

AMENDMENTS TO INSURANCE

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Insurance Code and provisions of the Utah Administrative Services Code relating to insurance.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ adds provisions a warrantor is required to disclose in a vehicle protection product warranty;
- ▶ repeals the requirement that the fixed amount of reimbursement under a vehicle protection product warranty is uniform for all warranty holders of the same vehicle protection product warranty;
- ▶ enacts and consolidates provisions related to an offer of qualified health insurance coverage that certain contractors and subcontractors are required to obtain and maintain;
- ▶ amends the threshold at which certain contractors and subcontractors become subject to certain health care-related requirements; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **31A-6a-101**, as last amended by Laws of Utah 2017, Chapter 27

32 **31A-6a-104**, as last amended by Laws of Utah 2016, Chapter 138

33 **31A-6a-105**, as last amended by Laws of Utah 2015, Chapter 244

34 **63A-5-205**, as last amended by Laws of Utah 2016, Chapters 20 and 355

35 ENACTS:

36 **63A-5-205.5**, Utah Code Annotated 1953

37 REPEALS AND REENACTS:

38 **31A-6a-111**, as enacted by Laws of Utah 2015, Chapter 244



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

41 Section 1. Section **31A-6a-101** is amended to read:

42 **31A-6a-101. Definitions.**

43 As used in this chapter:

44 (1) (a) "Incidental cost" means a cost, incurred by a warranty holder in relation to a
45 vehicle protection product warranty, that is in addition to the cost of purchasing the warranty.

46 (b) "Incidental cost" includes an insurance policy deductible, a rental vehicle charge,
47 the difference between the actual value of the stolen vehicle at the time of theft and the cost of
48 a replacement vehicle, sales tax, a registration fee, a transaction fee, a mechanical inspection
49 fee, or damage a theft causes to a vehicle.

50 ~~[(1)]~~ (2) "Mechanical breakdown insurance" means a policy, contract, or agreement
51 issued by an insurance company that has complied with either Chapter 5, Domestic Stock and
52 Mutual Insurance Corporations, or Chapter 14, Foreign Insurers, that undertakes to perform or
53 provide repair or replacement service on goods or property, or indemnification for repair or
54 replacement service, for the operational or structural failure of the goods or property due to a
55 defect in materials, workmanship, or normal wear and tear.

56 ~~[(2)]~~ (3) "Nonmanufacturers' parts" means replacement parts not made for or by the
57 original manufacturer of the goods commonly referred to as "after market parts."

58 ~~[(3)]~~ (4) (a) "Road hazard" means a hazard that is encountered while driving a motor

59 vehicle.

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

62 [~~(4)~~] (5) (a) "Service contract" means a contract or agreement to perform or reimburse
63 for the repair or maintenance of goods or property, for their operational or structural failure due
64 to a defect in materials, workmanship, normal wear and tear, power surge or interruption, or
65 accidental damage from handling, with or without additional provision for incidental payment
66 of indemnity under limited circumstances, including towing, providing a rental car, providing
67 emergency road service, and covering food spoilage.

68 (b) "Service contract" does not include:

69 (i) mechanical breakdown insurance; or

70 (ii) a prepaid contract of limited duration that provides for scheduled maintenance
71 only, regardless of whether the contract is executed before, on, or after May 9, 2017.

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

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

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

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

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

85 [~~(5)~~] (6) "Service contract holder" or "contract holder" means a person who purchases a
86 service contract.

87 [~~(6)~~] (7) "Service contract provider" means a person who issues, makes, provides,
88 administers, sells or offers to sell a service contract, or who is contractually obligated to
89 provide service under a service contract.

90 ~~[(7)]~~ (8) "Service contract reimbursement policy" or "reimbursement insurance policy"
91 means a policy of insurance providing coverage for all obligations and liabilities incurred by
92 the service contract provider or warrantor under the terms of the service contract or vehicle
93 protection product warranty issued by the provider or warrantor.

94 ~~[(8)]~~ (9) (a) "Vehicle protection product" means a device or system that is:

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

96 (ii) designed to:

97 (A) prevent the theft of the vehicle[-]; or

98 (B) if the vehicle is stolen, aid in the recovery of the vehicle.

99 (b) "Vehicle protection product" includes:

100 (i) a vehicle protection product warranty;

101 (ii) an alarm system;

102 (iii) a body part marking product;

103 (iv) a steering lock;

104 (v) a window etch product;

105 (vi) a pedal and ignition lock;

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

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

108 ~~[(9)]~~ (10) "Vehicle protection product warranty" means a written agreement by a
109 warrantor that provides that if the vehicle protection product fails to prevent the theft of the
110 motor vehicle, ~~[that]~~ or aid in the recovery of the motor vehicle within a time period specified
111 in the warranty, not exceeding 30 days after the day on which the motor vehicle is reported
112 stolen, the warrantor will reimburse the warranty holder [under the warranty in a fixed amount]
113 for incidental costs specified in the warranty, not [to exceed \$5,000] exceeding \$5,000, or in a
114 specified fixed amount not exceeding \$5,000.

115 ~~[(10)]~~ (11) "Warrantor" means a person who is contractually obligated to the warranty
116 holder under the terms of a vehicle protection product warranty.

117 ~~[(11)]~~ (12) "Warranty holder" means the person who purchases a vehicle protection
118 product, any authorized transferee or assignee of the purchaser, or any other person legally
119 assuming the purchaser's rights under the vehicle protection product warranty.

120 Section 2. Section **31A-6a-104** is amended to read:

121 **31A-6a-104. Required disclosures.**

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

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

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

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

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

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

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

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

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

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

154 (iii) "The warrantor under this vehicle protection product warranty will reimburse the
155 warranty holder as specified in the warranty:

156 (A) upon the theft of the vehicle; or

157 (B) if the stolen vehicle is not recovered within a time period specified in the warranty
158 following the theft of the vehicle, not to exceed 30 days after the day on which the vehicle is
159 reported stolen, at the end of the time period specified in the warranty."

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

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

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

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

168 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

196 (8) (a) As used in this Subsection (8), "conspicuous statement" means a disclosure that:

197 (i) appears in all-caps, bold, and 14-point font; and

198 (ii) provides a space to be initialed by the consumer:

199 (A) immediately below the printed disclosure; and

200 (B) before the consumer purchases the vehicle protection product.

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

204 (9) If a vehicle protection product warranty states that the warrantor will reimburse the
205 warranty holder for incidental costs, the vehicle protection product warranty shall state how
206 incidental costs paid under the warranty are calculated.

207 (10) If a vehicle protection product warranty states that the warrantor will reimburse
208 the warranty holder in a fixed amount, the vehicle protection product warranty shall state the
209 fixed amount.

210 Section 3. Section **31A-6a-105** is amended to read:

211 **31A-6a-105. Prohibited acts.**

212 (1) Except as provided in Subsection **31A-6a-104(2)**, a service contract provider or
213 warrantor may not use in [its] the service contract provider or warrantor's name, a contract, or

214 literature:

215 (a) any of the following words:

216 (i) "insurance";

217 (ii) "casualty";

218 (iii) "surety";

219 (iv) "mutual"; or

220 (v) another word descriptive of the insurance, casualty, or surety business; or

221 (b) a name deceptively similar to the name or description of:

222 (i) an insurance or surety corporation; or

223 (ii) another service contract provider.

224 (2) A service contract provider [~~or the~~], a service contract provider's representative, a
225 warrantor, or a warrantor's representative may not:

226 (a) make, permit, or cause to be made a false or misleading statement in connection
227 with the sale, offer to sell, or advertisement of a service contract or vehicle protection product;
228 or

229 (b) deliberately omit a material statement that would be considered misleading if
230 omitted, in connection with the sale, offer to sell, or advertisement of a service contract or
231 vehicle protection product.

232 (3) A bank, savings and loan association, insurance company, or other lending
233 institution may not require the purchase of a service contract as a condition of a loan.

234 (4) Except for a bank, savings and loan association, industrial bank, or credit union, a
235 service contract provider may not sell, or be the obligated party for:

236 (a) a guaranteed asset protection waiver, unless registered with the commissioner under
237 Chapter 6b, Guaranteed Asset Protection Waiver Act;

238 (b) a debt cancellation agreement, unless licensed by the commissioner; or

239 (c) a debt suspension agreement, unless licensed by the commissioner.

240 (5) A warrantor or [~~its~~] the warrantor's representative may not:

241 (a) require the purchase of a vehicle protection product as a condition of the financing,
242 lease, or purchase of a motor vehicle[-]; or

243 (b) sell a vehicle protection product to a consumer before providing the consumer, for
244 review, a copy of the vehicle protection product warranty that is filed with the Utah

245 Department of Insurance.

246 Section 4. Section **31A-6a-111** is repealed and reenacted to read:

247 **31A-6a-111. Vehicle protection product warranty requirements.**

248 (1) A warrantor shall make a reimbursement promised under a vehicle protection
 249 product warranty as specified in the warranty, regardless of, and not contingent upon, the
 250 payment of a benefit provided for under the warranty holder's primary vehicle insurance or any
 251 other contract.

252 (2) If a vehicle protection product is represented as preventing the theft of a vehicle or
 253 aiding in the recovery of a vehicle, the vehicle protection product warranty shall, at a
 254 minimum, provide for reimbursement of damage a theft causes to the motor vehicle, if the
 255 vehicle is recovered within the time period specified in the warranty following the theft of the
 256 vehicle, not to exceed 30 days after the day on which the vehicle is reported stolen.

257 Section 5. Section **63A-5-205** is amended to read:

258 **63A-5-205. Contracting powers of director -- Retainage.**

259 ~~[(1) As used in this section:]~~

260 ~~[(a) "Capital developments" means the same as that term is defined in Section~~
 261 ~~63A-5-104.]~~

262 ~~[(b) "Capital improvements" means the same as that term is defined in Section~~
 263 ~~63A-5-104.]~~

264 ~~[(c) "Employee" means an "employee," "worker," or "operative" as defined in Section~~
 265 ~~34A-2-104 who:]~~

266 ~~[(i) works at least 30 hours per calendar week; and]~~

267 ~~[(ii) meets employer eligibility waiting requirements for health care insurance which~~
 268 ~~may not exceed the first day of the calendar month following 60 days from the date of hire.]~~

269 ~~[(d) "Health benefit plan" means the same as that term is defined in Section~~
 270 ~~31A-1-301.]~~

271 ~~[(e) "Qualified health insurance coverage" means the same as that term is defined in~~
 272 ~~Section 26-40-115.]~~

273 ~~[(f) "Subcontractor" means the same as that term is defined in Section 63A-5-208.]~~

274 ~~[(2)]~~ (1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the
 275 director may:

276 (a) subject to [Subsections (3) and (4)] Section 63A-5-205.5, enter into [contracts] a
277 contract for any work or professional services [~~which~~] that the division or the State Building
278 Board may do or have done; and

279 (b) as a condition of any contract for architectural or engineering services, prohibit the
280 architect or engineer from retaining a sales or agent engineer for the necessary design work.

281 [~~(3) Except as provided in Subsection (4), this Subsection (3) applies to]~~
282 [~~all design or construction contracts entered into by the division or the State Building~~
283 ~~Board on or after July 1, 2009, and:]~~

284 [~~(a) applies to a prime contractor if the prime contract is in the amount of \$2,000,000~~
285 ~~or greater at the original execution of the contract, and]~~

286 [~~(b) applies to a subcontractor if the subcontract is in the amount of \$1,000,000 or~~
287 ~~greater at the original execution of the contract.]~~

288 [~~(4) Subsection (3) does not apply:]~~

289 [~~(a) if the application of Subsection (3) jeopardizes the receipt of federal funds;]~~

290 [~~(b) if the contract is a sole source contract;]~~

291 [~~(c) if the contract is an emergency procurement; or]~~

292 [~~(d) to a change order as defined in Section 63G-6a-103, or a modification to a~~
293 ~~contract, when the contract does not meet the threshold required by Subsection (3).]~~

294 [~~(5) A person who intentionally uses change orders or contract modifications to~~
295 ~~circumvent the requirements of Subsection (3) is guilty of an infraction.]~~

296 [~~(6) (a) A contractor subject to Subsection (3) shall demonstrate to the director that the~~
297 ~~contractor has and will maintain an offer of qualified health insurance coverage for the~~
298 ~~contractor's employees and the employees' dependents.]~~

299 [~~(b) If a subcontractor of the contractor is subject to Subsection (3), the contractor~~
300 ~~shall:]~~

301 [~~(i) place a requirement in the subcontract that the subcontractor shall obtain and~~
302 ~~maintain an offer of qualified health insurance coverage for the subcontractor's employees and~~
303 ~~the employees' dependants during the duration of the subcontract, and]~~

304 [~~(ii) certify to the director that the subcontractor has and will maintain an offer of~~
305 ~~qualified health insurance coverage for the subcontractor's employees and the employees'~~
306 ~~dependents during the duration of the prime contract.]~~

307 ~~[(c) (i) A contractor who fails to meet the requirements of Subsection (6)(a) during the~~
308 ~~duration of the contract is subject to penalties in accordance with administrative rules adopted~~
309 ~~by the division under Subsection (7).]~~

310 ~~[(ii) A contractor is not subject to penalties for the failure of a subcontractor to meet~~
311 ~~the requirements of Subsection (6)(b).]~~

312 ~~[(iii) A subcontractor who fails to meet the requirements of Subsection (6)(b) during~~
313 ~~the duration of the contract is subject to penalties in accordance with administrative rules~~
314 ~~adopted by the division under Subsection (7).]~~

315 ~~[(iv) A subcontractor is not subject to penalties for the failure of a contractor to meet~~
316 ~~the requirements of Subsection (6)(a).]~~

317 ~~[(7) The division shall adopt administrative rules:]~~

318 ~~[(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;]~~

319 ~~[(b) in coordination with:]~~

320 ~~[(i) the Department of Environmental Quality in accordance with Section 19-1-206;]~~

321 ~~[(ii) the Department of Natural Resources in accordance with Section 79-2-404;]~~

322 ~~[(iii) a public transit district in accordance with Section 17B-2a-818.5;]~~

323 ~~[(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;]~~

324 ~~[(v) the Department of Transportation in accordance with Section 72-6-107.5; and]~~

325 ~~[(vi) the Legislature's Administrative Rules Review Committee; and]~~

326 ~~[(c) that establish:]~~

327 ~~[(i) the requirements and procedures a contractor must follow to demonstrate to the~~
328 ~~director compliance with Subsections (3) through (10) that shall include:]~~

329 ~~[(A) that a contractor shall demonstrate compliance with Subsection (6)(a) or (b) at the~~
330 ~~time of the execution of each initial contract described in Subsection (3);]~~

331 ~~[(B) that the contractor's compliance is subject to an audit by the division or the Office~~
332 ~~of the Legislative Auditor General; and]~~

333 ~~[(C) that the actuarially equivalent determination required for the qualified health~~
334 ~~insurance coverage in Subsection (1) is met by the contractor if the contractor provides the~~
335 ~~department or division with a written statement of actuarial equivalency, which is not more~~
336 ~~than one year old, regarding the contractor's offer of qualified health coverage from an actuary~~
337 ~~selected by the contractor or the contractor's insurer, or an underwriter who is responsible for~~

338 developing the employer group's premium rates;]

339 [(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
340 violates the provisions of Subsections (3) through (10), which may include:]

341 [(A) a three-month suspension of the contractor or subcontractor from entering into
342 future contracts with the state upon the first violation;]

343 [(B) a six-month suspension of the contractor or subcontractor from entering into
344 future contracts with the state upon the second violation;]

345 [(C) an action for debarment of the contractor or subcontractor in accordance with
346 Section ~~63G-6a-904~~ upon the third or subsequent violation; and]

347 [(D) monetary penalties which may not exceed 50% of the amount necessary to
348 purchase qualified health insurance coverage for an employee and the dependents of an
349 employee of the contractor or subcontractor who was not offered qualified health insurance
350 coverage during the duration of the contract; and]

351 [(iii) a website on which the department shall post the commercially equivalent
352 benchmark, for the qualified health insurance coverage identified in Subsection (1)(e), that is
353 provided by the Department of Health, in accordance with Subsection ~~26-40-115~~(2).]

354 [(8) (a) In addition to the penalties imposed under Subsection (7)(c), a contractor or
355 subcontractor who intentionally violates the provisions of this section shall be liable to the
356 employee for health care costs that would have been covered by qualified health insurance
357 coverage.]

358 [(b) An employer has an affirmative defense to a cause of action under Subsection
359 (8)(a) if:]

360 [(i) the employer relied in good faith on a written statement of actuarial equivalency
361 provided by:]

362 [(A) an actuary; or]

363 [(B) an underwriter who is responsible for developing the employer group's premium
364 rates; or]

365 [(ii) the department determines that compliance with this section is not required under
366 the provisions of Subsection (4).]

367 [(c) An employee has a private right of action only against the employee's employer to
368 enforce the provisions of this Subsection (8).]

369 ~~[(9) Any penalties imposed and collected under this section shall be deposited into the~~
370 ~~Medicaid Restricted Account created by Section [26-18-402](#).]~~

371 ~~[(10) The failure of a contractor or subcontractor to provide qualified health insurance~~
372 ~~coverage as required by this section:]~~

373 ~~[(a) may not be the basis for a protest or other action from a prospective bidder,~~
374 ~~offeror, or contractor under Section [63G-6a-1602](#) or any other provision in Title 63G, Chapter~~
375 ~~6a, Utah Procurement Code; and]~~

376 ~~[(b) may not be used by the procurement entity or a prospective bidder, offeror, or~~
377 ~~contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design~~
378 ~~or construction.]~~

379 ~~[(11)]~~ (2) The judgment of the director as to the responsibility and qualifications of a
380 bidder is conclusive, except in case of fraud or bad faith.

381 ~~[(12)]~~ (3) The division shall make all payments to the contractor for completed work in
382 accordance with the contract and pay the interest specified in the contract on any payments that
383 are late.

384 ~~[(13)]~~ (4) If any payment on a contract with a private contractor to do work for the
385 division or the State Building Board is retained or withheld, it shall be retained or withheld and
386 released as provided in Section [13-8-5](#).

387 Section 6. Section **63A-5-205.5** is enacted to read:

388 **63A-5-205.5. Health insurance requirements -- Penalties.**

389 (1) As used in this section:

390 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
391 related to a single project.

392 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

393 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
394 "operative" who:

395 (i) works at least 30 hours per calendar week; and

396 (ii) meets employer eligibility waiting requirements for health care insurance, which
397 may not exceed the first day of the calendar month following 60 days after the day on which
398 the individual was hired.

399 (d) "Health benefit plan" means the same as that term is defined in Section [31A-1-301](#).

400 (e) "Qualified health insurance coverage" means the same as that term is defined in
401 Section 26-40-115.

402 (f) "Subcontractor" means the same as that term is defined in Section 63A-5-208.

403 (2) Except as provided in Subsection (3), the requirements of this section apply to:

404 (a) a contractor of a design or construction contract entered into by the division or the
405 State Building Board on or after July 1, 2009, if the prime contract is in the aggregate amount
406 equal to \$2,000,000 or greater; and

407 (b) a subcontractor of a contractor of a design or construction contract entered into by
408 the division or State Building Board on or after July 1, 2009, if the subcontract is in the
409 aggregate amount equal to \$1,000,000 or greater.

410 (3) The requirements of this section do not apply to a contractor or subcontractor
411 described in Subsection (2) if:

412 (a) the application of this section jeopardizes the receipt of federal funds;

413 (b) the contract is a sole source contract; or

414 (c) the contract is an emergency procurement.

415 (4) A person that intentionally uses change orders, contract modifications, or multiple
416 contracts to circumvent the requirements of this section is guilty of an infraction.

417 (5) (a) A contractor that is subject to the requirements of this section shall demonstrate
418 to the director that the contractor has and will maintain an offer of qualified health insurance
419 coverage for the contractor's employees and the employees' dependents by submitting to the
420 director a written statement that:

421 (i) certifies that the contractor offers qualified health insurance coverage in accordance
422 with Section 26-40-115;

423 (ii) is from:

424 (A) an actuary selected by the contractor or the contractor's insurer; or

425 (B) an underwriter who is responsible for developing the employer group's premium
426 rates; and

427 (iii) is not more than one year old.

428 (b) A contractor that is subject to the requirements of this section shall:

429 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
430 is subject to the requirements of this section shall obtain and maintain an offer of qualified

431 health insurance coverage for the subcontractor's employees and the employees' dependents
432 during the duration of the subcontract; and

433 (ii) obtain from a subcontractor that is subject to the requirements of this section a
434 written statement that:

435 (A) certifies that the subcontractor offers qualified health insurance coverage in
436 accordance with Section [26-40-115](#);

437 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, or an
438 underwriter who is responsible for developing the employer group's premium rates; and

439 (C) is not more than one year old.

440 (c) (i) A contractor that fails to maintain an offer of qualified health insurance coverage
441 as described in Subsection (5)(a) during the duration of the contract is subject to penalties in
442 accordance with administrative rules adopted by the division under Subsection (6).

443 (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain
444 and maintain an offer of qualified health insurance coverage described in Subsection (5)(b)(i).

445 (iii) A subcontractor that fails to obtain and maintain an offer of qualified health
446 insurance coverage described in Subsection (5)(b)(i) during the duration of the subcontract is
447 subject to penalties in accordance with administrative rules adopted by the division under
448 Subsection (6).

449 (iv) A subcontractor is not subject to penalties for the failure of a contractor to
450 maintain an offer of qualified health insurance coverage described in Subsection (5)(a).

451 (6) The division shall adopt administrative rules:

452 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

453 (b) in coordination with:

454 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

455 (ii) the Department of Natural Resources in accordance with Section [79-2-404](#);

456 (iii) a public transit district in accordance with Section [17B-2a-818.5](#);

457 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);

458 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and

459 (vi) the Legislature's Administrative Rules Review Committee; and

460 (c) that establish:

461 (i) the requirements and procedures a contractor or subcontractor must follow to

462 demonstrate to the director compliance with this section, including:

463 (A) that a contractor or subcontractor's compliance with this section is subject to an
464 audit by the division or the Office of the Legislative Auditor General;

465 (B) that a contractor that is subject to the requirements of this section shall obtain a
466 written statement described in Subsection (5)(a); and

467 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
468 written statement described in Subsection (5)(b)(ii);

469 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
470 violates the requirements of this section, which may include:

471 (A) a three-month suspension of the contractor or subcontractor from entering into
472 future contracts with the state upon the first violation;

473 (B) a six-month suspension of the contractor or subcontractor from entering into future
474 contracts with the state upon the second violation;

475 (C) an action for debarment of the contractor or subcontractor in accordance with
476 Section [63G-6a-904](#) upon the third or subsequent violation; and

477 (D) monetary penalties which may not exceed 50% of the amount necessary to
478 purchase qualified health insurance coverage for an employee and the dependents of an
479 employee of the contractor or subcontractor who was not offered qualified health insurance
480 coverage during the duration of the contract; and

481 (iii) a website on which the department shall post the commercially equivalent
482 benchmark for the qualified health insurance coverage that is provided by the Department of
483 Health in accordance with Subsection [26-40-115\(2\)](#).

484 (7) (a) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or
485 subcontractor that intentionally violates the requirements of this section is liable to the
486 employee for health care costs that would have been covered by qualified health insurance
487 coverage.

488 (b) An employer has an affirmative defense to a cause of action under Subsection
489 (7)(a) if:

490 (i) the employer relied in good faith on a written statement described in Subsection
491 (5)(a) or (b)(ii); or

492 (ii) the department determines that compliance with this section is not required under

493 the provisions of Subsection (3).

494 (c) An employee has a private right of action only against the employee's employer to
495 enforce the provisions of this Subsection (7).

496 (8) Any penalties imposed and collected under this section shall be deposited into the
497 Medicaid Restricted Account created by Section [26-18-402](#).

498 (9) The failure of a contractor or subcontractor to provide qualified health insurance
499 coverage as required by this section:

500 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
501 or contractor under:

502 (i) Section [63G-6a-1602](#); or

503 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

504 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
505 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
506 or construction.

Legislative Review Note
Office of Legislative Research and General Counsel