

Representative James A. Dunnigan proposes the following substitute bill:

DEPARTMENT OF INSURANCE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions of the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ defines terms and modifies defined terms;
- ▶ addresses the requirements for filing a binder for a health benefit plan or dental policy with the commissioner;
- ▶ modifies the date on which the commissioner presents an annual evaluation of the state's health insurance market;
- ▶ classifies certain records related to an examination as protected records;
- ▶ modifies the process by which the commissioner determines an applicant's ability to provide proposed health care services under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- ▶ modifies the requirements for ~~H~~→ [an-~~un~~authorized] a nonadmitted ←~~H~~ insurer to be listed on the commissioner's "reliable" list;
- ▶ provides the circumstances under which the commissioner must hold a hearing on a merger or other acquisition of an insurer;
- ▶ amends the deadline for holding a hearing on a merger or other acquisition of an



1545 (b) has agreed either directly or indirectly, by contract or any other arrangement with a
 1546 health discount program operator, to provide a discount to enrollees of a health discount
 1547 program.

1548 (3) (a) "Health discount program" means a business arrangement or contract in which a
 1549 person pays fees, dues, charges, or other consideration in exchange for a program that provides
 1550 access to health care providers who agree to provide a discount for health care services.

1551 (b) "Health discount program" does not include a program that does not charge a
 1552 membership fee or require other consideration from the member to use the program's discounts
 1553 for health services.

1554 (4) "Health discount program marketer" means a person, including a private label
 1555 entity, that markets, promotes, sells, or distributes a health discount program but does not
 1556 operate a health discount program.

1557 (5) "Health discount program operator" means a person that provides a health discount
 1558 program by entering into a contract or agreement, directly or indirectly, with a person or
 1559 persons in this state who agree to provide discounts for health care services to enrollees of the
 1560 health discount program and determines the charge to members.

1561 (6) "Marketing" means making or causing to be made any communication that contains
 1562 information that relates to a product or contract regulated under this chapter.

1563 [~~(6)~~] (7) "Value-added benefit" means a discount offering with no additional charge
 1564 made by a health insurer or health maintenance organization that is licensed under this title, in
 1565 connection with existing contracts with the health insurer or health maintenance organization.

1566 Section 8. Section **31A-15-103** is amended to read:

1567 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

1568 (1) Notwithstanding Section 31A-15-102, [~~a foreign~~] ~~H~~→ [~~an insurer that has not obtained a~~
 1569 ~~certificate of authority to do business in this state under Section 31A-14-202 may negotiate for~~
 1570 ~~and] when this state is the home state as defined in Section 31A-3-305, a nonadmitted insurer~~
 1570a ~~may~~ ←~~H~~ make an insurance contract ~~H~~→ [~~with] for coverage of~~ ←~~H~~ a person in this state and on
 1570b a risk located in this state,
 1571 subject to the limitations and requirements of this section.

1572 (2) (a) For a contract made under this section, the insurer may, in this state:

1573 (i) inspect the risks to be insured;

1574 (ii) collect premiums;

1575 (iii) adjust losses; and

1607 (i) the insurer willfully violates:

1608 (A) this section;

1609 (B) Section 31A-4-102, 31A-23a-402, 31A-23a-402.5, or 31A-26-303; or

1610 (C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);

1611 (ii) the insurer fails to pay the fees and taxes specified under Section 31A-3-301; or

1612 (iii) the commissioner has reason to believe that the insurer is:

1613 (A) in an unsound condition;

1614 (B) operated in a fraudulent, dishonest, or incompetent manner; or

1615 (C) in violation of the law of its domicile.

1616 (d) (i) The commissioner may issue one or more lists of ~~H~~→ [unauthorized]

1616a nonadmitted ←~~H~~ foreign insurers

1617 whose:

1618 (A) solidity the commissioner doubts; or

1619 (B) practices the commissioner considers objectionable.

1620 (ii) The commissioner shall issue one or more lists of ~~H~~→ [unauthorized] nonadmitted ←~~H~~

1620a foreign insurers the

1621 commissioner considers to be reliable and solid.

1622 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner

1623 may issue other relevant evaluations of ~~H~~→ [unauthorized] nonadmitted ←~~H~~ insurers.

1624 (iv) An action may not lie against the commissioner or an employee of the department

1625 for a written or oral communication made in, or in connection with the issuance of, a list or

1626 evaluation described in this Subsection (6)(d).

1627 (e) [~~A foreign~~] ~~H~~→ [~~An unauthorized~~] A nonadmitted ←~~H~~ insurer shall be listed on the

1627a commissioner's "reliable"

1628 list only if the ~~H~~→ [unauthorized] nonadmitted ←~~H~~ insurer:

1629 (i) delivers a request to the commissioner to be on the list;

1630 (ii) establishes satisfactory evidence of good reputation and financial integrity;

1631 (iii) (A) delivers to the commissioner a copy of the ~~H~~→ [unauthorized] nonadmitted ←~~H~~

1631a insurer's current

1632 annual statement certified by the insurer[~~;~~and] and, each subsequent year, delivers to the

1633 commissioner a copy of the ~~H~~→ [unauthorized] nonadmitted ←~~H~~ insurer's annual statement

1633a within 60 days after the

1634 day on which the ~~H~~→ [unauthorized] nonadmitted ←~~H~~ insurer files the annual statement with the

1634a insurance regulatory

1635 authority where the ~~H~~→ nonadmitted ←~~H~~ insurer is domiciled; or

1636 [~~B~~] ~~continues each subsequent year to file its annual statements with the~~

1637 ~~commissioner within 60 days of the day on which it is filed with the insurance regulatory~~

1638 authority where the insurer is domiciled;]

1639 (B) files the ~~H~~→ **[unauthorized] nonadmitted** ←~~H~~ insurer's annual statements with the

1639a National Association of

1640 Insurance Commissioners and the ~~H~~→ **[unauthorized] nonadmitted** ←~~H~~ insurer's annual

1640a statements are available

1641 electronically from the National Association of Insurance Commissioners;

1642 (iv) (A) ~~(F)~~ is in substantial compliance with the solvency standards in Chapter 17,
1643 Part 6, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever
1644 is greater; ~~and~~ or

1645 ~~[(H) maintains in the United States an irrevocable trust fund in either a national bank or~~
1646 ~~a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit~~
1647 ~~requirements for insurers in the state where it is made, which trust fund or deposit:]~~

1648 ~~[(Aa) shall be in an amount not less than \$2,500,000 for the protection of all of the~~
1649 ~~insurer's policyholders in the United States;]~~

1650 ~~[(Bb) may consist of cash, securities, or investments of substantially the same character~~
1651 ~~and quality as those which are "qualified assets" under Section 31A-17-201; and]~~

1652 ~~[(Cc) may include as part of the trust arrangement a letter of credit that qualifies as~~
1653 ~~acceptable security under Section 31A-17-404.1; or]~~

1654 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group
1655 of alien individual insurers, maintains a trust fund that:

1656 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all
1657 policyholders and creditors in the United States of each member of the group;

1658 (II) may consist of cash, securities, or investments of substantially the same character
1659 and quality as those which are "qualified assets" under Section 31A-17-201; and

1660 (III) may include as part of this trust arrangement a letter of credit that qualifies as
1661 acceptable security under Section 31A-17-404.1; and

1662 (v) for an alien insurer not domiciled in the United States or a territory of the United
1663 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National
1664 Association of Insurance Commissioners International Insurers Department.

1665 (7) (a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly
1666 or without reasonable investigation of the financial condition and general reputation of the
1667 insurer, place insurance under this section with:

1668 (i) a financially unsound insurer;