

Representative James A. Dunnigan proposes the following substitute bill:

INSURANCE AMENDMENTS

2019 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:

- ▶ defines terms;
- ▶ modifies the meeting requirements of the Title and Escrow Commission;
- ▶ decreases the amount held in the Captive Insurance Restricted Account at the end of the current and upcoming fiscal years;
- ▶ enacts provisions that require a group-wide supervisor for each internationally active insurance group;
- ▶ enacts the Corporate Governance Annual Disclosure Act, which:
 - requires each insurer or insurance group to submit a disclosure document to the Insurance Commissioner that describes the entity's corporate governance structure, policies, and practices;
 - provides that a corporate governance annual disclosure and certain related records are confidential and classified as protected for purposes of the Government Records Access and Management Act;
 - allows the insurance commissioner to hire one or more third-party consultants to



- 26 review a corporate governance annual disclosure; and
- 27 • provides a penalty for an insurer or insurance group that fails to timely submit a
- 28 corporate governance annual disclosure;
- 29 ▶ modifies the eligibility requirements for the small company exemption from the
- 30 generally applicable requirements for reserves;
- 31 ▶ provides that an endorsement to a policy must include the insurer's name and state
- 32 of domicile;
- 33 ▶ provides a deadline by which an insurer issuing certain types of policies must
- 34 deliver a policy to the policyholder or a certificate to each member of the insured
- 35 group;
- 36 ▶ provides certain conditions and disclosure requirements for a short-term limited
- 37 duration policy insurance policy that includes a preexisting condition exclusion;
- 38 ▶ modifies the requirements for certain contracts between a vision plan and a vision
- 39 service provider;
- 40 ▶ clarifies that an employee may, under certain circumstances, extend coverage under
- 41 an employer's group policy;
- 42 ▶ provides that the commissioner may take action against a navigator licensee or
- 43 applicant, a third-party administrator licensee or applicant, or an insurance adjuster
- 44 licensee or applicant, who:
- 45 • is convicted of a misdemeanor involving fraud, misrepresentation, theft, or
- 46 dishonesty; or
- 47 • has had a professional or occupational license or registration denied, suspended,
- 48 revoked, or surrendered to resolve an administrative action;
- 49 ▶ enacts provisions related to an indemnitor's duty to indemnify an insolvent insurer;
- 50 ▶ modifies the conduct that constitutes a fraudulent insurance act under the Insurance
- 51 Code and the Utah Criminal Code;
- 52 ▶ clarifies that the Insurance Department may investigate and enforce certain
- 53 provisions of the Workers' Compensation Act;
- 54 ▶ clarifies the process by which the Insurance Commissioner reviews and acts upon
- 55 an application for a bail bond agency license;
- 56 ▶ consolidates certain provisions governing captive insurance companies;

- 57 ▶ establishes a certificate of dormancy for eligible captive insurance companies;
- 58 ▶ requires a new or renamed captive insurance company to include the word
- 59 "insurance" or an equivalent term in its name;
- 60 ▶ requires two individuals to verify a captive insurance company's report of financial
- 61 condition;
- 62 ▶ requires a captive insurance company to report certain changes to its financial
- 63 condition to the Insurance Commissioner;
- 64 ▶ reauthorizes the Health Reform Task Force for two years;
- 65 ▶ modifies the duties of the Health Reform Task Force; and
- 66 ▶ makes technical and conforming changes.

67 **Money Appropriated in this Bill:**

68 None

69 **Other Special Clauses:**

70 This bill provides a special effective date.

71 This bill provides a coordination clause.

72 **Utah Code Sections Affected:**

73 AMENDS:

74 **31A-1-301**, as last amended by Laws of Utah 2018, Chapter 319

75 **31A-2-308**, as last amended by Laws of Utah 2017, Chapter 168

76 **31A-2-403**, as last amended by Laws of Utah 2018, Chapter 319

77 **31A-3-304**, as last amended by Laws of Utah 2018, Chapter 319

78 **31A-16-109**, as last amended by Laws of Utah 2016, Chapter 163

79 **31A-17-519**, as enacted by Laws of Utah 2016, Chapter 163

80 **31A-21-201**, as last amended by Laws of Utah 2010, Chapter 10

81 **31A-21-311**, as last amended by Laws of Utah 2003, Chapter 252

82 **31A-22-501**, as last amended by Laws of Utah 2005, Chapter 125

83 **31A-22-605.1**, as enacted by Laws of Utah 2005, Chapter 78

84 **31A-22-611**, as last amended by Laws of Utah 2011, Chapters 297 and 366

85 **31A-22-627**, as last amended by Laws of Utah 2017, Chapter 292

86 **31A-22-638**, as enacted by Laws of Utah 2010, Chapter 360

87 **31A-22-648**, as enacted by Laws of Utah 2018, Chapter 314

- 88 [31A-22-701](#), as last amended by Laws of Utah 2018, Chapter 319
- 89 [31A-22-722](#), as last amended by Laws of Utah 2018, Chapter 319
- 90 [31A-22-726](#), as last amended by Laws of Utah 2015, Chapter 283
- 91 [31A-22-1401](#), as last amended by Laws of Utah 2001, Chapter 116
- 92 [31A-23a-111](#), as last amended by Laws of Utah 2018, Chapter 319
- 93 [31A-23a-402](#), as last amended by Laws of Utah 2017, Chapter 292
- 94 [31A-23a-411.1](#), as enacted by Laws of Utah 2003, Chapter 252
- 95 [31A-23a-415](#), as last amended by Laws of Utah 2015, Chapters 312 and 330
- 96 [31A-23b-401](#), as last amended by Laws of Utah 2017, Chapter 168
- 97 [31A-25-208](#), as last amended by Laws of Utah 2016, Chapter 138
- 98 [31A-26-213](#), as last amended by Laws of Utah 2017, Chapter 168
- 99 [31A-30-103](#), as last amended by Laws of Utah 2014, Chapters 290, 300, and 425
- 100 [31A-30-104](#), as last amended by Laws of Utah 2017, Chapter 292
- 101 [31A-30-118](#), as enacted by Laws of Utah 2014, Chapter 425
- 102 [31A-31-103](#), as last amended by Laws of Utah 2004, Chapter 104
- 103 [31A-31-107](#), as last amended by Laws of Utah 1997, Chapter 375
- 104 [31A-35-405](#), as last amended by Laws of Utah 2016, Chapter 234
- 105 [31A-37-102](#), as last amended by Laws of Utah 2017, Chapter 168
- 106 [31A-37-103](#), as last amended by Laws of Utah 2016, Chapter 138
- 107 [31A-37-106](#), as last amended by Laws of Utah 2017, Chapter 168
- 108 [31A-37-201](#), as enacted by Laws of Utah 2003, Chapter 251
- 109 [31A-37-203](#), as enacted by Laws of Utah 2003, Chapter 251
- 110 [31A-37-301](#), as last amended by Laws of Utah 2017, Chapter 168
- 111 [31A-37-401](#), as last amended by Laws of Utah 2015, Chapter 244
- 112 [31A-37-501](#), as last amended by Laws of Utah 2016, Chapter 138
- 113 [31A-37-502](#), as last amended by Laws of Utah 2016, Chapters 138 and 348
- 114 [31A-37-503](#), as last amended by Laws of Utah 2008, Chapter 382
- 115 [31A-45-102](#), as enacted by Laws of Utah 2017, Chapter 292
- 116 [31A-45-303](#), as last amended by Laws of Utah 2017, Chapter 168 and renumbered and
- 117 amended by Laws of Utah 2017, Chapter 292
- 118 [31A-45-401](#), as renumbered and amended by Laws of Utah 2017, Chapter 292

119 **34A-2-110**, as last amended by Laws of Utah 2011, Chapters 328 and 413
 120 **58-1-501.7**, as enacted by Laws of Utah 2013, Chapter 100
 121 **62A-2-101**, as last amended by Laws of Utah 2018, Chapters 252 and 316
 122 **63G-2-305**, as last amended by Laws of Utah 2018, Chapters 81, 159, 285, 315, 316,
 123 319, 352, 409, and 425
 124 **63I-1-236**, as last amended by Laws of Utah 2018, Chapters 33, 170, and 342
 125 **76-6-521**, as last amended by Laws of Utah 2004, Chapter 104

126 ENACTS:

127 **31A-16-108.6**, Utah Code Annotated 1953
 128 **31A-16b-101**, Utah Code Annotated 1953
 129 **31A-16b-102**, Utah Code Annotated 1953
 130 **31A-16b-103**, Utah Code Annotated 1953
 131 **31A-16b-104**, Utah Code Annotated 1953
 132 **31A-16b-105**, Utah Code Annotated 1953
 133 **31A-16b-106**, Utah Code Annotated 1953
 134 **31A-16b-107**, Utah Code Annotated 1953
 135 **31A-16b-108**, Utah Code Annotated 1953
 136 **31A-27a-512.1**, Utah Code Annotated 1953
 137 **31A-37-701**, Utah Code Annotated 1953
 138 **31A-37-702**, Utah Code Annotated 1953
 139 **36-29-106**, Utah Code Annotated 1953

140 REPEALS AND REENACTS:

141 **31A-37-202**, as last amended by Laws of Utah 2017, Chapter 168

142 REPEALS:

143 **31A-16a-102**, as enacted by Laws of Utah 2017, Chapter 168

144 **Utah Code Sections Affected by Coordination Clause:**

145 **62A-2-101**, as last amended by Laws of Utah 2018, Chapters 252 and 316



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

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

149 **31A-1-301. Definitions.**

150 As used in this title, unless otherwise specified:

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

153 (i) a medical condition including:

154 (A) a medical care expense; or

155 (B) the risk of disability;

156 (ii) accident; or

157 (iii) sickness.

158 (b) "Accident and health insurance":

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

160 (A) an income replacement contract;

161 (B) a health care contract;

162 (C) an expense reimbursement contract;

163 (D) a credit accident and health contract;

164 (E) a continuing care contract; and

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

166 (ii) may provide:

167 (A) hospital coverage;

168 (B) surgical coverage;

169 (C) medical coverage;

170 (D) loss of income coverage;

171 (E) prescription drug coverage;

172 (F) dental coverage; or

173 (G) vision coverage.

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

175 (d) For purposes of a national licensing registry, "accident and health insurance" is the
176 same as "accident and health or sickness insurance."

177 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
178 63G, Chapter 3, Utah Administrative Rulemaking Act.

179 (3) "Administrator" means the same as that term is defined in Subsection [~~(171)~~] (178).

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

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

184 (6) "Agency" means:

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

187 (b) an insurance organization licensed or required to be licensed under Section
188 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).

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

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

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

195 (10) "Application" means a document:

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

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

200 (A) insure the risk under:

201 (I) the coverage as originally offered; or

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

203 (B) decline to insure the risk; or

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

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

207 (a) the original articles;

208 (b) a special law;

209 (c) a charter;

210 (d) an amendment;

211 (e) restated articles;

- 212 (f) articles of merger or consolidation;
- 213 (g) a trust instrument;
- 214 (h) another constitutive document for a trust or other entity that is not a corporation;
- 215 and
- 216 (i) an amendment to an item listed in Subsections (11)(a) through (h).
- 217 (12) "Bail bond insurance" means a guarantee that a person will attend court when
- 218 required, up to and including surrender of the person in execution of a sentence imposed under
- 219 Subsection [77-20-7\(1\)](#), as a condition to the release of that person from confinement.
- 220 (13) "Binder" means the same as that term is defined in Section [31A-21-102](#).
- 221 (14) "Blanket insurance policy" means a group policy covering a defined class of
- 222 persons:
- 223 (a) without individual underwriting or application; and
- 224 (b) that is determined by definition without designating each person covered.
- 225 (15) "Board," "board of trustees," or "board of directors" means the group of persons
- 226 with responsibility over, or management of, a corporation, however designated.
- 227 (16) "Bona fide office" means a physical office in this state:
- 228 (a) that is open to the public;
- 229 (b) that is staffed during regular business hours on regular business days; and
- 230 (c) at which the public may appear in person to obtain services.
- 231 (17) "Business entity" means:
- 232 (a) a corporation;
- 233 (b) an association;
- 234 (c) a partnership;
- 235 (d) a limited liability company;
- 236 (e) a limited liability partnership; or
- 237 (f) another legal entity.
- 238 (18) "Business of insurance" means the same as that term is defined in Subsection
- 239 [~~92~~] [\(94\)](#).
- 240 (19) "Business plan" means the information required to be supplied to the
- 241 commissioner under Subsections [31A-5-204\(2\)\(i\)](#) and (j), including the information required
- 242 when these subsections apply by reference under:

- 243 [~~(a)~~ Section ~~31A-7-201~~];
- 244 [~~(b)~~] (a) Section 31A-8-205; or
- 245 [~~(c)~~] (b) Subsection 31A-9-205(2).
- 246 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
- 247 corporation's affairs, however designated.
- 248 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
- 249 corporation.
- 250 (21) "Captive insurance company" means:
- 251 (a) an insurer:
- 252 (i) owned by another organization; and
- 253 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 254 affiliated company; or
- 255 (b) in the case of a group or association, an insurer:
- 256 (i) owned by the insureds; and
- 257 (ii) whose exclusive purpose is to insure risks of:
- 258 (A) a member organization;
- 259 (B) a group member; or
- 260 (C) an affiliate of:
- 261 (I) a member organization; or
- 262 (II) a group member.
- 263 (22) "Casualty insurance" means liability insurance.
- 264 (23) "Certificate" means evidence of insurance given to:
- 265 (a) an insured under a group insurance policy; or
- 266 (b) a third party.
- 267 (24) "Certificate of authority" is included within the term "license."
- 268 (25) "Claim," unless the context otherwise requires, means a request or demand on an
- 269 insurer for payment of a benefit according to the terms of an insurance policy.
- 270 (26) "Claims-made coverage" means an insurance contract or provision limiting
- 271 coverage under a policy insuring against legal liability to claims that are first made against the
- 272 insured while the policy is in force.
- 273 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance

274 commissioner.

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

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

278 (i) provides board and lodging;

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

280 (A) a personal service;

281 (B) a nursing service;

282 (C) a medical service; or

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

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

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

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

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

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

293 (i) by contract;

294 (ii) by common management;

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

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

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

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

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

304 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly

305 controlled by a producer.

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

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

311 (33) "Corporate governance annual disclosure" means a report an insurer or insurance
312 group files in accordance with the requirements of Chapter 16b, Corporate Governance Annual
313 Disclosure Act.

314 [~~33~~] (34) (a) "Corporation" means an insurance corporation, except when referring to:

315 (i) a corporation doing business:

316 (A) as:

317 (I) an insurance producer;

318 (II) a surplus lines producer;

319 (III) a limited line producer;

320 (IV) a consultant;

321 (V) a managing general agent;

322 (VI) a reinsurance intermediary;

323 (VII) a third party administrator; or

324 (VIII) an adjuster; and

325 (B) under:

326 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

327 Reinsurance Intermediaries;

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

329 (III) Chapter 26, Insurance Adjusters; or

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

332 (b) "Mutual" or "mutual corporation" means a mutual insurance corporation.

333 (c) "Stock corporation" means a stock insurance corporation.

334 [~~34~~] (35) (a) "Creditable coverage" has the same meaning as provided in federal
335 regulations adopted pursuant to the Health Insurance Portability and Accountability Act.

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

- 338 (i) the Primary Care Network Program under a Medicaid primary care network
339 demonstration waiver obtained subject to Section 26-18-3;
- 340 (ii) the Children's Health Insurance Program under Section 26-40-106; or
- 341 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
342 No. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No.
343 109-415.

344 [~~35~~] (36) "Credit accident and health insurance" means insurance on a debtor to
345 provide indemnity for payments coming due on a specific loan or other credit transaction while
346 the debtor has a disability.

347 [~~36~~] (37) (a) "Credit insurance" means insurance offered in connection with an
348 extension of credit that is limited to partially or wholly extinguishing that credit obligation.

349 (b) "Credit insurance" includes:

- 350 (i) credit accident and health insurance;
- 351 (ii) credit life insurance;
- 352 (iii) credit property insurance;
- 353 (iv) credit unemployment insurance;
- 354 (v) guaranteed automobile protection insurance;
- 355 (vi) involuntary unemployment insurance;
- 356 (vii) mortgage accident and health insurance;
- 357 (viii) mortgage guaranty insurance; and
- 358 (ix) mortgage life insurance.

359 [~~37~~] (38) "Credit life insurance" means insurance on the life of a debtor in connection
360 with an extension of credit that pays a person if the debtor dies.

361 [~~38~~] (39) "Creditor" means a person, including an insured, having a claim, whether:

- 362 (a) matured;
- 363 (b) unmatured;
- 364 (c) liquidated;
- 365 (d) unliquidated;
- 366 (e) secured;

367 (f) unsecured;

368 (g) absolute;

369 (h) fixed; or

370 (i) contingent.

371 [~~(39)~~] (40) "Credit property insurance" means insurance:

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

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

374 [~~(40)~~] (41) "Credit unemployment insurance" means insurance:

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

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

377 (i) specific loan; or

378 (ii) credit transaction.

379 [~~(41)~~] (42) (a) "Crop insurance" means insurance providing protection against damage

380 to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,

381 disease, or other yield-reducing conditions or perils that is:

382 (i) provided by the private insurance market; or

383 (ii) subsidized by the Federal Crop Insurance Corporation.

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

385 [~~(42)~~] (43) (a) "Customer service representative" means a person that provides an

386 insurance service and insurance product information:

387 (i) for the customer service representative's:

388 (A) producer;

389 (B) surplus lines producer; or

390 (C) consultant employer; and

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

392 (A) customer;

393 (B) client; or

394 (C) organization.

395 (b) A customer service representative may only operate within the scope of authority of

396 the customer service representative's producer, surplus lines producer, or consultant employer.

397 [~~(43)~~] (44) "Deadline" means a final date or time:

398 (a) imposed by:

399 (i) statute;

400 (ii) rule; or

401 (iii) order; and

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

403 [~~44~~] (45) "Deemer clause" means a provision under this title under which upon the
404 occurrence of a condition precedent, the commissioner is considered to have taken a specific
405 action. If the statute so provides, a condition precedent may be the commissioner's failure to
406 take a specific action.

407 [~~45~~] (46) "Degree of relationship" means the number of steps between two persons
408 determined by counting the generations separating one person from a common ancestor and
409 then counting the generations to the other person.

410 [~~46~~] (47) "Department" means the Insurance Department.

411 [~~47~~] (48) "Director" means a member of the board of directors of a corporation.

412 [~~48~~] (49) "Disability" means a physiological or psychological condition that partially
413 or totally limits an individual's ability to:

414 (a) perform the duties of:

415 (i) that individual's occupation; or

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

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

419 (i) eating;

420 (ii) toileting;

421 (iii) transferring;

422 (iv) bathing; or

423 (v) dressing.

424 [~~49~~] (50) "Disability income insurance" means the same as that term is defined in
425 Subsection [~~83~~] (85).

426 [~~50~~] (51) "Domestic insurer" means an insurer organized under the laws of this state.

427 [~~51~~] (52) "Domiciliary state" means the state in which an insurer:

428 (a) is incorporated;

- 429 (b) is organized; or
- 430 (c) in the case of an alien insurer, enters into the United States.
- 431 [~~(52)~~] (53) (a) "Eligible employee" means:
- 432 (i) an employee who:
- 433 (A) works on a full-time basis; and
- 434 (B) has a normal work week of 30 or more hours; or
- 435 (ii) a person described in Subsection [~~(52)~~] (53)(b).
- 436 (b) "Eligible employee" includes:
- 437 (i) an owner who:
- 438 (A) works on a full-time basis; and
- 439 (B) has a normal work week of 30 or more hours; and
- 440 (ii) if the individual is included under a health benefit plan of a small employer:
- 441 (A) a sole proprietor;
- 442 (B) a partner in a partnership; or
- 443 (C) an independent contractor.
- 444 (c) "Eligible employee" does not include, unless eligible under Subsection [~~(52)~~
- 445 (53)(b):
- 446 (i) an individual who works on a temporary or substitute basis for a small employer;
- 447 (ii) an employer's spouse who does not meet the requirements of Subsection [~~(52)~~
- 448 (53)(a)(i); or
- 449 (iii) a dependent of an employer who does not meet the requirements of Subsection
- 450 [~~(52)~~] (53)(a)(i).
- 451 [~~(53)~~] (54) "Employee" means:
- 452 (a) an individual employed by an employer; and
- 453 (b) an owner who meets the requirements of Subsection [~~(52)~~] (53)(b)(i).
- 454 [~~(54)~~] (55) "Employee benefits" means one or more benefits or services provided to:
- 455 (a) an employee; or
- 456 (b) a dependent of an employee.
- 457 [~~(55)~~] (56) (a) "Employee welfare fund" means a fund:
- 458 (i) established or maintained, whether directly or through a trustee, by:
- 459 (A) one or more employers;

460 (B) one or more labor organizations; or
461 (C) a combination of employers and labor organizations; and
462 (ii) that provides employee benefits paid or contracted to be paid, other than income
463 from investments of the fund:

464 (A) by or on behalf of an employer doing business in this state; or
465 (B) for the benefit of a person employed in this state.

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

468 [~~56~~] (57) "Endorsement" means a written agreement attached to a policy or certificate
469 to modify the policy or certificate coverage.

470 [~~57~~] (58) (a) "Enrollee" means:

471 (i) a policyholder;

472 (ii) a certificate holder;

473 (iii) a subscriber; or

474 (iv) a covered individual:

475 (A) who has entered into a contract with an organization for health care; or

476 (B) on whose behalf an arrangement for health care has been made.

477 (b) "Enrollee" includes an insured.

478 [~~58~~] (59) "Enrollment date," with respect to a health benefit plan, means:

479 (a) the first day of coverage; or

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

481 [~~59~~] (60) "Enterprise risk" means an activity, circumstance, event, or series of events
482 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
483 material adverse effect upon the financial condition or liquidity of the insurer or its insurance
484 holding company system as a whole, including anything that would cause:

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

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

488 [~~60~~] (61) (a) "Escrow" means:

489 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
490 when a person not a party to the transaction, and neither having nor acquiring an interest in the

491 title, performs, in accordance with the written instructions or terms of the written agreement
492 between the parties to the transaction, any of the following actions:

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

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

495 (ii) a settlement or closing involving:

496 (A) a mobile home;

497 (B) a grazing right;

498 (C) a water right; or

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

500 (b) "Escrow" does not include:

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

502 (A) an acknowledgment;

503 (B) a copy certification;

504 (C) jurat; and

505 (D) an oath or affirmation;

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

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

508 ~~[(61)]~~ (62) "Escrow agent" means an agency title insurance producer meeting the
509 requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an
510 individual title insurance producer licensed with an escrow subline of authority.

511 ~~[(62)]~~ (63) (a) "Excludes" is not exhaustive and does not mean that another thing is not
512 also excluded.

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

515 ~~[(63)]~~ (64) "Exclusion" means for the purposes of accident and health insurance that an
516 insurer does not provide insurance coverage, for whatever reason, for one of the following:

517 (a) a specific physical condition;

518 (b) a specific medical procedure;

519 (c) a specific disease or disorder; or

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

521 ~~[(64)]~~ (65) "Expense reimbursement insurance" means insurance:

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

524 (b) written:

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

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

527 ~~[(65)]~~ (66) "Fidelity insurance" means insurance guaranteeing the fidelity of a person
528 holding a position of public or private trust.

529 ~~[(66)]~~ (67) (a) "Filed" means that a filing is:

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

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

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

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

536 (B) rule.

537 (b) "Filed" does not include a filing that is rejected by the department because it is not
538 submitted in accordance with Subsection ~~[(66)]~~ (67)(a).

539 ~~[(67)]~~ (68) "Filing," when used as a noun, means an item required to be filed with the
540 department including:

541 (a) a policy;

542 (b) a rate;

543 (c) a form;

544 (d) a document;

545 (e) a plan;

546 (f) a manual;

547 (g) an application;

548 (h) a report;

549 (i) a certificate;

550 (j) an endorsement;

551 (k) an actuarial certification;

552 (l) a licensee annual statement;

553 (m) a licensee renewal application;

554 (n) an advertisement;

555 (o) a binder; or

556 (p) an outline of coverage.

557 [~~(68)~~] (69) "First party insurance" means an insurance policy or contract in which the
558 insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

559 [~~(69)~~] (70) "Foreign insurer" means an insurer domiciled outside of this state, including
560 an alien insurer.

561 [~~(70)~~] (71) (a) "Form" means one of the following prepared for general use:

562 (i) a policy;

563 (ii) a certificate;

564 (iii) an application;

565 (iv) an outline of coverage; or

566 (v) an endorsement.

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

569 [~~(71)~~] (72) "Franchise insurance" means an individual insurance policy provided
570 through a mass marketing arrangement involving a defined class of persons related in some
571 way other than through the purchase of insurance.

572 [~~(72)~~] (73) "General lines of authority" include:

573 (a) the general lines of insurance in Subsection [~~(73)~~] (74);

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

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

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

577 (iii) title marketing representative only;

578 (c) surplus lines;

579 (d) workers' compensation; and

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

582 [~~(73)~~] (74) "General lines of insurance" include:

583 (a) accident and health;

- 584 (b) casualty;
- 585 (c) life;
- 586 (d) personal lines;
- 587 (e) property; and
- 588 (f) variable contracts, including variable life and annuity.

589 ~~[(74)]~~ (75) "Group health plan" means an employee welfare benefit plan to the extent
590 that the plan provides medical care:

- 591 (a) (i) to an employee; or
- 592 (ii) to a dependent of an employee; and
- 593 (b) (i) directly;
- 594 (ii) through insurance reimbursement; or
- 595 (iii) through another method.

596 ~~[(75)]~~ (76) (a) "Group insurance policy" means a policy covering a group of persons
597 that is issued:

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

600 in:

- 601 (A) the policy; or
- 602 (B) an agreement that is collateral to the policy.
- 603 (b) A group insurance policy may include a member of the policyholder's family or a
604 dependent.

605 (77) "Group-wide supervisor" means the commissioner or other regulatory official
606 designated as the group-wide supervisor for an internationally active insurance group under
607 Section 31A-16-108.6.

608 ~~[(76)]~~ (78) "Guaranteed automobile protection insurance" means insurance offered in
609 connection with an extension of credit that pays the difference in amount between the
610 insurance settlement and the balance of the loan if the insured automobile is a total loss.

611 ~~[(77)]~~ (79) (a) "Health benefit plan" means, except as provided in Subsection ~~[(77)]~~
612 ~~(79)~~(b), a policy, contract, certificate, or agreement offered or issued by a health carrier to
613 provide, deliver, arrange for, pay for, or reimburse any of the costs of health care.

614 (b) "Health benefit plan" does not include:

- 615 (i) coverage only for accident or disability income insurance, or any combination
- 616 thereof;
- 617 (ii) coverage issued as a supplement to liability insurance;
- 618 (iii) liability insurance, including general liability insurance and automobile liability
- 619 insurance;
- 620 (iv) workers' compensation or similar insurance;
- 621 (v) automobile medical payment insurance;
- 622 (vi) credit-only insurance;
- 623 (vii) coverage for on-site medical clinics;
- 624 (viii) other similar insurance coverage, specified in federal regulations issued pursuant
- 625 to Pub. L. No. 104-191, under which benefits for health care services are secondary or
- 626 incidental to other insurance benefits;
- 627 (ix) the following benefits if they are provided under a separate policy, certificate, or
- 628 contract of insurance or are otherwise not an integral part of the plan:
- 629 (A) limited scope dental or vision benefits;
- 630 (B) benefits for long-term care, nursing home care, home health care,
- 631 community-based care, or any combination thereof; or
- 632 (C) other similar limited benefits, specified in federal regulations issued pursuant to
- 633 Pub. L. No. 104-191;
- 634 (x) the following benefits if the benefits are provided under a separate policy,
- 635 certificate, or contract of insurance, there is no coordination between the provision of benefits
- 636 and any exclusion of benefits under any health plan, and the benefits are paid with respect to an
- 637 event without regard to whether benefits are provided under any health plan:
- 638 (A) coverage only for specified disease or illness; or
- 639 (B) hospital indemnity or other fixed indemnity insurance; and
- 640 (xi) the following if offered as a separate policy, certificate, or contract of insurance:
- 641 (A) Medicare supplemental health insurance as defined under the Social Security Act,
- 642 42 U.S.C. Sec. 1395ss(g)(1);
- 643 (B) coverage supplemental to the coverage provided under United States Code, Title
- 644 10, Chapter 55, Civilian Health and Medical Program of the Uniformed Services
- 645 (CHAMPUS); or

646 (C) similar supplemental coverage provided to coverage under a group health insurance
647 plan.

648 [~~(78)~~] (80) "Health care" means any of the following intended for use in the diagnosis,
649 treatment, mitigation, or prevention of a human ailment or impairment:

- 650 (a) a professional service;
- 651 (b) a personal service;
- 652 (c) a facility;
- 653 (d) equipment;
- 654 (e) a device;
- 655 (f) supplies; or
- 656 (g) medicine.

657 [~~(79)~~] (81) (a) "Health care insurance" or "health insurance" means insurance
658 providing:

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

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

- 663 (i) replacement of income;
- 664 (ii) short-term accident;
- 665 (iii) fixed indemnity;
- 666 (iv) credit accident and health;
- 667 (v) supplements to liability;
- 668 (vi) workers' compensation;
- 669 (vii) automobile medical payment;
- 670 (viii) no-fault automobile;
- 671 (ix) equivalent self-insurance; or
- 672 (x) a type of accident and health insurance coverage that is a part of or attached to
673 another type of policy.

674 [~~(80)~~] (82) "Health care provider" means the same as that term is defined in Section
675 78B-3-403.

676 [~~(81)~~] (83) "Health insurance exchange" means an exchange as defined in 45 C.F.R.

677 Sec. 155.20.

678 ~~[(82)]~~ (84) "Health Insurance Portability and Accountability Act" means the Health
679 Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as
680 amended.

681 ~~[(83)]~~ (85) "Income replacement insurance" or "disability income insurance" means
682 insurance written to provide payments to replace income lost from accident or sickness.

683 ~~[(84)]~~ (86) "Indemnity" means the payment of an amount to offset all or part of an
684 insured loss.

685 ~~[(85)]~~ (87) "Independent adjuster" means an insurance adjuster required to be licensed
686 under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

687 ~~[(86)]~~ (88) "Independently procured insurance" means insurance procured under
688 Section 31A-15-104.

689 ~~[(87)]~~ (89) "Individual" means a natural person.

690 ~~[(88)]~~ (90) "Inland marine insurance" includes insurance covering:

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

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

693 (c) bailee liability;

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

696 (e) personal and commercial property floaters.

697 ~~[(89)]~~ (91) "Insolvency" or "insolvent" means that:

698 (a) an insurer is unable to pay the insurer's obligations as the obligations are due;

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

701 (c) an insurer's admitted assets are less than the insurer's liabilities.

702 ~~[(90)]~~ (92) (a) "Insurance" means:

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

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

707 (b) "Insurance" includes:

- 708 (i) a risk distributing arrangement providing for compensation or replacement for
- 709 damages or loss through the provision of a service or a benefit in kind;
- 710 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
- 711 business and not as merely incidental to a business transaction; and
- 712 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
- 713 but with a class of persons who have agreed to share the risk.

714 [~~(91)~~] (93) "Insurance adjuster" means a person who directs or conducts the

715 investigation, negotiation, or settlement of a claim under an insurance policy other than life

716 insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance

717 policy.

718 [~~(92)~~] (94) "Insurance business" or "business of insurance" includes:

- 719 (a) providing health care insurance by an organization that is or is required to be
- 720 licensed under this title;
- 721 (b) providing a benefit to an employee in the event of a contingency not within the
- 722 control of the employee, in which the employee is entitled to the benefit as a right, which
- 723 benefit may be provided either:
 - 724 (i) by a single employer or by multiple employer groups; or
 - 725 (ii) through one or more trusts, associations, or other entities;
- 726 (c) providing an annuity:
 - 727 (i) including an annuity issued in return for a gift; and
 - 728 (ii) except an annuity provided by a person specified in Subsections [31A-22-1305\(2\)](#)
 - 729 and (3);
- 730 (d) providing the characteristic services of a motor club as outlined in Subsection
- 731 [~~(121)~~] (125);
- 732 (e) providing another person with insurance;
- 733 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 734 or surety, a contract or policy of title insurance;
- 735 (g) transacting or proposing to transact any phase of title insurance, including:
 - 736 (i) solicitation;
 - 737 (ii) negotiation preliminary to execution;
 - 738 (iii) execution of a contract of title insurance;

- 739 (iv) insuring; and
- 740 (v) transacting matters subsequent to the execution of the contract and arising out of
- 741 the contract, including reinsurance;
- 742 (h) transacting or proposing a life settlement; and
- 743 (i) doing, or proposing to do, any business in substance equivalent to Subsections
- 744 ~~[(92)]~~ (94)(a) through (h) in a manner designed to evade this title.
- 745 ~~[(93)]~~ (95) "Insurance consultant" or "consultant" means a person who:
- 746 (a) advises another person about insurance needs and coverages;
- 747 (b) is compensated by the person advised on a basis not directly related to the insurance
- 748 placed; and
- 749 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 750 indirectly by an insurer or producer for advice given.
- 751 (96) "Insurance group" means the persons that comprise an insurance holding company
- 752 system.
- 753 ~~[(94)]~~ (97) "Insurance holding company system" means a group of two or more
- 754 affiliated persons, at least one of whom is an insurer.
- 755 ~~[(95)]~~ (98) (a) "Insurance producer" or "producer" means a person licensed or required
- 756 to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 757 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
- 758 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
- 759 insurer.
- 760 (ii) "Producer for the insurer" may be referred to as an "agent."
- 761 (c) (i) "Producer for the insured" means a producer who:
- 762 (A) is compensated directly and only by an insurance customer or an insured; and
- 763 (B) receives no compensation directly or indirectly from an insurer for selling,
- 764 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
- 765 insured.
- 766 (ii) "Producer for the insured" may be referred to as a "broker."
- 767 ~~[(96)]~~ (99) (a) "Insured" means a person to whom or for whose benefit an insurer
- 768 makes a promise in an insurance policy and includes:
- 769 (i) a policyholder;

770 (ii) a subscriber;
771 (iii) a member; and
772 (iv) a beneficiary.
773 (b) The definition in Subsection [~~(96)~~] (99)(a):
774 (i) applies only to this title;
775 (ii) does not define the meaning of "insured" as used in an insurance policy or
776 certificate; and
777 (iii) includes an enrollee.
778 [~~(97)~~] (100) (a) "Insurer" means a person doing an insurance business as a principal
779 including:
780 (i) a fraternal benefit society;
781 (ii) an issuer of a gift annuity other than an annuity specified in Subsections
782 [31A-22-1305\(2\)](#) and (3);
783 (iii) a motor club;
784 (iv) an employee welfare plan;
785 (v) a person purporting or intending to do an insurance business as a principal on that
786 person's own account; and
787 (vi) a health maintenance organization.
788 (b) "Insurer" does not include a governmental entity [~~to the extent the governmental~~
789 ~~entity is engaged in an activity described in Section [31A-12-107](#)].~~
790 [~~(98)~~] (101) "Interinsurance exchange" means the same as that term is defined in
791 Subsection [~~(153)~~] (160).
792 (102) "Internationally active insurance group" means an insurance holding company
793 system:
794 (a) that includes an insurer registered under Section [31A-16-105](#);
795 (b) that has premiums written in at least three countries;
796 (c) whose percentage of gross premiums written outside the United States is at least
797 10% of its total gross written premiums; and
798 (d) that, based on a three-year rolling average, has:
799 (i) total assets of at least \$50,000,000,000; or
800 (ii) total gross written premiums of at least \$10,000,000,000.

801 ~~[(99)]~~ (103) "Involuntary unemployment insurance" means insurance:

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

803 (b) that provides indemnity if the debtor is involuntarily unemployed for payments

804 coming due on a:

805 (i) specific loan; or

806 (ii) credit transaction.

807 ~~[(100)]~~ (104) (a) "Large employer," in connection with a health benefit plan, means an
808 employer who, with respect to a calendar year and to a plan year:

809 (i) employed an average of at least 51 employees on business days during the preceding
810 calendar year; and

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

812 (b) The number of employees shall be determined using the method set forth in 26

813 U.S.C. Sec. 4980H(c)(2).

814 ~~[(101)]~~ (105) "Late enrollee," with respect to an employer health benefit plan, means
815 an individual whose enrollment is a late enrollment.

816 ~~[(102)]~~ (106) "Late enrollment," with respect to an employer health benefit plan, means
817 enrollment of an individual other than:

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

820 (b) through special enrollment.

821 ~~[(103)]~~ (107) (a) Except for a retainer contract or legal assistance described in Section
822 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
823 specified legal expense.

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

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

828 ~~[(104)]~~ (108) (a) "Liability insurance" means insurance against liability:

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

831 (A) medical malpractice insurance;

832 (B) professional liability insurance; and
833 (C) workers' compensation insurance;
834 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
835 insured who is injured, irrespective of legal liability of the insured, when issued with or
836 supplemental to insurance against legal liability for the death, injury, or disability of a human
837 being, exclusive of the coverages under:

838 (A) medical malpractice insurance;
839 (B) professional liability insurance; and
840 (C) workers' compensation insurance;
841 (iii) for loss or damage to property resulting from an accident to or explosion of a
842 boiler, pipe, pressure container, machinery, or apparatus;
843 (iv) for loss or damage to property caused by:
844 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
845 (B) water entering through a leak or opening in a building; or
846 (v) for other loss or damage properly the subject of insurance not within another kind
847 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

848 (b) "Liability insurance" includes:
849 (i) vehicle liability insurance;
850 (ii) residential dwelling liability insurance; and
851 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
852 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
853 elevator, boiler, machinery, or apparatus.

854 ~~[(105)]~~ (109) (a) "License" means authorization issued by the commissioner to engage
855 in an activity that is part of or related to the insurance business.

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

857 ~~[(106)]~~ (110) (a) "Life insurance" means:

858 (i) insurance on a human life; and
859 (ii) insurance pertaining to or connected with human life.

860 (b) The business of life insurance includes:

861 (i) granting a death benefit;
862 (ii) granting an annuity benefit;

- 863 (iii) granting an endowment benefit;
- 864 (iv) granting an additional benefit in the event of death by accident;
- 865 (v) granting an additional benefit to safeguard the policy against lapse; and
- 866 (vi) providing an optional method of settlement of proceeds.
- 867 [~~(107)~~] (111) "Limited license" means a license that:
- 868 (a) is issued for a specific product of insurance; and
- 869 (b) limits an individual or agency to transact only for that product or insurance.
- 870 [~~(108)~~] (112) "Limited line credit insurance" includes the following forms of
- 871 insurance:
- 872 (a) credit life;
- 873 (b) credit accident and health;
- 874 (c) credit property;
- 875 (d) credit unemployment;
- 876 (e) involuntary unemployment;
- 877 (f) mortgage life;
- 878 (g) mortgage guaranty;
- 879 (h) mortgage accident and health;
- 880 (i) guaranteed automobile protection; and
- 881 (j) another form of insurance offered in connection with an extension of credit that:
- 882 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 883 (ii) the commissioner determines by rule should be designated as a form of limited line
- 884 credit insurance.
- 885 [~~(109)~~] (113) "Limited line credit insurance producer" means a person who sells,
- 886 solicits, or negotiates one or more forms of limited line credit insurance coverage to an
- 887 individual through a master, corporate, group, or individual policy.
- 888 [~~(110)~~] (114) "Limited line insurance" includes:
- 889 (a) bail bond;
- 890 (b) limited line credit insurance;
- 891 (c) legal expense insurance;
- 892 (d) motor club insurance;
- 893 (e) car rental related insurance;

- 894 (f) travel insurance;
- 895 (g) crop insurance;
- 896 (h) self-service storage insurance;
- 897 (i) guaranteed asset protection waiver;
- 898 (j) portable electronics insurance; and
- 899 (k) another form of limited insurance that the commissioner determines by rule should
- 900 be designated a form of limited line insurance.

901 [~~(111)~~] (115) "Limited lines authority" includes the lines of insurance listed in

902 Subsection [~~(110)~~] (114).

903 [~~(112)~~] (116) "Limited lines producer" means a person who sells, solicits, or negotiates

904 limited lines insurance.

905 [~~(113)~~] (117) (a) "Long-term care insurance" means an insurance policy or rider

906 advertised, marketed, offered, or designated to provide coverage:

- 907 (i) in a setting other than an acute care unit of a hospital;
- 908 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 909 (A) expenses incurred;
 - 910 (B) indemnity;
 - 911 (C) prepayment; or
 - 912 (D) another method;
- 913 (iii) for one or more necessary or medically necessary services that are:
 - 914 (A) diagnostic;
 - 915 (B) preventative;
 - 916 (C) therapeutic;
 - 917 (D) rehabilitative;
 - 918 (E) maintenance; or
 - 919 (F) personal care; and
- 920 (iv) that may be issued by:
 - 921 (A) an insurer;
 - 922 (B) a fraternal benefit society;
 - 923 (C) (I) a nonprofit health hospital; and
 - 924 (II) a medical service corporation;

- 925 (D) a prepaid health plan;
- 926 (E) a health maintenance organization; or
- 927 (F) an entity similar to the entities described in Subsections [~~(113)~~] (117)(a)(iv)(A)
- 928 through (E) to the extent that the entity is otherwise authorized to issue life or health care
- 929 insurance.
- 930 (b) "Long-term care insurance" includes:
- 931 (i) any of the following that provide directly or supplement long-term care insurance:
- 932 (A) a group or individual annuity or rider; or
- 933 (B) a life insurance policy or rider;
- 934 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 935 (A) cognitive impairment; or
- 936 (B) functional capacity; or
- 937 (iii) a qualified long-term care insurance contract.
- 938 (c) "Long-term care insurance" does not include:
- 939 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 940 (ii) basic hospital expense coverage;
- 941 (iii) basic medical/surgical expense coverage;
- 942 (iv) hospital confinement indemnity coverage;
- 943 (v) major medical expense coverage;
- 944 (vi) income replacement or related asset-protection coverage;
- 945 (vii) accident only coverage;
- 946 (viii) coverage for a specified:
- 947 (A) disease; or
- 948 (B) accident;
- 949 (ix) limited benefit health coverage; or
- 950 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 951 lump sum payment:
- 952 (A) if the following are not conditioned on the receipt of long-term care:
- 953 (I) benefits; or
- 954 (II) eligibility; and
- 955 (B) the coverage is for one or more the following qualifying events:

- 956 (I) terminal illness;
- 957 (II) medical conditions requiring extraordinary medical intervention; or
- 958 (III) permanent institutional confinement.
- 959 ~~[(114)]~~ (118) "Managed care organization" means a person:
- 960 (a) licensed as a health maintenance organization under Chapter 8, Health Maintenance
- 961 Organizations and Limited Health Plans; or
- 962 (b) (i) licensed under:
- 963 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 964 (B) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 965 (C) Chapter 14, Foreign Insurers; and
- 966 (ii) that requires an enrollee to use, or offers incentives, including financial incentives,
- 967 for an enrollee to use, network providers.
- 968 ~~[(115)]~~ (119) "Medical malpractice insurance" means insurance against legal liability
- 969 incident to the practice and provision of a medical service other than the practice and provision
- 970 of a dental service.
- 971 ~~[(116)]~~ (120) "Member" means a person having membership rights in an insurance
- 972 corporation.
- 973 ~~[(117)]~~ (121) "Minimum capital" or "minimum required capital" means the capital that
- 974 must be constantly maintained by a stock insurance corporation as required by statute.
- 975 ~~[(118)]~~ (122) "Mortgage accident and health insurance" means insurance offered in
- 976 connection with an extension of credit that provides indemnity for payments coming due on a
- 977 mortgage while the debtor has a disability.
- 978 ~~[(119)]~~ (123) "Mortgage guaranty insurance" means surety insurance under which a
- 979 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.
- 980 ~~[(120)]~~ (124) "Mortgage life insurance" means insurance on the life of a debtor in
- 981 connection with an extension of credit that pays if the debtor dies.
- 982 ~~[(121)]~~ (125) "Motor club" means a person:
- 983 (a) licensed under:
- 984 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 985 (ii) Chapter 11, Motor Clubs; or
- 986 (iii) Chapter 14, Foreign Insurers; and

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

- 989 (i) legal services under Subsection 31A-11-102(1)(b);
- 990 (ii) bail services under Subsection 31A-11-102(1)(c); or
- 991 (iii) (A) trip reimbursement;
- 992 (B) towing services;
- 993 (C) emergency road services;
- 994 (D) stolen automobile services;
- 995 (E) a combination of the services listed in Subsections [~~(121)~~] (125)(b)(iii)(A) through
- 996 (D); or
- 997 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

998 [~~(122)~~] (126) "Mutual" means a mutual insurance corporation.

999 [~~(123)~~] (127) "Network plan" means health care insurance:

- 1000 (a) that is issued by an insurer; and
- 1001 (b) under which the financing and delivery of medical care is provided, in whole or in
- 1002 part, through a defined set of providers under contract with the insurer, including the financing
- 1003 and delivery of an item paid for as medical care.

1004 [~~(124)~~] (128) "Network provider" means a health care provider who has an agreement
1005 with a managed care organization to provide health care services to an enrollee with an
1006 expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly
1007 from the managed care organization.

1008 [~~(125)~~] (129) "Nonparticipating" means a plan of insurance under which the insured is
1009 not entitled to receive a dividend representing a share of the surplus of the insurer.

1010 [~~(126)~~] (130) "Ocean marine insurance" means insurance against loss of or damage to:

- 1011 (a) ships or hulls of ships;
- 1012 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
- 1013 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
- 1014 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
- 1015 (c) earnings such as freight, passage money, commissions, or profits derived from
- 1016 transporting goods or people upon or across the oceans or inland waterways; or
- 1017 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,

1018 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
1019 in connection with maritime activity.

1020 [~~127~~] (131) "Order" means an order of the commissioner.

1021 (132) "ORSA guidance manual" means the current version of the Own Risk and
1022 Solvency Assessment Guidance Manual developed and adopted by the National Association of
1023 Insurance Commissioners and as amended from time to time.

1024 (133) "ORSA summary report" means a confidential high-level summary of an insurer
1025 or insurance group's own risk and solvency assessment.

1026 [~~128~~] (134) "Outline of coverage" means a summary that explains an accident and
1027 health insurance policy.

1028 (135) "Own risk and solvency assessment" means an insurer or insurance group's
1029 confidential internal assessment:

1030 (a) (i) of each material and relevant risk associated with the insurer or insurance group;
1031 (ii) of the insurer or insurance group's current business plan to support each risk
1032 described in Subsection (135)(a)(i); and

1033 (iii) of the sufficiency of capital resources to support each risk described in Subsection
1034 (135)(a)(i); and

1035 (b) that is appropriate to the nature, scale, and complexity of an insurer or insurance
1036 group.

1037 [~~129~~] (136) "Participating" means a plan of insurance under which the insured is
1038 entitled to receive a dividend representing a share of the surplus of the insurer.

1039 [~~130~~] (137) "Participation," as used in a health benefit plan, means a requirement
1040 relating to the minimum percentage of eligible employees that must be enrolled in relation to
1041 the total number of eligible employees of an employer reduced by each eligible employee who
1042 voluntarily declines coverage under the plan because the employee:

1043 (a) has other group health care insurance coverage; or

1044 (b) receives:

1045 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
1046 Security Amendments of 1965; or

1047 (ii) another government health benefit.

1048 [~~131~~] (138) "Person" includes:

- 1049 (a) an individual;
- 1050 (b) a partnership;
- 1051 (c) a corporation;
- 1052 (d) an incorporated or unincorporated association;
- 1053 (e) a joint stock company;
- 1054 (f) a trust;
- 1055 (g) a limited liability company;
- 1056 (h) a reciprocal;
- 1057 (i) a syndicate; or
- 1058 (j) another similar entity or combination of entities acting in concert.
- 1059 [~~(132)~~] (139) "Personal lines insurance" means property and casualty insurance
- 1060 coverage sold for primarily noncommercial purposes to:
 - 1061 (a) an individual; or
 - 1062 (b) a family.
- 1063 [~~(133)~~] (140) "Plan sponsor" means the same as that term is defined in 29 U.S.C. Sec.
- 1064 1002(16)(B).
 - 1065 [~~(134)~~] (141) "Plan year" means:
 - 1066 (a) the year that is designated as the plan year in:
 - 1067 (i) the plan document of a group health plan; or
 - 1068 (ii) a summary plan description of a group health plan;
 - 1069 (b) if the plan document or summary plan description does not designate a plan year or
 - 1070 there is no plan document or summary plan description:
 - 1071 (i) the year used to determine deductibles or limits;
 - 1072 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
 - 1073 or
 - 1074 (iii) the employer's taxable year if:
 - 1075 (A) the plan does not impose deductibles or limits on a yearly basis; and
 - 1076 (B) (I) the plan is not insured; or
 - 1077 (II) the insurance policy is not renewed on an annual basis; or
 - 1078 (c) in a case not described in Subsection [~~(134)~~] (141)(a) or (b), the calendar year.
 - 1079 [~~(135)~~] (142) (a) "Policy" means a document, including an attached endorsement or

1080 application that:

- 1081 (i) purports to be an enforceable contract; and
- 1082 (ii) memorializes in writing some or all of the terms of an insurance contract.

1083 (b) "Policy" includes a service contract issued by:

- 1084 (i) a motor club under Chapter 11, Motor Clubs;
- 1085 (ii) a service contract provided under Chapter 6a, Service Contracts; and

1086 (iii) a corporation licensed under:

- 1087 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 1088 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

1089 (c) "Policy" does not include:

- 1090 (i) a certificate under a group insurance contract; or
- 1091 (ii) a document that does not purport to have legal effect.

1092 [~~136~~] (143) "Policyholder" means a person who controls a policy, binder, or oral
1093 contract by ownership, premium payment, or otherwise.

1094 [~~137~~] (144) "Policy illustration" means a presentation or depiction that includes
1095 nonguaranteed elements of a policy of life insurance over a period of years.

1096 [~~138~~] (145) "Policy summary" means a synopsis describing the elements of a life
1097 insurance policy.

1098 [~~139~~] (146) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L.
1099 No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152,
1100 and related federal regulations and guidance.

1101 [~~140~~] (147) "Preexisting condition," with respect to health care insurance:

1102 (a) means a condition that was present before the effective date of coverage, whether or
1103 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
1104 and

1105 (b) does not include a condition indicated by genetic information unless an actual
1106 diagnosis of the condition by a physician has been made.

1107 [~~141~~] (148) (a) "Premium" means the monetary consideration for an insurance policy.

1108 (b) "Premium" includes, however designated:

- 1109 (i) an assessment;
- 1110 (ii) a membership fee;

1111 (iii) a required contribution; or
1112 (iv) monetary consideration.
1113 (c) (i) "Premium" does not include consideration paid to a third party administrator for
1114 the third party administrator's services.
1115 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1116 insurance on the risks administered by the third party administrator.
1117 [~~(142)~~] (149) "Principal officers" for a corporation means the officers designated under
1118 Subsection 31A-5-203(3).
1119 [~~(143)~~] (150) "Proceeding" includes an action or special statutory proceeding.
1120 [~~(144)~~] (151) "Professional liability insurance" means insurance against legal liability
1121 incident to the practice of a profession and provision of a professional service.
1122 [~~(145)~~] (152) (a) Except as provided in Subsection [~~(145)~~] (152)(b), "property
1123 insurance" means insurance against loss or damage to real or personal property of every kind
1124 and any interest in that property:
1125 (i) from all hazards or causes; and
1126 (ii) against loss consequential upon the loss or damage including vehicle
1127 comprehensive and vehicle physical damage coverages.
1128 (b) "Property insurance" does not include:
1129 (i) inland marine insurance; and
1130 (ii) ocean marine insurance.
1131 [~~(146)~~] (153) "Qualified long-term care insurance contract" or "federally tax qualified
1132 long-term care insurance contract" means:
1133 (a) an individual or group insurance contract that meets the requirements of Section
1134 7702B(b), Internal Revenue Code; or
1135 (b) the portion of a life insurance contract that provides long-term care insurance:
1136 (i) (A) by rider; or
1137 (B) as a part of the contract; and
1138 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1139 Code.
1140 [~~(147)~~] (154) "Qualified United States financial institution" means an institution that:
1141 (a) is:

- 1142 (i) organized under the laws of the United States or any state; or
1143 (ii) in the case of a United States office of a foreign banking organization, licensed
1144 under the laws of the United States or any state;
- 1145 (b) is regulated, supervised, and examined by a United States federal or state authority
1146 having regulatory authority over a bank or trust company; and
- 1147 (c) meets the standards of financial condition and standing that are considered
1148 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1149 will be acceptable to the commissioner as determined by:
- 1150 (i) the commissioner by rule; or
1151 (ii) the Securities Valuation Office of the National Association of Insurance
1152 Commissioners.
- 1153 [~~148~~] (155) (a) "Rate" means:
- 1154 (i) the cost of a given unit of insurance; or
1155 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
1156 expressed as:
- 1157 (A) a single number; or
1158 (B) a pure premium rate, adjusted before the application of individual risk variations
1159 based on loss or expense considerations to account for the treatment of:
- 1160 (I) expenses;
1161 (II) profit; and
1162 (III) individual insurer variation in loss experience.
- 1163 (b) "Rate" does not include a minimum premium.
- 1164 [~~149~~] (156) (a) Except as provided in Subsection [~~149~~] (156)(b), "rate service
1165 organization" means a person who assists an insurer in rate making or filing by:
- 1166 (i) collecting, compiling, and furnishing loss or expense statistics;
1167 (ii) recommending, making, or filing rates or supplementary rate information; or
1168 (iii) advising about rate questions, except as an attorney giving legal advice.
- 1169 (b) "Rate service organization" does not mean:
- 1170 (i) an employee of an insurer;
1171 (ii) a single insurer or group of insurers under common control;
1172 (iii) a joint underwriting group; or

- 1173 (iv) an individual serving as an actuarial or legal consultant.
- 1174 [~~(150)~~] (157) "Rating manual" means any of the following used to determine initial and
1175 renewal policy premiums:
- 1176 (a) a manual of rates;
 - 1177 (b) a classification;
 - 1178 (c) a rate-related underwriting rule; and
 - 1179 (d) a rating formula that describes steps, policies, and procedures for determining
1180 initial and renewal policy premiums.
- 1181 [~~(151)~~] (158) (a) "Rebate" means a licensee paying, allowing, giving, or offering to
1182 pay, allow, or give, directly or indirectly:
- 1183 (i) a refund of premium or portion of premium;
 - 1184 (ii) a refund of commission or portion of commission;
 - 1185 (iii) a refund of all or a portion of a consultant fee; or
 - 1186 (iv) providing services or other benefits not specified in an insurance or annuity
1187 contract.
- 1188 (b) "Rebate" does not include:
- 1189 (i) a refund due to termination or changes in coverage;
 - 1190 (ii) a refund due to overcharges made in error by the licensee; or
 - 1191 (iii) savings or wellness benefits as provided in the contract by the licensee.
- 1192 [~~(152)~~] (159) "Received by the department" means:
- 1193 (a) the date delivered to and stamped received by the department, if delivered in
1194 person;
 - 1195 (b) the post mark date, if delivered by mail;
 - 1196 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
 - 1197 (d) the received date recorded on an item delivered, if delivered by:
 - 1198 (i) facsimile;
 - 1199 (ii) email; or
 - 1200 (iii) another electronic method; or
 - 1201 (e) a date specified in:
 - 1202 (i) a statute;
 - 1203 (ii) a rule; or

1204 (iii) an order.

1205 [~~(153)~~] (160) "Reciprocal" or "interinsurance exchange" means an unincorporated
1206 association of persons:

1207 (a) operating through an attorney-in-fact common to all of the persons; and

1208 (b) exchanging insurance contracts with one another that provide insurance coverage
1209 on each other.

1210 [~~(154)~~] (161) "Reinsurance" means an insurance transaction where an insurer, for
1211 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1212 reinsurance transactions, this title sometimes refers to:

1213 (a) the insurer transferring the risk as the "ceding insurer"; and

1214 (b) the insurer assuming the risk as the:

1215 (i) "assuming insurer"; or

1216 (ii) "assuming reinsurer."

1217 [~~(155)~~] (162) "Reinsurer" means a person licensed in this state as an insurer with the
1218 authority to assume reinsurance.

1219 [~~(156)~~] (163) "Residential dwelling liability insurance" means insurance against
1220 liability resulting from or incident to the ownership, maintenance, or use of a residential
1221 dwelling that is a detached single family residence or multifamily residence up to four units.

1222 [~~(157)~~] (164) (a) "Retrocession" means reinsurance with another insurer of a liability
1223 assumed under a reinsurance contract.

1224 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1225 liability assumed under a reinsurance contract.

1226 [~~(158)~~] (165) "Rider" means an endorsement to:

1227 (a) an insurance policy; or

1228 (b) an insurance certificate.

1229 [~~(159)~~] (166) "Secondary medical condition" means a complication related to an
1230 exclusion from coverage in accident and health insurance.

1231 [~~(160)~~] (167) (a) "Security" means a:

1232 (i) note;

1233 (ii) stock;

1234 (iii) bond;

- 1235 (iv) debenture;
- 1236 (v) evidence of indebtedness;
- 1237 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1238 (vii) collateral-trust certificate;
- 1239 (viii) preorganization certificate or subscription;
- 1240 (ix) transferable share;
- 1241 (x) investment contract;
- 1242 (xi) voting trust certificate;
- 1243 (xii) certificate of deposit for a security;
- 1244 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1245 payments out of production under such a title or lease;
- 1246 (xiv) commodity contract or commodity option;
- 1247 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1248 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1249 in Subsections [~~(166)~~] (167)(a)(i) through (xiv); or
- 1250 (xvi) another interest or instrument commonly known as a security.
- 1251 (b) "Security" does not include:
- 1252 (i) any of the following under which an insurance company promises to pay money in a
- 1253 specific lump sum or periodically for life or some other specified period:
- 1254 (A) insurance;
- 1255 (B) an endowment policy; or
- 1256 (C) an annuity contract; or
- 1257 (ii) a burial certificate or burial contract.
- 1258 [~~(161)~~] (168) "Securityholder" means a specified person who owns a security of a
- 1259 person, including:
- 1260 (a) common stock;
- 1261 (b) preferred stock;
- 1262 (c) debt obligations; and
- 1263 (d) any other security convertible into or evidencing the right of any of the items listed
- 1264 in this Subsection [~~(161)~~] (168).
- 1265 [~~(162)~~] (169) (a) "Self-insurance" means an arrangement under which a person

1266 provides for spreading its own risks by a systematic plan.

1267 (b) Except as provided in this Subsection [~~(162)~~ (169)], "self-insurance" does not
1268 include an arrangement under which a number of persons spread their risks among themselves.

1269 (c) "Self-insurance" includes:

1270 (i) an arrangement by which a governmental entity undertakes to indemnify an
1271 employee for liability arising out of the employee's employment; and

1272 (ii) an arrangement by which a person with a managed program of self-insurance and
1273 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1274 employees for liability or risk that is related to the relationship or employment.

1275 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1276 [~~(163)~~ (170)] "Sell" means to exchange a contract of insurance:

1277 (a) by any means;

1278 (b) for money or its equivalent; and

1279 (c) on behalf of an insurance company.

1280 [~~(164)~~ (171)] "Short-term care insurance" means an insurance policy or rider
1281 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
1282 insurance, but that provides coverage for less than 12 consecutive months for each covered
1283 person.

1284 (172) "Short-term limited duration health insurance" means a health benefit product
1285 that:

1286 (a) after taking into account any renewals or extensions, has a total duration of no more
1287 than 36 months; and

1288 (b) has an expiration date specified in the contract that is less than 12 months after the
1289 original effective date of coverage under the health benefit product.

1290 [~~(165)~~ (173)] "Significant break in coverage" means a period of 63 consecutive days
1291 during each of which an individual does not have creditable coverage.

1292 [~~(166)~~ (174)] (a) "Small employer" means, in connection with a health benefit plan and
1293 with respect to a calendar year and to a plan year, an employer who:

1294 (i) (A) employed at least one but not more than 50 eligible employees on business days
1295 during the preceding calendar year; or

1296 (B) if the employer did not exist for the entirety of the preceding calendar year,

1297 reasonably expects to employ an average of at least one but not more than 50 eligible
1298 employees on business days during the current calendar year;

1299 (ii) employs at least one employee on the first day of the plan year; and

1300 (iii) for an employer who has common ownership with one or more other employers, is
1301 treated as a single employer under 26 U.S.C. Sec. 414(b), (c), (m), or (o).

1302 (b) "Small employer" does not include a sole proprietor that does not employ at least
1303 one employee.

1304 [~~(167)~~] (175) "Special enrollment period," in connection with a health benefit plan, has
1305 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1306 Portability and Accountability Act.

1307 [~~(168)~~] (176) (a) "Subsidiary" of a person means an affiliate controlled by that person
1308 either directly or indirectly through one or more affiliates or intermediaries.

1309 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1310 shares are owned by that person either alone or with its affiliates, except for the minimum
1311 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1312 others.

1313 [~~(169)~~] (177) Subject to Subsection [~~(90)~~] (91)(b), "surety insurance" includes:

1314 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1315 perform the principal's obligations to a creditor or other obligee;

1316 (b) bail bond insurance; and

1317 (c) fidelity insurance.

1318 [~~(170)~~] (178) (a) "Surplus" means the excess of assets over the sum of paid-in capital
1319 and liabilities.

1320 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1321 designated by the insurer or organization as permanent.

1322 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require
1323 that insurers or organizations doing business in this state maintain specified minimum levels of
1324 permanent surplus.

1325 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1326 same as the minimum required capital requirement that applies to stock insurers.

1327 (c) "Excess surplus" means:

1328 (i) for a life insurer, accident and health insurer, health organization, or property and
1329 casualty insurer as defined in Section 31A-17-601, the lesser of:

1330 (A) that amount of an insurer's or health organization's total adjusted capital that
1331 exceeds the product of:

1332 (I) 2.5; and

1333 (II) the sum of the insurer's or health organization's minimum capital or permanent
1334 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1335 (B) that amount of an insurer's or health organization's total adjusted capital that
1336 exceeds the product of:

1337 (I) 3.0; and

1338 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1339 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1340 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1341 (A) 1.5; and

1342 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1343 [(171)] (179) "Third party administrator" or "administrator" means a person who
1344 collects charges or premiums from, or who, for consideration, adjusts or settles claims of
1345 residents of the state in connection with insurance coverage, annuities, or service insurance
1346 coverage, except:

1347 (a) a union on behalf of its members;

1348 (b) a person administering a:

1349 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1350 1974;

1351 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1352 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1353 (c) an employer on behalf of the employer's employees or the employees of one or
1354 more of the subsidiary or affiliated corporations of the employer;

1355 (d) an insurer licensed under the following, but only for a line of insurance for which
1356 the insurer holds a license in this state:

1357 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1358 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

- 1359 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
1360 (iv) Chapter 9, Insurance Fraternal; or
1361 (v) Chapter 14, Foreign Insurers;
1362 (e) a person:
1363 (i) licensed or exempt from licensing under:
1364 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
1365 Reinsurance Intermediaries; or
1366 (B) Chapter 26, Insurance Adjusters; and
1367 (ii) whose activities are limited to those authorized under the license the person holds
1368 or for which the person is exempt; or
1369 (f) an institution, bank, or financial institution:
1370 (i) that is:
1371 (A) an institution whose deposits and accounts are to any extent insured by a federal
1372 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
1373 Credit Union Administration; or
1374 (B) a bank or other financial institution that is subject to supervision or examination by
1375 a federal or state banking authority; and
1376 (ii) that does not adjust claims without a third party administrator license.
1377 [~~(172)~~] (180) "Title insurance" means the insuring, guaranteeing, or indemnifying of an
1378 owner of real or personal property or the holder of liens or encumbrances on that property, or
1379 others interested in the property against loss or damage suffered by reason of liens or
1380 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
1381 or unenforceability of any liens or encumbrances on the property.
1382 [~~(173)~~] (181) "Total adjusted capital" means the sum of an insurer's or health
1383 organization's statutory capital and surplus as determined in accordance with:
1384 (a) the statutory accounting applicable to the annual financial statements required to be
1385 filed under Section 31A-4-113; and
1386 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1387 Section 31A-17-601.
1388 [~~(174)~~] (182) (a) "Trustee" means "director" when referring to the board of directors of
1389 a corporation.

1390 (b) "Trustee," when used in reference to an employee welfare fund, means an
1391 individual, firm, association, organization, joint stock company, or corporation, whether acting
1392 individually or jointly and whether designated by that name or any other, that is charged with
1393 or has the overall management of an employee welfare fund.

1394 ~~[(175)]~~ (183) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted
1395 insurer" means an insurer:

1396 (i) not holding a valid certificate of authority to do an insurance business in this state;
1397 or

1398 (ii) transacting business not authorized by a valid certificate.

1399 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1400 (i) holding a valid certificate of authority to do an insurance business in this state; and

1401 (ii) transacting business as authorized by a valid certificate.

1402 ~~[(176)]~~ (184) "Underwrite" means the authority to accept or reject risk on behalf of the
1403 insurer.

1404 ~~[(177)]~~ (185) "Vehicle liability insurance" means insurance against liability resulting
1405 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a
1406 vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(145)]~~ (152).

1407 ~~[(178)]~~ (186) "Voting security" means a security with voting rights, and includes a
1408 security convertible into a security with a voting right associated with the security.

1409 ~~[(179)]~~ (187) "Waiting period" for a health benefit plan means the period that must
1410 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of
1411 the health benefit plan, can become effective.

1412 ~~[(180)]~~ (188) "Workers' compensation insurance" means:

1413 (a) insurance for indemnification of an employer against liability for compensation
1414 based on:

1415 (i) a compensable accidental injury; and

1416 (ii) occupational disease disability;

1417 (b) employer's liability insurance incidental to workers' compensation insurance and
1418 written in connection with workers' compensation insurance; and

1419 (c) insurance assuring to a person entitled to workers' compensation benefits the
1420 compensation provided by law.

1421 Section 2. Section 31A-2-308 is amended to read:

1422 **31A-2-308. Enforcement penalties and procedures.**

1423 (1) (a) A person who violates any insurance statute or rule or any order issued under
1424 Subsection 31A-2-201(4) shall forfeit to the state up to twice the amount of any profit gained
1425 from the violation, in addition to any other forfeiture or penalty imposed.

1426 (b) (i) The commissioner may order an individual producer, surplus line producer,
1427 limited line producer, managing general agent, reinsurance intermediary, adjuster, third party
1428 administrator, navigator, or insurance consultant who violates an insurance statute or rule to
1429 forfeit to the state not more than \$2,500 for each violation.

1430 (ii) The commissioner may order any other person who violates an insurance statute or
1431 rule to forfeit to the state not more than \$5,000 for each violation.

1432 (c) (i) The commissioner may order an individual producer, surplus line producer,
1433 limited line producer, managing general agent, reinsurance intermediary, adjuster, third party
1434 administrator, navigator, or insurance consultant who violates an order issued under Subsection
1435 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the
1436 violation continues is a separate violation.

1437 (ii) The commissioner may order any other person who violates an order issued under
1438 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each
1439 day the violation continues is a separate violation.

1440 (d) The commissioner may accept or compromise any forfeiture under this Subsection
1441 (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only
1442 the attorney general may compromise the forfeiture.

1443 (2) When a person fails to comply with an order issued under Subsection
1444 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of
1445 competent jurisdiction or obtain a court order or judgment:

1446 (a) enforcing the commissioner's order;

1447 (b) (i) directing compliance with the commissioner's order and restraining further
1448 violation of the order; and

1449 (ii) subjecting the person ordered to the procedures and sanctions available to the court
1450 for punishing contempt if the failure to comply continues; or

1451 (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each

1452 day the failure to comply continues after the filing of the complaint until judgment is rendered.

1453 (3) (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2),
1454 except that the commissioner may file a complaint seeking a court-ordered forfeiture under
1455 Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's
1456 intention to proceed under Subsection (2)(c).

1457 (b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a
1458 notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

1459 (4) If, after a court order is issued under Subsection (2), the person fails to comply with
1460 the commissioner's order or judgment:

1461 (a) the commissioner may certify the fact of the failure to the court by affidavit; and

1462 (b) the court may, after a hearing following at least five days written notice to the
1463 parties subject to the order or judgment, amend the order or judgment to add the forfeiture or
1464 forfeitures, as prescribed in Subsection (2)(c), until the person complies.

1465 (5) (a) The proceeds of the forfeitures under this section, including collection expenses,
1466 shall be paid into the General Fund.

1467 (b) The expenses of collection shall be credited to the department's budget.

1468 (c) The attorney general's budget shall be credited to the extent the department
1469 reimburses the attorney general's office for its collection expenses under this section.

1470 (6) (a) Forfeitures and judgments under this section bear interest at the rate charged by
1471 the United States Internal Revenue Service for past due taxes on the:

1472 (i) date of entry of the commissioner's order under Subsection (1); or

1473 (ii) date of judgment under Subsection (2).

1474 (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the
1475 forfeiture and accrued interest are fully paid.

1476 (7) A forfeiture may not be imposed under Subsection (2)(c) if:

1477 (a) at the time the forfeiture action is commenced, the person was in compliance with
1478 the commissioner's order; or

1479 (b) the violation of the order occurred during the order's suspension.

1480 (8) The commissioner may seek an injunction as an alternative to issuing an order
1481 under Subsection 31A-2-201(4).

1482 (9) (a) A person is guilty of a class B misdemeanor if that person:

- 1483 (i) intentionally violates:
- 1484 (A) an insurance statute of this state; or
- 1485 (B) an order issued under Subsection 31A-2-201(4);
- 1486 (ii) intentionally permits a person over whom that person has authority to violate:
- 1487 (A) an insurance statute of this state; or
- 1488 (B) an order issued under Subsection 31A-2-201(4); or
- 1489 (iii) intentionally aids any person in violating:
- 1490 (A) an insurance statute of this state; or
- 1491 (B) an order issued under Subsection 31A-2-201(4).
- 1492 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may
- 1493 be fined not more than:
- 1494 (i) \$10,000 if a corporation; or
- 1495 (ii) \$5,000 if a person other than a corporation.
- 1496 (c) If the person is an individual, the person may, in addition, be imprisoned for up to
- 1497 one year.
- 1498 (d) As used in this Subsection (9), "intentionally" has the same meaning as under
- 1499 Subsection 76-2-103(1).
- 1500 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,
- 1501 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this
- 1502 Subsection (10).
- 1503 (b) When the value of the property, money, or other things obtained or sought to be
- 1504 obtained in violation of Subsection (10)(a):
- 1505 (i) is less than \$5,000, a person is guilty of a third degree felony; or
- 1506 (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.
- 1507 (11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend,
- 1508 place on probation, limit, or refuse to renew the licensee's license or certificate of authority:
- 1509 (i) when a licensee of the department, other than a domestic insurer:
- 1510 (A) persistently or substantially violates the insurance law; or
- 1511 (B) violates an order of the commissioner under Subsection 31A-2-201(4);
- 1512 (ii) if there are grounds for delinquency proceedings against the licensee under Section
- 1513 31A-27a-207; or

1514 (iii) if the licensee's methods and practices in the conduct of the licensee's business
1515 endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate
1516 interests of the licensee's customers and the public.

1517 (b) Additional license termination or probation provisions for licensees other than
1518 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112,
1519 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

1520 (12) The enforcement penalties and procedures set forth in this section are not
1521 exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to
1522 applicable law.

1523 Section 3. Section 31A-2-403 is amended to read:

1524 **31A-2-403. Title and Escrow Commission created.**

1525 (1) (a) Subject to Subsection (1)(b), there is created within the department the Title and
1526 Escrow Commission that is comprised of five members appointed by the governor with the
1527 consent of the Senate as follows:

1528 (i) except as provided in Subsection (1)(c), two members shall be employees of a title
1529 insurer;

1530 (ii) two members shall:

1531 (A) be employees of a Utah agency title insurance producer;

1532 (B) be or have been licensed under the title insurance line of authority;

1533 (C) as of the day on which the member is appointed, be or have been licensed with the
1534 title examination or escrow subline of authority for at least five years; and

1535 (D) as of the day on which the member is appointed, not be from the same county as
1536 another member appointed under this Subsection (1)(a)(ii); and

1537 (iii) one member shall be a member of the general public from any county in the state.

1538 (b) No more than one commission member may be appointed from a single company
1539 or an affiliate or subsidiary of the company.

1540 (c) If the governor is unable to identify more than one individual who is an employee
1541 of a title insurer and willing to serve as a member of the commission, the commission shall
1542 include the following members in lieu of the members described in Subsection (1)(a)(i):

1543 (i) one member who is an employee of a title insurer; and

1544 (ii) one member who is an employee of a Utah agency title insurance producer.

1545 (2) (a) Subject to Subsection (2)(c), a commission member shall file with the
1546 commissioner a disclosure of any position of employment or ownership interest that the
1547 commission member has with respect to a person that is subject to the jurisdiction of the
1548 commissioner.

1549 (b) The disclosure statement required by this Subsection (2) shall be:

1550 (i) filed by no later than the day on which the person begins that person's appointment;

1551 and

1552 (ii) amended when a significant change occurs in any matter required to be disclosed
1553 under this Subsection (2).

1554 (c) A commission member is not required to disclose an ownership interest that the
1555 commission member has if the ownership interest is in a publicly traded company or held as
1556 part of a mutual fund, trust, or similar investment.

1557 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
1558 members expire, the governor shall appoint each new commission member to a four-year term
1559 ending on June 30.

1560 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
1561 time of appointment, adjust the length of terms to ensure that the terms of the commission
1562 members are staggered so that approximately half of the members appointed under Subsection
1563 (1)(a)(i) and half of the members appointed under Subsection (1)(a)(ii) are appointed every two
1564 years.

1565 (c) A commission member may not serve more than one consecutive term.

1566 (d) When a vacancy occurs in the membership for any reason, the governor, with the
1567 consent of the Senate, shall appoint a replacement for the unexpired term.

1568 (e) Notwithstanding the other provisions of this Subsection (3), a commission member
1569 serves until a successor is appointed by the governor with the consent of the Senate.

1570 (4) A commission member may not receive compensation or benefits for the
1571 commission member's service, but may receive per diem and travel expenses in accordance
1572 with:

1573 (a) Section [63A-3-106](#);

1574 (b) Section [63A-3-107](#); and

1575 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and

1576 63A-3-107.

1577 (5) Members of the commission shall annually select one commission member to serve
1578 as chair.

1579 (6) (a) (i) ~~[The]~~ Except as provided in Subsection (6)(b), the commission shall meet at
1580 least monthly.

1581 (ii) (A) The commissioner shall, with the concurrence of the chair of the commission,
1582 designate at least one monthly meeting per quarter as an in-person meeting.

1583 (B) Notwithstanding Section 52-4-207, a commission member shall physically attend
1584 [a regularly scheduled monthly meeting of the commission] a meeting designated as an
1585 in-person meeting under Subsection (6)(a)(ii)(A) and may not attend through electronic means.
1586 A commission member may attend any other commission meeting, subcommittee [meetings,
1587 emergency meetings, or other not regularly scheduled meetings electronically] meeting, or
1588 emergency meeting by electronic means in accordance with Section 52-4-207.

1589 (b) (i) Except as provided in Subsection (6)(b)(ii), the commissioner may, with the
1590 concurrence of the chair of the commission, cancel a monthly meeting of the commission if,
1591 due to the number or nature of pending title insurance matters, the monthly meeting is not
1592 necessary.

1593 (ii) The commissioner may not cancel a monthly meeting designated as an in-person
1594 meeting under Subsection (6)(a)(ii)(A).

1595 ~~[(b)]~~ (c) The commissioner may call additional meetings:

1596 (i) at the commissioner's discretion;

1597 (ii) upon the request of the chair of the commission; or

1598 (iii) upon the written request of three or more commission members.

1599 ~~[(c)]~~ (d) (i) Three commission members constitute a quorum for the transaction of
1600 business.

1601 (ii) The action of a majority of the commission members when a quorum is present is
1602 the action of the commission.

1603 (7) The commissioner shall staff the commission.

1604 Section 4. Section 31A-3-304 is amended to read:

1605 **31A-3-304. Annual fees -- Other taxes or fees prohibited -- Captive Insurance**
1606 **Restricted Account.**

1607 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
1608 to obtain or renew a certificate of authority.

1609 (b) The commissioner shall:

1610 (i) determine the annual fee pursuant to Section 31A-3-103; and

1611 (ii) consider whether the annual fee is competitive with fees imposed by other states on
1612 captive insurance companies.

1613 (2) A captive insurance company that fails to pay the fee required by this section is
1614 subject to the relevant sanctions of this title.

1615 (3) (a) A captive insurance company that pays one of the following fees is exempt from
1616 Title 59, Chapter 7, Corporate Franchise and Income Taxes, and Title 59, Chapter 9, Taxation
1617 of Admitted Insurers:

1618 (i) a fee under this section;

1619 (ii) a fee under Chapter 37, Captive Insurance Companies Act; or

1620 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company
1621 Act.

1622 (b) The state or a county, city, or town within the state may not levy or collect an
1623 occupation tax or other fee or charge not described in Subsections (3)(a)(i) through (iii) against
1624 a captive insurance company.

1625 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115
1626 against a captive insurance company.

1627 (4) A captive insurance company shall pay the fee imposed by this section to the
1628 commissioner by June 1 of each year.

1629 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be
1630 deposited into the Captive Insurance Restricted Account.

1631 (b) There is created in the General Fund a restricted account known as the "Captive
1632 Insurance Restricted Account."

1633 (c) The Captive Insurance Restricted Account shall consist of the fees described in
1634 Subsection (3)(a).

1635 (d) The commissioner shall administer the Captive Insurance Restricted Account.
1636 Subject to appropriations by the Legislature, the commissioner shall use the money deposited
1637 into the Captive Insurance Restricted Account to:

1638 (i) administer and enforce:
1639 (A) Chapter 37, Captive Insurance Companies Act; and
1640 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and
1641 (ii) promote the captive insurance industry in Utah.
1642 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
1643 except that at the end of each fiscal year, money received by the commissioner in excess of the
1644 following shall be treated as free revenue in the General Fund:

1645 (i) for fiscal year [~~2017-2018~~] 2018-2019 and subsequent fiscal years, in excess of
1646 [~~\$1,850,000~~] \$1,600,000; and

1647 (ii) for fiscal year [~~2018-2019~~] 2019-2020 and subsequent fiscal years, in excess of
1648 [~~\$1,600,000~~] \$1,450,000.

1649 Section 5. Section **31A-16-108.6** is enacted to read:

1650 **31A-16-108.6. Supervision of internationally active insurance groups.**

1651 (1) (a) Except as otherwise provided in this section, the commissioner shall act as the
1652 group-wide supervisor for each internationally active insurance group.

1653 (b) In lieu of acting as the group-wide supervisor for an internationally active insurance
1654 company, the commissioner may acknowledge a regulatory official from another jurisdiction as
1655 the internationally active insurance group's group-wide supervisor, if the internationally active
1656 insurance group:

1657 (i) does not have substantial insurance operations in the United States;

1658 (ii) has substantial insurance operations in the United States, but does not have
1659 substantial insurance operations in the state; or

1660 (iii) has substantial insurance operations in the United State and in the state, but in
1661 accordance with the provisions of this section, the commissioner determines that a regulatory
1662 official from another jurisdiction is an appropriate group-wide supervisor.

1663 (2) In deciding whether to acknowledge another regulatory official as an internationally
1664 active insurance group's group-wide supervisor in lieu of acting as the group-wide supervisor,
1665 the commissioner shall:

1666 (a) consult and cooperate with other state, federal, and international regulatory
1667 agencies; and

1668 (b) consider:

- 1669 (i) the domicile of the insurer or insurers within the internationally active insurance
1670 group that hold the largest share of the group's written premiums, assets, or liabilities;
- 1671 (ii) the domicile of the top-tiered insurer or insurers in the insurance holding company
1672 system of the internationally active insurance group;
- 1673 (iii) the location of the executive office or largest operational office of the
1674 internationally active insurance group;
- 1675 (iv) whether another regulatory official acts or seeks to act as the group-wide
1676 supervisor under a regulatory system that the commissioner determines to be:
- 1677 (A) substantially similar to the system of regulation provided under the laws of this
1678 state; or
- 1679 (B) sufficient in terms of providing for group-wide supervision, enterprise risk
1680 analysis, and cooperation with other regulatory officials; and
- 1681 (v) whether another regulatory official acting or seeking to act as the group-wide
1682 supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.
- 1683 (3) (a) Before acting as the group-wide supervisor for an internationally active
1684 insurance group, the commissioner shall notify:
- 1685 (i) the insurer registered under Section [31A-16-105](#); and
- 1686 (ii) the ultimate controlling person within the internationally active insurance group.
- 1687 (b) Within 30 days after the day on which an internationally active insurance group
1688 receives a notification described in Subsection (3)(a), the internationally active insurance group
1689 may provide the commissioner additional information relevant to whether the commissioner
1690 should act as the internationally active insurance group's group-wide supervisor.
- 1691 (4) If the commissioner acts as the group-wide supervisor for an internationally active
1692 insurance group, the commissioner may later acknowledge a regulatory official from another
1693 jurisdiction as the group-wide supervisor for the internationally active insurance group if the
1694 commissioner:
- 1695 (a) considers the factors described in Subsection (2)(b);
- 1696 (b) cooperates with other regulatory officials involved with the supervision of the
1697 members of the internationally active insurance group; and
- 1698 (c) consults with the internationally active insurance group.
- 1699 (5) Notwithstanding any other provision of law, when a regulatory official from

1700 another jurisdiction is acting as the group-wide supervisor for an internationally active
1701 insurance group, the commissioner shall:

1702 (a) acknowledge the regulatory official as the group-wide supervisor; and
1703 (b) in accordance with Subsection (2), reevaluate whether it is appropriate to
1704 acknowledge a regulatory official from another jurisdiction as the group-wide supervisor if a
1705 change in circumstances results in:

1706 (i) the insurer or insurers within the internationally active insurance group that hold the
1707 largest share of the group's written premiums, assets, or liabilities being domiciled in the state;
1708 or

1709 (ii) the top-tiered insurer or insurers in the insurance holding company system of the
1710 internationally active insurance group being domiciled in the state.

1711 (6) In accordance with Section [31A-16-107.5](#), upon request from the commissioner, an
1712 insurer subject to this chapter shall provide the commissioner any information necessary to
1713 determine the appropriate group-wide supervisor for an internationally active insurance group.

1714 (7) The commissioner shall publish on the department's website the identity of each
1715 internationally active insurance group for which the commissioner acts as the group-wide
1716 supervisor.

1717 (8) If the commissioner is the group-wide supervisor of an internationally active
1718 insurance group, the commissioner may:

1719 (a) assess the enterprise risks within the internationally active insurance group to
1720 ensure that:

1721 (i) management of the internationally active insurance group identifies the material
1722 financial condition and liquidity risks to the members of the internationally active insurance
1723 group that are engaged in the business of insurance; and

1724 (ii) reasonable and effective mitigation measures are in place;

1725 (b) request, from any member of the internationally active insurance group, subject to
1726 the commissioner's supervision, information necessary and appropriate to assess enterprise risk,
1727 including information about the members of the internationally active insurance group
1728 regarding:

1729 (i) governance, risk assessment, and management;
1730 (ii) capital adequacy; or

1731 (iii) material intercompany transactions;
1732 (c) coordinate and, through the authority of the regulatory officials of the jurisdictions
1733 where members of the internationally active insurance group are domiciled, compel
1734 development and implementation of reasonable measures designed to ensure that the
1735 internationally active insurance group is able to timely recognize and mitigate enterprise risks
1736 to members of the internationally active insurance group that are engaged in the business of
1737 insurance;
1738 (d) communicate with other state, federal, and international regulatory agencies for
1739 members within the internationally active insurance group;
1740 (e) subject to the confidentiality provisions of Section 31A-16-109, share relevant
1741 information:
1742 (i) through a supervisory college in accordance with Section 31A-16-108.5; or
1743 (ii) by entering into an agreement or obtaining documentation:
1744 (A) with or from an insurer registered under Section 31A-16-105, a member of the
1745 internationally active insurance group, or a state, federal or international regulatory agency for
1746 members of the internationally active insurance group; and
1747 (B) that provides the basis for or otherwise clarifies the commissioner's role as
1748 group-wide supervisor, including a provision for resolving disputes with another regulatory
1749 official; and
1750 (f) engage in any other group-wide supervision activity, consistent with an authority
1751 and purpose enumerated in this section, as the commissioner determines necessary.
1752 (9) An agreement or documentation described in Subsection (8)(e) may not serve as
1753 evidence in any proceeding that an insurer or person within an insurance holding company
1754 system not domiciled or incorporated in the state:
1755 (a) is doing business in the state; or
1756 (b) is subject to jurisdiction in the state.
1757 (10) (a) If the commissioner acknowledges as a group-wide supervisor another
1758 regulatory official from a jurisdiction that the NAIC does not accredit as a group-wide
1759 supervisor, the commissioner may reasonably cooperate, through supervisory colleges or
1760 otherwise, with the group-wide supervision undertaken by the group-wide supervisor, provided
1761 that:

1762 (i) the commissioner's cooperation is in compliance with the laws of this state; and
1763 (ii) the group-wide supervisor also recognizes and cooperates with the commissioner's
1764 activities as the group-wide supervisor for other internationally active insurance groups where
1765 applicable.

1766 (b) Where the recognition and cooperation described in Subsection (10)(a)(ii) is not
1767 reasonably reciprocal, the commissioner may refuse recognition and cooperation.

1768 (11) The commissioner may in accordance with Title 63G, Chapter 3, Utah
1769 Administrative Rulemaking Act, make rules necessary for the administration of this section.

1770 (12) An insurer subject to this section is liable for and shall pay the reasonable
1771 expenses of the commissioner's participation in the administration of this section, including:

1772 (a) the engagement of an attorney, actuary, or other professional; and

1773 (b) all reasonable travel expenses.

1774 Section 6. Section **31A-16-109** is amended to read:

1775 **31A-16-109. Confidentiality of information obtained by commissioner.**

1776 (1) (a) [~~Information, documents, and copies of these that are~~] Documents, materials, or
1777 information obtained by or disclosed to the commissioner or any other person in the course of
1778 an examination or investigation made under Section [31A-16-107.5](#), and all information
1779 reported or provided to the department under Section [31A-16-105](#) or [31A-16-108.6](#), is
1780 confidential. [~~It is~~]

1781 (b) Any confidential document, material, or information described in Subsection (1)(a)
1782 is not subject to subpoena and may not be made public by the commissioner or any other
1783 person without the permission of the insurer, except [it] the confidential document, material, or
1784 information may be provided to the insurance departments of other states, without the prior
1785 written consent of the insurer to which [~~it~~] the confidential document, material, or information
1786 pertains.

1787 (2) The commissioner and any person who [~~received~~] receives documents, materials, or
1788 other information while acting under the authority of the commissioner or with whom the
1789 documents, materials, or other information are shared pursuant to this chapter shall keep
1790 confidential any confidential documents, materials, or information subject to Subsection (1).

1791 (3) (a) To assist in the performance of the commissioner's duties, the commissioner:

1792 (i) may share documents, materials, or other information, including the confidential

1793 documents, materials, or information subject to Subsection (1), with the following if the
1794 recipient agrees in writing to maintain the confidentiality status of the document, material, or
1795 other information, and has verified in writing the legal authority to maintain confidentiality:

1796 (A) ~~[other]~~ a state, federal, ~~[and]~~ or international regulatory ~~[agencies]~~ agency;

1797 (B) the National Association of Insurance Commissioners ~~[and its affiliates and~~
1798 ~~subsidiaries; and]~~ or an NAIC affiliate or subsidiary; or

1799 (C) a state, federal, ~~[and]~~ or international law enforcement ~~[authorities]~~ authority,
1800 including ~~[members]~~ a member of a supervisory college described in Section [31A-16-108.5](#);

1801 (ii) notwithstanding Subsection (1), may only share confidential documents, material,
1802 or information reported pursuant to Section [31A-16-105](#) or [31A-16-108.6](#) with ~~[commissioners~~
1803 ~~of states]~~ a commissioner of a state having statutes or regulations substantially similar to
1804 Subsection (1) and who ~~[have]~~ has agreed in writing not to disclose the documents, material, or
1805 information;

1806 (iii) may receive documents, materials, or information, including otherwise
1807 confidential documents, materials, or information from:

1808 (A) the National Association of Insurance Commissioners ~~[and its affiliates and~~
1809 ~~subsidiaries and from]~~ or an NAIC affiliate or subsidiary; or

1810 (B) a regulatory ~~[and]~~ or law enforcement ~~[officials]~~ official of ~~[other]~~ a foreign or
1811 domestic ~~[jurisdictions; and]~~ jurisdiction;

1812 (iv) shall maintain as confidential any document, material, or information received
1813 under this section with notice or the understanding that it is confidential under the laws of the
1814 jurisdiction that is the source of the document, material, or information; and

1815 ~~[(iv)]~~ (v) shall enter into written agreements with the National Association of Insurance
1816 Commissioners governing sharing and use of information provided pursuant to this chapter
1817 consistent with this Subsection (3) that shall:

1818 (A) specify procedures and protocols regarding the confidentiality and security of
1819 information shared with the National Association of Insurance Commissioners and ~~[its]~~ NAIC
1820 affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for
1821 sharing by the National Association of Insurance Commissioners with other state, federal, or
1822 international regulators;

1823 (B) specify that ownership of information shared with the National Association of

1824 Insurance Commissioners and [its] NAIC affiliates and subsidiaries pursuant to this chapter
1825 remains with the commissioner and the National Association of Insurance Commissioner's use
1826 of the information is subject to the direction of the commissioner;

1827 (C) require prompt notice to be given to an insurer whose confidential information in
1828 the possession of the National Association of Insurance Commissioners pursuant to this chapter
1829 is subject to a request or subpoena to the National Association of Insurance Commissioners for
1830 disclosure or production; and

1831 (D) require the National Association of Insurance Commissioners and [its] NAIC
1832 affiliates and subsidiaries to consent to intervention by an insurer in any judicial or
1833 administrative action in which the National Association of Insurance Commissioners and [its]
1834 NAIC affiliates and subsidiaries may be required to disclose confidential information about the
1835 insurer shared with the National Association of Insurance Commissioners and [its] NAIC
1836 affiliates and subsidiaries pursuant to this chapter.

1837 (4) The sharing of information by the commissioner pursuant to this chapter does not
1838 constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely
1839 responsible for the administration, execution, and enforcement of this chapter.

1840 (5) A waiver of any applicable claim of confidentiality in the documents, materials, or
1841 information does not occur as a result of disclosure to the commissioner under this section or
1842 as a result of sharing as authorized in Subsection (3).

1843 (6) Documents, materials, or other information in the possession or control of the
1844 National Association of Insurance Commissioners pursuant to this chapter are:

1845 (a) confidential, not public records, and not open to public inspection; and

1846 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
1847 Act.

1848 Section 7. Section **31A-16b-101** is enacted to read:

1849 **CHAPTER 16b. CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT**

1850 **31A-16b-101. Title.**

1851 This chapter is known as the "Corporate Governance Annual Disclosure Act."

1852 Section 8. Section **31A-16b-102** is enacted to read:

1853 **31A-16b-102. Administration and scope.**

1854 (1) The commissioner is solely responsible for the administration and enforcement of

1855 the provisions of this chapter.

1856 (2) This chapter does not:

1857 (a) prescribe or impose corporate governance standards or internal procedures beyond
1858 what is required under applicable state corporate law; or

1859 (b) limit the commissioner's authority, or the rights or obligations of third parties,
1860 under Chapter 2, Administration of the Insurance Laws.

1861 (3) The requirements of this Chapter apply to each insurer domiciled in the state.

1862 Section 9. Section **31A-16b-103** is enacted to read:

1863 **31A-16b-103. Disclosure requirement.**

1864 (1) An insurer, or the insurance group of which the insurer is a member, shall on or
1865 before June 1 of each year submit to the commissioner a corporate governance annual
1866 disclosure that contains the information required under Section [31A-16b-105](#).

1867 (2) Notwithstanding a request from the commissioner described in Subsection (4), if an
1868 insurer is a member of an insurance group, the insurer shall submit the report required under
1869 this section to the commissioner of the lead state for the insurance group in accordance with:

1870 (a) the laws of the lead state; and

1871 (b) the procedures outlined in the most recent Financial Analysis Handbook adopted by
1872 the NAIC.

1873 (3) The corporate governance annual disclosure described in Subsection (1) shall
1874 include a signature:

1875 (a) of the insurer's or insurance group's chief executive officer or corporate secretary;
1876 and

1877 (b) attesting to the best of the signatory's belief and knowledge that:

1878 (i) the insurer or insurance group has implemented the corporate governance practices;
1879 and

1880 (ii) a copy of the disclosure has been provided to the insurer's or insurance group's
1881 board of directors or the appropriate committee thereof.

1882 (4) An insurer not required to submit a corporate governance annual disclosure under
1883 this section shall submit a corporate governance annual disclosure to the commissioner upon
1884 the commissioner's request.

1885 (5) (a) For purposes of completing a corporate governance annual disclosure, an insurer

1886 or insurance group may provide information regarding corporate governance at one of the
1887 following levels:

1888 (i) at the ultimate controlling parent level;

1889 (ii) at an intermediate holding company level; or

1890 (iii) at the individual legal entity level.

1891 (b) An insurer or insurance group shall consider making each corporate governance
1892 annual disclosure at the level at which the insurer or insurance group:

1893 (i) determines the insurer or insurance group's risk appetite;

1894 (ii) (A) collectively oversees the earnings, capital, liquidity, operations, and reputation
1895 of the insurer; and

1896 (B) coordinates and exercises the supervision of earnings, capital, liquidity, operations,
1897 and reputation of the insurer; or

1898 (iii) places legal liability for failure of general corporate governance duties.

1899 (6) If an insurer or insurance group chooses a level of reporting described in

1900 Subsection (5), it shall indicate:

1901 (a) which of the three levels the insurer or insurance group chose; and

1902 (b) explain any subsequent change in the level of reporting.

1903 (7) An insurer may choose not to include certain information in a corporate governance
1904 annual disclosure, if:

1905 (a) the information is substantially similar to information included in another document
1906 submitted to the commissioner, including a proxy statement filed in conjunction with Section
1907 31A-16-105 or another state or federal filing provided to the department; and

1908 (b) the insurer cross references the document described in Subsection (7)(a) in the
1909 corporate governance annual disclosure.

1910 (8) A review of a corporate governance annual disclosure or any additional request for
1911 information related to a corporate governance annual disclosure shall be made through the lead
1912 state as determined by the procedures outlined in the most recent Financial Analysis Handbook
1913 adopted by the NAIC.

1914 Section 10. Section **31A-16b-104** is enacted to read:

1915 **31A-16b-104. Rulemaking.**

1916 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1917 commissioner may make rules to implement and administer this chapter.

1918 (2) The commissioner may issue orders as is necessary to carry out this chapter.

1919 Section 11. Section **31A-16b-105** is enacted to read:

1920 **31A-16b-105. Contents of corporate governance annual disclosure.**

1921 (1) (a) A corporate governance annual disclosure shall include information sufficient to
1922 provide the commissioner a clear understanding of the insurer's or insurance group's corporate
1923 governance structure, policies, and practices.

1924 (b) An insurer or insurance group has discretion to determine the information the
1925 insurer or insurance group includes in a corporate governance annual disclosure, provided the
1926 information complies with Subsection (1)(a).

1927 (2) The commissioner may request additional information that the commissioner
1928 determines material and necessary to provide the commissioner with a clear understanding of
1929 the insurer's or insurance group's:

1930 (a) corporate governance policies;

1931 (b) reporting and information systems; or

1932 (c) controls implementing the items described in Subsection (2)(a) or (b).

1933 (3) An insurer or insurance group shall maintain and make available upon request of
1934 the commissioner:

1935 (a) documentation; and

1936 (b) supporting information.

1937 Section 12. Section **31A-16b-106** is enacted to read:

1938 **31A-16b-106. Confidentiality.**

1939 (1) A document, material, or other information, including a corporate governance
1940 annual disclosure, is considered proprietary and to contain a trade secret if the document,
1941 material, or other information is:

1942 (a) in the control or possession of the department; and

1943 (b) obtained by, created by, or disclosed to the commissioner or any other person in
1944 accordance with this chapter.

1945 (2) A document, material, or other information described in Subsection (1) is:

1946 (a) confidential and privileged;

1947 (b) classified as a protected record under Title 63G, Chapter 2, Government Records

1948 Access and Management Act;

1949 (c) not subject to:

1950 (i) subpoena; or

1951 (ii) discovery; and

1952 (d) not admissible as evidence in any private civil action.

1953 (3) (a) The commissioner may use a document, material, or other information
1954 described in Subsection (1) in the furtherance of a regulatory or legal action brought as a part of
1955 the commissioner's duties.

1956 (b) Except as described in Subsection (3)(a), the commissioner may not make a
1957 document, material, or other information described in Subsection (1) public without the prior
1958 written consent of the insurer or insurance group.

1959 (4) Nothing in this section requires written consent of the insurer or insurance group
1960 before the commissioner shares or receives, in accordance with Subsection (6), a document,
1961 material, or other information described in Subsection (1) to assist in the performance of the
1962 commissioner's duties.

1963 (5) The following may not testify in any private civil action regarding a document,
1964 material, or other information described in Subsection (1):

1965 (a) the commissioner; or

1966 (b) a person:

1967 (i) who receives the document, material, or other information, through examination or
1968 otherwise, while acting under the authority of the commissioner; or

1969 (ii) with whom the document, material, or other information is shared in accordance
1970 with this chapter.

1971 (6) To carry out the commissioner's duties, the commissioner may:

1972 (a) upon request, share a document, material, or other information described in
1973 Subsection (1) with:

1974 (i) a state, federal, or international financial regulatory agency, including a member of a
1975 supervisory college as defined in Section [31A-16-108.5](#); or

1976 (ii) the NAIC or a third-party consultant retained in accordance with Section
1977 [31A-16b-107](#), if the recipient:

1978 (A) agrees in writing to maintain the confidentiality and privileged status of the

1979 document, material, or other information; and
1980 (B) verifies in writing the legal authority to maintain confidentiality; or
1981 (b) receive documents, materials, or other information related to a corporate
1982 governance annual disclosure, including:
1983 (i) otherwise confidential and privileged documents, materials, or other information;
1984 and
1985 (ii) proprietary and trade secret information or documents from:
1986 (A) a regulatory official of a state, federal, or international financial regulatory agency,
1987 including a member of a supervisory college as defined in Section [31A-16-108.5](#); or
1988 (B) the NAIC.
1989 (7) A written agreement governing the sharing of a document, material, or other
1990 information described in Subsection (1) with the NAIC or a third-party consultant shall contain
1991 the following:
1992 (a) specific procedures and protocols for maintaining the confidentiality and privileged
1993 status of the document, material, or other information in accordance with this chapter;
1994 (b) procedures and protocols ensuring the NAIC shares information only with a state
1995 regulator from a state in which the insurance group has a domiciled insurer;
1996 (c) verification that the recipient has legal authority to maintain the confidentiality and
1997 privileged status of the document, material, or other information;
1998 (d) a provision specifying that:
1999 (i) ownership of the document, material, or other information remains with the
2000 department; and
2001 (ii) the NAIC's or third-party consultant's use of the document, material, or other
2002 information shared with the NAIC or third-party consultant is subject to the direction of the
2003 commissioner;
2004 (e) a provision prohibiting the NAIC or third-party consultant from storing the
2005 document, material, or other information in a permanent database after the underlying analysis
2006 is complete;
2007 (f) a provision requiring the NAIC or third-party consultant to provide prompt notice to
2008 the commissioner and to the insurer or insurance group regarding any subpoena, request for
2009 disclosure, or request for production of the document, material, or other information;

2010 (g) a provision requiring the NAIC or third-party consultant consent to the insurer or
2011 insurance group intervening in any judicial or administrative action in which the NAIC or
2012 third-party consultant may be required to disclose the document, material, or other information;
2013 and

2014 (h) a provision requiring the written consent of the insurer or insurance group before
2015 making public the document, material, or other information.

2016 (8) (a) The commissioner shall maintain as confidential or privileged any documents,
2017 materials, or other information received with notice or with the understanding that it is
2018 confidential or privileged under the laws of the jurisdiction that is the source of the document,
2019 material, or other information.

2020 (b) The NAIC and a third-party consultant are subject to the same confidentiality
2021 standards and requirements as the commissioner.

2022 (9) The sharing of a document, material, or other information described in Subsection
2023 (1) by the commissioner in accordance with this chapter is not a delegation of regulatory
2024 authority or rulemaking.

2025 (10) Disclosing or sharing a document, material, or other information described in
2026 Subsection (1) in accordance with this chapter does not waive any privilege or claim of
2027 confidentiality, propriety, or trade secret related to the document, material, or other
2028 information.

2029 Section 13. Section **31A-16b-107** is enacted to read:

2030 **31A-16b-107. Third-party consultants.**

2031 (1) The commissioner may retain a third-party consultant, including an attorney,
2032 actuary, accountant, or other expert not otherwise a part of the commissioner's staff:

2033 (a) at the insurer's or insurance group's expense; and

2034 (b) as is reasonably necessary to assist the commissioner in reviewing the insurer's or
2035 insurance group's:

2036 (i) corporate governance annual disclosure and related information; or

2037 (ii) compliance with this chapter.

2038 (2) A person the commissioner retains under Subsection (1):

2039 (a) is under the direction and control of the commissioner; and

2040 (b) shall act in a purely advisory capacity.

2041 (3) As part of the retention process, a third-party consultant shall verify to the
2042 commissioner, with notice to the insurer or insurance group, that the third-party consultant:

2043 (a) is free of a conflict of interest; and

2044 (b) has internal procedures in place to:

2045 (i) monitor compliance with Subsection (3)(a); and

2046 (ii) comply with the confidentiality standards and requirements of this chapter.

2047 Section 14. Section **31A-16b-108** is enacted to read:

2048 **31A-16b-108. Penalties.**

2049 (1) An insurer or insurance group that, without just cause, fails to timely file a
2050 corporate governance annual disclosure as required in this chapter shall, after notice and
2051 hearing, pay a penalty of \$10,000 for each day's delay, up to \$300,000.

2052 (2) Any penalty recovered by the commissioner under this section shall be deposited
2053 into the General Fund.

2054 (3) The commissioner may reduce a penalty under this section if the insurer or
2055 insurance group demonstrates to the commissioner that the imposition of the penalty would
2056 constitute a financial hardship to the insurer.

2057 Section 15. Section **31A-17-519** is amended to read:

2058 **31A-17-519. Small company exemption.**

2059 (1) A company that is licensed and doing business in Utah, and whose reserves are
2060 computed subject to the requirements of Subsection 31A-17-502(2), in lieu of the reserves
2061 required under Sections 31A-17-514 and 31A-17-515, may hold reserves for ordinary life
2062 insurance policies issued directly, or assumed, during the current calendar year, based on the
2063 mortality tables and interest rates defined by the valuation manual for net premium reserves
2064 and using the methodology defined in Sections 31A-17-507 through 31A-17-512 as they apply
2065 to ordinary life insurance [~~in lieu of the reserves required by Sections 31A-17-514 and~~
2066 31A-17-515], provided that all of the following conditions have been met:

2067 (a) the company has less than \$300,000,000 of ordinary life premium;

2068 (b) if the company is a member of a group of life insurers, the group has combined
2069 ordinary life premiums of less than \$600,000,000;

2070 [~~(c) the company reported total adjusted capital of at least 450% of Authorized Control~~
2071 ~~Level Risk Based Capital in the risk-based capital report for the prior calendar year;~~]

2072 ~~[(d)]~~ (c) the appointed actuary has provided an unqualified opinion on the reserves in
2073 accordance with Subsection 31A-17-503(2) for the prior calendar year;

2074 ~~[(e) the company has provided a certification by a qualified actuary that]~~ (d) any
2075 universal life policy with a secondary guarantee issued on or after [the operative date of the
2076 valuation manual] January 1, 2020, and in force on the company's annual financial statement
2077 for the current calendar year-end valuation date, only has secondary guarantees that meets the
2078 definition of a ~~[non-material]~~ non material secondary guarantee ~~[universal life product]~~ as
2079 defined in the valuation manual;

2080 ~~[(f)]~~ (e) the company has filed by July 1 of the calendar year for which valuation under
2081 Subsection 31A-17-502(2) is required a statement with its domiciliary commissioner certifying
2082 that these conditions are met and that the company intends to calculate reserves as described in
2083 this section; and

2084 ~~[(g)]~~ (f) the company's domiciliary commissioner has not informed the company in
2085 writing before September 1 of the calendar year for which valuation under Subsection
2086 31A-17-502(2) is required that the company must comply with the valuation manual
2087 requirements for life insurance reserves.

2088 (2) For purposes of Subsections (1)(a) and (b), ordinary life premiums are measured as
2089 direct premium plus reinsurance assumed from an unaffiliated company, as reported in the
2090 prior calendar year annual statement, excluding premiums for guaranteed issue policies and
2091 pre-need life contracts and excluding amounts that represent the transfer of reserves in-force as
2092 of the effective date of a reinsurance assumed transaction.

2093 Section 16. Section 31A-21-201 is amended to read:

2094 **31A-21-201. Filing of forms.**

2095 (1) (a) Except as exempted under Subsections 31A-21-101(2) through (6), a form may
2096 not be used, sold, or offered for sale until the form is filed with the commissioner.

2097 (b) A form is considered filed with the commissioner when the commissioner receives:

2098 (i) the form;

2099 (ii) the applicable filing fee as prescribed under Section 31A-3-103; and

2100 (iii) the applicable transmittal forms as required by the commissioner.

2101 (2) In filing a form for use in this state the insurer is responsible for assuring that the
2102 form is in compliance with this title and rules adopted by the commissioner.

2103 (3) (a) The commissioner may prohibit the use of a form at any time upon a finding
2104 that:

- 2105 (i) the form:
 - 2106 (A) is inequitable;
 - 2107 (B) is unfairly discriminatory;
 - 2108 (C) is misleading;
 - 2109 (D) is deceptive;
 - 2110 (E) is obscure;
 - 2111 (F) is unfair;
 - 2112 (G) encourages misrepresentation; or
 - 2113 (H) is not in the public interest;
- 2114 (ii) the form provides benefits or contains another provision that endangers the solidity
2115 of the insurer;
- 2116 (iii) except an application required by Section 31A-22-635, the form is an insurance
2117 policy or application for an insurance policy that fails to conspicuously, as defined by rule,
2118 provide:
 - 2119 (A) the exact name of the insurer;
 - 2120 (B) the state of domicile of the insurer filing the insurance policy or application for the
2121 insurance policy; and
 - 2122 (C) for a life insurance and annuity insurance policy only, the address of the
2123 administrative office of the insurer filing the insurance policy or application for the insurance
2124 policy;
 - 2125 (iv) the form violates a statute or a rule adopted by the commissioner; or
 - 2126 (v) the form is otherwise contrary to law.

2127 [~~(b) Subsection (3)(a)(iii) does not apply to an endorsement to an insurance policy.~~]
2128 [~~(c)~~] (b) (i) When the commissioner prohibits the use of a form under Subsection (3)(a),
2129 the commissioner may order that, on or before a date not less than 15 days after the order, the
2130 use of the form be discontinued.

- 2131 (ii) Once use of a form is prohibited, the form may not be used until appropriate
2132 changes are filed with and reviewed by the commissioner.
- 2133 (iii) When the commissioner prohibits the use of a form under Subsection (3)(a), the

2134 commissioner may require the insurer to disclose contract deficiencies to the existing
2135 policyholders.

2136 ~~[(d)]~~ (c) If the commissioner prohibits use of a form under this Subsection (3), the
2137 prohibition shall:

2138 (i) be in writing;

2139 (ii) constitute an order; and

2140 (iii) state the reasons for the prohibition.

2141 (4) (a) If, after a hearing, the commissioner determines that it is in the public interest,
2142 the commissioner may require by rule or order that a form be subject to the commissioner's
2143 approval before its use.

2144 (b) The rule or order described in Subsection (4)(a) shall prescribe the filing
2145 procedures for a form if the procedures are different from the procedures stated in this section.

2146 (c) The type of form that under Subsection (4)(a) the commissioner may require
2147 approval of before use includes:

2148 (i) a form for a particular class of insurance;

2149 (ii) a form for a specific line of insurance;

2150 (iii) a specific type of form; or

2151 (iv) a form for a specific market segment.

2152 (5) (a) An insurer shall maintain a complete and accurate record of the following for
2153 the time period described in Subsection (5)(b):

2154 (i) a form:

2155 (A) filed under this section for use; or

2156 (B) that is in use; and

2157 (ii) a document filed under this section with a form described in Subsection (5)(a)(i).

2158 (b) The insurer shall maintain a record required under Subsection (5)(a) for the balance
2159 of the current year, plus five years from:

2160 (i) the last day on which the form is used; or

2161 (ii) the last day an insurance policy that is issued using the form is in effect.

2162 Section 17. Section **31A-21-311** is amended to read:

2163 **31A-21-311. Delivery of policy or certificate.**

2164 (1) (a) An insurer issuing an individual or group life insurance policy or an accident

2165 and health insurance policy shall deliver a copy of the policy to the policyholder as soon as
2166 practicable but no later than 90 days after the day on which the coverage is effective.

2167 (b) The policy described in this Subsection (1) shall:

2168 (i) provide the exact name of the insurer; and

2169 (ii) state the state of domicile of the insurer.

2170 ~~[(+)]~~ (2) (a) (i) Except under Subsection ~~[(+)]~~ (2)(d), an insurer issuing a group
2171 insurance policy other than a blanket insurance policy shall, as soon as practicable after the
2172 coverage is effective, but no later than 90 days after the day on which the coverage is effective,
2173 provide a certificate for each member of the insured group, except that only one certificate need
2174 be provided for the members of a family unit.

2175 (ii) The certificate ~~[required by]~~ described in this Subsection ~~[(+)]~~ (2) shall:

2176 (A) provide the exact name of the insurer;

2177 (B) state the state of domicile of the insurer; and

2178 (C) contain a summary of the essential features of the insurance coverage, including:

2179 (I) any rights of conversion to an individual policy;

2180 (II) in the case of group life insurance, any continuation of coverage during total
2181 disability; and

2182 (III) in the case of group life insurance, the incontestability provision.

2183 (iii) Upon receiving a written request, the insurer shall inform any insured how the
2184 insured may inspect, during normal business hours at a place reasonably convenient to the
2185 insured:

2186 (A) a copy of the policy; or

2187 (B) a summary of the policy containing all the details that are relevant to the certificate
2188 holder.

2189 (b) The commissioner may by rule impose a requirement similar to Subsection ~~[(+)]~~
2190 (2)(a) on any class of blanket insurance policies for which the commissioner finds that the
2191 group of persons covered is constant enough for that type of action to be practicable and not
2192 unreasonably expensive.

2193 (c) (i) A certificate shall be provided in a manner reasonably calculated to bring the
2194 certificate to the attention of the certificate holder.

2195 (ii) The insurer may deliver or mail a certificate:

2196 (A) directly to the certificate holders; or
2197 (B) in bulk to the policyholder to transmit to certificate holders.
2198 (iii) An affidavit by the insurer that the insurer mailed the certificates in the usual
2199 course of business creates a rebuttable presumption that the insurer has mailed the certificate
2200 to:

2201 (A) a certificate holder; or
2202 (B) a policyholder as provided in Subsection ~~[(+)]~~ (2)(c)(ii)(B).
2203 (d) The commissioner may by rule or order prescribe substitutes for delivery or mailing
2204 of certificates that are reasonably calculated to inform a certificate holder of the certificate
2205 holder's rights, including:

2206 (i) booklets describing the coverage;
2207 (ii) the posting of notices in the place of business; or
2208 (iii) publication in a house organ.

2209 ~~[(2)]~~ (3) Unless a policy, certificate or an authorized substitute has been made available
2210 to the policyholder or certificate holder, as applicable, when required by this section, an act or
2211 omission forbidden to or required of the policyholder or certificate holder by the policy or
2212 certificate after the coverage has become effective as to the policyholder or certificate holder,
2213 other than intentionally causing the loss insured against or failing to make required
2214 contributory premium payments, may not affect the insurer's obligations under the insurance
2215 contract.

2216 Section 18. Section **31A-22-501** is amended to read:

2217 **31A-22-501. Eligible groups.**

2218 A group or blanket policy of life insurance may not be delivered in Utah unless the
2219 insured group:

2220 (1) falls within at least one of the classifications under Sections **31A-22-501.1** through
2221 **31A-22-509**; and

2222 (2) is formed ~~[for a reason other than the purchase of insurance]~~ and maintained in
2223 good faith for purposes other than obtaining insurance.

2224 Section 19. Section **31A-22-605.1** is amended to read:

2225 **31A-22-605.1. Preexisting condition limitations.**

2226 (1) Any provision dealing with preexisting conditions shall be consistent with this

2227 section, Section 31A-22-609, and rules adopted by the commissioner.

2228 (2) Except as provided in this section, an insurer that elects to use an application form
2229 without questions concerning the insured's health or medical treatment history shall provide
2230 coverage under the policy for any loss which occurs more than 12 months after the effective
2231 date of coverage due to a preexisting condition which is not specifically excluded from
2232 coverage.

2233 (3) (a) An insurer that issues a specified disease policy may not deny a claim for loss
2234 due to a preexisting condition that occurs more than six months after the effective date of
2235 coverage.

2236 (b) A specified disease policy may impose a preexisting condition exclusion only if the
2237 exclusion relates to a preexisting condition which first manifested itself within six months prior
2238 to the effective date of coverage or which was diagnosed by a physician at any time prior to the
2239 effective date of coverage.

2240 (4) (a) Except as [~~provided in this Subsection (4)~~] otherwise provided in this section, a
2241 health benefit plan may impose a preexisting condition exclusion only if:

2242 (i) the exclusion relates to a preexisting condition for which medical advice, diagnosis,
2243 care, or treatment was recommended or received within the six-month period ending on the
2244 enrollment date from an individual licensed or similarly authorized to provide those services
2245 under state law and operating within the scope of practice authorized by state law;

2246 (ii) the exclusion period ends no later than 12 months after the enrollment date, or in
2247 the case of a late enrollee, 18 months after the enrollment date; and

2248 (iii) the exclusion period is reduced by the number of days of creditable coverage the
2249 enrollee has as of the enrollment date, in accordance with Subsection (4)(b).

2250 (b) (i) The amount of creditable coverage allowed under Subsection (4)(a)(iii) is
2251 determined by counting all the days on which the individual has one or more types of creditable
2252 coverage.

2253 (ii) Days of creditable coverage that occur before a significant break in coverage are
2254 not required to be counted.

2255 (A) Days in a waiting period or affiliation period are not taken into account in
2256 determining whether a significant break in coverage has occurred.

2257 (B) For an individual who elects federal COBRA continuation coverage during the

2258 second election period provided under the federal Trade Act of 2002, the days between the date
2259 the individual lost group health plan coverage and the first day of the second COBRA election
2260 period are not taken into account in determining whether a significant break in coverage has
2261 occurred.

2262 (c) A group health benefit plan may not impose a preexisting condition exclusion
2263 relating to pregnancy.

2264 (d) (i) An insurer imposing a preexisting condition exclusion shall provide a written
2265 general notice of preexisting condition exclusion as part of any written application materials.

2266 (ii) The general notice under this subsection shall include:

2267 (A) a description of the existence and terms of any preexisting condition exclusion
2268 under the plan, including the six-month period ending on the enrollment date, the maximum
2269 preexisting condition exclusion period, and how the insurer will reduce the maximum
2270 preexisting condition exclusion period by creditable coverage;

2271 (B) a description of the rights of individuals:

2272 (I) to demonstrate creditable coverage, including any applicable waiting periods,
2273 through a certificate of creditable coverage or through other means; and

2274 (II) to request a certificate of creditable coverage from a prior plan;

2275 (C) a statement that the current plan will assist in obtaining a certificate of creditable
2276 coverage from any prior plan or issuer if necessary; and

2277 (D) a person to contact, and an address and telephone number for the person, for
2278 obtaining additional information or assistance regarding the preexisting condition exclusion.

2279 (e) An insurer may not impose any limit on the amount of time that an individual has to
2280 present a certificate or other evidence of creditable coverage.

2281 (f) This Subsection (4) does not preclude application of any waiting period applicable
2282 to all new enrollees under the plan.

2283 (5) (a) If a short-term limited duration health insurance policy provides for an
2284 extension or renewal of the policy, the insurer may not exclude coverage for a loss due to a
2285 preexisting condition for a period greater than 12 months following the original effective date
2286 of the coverage, unless the insurer specifically and expressly excludes the preexisting condition
2287 in the terms of the policy or certificate.

2288 (b) (i) An insurer that includes a preexisting condition exclusion in a short-term limited

2289 duration health insurance policy in accordance with this subsection shall provide a written
2290 general notice of the preexisting condition exclusion as part of any written application
2291 materials.

2292 (ii) A written general notice described in this subsection shall:

2293 (A) include a description of the existence and terms of any preexisting condition
2294 exclusion under the policy, including the maximum preexisting exclusion period; and

2295 (B) state that the exclusion period ends no later than 12 months after the original
2296 effective date of the coverage.

2297 Section 20. Section **31A-22-611** is amended to read:

2298 **31A-22-611. Coverage for children with a disability.**

2299 (1) For the purposes of this section:

2300 (a) "Dependent with a disability" means a child who is and continues to be both:

2301 (i) unable to engage in substantial gainful employment to the degree that the child can
2302 achieve economic independence due to a medically determinable physical or mental
2303 impairment which can be expected to result in death, or which has lasted or can be expected to
2304 last for a continuous period of not less than 12 months; and

2305 (ii) chiefly dependent upon an insured for support and maintenance since the child
2306 reached the age specified in Subsection [31A-22-610.5\(2\)](#).

2307 (b) "Mental impairment" means a mental or psychological disorder such as:

2308 (i) an intellectual disability;

2309 (ii) organic brain syndrome;

2310 (iii) emotional or mental illness; or

2311 (iv) specific learning disabilities as determined by the insurer.

2312 (c) "Physical impairment" means a physiological disorder, condition, or disfigurement,
2313 or anatomical loss affecting one or more of the following body systems:

2314 (i) neurological;

2315 (ii) musculoskeletal;

2316 (iii) special sense organs;

2317 (iv) respiratory organs;

2318 (v) speech organs;

2319 (vi) cardiovascular;

- 2320 (vii) reproductive;
- 2321 (viii) digestive;
- 2322 (ix) genito-urinary;
- 2323 (x) hemic and lymphatic;
- 2324 (xi) skin; or
- 2325 (xii) endocrine.

2326 (2) The insurer may require proof of the [~~incapacity~~] impairment and dependency be
2327 furnished by the person insured under the policy within 30 days of the effective date or the date
2328 the child attains the age specified in Subsection 31A-22-610.5(2), and at any time thereafter,
2329 except that the insurer may not require proof more often than annually after the two-year period
2330 immediately following attainment of the limiting age by the dependent with a disability.

2331 (3) Any individual or group accident and health insurance policy or health maintenance
2332 organization contract that provides coverage for a policyholder's or certificate holder's
2333 dependent shall, upon application, provide coverage for all unmarried dependents with a
2334 disability who have been continuously covered, with no break of more than 63 days, under any
2335 accident and health insurance since the age specified in Subsection 31A-22-610.5(2).

2336 (4) Every accident and health insurance policy or contract that provides coverage of a
2337 dependent with a disability may not terminate the policy due to an age limitation.

2338 Section 21. Section 31A-22-627 is amended to read:

2339 **31A-22-627. Coverage of emergency medical services.**

2340 (1) A health insurance policy or managed care organization contract:

2341 (a) shall provide, at a minimum, coverage of emergency services as required in 29
2342 C.F.R. Sec. 2590.715-2719A; and

2343 (b) may not:

2344 (i) require any form of preauthorization for treatment of an emergency medical
2345 condition until after the insured's condition has been stabilized; or

2346 (ii) deny a claim for any covered evaluation, covered diagnostic test, or other covered
2347 treatment considered medically necessary to stabilize the emergency medical condition of an
2348 insured.

2349 (2) A health insurance policy or managed care organization contract may require
2350 authorization for the continued treatment of an emergency medical condition after the insured's

2351 condition has been stabilized. If such authorization is required, an insurer who does not accept
2352 or reject a request for authorization may not deny a claim for any evaluation, diagnostic testing,
2353 or other treatment considered medically necessary that occurred between the time the request
2354 was received and the time the insurer rejected the request for authorization.

2355 (3) For purposes of this section:

2356 (a) "Emergency medical condition" means a medical condition manifesting itself by
2357 acute symptoms of sufficient severity, including severe pain, such that a prudent layperson,
2358 who possesses an average knowledge of medicine and health, would reasonably expect the
2359 absence of immediate medical attention [at] through a hospital emergency department to result
2360 in:

2361 (i) placing the insured's health, or with respect to a pregnant woman, the health of the
2362 woman or her unborn child, in serious jeopardy;

2363 (ii) serious impairment to bodily functions; or

2364 (iii) serious dysfunction of any bodily organ or part.

2365 (b) "Hospital emergency department" means that area of a hospital in which emergency
2366 services are provided on a 24-hour-a-day basis.

2367 (c) "Stabilize" means the same as that term is defined in 42 U.S.C. Sec. 1395dd(e)(3).

2368 (4) Nothing in this section may be construed as:

2369 (a) altering the level or type of benefits that are provided under the terms of a contract
2370 or policy; or

2371 (b) restricting a policy or contract from providing enhanced benefits for certain
2372 emergency medical conditions that are identified in the policy or contract.

2373 (5) Notwithstanding Section [31A-2-308](#), if the commissioner finds an insurer has
2374 violated this section, the commissioner may:

2375 (a) work with the insurer to improve the insurer's compliance with this section; or

2376 (b) impose the following fines:

2377 (i) not more than \$5,000; or

2378 (ii) twice the amount of any profit gained from violations of this section.

2379 Section 22. Section **31A-22-638** is amended to read:

2380 **31A-22-638. Coverage for prosthetic devices.**

2381 (1) For purposes of this section:

2382 (a) "Orthotic device" means a rigid or semirigid device supporting a weak or deformed
2383 leg, foot, arm, hand, back, or neck, or restricting or eliminating motion in a diseased or injured
2384 leg, foot, arm, hand, back, or neck.

2385 (b) (i) "Prosthetic device" means an artificial limb device or appliance designed to
2386 replace in whole or in part an arm or a leg.

2387 (ii) "Prosthetic device" does not include an orthotic device.

2388 (2) (a) Beginning January 1, 2011, an insurer, other than an insurer described in
2389 Subsection (2)(b), that provides a health benefit plan shall offer at least one plan, in each
2390 market where the insurer offers a health benefit plan, that provides coverage for benefits for
2391 prosthetics that includes:

2392 (i) a prosthetic device;

2393 (ii) all services and supplies necessary for the effective use of a prosthetic device,
2394 including:

2395 (A) formulating its design;

2396 (B) fabrication;

2397 (C) material and component selection;

2398 (D) measurements and fittings;

2399 (E) static and dynamic alignments; and

2400 (F) instructing the patient in the use of the prosthetic device;

2401 (iii) all materials and components necessary to use the prosthetic device; and

2402 (iv) any repair or replacement of a prosthetic device that is determined medically
2403 necessary to restore or maintain the ability to complete activities of daily living or essential
2404 job-related activities and that is not solely for comfort or convenience.

2405 (b) Beginning January 1, 2011, an insurer that is subject to Title 49, Chapter 20, Public
2406 Employees' Benefit and Insurance Program Act, shall offer to a covered employer at least one
2407 plan that:

2408 (i) provides coverage for prosthetics that complies with Subsections (2)(a)(i) through
2409 (iv); and

2410 (ii) requires an employee who elects to purchase the coverage described in Subsection
2411 (2)(b)(i) to pay an increased premium to pay the costs of obtaining that coverage.

2412 (c) At least one of the plans with the prosthetic benefits described in Subsections (2)(a)

2413 and (b) that is offered by an insurer described in this Subsection (2) shall have a coinsurance
2414 rate, that applies to physical injury generally and to prosthetics, of 80% to be paid by the
2415 insurer and 20% to be paid by the insured, if the prosthetic benefit is obtained from a person
2416 that the insurer contracts with or approves.

2417 (d) For policies issued on or after July 1, 2010 until July 1, 2015, an insurer is exempt
2418 from the 30% index rating restrictions in Section 31A-30-106.1, and for the first year only that
2419 coverage under this section is chosen, the 15% annual adjustment restriction in Section
2420 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses
2421 coverage that meets or exceeds the coverage under this section.

2422 (3) The coverage described in this section:

2423 (a) shall, except as otherwise provided in this section, be made subject to cost-sharing
2424 provisions, including dollar limits, deductibles, copayments, and co-insurance, that are not less
2425 favorable to the insured than the cost-sharing provisions of the health benefit plan that apply to
2426 physical illness generally; and

2427 (b) may limit coverage for the purchase, repair, or replacement of a microprocessor
2428 component for a prosthetic device to \$30,000, per limb, every three years.

2429 (4) If the coverage described in this section is provided through a managed care plan,
2430 offered under Chapter [~~8, Health Maintenance Organizations and Limited Health Plans, or~~
2431 ~~under a preferred provider plan under this chapter,]~~ 45, Managed Care Organizations, the
2432 insured shall have access to medically necessary prosthetic clinical care, and to prosthetic
2433 devices and technology, from one or more prosthetic providers in the managed care plan's
2434 provider network.

2435 Section 23. Section 31A-22-648 is amended to read:

2436 **31A-22-648. Vision insurance -- Contract provisions.**

2437 (1) As used in this section:

2438 (a) "Covered individual" means an individual who has insurance coverage under a
2439 vision plan.

2440 (b) "Covered service" means a vision service that:

2441 (i) is reimbursable under or would be reimbursable under an enrollee's vision plan, but
2442 for the application of at least one of the following contractual provisions:

2443 (A) a deductible;

- 2444 (B) a copayment;
- 2445 (C) coinsurance;
- 2446 (D) a waiting period;
- 2447 (E) an annual or lifetime maximum;
- 2448 (F) a frequency limitation; or
- 2449 (G) an alternative benefit payment; and
- 2450 (ii) is not merely nominal, for the purpose of avoiding the requirements of this section.
- 2451 (c) "Optometrist" means an individual licensed under Title 58, Chapter 16a, Utah
- 2452 Optometry Practice Act.
- 2453 (d) "Vendor" means a person who provides ophthalmic goods to a vision service
- 2454 provider.
- 2455 [~~(d)~~] (e) "Vision plan" means a health insurance policy or contract that provides vision
- 2456 coverage.
- 2457 [~~(e)~~] (f) "Vision service" means:
- 2458 (i) professional work performed by a vision service provider; or
- 2459 (ii) an ophthalmic medical device, such as lenses, ophthalmic frames, contact lenses, or a
- 2460 prosthetic device that treats a condition of the human eye or the areas surrounding the human
- 2461 eye.
- 2462 [~~(f)~~] (g) "Vision service provider" means:
- 2463 (i) an optometrist; or
- 2464 (ii) an individual who provides a vision service and is licensed under:
- 2465 (A) Title 58, Chapter 67, Utah Medical Practice Act; or
- 2466 (B) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- 2467 (2) (a) This section applies to:
- 2468 (i) a vision plan that a person enters into or renews on or after January 1, 2019; and
- 2469 (ii) an administrator providing third-party administration services or a provider
- 2470 network for a vision plan.
- 2471 (b) This section does not apply to a self-insured vision plan that is regulated by federal
- 2472 law.
- 2473 (3) A contract between a vision plan and a vision service provider to provide a covered
- 2474 service may not:

2475 (a) except as provided in Subsection (4), require that a vision service provider provide
2476 a vision service to a covered individual at a fee set by, or a fee subject to the approval of, the
2477 vision plan unless the vision service is a covered service; ~~[or]~~

2478 (b) prohibit a vision service provider from offering or providing a vision service that is
2479 not a covered service to a covered individual at a fee determined by:

2480 (i) the vision service provider; or

2481 (ii) the vision service provider and the covered individual~~[-]; or~~

2482 (c) require a vision service provider to use one or more specific vendors to replenish
2483 the vision service provider's inventory of spectacle lenses after the vision service provider
2484 dispenses the vision service provider's inventory to eligible members of the vision plan as a
2485 covered vision service.

2486 (4) (a) In accordance with Subsections (4)(b) and (c), a vision service provider may, in
2487 a contract with a vision plan, agree to participate in a discount program sponsored by the vision
2488 plan.

2489 (b) A contract between a vision service provider and a vision plan to provide a covered
2490 service may not be contingent on whether the vision service provider agrees to participate in a
2491 discount program sponsored by the vision plan.

2492 (c) Regardless of whether a vision service provider participates in a discount program
2493 sponsored by the vision plan, a vision plan shall offer equal treatment to a vision service
2494 provider under contract with the vision plan to provide a covered service, regarding:

2495 (i) promotional treatment;

2496 (ii) marketing benefits;

2497 (iii) materials; and

2498 (iv) contract terms for providing a covered service.

2499 (5) Notwithstanding Subsection (4)(c), a vision plan may, when providing a
2500 typically-formatted list of vision service providers that accept the vision plan, identify whether
2501 a vision service provider participates in a discount program sponsored by the vision plan.

2502 Section 24. Section **31A-22-701** is amended to read:

2503 **31A-22-701. Groups eligible for group or blanket insurance.**

2504 (1) As used in this section, "association group" means a lawfully formed association of
2505 individuals or business entities that:

- 2506 (a) purchases insurance on a group basis on behalf of members; and
- 2507 (b) is formed and maintained in good faith for purposes other than obtaining insurance.
- 2508 (2) A group accident and health insurance policy may be issued to:
- 2509 (a) a group:
- 2510 (i) to which a group life insurance policy may be issued under Section 31A-22-502,
- 2511 31A-22-503, 31A-22-504, 31A-22-506, or 31A-22-507; and
- 2512 (ii) that is formed and maintained in good faith for a purpose other than obtaining
- 2513 insurance;
- 2514 (b) an association group authorized by the commissioner that:
- 2515 (i) has been actively in existence for at least five years;
- 2516 (ii) has a constitution and bylaws;
- 2517 (iii) has a shared or common purpose that is not primarily a business or customer
- 2518 relationship;
- 2519 (iv) is formed and maintained in good faith for purposes other than obtaining
- 2520 insurance;
- 2521 (v) does not condition membership in the association group on any health status-related
- 2522 factor relating to an individual, including an employee of an employer or a dependent of an
- 2523 employee;
- 2524 (vi) makes accident and health insurance coverage offered through the association
- 2525 group available to all members regardless of any health status-related factor relating to the
- 2526 members or individuals eligible for coverage through a member;
- 2527 (vii) does not make accident and health insurance coverage offered through the
- 2528 association group available other than in connection with a member of the association group;
- 2529 and
- 2530 (viii) is actuarially sound; or
- 2531 (c) a group specifically authorized by the commissioner, upon a finding that:
- 2532 (i) authorization is not contrary to the public interest;
- 2533 (ii) the group is actuarially sound;
- 2534 (iii) formation of the proposed group may result in economies of scale in acquisition,
- 2535 administrative, marketing, and brokerage costs;
- 2536 (iv) the insurance policy, insurance certificate, or other indicia of coverage that will be

2537 offered to the proposed group is substantially equivalent to insurance policies that are
2538 otherwise available to similar groups;

2539 (v) the group would not present hazards of adverse selection;

2540 (vi) the premiums for the insurance policy and any contributions by or on behalf of the
2541 insured persons are reasonable in relation to the benefits provided; and

2542 (vii) the group is formed and maintained in good faith for a purpose other than
2543 obtaining insurance.

2544 (3) A blanket accident and health insurance policy:

2545 (a) covers a defined class of persons;

2546 (b) may not be offered or underwritten on an individual basis;

2547 (c) shall cover only a group that is:

2548 (i) actuarially sound; and

2549 (ii) formed and maintained in good faith for a purpose other than obtaining insurance;

2550 and

2551 (d) may be issued only to:

2552 (i) a common carrier or an operator, owner, or lessee of a means of transportation, as
2553 policyholder, covering persons who may become passengers as defined by reference to the
2554 person's travel status;

2555 (ii) an employer, as policyholder, covering any group of employees, dependents, or
2556 guests, as defined by reference to specified hazards incident to any activities of the
2557 policyholder;

2558 (iii) an institution of learning, including a school district, a school jurisdictional unit, or
2559 the head, principal, or governing board of a school jurisdictional unit, as policyholder, covering
2560 students, teachers, or employees;

2561 (iv) a religious, charitable, recreational, educational, or civic organization, or branch of
2562 one of those organizations, as policyholder, covering a group of members or participants as
2563 defined by reference to specified hazards incident to the activities sponsored or supervised by
2564 the policyholder;

2565 (v) a sports team, camp, or sponsor of a sports team or camp, as policyholder, covering
2566 members, campers, employees, officials, or supervisors;

2567 (vi) a volunteer fire department, first aid, civil defense, or other similar volunteer

2568 organization, as policyholder, covering a group of members or participants as defined by
2569 reference to specified hazards incident to activities sponsored, supervised, or participated in by
2570 the policyholder;

2571 (vii) a newspaper or other publisher, as policyholder, covering its carriers;

2572 (viii) a labor union, as a policyholder, covering a group of members or participants as
2573 defined by reference to specified hazards incident to the activities or operations sponsored or
2574 supervised by the policyholder;

2575 [~~(viii)~~] (ix) an association~~[, including a labor union,]~~ that has a constitution and bylaws
2576 ~~[and that is organized in good faith for purposes other than that of obtaining insurance, as~~
2577 ~~policyholder,]~~ covering a group of members or participants as defined by reference to specified
2578 hazards incident to the activities or operations sponsored or supervised by the policyholder;
2579 ~~[and]~~ or

2580 [~~(ix)~~] (x) any other class of risks that, in the judgment of the commissioner, may be
2581 properly eligible for blanket accident and health insurance.

2582 (4) The judgment of the commissioner may be exercised on the basis of:

2583 (a) individual risks;

2584 (b) a class of risks; or

2585 (c) both Subsections (4)(a) and (b).

2586 Section 25. Section **31A-22-722** is amended to read:

2587 **31A-22-722. Utah mini-COBRA benefits for employer group coverage.**

2588 (1) An ~~[insured may extend the]~~ employer's group policy shall offer an employee's
2589 coverage to be extended under the current employer's group policy for a period of 12 months,
2590 except as provided in Subsection (2). The right to extend coverage includes:

2591 (a) voluntary termination;

2592 (b) involuntary termination;

2593 (c) retirement;

2594 (d) death;

2595 (e) divorce or legal separation;

2596 (f) loss of dependent status;

2597 (g) sabbatical;

2598 (h) a disability;

- 2599 (i) leave of absence; or
2600 (j) reduction of hours.
- 2601 (2) (a) Notwithstanding Subsection (1), an employee may not extend coverage under
2602 the current employer's group insurance policy if the employee:
- 2603 (i) fails to pay premiums or contributions in accordance with the terms of the insurance
2604 policy;
- 2605 (ii) acquires other group coverage covering all preexisting conditions including
2606 maternity, if the coverage exists;
- 2607 (iii) performs an act or practice that constitutes fraud in connection with the coverage;
- 2608 (iv) makes an intentional misrepresentation of material fact under the terms of the
2609 coverage;
- 2610 (v) is terminated from employment for gross misconduct;
- 2611 (vi) is not continuously covered under the current employer's group policy for a period
2612 of three months immediately before the termination of the insurance policy due to an event set
2613 forth in Subsection (1);
- 2614 (vii) is eligible for an extension of coverage required by federal law;
- 2615 (viii) establishes residence outside of this state;
- 2616 (ix) moves out of the insurer's service area;
- 2617 (x) is eligible for similar coverage under another group insurance policy; or
- 2618 (xi) has the employee's coverage terminated because the employer's coverage is
2619 terminated, except as provided in Subsection (8).
- 2620 (b) The right to extend coverage under Subsection (1) applies to spouse or dependent
2621 coverage, including a surviving spouse or dependents whose coverage under the insurance
2622 policy terminates by reason of the death of the employee or member.
- 2623 (3) (a) The employer shall notify the following in writing of the right to extend group
2624 coverage and the payment amounts required for extension of coverage, including the manner,
2625 place, and time in which the payments shall be made:
- 2626 (i) a terminated insured;
- 2627 (ii) an ex-spouse of an insured; or
- 2628 (iii) if Subsection (2)(b) applies:
- 2629 (A) a surviving spouse; and

- 2630 (B) the guardian of surviving dependents, if different from a surviving spouse.
- 2631 (b) The notification required in Subsection (3)(a) shall be sent first class mail within 30
- 2632 days after the termination date of the group coverage to:
- 2633 (i) the terminated insured's home address as shown on the records of the employer;
- 2634 (ii) the address of the surviving spouse, if different from the insured's address and if
- 2635 shown on the records of the employer;
- 2636 (iii) the guardian of any dependents address, if different from the insured's address, and
- 2637 if shown on the records of the employer; and
- 2638 (iv) the address of the ex-spouse, if shown on the records of the employer.
- 2639 (4) The insurer shall provide the employee, spouse, or any eligible dependent the
- 2640 opportunity to extend the group coverage at the payment amount stated in Subsection (5) if:
- 2641 (a) the employer policyholder does not provide the terminated insured the written
- 2642 notification required by Subsection (3)(a); and
- 2643 (b) the employee or other individual eligible for extension contacts the insurer within
- 2644 60 days of coverage termination.
- 2645 (5) (a) A premium amount for extended group coverage may not exceed 102% of the
- 2646 group rate in effect for a group member, including an employer's contribution, if any, for a
- 2647 group insurance policy.
- 2648 (b) Except as provided in Subsection (5)(a), an insurer may not charge an insured an
- 2649 additional fee, an additional premium, interest, or any similar charge for electing extended
- 2650 group coverage.
- 2651 (6) Except as provided in this Subsection (6), coverage extends without interruption for
- 2652 12 months and may not terminate if the terminated insured or, with respect to a minor, the
- 2653 parent or guardian of the terminated insured:
- 2654 (a) elects to extend group coverage within 60 days of losing group coverage; and
- 2655 (b) tenders the amount required to the employer or insurer.
- 2656 (7) The insured's coverage may be terminated before 12 months if the terminated
- 2657 insured:
- 2658 (a) establishes residence outside of this state;
- 2659 (b) moves out of the insurer's service area;
- 2660 (c) fails to pay premiums or contributions in accordance with the terms of the insurance

2661 policy, including any timeliness requirements;

2662 (d) performs an act or practice that constitutes fraud in connection with the coverage;

2663 (e) makes an intentional misrepresentation of material fact under the terms of the
2664 coverage;

2665 (f) becomes eligible for similar coverage under another group insurance policy; or

2666 (g) has the coverage terminated because the employer's coverage is terminated, except
2667 as provided in Subsection (8).

2668 (8) If the current employer coverage is terminated and the employer replaces coverage
2669 with similar coverage under another group insurance policy, without interruption, the
2670 terminated insured, spouse, or the surviving spouse and guardian of dependents if Subsection
2671 (2)(b) applies, may obtain extension of coverage under the replacement group insurance policy:

2672 (a) for the balance of the period the terminated insured would have extended coverage
2673 under the replaced group insurance policy; and

2674 (b) if the terminated insured is otherwise eligible for extension of coverage.

2675 (9) An insurer shall require an insured employer to offer to the following individuals an
2676 open enrollment period at the same time as other regular employees:

2677 (a) an individual who extends group coverage and is current on payment; and

2678 (b) during the applicable grace period described in Subsection (3) or (4), an individual
2679 who is eligible to elect to extend group coverage.

2680 Section 26. Section **31A-22-726** is amended to read:

2681 **31A-22-726. Abortion coverage restriction in health benefit plan and on health**
2682 **insurance exchange.**

2683 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

2684 (a) that is necessary to avert:

2685 (i) the death of the woman on whom the abortion is performed; or

2686 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
2687 of the woman on whom the abortion is performed;

2688 (b) of a fetus that has a defect that is documented by a physician or physicians to be
2689 uniformly diagnosable and uniformly lethal; or

2690 (c) where the woman is pregnant as a result of:

2691 (i) rape, as described in Section [76-5-402](#);

2692 (ii) rape of a child, as described in Section 76-5-402.1; or

2693 (iii) incest, as described in Subsection 76-5-406(10) or Section 76-7-102.

2694 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the
2695 coverage is a type of permitted abortion coverage.

2696 ~~[(3) A person may not offer a health benefit plan that provides coverage for an abortion~~
2697 ~~in a health insurance exchange created under Title 63N, Chapter 11, Health System Reform~~
2698 ~~Act, unless the coverage is a type of permitted abortion coverage.]~~

2699 [(4)] (3) A person may not offer a health benefit plan that provides coverage for an
2700 abortion in a health insurance exchange created under the federal Patient Protection and
2701 Affordable Care Act, 111 P.L. 148, unless the coverage is a type of permitted abortion
2702 coverage.

2703 Section 27. Section 31A-22-1401 is amended to read:

2704 **31A-22-1401. Application.**

2705 (1) The requirements of this part apply to individual policies and to group policies and
2706 certificates marketed in this state on or after July 1, 2001~~[, other than employee and labor union~~
2707 ~~group policies and certificates].~~

2708 (2) Entities subject to this part shall comply with other applicable insurance laws and
2709 rules unless they are in conflict with this part.

2710 (3) The laws, regulations, and rules designed and intended to apply to Medicare
2711 supplement insurance policies may not be applied to long-term care insurance.

2712 (4) Any policy or rider advertised, marketed, or offered as long-term care or nursing
2713 home insurance shall comply with the provisions of this part.

2714 Section 28. Section 31A-23a-111 is amended to read:

2715 **31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
2716 **terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.**

2717 (1) A license type issued under this chapter remains in force until:

2718 (a) revoked or suspended under Subsection (5);

2719 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2720 administrative action;

2721 (c) the licensee dies or is adjudicated incompetent as defined under:

2722 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2723 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2724 Minors;

2725 (d) lapsed under Section 31A-23a-113; or
2726 (e) voluntarily surrendered.

2727 (2) The following may be reinstated within one year after the day on which the license
2728 is no longer in force:

2729 (a) a lapsed license; or
2730 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
2731 not be reinstated after the license period in which the license is voluntarily surrendered.

2732 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
2733 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2734 department from pursuing additional disciplinary or other action authorized under:

2735 (a) this title; or
2736 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2737 Administrative Rulemaking Act.

2738 (4) A line of authority issued under this chapter remains in force until:

2739 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;
2740 or
2741 (b) the supporting license type:

2742 (i) is revoked or suspended under Subsection (5);
2743 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
2744 administrative action;

2745 (iii) lapses under Section 31A-23a-113; or
2746 (iv) is voluntarily surrendered; or
2747 (c) the licensee dies or is adjudicated incompetent as defined under:

2748 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
2749 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2750 Minors.

2751 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an
2752 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2753 commissioner may:

- 2754 (i) revoke:
- 2755 (A) a license; or
- 2756 (B) a line of authority;
- 2757 (ii) suspend for a specified period of 12 months or less:
- 2758 (A) a license; or
- 2759 (B) a line of authority;
- 2760 (iii) limit in whole or in part:
- 2761 (A) a license; or
- 2762 (B) a line of authority;
- 2763 (iv) deny a license application;
- 2764 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- 2765 (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and
- 2766 Subsection (5)(a)(v).
- 2767 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 2768 commissioner finds that the licensee:
- 2769 (i) is unqualified for a license or line of authority under Section 31A-23a-104,
- 2770 31A-23a-105, or 31A-23a-107;
- 2771 (ii) violates:
- 2772 (A) an insurance statute;
- 2773 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 2774 (C) an order that is valid under Subsection 31A-2-201(4);
- 2775 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 2776 delinquency proceedings in any state;
- 2777 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 2778 days after the day on which the judgment became final;
- 2779 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 2780 admitted insurers;
- 2781 (vi) is affiliated with and under the same general management or interlocking
- 2782 directorate or ownership as another insurance producer that transacts business in this state
- 2783 without a license;
- 2784 (vii) refuses:

- 2785 (A) to be examined; or
- 2786 (B) to produce its accounts, records, and files for examination;
- 2787 (viii) has an officer who refuses to:
- 2788 (A) give information with respect to the insurance producer's affairs; or
- 2789 (B) perform any other legal obligation as to an examination;
- 2790 (ix) provides information in the license application that is:
- 2791 (A) incorrect;
- 2792 (B) misleading;
- 2793 (C) incomplete; or
- 2794 (D) materially untrue;
- 2795 (x) violates an insurance law, valid rule, or valid order of another regulatory agency in
- 2796 any jurisdiction;
- 2797 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
- 2798 (xii) improperly withholds, misappropriates, or converts money or properties received
- 2799 in the course of doing insurance business;
- 2800 (xiii) intentionally misrepresents the terms of an actual or proposed:
- 2801 (A) insurance contract;
- 2802 (B) application for insurance; or
- 2803 (C) life settlement;
- 2804 (xiv) [~~is~~] has been convicted of:
- 2805 (A) a felony; or
- 2806 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 2807 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
- 2808 (xvi) in the conduct of business in this state or elsewhere:
- 2809 (A) uses fraudulent, coercive, or dishonest practices; or
- 2810 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
- 2811 (xvii) has had an insurance license or other professional or occupational license, or an
- 2812 equivalent to an insurance license or registration, or other professional or occupational license
- 2813 or registration:
- 2814 (A) denied;
- 2815 (B) suspended;

- 2816 (C) revoked; or
- 2817 (D) surrendered to resolve an administrative action;
- 2818 (xviii) forges another's name to:
- 2819 (A) an application for insurance; or
- 2820 (B) a document related to an insurance transaction;
- 2821 (xix) improperly uses notes or another reference material to complete an examination
- 2822 for an insurance license;
- 2823 (xx) knowingly accepts insurance business from an individual who is not licensed;
- 2824 (xxi) fails to comply with an administrative or court order imposing a child support
- 2825 obligation;
- 2826 (xxii) fails to:
- 2827 (A) pay state income tax; or
- 2828 (B) comply with an administrative or court order directing payment of state income
- 2829 tax;
- 2830 (xxiii) ~~[violates or permits others to violate]~~ has been convicted of violating the federal
- 2831 Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and [therefore
- 2832 under] has not obtained written consent to engage in the business of insurance or participate in
- 2833 such business as required by 18 U.S.C. Sec. 1033 [is prohibited from engaging in the business
- 2834 of insurance; or];
- 2835 (xxiv) engages in a method or practice in the conduct of business that endangers the
- 2836 legitimate interests of customers and the public[-]; or
- 2837 (xxv) has been convicted of any criminal felony involving dishonesty or breach of trust
- 2838 and has not obtained written consent to engage in the business of insurance or participate in
- 2839 such business as required by 18 U.S.C. Sec. 1033.
- 2840 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 2841 and any individual designated under the license are considered to be the holders of the license.
- 2842 (d) If an individual designated under the agency license commits an act or fails to
- 2843 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
- 2844 the commissioner may suspend, revoke, or limit the license of:
- 2845 (i) the individual;
- 2846 (ii) the agency, if the agency:

2847 (A) is reckless or negligent in its supervision of the individual; or
2848 (B) knowingly participates in the act or failure to act that is the ground for suspending,
2849 revoking, or limiting the license; or
2850 (iii) (A) the individual; and
2851 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
2852 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
2853 without a license if:
2854 (a) the licensee's license is:
2855 (i) revoked;
2856 (ii) suspended;
2857 (iii) limited;
2858 (iv) surrendered in lieu of administrative action;
2859 (v) lapsed; or
2860 (vi) voluntarily surrendered; and
2861 (b) the licensee:
2862 (i) continues to act as a licensee; or
2863 (ii) violates the terms of the license limitation.
2864 (7) A licensee under this chapter shall immediately report to the commissioner:
2865 (a) a revocation, suspension, or limitation of the person's license in another state, the
2866 District of Columbia, or a territory of the United States;
2867 (b) the imposition of a disciplinary sanction imposed on that person by another state,
2868 the District of Columbia, or a territory of the United States; or
2869 (c) a judgment or injunction entered against that person on the basis of conduct
2870 involving:
2871 (i) fraud;
2872 (ii) deceit;
2873 (iii) misrepresentation; or
2874 (iv) a violation of an insurance law or rule.
2875 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
2876 license in lieu of administrative action may specify a time, not to exceed five years, within
2877 which the former licensee may not apply for a new license.

2878 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
2879 former licensee may not apply for a new license for five years from the day on which the order
2880 or agreement is made without the express approval by the commissioner.

2881 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2882 a license issued under this part if so ordered by a court.

2883 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
2884 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2885 Section 29. Section 31A-23a-402 is amended to read:

2886 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**
2887 **discrimination -- Coercion or intimidation -- Restriction on choice.**

2888 (1) (a) (i) Any of the following may not make or cause to be made any communication
2889 that contains false or misleading information, relating to an insurance product or contract, any
2890 insurer, or any licensee under this title, including information that is false or misleading
2891 because it is incomplete:

2892 (A) a person who is or should be licensed under this title;

2893 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

2894 (C) a person whose primary interest is as a competitor of a person licensed under this
2895 title; and

2896 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

2897 (ii) As used in this Subsection (1), "false or misleading information" includes:

2898 (A) assuring the nonobligatory payment of future dividends or refunds of unused
2899 premiums in any specific or approximate amounts, but reporting fully and accurately past
2900 experience is not false or misleading information; and

2901 (B) with intent to deceive a person examining it:

2902 (I) filing a report;

2903 (II) making a false entry in a record; or

2904 (III) wilfully refraining from making a proper entry in a record.

2905 (iii) A licensee under this title may not:

2906 (A) use any business name, slogan, emblem, or related device that is misleading or
2907 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
2908 already in business; or

2909 (B) use any name, advertisement, or other insurance promotional material that would
2910 cause a reasonable person to mistakenly believe that a state or federal government agency,
2911 [~~including Utah's small employer health insurance exchange known as "Avenue H,"~~] and the
2912 Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health
2913 Insurance Act:

2914 (I) is responsible for the insurance sales activities of the person;

2915 (II) stands behind the credit of the person;

2916 (III) guarantees any returns on insurance products of or sold by the person; or

2917 (IV) is a source of payment of any insurance obligation of or sold by the person.

2918 (iv) A person who is not an insurer may not assume or use any name that deceptively
2919 implies or suggests that person is an insurer.

2920 (v) A person other than persons licensed as health maintenance organizations under
2921 Chapter 8, Health Maintenance Organizations and Limited Health Plans, may not use the term
2922 "Health Maintenance Organization" or "HMO" in referring to itself.

2923 (b) A licensee's violation creates a rebuttable presumption that the violation was also
2924 committed by the insurer if:

2925 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
2926 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
2927 insurer:

2928 (A) that the licensee represents; or

2929 (B) for whom the licensee processes claims; and

2930 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
2931 insurer.

2932 (2) (a) A title insurer, individual title insurance producer, or agency title insurance
2933 producer or any officer or employee of the title insurer, individual title insurance producer, or
2934 agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give,
2935 directly or indirectly, as an inducement to obtaining any title insurance business:

2936 (i) any rebate, reduction, or abatement of any rate or charge made incident to the
2937 issuance of the title insurance;

2938 (ii) any special favor or advantage not generally available to others;

2939 (iii) any money or other consideration, except if approved under Section [31A-2-405](#); or

- 2940 (iv) material inducement.
- 2941 (b) "Charge made incident to the issuance of the title insurance" includes escrow
2942 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
2943 after consultation with the commissioner and subject to Section [31A-2-404](#).
- 2944 (c) An insured or any other person connected, directly or indirectly, with the
2945 transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to
2946 in Subsection (2)(a), including:
- 2947 (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices
2948 and Licensing Act;
- 2949 (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices
2950 Act;
- 2951 (iii) a builder;
- 2952 (iv) an attorney; or
- 2953 (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).
- 2954 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
2955 different premiums or by offering different terms of coverage, except on the basis of
2956 classifications related to the nature and the degree of the risk covered or the expenses involved.
- 2957 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
2958 insured under a group, blanket, or franchise policy, and the terms of those policies are not
2959 unfairly discriminatory merely because they are more favorable than in similar individual
2960 policies.
- 2961 (4) (a) This Subsection (4) applies to:
- 2962 (i) a person who is or should be licensed under this title;
- 2963 (ii) an employee of that licensee or person who should be licensed;
- 2964 (iii) a person whose primary interest is as a competitor of a person licensed under this
2965 title; and
- 2966 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).
- 2967 (b) A person described in Subsection (4)(a) may not commit or enter into any
2968 agreement to participate in any act of boycott, coercion, or intimidation that:
- 2969 (i) tends to produce:
- 2970 (A) an unreasonable restraint of the business of insurance; or

2971 (B) a monopoly in that business; or
2972 (ii) results in an applicant purchasing or replacing an insurance contract.

2973 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
2974 insurer or licensee under this chapter, another person who is required to pay for insurance as a
2975 condition for the conclusion of a contract or other transaction or for the exercise of any right
2976 under a contract.

2977 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
2978 coverage selected on reasonable grounds.

2979 (b) The form of corporate organization of an insurer authorized to do business in this
2980 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
2981 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
2982 declining an application for insurance.

2983 (6) A person may not make any charge other than insurance premiums and premium
2984 financing charges for the protection of property or of a security interest in property, as a
2985 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
2986 the lending of money on the security of an interest in the property.

2987 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
2988 agency to the principal on demand.

2989 (b) A licensee whose license is suspended, limited, or revoked under Section
2990 [31A-2-308](#), [31A-23a-111](#), or [31A-23a-112](#) may not refuse or fail to return the license to the
2991 commissioner on demand.

2992 (8) (a) A person may not engage in an unfair method of competition or any other unfair
2993 or deceptive act or practice in the business of insurance, as defined by the commissioner by
2994 rule, after a finding that the method of competition, the act, or the practice:

2995 (i) is misleading;
2996 (ii) is deceptive;
2997 (iii) is unfairly discriminatory;
2998 (iv) provides an unfair inducement; or
2999 (v) unreasonably restrains competition.

3000 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
3001 Title and Escrow Commission shall make rules, subject to Section [31A-2-404](#), that define an

3002 unfair method of competition or unfair or deceptive act or practice after a finding that the
3003 method of competition, the act, or the practice:

- 3004 (i) is misleading;
- 3005 (ii) is deceptive;
- 3006 (iii) is unfairly discriminatory;
- 3007 (iv) provides an unfair inducement; or
- 3008 (v) unreasonably restrains competition.

3009 Section 30. Section **31A-23a-411.1** is amended to read:

3010 **31A-23a-411.1. Person's liability if premium received is not forwarded to the**
3011 **insurer.**

3012 A person commits insurance fraud as described in Subsection **31A-31-103(1)(f)(g)** if
3013 that person knowingly fails to forward to the insurer a premium:

3014 (1) received from one of the following in partial or total payment of the premium due
3015 from:

- 3016 (a) an applicant;
- 3017 (b) a policyholder; or
- 3018 (c) a certificate holder; or

3019 (2) collected from or on behalf of an insured employee under an insured employee
3020 benefit plan.

3021 Section 31. Section **31A-23a-415** is amended to read:

3022 **31A-23a-415. Assessment on agency title insurance producers or title insurers --**
3023 **Account created.**

3024 (1) For purposes of this section:

3025 (a) "Premium" is as defined in Subsection **59-9-101(3)**.

3026 (b) "Title insurer" means a person:

3027 (i) making any contract or policy of title insurance as:

- 3028 (A) insurer;
- 3029 (B) guarantor; or
- 3030 (C) surety;

3031 (ii) proposing to make any contract or policy of title insurance as:

3032 (A) insurer;

- 3033 (B) guarantor; or
- 3034 (C) surety; or
- 3035 (iii) transacting or proposing to transact any phase of title insurance, including:
- 3036 (A) soliciting;
- 3037 (B) negotiating preliminary to execution;
- 3038 (C) executing of a contract of title insurance;
- 3039 (D) insuring; and
- 3040 (E) transacting matters subsequent to the execution of the contract and arising out of
- 3041 the contract.

3042 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or

3043 personal property located in Utah, an owner of real or personal property, the holders of liens or

3044 encumbrances on that property, or others interested in the property against loss or damage

3045 suffered by reason of:

- 3046 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
- 3047 property; or
- 3048 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

3049 (2) (a) The commissioner may assess each title insurer, each individual title insurance

3050 producer who is not an employee of a title insurer or who is not designated by an agency title

3051 insurance producer, and each agency title insurance producer an annual assessment:

- 3052 (i) determined by the Title and Escrow Commission:
- 3053 (A) after consultation with the commissioner; and
- 3054 (B) in accordance with this Subsection (2); and
- 3055 (ii) to be used for the purposes described in Subsection (3).

3056 (b) An agency title insurance producer and individual title insurance producer who is

3057 not an employee of a title insurer or who is not designated by an agency title insurance

3058 producer shall be assessed up to:

- 3059 (i) \$250 for the first office in each county in which the agency title insurance producer
- 3060 or individual title insurance producer maintains an office; and
- 3061 (ii) \$150 for each additional office the agency title insurance producer or individual
- 3062 title insurance producer maintains in the county described in Subsection (2)(b)(i).

3063 (c) A title insurer shall be assessed up to:

3064 (i) \$250 for the first office in each county in which the title insurer maintains an office;
3065 (ii) \$150 for each additional office the title insurer maintains in the county described in

3066 Subsection (2)(c)(i); and

3067 (iii) an amount calculated by:

3068 (A) aggregating the assessments imposed on:

3069 (I) agency title insurance producers and individual title insurance producers under

3070 Subsection (2)(b); and

3071 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

3072 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total
3073 costs and expenses determined under Subsection (2)(d); and

3074 (C) multiplying:

3075 (I) the amount calculated under Subsection (2)(c)(iii)(B); and

3076 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
3077 of the title insurer.

3078 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title
3079 and Escrow Commission by rule shall establish the amount of costs and expenses described
3080 under Subsection (3) that will be covered by the assessment, except the costs or expenses to be
3081 covered by the assessment may not exceed \$100,000 annually.

3082 (e) (i) An individual licensed to practice law in Utah is exempt from the requirements
3083 of this Subsection (2) if that person issues 12 or less policies during a 12-month period.

3084 (ii) In determining the number of policies issued by an individual licensed to practice
3085 law in Utah for purposes of Subsection (2)(e)(i), if the individual issues a policy to more than
3086 one party to the same closing, the individual is considered to have issued only one policy.

3087 (3) (a) Money received by the state under this section shall be deposited into the Title
3088 Licensee Enforcement Restricted Account.

3089 (b) There is created in the General Fund a restricted account known as the "Title
3090 Licensee Enforcement Restricted Account."

3091 (c) The Title Licensee Enforcement Restricted Account shall consist of the money
3092 received by the state under this section.

3093 (d) The commissioner shall administer the Title Licensee Enforcement Restricted
3094 Account. Subject to appropriations by the Legislature, the commissioner shall use the money

3095 deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or
 3096 expense incurred by the department in the administration, investigation, and enforcement of
 3097 [~~this part and Part 5, Compensation of Producers and Consultants, related to:~~] laws governing
 3098 individual title insurance producers, agency title insurance producers, or title insurers.

3099 [~~(i) the marketing of title insurance; and]~~

3100 [~~(ii) audits of agency title insurance producers.]~~

3101 (e) An appropriation from the Title Licensee Enforcement Restricted Account is
 3102 nonlapsing.

3103 (4) The assessment imposed by this section shall be in addition to any premium
 3104 assessment imposed under Subsection 59-9-101(3).

3105 Section 32. Section 31A-23b-401 is amended to read:

3106 **31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
 3107 **terminating a license -- Rulemaking for renewal or reinstatement.**

3108 (1) A license as a navigator under this chapter remains in force until:

3109 (a) revoked or suspended under Subsection (4);

3110 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
 3111 administrative action;

3112 (c) the licensee dies or is adjudicated incompetent as defined under:

3113 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3114 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
 3115 Minors;

3116 (d) lapsed under this section; or

3117 (e) voluntarily surrendered.

3118 (2) The following may be reinstated within one year after the day on which the license
 3119 is no longer in force:

3120 (a) a lapsed license; or

3121 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
 3122 not be reinstated after the license period in which the license is voluntarily surrendered.

3123 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
 3124 license, submission and acceptance of a voluntary surrender of a license does not prevent the
 3125 department from pursuing additional disciplinary or other action authorized under:

- 3126 (a) this title; or
- 3127 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
- 3128 Administrative Rulemaking Act.
- 3129 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
- 3130 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
- 3131 commissioner may:
 - 3132 (i) revoke a license;
 - 3133 (ii) suspend a license for a specified period of 12 months or less;
 - 3134 (iii) limit a license in whole or in part;
 - 3135 (iv) deny a license application;
 - 3136 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
 - 3137 (vi) take a combination of actions under Subsections (4)(a)(i) through (iv) and
 - 3138 Subsection (4)(a)(v).
- 3139 (b) The commissioner may take an action described in Subsection (4)(a) if the
- 3140 commissioner finds that the licensee:
 - 3141 (i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or
 - 3142 31A-23b-206;
 - 3143 (ii) violated:
 - 3144 (A) an insurance statute;
 - 3145 (B) a rule that is valid under Subsection 31A-2-201(3); or
 - 3146 (C) an order that is valid under Subsection 31A-2-201(4);
 - 3147 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
 - 3148 delinquency proceedings in any state;
 - 3149 (iv) failed to pay a final judgment rendered against the person in this state within 60
 - 3150 days after the day on which the judgment became final;
 - 3151 (v) refused:
 - 3152 (A) to be examined; or
 - 3153 (B) to produce its accounts, records, and files for examination;
 - 3154 (vi) had an officer who refused to:
 - 3155 (A) give information with respect to the navigator's affairs; or
 - 3156 (B) perform any other legal obligation as to an examination;

- 3157 (vii) provided information in the license application that is:
3158 (A) incorrect;
3159 (B) misleading;
3160 (C) incomplete; or
3161 (D) materially untrue;
- 3162 (viii) violated an insurance law, valid rule, or valid order of another regulatory agency
3163 in any jurisdiction;
- 3164 (ix) obtained or attempted to obtain a license through misrepresentation or fraud;
3165 (x) improperly withheld, misappropriated, or converted money or properties received
3166 in the course of doing insurance business;
- 3167 (xi) intentionally misrepresented the terms of an actual or proposed:
3168 (A) insurance contract;
3169 (B) application for insurance; or
3170 (C) application for public program;
- 3171 (xii) [is] has been convicted of:
3172 (A) a felony; or
3173 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 3174 (xiii) admitted or is found to have committed an insurance unfair trade practice or
3175 fraud;
- 3176 (xiv) in the conduct of business in this state or elsewhere:
3177 (A) used fraudulent, coercive, or dishonest practices; or
3178 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3179 (xv) has had an insurance license, navigator license, or [its equivalent,] other
3180 professional or occupational license or registration, or an equivalent of the same denied,
3181 suspended, [or] revoked [in another state, province, district, or territory], or surrendered to
3182 resolve an administrative action;
- 3183 (xvi) forged another's name to:
3184 (A) an application for insurance;
3185 (B) a document related to an insurance transaction;
3186 (C) a document related to an application for a public program; or
3187 (D) a document related to an application for premium subsidies;

3188 (xvii) improperly used notes or another reference material to complete an examination
3189 for a license;

3190 (xviii) knowingly accepted insurance business from an individual who is not licensed;

3191 (xix) failed to comply with an administrative or court order imposing a child support
3192 obligation;

3193 (xx) failed to:

3194 (A) pay state income tax; or

3195 (B) comply with an administrative or court order directing payment of state income
3196 tax;

3197 (xxi) ~~[violated or permitted others to violate]~~ has been convicted of violating the
3198 federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and
3199 [therefore under] has not obtained written consent to engage in the business of insurance or
3200 participate in such business as required by 18 U.S.C. Sec. 1033 ~~[is prohibited from engaging in~~
3201 ~~the business of insurance; or];~~

3202 (xxii) engaged in a method or practice in the conduct of business that endangered the
3203 legitimate interests of customers and the public[-]; or

3204 (xxiii) has been convicted of any criminal felony involving dishonesty or breach of
3205 trust and has not obtained written consent to engage in the business of insurance or participate
3206 in such business as required by 18 U.S.C. Sec. 1033.

3207 (c) For purposes of this section, if a license is held by an agency, both the agency itself
3208 and any individual designated under the license are considered to be the holders of the license.

3209 (d) If an individual designated under the agency license commits an act or fails to
3210 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
3211 the commissioner may suspend, revoke, or limit the license of:

3212 (i) the individual;

3213 (ii) the agency, if the agency:

3214 (A) is reckless or negligent in its supervision of the individual; or

3215 (B) knowingly participates in the act or failure to act that is the ground for suspending,
3216 revoking, or limiting the license; or

3217 (iii) (A) the individual; and

3218 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

- 3219 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
3220 without a license if:
- 3221 (a) the licensee's license is:
- 3222 (i) revoked;
- 3223 (ii) suspended;
- 3224 (iii) surrendered in lieu of administrative action;
- 3225 (iv) lapsed; or
- 3226 (v) voluntarily surrendered; and
- 3227 (b) the licensee:
- 3228 (i) continues to act as a licensee; or
- 3229 (ii) violates the terms of the license limitation.
- 3230 (6) A licensee under this chapter shall immediately report to the commissioner:
- 3231 (a) a revocation, suspension, or limitation of the person's license in another state, the
3232 District of Columbia, or a territory of the United States;
- 3233 (b) the imposition of a disciplinary sanction imposed on that person by another state,
3234 the District of Columbia, or a territory of the United States; or
- 3235 (c) a judgment or injunction entered against that person on the basis of conduct
3236 involving:
- 3237 (i) fraud;
- 3238 (ii) deceit;
- 3239 (iii) misrepresentation; or
- 3240 (iv) a violation of an insurance law or rule.
- 3241 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
3242 license in lieu of administrative action may specify a time, not to exceed five years, within
3243 which the former licensee may not apply for a new license.
- 3244 (b) If no time is specified in an order or agreement described in Subsection (7)(a), the
3245 former licensee may not apply for a new license for five years from the day on which the order
3246 or agreement is made without the express approval of the commissioner.
- 3247 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
3248 a license issued under this chapter if so ordered by a court.
- 3249 (9) The commissioner shall by rule prescribe the license renewal and reinstatement

3250 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3251 Section 33. Section **31A-25-208** is amended to read:

3252 **31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
3253 **terminating a license -- Rulemaking for renewal and reinstatement.**

3254 (1) A license type issued under this chapter remains in force until:

3255 (a) revoked or suspended under Subsection (4);

3256 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
3257 administrative action;

3258 (c) the licensee dies or is adjudicated incompetent as defined under:

3259 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3260 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
3261 Minors;

3262 (d) lapsed under Section [31A-25-210](#); or

3263 (e) voluntarily surrendered.

3264 (2) The following may be reinstated within one year after the day on which the license
3265 is no longer in force:

3266 (a) a lapsed license; or

3267 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
3268 not be reinstated after the license period in which the license is voluntarily surrendered.

3269 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
3270 license, submission and acceptance of a voluntary surrender of a license does not prevent the
3271 department from pursuing additional disciplinary or other action authorized under:

3272 (a) this title; or

3273 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
3274 Administrative Rulemaking Act.

3275 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
3276 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
3277 commissioner may:

3278 (i) revoke a license;

3279 (ii) suspend a license for a specified period of 12 months or less;

3280 (iii) limit a license in whole or in part; or

- 3281 (iv) deny a license application.
- 3282 (b) The commissioner may take an action described in Subsection (4)(a) if the
3283 commissioner finds that the licensee:
- 3284 (i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;
3285 (ii) has violated:
- 3286 (A) an insurance statute;
3287 (B) a rule that is valid under Subsection 31A-2-201(3); or
3288 (C) an order that is valid under Subsection 31A-2-201(4);
- 3289 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
3290 delinquency proceedings in any state;
- 3291 (iv) fails to pay a final judgment rendered against the person in this state within 60
3292 days after the day on which the judgment became final;
- 3293 (v) fails to meet the same good faith obligations in claims settlement that is required of
3294 admitted insurers;
- 3295 (vi) is affiliated with and under the same general management or interlocking
3296 directorate or ownership as another third party administrator that transacts business in this state
3297 without a license;
- 3298 (vii) refuses:
- 3299 (A) to be examined; or
3300 (B) to produce its accounts, records, and files for examination;
- 3301 (viii) has an officer who refuses to:
- 3302 (A) give information with respect to the third party administrator's affairs; or
3303 (B) perform any other legal obligation as to an examination;
- 3304 (ix) provides information in the license application that is:
- 3305 (A) incorrect;
3306 (B) misleading;
3307 (C) incomplete; or
3308 (D) materially untrue;
- 3309 (x) has violated an insurance law, valid rule, or valid order of another regulatory
3310 agency in any jurisdiction;
- 3311 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

- 3312 (xii) has improperly withheld, misappropriated, or converted money or properties
- 3313 received in the course of doing insurance business;
- 3314 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3315 (A) insurance contract; or
- 3316 (B) application for insurance;
- 3317 (xiv) has been convicted of:
- 3318 (A) a felony; or
- 3319 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 3320 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 3321 or fraud;
- 3322 (xvi) in the conduct of business in this state or elsewhere has:
- 3323 (A) used fraudulent, coercive, or dishonest practices; or
- 3324 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3325 (xvii) has had an insurance license or ~~[its equivalent,]~~ other professional or
- 3326 occupational license or registration, or an equivalent of the same, denied, suspended, [or]
- 3327 revoked [in any other state, province, district, or territory], or surrendered to resolve an
- 3328 administrative action;
- 3329 (xviii) has forged another's name to:
- 3330 (A) an application for insurance; or
- 3331 (B) a document related to an insurance transaction;
- 3332 (xix) has improperly used notes or any other reference material to complete an
- 3333 examination for an insurance license;
- 3334 (xx) has knowingly accepted insurance business from an individual who is not
- 3335 licensed;
- 3336 (xxi) has failed to comply with an administrative or court order imposing a child
- 3337 support obligation;
- 3338 (xxii) has failed to:
- 3339 (A) pay state income tax; or
- 3340 (B) comply with an administrative or court order directing payment of state income
- 3341 tax;
- 3342 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and

3343 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
3344 prohibited from engaging in the business of insurance; or

3345 (xxiv) has engaged in methods and practices in the conduct of business that endanger
3346 the legitimate interests of customers and the public.

3347 (c) For purposes of this section, if a license is held by an agency, both the agency itself
3348 and any individual designated under the license are considered to be the holders of the agency
3349 license.

3350 (d) If an individual designated under the agency license commits an act or fails to
3351 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
3352 the commissioner may suspend, revoke, or limit the license of:

3353 (i) the individual;

3354 (ii) the agency if the agency:

3355 (A) is reckless or negligent in its supervision of the individual; or

3356 (B) knowingly participated in the act or failure to act that is the ground for suspending,
3357 revoking, or limiting the license; or

3358 (iii) (A) the individual; and

3359 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

3360 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
3361 without a license if:

3362 (a) the licensee's license is:

3363 (i) revoked;

3364 (ii) suspended;

3365 (iii) limited;

3366 (iv) surrendered in lieu of administrative action;

3367 (v) lapsed; or

3368 (vi) voluntarily surrendered; and

3369 (b) the licensee:

3370 (i) continues to act as a licensee; or

3371 (ii) violates the terms of the license limitation.

3372 (6) A licensee under this chapter shall immediately report to the commissioner:

3373 (a) a revocation, suspension, or limitation of the person's license in any other state, the

3374 District of Columbia, or a territory of the United States;

3375 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
3376 the District of Columbia, or a territory of the United States; or

3377 (c) a judgment or injunction entered against the person on the basis of conduct
3378 involving:

3379 (i) fraud;

3380 (ii) deceit;

3381 (iii) misrepresentation; or

3382 (iv) a violation of an insurance law or rule.

3383 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
3384 license in lieu of administrative action may specify a time, not to exceed five years, within
3385 which the former licensee may not apply for a new license.

3386 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
3387 former licensee may not apply for a new license for five years from the day on which the order
3388 or agreement is made without the express approval of the commissioner.

3389 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
3390 a license issued under this part if so ordered by the court.

3391 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
3392 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3393 Section 34. Section **31A-26-213** is amended to read:

3394 **31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
3395 **terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.**

3396 (1) A license type issued under this chapter remains in force until:

3397 (a) revoked or suspended under Subsection (5);

3398 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
3399 administrative action;

3400 (c) the licensee dies or is adjudicated incompetent as defined under:

3401 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3402 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
3403 Minors;

3404 (d) lapsed under Section [31A-26-214.5](#); or

- 3405 (e) voluntarily surrendered.
- 3406 (2) The following may be reinstated within one year after the day on which the license
3407 is no longer in force:
- 3408 (a) a lapsed license; or
- 3409 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
3410 not be reinstated after the license period in which it is voluntarily surrendered.
- 3411 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
3412 license, submission and acceptance of a voluntary surrender of a license does not prevent the
3413 department from pursuing additional disciplinary or other action authorized under:
- 3414 (a) this title; or
- 3415 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
3416 Administrative Rulemaking Act.
- 3417 (4) A license classification issued under this chapter remains in force until:
- 3418 (a) the qualifications pertaining to a license classification are no longer met by the
3419 licensee; or
- 3420 (b) the supporting license type:
- 3421 (i) is revoked or suspended under Subsection (5); or
- 3422 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
3423 administrative action.
- 3424 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an
3425 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
3426 commissioner may:
- 3427 (i) revoke:
- 3428 (A) a license; or
- 3429 (B) a license classification;
- 3430 (ii) suspend for a specified period of 12 months or less:
- 3431 (A) a license; or
- 3432 (B) a license classification;
- 3433 (iii) limit in whole or in part:
- 3434 (A) a license; or
- 3435 (B) a license classification;

- 3436 (iv) deny a license application;
- 3437 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- 3438 (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and
- 3439 Subsection (5)(a)(v).
- 3440 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 3441 commissioner finds that the licensee:
- 3442 (i) is unqualified for a license or license classification under Section 31A-26-202,
- 3443 31A-26-203, 31A-26-204, or 31A-26-205;
- 3444 (ii) has violated:
- 3445 (A) an insurance statute;
- 3446 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 3447 (C) an order that is valid under Subsection 31A-2-201(4);
- 3448 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
- 3449 delinquency proceedings in any state;
- 3450 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 3451 days after the judgment became final;
- 3452 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 3453 admitted insurers;
- 3454 (vi) is affiliated with and under the same general management or interlocking
- 3455 directorate or ownership as another insurance adjuster that transacts business in this state
- 3456 without a license;
- 3457 (vii) refuses:
- 3458 (A) to be examined; or
- 3459 (B) to produce its accounts, records, and files for examination;
- 3460 (viii) has an officer who refuses to:
- 3461 (A) give information with respect to the insurance adjuster's affairs; or
- 3462 (B) perform any other legal obligation as to an examination;
- 3463 (ix) provides information in the license application that is:
- 3464 (A) incorrect;
- 3465 (B) misleading;
- 3466 (C) incomplete; or

- 3467 (D) materially untrue;
- 3468 (x) has violated an insurance law, valid rule, or valid order of another regulatory
3469 agency in any jurisdiction;
- 3470 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3471 (xii) has improperly withheld, misappropriated, or converted money or properties
3472 received in the course of doing insurance business;
- 3473 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3474 (A) insurance contract; or
- 3475 (B) application for insurance;
- 3476 (xiv) has been convicted of:
- 3477 (A) a felony; or
- 3478 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 3479 (xv) has admitted or been found to have committed an insurance unfair trade practice
3480 or fraud;
- 3481 (xvi) in the conduct of business in this state or elsewhere has:
- 3482 (A) used fraudulent, coercive, or dishonest practices; or
- 3483 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3484 (xvii) has had an insurance license~~[-or its equivalent]~~ or other professional or
3485 occupational license or registration, or equivalent, denied, suspended, [or] revoked [in any
3486 other state, province, district, or territory], or surrendered to resolve an administrative action;
- 3487 (xviii) has forged another's name to:
- 3488 (A) an application for insurance; or
- 3489 (B) a document related to an insurance transaction;
- 3490 (xix) has improperly used notes or any other reference material to complete an
3491 examination for an insurance license;
- 3492 (xx) has knowingly accepted insurance business from an individual who is not
3493 licensed;
- 3494 (xxi) has failed to comply with an administrative or court order imposing a child
3495 support obligation;
- 3496 (xxii) has failed to:
- 3497 (A) pay state income tax; or

3498 (B) comply with an administrative or court order directing payment of state income
3499 tax;

3500 (xxiii) has [~~violated or permitted others to violate~~] been convicted of a violation of the
3501 federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and
3502 [therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance]
3503 has not obtained written consent in accordance with 18 U.S.C. Sec. 1033 to engage in the
3504 business of insurance or participate in such business; [or]

3505 (xxiv) has engaged in methods and practices in the conduct of business that endanger
3506 the legitimate interests of customers and the public[-]; or

3507 (xxv) has been convicted of any criminal felony involving dishonesty or breach of trust
3508 and has not obtained written consent in accordance with 18 U.S.C. Sec. 1033 to engage in the
3509 business of insurance or participate in such business.

3510 (c) For purposes of this section, if a license is held by an agency, both the agency itself
3511 and any individual designated under the license are considered to be the holders of the license.

3512 (d) If an individual designated under the agency license commits an act or fails to
3513 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
3514 the commissioner may suspend, revoke, or limit the license of:

3515 (i) the individual;

3516 (ii) the agency, if the agency:

3517 (A) is reckless or negligent in its supervision of the individual; or

3518 (B) knowingly participated in the act or failure to act that is the ground for suspending,
3519 revoking, or limiting the license; or

3520 (iii) (A) the individual; and

3521 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

3522 (6) A licensee under this chapter is subject to the penalties for conducting an insurance
3523 business without a license if:

3524 (a) the licensee's license is:

3525 (i) revoked;

3526 (ii) suspended;

3527 (iii) limited;

3528 (iv) surrendered in lieu of administrative action;

- 3529 (v) lapsed; or
- 3530 (vi) voluntarily surrendered; and
- 3531 (b) the licensee:
- 3532 (i) continues to act as a licensee; or
- 3533 (ii) violates the terms of the license limitation.
- 3534 (7) A licensee under this chapter shall immediately report to the commissioner:
- 3535 (a) a revocation, suspension, or limitation of the person's license in any other state, the
- 3536 District of Columbia, or a territory of the United States;
- 3537 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
- 3538 the District of Columbia, or a territory of the United States; or
- 3539 (c) a judgment or injunction entered against that person on the basis of conduct
- 3540 involving:
- 3541 (i) fraud;
- 3542 (ii) deceit;
- 3543 (iii) misrepresentation; or
- 3544 (iv) a violation of an insurance law or rule.
- 3545 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
- 3546 license in lieu of administrative action may specify a time not to exceed five years within
- 3547 which the former licensee may not apply for a new license.
- 3548 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
- 3549 former licensee may not apply for a new license for five years without the express approval of
- 3550 the commissioner.
- 3551 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 3552 a license issued under this part if so ordered by a court.
- 3553 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
- 3554 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3555 Section 35. Section **31A-27a-512.1** is enacted to read:
- 3556 **31A-27a-512.1. Indemnitor liability.**
- 3557 (1) (a) Except as otherwise provided in this chapter, the amount recoverable by the
- 3558 receiver from an indemnitor may not be reduced as a result of a delinquency proceeding with a
- 3559 finding of insolvency, regardless of any provision in the indemnity contract or other agreement.

3560 (b) To the extent an agreement, written or oral, conflicts with or is not in strict
3561 compliance with this section, the agreement is unenforceable.

3562 (c) Except as expressly provided in this section, a person who is not the receiver,
3563 including a creditor or third-party beneficiary, does not have a right to indemnity proceeds from
3564 any indemnitor of the insolvent insurer:

3565 (i) on the basis of any agreement, written or oral; or
3566 (ii) pursuant to an action or cause of action seeking any equitable or legal remedy.

3567 (d) This section applies to all the insurer's indemnity contracts.

3568 (2) The amount recoverable by the liquidator from an indemnitor is payable under one
3569 or more contract of indemnity on the basis of:

3570 (a) proof of payment of the insured claim by an affected guaranty association, the
3571 insurer, or the receiver, to the extent of payment; or

3572 (b) the allowance of the claim pursuant to:

3573 (i) [Section 31A-27a-608](#);
3574 (ii) an order of the receivership court; or
3575 (iii) a plan of rehabilitation.

3576 (3) If an insurer takes credit for an indemnity contract in a filing or submission made to
3577 the commissioner and the indemnity contract does not contain the provisions required with
3578 respect to the obligations of indemnitor in the event of insolvency of the principal, the
3579 indemnity contract is considered to contain the provisions required with respect to:

3580 (a) the obligations of indemnitors in the event of insolvency of the principal in order to
3581 obtain indemnity; or

3582 (b) other applicable statutes.

3583 (4) An indemnity contract that under Subsection (3) is considered to contain certain
3584 provisions, is considered to contain a provision that:

3585 (a) in the event of insolvency and the appointment of a receiver, the indemnity
3586 obligation is payable to the indemnified insurer or to its receiver without diminution because of
3587 the insolvency or because the receiver fails to pay all or a portion of the claim;

3588 (b) payment shall be made upon:

3589 (i) to the extent of the payment, proof of payment of the insured claim by an affected
3590 guaranty association, the insurer, or the receiver; or

3591 (ii) the allowance of the claim pursuant to:

3592 (A) Section [31A-27a-608](#);

3593 (B) an order of the receivership court; or

3594 (C) a plan of rehabilitation; and

3595 (c) If an indemnitor does not pay the amount billed by the receiver within 60 days after
3596 the mailing by the receiver, interest on the unpaid billed amount will begin to accrue at the
3597 statutory legal rate described in Section [15-1-1](#), except that all or a portion of the interest may
3598 be waived.

3599 (5) (a) The receiver shall notify in writing, in accordance with the terms of the
3600 indemnity contract, each indemnitor obligated in relation to an indemnified claim or the
3601 pendency of an indemnified claim against the indemnified company.

3602 (b) (i) The receiver's failure to give notice of a pending claim does not excuse the
3603 obligation of the indemnitor, unless the indemnitor is prejudiced by the receiver's failure.

3604 (ii) If the indemnitor is prejudiced by the receiver's failure, indemnitor's obligation is
3605 reduced only to the extent of the prejudice.

3606 (c) In a proceeding in which an indemnified claim is to be adjudicated, an indemnitor
3607 may interpose, at its own expense, any one or more defenses that the indemnitor considers
3608 available to the indemnified company or its receiver.

3609 (6) The entry of an order of rehabilitation or liquidation is not:

3610 (a) a breach or an anticipatory breach of an indemnity contract; or

3611 (b) grounds for retroactive revocation or retroactive cancellation of an indemnity
3612 contract by the indemnifier.

3613 Section 36. Section **31A-30-103** is amended to read:

3614 **31A-30-103. Definitions.**

3615 As used in this chapter:

3616 (1) "Actuarial certification" means a written statement by a member of the American
3617 Academy of Actuaries or other individual approved by the commissioner that a covered carrier
3618 is in compliance with this chapter, based upon the examination of the covered carrier, including
3619 review of the appropriate records and of the actuarial assumptions and methods used by the
3620 covered carrier in establishing premium rates for applicable health benefit plans.

3621 (2) "Affiliate" or "affiliated" means a person who directly or indirectly through one or

3622 more intermediaries, controls or is controlled by, or is under common control with, a specified
3623 person.

3624 (3) "Base premium rate" means, for each class of business as to a rating period, the
3625 lowest premium rate charged or that could have been charged under a rating system for that
3626 class of business by the covered carrier to covered insureds with similar case characteristics for
3627 health benefit plans with the same or similar coverage.

3628 (4) (a) "Bona fide employer association" means an association of employers:

3629 (i) that meets the requirements of Subsection 31A-22-701(2)(b);

3630 (ii) in which the employers of the association, either directly or indirectly, exercise
3631 control over the plan;

3632 (iii) that is organized:

3633 (A) based on a commonality of interest between the employers and their employees
3634 that participate in the plan by some common economic or representation interest or genuine
3635 organizational relationship unrelated to the provision of benefits; and

3636 (B) to act in the best interests of its employers to provide benefits for the employer's
3637 employees and their spouses and dependents, and other benefits relating to employment; and

3638 (iv) whose association sponsored health plan complies with 45 C.F.R. 146.121.

3639 (b) The commissioner shall consider the following with regard to determining whether
3640 an association of employers is a bona fide employer association under Subsection (4)(a):

3641 (i) how association members are solicited;

3642 (ii) who participates in the association;

3643 (iii) the process by which the association was formed;

3644 (iv) the purposes for which the association was formed, and what, if any, were the
3645 pre-existing relationships of its members;

3646 (v) the powers, rights and privileges of employer members; and

3647 (vi) who actually controls and directs the activities and operations of the benefit
3648 programs.

3649 (5) "Carrier" means a person that provides health insurance in this state including:

3650 (a) an insurance company;

3651 (b) a prepaid hospital or medical care plan;

3652 (c) a health maintenance organization;

- 3653 (d) a multiple employer welfare arrangement; and
3654 (e) another person providing a health insurance plan under this title.
- 3655 (6) (a) Except as provided in Subsection (6)(b), "case characteristics" means
3656 demographic or other objective characteristics of a covered insured that are considered by the
3657 carrier in determining premium rates for the covered insured.
- 3658 (b) "Case characteristics" do not include:
3659 (i) duration of coverage since the policy was issued;
3660 (ii) claim experience; and
3661 (iii) health status.
- 3662 (7) "Class of business" means all or a separate grouping of covered insureds that is
3663 permitted by the commissioner in accordance with Section [31A-30-105](#).
- 3664 (8) "Covered carrier" means an individual carrier or small employer carrier subject to
3665 this chapter.
- 3666 (9) "Covered individual" means an individual who is covered under a health benefit
3667 plan subject to this chapter.
- 3668 (10) "Covered insureds" means small employers and individuals who are issued a
3669 health benefit plan that is subject to this chapter.
- 3670 (11) "Dependent" means an individual to the extent that the individual is defined to be
3671 a dependent by:
3672 (a) the health benefit plan covering the covered individual; and
3673 (b) Chapter 22, Part 6, Accident and Health Insurance.
- 3674 (12) "Established geographic service area" means a geographical area approved by the
3675 commissioner within which the carrier is authorized to provide coverage.
- 3676 (13) "Index rate" means, for each class of business as to a rating period for covered
3677 insureds with similar case characteristics, the arithmetic average of the applicable base
3678 premium rate and the corresponding highest premium rate.
- 3679 (14) "Individual carrier" means a carrier that provides coverage on an individual basis
3680 through a health benefit plan regardless of whether:
3681 (a) coverage is offered through:
3682 (i) an association;
3683 (ii) a trust;

3684 (iii) a discretionary group; or

3685 (iv) other similar groups; or

3686 (b) the policy or contract is situated out-of-state.

3687 (15) "Individual conversion policy" means a conversion policy issued to:

3688 (a) an individual; or

3689 (b) an individual with a family.

3690 (16) "New business premium rate" means, for each class of business as to a rating

3691 period, the lowest premium rate charged or offered, or that could have been charged or offered,

3692 by the carrier to covered insureds with similar case characteristics for newly issued health

3693 benefit plans with the same or similar coverage.

3694 (17) "Premium" means money paid by covered insureds and covered individuals as a

3695 condition of receiving coverage from a covered carrier, including fees or other contributions

3696 associated with the health benefit plan.

3697 (18) (a) "Rating period" means the calendar period for which premium rates

3698 established by a covered carrier are assumed to be in effect, as determined by the carrier.

3699 (b) A covered carrier may not have:

3700 (i) more than one rating period in any calendar month; and

3701 (ii) no more than 12 rating periods in any calendar year.

3702 [~~(19) "Short-term limited duration insurance" means a health benefit product that:]~~

3703 [~~(a) is not renewable; and]~~

3704 [~~(b) has an expiration date specified in the contract that is less than 364 days after the~~
3705 ~~date the plan became effective.]~~

3706 [(~~20~~) (19) "Small employer carrier" means a carrier that provides health benefit plans

3707 covering eligible employees of one or more small employers in this state, regardless of

3708 whether:

3709 (a) coverage is offered through:

3710 (i) an association;

3711 (ii) a trust;

3712 (iii) a discretionary group; or

3713 (iv) other similar grouping; or

3714 (b) the policy or contract is situated out-of-state.

3715 Section 37. Section 31A-30-104 is amended to read:

3716 **31A-30-104. Applicability and scope.**

3717 (1) This chapter applies to any:

3718 (a) health benefit plan that provides coverage to:

3719 (i) individuals;

3720 (ii) small employers, except as provided in Subsection (3); or

3721 (iii) both Subsections (1)(a)(i) and (ii); or

3722 (b) individual conversion policy for purposes of Sections 31A-30-106.5 and

3723 [31A-30-107.5](#).

3724 (2) This chapter applies to a health benefit plan that provides coverage to small
3725 employers or individuals regardless of:

3726 (a) whether the contract is issued to:

3727 (i) an association, except as provided in Subsection (3);

3728 (ii) a trust;

3729 (iii) a discretionary group; or

3730 (iv) other similar grouping; or

3731 (b) the situs of delivery of the policy or contract.

3732 (3) This chapter does not apply to:

3733 (a) short-term limited duration health insurance;

3734 (b) federally funded or partially funded programs; or

3735 (c) a bona fide employer association.

3736 (4) (a) Except as provided in Subsection (4)(b), for the purposes of this chapter:

3737 (i) carriers that are affiliated companies or that are eligible to file a consolidated tax
3738 return shall be treated as one carrier; and

3739 (ii) any restrictions or limitations imposed by this chapter or Section 31A-22-618.6 or
3740 31A-22-618.7 shall apply as if all health benefit plans delivered or issued for delivery to
3741 covered insureds in this state by the affiliated carriers were issued by one carrier.

3742 (b) Upon a finding of the commissioner, an affiliated carrier that is a health
3743 maintenance organization having a certificate of authority under this title may be considered to
3744 be a separate carrier for the purposes of this chapter.

3745 (c) Unless otherwise authorized by the commissioner, a covered carrier may not enter

3746 into one or more ceding arrangements with respect to health benefit plans delivered or issued
3747 for delivery to covered insureds in this state if the ceding arrangements would result in less
3748 than 50% of the insurance obligation or risk for the health benefit plans being retained by the
3749 ceding carrier.

3750 (d) Section 31A-22-1201 applies if a covered carrier cedes or assumes all of the
3751 insurance obligation or risk with respect to one or more health benefit plans delivered or issued
3752 for delivery to covered insureds in this state.

3753 (5) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal
3754 Labor Management Relations Act, or a carrier with the written authorization of such a trust,
3755 may make a written request to the commissioner for a waiver from the application of any of the
3756 provisions of Subsections 31A-30-106(1) and 31A-30-106.1(1) with respect to a health benefit
3757 plan provided to the trust.

3758 (b) The commissioner may grant a trust or carrier described in Subsection (5)(a) a
3759 waiver if the commissioner finds that application with respect to the trust would:

3760 (i) have a substantial adverse effect on the participants and beneficiaries of the trust;
3761 and

3762 (ii) require significant modifications to one or more collective bargaining arrangements
3763 under which the trust is established or maintained.

3764 (c) A waiver granted under this Subsection (5) may not apply to an individual if the
3765 person participates in a Taft Hartley trust as an associate member of any employee
3766 organization.

3767 (6) The provisions of Chapter 45, Managed Care Organizations, and Sections
3768 31A-22-618.6, 31A-30-106, 31A-30-106.1, 31A-30-106.5, 31A-30-106.7, and 31A-30-108,
3769 apply to:

3770 (a) any insurer engaging in the business of insurance related to the risk of a small
3771 employer for medical, surgical, hospital, or ancillary health care expenses of the small
3772 employer's employees provided as an employee benefit; and

3773 (b) any contract of an insurer, other than a workers' compensation policy, related to the
3774 risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the
3775 small employer's employees provided as an employee benefit.

3776 (7) The commissioner may make rules requiring that the marketing practices be

3777 consistent with this chapter for:

- 3778 (a) a small employer carrier;
- 3779 (b) a small employer carrier's agent;
- 3780 (c) an insurance producer;
- 3781 (d) an insurance consultant; and
- 3782 (e) a navigator.

3783 Section 38. Section **31A-30-118** is amended to read:

3784 **31A-30-118. Patient Protection and Affordable Care Act -- State insurance**
3785 **mandates -- Cost of additional benefits.**

3786 (1) (a) The commissioner shall identify a new mandated benefit that is in excess of the
3787 essential health benefits required by PPACA.

3788 (b) The state shall quantify the cost attributable to each additional mandated benefit
3789 specified in Subsection (1)(a) based on a qualified health plan issuer's calculation of the cost
3790 associated with the mandated benefit, which shall be:

- 3791 (i) calculated in accordance with generally accepted actuarial principles and
3792 methodologies;
- 3793 (ii) conducted by a member of the American Academy of Actuaries; and
- 3794 (iii) reported to the commissioner and to the individual exchange operating in the state.

3795 (c) The commissioner may require a proponent of a new mandated benefit under
3796 Subsection (1)(a) to provide the commissioner with a cost analysis conducted in accordance
3797 with Subsection (1)(b). The commissioner may use the cost information provided under this
3798 Subsection (1)(c) to establish estimates of the cost to the state under Subsection (2).

3799 (2) If the state is required to defray the cost of additional required benefits under the
3800 provisions of 45 C.F.R. 155.170:

- 3801 (a) the state shall make the required payments:
 - 3802 (i) in accordance with Subsection (3); and
 - 3803 (ii) directly to the qualified health plan issuer in accordance with 45 C.F.R. 155.170;

3804 (b) an issuer of a qualified health plan that receives a payment under the provisions of
3805 Subsection (1) and 45 C.F.R. 155.170 shall:

- 3806 (i) reduce the premium charged to the individual on whose behalf the issuer will be
3807 paid under Subsection (1), in an amount equal to the amount of the payment under Subsection

3808 (1); or

3809 (ii) notwithstanding Subsection 31A-23a-402.5(5), provide a premium rebate to an
3810 individual on whose behalf the issuer received a payment under Subsection (1), in an amount
3811 equal to the amount of the payment under Subsection (1); and

3812 (c) a premium rebate made under this section is not a prohibited inducement under
3813 Section 31A-23a-402.5.

3814 (3) A payment required under 45 C.F.R. 155.170(c) shall:

3815 (a) unless otherwise required by PPACA, be based on a statewide average of the cost
3816 of the additional benefit for all issuers who are entitled to payment under the provisions of 45
3817 C.F.R. 155.70; and

3818 (b) be submitted to an issuer through a process established and administered by~~[(i)]~~
3819 the federal marketplace exchange for the state under PPACA for individual health plans~~[-or]~~.

3820 ~~[(ii) Avenue H small employer market exchange for qualified health plans offered on~~
3821 ~~the exchange.]~~

3822 (4) The commissioner may:

3823 (a) ~~[may]~~ adopt rules as necessary to administer the provisions of this section and 45
3824 C.F.R. 155.170; and

3825 (b) ~~[may not]~~ establish or implement ~~[the]~~ a process for submitting ~~[the payments]~~ a
3826 payment to an issuer under Subsection (3)(b)(i) ~~[unless the cost of establishing and~~
3827 ~~implementing the process for submitting payments is paid for by the federal exchange~~
3828 ~~marketplace].~~

3829 Section 39. Section 31A-31-103 is amended to read:

3830 **31A-31-103. Fraudulent insurance act.**

3831 (1) A person commits a fraudulent insurance act if that person with intent to deceive or
3832 defraud:

3833 (a) knowingly presents or causes to be presented to an insurer any oral or written
3834 statement or representation knowing that the statement or representation contains false,
3835 incomplete, or misleading information concerning any fact material to an application for the
3836 issuance or renewal of an insurance policy, certificate, or contract~~[-];~~, as part of or in support of:

3837 (i) obtaining an insurance policy the insurer would otherwise not issue on the basis of
3838 underwriting criteria applicable to the person;

- 3839 (ii) a scheme or artifice to avoid paying the premium that an insurer charges on the
3840 basis of underwriting criteria applicable to the person; or
- 3841 (iii) a scheme or artifice to file an insurance claim for a loss that has already occurred;
3842 (b) [~~knowingly~~] presents or causes to be presented to an insurer any oral or written
3843 statement or representation:
- 3844 (i) (A) as part of, or in support of, a claim for payment or other benefit pursuant to an
3845 insurance policy, certificate, or contract; or
- 3846 (B) in connection with any civil claim asserted for recovery of damages for personal or
3847 bodily injuries or property damage; and
- 3848 (ii) knowing that the statement or representation contains false, incomplete, or
3849 misleading information concerning any fact or thing material to the claim;
- 3850 (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance
3851 act;
- 3852 (d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees
3853 for anything of value, including professional services, by means of false or fraudulent
3854 pretenses, representations, promises, or material omissions;
- 3855 [~~(d)~~] (e) knowingly assists, abets, solicits, or conspires with another to commit a
3856 fraudulent insurance act;
- 3857 [~~(e)~~] (f) knowingly supplies false or fraudulent material information in any document
3858 or statement required by the department;
- 3859 [~~(f)~~] (g) knowingly fails to forward a premium to an insurer in violation of Section
3860 [31A-23a-411.1](#); or
- 3861 [~~(g)~~] (h) knowingly employs, uses, or acts as a runner for the purpose of committing a
3862 fraudulent insurance act.
- 3863 (2) A service provider commits a fraudulent insurance act if that service provider with
3864 intent to deceive or defraud:
- 3865 (a) knowingly submits or causes to be submitted a bill or request for payment:
- 3866 (i) containing charges or costs for an item or service that are substantially in excess of
3867 customary charges or costs for the item or service; or
- 3868 (ii) containing itemized or delineated fees for what would customarily be considered a
3869 single procedure or service;

- 3870 (b) knowingly furnishes or causes to be furnished an item or service to a person:
- 3871 (i) substantially in excess of the needs of the person; or
- 3872 (ii) of a quality that fails to meet professionally recognized standards;
- 3873 (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance
- 3874 act; or
- 3875 (d) assists, abets, solicits, or conspires with another to commit a fraudulent insurance
- 3876 act.

3877 (3) An insurer commits a fraudulent insurance act if that insurer with intent to deceive
3878 or defraud:

3879 (a) knowingly withholds information or provides false or misleading information with
3880 respect to an application, coverage, benefits, or claims under a policy or certificate;

3881 (b) assists, abets, solicits, or conspires with another to commit a fraudulent insurance
3882 act;

3883 (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance
3884 act; or

3885 (d) knowingly supplies false or fraudulent material information in any document or
3886 statement required by the department.

3887 (4) An insurer or service provider is not liable for any fraudulent insurance act
3888 committed by an employee without the authority of the insurer or service provider unless the
3889 insurer or service provider knew or should have known of the fraudulent insurance act.

3890 Section 40. Section **31A-31-107** is amended to read:

3891 **31A-31-107. Workers' compensation insurance fraud.**

3892 (1) In any action involving workers' compensation insurance, Section 34A-2-110
3893 supersedes this chapter.

3894 (2) Nothing in this section prohibits the department from investigating and pursuing
3895 civil or criminal penalties in accordance with Section 31A-31-109 and Title 34A, Utah Labor
3896 Code, for violations of Section 34A-2-110.

3897 Section 41. Section **31A-35-405** is amended to read:

3898 **31A-35-405. Issuance of license -- Denial -- Right of appeal.**

3899 (1) After the commissioner receives a complete application, fee, and any additional
3900 information in accordance with Section 31A-35-401, the board shall determine whether the

3901 applicant meets the requirements for issuance of a license under this chapter.

3902 ~~[(1) Upon a determination by the board that a person applying for a bail bond agency~~
 3903 ~~license]~~ (2) (a) If the board determines that the applicant meets the requirements for issuance
 3904 of a license under this chapter, the commissioner shall issue to that person a bail bond agency
 3905 license.

3906 (b) If the board determines that the applicant does not meet the requirements for
 3907 issuance of a license under this chapter, the commissioner shall make a final determination as
 3908 to whether to issue a license under this chapter.

3909 ~~[(2)]~~ (3) (a) If the commissioner denies an application for a bail bond agency license
 3910 under this chapter, the commissioner shall provide prompt written notification [to the person
 3911 applying for licensure:] of the denial by commencing an informal adjudicative proceeding in
 3912 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3913 (b) An applicant may request a hearing on a denial of an application for a bail bond
 3914 agency license within 15 days after the day on which the commissioner issues the denial.

3915 (c) The commissioner shall hold a hearing no later than 60 days after the day on which
 3916 the commissioner receives a request for a hearing described in Subsection (3)(b).

3917 ~~[(i) stating the grounds for denial; and]~~

3918 ~~[(ii) notifying the person applying for licensure as a bail bond agency that:]~~

3919 ~~[(A) the person is entitled to a hearing if that person wants to contest the denial; and]~~

3920 ~~[(B) if the person wants a hearing, the person shall submit the request in writing to the~~
 3921 ~~commissioner within 15 days after the issuance of the denial.]~~

3922 ~~[(b) The department shall schedule a hearing described in Subsection (2)(a) no later~~
 3923 ~~than 60 days after the commissioner's receipt of the request.]~~

3924 ~~[(c) The department shall hear the appeal, and may:]~~

3925 ~~[(i) return the case to the commissioner for reconsideration;]~~

3926 ~~[(ii) modify the commissioner's decision; or]~~

3927 ~~[(iii) reverse the commissioner's decision.]~~

3928 ~~[(3) A decision under this section is subject to review under Title 63G, Chapter 4,~~
 3929 ~~Administrative Procedures Act.]~~

3930 Section 42. Section **31A-37-102** is amended to read:

3931 **31A-37-102. Definitions.**

3932 As used in this chapter:

3933 (1) (a) "Affiliated company" means a business entity that because of common
3934 ownership, control, operation, or management is in the same corporate or limited liability
3935 company system as:

- 3936 (i) a parent;
- 3937 (ii) an industrial insured; or
- 3938 (iii) a member organization.

3939 (b) Notwithstanding Subsection (1)(a), the commissioner may issue an order finding
3940 that a business entity is not an affiliated company.

3941 (2) "Alien captive insurance company" means an insurer:

- 3942 (a) formed to write insurance business for a parent or affiliate of the insurer; and
- 3943 (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes
3944 statutory or regulatory standards:

- 3945 (i) on a business entity transacting the business of insurance in the alien or foreign
3946 jurisdiction; and
- 3947 (ii) in a form acceptable to the commissioner.

3948 (3) "Applicant captive insurance company" means an entity that has submitted an
3949 application for a certificate of authority for a captive insurance company, unless the application
3950 has been denied or withdrawn.

3951 [~~3~~] (4) "Association" means a legal association of two or more persons that has been
3952 in continuous existence for at least one year if:

- 3953 (a) the association or its member organizations:
 - 3954 (i) own, control, or hold with power to vote all of the outstanding voting securities of
3955 an association captive insurance company incorporated as a stock insurer; or
 - 3956 (ii) have complete voting control over an association captive insurance company
3957 incorporated as a mutual insurer;

3958 (b) the association's member organizations collectively constitute all of the subscribers
3959 of an association captive insurance company formed as a reciprocal insurer; or

3960 (c) the association or its member organizations have complete voting control over an
3961 association captive insurance company formed as a limited liability company.

3962 [~~4~~] (5) "Association captive insurance company" means a business entity that insures

3963 risks of:

- 3964 (a) a member organization of the association;
3965 (b) an affiliate of a member organization of the association; and
3966 (c) the association.

3967 [~~5~~] (6) "Branch business" means an insurance business transacted by a branch captive
3968 insurance company in this state.

3969 [~~6~~] (7) "Branch captive insurance company" means an alien captive insurance
3970 company that has a certificate of authority from the commissioner to transact the business of
3971 insurance in this state through a captive insurance company that is domiciled outside of this
3972 state.

3973 [~~7~~] (8) "Branch operation" means a business operation of a branch captive insurance
3974 company in this state.

3975 [~~8~~] (9) "Captive insurance company" means any of the following formed or holding a
3976 certificate of authority under this chapter:

- 3977 (a) a branch captive insurance company;
3978 (b) a pure captive insurance company;
3979 (c) an association captive insurance company;
3980 (d) a sponsored captive insurance company;
3981 (e) an industrial insured captive insurance company, including an industrial insured
3982 captive insurance company formed as a risk retention group captive in this state pursuant to the
3983 provisions of the Federal Liability Risk Retention Act of 1986;
3984 (f) a special purpose captive insurance company; or
3985 (g) a special purpose financial captive insurance company.

3986 [~~9~~] (10) "Commissioner" means Utah's Insurance Commissioner or the
3987 commissioner's designee.

3988 [~~10~~] (11) "Common ownership and control" means that two or more captive
3989 insurance companies are owned or controlled by the same person or group of persons as
3990 follows:

- 3991 (a) in the case of a captive insurance company that is a stock corporation, the direct or
3992 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;
3993 (b) in the case of a captive insurance company that is a mutual corporation, the direct

3994 or indirect ownership of 80% or more of the surplus and the voting power of the mutual
3995 corporation;

3996 (c) in the case of a captive insurance company that is a limited liability company, the
3997 direct or indirect ownership by the same member or members of 80% or more of the
3998 membership interests in the limited liability company; or

3999 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
4000 captive insurance company owned and controlled by the protected cell's participant, only if:

4001 (i) the participant is the only participant with respect to the protected cell; and

4002 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
4003 captive insurance company through common ownership and control.

4004 ~~[(11)]~~ (12) "Consolidated debt to total capital ratio" means the ratio of Subsection
4005 ~~[(11)]~~ (12)(a) to (b).

4006 (a) This Subsection ~~[(11)]~~ (12)(a) is an amount equal to the sum of all debts and hybrid
4007 capital instruments including:

4008 (i) all borrowings from depository institutions;

4009 (ii) all senior debt;

4010 (iii) all subordinated debts;

4011 (iv) all trust preferred shares; and

4012 (v) all other hybrid capital instruments that are not included in the determination of
4013 consolidated GAAP net worth issued and outstanding.

4014 (b) This Subsection ~~[(11)]~~ (12)(b) is an amount equal to the sum of:

4015 (i) total capital consisting of all debts and hybrid capital instruments as described in
4016 Subsection ~~[(11)]~~ (12)(a); and

4017 (ii) shareholders' equity determined in accordance with generally accepted accounting
4018 principles for reporting to the United States Securities and Exchange Commission.

4019 ~~[(12)]~~ (13) "Consolidated GAAP net worth" means the consolidated shareholders' or
4020 members' equity determined in accordance with generally accepted accounting principles for
4021 reporting to the United States Securities and Exchange Commission.

4022 ~~[(13)]~~ (14) "Controlled unaffiliated business" means a business entity:

4023 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or
4024 limited liability company system of a parent or the parent's affiliate; or

4025 (ii) in the case of an industrial insured captive insurance company, that is not in the
4026 corporate or limited liability company system of an industrial insured or an affiliated company
4027 of the industrial insured;

4028 (b) (i) in the case of a pure captive insurance company, that has a contractual
4029 relationship with a parent or affiliate; or

4030 (ii) in the case of an industrial insured captive insurance company, that has a
4031 contractual relationship with an industrial insured or an affiliated company of the industrial
4032 insured; and

4033 (c) whose risks that are or will be insured by a pure captive insurance company, an
4034 industrial insured captive insurance company, or both, are managed in accordance with
4035 Subsection 31A-37-106(1)(j) by:

4036 (i) (A) a pure captive insurance company; or

4037 (B) an industrial insured captive insurance company; or

4038 (ii) a parent or affiliate of:

4039 (A) a pure captive insurance company; or

4040 (B) an industrial insured captive insurance company.

4041 [~~(14)~~ "Department" means the Insurance Department.]

4042 (15) "Establisher" means a person who establishes a business entity or a trust.

4043 (16) "Governing body" means the persons who hold the ultimate authority to direct and
4044 manage the affairs of an entity.

4045 [~~(15)~~] (17) "Industrial insured" means an insured:

4046 (a) that produces insurance:

4047 (i) by the services of a full-time employee acting as a risk manager or insurance
4048 manager; or

4049 (ii) using the services of a regularly and continuously qualified insurance consultant;

4050 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;

4051 and

4052 (c) that has at least 25 full-time employees.

4053 [~~(16)~~] (18) "Industrial insured captive insurance company" means a business entity

4054 that:

4055 (a) insures risks of the industrial insureds that comprise the industrial insured group;

4056 and

4057 (b) may insure the risks of:

4058 (i) an affiliated company of an industrial insured; or

4059 (ii) a controlled unaffiliated business of:

4060 (A) an industrial insured; or

4061 (B) an affiliated company of an industrial insured.

4062 ~~[(17)]~~ (19) "Industrial insured group" means:

4063 (a) a group of industrial insureds that collectively:

4064 (i) own, control, or hold with power to vote all of the outstanding voting securities of
4065 an industrial insured captive insurance company incorporated or organized as a limited liability
4066 company as a stock insurer; or

4067 (ii) have complete voting control over an industrial insured captive insurance company
4068 incorporated or organized as a limited liability company as a mutual insurer;

4069 (b) a group that is:

4070 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901
4071 et seq., as amended, as a corporation or other limited liability association; and

4072 (ii) taxable under this title as a:

4073 (A) stock corporation; or

4074 (B) mutual insurer; or

4075 (c) a group that has complete voting control over an industrial captive insurance
4076 company formed as a limited liability company.

4077 ~~[(18)]~~ (20) "Member organization" means a person that belongs to an association.

4078 ~~[(19)]~~ (21) "Parent" means a person that directly or indirectly owns, controls, or holds
4079 with power to vote more than 50% of~~[:]~~ the outstanding securities of an organization.

4080 ~~[(a) the outstanding voting securities of a pure captive insurance company; or]~~

4081 ~~[(b) the pure captive insurance company, if the pure captive insurance company is
4082 formed as a limited liability company.]~~

4083 ~~[(20)]~~ (22) "Participant" means an entity that is insured by a sponsored captive
4084 insurance company:

4085 (a) if the losses of the participant are limited through a participant contract to the assets
4086 of a protected cell; and

4087 (b)(i) the entity is permitted to be a participant under Section 31A-37-403; or
4088 (ii) the entity is an affiliate of an entity permitted to be a participant under Section
4089 31A-37-403.

4090 [~~(21)~~] (23) "Participant contract" means a contract by which a sponsored captive
4091 insurance company:

4092 (a) insures the risks of a participant; and
4093 (b) limits the losses of the participant to the assets of a protected cell.

4094 [~~(22)~~] (24) "Protected cell" means a separate account established and maintained by a
4095 sponsored captive insurance company for one participant.

4096 [~~(23)~~] (25) "Pure captive insurance company" means a business entity that insures risks
4097 of a parent or affiliate of the business entity.

4098 [~~(24)~~] (26) "Special purpose financial captive insurance company" is as defined in
4099 Section 31A-37a-102.

4100 [~~(25)~~] (27) "Sponsor" means an entity that:

4101 (a) meets the requirements of Section 31A-37-402; and
4102 (b) is approved by the commissioner to:

4103 (i) provide all or part of the capital and surplus required by applicable law in an amount
4104 of not less than \$350,000, which amount the commissioner may increase by order if the
4105 commissioner considers it necessary; and

4106 (ii) organize and operate a sponsored captive insurance company.

4107 [~~(26)~~] (28) "Sponsored captive insurance company" means a captive insurance
4108 company:

4109 (a) in which the minimum capital and surplus required by applicable law is provided by
4110 one or more sponsors;

4111 (b) that is formed or holding a certificate of authority under this chapter;

4112 (c) that insures the risks of a separate participant through the contract; and

4113 (d) that segregates each participant's liability through one or more protected cells.

4114 [~~(27)~~] (29) "Treasury rates" means the United States Treasury strip asked yield as
4115 published in the Wall Street Journal as of a balance sheet date.

4116 Section 43. Section 31A-37-103 is amended to read:

4117 **31A-37-103. Chapter exclusivity.**

4118 (1) Except as provided in Subsections (2) and (3) or otherwise provided in this chapter,
4119 a provision of this title other than this chapter does not apply to a captive insurance company.

4120 (2) To the extent that a provision of the following does not contradict this chapter, the
4121 provision applies to a captive insurance company that receives a certificate of authority under
4122 this chapter:

4123 (a) Chapter 1, General Provisions;

4124 [~~(a)~~] (b) Chapter 2, Administration of the Insurance Laws;

4125 [~~(b)~~] (c) Chapter 4, Insurers in General;

4126 [~~(c)~~] (d) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

4127 [~~(d)~~] (e) Chapter 14, Foreign Insurers;

4128 [~~(e)~~] (f) Chapter 16, Insurance Holding Companies;

4129 [~~(f)~~] (g) Chapter 17, Determination of Financial Condition;

4130 [~~(g)~~] (h) Chapter 18, Investments;

4131 [~~(h)~~] (i) Chapter 19a, Utah Rate Regulation Act;

4132 [~~(i)~~] (j) Chapter 27, Delinquency Administrative Action Provisions; and

4133 [~~(j)~~] (k) Chapter 27a, Insurer Receivership Act.

4134 (3) In addition to this chapter, and subject to Section [31A-37a-103](#):

4135 (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to
4136 a special purpose financial captive insurance company; and

4137 (b) for purposes of a special purpose financial captive insurance company, a reference
4138 in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial
4139 Captive Insurance Company Act.

4140 (4) In addition to this chapter, an industrial group captive insurance company formed
4141 as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to
4142 the extent that this chapter is silent regarding regulation of risk retention groups conducting
4143 business in the state.

4144 Section 44. Section [31A-37-106](#) is amended to read:

4145 **31A-37-106. Authority to make rules -- Authority to issue orders.**

4146 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
4147 commissioner may adopt rules to:

4148 (a) determine circumstances under which a branch captive insurance company is not

- 4149 required to be a pure captive insurance company;
- 4150 (b) require a statement, document, or information that a captive insurance company
4151 shall provide to the commissioner to obtain a certificate of authority;
- 4152 (c) determine a factor a captive insurance company shall provide evidence of under
4153 Subsection [~~31A-37-202~~] 31A-37-201(4)(b);
- 4154 (d) prescribe one or more capital requirements for a captive insurance company in
4155 addition to those required under Section 31A-37-204 based on the type, volume, and nature of
4156 insurance business transacted by the captive insurance company;
- 4157 (e) waive or modify a requirement for public notice and hearing for the following by a
4158 captive insurance company:
- 4159 (i) merger;
- 4160 (ii) consolidation;
- 4161 (iii) conversion;
- 4162 (iv) mutualization;
- 4163 (v) redomestication; or
- 4164 (vi) acquisition;
- 4165 (f) approve the use of one or more reliable methods of valuation and rating for:
- 4166 (i) an association captive insurance company;
- 4167 (ii) a sponsored captive insurance company; or
- 4168 (iii) an industrial insured group;
- 4169 (g) prohibit or limit an investment that threatens the solvency or liquidity of:
- 4170 (i) a pure captive insurance company; or
- 4171 (ii) an industrial insured captive insurance company;
- 4172 (h) determine the financial reports a sponsored captive insurance company shall
4173 annually file with the commissioner;
- 4174 (i) prescribe the required forms and reports under Section 31A-37-501; [~~and~~]
- 4175 (j) establish one or more standards to ensure that:
- 4176 (i) one of the following is able to exercise control of the risk management function of a
4177 controlled unaffiliated business to be insured by a pure captive insurance company:
- 4178 (A) a parent; or
- 4179 (B) an affiliated company of a parent; or

4180 (ii) one of the following is able to exercise control of the risk management function of
4181 a controlled unaffiliated business to be insured by an industrial insured captive insurance
4182 company:

4183 (A) an industrial insured; or

4184 (B) an affiliated company of the industrial insured[-]; and

4185 (k) establish requirements for obtaining, maintaining, and renewing a certificate of
4186 dormancy.

4187 (2) Notwithstanding Subsection (1)(j), until the commissioner adopts the rules
4188 authorized under Subsection (1)(j), the commissioner may by temporary order grant authority
4189 to insure risks to:

4190 (a) a pure captive insurance company; or

4191 (b) an industrial insured captive insurance company.

4192 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a
4193 captive insurance company as necessary to enable the commissioner to secure compliance with
4194 this chapter.

4195 Section 45. Section **31A-37-201** is amended to read:

4196 **31A-37-201. Certificate of authority.**

4197 (1) The commissioner may issue a certificate of authority to act as an insurer in this
4198 state to a captive insurance company that meets the requirements of this chapter.

4199 (2) To conduct insurance business in this state, a captive insurance company shall:

4200 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
4201 insurance business in this state;

4202 (b) hold at least once each year in the state a meeting of the governing body;

4203 (c) maintain in this state:

4204 (i) the principal place of business of the captive insurance company; or

4205 (ii) in the case of a branch captive insurance company, the principal place of business
4206 for the branch operations of the branch captive insurance company; and

4207 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
4208 service of process and to otherwise act on behalf of the captive insurance company in the state.

4209 (3) In the case of a captive insurance company formed as a corporation, if the
4210 registered agent cannot with reasonable diligence be found at the registered office of the

4211 captive insurance company, the commissioner is the agent of the captive insurance company
4212 upon whom process, notice, or demand may be served.

4213 (4) (a) Before receiving a certificate of authority, an applicant captive insurance
4214 company shall file with the commissioner:

4215 (i) a certified copy of the captive insurance company's organizational charter;

4216 (ii) a statement under oath of the captive insurance company's president and secretary
4217 or their equivalents showing the captive insurance company's financial condition; and

4218 (iii) any other statement or document required by the commissioner under Section
4219 [31A-37-106](#).

4220 (b) In addition to the information required under Subsection (4)(a), an applicant captive
4221 insurance company shall file with the commissioner evidence of:

4222 (i) the amount and liquidity of the assets of the applicant captive insurance company
4223 relative to the risks to be assumed by the applicant captive insurance company;

4224 (ii) the adequacy of the expertise, experience, and character of the person who will
4225 manage the applicant captive insurance company;

4226 (iii) the overall soundness of the plan of operation of the applicant captive insurance
4227 company;

4228 (iv) the adequacy of the loss prevention programs for the prospective insureds of the
4229 applicant captive insurance company as the commissioner deems necessary; and

4230 (v) any other factor the commissioner:

4231 (A) adopts by rule under Section [31A-37-106](#); and

4232 (B) considers relevant in ascertaining whether the applicant captive insurance company
4233 will be able to meet the policy obligations of the applicant captive insurance company.

4234 (c) In addition to the information required by Subsections (4)(a) and (b), an applicant
4235 sponsored captive insurance company shall file with the commissioner:

4236 (i) a business plan at the level of detail required by the commissioner under Section
4237 [31A-37-106](#) demonstrating:

4238 (A) the manner in which the applicant sponsored captive insurance company will
4239 account for the losses and expenses of each protected cell; and

4240 (B) the manner in which the applicant sponsored captive insurance company will report
4241 to the commissioner the financial history, including losses and expenses, of each protected cell;

4242 (ii) a statement acknowledging that the applicant sponsored captive insurance company
4243 will make all financial records of the applicant sponsored captive insurance company,
4244 including records pertaining to a protected cell, available for inspection or examination by the
4245 commissioner;

4246 (iii) a contract or sample contract between the applicant sponsored captive insurance
4247 company and a participant; and

4248 (iv) evidence that expenses will be allocated to each protected cell in an equitable
4249 manner.

4250 (5) (a) Information submitted pursuant to this section is classified as a protected record
4251 under Title 63G, Chapter 2, Government Records Access and Management Act.

4252 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and
4253 Management Act, the commissioner may disclose information submitted pursuant to this
4254 section to a public official having jurisdiction over the regulation of insurance in another state
4255 if:

4256 (i) the public official receiving the information agrees in writing to maintain the
4257 confidentiality of the information; and

4258 (ii) the laws of the state in which the public official serves require the information to be
4259 confidential.

4260 (c) This Subsection (5) does not apply to information provided by an industrial insured
4261 captive insurance company insuring the risks of an industrial insured group.

4262 (6) (a) A captive insurance company shall pay to the department the following
4263 nonrefundable fees established by the department under Sections [31A-3-103](#), [31A-3-304](#), and
4264 [63J-1-504](#):

4265 (i) a fee for examining, investigating, and processing, by a department employee, of an
4266 application for a certificate of authority made by an applicant captive insurance company;

4267 (ii) a fee for obtaining a certificate of authority for the year the captive insurance
4268 company is issued a certificate of authority by the department; and

4269 (iii) a certificate of authority renewal fee, assessed annually.

4270 (b) The commissioner may:

4271 (i) assign a department employee or retain legal, financial, or examination services
4272 from outside the department to perform the services described in:

4273 (A) Subsection (6)(a); and
4274 (B) Section 31A-37-502; and
4275 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the
4276 applicant captive insurance company.

4277 (7) If the commissioner is satisfied that the documents and statements filed by the
4278 applicant captive insurance company comply with this chapter, the commissioner may grant a
4279 certificate of authority authorizing the company to do insurance business in this state.

4280 (8) A certificate of authority granted under this section expires annually and shall be
4281 renewed by July 1 of each year.

4282 Section 46. Section 31A-37-202 is repealed and reenacted to read:

4283 **31A-37-202. Permissive areas of insurance.**

4284 (1) Except as provided in Subsections (2) and (3), a captive insurance company may
4285 not directly insure a risk other than the risk of the captive insurance company's parent or
4286 affiliated company.

4287 (2) In addition to the risks described in Subsection (1), an association captive insurance
4288 company may insure the risk of:

4289 (a) a member organization of the association captive insurance company's association;
4290 or

4291 (b) an affiliate of a member organization of the association captive insurance
4292 company's association.

4293 (3) The following may insure a risk of a controlled unaffiliated business:

4294 (a) an industrial insured captive insurance company;

4295 (b) a protected cell;

4296 (c) a pure captive insurance company; or

4297 (d) a sponsored captive insurance company.

4298 (4) To the extent allowed by a captive insurance company's organizational charter, a
4299 captive insurance company may provide any type of insurance described in this title, except:

4300 (a) workers' compensation insurance;

4301 (b) personal motor vehicle insurance;

4302 (c) homeowners' insurance; and

4303 (d) any component of the types of insurance described in Subsections (4)(a) through

4304 (c).

4305 (5) A captive insurance company may not provide coverage for:

4306 (a) a wager or gaming risk;

4307 (b) loss of an election;

4308 (c) the penal consequences of a crime; or

4309 (d) punitive damages.

4310 (6) Notwithstanding Subsection (4), if approved by the commissioner, a captive

4311 insurance company may insure as a reimbursement a limited layer or deductible of workers'

4312 compensation coverage.

4313 Section 47. Section **31A-37-203** is amended to read:

4314 **31A-37-203. Deceptive name prohibited.**

4315 (1) A captive insurance company may not adopt a name that is:

4316 ~~[(1)]~~ (a) the same as any other existing business name registered in this state;

4317 ~~[(2)]~~ (b) deceptively similar to any other existing business name registered in this state;

4318 or

4319 ~~[(3)]~~ (c) likely to be:

4320 ~~[(a)]~~ (i) confused with any other existing business name registered in this state; or

4321 ~~[(b)]~~ (ii) mistaken for any other existing business name registered in this state.

4322 (2) An applicant captive insurance company that submits an application for a certificate

4323 of authority on or after May 14, 2019, or a captive insurance company that changes its name on

4324 or after May 14, 2019, shall include the word "insurance" or a term of equivalent meaning in its

4325 name.

4326 Section 48. Section **31A-37-301** is amended to read:

4327 **31A-37-301. Formation.**

4328 (1) A ~~[pure]~~ captive insurance company ~~[or a sponsored captive insurance company~~

4329 ~~formed as a stock insurer shall be incorporated as a stock insurer with the capital of the pure~~

4330 ~~captive insurance company or sponsored captive insurance company];~~ other than a branch

4331 captive insurance company, may be formed as a corporation or a limited liability company.

4332 ~~[(a) divided into shares; and]~~

4333 ~~[(b) held by the stockholders of the pure captive insurance company or sponsored~~

4334 ~~captive insurance company;]~~

4335 ~~[(2) A pure captive insurance company or a sponsored captive insurance company~~
4336 ~~formed as a limited liability company shall be organized as a members' interest insurer with the~~
4337 ~~capital of the pure captive insurance company or sponsored captive insurance company:]~~
4338 ~~[(a) divided into interests; and]~~
4339 ~~[(b) held by the members of the pure captive insurance company or sponsored captive~~
4340 ~~insurance company:]~~
4341 ~~[(3) An association captive insurance company or an industrial insured captive~~
4342 ~~insurance company may be:]~~
4343 ~~[(a) incorporated as a stock insurer with the capital of the association captive insurance~~
4344 ~~company or industrial insured captive insurance company:]~~
4345 ~~[(i) divided into shares; and]~~
4346 ~~[(ii) held by the stockholders of the association captive insurance company or industrial~~
4347 ~~insured captive insurance company:]~~
4348 ~~[(b) incorporated as a mutual insurer without capital stock, with a governing body~~
4349 ~~elected by the member organizations of the association captive insurance company or industrial~~
4350 ~~insured captive insurance company; or]~~
4351 ~~[(c) organized as a limited liability company with the capital of the association captive~~
4352 ~~insurance company or industrial insured captive insurance company:]~~
4353 ~~[(i) divided into interests; and]~~
4354 ~~[(ii) held by the members of the association captive insurance company or industrial~~
4355 ~~insured captive insurance company.]~~
4356 (2) The capital of a captive insurance company shall be held by:
4357 (a) the interest holders of the captive insurance company; or
4358 (b) a governing body elected by:
4359 (i) the insureds;
4360 (ii) one or more affiliates; or
4361 (iii) a combination of the persons described in Subsections (2)(b)(i) and (ii).
4362 ~~[(4)]~~ (3) A captive insurance company formed [as a corporation may not have fewer
4363 than three incorporators of whom one shall be a resident of this state] in this state shall have at
4364 least one establisher who is an individual and a resident of the state.
4365 ~~[(5) A captive insurance company formed as a limited liability company may not have~~

4366 fewer than three organizers of whom one shall be a resident of this state.]

4367 [~~(6) (a) Before a captive insurance company formed as a corporation files the~~
4368 corporation's articles of incorporation with the Division of Corporations and Commercial
4369 Code, the incorporators shall obtain from the commissioner a certificate finding that the
4370 establishment and maintenance of the proposed corporation will promote the general good of
4371 the state.]

4372 (4) (a) An applicant captive insurance company's establishers shall obtain a certificate
4373 of public good from the commissioner before filing its governing documents with the Division
4374 of Corporations and Commercial Code.

4375 (b) In considering a request for a certificate under Subsection ~~[(6)]~~ (4)(a), the
4376 commissioner shall consider:

4377 (i) the character, reputation, financial standing, and purposes of the ~~[incorporators]~~
4378 establishers;

4379 (ii) the character, reputation, financial responsibility, insurance experience, and
4380 business qualifications of the principal officers ~~[and directors]~~ or members of the governing
4381 body;

4382 (iii) any information in:

4383 (A) the application for a certificate of authority; or

4384 (B) the department's files; and

4385 (iv) other aspects that the commissioner considers advisable.

4386 ~~[(7) (a) Before a captive insurance company formed as a limited liability company files~~
4387 ~~the limited liability company's certificate of organization with the Division of Corporations and~~
4388 ~~Commercial Code, the limited liability company shall obtain from the commissioner a~~
4389 ~~certificate finding that the establishment and maintenance of the proposed limited liability~~
4390 ~~company will promote the general good of the state.]~~

4391 ~~[(b) In considering a request for a certificate under Subsection (7)(a), the commissioner~~
4392 ~~shall consider:]~~

4393 ~~[(i) the character, reputation, financial standing, and purposes of the organizers;]~~

4394 ~~[(ii) the character, reputation, financial responsibility, insurance experience, and~~
4395 ~~business qualifications of the managers;]~~

4396 ~~[(iii) any information in:]~~

4397 ~~[(A) the application for a certificate of authority, or]~~
4398 ~~[(B) the department's files; and]~~
4399 ~~[(iv) other aspects that the commissioner considers advisable.]~~
4400 ~~[(8) (a) A captive insurance company formed as a corporation shall file with the~~
4401 ~~Division of Corporations and Commercial Code:]~~
4402 ~~[(i) the captive insurance company's articles of incorporation;]~~
4403 ~~[(ii) the certificate issued pursuant to Subsection (6); and]~~
4404 ~~[(iii) the fees required by the Division of Corporations and Commercial Code.]~~
4405 ~~[(b) The Division of Corporations and Commercial Code shall file both the articles of~~
4406 ~~incorporation and the certificate described in Subsection (6) for a captive insurance company~~
4407 ~~that complies with this section.]~~
4408 ~~[(9) (a) A captive insurance company formed as a limited liability company shall file~~
4409 ~~with the Division of Corporations and Commercial Code:]~~
4410 ~~[(i) the captive insurance company's certificate of organization;]~~
4411 ~~[(ii) the certificate issued pursuant to Subsection (7); and]~~
4412 ~~[(iii) the fees required by the Division of Corporations and Commercial Code.]~~
4413 ~~[(b) The Division of Corporations and Commercial Code shall file both the certificate~~
4414 ~~of organization and the certificate described in Subsection (7) for a captive insurance company~~
4415 ~~that complies with this section.]~~
4416 ~~[(10) (a) The organizers of a captive insurance company formed as a reciprocal insurer~~
4417 ~~shall obtain from the commissioner a certificate finding that the establishment and maintenance~~
4418 ~~of the proposed association will promote the general good of the state.]~~
4419 ~~[(b) In considering a request for a certificate under Subsection (10)(a), the~~
4420 ~~commissioner shall consider:]~~
4421 ~~[(i) the character, reputation, financial standing, and purposes of the incorporators;]~~
4422 ~~[(ii) the character, reputation, financial responsibility, insurance experience, and~~
4423 ~~business qualifications of the officers and directors;]~~
4424 ~~[(iii) any information in:]~~
4425 ~~[(A) the application for a certificate of authority, or]~~
4426 ~~[(B) the department's files; and]~~
4427 ~~[(iv) other aspects that the commissioner considers advisable.]~~

4428 ~~[(11) (a) An alien captive insurance company that has received a certificate of authority~~
4429 ~~to act as a branch captive insurance company shall obtain from the commissioner a certificate~~
4430 ~~finding that:]~~

4431 ~~[(i) the home jurisdiction of the alien captive insurance company imposes statutory or~~
4432 ~~regulatory standards in a form acceptable to the commissioner on companies transacting the~~
4433 ~~business of insurance in that state; and]~~

4434 ~~[(ii) after considering the character, reputation, financial responsibility, insurance~~
4435 ~~experience, and business qualifications of the officers and directors of the alien captive~~
4436 ~~insurance company, and other relevant information, the establishment and maintenance of the~~
4437 ~~branch operations will promote the general good of the state.]~~

4438 ~~[(b) After the commissioner issues a certificate under Subsection (11)(a) to an alien~~
4439 ~~captive insurance company, the alien captive insurance company may register to do business in~~
4440 ~~this state.]~~

4441 ~~[(12) At least one of the members of the board of directors of a captive insurance~~
4442 ~~company formed as a corporation shall be a resident of this state.]~~

4443 ~~[(13) At least one of the managers of a limited liability company shall be a resident of~~
4444 ~~this state.]~~

4445 (5) (a) Except as otherwise provided in this title, the governing body of a captive
4446 insurance company shall consist of at least three individuals as members, at least one of whom
4447 is a resident of the state.

4448 (b) One-third of the members of the governing body of a captive insurance company
4449 constitutes a quorum of the governing body.

4450 (6) A captive insurance company shall have at least three individuals as principal
4451 officers with duties comparable to those of president, treasurer, and secretary.

4452 ~~[(14)]~~ (7) (a) A captive insurance company formed as a corporation [under this chapter
4453 has the privileges and is subject to the provisions of the general corporation law as well as the
4454 applicable provisions contained in this chapter. (b) If] is subject to the provisions of Title 16,
4455 Chapter 10a, Utah Revised Business Corporation Act, and this chapter. If a conflict exists
4456 between a provision of [the general corporation law] Title 16, Chapter 10a, Utah Revised
4457 Business Corporation Act, and a provision of this chapter, this chapter [shall control] controls.

4458 (b) A captive insurance company formed as a limited liability company is subject to the

4459 provisions of Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, and
4460 this chapter. If a conflict exists between a provision of Title 48, Chapter 3a, Utah Revised
4461 Uniform Limited Liability Company Act, and a provision of this chapter, this chapter controls.

4462 (c) Except as provided in Subsection ~~[(14)]~~ (7)(d), the provisions of this title
4463 ~~[pertaining to]~~ that govern a merger, consolidation, conversion, mutualization, and
4464 redomestication apply ~~[in determining the procedures to be followed by]~~ to a captive insurance
4465 company in carrying out any of the transactions described in those provisions.

4466 (d) Notwithstanding Subsection ~~[(14)]~~ (7)(c), the commissioner may waive or modify
4467 the requirements for public notice and hearing in accordance with rules adopted under Section
4468 [31A-37-106](#).

4469 (e) If a notice of public hearing is required, but no one requests a hearing, the
4470 commissioner may cancel the public hearing.

4471 ~~[(15) (a) A captive insurance company formed as a limited liability company under this~~
4472 ~~chapter has the privileges and is subject to Title 48, Chapter 3a, Utah Revised Uniform Limited~~
4473 ~~Liability Company Act, as well as the applicable provisions in this chapter.]~~

4474 ~~[(b) If a conflict exists between a provision of the limited liability company law and a~~
4475 ~~provision of this chapter, this chapter controls.]~~

4476 ~~[(c) The provisions of this title pertaining to a merger, consolidation, conversion,~~
4477 ~~mutualization, and redomestication apply in determining the procedures to be followed by a~~
4478 ~~captive insurance company in carrying out any of the transactions described in those~~
4479 ~~provisions.]~~

4480 ~~[(d) Notwithstanding Subsection (15)(c), the commissioner may waive or modify the~~
4481 ~~requirements for public notice and hearing in accordance with rules adopted under Section~~
4482 ~~[31A-37-106](#).]~~

4483 ~~[(e) If a notice of public hearing is required, but no one requests a hearing, the~~
4484 ~~commissioner may cancel the public hearing.]~~

4485 ~~[(16) (a) The articles of incorporation or bylaws of a captive insurance company~~
4486 ~~formed as a corporation may not authorize a quorum of a board of directors to consist of fewer~~
4487 ~~than one-third of the fixed or prescribed number of directors as provided in Section~~
4488 ~~[16-10a-824](#).]~~

4489 ~~[(b) The certificate of organization of a captive insurance company formed as a limited~~

4490 liability company may not authorize a quorum of a board of managers to consist of fewer than
4491 one-third of the fixed or prescribed number of directors required in Section ~~16-10a-824.~~]

4492 Section 49. Section ~~31A-37-401~~ is amended to read:

4493 **31A-37-401. Sponsored captive insurance companies -- Formation.**

4494 (1) One or more sponsors may form a sponsored captive insurance company under this
4495 chapter.

4496 (2) A sponsored captive insurance company formed under this chapter may establish
4497 and maintain a protected cell to insure risks of a participant if:

4498 (a) the ~~[shareholders]~~ interest holders of a sponsored captive insurance company are
4499 limited to:

4500 (i) the participants of the sponsored captive insurance company; and

4501 (ii) the sponsors of the sponsored captive insurance company;

4502 (b) each protected cell is accounted for separately on the books and records of the
4503 sponsored cell captive insurance company to reflect:

4504 (i) the financial condition of each individual protected cell;

4505 (ii) the results of operations of each individual protected cell;

4506 (iii) the net income or loss of each individual protected cell;

4507 (iv) the dividends or other distributions to participants of each individual protected
4508 cell; and

4509 (v) other factors that may be:

4510 (A) provided in the participant contract; or

4511 (B) required by the commissioner;

4512 (c) the assets of a protected cell are not chargeable with liabilities arising out of any
4513 other insurance business the sponsored captive insurance company may conduct;

4514 (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive
4515 insurance company between or among any of the protected cells of the sponsored captive
4516 insurance company without the consent of the protected cells;

4517 (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a
4518 protected cell to a sponsor or participant without the commissioner's approval, which may not
4519 be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or
4520 impairment with respect to a protected cell;

4521 (f) a sponsored captive insurance company annually files with the commissioner
4522 financial reports the commissioner requires under Section 31A-37-106, including accounting
4523 statements detailing the financial experience of each protected cell;

4524 (g) a sponsored captive insurance company notifies the commissioner in writing within
4525 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or
4526 expense obligations of the protected cell;

4527 (h) a participant contract does not take effect without the commissioner's prior written
4528 approval;

4529 (i) the addition of each new protected cell and withdrawal of a participant of any
4530 existing protected cell does not take effect without the commissioner's prior written approval;
4531 and

4532 (j) (i) a protected cell captive insurance company shall pay to the department the
4533 following nonrefundable fees established by the department under Sections 31A-3-103,
4534 31A-3-304, and 63J-1-504:

4535 (A) a fee for examining, investigating, and processing by a department employee of an
4536 application for a certificate of authority made by a protected cell captive insurance company;

4537 (B) a fee for obtaining a certificate of authority for the year the protected cell captive
4538 insurance company is issued a certificate of authority by the department; and

4539 (C) a certificate of authority renewal fee; and

4540 (ii) a protected cell may be created by the sponsor or the sponsor may create a pooling
4541 insurance arrangement to provide for pooling of risks to allow for risk distribution upon written
4542 approval from every protected cell under the sponsor and written approval of the
4543 commissioner.

4544 Section 50. Section 31A-37-501 is amended to read:

4545 **31A-37-501. Reports to commissioner.**

4546 (1) A captive insurance company is not required to make a report except those
4547 provided in this chapter.

4548 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the
4549 commissioner a report of the financial condition of the captive insurance company, verified by
4550 oath of ~~[one of the]~~ at least two individuals who are executive officers of the captive insurance
4551 company.

4552 (b) Except as provided in Section 31A-37-204, a captive insurance company shall
4553 report:

4554 (i) using generally accepted accounting principles, except to the extent that the
4555 commissioner requires, approves, or accepts the use of a statutory accounting principle;

4556 (ii) using a useful or necessary modification or adaptation to an accounting principle
4557 that is required, approved, or accepted by the commissioner for the type of insurance and kind
4558 of insurer to be reported upon; and

4559 (iii) supplemental or additional information required by the commissioner.

4560 (c) Except as otherwise provided:

4561 (i) a licensed captive insurance company shall file the report required by Section
4562 31A-4-113; and

4563 (ii) an industrial insured group shall comply with Section 31A-4-113.5.

4564 (3) (a) A pure captive insurance company may make written application to file the
4565 required report on a fiscal year end that is consistent with the fiscal year of the parent company
4566 of the pure captive insurance company.

4567 (b) If the commissioner grants an alternative reporting date for a pure captive insurance
4568 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal
4569 year end.

4570 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall
4571 file with the commissioner a copy of the reports and statements required to be filed under the
4572 laws of the jurisdiction in which the alien captive insurance company is formed, verified by
4573 oath by two of the alien captive insurance company's executive officers.

4574 (b) If the commissioner is satisfied that the annual report filed by the alien captive
4575 insurance company in the jurisdiction in which the alien captive insurance company is formed
4576 provides adequate information concerning the financial condition of the alien captive insurance
4577 company, the commissioner may waive the requirement for completion of the annual statement
4578 required for a captive insurance company under this section with respect to business written in
4579 the alien or foreign jurisdiction.

4580 (c) A waiver by the commissioner under Subsection (4)(b):

4581 (i) shall be in writing; and

4582 (ii) is subject to public inspection.

4583 (5) Before March 1 of each year, a sponsored cell captive insurance company shall
4584 submit to the commissioner a consolidated report of the financial condition of each individual
4585 protected cell, including a financial statement for each protected cell.

4586 (6) (a) A captive insurance company shall notify the commissioner in writing if there
4587 is:

4588 (i) a material change to the captive insurance company's most recently filed report of
4589 financial condition; or

4590 (ii) an adverse material change in the financial condition of a captive insurance
4591 company since the captive insurance company's most recently filed report of financial
4592 condition.

4593 (b) A captive insurance company shall submit a notification described in this
4594 subsection within 20 days after the day on which the captive insurance company learns of the
4595 material change.

4596 Section 51. Section **31A-37-502** is amended to read:

4597 **31A-37-502. Examination.**

4598 (1) (a) As provided in this section, the commissioner, or a person appointed by the
4599 commissioner, shall examine each captive insurance company in each five-year period.

4600 (b) The five-year period described in Subsection (1)(a) shall be determined on the basis
4601 of five full annual accounting periods of operation.

4602 (c) The examination is to be made as of:

4603 (i) December 31 of the full five-year period; or

4604 (ii) the last day of the month of an annual accounting period authorized for a captive
4605 insurance company under this section.

4606 (d) In addition to an examination required under this Subsection (1), the commissioner,
4607 or a person appointed by the commissioner may examine a captive insurance company
4608 whenever the commissioner determines it to be prudent.

4609 (2) During an examination under this section the commissioner, or a person appointed
4610 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance
4611 company to ascertain:

4612 (a) the financial condition of the captive insurance company;

4613 (b) the ability of the captive insurance company to fulfill the obligations of the captive

4614 insurance company; and

4615 (c) whether the captive insurance company has complied with this chapter.

4616 (3) The commissioner may accept a comprehensive annual independent audit in lieu of
4617 an examination:

4618 (a) of a scope satisfactory to the commissioner; and

4619 (b) performed by an independent auditor approved by the commissioner.

4620 (4) A captive insurance company that is inspected and examined under this section
4621 shall pay, as provided in Subsection [~~31A-37-202~~] 31A-37-201(6)(b), the expenses and charges
4622 of an inspection and examination.

4623 Section 52. Section **31A-37-503** is amended to read:

4624 **31A-37-503. Classification and use of records.**

4625 (1) The following shall be classified as a protected record under Title 63G, Chapter 2,
4626 Government Records Access and Management Act:

4627 (a) examination, analysis, and licensing application reports under this [~~section~~] chapter;

4628 (b) preliminary examination, analysis, and licensing application reports or results under
4629 this [~~section~~] chapter;

4630 (c) working papers for an examination, analysis, or licensing application review
4631 conducted under this [~~section~~] chapter;

4632 (d) recorded information for an examination, analysis, or licensing application review
4633 conducted under this [~~section~~] chapter; and

4634 (e) documents and copies of documents produced by, obtained by, or disclosed to the
4635 commissioner or any other person in the course of an examination, analysis, or licensing
4636 application review conducted under this [~~section~~] chapter.

4637 (2) This section does not prevent the commissioner from using the information
4638 provided under this section in furtherance of the commissioner's regulatory authority under this
4639 title.

4640 (3) Notwithstanding other provisions of this section, the commissioner may grant
4641 access to the information provided under this section to:

4642 (a) public officers having jurisdiction over the regulation of insurance in any other state
4643 or country; or

4644 (b) law enforcement officers of this state or any other state or agency of the federal

4645 government, if the officers receiving the information agree in writing to hold the information in
4646 a manner consistent with this section.

4647 Section 53. Section **31A-37-701** is enacted to read:

4648 **Part 7. Dormancy.**

4649 **31A-37-701. Certificate of dormancy.**

4650 (1) In accordance with the provisions of this section, a captive insurance company,
4651 other than a risk retention group may apply, without fee, to the commissioner for a certificate
4652 of dormancy.

4653 (2) (a) A captive insurance company, other than a risk retention group, is eligible for a
4654 certificate of dormancy if the captive insurance company:

4655 (i) has ceased transacting the business of insurance, including the issuance of insurance
4656 policies; and

4657 (ii) has no remaining insurance liabilities or obligations associated with insurance
4658 business transactions or insurance policies.

4659 (b) For purposes of Subsection (2)(a)(ii), the commissioner may disregard liabilities or
4660 obligations for which the captive insurance company has withheld sufficient funds or that are
4661 otherwise sufficiently secured.

4662 (3) Except as provided in Subsection (5), a captive insurance company that holds a
4663 certificate of dormancy is subject to all requirements of this chapter.

4664 (4) A captive insurance company that holds a certificate of dormancy:

4665 (a) shall possess and maintain unimpaired paid-in capital and unimpaired paid-in
4666 surplus of:

4667 (i) in the case of a pure captive insurance company or a special purpose captive
4668 insurance company, not less than \$25,000;

4669 (ii) in the case of an association captive insurance company, not less than \$75,000; or

4670 (iii) in the case of a sponsored captive insurance company, not less than \$100,000, of
4671 which at least \$35,000 is provided by the sponsor; and

4672 (b) is not required to:

4673 (i) subject to Subsection (5), submit an annual audit or statement of actuarial opinion;

4674 (ii) maintain an active agreement with an independent auditor or actuary; or

4675 (iii) hold an annual meeting of the captive insurance company in the state.

4676 (5) The commissioner may require a captive insurance company that holds a certificate
4677 of dormancy to submit an annual audit if the commissioner determines that there are concerns
4678 regarding the captive insurance company's solvency or liquidity.

4679 (6) To maintain a certificate of dormancy and in lieu of a certificate of authority
4680 renewal fee, no later than July 1 of each year, a captive insurance company shall pay an annual
4681 dormancy renewal fee that is equal to 50% of the captive insurance's company's certificate of
4682 authority renewal fee.

4683 (7) A captive insurance company may consecutively renew a certificate or dormancy
4684 no more than five times.

4685 Section 54. Section **31A-37-702** is enacted to read:

4686 **31A-37-702. Cancelling a certificate of dormancy.**

4687 A captive insurance company may apply to cancel its certificate of dormancy by
4688 complying with the procedures established in rule made by the commissioner in accordance
4689 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4690 Section 55. Section **31A-45-102** is amended to read:

4691 **31A-45-102. Definitions.**

4692 As used in this chapter:

4693 (1) "Covered benefit" or "benefit" means the health care services to which a covered
4694 person is entitled under the terms of a health ~~[benefit]~~ care insurance plan offered by a
4695 managed care organization.

4696 (2) "Managed care organization" means:

4697 (a) a managed care organization as that term is defined in Section **31A-1-301**; and

4698 (b) a third party administrator as that term is defined in Section **31A-1-301**.

4699 Section 56. Section **31A-45-303** is amended to read:

4700 **31A-45-303. Network provider contract provisions.**

4701 (1) Managed care organizations may provide for enrollees to receive services or
4702 reimbursement ~~[under the health benefit plans]~~ in accordance with this section.

4703 (2) (a) Subject to restrictions under this section, a managed care organization may enter
4704 into contracts with health care providers under which the health care providers agree to be a
4705 network provider and supply services, at prices specified in the contracts, to enrollees.

4706 (b) A network provider contract shall require the network provider to accept the

4707 specified payment in this Subsection (2) as payment in full, relinquishing the right to collect
4708 amounts other than copayments, coinsurance, and deductibles from the enrollee.

4709 (c) The insurance contract may reward the enrollee for selection of network providers
4710 by:

4711 (i) reducing premium rates;

4712 (ii) reducing deductibles;

4713 (iii) coinsurance;

4714 (iv) other copayments; or

4715 (v) any other reasonable manner.

4716 (3) (a) When reimbursing for services of health care providers that are not network
4717 providers, the managed care organization may:

4718 (i) make direct payment to the enrollee; and

4719 (ii) impose a deductible on coverage of health care providers not under contract.

4720 (b) (i) Subsections (3)(b)(iii) and (c) apply to a managed care organization licensed
4721 under:

4722 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

4723 (B) Chapter 7, Nonprofit Health Service Insurance Corporations; or

4724 (C) Chapter 14, Foreign Insurers; and

4725 (ii) Subsections (3)(b)(iii) and (c) and Subsection (6)(b) do not apply to a managed care
4726 organization licensed under Chapter 8, Health Maintenance Organizations and Limited Health
4727 Plans.

4728 (iii) When selecting health care providers with whom to contract under Subsection (2),
4729 a managed care organization described in Subsection (3)(b)(i) may not unfairly discriminate
4730 between classes of health care providers, but may discriminate within a class of health care
4731 providers, subject to Subsection (6).

4732 (c) For purposes of this section, unfair discrimination between classes of health care
4733 providers includes:

4734 (i) refusal to contract with class members in reasonable proportion to the number of
4735 insureds covered by the insurer and the expected demand for services from class members; and

4736 (ii) refusal to cover procedures for one class of providers that are:

4737 (A) commonly used by members of the class of health care providers for the treatment

4738 of illnesses, injuries, or conditions;

4739 (B) otherwise covered by the managed care organization; and

4740 (C) within the scope of practice of the class of health care providers.

4741 (4) Before the enrollee consents to the insurance contract, the managed care

4742 organization shall fully disclose to the enrollee that the managed care organization has entered

4743 into network provider contracts. The managed care organization shall provide sufficient detail

4744 on the network provider contracts to permit the enrollee to agree to the terms of the insurance

4745 contract. The managed care organization shall provide at least the following information:

4746 (a) a list of the health care providers under contract, and if requested their business
4747 locations and specialties;

4748 (b) a description of the insured benefits, including deductibles, coinsurance, or other
4749 copayments;

4750 (c) a description of the quality assurance program required under Subsection (5); and

4751 (d) a description of the adverse benefit determination procedures required under
4752 Section [31A-22-629](#).

4753 (5) (a) A managed care organization using network provider contracts shall maintain a
4754 quality assurance program for assuring that the care provided by the network providers meets
4755 prevailing standards in the state.

4756 (b) The commissioner in consultation with the executive director of the Department of
4757 Health may designate qualified persons to perform an audit of the quality assurance program.
4758 The auditors shall have full access to all records of the managed care organization and the
4759 managed care organization's health care providers, including medical records of individual
4760 patients.

4761 (c) The information contained in the medical records of individual patients shall
4762 remain confidential. All information, interviews, reports, statements, memoranda, or other data
4763 furnished for purposes of the audit and any findings or conclusions of the auditors are
4764 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal
4765 proceeding except hearings before the commissioner concerning alleged violations of this
4766 section.

4767 (6) (a) A health care provider or managed care organization may not discriminate
4768 against a network provider for agreeing to a contract under Subsection (2).

4769 (b) (i) Subsections (6)(b) and (c) apply to a managed care organization that is described
4770 in Subsection (3)(b)(i) and do not apply to a managed care organization described in
4771 Subsection (3)(b)(ii).

4772 (ii) A health care provider licensed to treat an illness or injury within the scope of the
4773 health care provider's practice, that is willing and able to meet the terms and conditions
4774 established by the managed care organization for designation as a network provider, shall be
4775 able to apply for and receive the designation as a network provider. Contract terms and
4776 conditions may include reasonable limitations on the number of designated network providers
4777 based upon substantial objective and economic grounds, or expected use of particular services
4778 based upon prior provider-patient profiles.

4779 (c) Upon the written request of a provider excluded from a network provider contract,
4780 the commissioner may hold a hearing to determine if the managed care organization's exclusion
4781 of the provider is based on the criteria set forth in Subsection (6)(b).

4782 (7) Nothing in this section is to be construed as to require a managed care organization
4783 to offer a certain benefit or service as part of a health benefit plan.

4784 (8) Notwithstanding Subsection (2) or [Subsection] (6)(b), a managed care
4785 organization described in Subsection (3)(b)(i) or third party administrator is not required to, but
4786 may, enter into a contract with a licensed athletic trainer, licensed under Title 58, Chapter 40a,
4787 Athletic Trainer Licensing Act.

4788 Section 57. Section **31A-45-401** is amended to read:

4789 **31A-45-401. Court ordered coverage for minor children who reside outside the**
4790 **service area.**

4791 (1) (a) The requirements of Subsection (2) apply to a managed care organization if the
4792 managed care organization [~~health benefit plan~~]:

4793 (i) restricts coverage for nonemergency services to services provided by contracted
4794 providers within the organization's service area; and

4795 (ii) does not offer a benefit that permits members the option of obtaining covered
4796 services from a non-network provider.

4797 (b) The requirements of Subsection (2) do not apply to a managed care organization if:

4798 (i) the child [~~that is~~] is no longer the subject of a court or administrative support order
4799 [~~is over the age of 18 and is no longer enrolled in high school~~]; or

4800 (ii) a parent's employer offers the parent a choice to select health insurance coverage
4801 that is not a managed care organization plan either at the time of the court or administrative
4802 support order, or at a subsequent open enrollment period. This exemption from Subsection (2)
4803 applies even if the parent ultimately chooses the managed care organization plan.

4804 (2) If a parent is required by a court or administrative support order to provide health
4805 insurance coverage for a child who resides outside of a managed care organization's service
4806 area, the managed care organization shall:

4807 (a) comply with the provisions of Section [31A-22-610.5](#);

4808 (b) allow the enrollee parent to enroll the child on the organization plan;

4809 (c) pay for otherwise covered health care services rendered to the child outside of the
4810 service area by a non-network provider:

4811 (i) if the child, noncustodial parent, or custodial parent has complied with prior
4812 authorization or utilization review otherwise required by the organization; and

4813 (ii) in an amount equal to the dollar amount the organization pays under a noncapitated
4814 arrangement for comparable services to a network provider in the same class of health care
4815 providers as the provider who rendered the services; and

4816 (d) make payments on claims submitted in accordance with Subsection (2)(c) directly
4817 to the provider, custodial parent, the child who obtained benefits, or state Medicaid agency.

4818 (3) (a) The parents of the child who is the subject of the court or administrative support
4819 order are responsible for any charges billed by the provider in excess of those paid by the
4820 organization.

4821 (b) This section does not affect any court or administrative order regarding the
4822 responsibilities between the parents to pay any medical expenses not covered by accident and
4823 health insurance or a managed care organization plan.

4824 (4) The commissioner shall adopt rules as necessary to administer this section and
4825 Section [31A-22-610.5](#).

4826 Section 58. Section [34A-2-110](#) is amended to read:

4827 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**
4828 **Notice.**

4829 (1) As used in this section:

4830 (a) "Corporation" has the same meaning as in Section [76-2-201](#).

- 4831 (b) "Intentionally" has the same meaning as in Section 76-2-103.
- 4832 (c) "Knowingly" has the same meaning as in Section 76-2-103.
- 4833 (d) "Person" has the same meaning as in Section 76-1-601.
- 4834 (e) "Recklessly" has the same meaning as in Section 76-2-103.
- 4835 (f) "Thing of value" means one or more of the following obtained under this chapter or
- 4836 Chapter 3, Utah Occupational Disease Act:
- 4837 (i) workers' compensation insurance coverage;
- 4838 (ii) disability compensation;
- 4839 (iii) a medical benefit;
- 4840 (iv) a good;
- 4841 (v) a professional service;
- 4842 (vi) a fee for a professional service; or
- 4843 (vii) anything of value.
- 4844 (2) (a) A person is guilty of workers' compensation insurance fraud if that person
- 4845 intentionally, knowingly, or recklessly:
- 4846 (i) devises a scheme or artifice to do the following by means of a false or fraudulent
- 4847 pretense, representation, promise, or material omission:
- 4848 (A) obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease
- 4849 Act;
- 4850 (B) avoid paying the premium that an insurer charges, for an employee on the basis of
- 4851 the underwriting criteria applicable to that employee, to obtain a thing of value under this
- 4852 chapter or Chapter 3, Utah Occupational Disease Act; or
- 4853 (C) deprive an employee of a thing of value under this chapter or Chapter 3, Utah
- 4854 Occupational Disease Act; and
- 4855 (ii) communicates or causes a communication with another in furtherance of the
- 4856 scheme or artifice.
- 4857 (b) A violation of this Subsection (2) includes a scheme or artifice to:
- 4858 (i) make or cause to be made a false written or oral statement with the intent to obtain
- 4859 insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act,
- 4860 at a rate that does not reflect the risk, industry, employer, or class code actually covered by the
- 4861 insurance coverage;

4862 (ii) form a business, reorganize a business, or change ownership in a business with the
4863 intent to:

4864 (A) obtain insurance coverage as mandated by this chapter or Chapter 3, Utah
4865 Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class
4866 code actually covered by the insurance coverage;

4867 (B) misclassify an employee as described in Subsection (2)(b)(iii); or

4868 (C) deprive an employee of workers' compensation coverage as required by Subsection
4869 [34A-2-103](#)(8);

4870 (iii) misclassify an employee as one of the following so as to avoid the obligation to
4871 obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational
4872 Disease Act:

4873 (A) an independent contractor;

4874 (B) a sole proprietor;

4875 (C) an owner;

4876 (D) a partner;

4877 (E) an officer; or

4878 (F) a member in a limited liability company;

4879 (iv) use a workers' compensation coverage waiver issued under Part 10, Workers'
4880 Compensation Coverage Waivers Act, to deprive an employee of workers' compensation
4881 coverage under this chapter or Chapter 3, Utah Occupational Disease Act; or

4882 (v) collect or make a claim for temporary disability compensation as provided in
4883 Section [34A-2-410](#) while working for gain.

4884 (3) (a) Workers' compensation insurance fraud under Subsection (2) is punishable in
4885 the manner prescribed in Subsection (3)(c).

4886 (b) A corporation or association is guilty of the offense of workers' compensation
4887 insurance fraud under the same conditions as those set forth in Section [76-2-204](#).

4888 (c) (i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an
4889 offense under Subsection (2) shall be measured by the following on the basis of which creates
4890 the greatest penalty:

4891 (A) the total value of all property, money, or other things obtained or sought to be
4892 obtained by the scheme or artifice described in Subsection (2); or

4893 (B) the number of individuals not covered under this chapter or Chapter 3, Utah
4894 Occupational Disease Act, because of the scheme or artifice described in Subsection (2).
4895 (ii) A person is guilty of:
4896 (A) a class A misdemeanor:
4897 (I) if the value of the property, money, or other thing of value described in Subsection
4898 (3)(c)(i)(A) is less than \$1,000; or
4899 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
4900 individuals described in Subsection (3)(c)(i)(B) is less than five;
4901 (B) a third degree felony:
4902 (I) if the value of the property, money, or other thing of value described in Subsection
4903 (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or
4904 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
4905 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than
4906 50; and
4907 (C) a second degree felony:
4908 (I) if the value of the property, money, or other thing of value described in Subsection
4909 (3)(c)(i)(A) is equal to or greater than \$5,000; or
4910 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
4911 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.
4912 (4) The following are not a necessary element of an offense described in Subsection
4913 (2):
4914 (a) reliance on the part of a person;
4915 (b) the intent on the part of the perpetrator of an offense described in Subsection (2) to
4916 permanently deprive a person of property, money, or anything of value; or
4917 (c) an insurer or self-insured employer giving written notice in accordance with
4918 Subsection (5) that workers' compensation insurance fraud is a crime.
4919 (5) (a) An insurer or self-insured employer who, in connection with this chapter or
4920 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in
4921 Subsection (5)(b) shall cause to be printed or displayed in comparative prominence with other
4922 content on the form the statement: "Any person who knowingly presents false or fraudulent
4923 underwriting information, files or causes to be filed a false or fraudulent claim for disability

4924 compensation or medical benefits, or submits a false or fraudulent report or billing for health
4925 care fees or other professional services is guilty of a crime and may be subject to fines and
4926 confinement in state prison."

4927 (b) Subsection (5)(a) applies to a form upon which a person:

4928 (i) applies for insurance coverage;

4929 (ii) applies for a workers' compensation coverage waiver issued under Part 10,

4930 Workers' Compensation Coverage Waivers Act;

4931 (iii) reports payroll;

4932 (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss;

4933 or

4934 (v) makes a report or gives notice to an insurer or self-insured employer.

4935 (c) An insurer or self-insured employer who issues a check, warrant, or other financial

4936 instrument in payment of compensation issued under this chapter or Chapter 3, Utah

4937 Occupational Disease Act, shall cause to be printed or displayed in comparative prominence

4938 above the area for endorsement a statement substantially similar to the following: "Workers'

4939 compensation insurance fraud is a crime punishable by Utah law."

4940 (d) This Subsection (5) applies only to the legal obligations of an insurer or a
4941 self-insured employer.

4942 (e) A person who violates Subsection (2) is guilty of workers' compensation insurance
4943 fraud, and the failure of an insurer or a self-insured employer to fully comply with this

4944 Subsection (5) is not:

4945 (i) a defense to violating Subsection (2); or

4946 (ii) grounds for suppressing evidence.

4947 (6) In the absence of malice, a person, employer, insurer, or governmental entity that

4948 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim

4949 is not subject to civil liability for libel, slander, or another relevant cause of action.

4950 (7) (a) In an action involving workers' compensation, this section supersedes Title 31A,
4951 Chapter 31, Insurance Fraud Act.

4952 (b) Nothing in this section prohibits the Insurance Department from investigating
4953 violations of this section or from pursuing civil or criminal penalties for violations of this
4954 section in accordance with Section [31A-31-109](#) and this title.

4955 Section 59. Section **36-29-106** is enacted to read:

4956 **36-29-106. Health Reform Task Force.**

4957 (1) There is created the Health Reform Task Force consisting of the following 11
4958 members:

4959 (a) four members of the Senate appointed by the president of the Senate, no more than
4960 three of whom are from the same political party; and

4961 (b) seven members of the House of Representatives appointed by the speaker of the
4962 House of Representatives, no more than five of whom are from the same political party.

4963 (2) (a) The president of the Senate shall designate a member of the Senate appointed
4964 under Subsection (1)(a) as a cochair of the task force.

4965 (b) The speaker of the House of Representatives shall designate a member of the House
4966 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

4967 (3) Salaries and expenses of the members of the task force shall be paid in accordance
4968 with Section [36-2-2](#) and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

4969 (4) The Office of Legislative Research and General Counsel shall provide staff support
4970 to the task force.

4971 (5) The task force shall review and make recommendations on health system reform,
4972 including the following issues:

4973 (a) the need for state statutory and regulatory changes in response to federal actions
4974 affecting health care;

4975 (b) Medicaid and reforms to the Medicaid program;

4976 (c) options for increasing state flexibility, including the use of federal waivers;

4977 (d) the state's health insurance marketplace;

4978 (e) health insurance code modifications;

4979 (f) insurance network adequacy standards and balance billing;

4980 (g) health care provider workforce in the state;

4981 (h) rising health care costs; and

4982 (i) non-opiate pain management options.

4983 (6) A final report, including any proposed legislation, shall be presented to the
4984 Business and Labor Interim Committee and Health and Human Services Interim Committee
4985 before November 30, 2019, and November 30, 2020.

4986 Section 60. Section **58-1-501.7** is amended to read:

4987 **58-1-501.7. Standards of conduct for prescription drug education -- Academic**
4988 **and commercial detailing.**

4989 (1) For purposes of this section:

4990 (a) "Academic detailing":

4991 (i) means a health care provider who is licensed under this title to prescribe or dispense
4992 a prescription drug and employed by someone other than a pharmaceutical manufacturer:

4993 (A) for the purpose of countering information provided in commercial detailing; and

4994 (B) to disseminate educational information about prescription drugs to other health
4995 care providers in an effort to better align clinical practice with scientific research; and

4996 (ii) does not include a health care provider who:

4997 (A) is disseminating educational information about a prescription drug as part of
4998 teaching or supervising students or graduate medical education students at an institution of
4999 higher education or through a medical residency program;

5000 (B) is disseminating educational information about a prescription drug to a patient or a
5001 patient's representative; or

5002 (C) is acting within the scope of practice for the health care provider regarding the
5003 prescribing or dispensing of a prescription drug.

5004 (b) "Commercial detailing" means an educational practice employed by a
5005 pharmaceutical manufacturer in which clinical information and evidence about a prescription
5006 drug is shared with health care professionals.

5007 (c) "Manufacture" is as defined in Section [58-37-2](#).

5008 (d) "Pharmaceutical manufacturer" is a person who manufactures a prescription drug.

5009 (2) (a) Except as provided in Subsection (3), the provisions of this section apply to an
5010 academic detailer beginning July 1, 2013.

5011 (b) An academic detailer and a commercial detailer who educate another health care
5012 provider about prescription drugs through written or oral educational material is subject to
5013 federal regulations regarding:

5014 (i) false and misleading advertising in 21 C.F.R., Part 201 (2007);

5015 (ii) prescription drug advertising in 21 C.F.R., Part 202 (2007); and

5016 (iii) the federal Office of the Inspector General's Compliance Program Guidance for

5017 Pharmaceutical Manufacturers issued in April 2003, as amended.

5018 (c) A person who is injured by a violation of this section has a private right of action
5019 against a person engaged in academic detailing, if:

5020 (i) the actions of the person engaged in academic detailing, that are a violation of this
5021 section, are:

5022 (A) the result of gross negligence by the person; or

5023 (B) willful and wanton behavior by the person; and

5024 (ii) the damages to the person are reasonable, foreseeable, and proximately caused by
5025 the violations of this section.

5026 (3) (a) For purposes of this Subsection, "accident and health ~~[insurer]~~ insurance":

5027 (i) ~~[is as]~~ means the same as that term is defined in Section 31A-1-301; and

5028 (ii) includes a self-funded health benefit plan and an administrator for a self-funded
5029 health benefit plan.

5030 (b) This section does not apply to a person who engages in academic detailing if that
5031 person is engaged in academic detailing on behalf of:

5032 (i) ~~[an]~~ a person who provides accident and health ~~[insurer]~~ insurance, including when
5033 ~~[an accident and health insurer]~~ the person who provides accident and health insurance
5034 contracts with or offers:

5035 (A) the state Medicaid program, including the Primary Care Network within the state's
5036 Medicaid program;

5037 (B) the Children's Health Insurance Program created in Section 26-40-103;

5038 (C) the state's high risk insurance program created in Section 31A-29-104;

5039 (D) a Medicare plan; ~~[and]~~ or

5040 (E) a Medicare supplement plan;

5041 (ii) a hospital as defined in Section 26-21-2;

5042 (iii) any class of pharmacy as defined in Section 58-17b-102, including any affiliated
5043 pharmacies;

5044 (iv) an integrated health system as defined in Section 13-5b-102; or

5045 (v) a medical clinic.

5046 (c) This section does not apply to communicating or disseminating information about a
5047 prescription drug for the purpose of conducting research using prescription drugs at a health

5048 care facility as defined in Section 26-21-2, or a medical clinic.

5049 Section 61. Section 62A-2-101 is amended to read:

5050 **62A-2-101. Definitions.**

5051 As used in this chapter:

5052 (1) "Adult day care" means nonresidential care and supervision:

5053 (a) for three or more adults for at least four but less than 24 hours a day; and

5054 (b) that meets the needs of functionally impaired adults through a comprehensive
5055 program that provides a variety of health, social, recreational, and related support services in a
5056 protective setting.

5057 (2) "Applicant" means a person who applies for an initial license or a license renewal
5058 under this chapter.

5059 (3) (a) "Associated with the licensee" means that an individual is:

5060 (i) affiliated with a licensee as an owner, director, member of the governing body,
5061 employee, agent, provider of care, department contractor, or volunteer; or

5062 (ii) applying to become affiliated with a licensee in a capacity described in Subsection
5063 (3)(a)(i).

5064 (b) "Associated with the licensee" does not include:

5065 (i) service on the following bodies, unless that service includes direct access to a child
5066 or a vulnerable adult:

5067 (A) a local mental health authority described in Section 17-43-301;

5068 (B) a local substance abuse authority described in Section 17-43-201; or

5069 (C) a board of an organization operating under a contract to provide mental health or
5070 substance abuse programs, or services for the local mental health authority or substance abuse
5071 authority; or

5072 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
5073 at all times.

5074 (4) (a) "Boarding school" means a private school that:

5075 (i) uses a regionally accredited education program;

5076 (ii) provides a residence to the school's students:

5077 (A) for the purpose of enabling the school's students to attend classes at the school; and

5078 (B) as an ancillary service to educating the students at the school;

5079 (iii) has the primary purpose of providing the school's students with an education, as
5080 defined in Subsection (4)(b)(i); and

5081 (iv) (A) does not provide the treatment or services described in Subsection (33)(a); or

5082 (B) provides the treatment or services described in Subsection (33)(a) on a limited
5083 basis, as described in Subsection (4)(b)(ii).

5084 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for
5085 one or more of grades kindergarten through 12th grade.

5086 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or
5087 services described in Subsection (33)(a) on a limited basis if:

5088 (A) the treatment or services described in Subsection (33)(a) are provided only as an
5089 incidental service to a student; and

5090 (B) the school does not:

5091 (I) specifically solicit a student for the purpose of providing the treatment or services
5092 described in Subsection (33)(a); or

5093 (II) have a primary purpose of providing the treatment or services described in
5094 Subsection (33)(a).

5095 (c) "Boarding school" does not include a therapeutic school.

5096 (5) "Child" means a person under 18 years of age.

5097 (6) "Child placing" means receiving, accepting, or providing custody or care for any
5098 child, temporarily or permanently, for the purpose of:

5099 (a) finding a person to adopt the child;

5100 (b) placing the child in a home for adoption; or

5101 (c) foster home placement.

5102 (7) "Child-placing agency" means a person that engages in child placing.

5103 (8) "Client" means an individual who receives or has received services from a licensee.

5104 (9) "Day treatment" means specialized treatment that is provided to:

5105 (a) a client less than 24 hours a day; and

5106 (b) four or more persons who:

5107 (i) are unrelated to the owner or provider; and

5108 (ii) have emotional, psychological, developmental, physical, or behavioral
5109 dysfunctions, impairments, or chemical dependencies.

- 5110 (10) "Department" means the Department of Human Services.
- 5111 (11) "Department contractor" means an individual who:
- 5112 (a) provides services under a contract with the department; and
- 5113 (b) due to the contract with the department, has or will likely have direct access to a
- 5114 child or vulnerable adult.
- 5115 (12) "Direct access" means that an individual has, or likely will have:
- 5116 (a) contact with or access to a child or vulnerable adult that provides the individual
- 5117 with an opportunity for personal communication or touch; or
- 5118 (b) an opportunity to view medical, financial, or other confidential personal identifying
- 5119 information of the child, the child's parents or legal guardians, or the vulnerable adult.
- 5120 (13) "Directly supervised" means that an individual is being supervised under the
- 5121 uninterrupted visual and auditory surveillance of another individual who has a current
- 5122 background screening approval issued by the office.
- 5123 (14) "Director" means the director of the Office of Licensing.
- 5124 (15) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).
- 5125 (16) "Domestic violence treatment program" means a nonresidential program designed
- 5126 to provide psychological treatment and educational services to perpetrators and victims of
- 5127 domestic violence.
- 5128 (17) "Elder adult" means a person 65 years of age or older.
- 5129 (18) "Executive director" means the executive director of the department.
- 5130 (19) "Foster home" means a residence that is licensed or certified by the Office of
- 5131 Licensing for the full-time substitute care of a child.
- 5132 (20) "Health benefit plan" means the same as that term is defined in Section
- 5133 [\[31A-22-619.6\]](#) [31A-1-301](#).
- 5134 (21) "Health care provider" means the same as that term is defined in Section
- 5135 [78B-3-403](#).
- 5136 (22) "Health insurer" means the same as that term is defined in Section [31A-22-615.5](#).
- 5137 (23) (a) "Human services program" means a:
- 5138 (i) foster home;
- 5139 (ii) therapeutic school;
- 5140 (iii) youth program;

- 5141 (iv) resource family home;
- 5142 (v) recovery residence; or
- 5143 (vi) facility or program that provides:
 - 5144 (A) secure treatment;
 - 5145 (B) inpatient treatment;
 - 5146 (C) residential treatment;
 - 5147 (D) residential support;
 - 5148 (E) adult day care;
 - 5149 (F) day treatment;
 - 5150 (G) outpatient treatment;
 - 5151 (H) domestic violence treatment;
 - 5152 (I) child-placing services;
 - 5153 (J) social detoxification; or
 - 5154 (K) any other human services that are required by contract with the department to be
 - 5155 licensed with the department.
- 5156 (b) "Human services program" does not include:
 - 5157 (i) a boarding school; or
 - 5158 (ii) a residential, vocational and life skills program, as defined in Section [13-53-102](#).
- 5159 (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 5160 (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- 5161 (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 5162 (27) "Licensee" means an individual or a human services program licensed by the
- 5163 office.
- 5164 (28) "Local government" means a city, town, metro township, or county.
- 5165 (29) "Minor" has the same meaning as "child."
- 5166 (30) "Office" means the Office of Licensing within the Department of Human Services.
- 5167 (31) "Outpatient treatment" means individual, family, or group therapy or counseling
- 5168 designed to improve and enhance social or psychological functioning for those whose physical
- 5169 and emotional status allows them to continue functioning in their usual living environment.
- 5170 (32) "Practice group" or "group practice" means two or more health care providers
- 5171 legally organized as a partnership, professional corporation, or similar association, for which:

5172 (a) substantially all of the services of the health care providers who are members of the
5173 group are provided through the group and are billed in the name of the group and amounts
5174 received are treated as receipts of the group; and

5175 (b) the overhead expenses of and the income from the practice are distributed in
5176 accordance with methods previously determined by members of the group.

5177 (33) (a) "Recovery residence" means a home, residence, or facility that meets at least
5178 two of the following requirements:

5179 (i) provides a supervised living environment for individuals recovering from a
5180 substance use disorder;

5181 (ii) provides a living environment in which more than half of the individuals in the
5182 residence are recovering from a substance use disorder;

5183 (iii) provides or arranges for residents to receive services related to their recovery from
5184 a substance use disorder, either on or off site;

5185 (iv) is held out as a living environment in which individuals recovering from substance
5186 abuse disorders live together to encourage continued sobriety; or

5187 (v) (A) receives public funding; or

5188 (B) is run as a business venture, either for-profit or not-for-profit.

5189 (b) "Recovery residence" does not mean:

5190 (i) a residential treatment program;

5191 (ii) residential support; or

5192 (iii) a home, residence, or facility, in which:

5193 (A) residents, by their majority vote, establish, implement, and enforce policies

5194 governing the living environment, including the manner in which applications for residence are
5195 approved and the manner in which residents are expelled;

5196 (B) residents equitably share rent and housing-related expenses; and

5197 (C) a landlord, owner, or operator does not receive compensation, other than fair
5198 market rental income, for establishing, implementing, or enforcing policies governing the
5199 living environment.

5200 (34) "Regular business hours" means:

5201 (a) the hours during which services of any kind are provided to a client; or

5202 (b) the hours during which a client is present at the facility of a licensee.

5203 (35) (a) "Residential support" means arranging for or providing the necessities of life
5204 as a protective service to individuals or families who have a disability or who are experiencing
5205 a dislocation or emergency that prevents them from providing these services for themselves or
5206 their families.

5207 (b) "Residential support" includes providing a supervised living environment for
5208 persons with dysfunctions or impairments that are:

- 5209 (i) emotional;
- 5210 (ii) psychological;
- 5211 (iii) developmental; or
- 5212 (iv) behavioral.

5213 (c) Treatment is not a necessary component of residential support.

5214 (d) "Residential support" does not include:

- 5215 (i) a recovery residence; or
- 5216 (ii) residential services that are performed:
 - 5217 (A) exclusively under contract with the Division of Services for People with
 - 5218 Disabilities; or
 - 5219 (B) in a facility that serves fewer than four individuals.

5220 (36) (a) "Residential treatment" means a 24-hour group living environment for four or
5221 more individuals unrelated to the owner or provider that offers room or board and specialized
5222 treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation
5223 services for persons with emotional, psychological, developmental, or behavioral dysfunctions,
5224 impairments, or chemical dependencies.

5225 (b) "Residential treatment" does not include a:

- 5226 (i) boarding school;
- 5227 (ii) foster home; or
- 5228 (iii) recovery residence.

5229 (37) "Residential treatment program" means a human services program that provides:

- 5230 (a) residential treatment; or
- 5231 (b) secure treatment.

5232 (38) (a) "Secure treatment" means 24-hour specialized residential treatment or care for
5233 persons whose current functioning is such that they cannot live independently or in a less

5234 restrictive environment.

5235 (b) "Secure treatment" differs from residential treatment to the extent that it requires
5236 intensive supervision, locked doors, and other security measures that are imposed on residents
5237 with neither their consent nor control.

5238 (39) "Social detoxification" means short-term residential services for persons who are
5239 experiencing or have recently experienced drug or alcohol intoxication, that are provided
5240 outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility
5241 Licensing and Inspection Act, and that include:

5242 (a) room and board for persons who are unrelated to the owner or manager of the
5243 facility;

5244 (b) specialized rehabilitation to acquire sobriety; and

5245 (c) aftercare services.

5246 (40) "Substance abuse disorder" or "substance use disorder" mean the same as
5247 "substance use disorder" is defined in Section [62A-15-1202](#).

5248 (41) "Substance abuse treatment program" or "substance use disorder treatment
5249 program" means a program:

5250 (a) designed to provide:

5251 (i) specialized drug or alcohol treatment;

5252 (ii) rehabilitation; or

5253 (iii) habilitation services; and

5254 (b) that provides the treatment or services described in Subsection (40)(a) to persons
5255 with:

5256 (i) a diagnosed substance use disorder; or

5257 (ii) chemical dependency disorder.

5258 (42) "Therapeutic school" means a residential group living facility:

5259 (a) for four or more individuals that are not related to:

5260 (i) the owner of the facility; or

5261 (ii) the primary service provider of the facility;

5262 (b) that serves students who have a history of failing to function:

5263 (i) at home;

5264 (ii) in a public school; or

- 5265 (iii) in a nonresidential private school; and
- 5266 (c) that offers:
 - 5267 (i) room and board; and
 - 5268 (ii) an academic education integrated with:
 - 5269 (A) specialized structure and supervision; or
 - 5270 (B) services or treatment related to:
 - 5271 (I) a disability;
 - 5272 (II) emotional development;
 - 5273 (III) behavioral development;
 - 5274 (IV) familial development; or
 - 5275 (V) social development.
- 5276 (43) "Unrelated persons" means persons other than parents, legal guardians,
- 5277 grandparents, brothers, sisters, uncles, or aunts.
- 5278 (44) "Vulnerable adult" means an elder adult or an adult who has a temporary or
- 5279 permanent mental or physical impairment that substantially affects the person's ability to:
 - 5280 (a) provide personal protection;
 - 5281 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - 5282 (c) obtain services necessary for health, safety, or welfare;
 - 5283 (d) carry out the activities of daily living;
 - 5284 (e) manage the adult's own resources; or
 - 5285 (f) comprehend the nature and consequences of remaining in a situation of abuse,
 - 5286 neglect, or exploitation.
- 5287 (45) (a) "Youth program" means a nonresidential program designed to provide
- 5288 behavioral, substance abuse, or mental health services to minors that:
 - 5289 (i) serves adjudicated or nonadjudicated youth;
 - 5290 (ii) charges a fee for its services;
 - 5291 (iii) may or may not provide host homes or other arrangements for overnight
 - 5292 accommodation of the youth;
 - 5293 (iv) may or may not provide all or part of its services in the outdoors;
 - 5294 (v) may or may not limit or censor access to parents or guardians; and
 - 5295 (vi) prohibits or restricts a minor's ability to leave the program at any time of the

5296 minor's own free will.

5297 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
5298 Scouts, 4-H, and other such organizations.

5299 Section 62. Section **63G-2-305** is amended to read:

5300 **63G-2-305. Protected records.**

5301 The following records are protected if properly classified by a governmental entity:

5302 (1) trade secrets as defined in Section [13-24-2](#) if the person submitting the trade secret
5303 has provided the governmental entity with the information specified in Section [63G-2-309](#);

5304 (2) commercial information or nonindividual financial information obtained from a
5305 person if:

5306 (a) disclosure of the information could reasonably be expected to result in unfair
5307 competitive injury to the person submitting the information or would impair the ability of the
5308 governmental entity to obtain necessary information in the future;

5309 (b) the person submitting the information has a greater interest in prohibiting access
5310 than the public in obtaining access; and

5311 (c) the person submitting the information has provided the governmental entity with
5312 the information specified in Section [63G-2-309](#);

5313 (3) commercial or financial information acquired or prepared by a governmental entity
5314 to the extent that disclosure would lead to financial speculations in currencies, securities, or
5315 commodities that will interfere with a planned transaction by the governmental entity or cause
5316 substantial financial injury to the governmental entity or state economy;

5317 (4) records, the disclosure of which could cause commercial injury to, or confer a
5318 competitive advantage upon a potential or actual competitor of, a commercial project entity as
5319 defined in Subsection [11-13-103\(4\)](#);

5320 (5) test questions and answers to be used in future license, certification, registration,
5321 employment, or academic examinations;

5322 (6) records, the disclosure of which would impair governmental procurement
5323 proceedings or give an unfair advantage to any person proposing to enter into a contract or
5324 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
5325 Subsection (6) does not restrict the right of a person to have access to, after the contract or
5326 grant has been awarded and signed by all parties:

5327 (a) a bid, proposal, application, or other information submitted to or by a governmental
5328 entity in response to:

5329 (i) an invitation for bids;

5330 (ii) a request for proposals;

5331 (iii) a request for quotes;

5332 (iv) a grant; or

5333 (v) other similar document; or

5334 (b) an unsolicited proposal, as defined in Section [63G-6a-712](#);

5335 (7) information submitted to or by a governmental entity in response to a request for
5336 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
5337 the right of a person to have access to the information, after:

5338 (a) a contract directly relating to the subject of the request for information has been
5339 awarded and signed by all parties; or

5340 (b) (i) a final determination is made not to enter into a contract that relates to the
5341 subject of the request for information; and

5342 (ii) at least two years have passed after the day on which the request for information is
5343 issued;

5344 (8) records that would identify real property or the appraisal or estimated value of real
5345 or personal property, including intellectual property, under consideration for public acquisition
5346 before any rights to the property are acquired unless:

5347 (a) public interest in obtaining access to the information is greater than or equal to the
5348 governmental entity's need to acquire the property on the best terms possible;

5349 (b) the information has already been disclosed to persons not employed by or under a
5350 duty of confidentiality to the entity;

5351 (c) in the case of records that would identify property, potential sellers of the described
5352 property have already learned of the governmental entity's plans to acquire the property;

5353 (d) in the case of records that would identify the appraisal or estimated value of
5354 property, the potential sellers have already learned of the governmental entity's estimated value
5355 of the property; or

5356 (e) the property under consideration for public acquisition is a single family residence
5357 and the governmental entity seeking to acquire the property has initiated negotiations to acquire

5358 the property as required under Section 78B-6-505;

5359 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
5360 compensated transaction of real or personal property including intellectual property, which, if
5361 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
5362 of the subject property, unless:

5363 (a) the public interest in access is greater than or equal to the interests in restricting
5364 access, including the governmental entity's interest in maximizing the financial benefit of the
5365 transaction; or

5366 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
5367 the value of the subject property have already been disclosed to persons not employed by or
5368 under a duty of confidentiality to the entity;

5369 (10) records created or maintained for civil, criminal, or administrative enforcement
5370 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
5371 release of the records:

5372 (a) reasonably could be expected to interfere with investigations undertaken for
5373 enforcement, discipline, licensing, certification, or registration purposes;

5374 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
5375 proceedings;

5376 (c) would create a danger of depriving a person of a right to a fair trial or impartial
5377 hearing;

5378 (d) reasonably could be expected to disclose the identity of a source who is not
5379 generally known outside of government and, in the case of a record compiled in the course of
5380 an investigation, disclose information furnished by a source not generally known outside of
5381 government if disclosure would compromise the source; or

5382 (e) reasonably could be expected to disclose investigative or audit techniques,
5383 procedures, policies, or orders not generally known outside of government if disclosure would
5384 interfere with enforcement or audit efforts;

5385 (11) records the disclosure of which would jeopardize the life or safety of an
5386 individual;

5387 (12) records the disclosure of which would jeopardize the security of governmental
5388 property, governmental programs, or governmental recordkeeping systems from damage, theft,

5389 or other appropriation or use contrary to law or public policy;

5390 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
5391 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
5392 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

5393 (14) records that, if disclosed, would reveal recommendations made to the Board of
5394 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
5395 Board of Pardons and Parole, or the Department of Human Services that are based on the
5396 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
5397 jurisdiction;

5398 (15) records and audit workpapers that identify audit, collection, and operational
5399 procedures and methods used by the State Tax Commission, if disclosure would interfere with
5400 audits or collections;

5401 (16) records of a governmental audit agency relating to an ongoing or planned audit
5402 until the final audit is released;

5403 (17) records that are subject to the attorney client privilege;

5404 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
5405 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
5406 quasi-judicial, or administrative proceeding;

5407 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
5408 from a member of the Legislature; and

5409 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
5410 legislative action or policy may not be classified as protected under this section; and

5411 (b) (i) an internal communication that is part of the deliberative process in connection
5412 with the preparation of legislation between:

5413 (A) members of a legislative body;

5414 (B) a member of a legislative body and a member of the legislative body's staff; or

5415 (C) members of a legislative body's staff; and

5416 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
5417 legislative action or policy may not be classified as protected under this section;

5418 (20) (a) records in the custody or control of the Office of Legislative Research and
5419 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated

5420 legislation or contemplated course of action before the legislator has elected to support the
5421 legislation or course of action, or made the legislation or course of action public; and

5422 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
5423 Office of Legislative Research and General Counsel is a public document unless a legislator
5424 asks that the records requesting the legislation be maintained as protected records until such
5425 time as the legislator elects to make the legislation or course of action public;

5426 (21) research requests from legislators to the Office of Legislative Research and
5427 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
5428 in response to these requests;

5429 (22) drafts, unless otherwise classified as public;

5430 (23) records concerning a governmental entity's strategy about:

5431 (a) collective bargaining; or

5432 (b) imminent or pending litigation;

5433 (24) records of investigations of loss occurrences and analyses of loss occurrences that
5434 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
5435 Uninsured Employers' Fund, or similar divisions in other governmental entities;

5436 (25) records, other than personnel evaluations, that contain a personal recommendation
5437 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
5438 personal privacy, or disclosure is not in the public interest;

5439 (26) records that reveal the location of historic, prehistoric, paleontological, or
5440 biological resources that if known would jeopardize the security of those resources or of
5441 valuable historic, scientific, educational, or cultural information;

5442 (27) records of independent state agencies if the disclosure of the records would
5443 conflict with the fiduciary obligations of the agency;

5444 (28) records of an institution within the state system of higher education defined in
5445 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
5446 retention decisions, and promotions, which could be properly discussed in a meeting closed in
5447 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
5448 the final decisions about tenure, appointments, retention, promotions, or those students
5449 admitted, may not be classified as protected under this section;

5450 (29) records of the governor's office, including budget recommendations, legislative

5451 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
5452 policies or contemplated courses of action before the governor has implemented or rejected
5453 those policies or courses of action or made them public;

5454 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
5455 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
5456 recommendations in these areas;

5457 (31) records provided by the United States or by a government entity outside the state
5458 that are given to the governmental entity with a requirement that they be managed as protected
5459 records if the providing entity certifies that the record would not be subject to public disclosure
5460 if retained by it;

5461 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a
5462 public body except as provided in Section [52-4-206](#);

5463 (33) records that would reveal the contents of settlement negotiations but not including
5464 final settlements or empirical data to the extent that they are not otherwise exempt from
5465 disclosure;

5466 (34) memoranda prepared by staff and used in the decision-making process by an
5467 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
5468 other body charged by law with performing a quasi-judicial function;

5469 (35) records that would reveal negotiations regarding assistance or incentives offered
5470 by or requested from a governmental entity for the purpose of encouraging a person to expand
5471 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
5472 person or place the governmental entity at a competitive disadvantage, but this section may not
5473 be used to restrict access to a record evidencing a final contract;

5474 (36) materials to which access must be limited for purposes of securing or maintaining
5475 the governmental entity's proprietary protection of intellectual property rights including patents,
5476 copyrights, and trade secrets;

5477 (37) the name of a donor or a prospective donor to a governmental entity, including an
5478 institution within the state system of higher education defined in Section [53B-1-102](#), and other
5479 information concerning the donation that could reasonably be expected to reveal the identity of
5480 the donor, provided that:

5481 (a) the donor requests anonymity in writing;

5482 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
5483 classified protected by the governmental entity under this Subsection (37); and

5484 (c) except for an institution within the state system of higher education defined in
5485 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
5486 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
5487 over the donor, a member of the donor's immediate family, or any entity owned or controlled
5488 by the donor or the donor's immediate family;

5489 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
5490 73-18-13;

5491 (39) a notification of workers' compensation insurance coverage described in Section
5492 34A-2-205;

5493 (40) (a) the following records of an institution within the state system of higher
5494 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
5495 or received by or on behalf of faculty, staff, employees, or students of the institution:

5496 (i) unpublished lecture notes;

5497 (ii) unpublished notes, data, and information:

5498 (A) relating to research; and

5499 (B) of:

5500 (I) the institution within the state system of higher education defined in Section
5501 53B-1-102; or

5502 (II) a sponsor of sponsored research;

5503 (iii) unpublished manuscripts;

5504 (iv) creative works in process;

5505 (v) scholarly correspondence; and

5506 (vi) confidential information contained in research proposals;

5507 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
5508 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

5509 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

5510 (41) (a) records in the custody or control of the Office of Legislative Auditor General
5511 that would reveal the name of a particular legislator who requests a legislative audit prior to the
5512 date that audit is completed and made public; and

5513 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
5514 Office of the Legislative Auditor General is a public document unless the legislator asks that
5515 the records in the custody or control of the Office of Legislative Auditor General that would
5516 reveal the name of a particular legislator who requests a legislative audit be maintained as
5517 protected records until the audit is completed and made public;

5518 (42) records that provide detail as to the location of an explosive, including a map or
5519 other document that indicates the location of:

5520 (a) a production facility; or

5521 (b) a magazine;

5522 (43) information:

5523 (a) contained in the statewide database of the Division of Aging and Adult Services
5524 created by Section [62A-3-311.1](#); or

5525 (b) received or maintained in relation to the Identity Theft Reporting Information
5526 System (IRIS) established under Section [67-5-22](#);

5527 (44) information contained in the Management Information System and Licensing
5528 Information System described in Title 62A, Chapter 4a, Child and Family Services;

5529 (45) information regarding National Guard operations or activities in support of the
5530 National Guard's federal mission;

5531 (46) records provided by any pawn or secondhand business to a law enforcement
5532 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
5533 Secondhand Merchandise Transaction Information Act;

5534 (47) information regarding food security, risk, and vulnerability assessments performed
5535 by the Department of Agriculture and Food;

5536 (48) except to the extent that the record is exempt from this chapter pursuant to Section
5537 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
5538 prepared or maintained by the Division of Emergency Management, and the disclosure of
5539 which would jeopardize:

5540 (a) the safety of the general public; or

5541 (b) the security of:

5542 (i) governmental property;

5543 (ii) governmental programs; or

5544 (iii) the property of a private person who provides the Division of Emergency
5545 Management information;

5546 (49) records of the Department of Agriculture and Food that provides for the
5547 identification, tracing, or control of livestock diseases, including any program established under
5548 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
5549 of Animal Disease;

5550 (50) as provided in Section 26-39-501:

5551 (a) information or records held by the Department of Health related to a complaint
5552 regarding a child care program or residential child care which the department is unable to
5553 substantiate; and

5554 (b) information or records related to a complaint received by the Department of Health
5555 from an anonymous complainant regarding a child care program or residential child care;

5556 (51) unless otherwise classified as public under Section 63G-2-301 and except as
5557 provided under Section 41-1a-116, an individual's home address, home telephone number, or
5558 personal mobile phone number, if:

5559 (a) the individual is required to provide the information in order to comply with a law,
5560 ordinance, rule, or order of a government entity; and

5561 (b) the subject of the record has a reasonable expectation that this information will be
5562 kept confidential due to:

5563 (i) the nature of the law, ordinance, rule, or order; and
5564 (ii) the individual complying with the law, ordinance, rule, or order;

5565 (52) the name, home address, work addresses, and telephone numbers of an individual
5566 that is engaged in, or that provides goods or services for, medical or scientific research that is:

5567 (a) conducted within the state system of higher education, as defined in Section
5568 53B-1-102; and

5569 (b) conducted using animals;

5570 (53) in accordance with Section 78A-12-203, any record of the Judicial Performance
5571 Evaluation Commission concerning an individual commissioner's vote on whether or not to
5572 recommend that the voters retain a judge including information disclosed under Subsection
5573 78A-12-203(5)(e);

5574 (54) information collected and a report prepared by the Judicial Performance

5575 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
5576 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
5577 the information or report;

5578 (55) records contained in the Management Information System created in Section
5579 62A-4a-1003;

5580 (56) records provided or received by the Public Lands Policy Coordinating Office in
5581 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

5582 (57) information requested by and provided to the 911 Division under Section
5583 63H-7a-302;

5584 (58) in accordance with Section 73-10-33:

5585 (a) a management plan for a water conveyance facility in the possession of the Division
5586 of Water Resources or the Board of Water Resources; or

5587 (b) an outline of an emergency response plan in possession of the state or a county or
5588 municipality;

5589 (59) the following records in the custody or control of the Office of Inspector General
5590 of Medicaid Services, created in Section 63A-13-201:

5591 (a) records that would disclose information relating to allegations of personal
5592 misconduct, gross mismanagement, or illegal activity of a person if the information or
5593 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
5594 through other documents or evidence, and the records relating to the allegation are not relied
5595 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
5596 report or final audit report;

5597 (b) records and audit workpapers to the extent they would disclose the identity of a
5598 person who, during the course of an investigation or audit, communicated the existence of any
5599 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
5600 regulation adopted under the laws of this state, a political subdivision of the state, or any
5601 recognized entity of the United States, if the information was disclosed on the condition that
5602 the identity of the person be protected;

5603 (c) before the time that an investigation or audit is completed and the final
5604 investigation or final audit report is released, records or drafts circulated to a person who is not
5605 an employee or head of a governmental entity for the person's response or information;

- 5606 (d) records that would disclose an outline or part of any investigation, audit survey
5607 plan, or audit program; or
- 5608 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
5609 investigation or audit;
- 5610 (60) records that reveal methods used by the Office of Inspector General of Medicaid
5611 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
5612 abuse;
- 5613 (61) information provided to the Department of Health or the Division of Occupational
5614 and Professional Licensing under Subsection 58-68-304(3) or (4);
- 5615 (62) a record described in Section 63G-12-210;
- 5616 (63) captured plate data that is obtained through an automatic license plate reader
5617 system used by a governmental entity as authorized in Section 41-6a-2003;
- 5618 (64) any record in the custody of the Utah Office for Victims of Crime relating to a
5619 victim, including:
- 5620 (a) a victim's application or request for benefits;
- 5621 (b) a victim's receipt or denial of benefits; and
- 5622 (c) any administrative notes or records made or created for the purpose of, or used to,
5623 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
5624 Reparations Fund;
- 5625 (65) an audio or video recording created by a body-worn camera, as that term is
5626 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
5627 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
5628 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
5629 that term is defined in Section 62A-2-101, except for recordings that:
- 5630 (a) depict the commission of an alleged crime;
- 5631 (b) record any encounter between a law enforcement officer and a person that results in
5632 death or bodily injury, or includes an instance when an officer fires a weapon;
- 5633 (c) record any encounter that is the subject of a complaint or a legal proceeding against
5634 a law enforcement officer or law enforcement agency;
- 5635 (d) contain an officer involved critical incident as defined in Subsection
5636 76-2-408(1)(d); or

- 5637 (e) have been requested for reclassification as a public record by a subject or
5638 authorized agent of a subject featured in the recording;
- 5639 (66) a record pertaining to the search process for a president of an institution of higher
5640 education described in Section [53B-2-102](#), except for application materials for a publicly
5641 announced finalist; and
- 5642 (67) an audio recording that is:
- 5643 (a) produced by an audio recording device that is used in conjunction with a device or
5644 piece of equipment designed or intended for resuscitating an individual or for treating an
5645 individual with a life-threatening condition;
- 5646 (b) produced during an emergency event when an individual employed to provide law
5647 enforcement, fire protection, paramedic, emergency medical, or other first responder service:
- 5648 (i) is responding to an individual needing resuscitation or with a life-threatening
5649 condition; and
- 5650 (ii) uses a device or piece of equipment designed or intended for resuscitating an
5651 individual or for treating an individual with a life-threatening condition; and
- 5652 (c) intended and used for purposes of training emergency responders how to improve
5653 their response to an emergency situation;
- 5654 (68) records submitted by or prepared in relation to an applicant seeking a
5655 recommendation by the Research and General Counsel Subcommittee, the Budget
5656 Subcommittee, or the Audit Subcommittee, established under Section [36-12-8](#), for an
5657 employment position with the Legislature;
- 5658 (69) work papers as defined in Section [31A-2-204](#); [~~and~~]
- 5659 (70) a record made available to Adult Protective Services or a law enforcement agency
5660 under Section [61-1-206](#)[~~7~~];
- 5661 (71) a record submitted to the Insurance Department in accordance with Section
5662 [31A-37-201](#); and
- 5663 (72) a record described in Section [31A-37-503](#).
- 5664 Section 63. Section **63I-1-236** is amended to read:
- 5665 **63I-1-236. Repeal dates, Title 36.**
- 5666 (1) Section [36-12-20](#) is repealed June 30, 2023.
- 5667 (2) Section [36-29-106](#) is repealed June 1, 2021.

5668 [(2)] (3) Title 36, Chapter 31, Martha Hughes Cannon Capitol Statue Oversight
5669 Committee, is repealed January 1, 2021.

5670 Section 64. Section **76-6-521** is amended to read:

5671 **76-6-521. Fraudulent insurance act.**

5672 (1) A person commits a fraudulent insurance act if that person with intent to defraud:

5673 (a) presents or causes to be presented any oral or written statement or representation

5674 knowing that the statement or representation contains false or fraudulent information

5675 concerning any fact material to an application for the issuance or renewal of an insurance

5676 policy, certificate, or contract[;], as part of or in support of:

5677 (i) obtaining an insurance policy the insurer would otherwise not issue on the basis of

5678 underwriting criteria applicable to the person;

5679 (ii) a scheme or artifice to avoid paying the premium that an insurer charges on the

5680 basis of underwriting criteria applicable to the person; or

5681 (iii) a scheme or artifice to file an insurance claim for a loss that has already occurred;

5682 (b) presents, or causes to be presented, any oral or written statement or representation:

5683 (i) (A) as part of or in support of a claim for payment or other benefit pursuant to an

5684 insurance policy, certificate, or contract; or

5685 (B) in connection with any civil claim asserted for recovery of damages for personal or

5686 bodily injuries or property damage; and

5687 (ii) knowing that the statement or representation contains false, incomplete, or

5688 fraudulent information concerning any fact or thing material to the claim;

5689 (c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance act;

5690 (d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees

5691 for professional services, or anything of value by means of false or fraudulent pretenses,

5692 representations, promises, or material omissions;

5693 (e) knowingly employs, uses, or acts as a runner, as defined in Section [31A-31-102](#), for

5694 the purpose of committing a fraudulent insurance act;

5695 (f) knowingly assists, abets, solicits, or conspires with another to commit a fraudulent

5696 insurance act; [~~or~~]

5697 (g) knowingly supplies false or fraudulent material information in any document or

5698 statement required by the Department of Insurance[-]; or

5699 (h) knowingly fails to forward a premium to an insurer in violation of Section
5700 31A-23a-411.1.

5701 (2) (a) A violation of Subsection (1)(a) (i) is a class [B] A misdemeanor.

5702 (b) A violation of Subsections (1)(a)(ii) or (1)(b) through (1)(g) (h) is punishable as
5703 in the manner prescribed by Section 76-10-1801 for communication fraud for property of like
5704 value.

5705 (c) A violation of Subsection (1)(a)(iii):

5706 (i) is a class A misdemeanor if the value of the loss is less than \$1,500 or unable to be
5707 determined; or

5708 (ii) if the value of the loss is \$1,500 or more, is punishable as in the manner prescribed
5709 by Section 76-10-1801 for communication fraud for property of like value.

5710 (3) A corporation or association is guilty of the offense of insurance fraud under the
5711 same conditions as those set forth in Section 76-2-204.

5712 (4) The determination of the degree of any offense under Subsections (1)(a)(ii) and
5713 (1)(b) through (1)(g) (1)(h) shall be measured by the total value of all property, money, or
5714 other things obtained or sought to be obtained by the fraudulent insurance act or acts described
5715 in Subsections (1)(a)(ii) and (1)(b) through (1)(g) (1)(h).

5716 Section 65. **Repealer.**

5717 This bill repeals:

5718 Section 31A-16a-102, **Definitions.**

5719 Section 66. **Effective date.**

5720 (1) Except as provided in Subsection (2), this bill takes effect on May 14, 2019.

5721 (2) The actions affecting the following sections take effect on January 1, 2020:

5722 (a) Section 31A-16b-101;

5723 (b) Section 31A-16b-102;

5724 (c) Section 31A-16b-103;

5725 (d) Section 31A-16b-104;

5726 (e) Section 31A-16b-105;

5727 (f) Section 31A-16b-106;

5728 (g) Section 31A-16b-107; and

5729 (h) Section 31A-16b-108.

5730 Section 67. **Coordinating H.B. 55 with H.B. 249 -- Superseding technical and**
5731 **substantive amendments.**

5732 If this H.B. 55 and H.B. 249, Revisor's Technical Corrections to Utah Code, both pass
5733 and become law, it is the intent of the Legislature that the amendments to Section [62A-2-101](#) in
5734 this bill supersede the amendments to Section [62A-2-101](#) in H.B. 249, when the Office of
5735 Legislative Research and General Counsel prepares the Utah Code database for publication.