[~~, if the liability arises~~] arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.

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

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

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

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

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

(d) is domiciled in any state.

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

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

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

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

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

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

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

the Liability Risk Retention Act of 1986;

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

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

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

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

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

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

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

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

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

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

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

(12) "State" means:

(a) a state of the United States; or

(b) the District of Columbia.

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

(iii) the amount and nature of initial capitalization;

(iv) the coverages to be afforded; and

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

(b) Upon receipt of this information, the commissioner shall forward the information to

the [~~NAIC~~] National Association of Insurance Commissioners. Providing notification to the [~~NAIC~~] National Association of Insurance Commissioners is in addition to, and may not be sufficient to satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) A service provider contract meeting the definition of material relationship contained in Section (5)(d) may not be entered into unless the risk retention group has, at least 30 days before entering into the service provider contract, notified the commissioner in writing

of its intention to enter into the transaction and the commissioner has not disapproved it within the 30-day period.

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

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

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

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

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

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

(v) review and approve at least annually:

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

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

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

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

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

(A) assist the board's oversight of the integrity of the financial statements, the compliance with legal and regulatory requirements, and the qualifications, independence, and performance of the independent auditor and actuary;

(B) discuss the annual audited financial statements and quarterly financial statements

with management;

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

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

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

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

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

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

(I) report regularly to the board of directors.

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

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

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

(ii) director qualification standards;

(iii) director responsibilities;

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

(v) director compensation;

(vi) director orientation and continuing education;

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

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

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

(i) conflicts of interest;

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

(iii) confidentiality;

(iv) fair dealing;

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

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

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

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

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

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

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

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

(i) a statement identifying the states in which the group is chartered and licensed as a liability insurance company, its charter date, its principal place of business, and any other information, including information on its membership, the commissioner may require to verify

that the group is a qualified risk retention group as defined in [~~Subsection~~] Section 31A-15-202[~~(11)~~]; and

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

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

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

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

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

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

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

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

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

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

(d) any other information required to verify the group's continuing qualification as a risk retention group within the definition in [~~Subsection~~] Section 31A-15-202[~~(11)~~].

(3) (a) Each risk retention group shall pay premium taxes and taxes on premiums of

direct business for risks resident or located within this state, and shall report to the Utah State Tax Commission the net premiums written for risks resident or located within this state. Each risk retention group shall be subject to taxation, and any applicable fines and penalties related to taxation, on the same basis as a foreign admitted insurer.

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

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

(i) the limit of liability;

(ii) the time period covered;

(iii) the effective date;

(iv) the name of the risk retention group that issued the policy;

(v) the gross premium charged;

(vi) the amount of any returned premiums; and

(vii) additional information required by the insurance commissioner.

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

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

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

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

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

(6) If the commissioner of the jurisdiction in which the group is chartered and licensed

has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state, the risk retention group shall submit to an examination by the commissioner of this state to determine its financial condition. Any examination conducted under this subsection shall be coordinated to avoid unjustified repetition and shall be conducted in an expeditious manner and in accordance with the [~~NAIC's~~] National Association of Insurance Commissioner's Examiner Handbook.

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

"NOTICE

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

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

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

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

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

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

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

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

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

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

31A-15-206.5. Countersignatures not required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) in any state of the United States:

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

(B) is domiciled after October 27, 1986;

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

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

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

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

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

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

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

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

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

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

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

(2) A purchasing group that obtains liability insurance from an insurer not admitted in

this state or a risk retention group shall inform each of the members of the purchasing group or risk retention group that have a risk resident or located in this state that:

(a) the risk is not protected by an insurance insolvency guaranty fund in this state; and

(b) the risk retention group or insurer may not be subject to all insurance laws and regulations of this state.

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

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

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

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

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

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

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

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

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

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

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

[~~(4) On business placed with a risk retention group or written through a purchasing~~

~~group, each person licensed under this title shall provide to each prospective insured the notice required by Subsection 31A-15-204(7) in the case of a risk retention group, and by Subsection 31A-15-209(1) in the case of a purchasing group.~~]

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

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

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

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

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

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

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

31A-15-213.5. Rulemaking.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make and from time to time amend rules relating to risk retention groups as

may be necessary or desirable to carry out this part.

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

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

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

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

(i) in its state of domicile; or

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

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

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

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

(b) only to the extent that the accounting:

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

(ii) clearly reflects:

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

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

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

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

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

(4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state.

(b) An insurer is accredited as a reinsurer if the insurer:

(i) files with the commissioner evidence of the insurer's submission to this state's jurisdiction;

(ii) submits to the commissioner's authority to examine the insurer's books and records;

(iii) (A) is licensed to transact insurance or reinsurance in at least one state; or

(B) in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(iv) files annually with the commissioner a copy of the insurer's:

(A) annual statement filed with the insurance department of its state of domicile; and

(B) most recent audited financial statement; and

(v) (A) (I) has not had its accreditation denied by the commissioner within 90 days of the day on which the insurer submits the information required by this Subsection (4); and

(II) maintains a surplus with regard to policyholders in an amount not less than $20,000,000; or

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

(II) maintains a surplus with regard to policyholders in an amount less than $20,000,000.

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

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

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

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

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

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

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

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

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

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

system.

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

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

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

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

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

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

(b) To enable the commissioner to determine the sufficiency of the trust fund described in Subsection (6)(a), the assuming insurer shall:

(i) report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by a licensed insurer; and

(ii) (A) submit to examination of its books and records by the commissioner; and

(B) pay the cost of an examination.

(c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the form of the trust and any amendment to the trust is approved by:

(A) the commissioner of the state where the trust is domiciled; or

(B) the commissioner of another state who, pursuant to the terms of the trust instrument, accepts principal regulatory oversight of the trust.

(ii) The form of the trust and an amendment to the trust shall be filed with the commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.

(iii) The trust instrument shall provide that a contested claim is valid and enforceable upon the final order of a court of competent jurisdiction in the United States.

(iv) The trust shall vest legal title to its assets in its one or more trustees for the benefit of:

(A) a United States ceding insurer of the assuming insurer;

(B) an assign of the United States ceding insurer; or

(C) a successor in interest to the United States ceding insurer.

(v) The trust and the assuming insurer are subject to examination as determined by the commissioner.

(vi) The trust shall remain in effect for as long as the assuming insurer has an outstanding obligation due under a reinsurance agreement subject to the trust.

(vii) No later than February 28 of each year, the trustee of the trust shall:

(A) report to the commissioner in writing the balance of the trust;

(B) list the trust's investments at the end of the preceding calendar year; and

(C) (I) certify the date of termination of the trust, if so planned; or

(II) certify that the trust will not expire prior to the following December 31.

(d) The following requirements apply to the following categories of assuming insurer:

(i) For a single assuming insurer:

(A) the trust fund shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and

(B) the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000[~~.~~], except as provided in Subsection (6)(d)(ii).

(ii) (A) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

(B) The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.

(C) The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

[~~(ii)~~] (iii) For a group acting as assuming insurer, including incorporated and individual unincorporated underwriters:

(A) for reinsurance ceded under a reinsurance agreement with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the [~~group's~~] respective underwriters' several liabilities

attributable to business ceded by the one or more United States domiciled ceding insurers to [~~a member~~] an underwriter of the group;

(B) for reinsurance ceded under a reinsurance agreement with an inception date on or before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the other provisions of this chapter, the trust shall consist of a trusteed account in an amount not less than the [~~group's~~] respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States;

(C) in addition to a trust described in Subsection (6)(d)[~~(ii)~~](iii)(A) or (B), the group shall maintain in trust a trusteed surplus of which $100,000,000 is held jointly for the benefit of the one or more United States domiciled ceding insurers of a member of the group for all years of account;

(D) the incorporated members of the group:

(I) may not be engaged in a business other than underwriting as a member of the group; and

(II) are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(E) within 90 days after the day on which the group's financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner:

(I) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or

(II) if a certification is unavailable, a financial statement, prepared by an independent public accountant, of each underwriter member of the group.

[~~(iii)~~] (iv) For a group of incorporated underwriters under common administration, the group shall:

(A) have continuously transacted an insurance business outside the United States for at least three years immediately preceding the day on which the group makes application for accreditation;

(B) maintain aggregate policyholders' surplus of at least $10,000,000,000;

(C) maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by the one or more United States domiciled ceding insurers to a member of the group pursuant to a reinsurance contract issued in the name of the group;

(D) in addition to complying with the other provisions of this Subsection (6)(d)[~~(iii)~~](iv), maintain a joint trusteed surplus of which $100,000,000 is held jointly for the benefit of the one or more United States domiciled ceding insurers of a member of the group as additional security for these liabilities; and

(E) within 90 days after the day on which the group's financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner:

(I) an annual certification of each underwriter member's solvency by the member's domiciliary regulator; and

(II) a financial statement of each underwriter member of the group prepared by an independent public accountant.

(7) If reinsurance is ceded to an assuming insurer not meeting the requirements of Subsection (3), (4), (5), or (6), a domestic ceding insurer is allowed credit only as to the insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law or regulation of that jurisdiction.

(8) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that secures its obligations in accordance with this Subsection (8):

(a) The insurer shall be certified by the commissioner as a reinsurer in this state.

(b) To be eligible for certification, the assuming insurer shall:

(i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to Subsection (8)(d);

(ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(iii) maintain financial strength ratings from two or more rating agencies considered acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(iv) agree to:

(A) submit to the jurisdiction of this state;

(B) appoint the commissioner as its agent for service of process in this state;

(C) provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United

States judgment;

(D) agree to meet applicable information filing requirements as determined by the commissioner including an application for certification, a renewal and on an ongoing basis; and

(E) any other requirements for certification considered relevant by the commissioner.

(c) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. To be eligible for certification, in addition to satisfying requirements of Subsections (8)(a) and (b), the association:

(i) shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members in an amount determined by the commissioner to provide adequate protection;

(ii) may not have incorporated members of the association engaged in any business other than underwriting as a member of the association;

(iii) shall be subject to the same level of regulation and solvency control of the incorporated members of the association by the association's domiciliary regulator as are the unincorporated members; and

(iv) within 90 days after its financial statements are due to be filed with the association's domiciliary regulator provide:

(A) to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(B) if a certification is unavailable, financial statements prepared by independent public accountants, of each underwriter member of the association.

(d) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(i) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:

(A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis;

(B) shall consider the rights, the benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the

United States;

(C) shall require the qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and

(D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.

(ii) The commissioner may consider additional factors in determining a qualified jurisdiction.

(iii) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners' Committee Process and the commissioner shall:

(A) consider this list in determining qualified jurisdictions; and

(B) if the commissioner approves a jurisdiction as qualified that does not appear on the National Association of Insurance Commissioner's list of qualified jurisdictions, provide thoroughly documented justification in accordance with criteria to be developed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(iv) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.

(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

(e) The commissioner shall:

(i) assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies considered acceptable to the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) publish a list of all certified reinsurers and their ratings.

(f) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this Subsection (8) at a level consistent with its rating, as specified in rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(i) For a domestic ceding insurer to qualify for full financial statement credit for

reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with Section 31A-17-404.1, or in a multibeneficiary trust in accordance with Subsections (5), (6), and (7), except as otherwise provided in this Subsection (8).

(ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to Subsections (5), (6), and (7), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this Subsection (8) or comparable laws of other United States jurisdictions and for its obligations subject to Subsections (5), (6), and (7).

(iii) It shall be a condition to the grant of certification under this Subsection (8) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of the trust account, to fund, upon termination of the trust account, out of the remaining surplus of the trust, any deficiency of any other the trust account.

(iv) The minimum trusteed surplus requirements provided in Subsections (5), (6), and (7) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this Subsection (8), except that the trust shall maintain a minimum trusteed surplus of $10,000,000.

(v) With respect to obligations incurred by a certified reinsurer under this Subsection (8), if the security is insufficient, the commissioner:

(A) shall reduce the allowable credit by an amount proportionate to the deficiency; and

(B) may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(vi) For purposes of this Subsection (8), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

(A) As used in this Subsection (8), the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(B) If the commissioner continues to assign a higher rating as permitted by other

provisions of this section, the requirement under this Subsection (8)(f)(vi) does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:

(i) defer to that jurisdiction's certification;

(ii) defer to the rating assigned by that jurisdiction; and

(iii) consider such reinsurer to be a certified reinsurer in this state.

(h) (i) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business.

(ii) An inactive certified reinsurer shall continue to comply with all applicable requirements of this Subsection (8).

(iii) The commissioner shall assign a rating to a reinsurer that qualifies under this Subsection (8)(h), that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

[~~(8)~~] (9) Reinsurance credit may not be allowed a domestic ceding insurer unless the assuming insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:

(a) (i) being an admitted insurer; and

(ii) submitting to jurisdiction under Section 31A-2-309;

(b) having irrevocably appointed the commissioner as the domestic ceding insurer's agent for service of process in an action arising out of or in connection with the reinsurance, which appointment is made under Section 31A-2-309; or

(c) agreeing in the reinsurance contract:

(i) that if the assuming insurer fails to perform its obligations under the terms of the reinsurance contract, the assuming insurer, at the request of the ceding insurer, shall:

(A) submit to the jurisdiction of a court of competent jurisdiction in a state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of an appellate court in the event of an appeal; and

(ii) to designate the commissioner or a specific attorney licensed to practice law in this

state as its attorney upon whom may be served lawful process in an action, suit, or proceeding instituted by or on behalf of the ceding company.

[~~(9)~~] (10) Submitting to the jurisdiction of Utah courts under Subsection [~~(8)~~] (9) does not override a duty or right of a party under the reinsurance contract, including a requirement that the parties arbitrate their disputes.

[~~(10)~~] (11) If an assuming insurer does not meet the requirements of Subsection (3), (4), or (5), the credit permitted by Subsection (6) or (8) may not be allowed unless the assuming insurer agrees in the trust instrument to the following conditions:

(a) (i) Notwithstanding any other provision in the trust instrument, if an event described in Subsection [~~(10)~~] (11)(a)(ii) occurs the trustee shall comply with:

(A) an order of the commissioner with regulatory oversight over the trust; or

(B) an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(ii) This Subsection [~~(10)~~] (11)(a) applies if:

(A) the trust fund is inadequate because the trust contains an amount less than the amount required by Subsection (6)(d); or

(B) the grantor of the trust is:

(I) declared insolvent; or

(II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the laws of its state or country of domicile.

(b) The assets of a trust fund described in Subsection [~~(10)~~] (11)(a) shall be distributed by and a claim shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of a domestic insurance company.

(c) If the commissioner with regulatory oversight determines that the assets of the trust fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust instrument.

(d) A grantor shall waive any right otherwise available to it under United States law that is inconsistent with this Subsection [~~(10)~~] (11).

(12) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

(a) The commissioner shall give the reinsurer notice and opportunity for hearing.

(b) The suspension or revocation may not take effect until after the commissioner's order after a hearing, unless:

(i) the reinsurer waives its right to hearing;

(ii) the commissioner's order is based on:

(A) regulatory action by the reinsurer's domiciliary jurisdiction; or

(B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state under Subsection (8)(g); or

(iii) the commissioner's finding that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 31A-17-404.1.

(d) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subsection (8)(f) or Section 31A-17-404.1.

(13) (a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business.

(b) (i) A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers:

(A) exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or

(B) after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding

insurer's last reported surplus to policyholders.

(ii) The notification required by Subsection (13)(b)(i) shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(c) A ceding insurer shall take steps to diversify its reinsurance program.

(d) (i) A domestic ceding insurer shall notify the commissioner within 30 days after ceding or being likely to cede more than 20% of the ceding insurer's gross written premium in the prior calendar year to any:

(A) single assuming insurer; or

(B) group of affiliated assuming insurers.

(ii) The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Section 17. Section **31A-17-404.1** is amended to read:

31A-17-404.1. Asset or reduction from liability for reinsurance ceded by a domestic insurer to other assuming insurers.

(1) (a) An asset or a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements of Section 31A-17-404 is allowed in an amount not exceeding the liabilities carried by the ceding insurer.

(b) A reduction described in Subsection (1)(a) shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

(i) that are held:

(A) under a reinsurance contract with the assuming insurer; and

(B) as security for the payment of obligations under the reinsurance contract; and

(ii) if the security is held:

(A) in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or

(B) in the case of a trust, in a qualified United States financial institution.

(2) Security described in Subsection (1) may be in the form of:

(a) cash;

(b) a security:

(i) listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those considered exempt from filing as defined by the Purposes and

Procedures Manual of the Securities Valuation Office; and

(ii) qualifying as an admitted asset;

(c) subject to Subsection (3), a clean, irrevocable, unconditional letter of credit, issued or confirmed by a qualified United States financial institution:

(i) effective no later than December 31 of the year for which the filing is being made; and

(ii) in the possession of, or in trust for, the ceding [~~company~~] insurer on or before the filing date of its annual statement; or

(d) another form of security acceptable to the commissioner.

(3) Notwithstanding an issuing or confirming institution's subsequent failure to meet an applicable standard of acceptability, a letter of credit described in Subsection (2) that meets the applicable standards of issuer acceptability as of the day on which it is issued or confirmed shall continue to be acceptable as security until the sooner of the day on which the letter of credit expires, is extended, is renewed, is modified, or is amended.

Section 18. Section **31A-17-404.3** is amended to read:

31A-17-404.3. Rules.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and this chapter, the commissioner may make rules prescribing:

[~~(1)~~] (a) the form of a letter of credit required under this chapter;

[~~(2)~~] (b) the requirements for a trust or trust instrument required by this chapter;

[~~(3)~~] (c) the procedures for licensing and accrediting; [~~and~~]

[~~(4)~~] (d) minimum capital and surplus requirements[~~.~~];

(e) additional requirements relating to calculation of credit allowed a domestic ceding insurer against reserves for reinsurance under Section 31A-17-404; and

(f) additional requirements relating to calculation of asset reduction from liability for reinsurance ceded by a domestic insurer to other ceding insurers under Section 31A-17-404.1.

(2) A rule made pursuant to Subsection (1)(e) or (1)(f) may apply to reinsurance relating to:

(a) a life insurance policy with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(b) a universal life insurance policy with provisions resulting in the ability of a

policyholder to keep a policy in force over a secondary guarantee period;

(c) a variable annuity with guaranteed death or living benefits;

(d) a long-term care insurance policy; or

(e) such other life and health insurance or annuity product as to which the National Association of Insurance Commissioners adopts model regulatory requirements with respect for credit for reinsurance.

(3) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may apply to a treaty containing:

(a) a policy issued on or after January 1, 2015; and

(b) a policy issued before January 1, 2015, if risk pertaining to the policy is ceded in connection with the treaty, either in whole or in part, on or after January 1, 2015.

(4) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may require the ceding insurer, in calculating the amounts or forms of security required to be held under rules made under this section, to use the Valuation Manual adopted by the National Association of Insurance Commissioners under Section 11B(1) of the National Association of Insurance Commissioners Standard Valuation Law, including all amendments adopted by the National Association of Insurance Commissioners and in effect on the date as of which the calculation is made, to the extent applicable.

(5) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may not apply to cessions to an assuming insurer that:

(a) is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 2E of the Credit for Reinsurance Model Law, certified in a minimum of five other states; or

(b) maintains at least $250,000,000 in capital and surplus when determined in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, including all amendments thereto adopted by the National Association of Insurance Commissioners, excluding the impact of any permitted or prescribed practices and is:

(i) licensed in at least 26 states; or

(ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(6) The authority to adopt rules pursuant to Subsection (1)(e) or (1)(f) does not otherwise limit the commissioner's general authority to make rules pursuant to Subsection (1).

Section 19. Section **31A-22-202** is amended to read:

31A-22-202. Protection of third-party claimants.

(1) [~~No~~] An insurance contract insuring against loss or damage through legal liability for the bodily injury or death by accident of any person, or for damage to the property of any person, may not be retroactively abrogated to the detriment of any third-party claimant by any agreement between the insurer and insured after the occurrence of any injury, death, or damage for which the insured may be liable. This attempted abrogation is void.

(2) A motor vehicle liability policy may be rescinded or cancelled as to an insured for fraud, material misrepresentation, or any reason allowable under the law.

(3) A motor vehicle liability policy may not be rescinded for fraud or material misrepresentation, as to minimum liability coverage limits under Section 31A-22-304, to the detriment of a ~~{third-party}~~third party for a loss otherwise covered by the policy.

Section 20. Section **31A-22-603** is amended to read:

31A-22-603. Persons insured under an individual accident and health policy.

A policy of individual accident and health insurance may insure only one person, except that originally or by subsequent amendment, upon the application of an adult policyholder, a policy may insure any two or more eligible members of the policyholder's family, including [~~husband, wife~~] spouse, dependent children, and any other person dependent upon the policyholder.

Section 21. Section **31A-22-715** is amended to read:

31A-22-715. Alcohol and drug dependency treatment.

(1) [~~Each group accident and health insurance policy shall contain an optional rider allowing certificate holders to obtain~~] An insurer offering a health benefit plan providing coverage for alcohol or drug dependency treatment [~~in programs~~] may require an inpatient facility to be licensed by:

(a) (i) the Department of Human Services, under Title 62A, Chapter 2, Licensure of Programs and Facilities[~~, inpatient hospitals accredited by the joint commission on the accreditation of hospitals, or facilities licensed by~~]; or

(ii) the Department of Health[~~.~~]; or

(b) for an inpatient facility located outside the state, a state agency similar to one described in Subsection (1)(a).

(2) For inpatient coverage provided pursuant to Subsection (1), an insurer may require an inpatient facility to be accredited by the following:

(a) the Joint Commission; and

(b) one other nationally recognized accrediting agency.

Section 22. Section **31A-22-1201** is amended to read:

31A-22-1201. Assumption agreement.

(1) Subject to Subsection (2), a credit for reinsurance ceded under Section 31A-17-404[~~,~~] or 31A-17-404.1[~~, or 31A-17-404.2,~~] is not allowed unless, in addition to meeting the requirements of Section 31A-17-404[~~,~~] or 31A-17-404.1[~~, or 31A-17-404.2~~], the reinsurance agreement provides in substance that if the ceding insurer is insolvent, the reinsurance is payable by the assuming insurer:

(a) on the basis of the liability of the ceding insurer under the contract or contracts reinsured;

(b) without diminution because of the insolvency of the ceding insurer; and

(c) directly to the ceding insurer or to its domiciliary liquidator or receiver.

(2) Subsection (1) applies except if:

(a) a contract specifically provides another payee of the insurance in the event of the insolvency of the ceding insurer; or

(b) the assuming insurer, with the consent of the one or more direct insureds, assumes the policy obligations of the ceding insurer:

(i) as direct obligations of the assuming insurer to the payees under the policies; and

(ii) in substitution for the obligations of the ceding insurer to the payees.

Section 23. Section **31A-23a-111** is amended to read:

31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(1) A license type issued under this chapter remains in force until:

(a) revoked or suspended under Subsection (5);

(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under Section 31A-23a-113; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.

(3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) A line of authority issued under this chapter remains in force until:

(a) the qualifications pertaining to a line of authority are no longer met by the licensee; or

(b) the supporting license type:

(i) is revoked or suspended under Subsection (5);

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(iii) lapses under Section 31A-23a-113; or

(iv) is voluntarily surrendered; or

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.

(5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an

adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke:

(A) a license; or

(B) a line of authority;

(ii) suspend for a specified period of 12 months or less:

(A) a license; or

(B) a line of authority;

(iii) limit in whole or in part:

(A) a license; or

(B) a line of authority; or

(iv) deny a license application.

(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license or line of authority under Section 31A-23a-104, 31A-23a-105, or 31A-23a-107;

(ii) violates:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the insurance producer's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provides information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) violates an insurance law, valid rule, or valid order of another [~~state's insurance department~~] regulatory agency in any jurisdiction;

(xi) obtains or attempts to obtain a license through misrepresentation or fraud;

(xii) improperly withholds, misappropriates, or converts money or properties received in the course of doing insurance business;

(xiii) intentionally misrepresents the terms of an actual or proposed:

(A) insurance contract;

(B) application for insurance; or

(C) life settlement;

(xiv) is convicted of a felony;

(xv) admits or is found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere:

(A) uses fraudulent, coercive, or dishonest practices; or

(B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

(xviii) forges another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) improperly uses notes or another reference material to complete an examination for an insurance license;

(xx) knowingly accepts insurance business from an individual who is not licensed;

(xxi) fails to comply with an administrative or court order imposing a child support obligation;

(xxii) fails to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxiii) violates or permits others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or

(xxiv) engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(6) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(7) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in another state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by another state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against that person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order or agreement described in Subsection (8)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval by the commissioner.

(9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

(10) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 24. Section **31A-23a-202** is amended to read:

31A-23a-202. Continuing education requirements.

(1) Pursuant to this section, the commissioner shall by rule prescribe the continuing education requirements for a producer and a consultant.

(2) (a) The commissioner may not state a continuing education requirement in terms of formal education.

(b) The commissioner may state a continuing education requirement in terms of hours of insurance-related instruction received.

(c) Insurance-related formal education may be a substitute, in whole or in part, for the hours required under Subsection (2)(b).

(3) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (3).

(b) (i) Except as provided in this section, the continuing education requirements shall require:

(A) that a licensee complete 24 credit hours of continuing education for every two-year licensing period;

(B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses; and

(C) that the licensee complete at least half of the required hours through classroom hours of insurance-related instruction.

(ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be obtained through:

(A) classroom attendance;

(B) home study;

(C) watching a video recording;

(D) experience credit; or

(E) another method provided by rule.

(iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), an individual title insurance producer is required to complete 12 credit hours of continuing education for every two-year licensing period, with 3 of the credit hours being ethics courses unless the individual title insurance producer is licensed in this state as an individual title insurance producer for 20 or more consecutive years.

(B) If an individual title insurance producer is licensed in this state as an individual title insurance producer for 20 or more consecutive years, the individual title insurance producer is required to complete 6 credit hours of continuing education for every two-year licensing period, with 3 of the credit hours being ethics courses.

(C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance producer is considered to have met the continuing education requirements imposed under Subsection (3)(b)(iii)(A) or (B) if at the time of license renewal the individual title insurance producer:

(I) provides the department evidence that the individual title insurance producer is an active member in good standing with the Utah State Bar;

(II) is in compliance with the continuing education requirements of the Utah State Bar; and

(III) if requested by the department, provides the department evidence that the individual title insurance producer complied with the continuing education requirements of the Utah State Bar.

(c) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(d) (i) A licensee is exempt from continuing education requirements under this section if:

(A) the licensee was first licensed before December 31, 1982;

(B) the license does not have a continuous lapse for a period of more than one year, except for a license for which the licensee has had an exemption approved before May 11, 2011;

(C) the licensee requests an exemption from the department; and

(D) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is not required to apply again for the exemption.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall, by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (3)(b);

(ii) authorize a continuing education provider or a state or national professional producer or consultant association to:

(A) offer a qualified program for a license type or line of authority on a geographically

accessible basis; and

(B) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner; and

(iii) provide that membership by a producer or consultant in a state or national professional producer or consultant association is considered a substitute for the equivalent of two hours for each year during which the producer or consultant is a member of the professional association, except that the commissioner may not give more than two hours of continuing education credit in a year regardless of the number of professional associations of which the producer or consultant is a member.

(f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a professional producer or consultant association program may be less for an association member, on the basis of the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(4) The commissioner shall approve a continuing education provider or continuing education course that satisfies the requirements of this section.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall by rule set the processes and procedures for continuing education provider registration and course approval.

(6) The requirements of this section apply only to a producer or consultant who is an individual.

(7) A nonresident producer or consultant is considered to have satisfied this state's continuing education requirements if the nonresident producer or consultant satisfies the nonresident producer's or consultant's home state's continuing education requirements for a licensed insurance producer or consultant.

(8) A producer or consultant subject to this section shall keep documentation of completing the continuing education requirements of this section for two years after the end of the two-year licensing period to which the continuing education applies.

Section 25. Section **31A-23a-206** is amended to read:

31A-23a-206. Special requirements for variable contracts line of authority.

(1) Before applying for a variable contracts line of authority:

(a) a producer shall be licensed under Section 61-1-3 as a:

(i) broker-dealer; or

(ii) broker-dealer agent; and

(b) a consultant shall be licensed under Section 61-1-3 as an:

(i) investment adviser; or

(ii) investment adviser representative.

(2) A producer's or consultant's variable contracts line of authority is [~~revoked~~] canceled on the day the producer's or consultant's securities related license under Section 61-1-3 is no longer [~~valid~~] active.

Section 26. Section **31A-23a-410** is amended to read:

31A-23a-410. Insurer's liability if insured pays premium to a licensee or group policyholder.

(1) Subject to Subsections (2) and (5), as between the insurer and the insured, the insurer is considered to have received the premium and is liable to the insured for losses covered by the insurance and for any unearned premiums upon cancellation of the insurance if an insurer, including a surplus lines insurer:

(a) assumes a risk; and

(b) the premium for that insurance is received by:

(i) a licensee who placed the insurance;

(ii) a group policyholder;

(iii) an employer who deducts part or all of the premium from an employee's wages or salary; or

(iv) an employer who pays all or part of the premium for an employee.

(2) Subsection (1) does not apply if:

(a) the insured pays a licensee, knowing the licensee does not intend to submit the premium to the insurer; or

(b) the insured has premium withheld from the insured's wages or salary knowing the employer does not intend to submit it to the insurer.

(3) (a) In the case of [~~an employer~~] a group policyholder who has received the premium [~~by deducting all or part of it from the wages or salaries of the certificate holders~~], the insurer may terminate its liability by giving notice of coverage termination to:

(i) the certificate holders;

(ii) the policyholder; and

(iii) the producer, if any, for the policy.

(b) The insurer may not send the notice required by Subsection (3)(a) to a certificate holder before 20 days after the day on which premium is due and unpaid.

(c) The liability of the insurer for the losses covered by the insurance terminates at the later of:

(i) the last day of the coverage period for which premium has been [~~withheld~~] received by the [~~employer~~] group policyholder;

(ii) 10 days after the date the insurer mails notice to the certificate holder that coverage has terminated; or

(iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days from the last date for which premium is received.

(4) Despite [~~an employer's~~] a group policyholder's collection of premium under Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the insurance to group policy certificate holders terminates upon the effective date of notice from the policyholder that:

(a) coverage of a similar kind and quality has been obtained from another insurer; or

(b) the policyholder is electing to voluntarily terminate the certificate holder's coverage and has given the [~~employees~~] certificate holder's notice of the termination.

(5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or [~~employer~~] group policyholder who received the premium and failed to forward it is obligated to the insurer for the entire unpaid premium due under the policy together with reasonable expenses of suit and reasonable attorney fees.

(6) If, under an employee health insurance plan, an employee builds up credit for future coverage because the employee has not used the policy protection, or in some other way, the insurer is obligated to the employee for that future coverage earned while the policy was in full effect.

(7) (a) Notwithstanding that an insurer is liable for losses as provided in this section, this section applies only to apportion the liability for the losses described in this section.

(b) This section does not:

(i) extend a policy or coverage beyond its date of termination; or

(ii) alter or amend a provision of a policy.

Section 27. Section **31A-23a-501** is amended to read:

31A-23a-501. Licensee compensation.

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of a licensee from:

(i) commission amounts deducted from insurance premiums on insurance sold by or placed through the licensee;

(ii) commission amounts received from an insurer or another licensee as a result of the sale or placement of insurance; or

(iii) overrides, bonuses, contingent bonuses, or contingent commissions received from an insurer or another licensee as a result of the sale or placement of insurance.

(b) (i) "Compensation from an insurer or third party administrator" means commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration:

(A) whether or not payable pursuant to a written agreement; and

(B) received from:

(I) an insurer; or

(II) a third party to the transaction for the sale or placement of insurance.

(ii) "Compensation from an insurer or third party administrator" does not mean compensation from a customer that is:

(A) a fee or pass-through costs as provided in Subsection (1)(e); or

(B) a fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner by administrative rule.

(c) (i) "Customer" means:

(A) the person signing the application or submission for insurance; or

(B) the authorized representative of the insured actually negotiating the placement of insurance with the producer.

(ii) "Customer" does not mean a person who is a participant or beneficiary of:

(A) an employee benefit plan; or

(B) a group or blanket insurance policy or group annuity contract sold, solicited, or

negotiated by the producer or affiliate.

(d) (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of a licensee other than commission compensation.

(ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

(e) "Pass-through costs" include:

(i) costs for copying documents to be submitted to the insurer; and

(ii) bank costs for processing cash or credit card payments.

(2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.

(a) The disclosure required by this Subsection (2) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify:

(A) the amount of any known noncommission compensation; and

(B) the type and amount, if known, of any potential and contingent noncommission compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services; and

(ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.

(c) A copy of the signed disclosure required by this Subsection (2) shall be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.

(d) All accounting records relating to noncommission compensation shall be maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

(3) (a) A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if:

(i) the producer and the insured have agreed on the producer's noncommission compensation; and

(ii) the producer has disclosed to the insured the existence and source of any other compensation that accrues to the producer as a result of the transaction.

(b) The disclosure required by this Subsection (3) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify:

(A) the amount of any known noncommission compensation;

(B) the type and amount, if known, of any potential and contingent noncommission compensation; and

(C) the existence and source of any other compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(c) The following additional noncommission compensation is authorized:

(i) compensation received by a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

(ii) compensation received by an insurance producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

(iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23a-401; or

(iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23a-401 and are not harmful to the public.

(d) Subject to Section 31A-23a-402.5, a producer for the insured may receive compensation from an insured through an insurer, for the negotiation and sale of a health benefit plan, if there is a separate written agreement between the insured and the licensee for the compensation. An insurer who passes through the compensation from the insured to the licensee under this Subsection (3)(d) is not providing direct or indirect compensation or

commission compensation to the licensee.

(4) (a) For purposes of this Subsection (4):

(i) "Large customer" means an employer who, with respect to a calendar year and to a plan year:

(A) employed an average of at least 100 eligible employees on each business day during the preceding calendar year; and

(B) employs at least two employees on the first day of the plan year.

(ii) "Producer" includes:

(A) a producer;

(B) an affiliate of a producer; or

(C) a consultant.

(b) A producer may not accept or receive any compensation from an insurer or third party administrator for the initial placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to a large customer's initial purchase of the health benefit plan the producer discloses in writing to the large customer that the producer will receive compensation from the insurer or third party administrator for the placement of insurance, including the amount or type of compensation known to the producer at the time of the disclosure.

(c) A producer shall:

(i) obtain the large customer's signed acknowledgment that the disclosure under Subsection (4)(b) was made to the large customer; or

(ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to the large customer; and

(B) keep the signed statement on file in the producer's office while the health benefit plan placed with the large customer is in force.

(d) A licensee who collects or receives any part of the compensation from an insurer or third party administrator in a manner that facilitates an audit shall, while the health benefit plan placed with the large customer is in force, maintain a copy of:

(i) the signed acknowledgment described in Subsection (4)(c)(i); or

(ii) the signed statement described in Subsection (4)(c)(ii).

(e) Subsection (4)(c) does not apply to:

(i) a person licensed as a producer who acts only as an intermediary between an insurer and the customer's producer, including a managing general agent; or

(ii) the placement of insurance in a secondary or residual market.

(f) (i) A producer shall provide to a large customer listed in this Subsection (4)(f) an annual accounting, as defined by rule made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of all amounts the producer receives in commission compensation from an insurer or third party administrator as a result of the sale or placement of [~~insurance~~] a health benefit plan to a large customer that is:

(A) the state;

(B) a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including the State Board of Education and its instrumentalities, an institution of higher education and its branches, a school district and its instrumentalities, a vocational and technical school, and an entity arising out of a consolidation agreement between entities described under this Subsection (4)(f)(i)(B);

(C) a county, city, town, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, an entity created by an interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state; or

(D) a quasi-public corporation, that has the same meaning as defined in Section 63E-1-102.

(ii) The department shall pattern the annual accounting required by this Subsection (4)(f) on the insurance related information on Internal Revenue Service Form 5500 and its relevant attachments.

(g) At the request of the department, a producer shall provide the department a copy of:

(i) a disclosure required by this Subsection (4); or

(ii) an Internal Revenue Service Form 5500 and its relevant attachments.

(5) This section does not alter the right of any licensee to recover from an insured the amount of any premium due for insurance effected by or through that licensee or to charge a reasonable rate of interest upon past-due accounts.

(6) This section does not apply to bail bond producers or bail enforcement agents as defined in Section 31A-35-102.

(7) A licensee may not receive noncommission compensation from an insured or enrollee for providing a service or engaging in an act that is required to be provided or performed in order to receive commission compensation, except for the surplus lines transactions that do not receive commissions.

Section 28. Section **31A-23b-401** is amended to read:

31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(1) A license as a navigator under this chapter remains in force until:

(a) revoked or suspended under Subsection (4);

(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under this section; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.

(3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an

adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke a license;

(ii) suspend a license for a specified period of 12 months or less;

(iii) limit a license in whole or in part; or

(iv) deny a license application.

(b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or 31A-23b-206;

(ii) violated:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) failed to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) refused:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(vi) had an officer who refused to:

(A) give information with respect to the navigator's affairs; or

(B) perform any other legal obligation as to an examination;

(vii) provided information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(viii) violated an insurance law, valid rule, or valid order of another [~~state's insurance department~~] regulatory agency in any jurisdiction;

(ix) obtained or attempted to obtain a license through misrepresentation or fraud;

(x) improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;

(xi) intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract;

(B) application for insurance; or

(C) application for public program;

(xii) is convicted of a felony;

(xiii) admitted or is found to have committed an insurance unfair trade practice or fraud;

(xiv) in the conduct of business in this state or elsewhere:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xv) had an insurance license, navigator license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

(xvi) forged another's name to:

(A) an application for insurance;

(B) a document related to an insurance transaction;

(C) a document related to an application for a public program; or

(D) a document related to an application for premium subsidies;

(xvii) improperly used notes or another reference material to complete an examination for a license;

(xviii) knowingly accepted insurance business from an individual who is not licensed;

(xix) failed to comply with an administrative or court order imposing a child support obligation;

(xx) failed to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxi) violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is

prohibited from engaging in the business of insurance; or

(xxii) engaged in a method or practice in the conduct of business that endangered the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

(5) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) surrendered in lieu of administrative action;

(iv) lapsed; or

(v) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(6) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in another state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by another state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against that person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.

(8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.

(9) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 29. Section **31A-25-208** is amended to read:

31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal and reinstatement.

(1) A license type issued under this chapter remains in force until:

(a) revoked or suspended under Subsection (4);

(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under Section 31A-25-210; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.

(3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke a license;

(ii) suspend a license for a specified period of 12 months or less;

(iii) limit a license in whole or in part; or

(iv) deny a license application.

(b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;

(ii) has violated:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another third party administrator that transacts business in this state

without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the third party administrator's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provides information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) has violated an insurance law, valid rule, or valid order of another [~~state's insurance department~~] regulatory agency in any jurisdiction;

(xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

(xii) has improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;

(xiii) has intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract; or

(B) application for insurance;

(xiv) has been convicted of a felony;

(xv) has admitted or been found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere has:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(xviii) has forged another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) has improperly used notes or any other reference material to complete an examination for an insurance license;

(xx) has knowingly accepted insurance business from an individual who is not licensed;

(xxi) has failed to comply with an administrative or court order imposing a child support obligation;

(xxii) has failed to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or

(xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the agency license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participated in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

(5) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(6) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in any other state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by any other state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against the person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in the order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.

(8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by the court.

(9) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 30. Section **31A-26-213** is amended to read:

31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(1) A license type issued under this chapter remains in force until:

(a) revoked or suspended under Subsection (5);

(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under Section 31A-26-214.5; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which it is voluntarily surrendered.

(3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) A license classification issued under this chapter remains in force until:

(a) the qualifications pertaining to a license classification are no longer met by the licensee; or

(b) the supporting license type:

(i) is revoked or suspended under Subsection (5); or

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action.

(5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an

adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke:

(A) a license; or

(B) a license classification;

(ii) suspend for a specified period of 12 months or less:

(A) a license; or

(B) a license classification;

(iii) limit in whole or in part:

(A) a license; or

(B) a license classification; or

(iv) deny a license application.

(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license or license classification under Section 31A-26-202, 31A-26-203, 31A-26-204, or 31A-26-205;

(ii) has violated:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance adjuster that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the insurance adjuster's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provides information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) has violated an insurance law, valid rule, or valid order of another [~~state's insurance department~~] regulatory agency in any jurisdiction;

(xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

(xii) has improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;

(xiii) has intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract; or

(B) application for insurance;

(xiv) has been convicted of a felony;

(xv) has admitted or been found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere has:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(xviii) has forged another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) has improperly used notes or any other reference material to complete an examination for an insurance license;

(xx) has knowingly accepted insurance business from an individual who is not

licensed;

(xxi) has failed to comply with an administrative or court order imposing a child support obligation;

(xxii) has failed to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or

(xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participated in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(6) A licensee under this chapter is subject to the penalties for conducting an insurance business without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(7) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in any other state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by any other state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against that person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a license in lieu of administrative action may specify a time not to exceed five years within which the former licensee may not apply for a new license.

(b) If no time is specified in the order or agreement described in Subsection (8)(a), the former licensee may not apply for a new license for five years without the express approval of the commissioner.

(9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

(10) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 31. Section **31A-27a-601** is amended to read:

31A-27a-601. Filing of claims.

(1) (a) Subject to the other provisions of this Subsection (1), proof of a claim shall be filed with the liquidator in the form required by Section 31A-27a-602 on or before the last day for filing specified in the notice required under Section 31A-27a-406.

(b) The last day for filing specified in the notice may not be later than 18 months after the day on which the order of liquidation is entered unless the receivership court, for good cause shown, extends the time.

(c) Proof of a claim for the following does not need to be filed unless the liquidator expressly requires filing of proof:

(i) cash surrender value in life insurance and annuities;

(ii) investment value in life insurance and annuities other than cash surrender value; and

(iii) any other policy insuring the life of a person.

(d) Only upon application of the liquidator, the receivership court may allow alternative procedures and requirements for the filing of proof of a claim or for allowing or proving a claim.

(e) Upon application, if the receivership court dispenses with the requirements of filing a proof of claim by a person, class, or group of persons, a proof of claim for that person, class, or group is considered as being filed for all purposes, except that the receivership court's waiver of proof of claim requirements may not impact guaranty association proof of claim filing requirements or coverage determinations to the extent that the guaranty association statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(2) The liquidator may permit a claimant that makes a late filing to share ratably in distributions, whether past or future, as if the claim were not filed late, to the extent that the payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the eligibility to file a proof of claim was not known to the claimant, and the claimant files a proof of claim within 90 days after the day on which the claimant first learns of the eligibility;

(b) (i) a transfer to a creditor is:

(A) avoided under Section 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507; or

(B) voluntarily surrendered under Section 31A-27a-509; and

(ii) the filing satisfies the conditions of Section 31A-27a-509; or

(c) the valuation of security held by a secured creditor under Section 31A-27a-610

shows a deficiency and the claim for the deficiency is filed within 30 days after the valuation.

(3) If a reinsurer's reinsurance contract terminates pursuant to Section 31A-27a-513:

(a) a claim filed by the receiver which arises from the termination may not be considered late if the claim is filed within 90 days of the day on which the reinsurance contract terminates; and

(b) the reinsurer shall receive a ratable share of distributions, whether past or future, as if the claim described in Subsection (3)(a) is not late.

(4) Notwithstanding any other provision of this chapter, the liquidator may petition the receivership court, subject to Section 31A-27a-107, to set a date certain after which no further claims may be filed.

(5) A Class 1 claim pursuant to Subsection 31A-27a-701(2)(a) is not subject to the claim filing provisions of this section.

Section 32. Section **31A-27a-605** is amended to read:

31A-27a-605. Allowance of contingent and unliquidated claims.

(1) As used in this section, "claim" means a demand for payment pursuant to Section 31A-27a-601 under the terms and conditions of a contract issued by the insurer as a result of a known accident, casualty, disaster, loss, event, or occurrence.

(2) (a) A claim of an insured or third party may be allowed under Section 31A-27a-603, regardless of the fact that it is contingent or unliquidated if:

(i) any contingency is removed in accordance with Subsection (3); and

(ii) the value of the claim is determined in accordance with Subsection (4).

(b) A claim is contingent if:

(i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or bonded against occurs on or before the date fixed under Section [~~31A-27a-601~~] 31A-27a-401; and

(ii) the act or event triggering the insurer's obligation to pay has not occurred as of [~~the~~] that date [~~fixed under Section 31A-27a-401~~].

(c) A claim is unliquidated if the insurer's obligation to pay is established, but the amount of the claim has not been determined.

(3) (a) Unless the receivership court directs otherwise, a contingent claim may be allowed if:

(i) the claimant presents proof of the insurer's obligation to pay reasonably satisfactory to the liquidator; or

(ii) subject to Subsection (3)(b), the claim is based on a cause of action against an insured of the insurer, and:

(A) it may be reasonably inferred from proof presented upon the claim that the claimant would be able to obtain a judgment; and

(B) the person furnishes suitable proof.

(b) A contingent claim may not be allowed under Subsection (3)(a)(ii)(B) if the receivership court for good cause shown shall otherwise direct that no further valid claims can be made against the insurer arising out of the cause of action other than those already presented.

(4) (a) An unliquidated claim may be allowed if its amount has been determined.

(b) If the amount of an unliquidated claim filed pursuant to Section 31A-27a-601 remains undetermined, the valuation of the unliquidated claim may be made by estimate whenever the liquidator determines that:

(i) liquidation of the claim would unduly delay the administration of the liquidation proceeding; or

(ii) the administrative expense of processing and adjudicating the claim or group of claims of a similar type would be unduly excessive when compared with the property that is estimated to be available for distribution with respect to the claim.

(c) Any estimate shall be based on an accepted method of valuing a claim with reasonable certainty at the claim's net present value, such as an actuarial evaluation.

(5) (a) Notwithstanding the other provisions of this section, a claim for the value or breach of a life insurance policy, disability income insurance policy, long-term care insurance policy, or annuity may not result in or serve as the basis of any liability of a reinsurer of the insurer.

(b) A reinsurer's liability to the insurer shall be determined exclusively on the basis of its contracts of reinsurance and Section 31A-27a-513.

(6) (a) The liquidator may petition the receivership court to set a date certain before which all claims under this section shall be final.

(b) In addition to the notice requirements of Section 31A-27a-107, the liquidator shall

give notice of the filing of the petition to all claimants with claims that remain contingent or unliquidated under this section.

Section 33. Section ~~{31A-28-119}~~31A-30-116 is amended to read:

~~{ 31A-28-119. Prohibited advertisement of the association -- Notice to owners of policies and contracts.~~

~~(1) (a) Except as provided in Subsection (1)(b), a person, including an insurer, agent, or affiliate of an insurer may not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio station or television station, or in any other way, any advertisement, announcement, or statement written or oral, that uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance.~~

~~(b) Notwithstanding Subsection (1)(a), this section does not apply to:~~

~~(i) the association; or~~

~~(ii) another entity that does not sell or solicit insurance.~~

~~(2) (a) The association shall:~~

~~(i) have a summary document describing the general purposes and current limitations of this part that complies with Subsection (3); and~~

~~(ii) submit the summary document described in Subsection (2)(a)(i) to the commissioner for approval.~~

~~(b) An insurer may not deliver a policy or contract to a policy or contract owner unless the summary document is also delivered to the policy or contract owner before, or at the time of, delivery of the policy or contract.~~

~~(c) The summary document shall be available upon request by a policy owner.~~

~~(d) The distribution, delivery, or contents or interpretation of the summary document does not guarantee that:~~

~~(i) the policy or the contract is covered in the event of the impairment or insolvency of a member insurer; or~~

~~(ii) the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer.~~

~~(c) The summary document shall be revised by the association as amendments to this part may require.~~

~~(f) Failure to receive the summary document as required in Subsection (2)(b) does not give the owner of a policy or contract, certificate holder, or insured any greater rights than those stated in this part.~~

~~(3) (a) The summary document described in Subsection (2) shall contain a clear and conspicuous disclaimer on its face.~~

~~(b) The commissioner shall, by rule, establish the form and content of the disclaimer described in Subsection (3)(a), except that the disclaimer shall:~~

~~(i) state the name and address of:~~

~~(A) the association; and~~

~~(B) the department;~~

~~(ii) prominently warn a policy or contract owner that:~~

~~(A) the association may not cover the policy or contract; or~~

~~(B) if coverage is available, it is:~~

~~(I) subject to substantial limitations and exclusions; and~~

~~(II) conditioned on continued residence in the state;~~

~~(iii) state the types of policies or contracts for which the association will provide coverage;~~

~~(iv) state that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;~~

~~(v) state that the policy or contract owner should not rely on coverage under the association when selecting an insurer;~~

~~(vi) explain the rights available and procedures for filing a complaint to allege a violation of this part; and~~

~~(vii) provide other information as directed by the commissioner including sources for information about the financial condition of insurers provided that the information:~~

~~(A) is not proprietary; and~~

~~(B) is subject to disclosure under public records laws.~~

~~(4) [(a) An insurer or agent may not deliver a]~~ A policy or contract described in

~~Subsection 31A-28-103(2)(a) and wholly excluded under Subsection 31A-28-103(2)(b)(i) from coverage under this part [unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice that] shall clearly and conspicuously [discloses] disclose on the cover or face page that the policy or contract is not covered by the association.~~

~~[(b) The commissioner shall by rule specify the form and content of the notice required by Subsection (4)(a).]~~

~~(5) A member insurer shall retain evidence of compliance with Subsection (2) for the later of:~~

~~(a) three years; or~~

~~(b) until the conclusion of the next market conduct examination by the department of insurance where the member insurer is domiciled.~~

~~Section 34. Section **31A-30-116** is amended to read:~~

~~}~~ **31A-30-116. Essential health benefits.**

(1) For purposes of this section, the [~~"Affordable Care Act" is as~~] PPACA means the same as that term is defined in Section [~~31A-2-212~~] 31A-1-301 and includes federal rules related to the offering of essential health benefits.

(2) The state chooses to designate its own essential health benefits rather than accept a federal determination of the essential health benefits required to be offered in the individual and small group market for plans renewed or offered on or after January 1, 2014.

(3) (a) Subject to Subsections (3)(b) and (c), to the extent required by the [~~Affordable Care Act~~] PPACA, and after considering public testimony, the Legislature's Health System Reform Task Force shall recommend to the commissioner, no later than September 1, 2012, a benchmark plan for the state's essential health benefits based on:

(i) the largest plan by enrollment in any of the three largest small employer group insurance products in the state's small employer group market;

(ii) any of the largest three state employee health benefit plans by enrollment;

(iii) the largest insured commercial non-Medicaid health maintenance organization operating in the state; or

(iv) other benchmarks required or permitted by the [~~Affordable Care Act~~] PPACA.

(b) Notwithstanding the provisions of Subsection 63N-11-106(2), based on the

recommendation of the task force under Subsection (3)(a), and within 30 days of the task force recommendation, the commissioner shall adopt an emergency administrative rule that designates the essential health benefits that shall be included in a plan offered or renewed on or after January 1, 2014, in the small employer group and individual markets.

(c) The essential health benefit plan:

(i) shall not include a state mandate if the inclusion of the state mandate would require the state to contribute to premium subsidies under the [~~Affordable Care Act~~] PPACA; and

(ii) may add benefits in addition to the benefits included in a benchmark plan described in Subsection (3)(b) if the additional benefits are mandated under the [~~Affordable Care Act~~] PPACA.

Section ~~{35}~~34. Section **31A-30-209** is amended to read:

31A-30-209. Insurance producers and the Health Insurance Exchange.

(1) A producer may be listed on the Health Insurance Exchange as a credentialed producer if the producer is designated as a credentialed agent for the Health Insurance Exchange in accordance with Subsection (2).

(2) A producer whose license under this title authorizes the producer to sell accident and health insurance may be credentialed by the Health Insurance Exchange and may sell any product on the Health Insurance Exchange, if the producer:

(a) is an appointed producer with:

(i) all carriers that offer a plan in the defined contribution market on the Health Insurance Exchange; and

(ii) at least one carrier that offers a dental plan on the Health Insurance Exchange; and

(b) completes each year the Health Insurance Exchange training [~~that includes training on premium assistance programs~~].

(3) A carrier shall appoint a producer to sell the carrier's products in the defined contribution arrangement market of the Health Insurance Exchange, within 30 days of the notice required in Subsection (3)(b), if:

(a) the producer is currently appointed by a majority of the carriers in the Health Insurance Exchange to sell products either outside or inside of the Health Insurance Exchange; and

(b) the producer informs the carrier that the producer is:

(i) applying to be appointed to the defined contribution arrangement market in the Health Insurance Exchange;

(ii) appointed by a majority of the carriers in the defined contribution arrangement market in the Health Insurance Exchange;

(iii) willing to complete training regarding the carrier's products offered on the defined contribution arrangement market in the Health Insurance Exchange; and

(iv) willing to sign the contracts and business associate's agreements that the carrier requires for appointed producers in the Health Insurance Exchange.

Section ~~{36}~~35. Section **31A-31-112** is enacted to read:

31A-31-112. Insurance antifraud plan.

(1) An insurer, as defined in Section 31A-31-102, shall prepare, implement, and maintain an insurance antifraud plan for its operations in this state.

(2) The insurance antifraud plan required by Subsection (1) shall outline specific procedures, actions, and safeguards that include how the authorized insurer or health maintenance organization will do each of the following:

(a) detect, investigate, and prevent all forms of insurance fraud, including:

(i) fraud involving its employees or agents;

(ii) fraud resulting from misrepresentations in the application, renewal, or rating of insurance policies;

(iii) fraudulent claims; and

(iv) breach of security of its data processing systems;

(b) educate employees of fraud detection and the insurance antifraud plan;

(c) provide for fraud investigations, whether through the use of internal fraud investigators or third-party contractors;

(d) report a suspected fraudulent insurance act, as described in Section 31A-31-103, to the department as required by Section 31A-31-110; and

(e) pursue restitution for financial loss caused by insurance fraud.

(3) The commissioner may investigate and examine the records and operations of authorized insurers and health maintenance organizations to determine if they have implemented and complied with the insurance antifraud plan.

(4) The commissioner may:

(a) direct any modification to the insurance antifraud plan necessary to comply with the requirements of this section; and

(b) require action to remedy substantial noncompliance with the insurance antifraud plan.

Section ~~{37}~~36. Section **31A-37-102** is amended to read:

31A-37-102. Definitions.

As used in this chapter:

(1) "Affiliated company" means a business entity that because of common ownership, control, operation, or management is in the same corporate or limited liability company system as:

(a) a parent;

(b) an industrial insured; or

(c) a member organization.

(2) "Alien captive insurance company" means an insurer:

(a) formed to write insurance business for a parent or affiliate of the insurer; and

(b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes statutory or regulatory standards:

(i) on a business entity transacting the business of insurance in the alien jurisdiction; and

(ii) in a form acceptable to the commissioner.

(3) "Association" means a legal association of two or more persons that has been in continuous existence for at least one year if:

(a) the association or its member organizations:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(ii) have complete voting control over an association captive insurance company incorporated as a mutual insurer;

(b) the association's member organizations collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

(c) the association or its member organizations have complete voting control over an association captive insurance company formed as a limited liability company.

(4) "Association captive insurance company" means a business entity that insures risks of:

(a) a member organization of the association;

(b) an affiliate of a member organization of the association; and

(c) the association.

(5) "Branch business" means an insurance business transacted by a branch captive insurance company in this state.

(6) "Branch captive insurance company" means an alien captive insurance company that has a certificate of authority from the commissioner to transact the business of insurance in this state through a [~~business unit with a principal place of business in~~] captive insurance company that is domiciled outside of this state.

(7) "Branch operation" means a business operation of a branch captive insurance company in this state.

(8) "Captive insurance company" means any of the following formed or holding a certificate of authority under this chapter:

(a) a branch captive insurance company;

(b) a pure captive insurance company;

(c) an association captive insurance company;

(d) a sponsored captive insurance company;

(e) an industrial insured captive insurance company, including an industrial insured captive insurance company formed as a risk retention group captive in this state pursuant to the provisions of the Federal Liability Risk Retention Act of 1986;

(f) a special purpose captive insurance company; or

(g) a special purpose financial captive insurance company.

(9) "Commissioner" means Utah's Insurance Commissioner or the commissioner's designee.

(10) "Common ownership and control" means that two or more captive insurance companies are owned or controlled by the same person or group of persons as follows:

(a) in the case of a captive insurance company that is a stock corporation, the direct or indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

(b) in the case of a captive insurance company that is a mutual corporation, the direct

or indirect ownership of 80% or more of the surplus and the voting power of the mutual corporation;

(c) in the case of a captive insurance company that is a limited liability company, the direct or indirect ownership by the same member or members of 80% or more of the membership interests in the limited liability company; or

(d) in the case of a sponsored captive insurance company, a protected cell is a separate captive insurance company owned and controlled by the protected cell's participant, only if:

(i) the participant is the only participant with respect to the protected cell; and

(ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored captive insurance company through common ownership and control.

(11) "Consolidated debt to total capital ratio" means the ratio of Subsection (11)(a) to (b).

(a) This Subsection (11)(a) is an amount equal to the sum of all debts and hybrid capital instruments including:

(i) all borrowings from depository institutions;

(ii) all senior debt;

(iii) all subordinated debts;

(iv) all trust preferred shares; and

(v) all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.

(b) This Subsection (11)(b) is an amount equal to the sum of:

(i) total capital consisting of all debts and hybrid capital instruments as described in Subsection (11)(a); and

(ii) shareholders' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(12) "Consolidated GAAP net worth" means the consolidated shareholders' or members' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(13) "Controlled unaffiliated business" means a business entity:

(a) (i) in the case of a pure captive insurance company, that is not in the corporate or limited liability company system of a parent or the parent's affiliate; or

(ii) in the case of an industrial insured captive insurance company, that is not in the corporate or limited liability company system of an industrial insured or an affiliated company of the industrial insured;

(b) (i) in the case of a pure captive insurance company, that has a contractual relationship with a parent or affiliate; or

(ii) in the case of an industrial insured captive insurance company, that has a contractual relationship with an industrial insured or an affiliated company of the industrial insured; and

(c) whose risks are managed by one of the following in accordance with Subsection 31A-37-106(1)(j):

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company.

(14) "Department" means the Insurance Department.

(15) "Industrial insured" means an insured:

(a) that produces insurance:

(i) by the services of a full-time employee acting as a risk manager or insurance manager; or

(ii) using the services of a regularly and continuously qualified insurance consultant;

(b) whose aggregate annual premiums for insurance on all risks total at least $25,000; and

(c) that has at least 25 full-time employees.

(16) "Industrial insured captive insurance company" means a business entity that:

(a) insures risks of the industrial insureds that comprise the industrial insured group; and

(b) may insure the risks of:

(i) an affiliated company of an industrial insured; or

(ii) a controlled unaffiliated business of:

(A) an industrial insured; or

(B) an affiliated company of an industrial insured.

(17) "Industrial insured group" means:

(a) a group of industrial insureds that collectively:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated or organized as a limited liability company as a stock insurer; or

(ii) have complete voting control over an industrial insured captive insurance company incorporated or organized as a limited liability company as a mutual insurer;

(b) a group that is:

(i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and

(ii) taxable under this title as a:

(A) stock corporation; or

(B) mutual insurer; or

(c) a group that has complete voting control over an industrial captive insurance company formed as a limited liability company.

(18) "Member organization" means a person that belongs to an association.

(19) "Parent" means a person that directly or indirectly owns, controls, or holds with power to vote more than 50% of:

(a) the outstanding voting securities of a pure captive insurance company; or

(b) the pure captive insurance company, if the pure captive insurance company is formed as a limited liability company.

(20) "Participant" means an entity that is insured by a sponsored captive insurance company:

(a) if the losses of the participant are limited through a participant contract to the assets of a protected cell; and

(b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

(ii) the entity is an affiliate of an entity permitted to be a participant under Section 31A-37-403.

(21) "Participant contract" means a contract by which a sponsored captive insurance company:

(a) insures the risks of a participant; and

(b) limits the losses of the participant to the assets of a protected cell.

(22) "Protected cell" means a separate account established and maintained by a

sponsored captive insurance company for one participant.

(23) "Pure captive insurance company" means a business entity that insures risks of a parent or affiliate of the business entity.

(24) "Special purpose financial captive insurance company" is as defined in Section 31A-37a-102.

(25) "Sponsor" means an entity that:

(a) meets the requirements of Section 31A-37-402; and

(b) is approved by the commissioner to:

(i) provide all or part of the capital and surplus required by applicable law in an amount of not less than $350,000, which amount the commissioner may increase by order if the commissioner considers it necessary; and

(ii) organize and operate a sponsored captive insurance company.

(26) "Sponsored captive insurance company" means a captive insurance company:

(a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(b) that is formed or holding a certificate of authority under this chapter;

(c) that insures the risks of a separate participant through the contract; and

(d) that segregates each participant's liability through one or more protected cells.

(27) "Treasury rates" means the United States Treasury strip asked yield as published in the Wall Street Journal as of a balance sheet date.

Section ~~{38}~~37. Section **31A-37-103** is amended to read:

31A-37-103. Chapter exclusivity.

(1) Except as provided in Subsections (2) and (3) or otherwise provided in this chapter, a provision of this title other than this chapter does not apply to a captive insurance company.

(2) To the extent that a provision of the following does not contradict this chapter, the provision applies to a captive insurance company that receives a certificate of authority under this chapter:

(a) Chapter 2, Administration of the Insurance Laws;

(b) Chapter 4, Insurers in General;

(c) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(d) Chapter 14, Foreign Insurers;

(e) Chapter 16, Insurance Holding Companies;

(f) Chapter 17, Determination of Financial Condition;

(g) Chapter 18, Investments;

(h) Chapter 19a, Utah Rate Regulation Act;

(i) Chapter 27, Delinquency Administrative Action Provisions; and

(j) Chapter 27a, Insurer Receivership Act.

(3) In addition to this chapter, and subject to Section 31A-37a-103:

(a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to a special purpose financial captive insurance company; and

(b) for purposes of a special purpose financial captive insurance company, a reference in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial Captive Insurance Company Act.

(4) In addition to this chapter, an industrial group captive insurance company formed as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to the extent that this chapter is silent regarding regulation of risk retention groups conducting business in the state.

Section ~~{39}~~38. Section **31A-37-204** is amended to read:

31A-37-204. Paid-in capital -- Other capital.

(1) (a) The commissioner may not issue a certificate of authority to a company described in Subsection (1)(c) unless the company possesses and thereafter maintains unimpaired paid-in capital and unimpaired paid-in surplus of:

(i) in the case of a pure captive insurance company, not less than $250,000;

(ii) in the case of an association captive insurance company incorporated as a stock insurer, not less than $750,000;

(iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than $700,000;

(iv) in the case of a sponsored captive insurance company, not less than $1,000,000, of which a minimum of $350,000 is provided by the sponsor; or

(v) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured.

(b) The paid-in capital and surplus required under this Subsection (1) may be in the form of:

(i) (A) cash; or

(B) cash equivalent; [~~or~~]

(ii) an irrevocable letter of credit:

(A) issued by:

(I) a bank chartered by this state; or

(II) a member bank of the Federal Reserve System; and

(B) approved by the commissioner[~~.~~]; or

(iii) marketable securities as determined by Subsections 31A-18-105(1) and (6).

(c) This Subsection (1) applies to:

(i) a pure captive insurance company;

(ii) a sponsored captive insurance company;

(iii) a special purpose captive insurance company;

(iv) an association captive insurance company incorporated as a stock insurer; or

(v) an industrial insured captive insurance company incorporated as a stock insurer.

(2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.

(b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:

(i) cash; [~~or~~]

(ii) an irrevocable letter of credit issued by:

(A) a bank chartered by this state; or

(B) a member bank of the Federal Reserve System[~~.~~]; or

(iii) marketable securities as determined by Subsections 31A-18-105(1) and (6).

(3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, shall, through its branch operations, establish and maintain a trust fund:

(i) funded by an irrevocable letter of credit or other acceptable asset; and

(ii) in the United States for the benefit of:

(A) United States policyholders; and

(B) United States ceding insurers under:

(I) insurance policies issued; or

(II) reinsurance contracts issued or assumed.

(b) The amount of the security required under this Subsection (3) shall be no less than:

(i) the capital and surplus required by this chapter; and

(ii) the reserves on the insurance policies or reinsurance contracts, including:

(A) reserves for losses;

(B) allocated loss adjustment expenses;

(C) incurred but not reported losses; and

(D) unearned premiums with regard to business written through branch operations.

(c) Notwithstanding the other provisions of this Subsection (3), the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount as the security posted if the security remains posted with the reinsurer.

(4) (a) A captive insurance company may not pay the following without the prior approval of the commissioner:

(i) a dividend out of capital or surplus in excess of the limits under Section 16-10a-640; or

(ii) a distribution with respect to capital or surplus in excess of the limits under Section 16-10a-640.

(b) The commissioner shall condition approval of an ongoing plan for the payment of dividends or other distributions on the retention, at the time of each payment, of capital or surplus in excess of:

(i) amounts specified by the commissioner under Section 31A-37-106; or

(ii) determined in accordance with formulas approved by the commissioner under Section 31A-37-106.

(5) Notwithstanding Subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a certificate of authority unless the captive insurance company possesses and maintains unimpaired paid-in surplus of $1,000,000.

(6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based upon the type, volume, and nature of the insurance business transacted.

(b) The unimpaired paid-in surplus required under this Subsection (6) may be in the form of an irrevocable letter of credit issued by:

(i) a bank chartered by this state; or

(ii) a member bank of the Federal Reserve System.

Section ~~{40}~~39. Section **31A-37-303** is amended to read:

31A-37-303. Reinsurance.

(1) A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.

(2) (a) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or if the captive insurance company complies with other requirements as the commissioner may establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) Unless the reinsurer is in compliance with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or a rule adopted under Subsection (2)(a), a captive insurance company may not take credit for:

(i) reserves on risks ceded to a reinsurer; or

(ii) portions of risks ceded to a reinsurer.

Section ~~{41}~~40. Section **31A-37-501** is amended to read:

31A-37-501. Reports to commissioner.

(1) A captive insurance company is not required to make a report except those provided in this chapter.

(2) (a) Before March 1 of each year, a captive insurance company shall submit to the commissioner a report of the financial condition of the captive insurance company, verified by oath of [~~two~~] one of the executive officers of the captive insurance company.

(b) Except as provided in Section 31A-37-204, a captive insurance company shall report:

(i) using generally accepted accounting principles, except to the extent that the commissioner requires, approves, or accepts the use of a statutory accounting principle;

(ii) using a useful or necessary modification or adaptation to an accounting principle that is required, approved, or accepted by the commissioner for the type of insurance and kind

of insurer to be reported upon; and

(iii) supplemental or additional information required by the commissioner.

(c) Except as otherwise provided:

(i) a licensed captive insurance company shall file the report required by Section 31A-4-113; and

(ii) an industrial insured group shall comply with Section 31A-4-113.5.

(3) (a) A pure captive insurance company may make written application to file the required report on a fiscal year end that is consistent with the fiscal year of the parent company of the pure captive insurance company.

(b) If the commissioner grants an alternative reporting date for a pure captive insurance company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal year end.

(4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall file with the commissioner a copy of the reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two of the alien captive insurance company's executive officers.

(b) If the commissioner is satisfied that the annual report filed by the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the annual statement required for a captive insurance company under this section with respect to business written in the alien or foreign jurisdiction.

(c) A waiver by the commissioner under Subsection (4)(b):

(i) shall be in writing; and

(ii) is subject to public inspection.

(5) Before March 1 of each year, a sponsored cell captive insurance company shall submit to the commissioner a consolidated report of the financial condition of each individual protected cell, including a financial statement for each protected cell.

Section ~~{42}~~41. Section **31A-37-502** is amended to read:

31A-37-502. Examination.

(1) (a) As provided in this section, the commissioner, or a person appointed by the

commissioner, shall examine each captive insurance company in each five-year period.

(b) The five-year period described in Subsection (1)(a) shall be determined on the basis of five full annual accounting periods of operation.

(c) The examination is to be made as of:

(i) December 31 of the full [~~three-year~~] five-year period; or

(ii) the last day of the month of an annual accounting period authorized for a captive insurance company under this section.

(d) In addition to an examination required under this Subsection (1), the commissioner, or a person appointed by the commissioner may examine a captive insurance company whenever the commissioner determines it to be prudent.

(2) During an examination under this section the commissioner, or a person appointed by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance company to ascertain:

(a) the financial condition of the captive insurance company;

(b) the ability of the captive insurance company to fulfill the obligations of the captive insurance company; and

(c) whether the captive insurance company has complied with this chapter.

(3) The commissioner may accept a comprehensive annual independent audit in lieu of an examination:

(a) of a scope satisfactory to the commissioner; and

(b) performed by an independent auditor approved by the commissioner.

(4) A captive insurance company that is inspected and examined under this section shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an inspection and examination.

Section ~~{43}~~42. Section **31A-40-208** is amended to read:

31A-40-208. Benefit plan.

(1) A client and a professional employer organization licensed under this chapter shall each be considered an employer for purposes of sponsoring a retirement or welfare benefit plan for a covered employee.

(2) (a) A fully insured welfare benefit plan offered to a covered employee of a single professional employer organization licensed under this chapter[~~: (a)~~] is to be treated as a single

employer welfare benefit plan for purposes of this title and rules made under this title[~~;~~].

[~~(b) may not be considered an employer welfare fund or plan, as described in Section 31A-13-101; and~~]

[~~(c)~~] (b) The single professional employer organization that sponsors the fully insured welfare plan is exempt from the registration requirements under this title for:

(i) an insurance provider; or

(ii) an employer welfare fund or plan.

(3) For purposes of Chapter 30, Individual, Small Employer, and Group Health Insurance Act:

(a) a professional employer organization licensed under this chapter is considered the employer of a covered employee; and

(b) all covered employees of one or more clients participating in a health benefit plan sponsored by a single professional employer organization licensed under this chapter are considered employees of that professional employer organization.

(4) A professional employer organization licensed under this chapter may offer to a covered employee a health benefit plan that is not fully insured by an authorized insurer, only if:

(a) the professional employer organization has operated as a professional employer organization for at least one year before the day on which the professional employer organization offers the health benefit plan; and

(b) the health benefit plan:

(i) is administered by a third-party administrator licensed to do business in this state;

(ii) holds all assets of the health benefit plan, including participant contributions, in a trust account;

(iii) has and maintains reserves that are sound for the health benefit plan as determined by an actuary who:

(A) uses generally accepted actuarial standards of practice; and

(B) is an independent qualified actuary, including not being an employee or covered employee of the professional employer organization;

(iv) provides written notice to a covered employee participating in the health benefit plan that the health benefit plan is self-insured or is not fully insured;

(v) consents to an audit:

(A) on a random basis; or

(B) upon a finding of a reasonable need by the commissioner; and

(vi) provides for continuation of coverage in compliance with Section 31A-22-722.

(5) The cost of an audit described in Subsection (4)(b)(v) shall be paid by the sponsoring professional employer organization.

(6) A plan of a professional employer organization described in Subsection (4) that is not fully insured:

(a) is subject to the requirements of this section; and

(b) is not subject to another licensure or approval requirement of this title.

Section ~~{44)~~43. Section **31A-41-202** is amended to read:

31A-41-202. Assessments.

(1) [~~Beginning January 1, 2009, an~~] An agency title insurance producer licensed under this title shall pay an annual assessment determined by the commission by rule made in accordance with Section 31A-2-404, except that the annual assessment:

(a) may not exceed $1,000; and

(b) shall be determined on the basis of title insurance premium volume.

(2) [~~Beginning January 1, 2009, an~~] An individual who applies for a license or renewal of a license as an individual title insurance producer, shall pay in addition to any other fee required by this title, an assessment not to exceed $20, as determined by the commission by rule made in accordance with Section 31A-2-404, except that if the individual holds more than one license, the total of all assessments under this Subsection (2) may not exceed $20 in a fiscal year.

(3) (a) To be licensed as an agency title insurance producer [~~on or after July 1, 2008~~], a person shall pay to the department an assessment of $1,000 before the day on which the person is licensed as a title insurance agency.

(b) (i) [~~By no later than July 15, 2008, the~~] The department shall assess on [~~an~~] a licensed agency title insurance producer [~~licensed as of June 30, 2008,~~] an amount equal to the greater of:

(A) $1,000; or

(B) subject to Subsection (3)(b)(ii), 2% of the balance [~~as of December 31, 2007,~~] in

the agency title insurance producer's reserve account described in Subsection 31A-23a-204(3).

(ii) The department may assess on an agency title insurance producer an amount less than 2% of the balance described in Subsection (3)(b)(i)(B) if:

(A) before issuing the assessments under this Subsection (3)(b) the department determines that the total of all assessments under Subsection (3)(b)(i) will exceed $250,000;

(B) the amount assessed on the agency title insurance producer is not less than $1,000; and

(C) the department reduces the assessment in a proportionate amount for agency title insurance producers assessed on the basis of the 2% of the balance described in Subsection (3)(b)(i)(B).

(iii) An agency title insurance producer assessed under this Subsection (3)(b) shall pay the assessment by no later than August 1[~~, 2008~~].

(4) The department may not assess a title insurance licensee an assessment for purposes of the fund if that assessment is not expressly provided for in this section.

Section ~~{45}~~44. Section **31A-41-301** is amended to read:

31A-41-301. Procedure for making a claim against the fund.

[~~(1) (a) To bring a claim against the fund a person shall notify the department within 30 business days of the day on which the person files an action against a title insurance licensee alleging the following related to a title insurance transaction:~~]

[~~(i) fraud;~~]

[~~(ii) misrepresentation; or~~]

[~~(iii) deceit.~~]

[~~(b) The notification required by Subsection (1)(a) shall be:~~]

[~~(i) in writing; and~~]

[~~(ii) signed by the person who provides the notice.~~]

[~~(c) Within 30 days of the day on which the department receives a notice under Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).~~]

[~~(2) (a) Subject to the other provisions in this section, a person who provides the notice required under Subsection (1) may maintain a claim against the fund if:~~]

[~~(i) in an action described in Subsection (1), the person obtains a final judgment in a court of competent jurisdiction in this state against a title insurance licensee;~~]

[~~(ii) all proceedings including appeals related to the final judgment described in Subsection (2)(a)(i) are at an end; and~~]

[~~(iii) the person files a verified petition in the court where the judgment is entered for an order directing payment from the fund for the uncollected actual damages included in the judgment and unpaid.~~]

[~~(b) A court may not direct the payment from the fund of:~~]

[~~(i) punitive damages;~~]

[~~(ii) attorney fees;~~]

[~~(iii) interest; or~~]

[~~(iv) court costs.~~]

[~~(c) Regardless of the number of claimants or parcels of real estate involved in a single real estate transaction, the liability of the fund may not exceed:~~]

[~~(i) $15,000 for a single real estate transaction; or~~]

[~~(ii) $50,000 for all transactions of a title insurance license.~~]

[~~(d) A person shall:~~]

[~~(i) serve the verified petition required by Subsection (2)(a) on the department; and~~]

[~~(ii) file an affidavit of service with the court.~~]

[~~(3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days after the day on which the department is served.~~]

[~~(b) The person who files the petition may recover from the fund only if the person shows all of the following:~~]

(1) To recover from the fund, a person shall:

(a) obtain a final judgment against a title insurance licensee establishing that fraud, misrepresentation, or deceit by the licensee in a real estate transaction proximately caused economic harm to the person; and

(b) apply to the department to receive compensation for the economic harm from the fund.

(2) An application under Subsection (1)(b) shall establish all of the following:

[~~(i)~~] (a) the [~~person~~] applicant is not a spouse of the judgment debtor or the personal representative of the spouse;

[~~(ii) the person complied with this chapter;~~]

[~~(iii)~~] (b) the [~~person~~] applicant has obtained a final judgment in accordance with [~~this section indicating the amount of the judgment awarded~~] Subsections (1)(a) and (3);

[~~(iv)~~] (c) [~~the~~] an amount is still [~~owing~~] owed on the judgment at the date of the [~~petition~~] application;

[~~(v)~~] (d) the [~~person~~] applicant has had a writ of execution issued under the judgment, and the officer executing the writ has returned showing that:

[~~(A)~~] (i) no property subject to execution in satisfaction of the judgment could be found; or

[~~(B)~~] (ii) the amount realized upon the execution levied against the property of the judgment debtor is insufficient to satisfy the judgment;

[~~(vi)~~] (e) the [~~person~~] applicant has made reasonable searches and inquiries to ascertain whether the judgment debtor has any interest in property, real or personal, that may satisfy the judgment; and

[~~(vii)~~] (f) the [~~person~~] applicant has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.

[~~(4) If the person described in Subsection (3) satisfies the court that it is not practicable for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through (vii), the court may waive those requirements.~~]

[~~(5) (a) A judgment that is the basis for a claim against the fund may not have been discharged in bankruptcy.~~]

[~~(b) If a bankruptcy proceeding is still open or is commenced during the pendency of the claim, the person bringing a claim against the fund shall obtain an order from the bankruptcy court declaring the judgement and debt to be nondischargeable.~~]

(3) (a) A final judgment under Subsection (1)(a) does not include a default judgment entered against a title insurance licensee. If grounds exist for a default judgment against a title insurance licensee, the requirement of a final judgment may be satisfied by complying with Section 31A-41-302.

(b) A final judgment under Subsection (1)(a) does not include a judgment that is discharged in bankruptcy. If a bankruptcy proceeding is open or is commenced during the pendency of an application under Subsection (1)(b) before the department or the court, the applicant shall obtain an order from the bankruptcy court declaring the judgment and debt to be

non-dischargeable.

(4) The department may hold a hearing on the application filed pursuant to Subsection (2). The hearing shall be an informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, with rights of appeal as provided in Title 63G, Chapter 4, Administrative Procedures Act.

Section ~~{46}~~45. Section **31A-41-302** is repealed and reenacted to read:

31A-41-302. Department may defend action in which title insurance licensee does not appear or defend.

(1) In a lawsuit alleging that fraud, misrepresentation, or deceit by a title insurance licensee in a real estate transaction proximately caused economic harm, if grounds arise for the entry of a default judgment against the title insurance licensee, the plaintiff may petition the court to join the department as a defendant in the lawsuit.

(2) After being served, the department may appear, conduct discovery, and otherwise defend against any claim asserted against the title insurance licensee for which the fund may be liable under this part. A judgment under this Subsection (2) may not be issued against the department.

Section ~~{47}~~46. Section **31A-41-303** is amended to read:

31A-41-303. Determination and amount of fund liability.

(1) Subject to the requirements of this part, if the [~~court~~] department determines that a claim should be levied against the fund, the [~~court~~] department shall enter an order [~~directing the department to pay from the fund~~] that the fund pay that portion of the petitioner's judgment that is [~~payable~~] eligible for payment from the fund.

(2) A payment from the fund may not compensate for punitive damages, attorney fees, interest, or court costs.

(3) Regardless of the number of claimants or parcels of real estate involved in a single transaction, the liability of the fund may not exceed:

(a) $15,000 for a single real estate transaction; or

(b) $50,000 for all transactions of a title insurance licensee.

Section ~~{48}~~47. Section **63I-2-231** is amended to read:

63I-2-231. Repeal dates, Title 31A.

(1) Section 31A-22-315.5 is repealed July 1, [~~2016~~] 2019.

(2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed [~~July 1, 2016~~] December 31, 2018.

Section 48. **Health Reform Task Force -- Creation -- Membership -- Interim rules followed -- Compensation -- Staff.**

(1) There is created the Health Reform Task Force consisting of the following 11 members:

(a) four members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and

(b) seven members of the House of Representatives appointed by the speaker of the House of Representatives, no more than five of whom may be from the same political party.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

(3) In conducting its business, the task force shall comply with the rules of legislative interim committees.

(4) Salaries and expenses of the members of the task force shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(5) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

Section 49. **Duties -- Interim Report.**

(1) The task force shall review and make recommendations on the following issues:

(a) substance abuse and mental health;

(b) telehealth services;

(c) health professional licensing;

(d) regulation of health maintenance organizations and preferred provider organizations;

(e) balanced billing for covered medical services;

(f) re-codification of the health insurance related parts of Title 31A, Insurance Code; and

(g) the state Medicaid program.

(2) A final report, including any proposed legislation, shall be presented to the Business and Labor Interim Committee before November 30, 2016.

Section ~~{49}~~50. **Repealer.**

This bill repeals:

Section **31A-13-101, Scope.**

Section **31A-13-102, Regulation in general.**

Section **31A-13-103, Registration.**

Section **31A-13-104, Commissioner to file information.**

Section **31A-13-105, Reports to employers and employees.**

Section **31A-13-106, Annual accounting by insurance companies, service plans, and corporate trustees and agents.**

Section **31A-13-107, Commissioner's remedies.**

Section **31A-13-108, Investments.**

Section **31A-13-109, Political activities.**

Section **31A-17-404.2, Credit allowed a foreign ceding insurer.**

Section 51. **Appropriation.**

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for the fiscal year beginning July 1, 2016, and ending June 30, 2017, the following sums of money are appropriated from resources not otherwise appropriated, or reduced from amounts previously appropriated, out of the funds or accounts indicated. These sums of money are in addition to amounts previously appropriated for fiscal year 2016-2017.

To Legislature - Senate

From General Fund, one-time		$13,000
Schedule of Programs:		
Administration	$13,000	

To Legislature - House of Representatives

From General Fund, one-time		$22,000
Schedule of Programs:		
Administration	$22,000	

Section 52. **Repeal date.**

Uncodified Sections 48 and 49 that create the Health Reform Task Force are repealed

December 30, 2016.