

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

INSURANCE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Insurance Code, the Public Employees' Benefit and Insurance Program Act, and related provisions.

Highlighted Provisions:

This bill:

▶ makes changes to provisions of the Insurance Code to:

- amend what is considered protected work papers when the commissioner conducts an examination;
- amend requirements for service of process;
- increase the amount of the annual appropriation for the Captive Insurance Division;
- amend the required process for insurers to file certain documents;
- specify the filing requirements for insurers to submit annual statements with the National Association of Insurance Commissioners;
- prohibit insurance credit when a risk is ceded to an out-of-state captive;
- eliminate certain requirements for a title insurance licensee to submit certain filings;
- add a limited line insurance producer license for pet insurance;
- permit the Department of Insurance (department) to take action against licensees if the licensee enters a plea in abeyance to certain crimes;



- 28 • clarify provisions related to title insurance companies' deposit of trust money in
- 29 federally-insured depository institutions in Utah;
- 30 • eliminate the requirement that the Title and Escrow Commission (commission)
- 31 establish in rule an amount of costs and expenses that are covered by the annual
- 32 assessment on agency title insurance producers and title insurers (annual
- 33 assessment);
- 34 • allow the commission to approve costs and expenses covered by the annual
- 35 assessment for the prior fiscal year;
- 36 • eliminate the limitation on the amount of costs covered by the annual
- 37 assessment;
- 38 • create the State Mandated Insurer Payments Restricted Account (account) and
- 39 provide that appropriations from the account are nonlapsing;
- 40 • amend requirements for the method of reporting insurance fraud;
- 41 • eliminate the requirement that an association of captives be in continuous
- 42 existence for at least one year;
- 43 • change requirements for a captive insurer's paid-in capital;
- 44 • prohibit insuring an award of punitive damages against a third party; and
- 45 • amend the requirements for pure captive insurance companies to which the
- 46 commissioner issues a certificate of authority;
- 47 ▶ amends provisions related to certain recommendations for benefit and rate
- 48 adjustments for state employees that the Public Employees' Benefit and Insurance
- 49 Program is required to submit;
- 50 ▶ makes technical and conforming changes; and
- 51 ▶ defines terms.

52 Money Appropriated in this Bill:

53 None

54 Other Special Clauses:

55 None

56 Utah Code Sections Affected:

57 AMENDS:

58 **31A-2-204**, as last amended by Laws of Utah 2018, Chapter 319

- 59 **31A-2-310**, as last amended by Laws of Utah 1995, Chapter 20
- 60 **31A-3-304**, as last amended by Laws of Utah 2019, Chapter 193
- 61 **31A-4-113.5**, as last amended by Laws of Utah 2003, Chapter 252
- 62 **31A-16-103**, as last amended by Laws of Utah 2018, Chapter 319
- 63 **31A-17-404**, as last amended by Laws of Utah 2021, Chapter 252
- 64 **31A-19a-209**, as last amended by Laws of Utah 2015, Chapters 312, 330
- 65 **31A-23a-106**, as last amended by Laws of Utah 2015, Chapter 330
- 66 **31A-23a-111**, as last amended by Laws of Utah 2022, Chapter 198
- 67 **31A-23a-406**, as last amended by Laws of Utah 2021, Chapter 252
- 68 **31A-23a-409**, as last amended by Laws of Utah 2021, Chapter 252
- 69 **31A-23a-415**, as last amended by Laws of Utah 2020, Chapter 32
- 70 **31A-23b-401**, as last amended by Laws of Utah 2020, Chapter 32
- 71 **31A-25-208**, as last amended by Laws of Utah 2020, Chapter 32
- 72 **31A-26-213**, as last amended by Laws of Utah 2020, Chapter 32
- 73 **31A-30-118**, as last amended by Laws of Utah 2020, Chapter 32
- 74 **31A-31-110**, as last amended by Laws of Utah 2008, Chapter 150
- 75 **31A-35-504**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4
- 76 **31A-37-102**, as last amended by Laws of Utah 2021, Chapter 252
- 77 **31A-37-202**, as last amended by Laws of Utah 2021, Chapter 252
- 78 **31A-37-204**, as last amended by Laws of Utah 2021, Chapter 252
- 79 **49-20-401**, as last amended by Laws of Utah 2022, Chapter 302
- 80 **63J-1-602.1**, as last amended by Laws of Utah 2022, Chapters 48, 191, 255, 335, 415,
- 81 and 451

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

84 Section 1. Section **31A-2-204** is amended to read:

85 **31A-2-204. Conducting examinations.**

86 (1) As used in this section, "work papers" means a record that is created or relied upon:

87 (a) during the course of an examination conducted under Section **31A-2-203**; [~~or~~]

88 (b) in drafting an examination report[-]; or

89 (c) in requesting, responding to a request, or reviewing a response to a request under

90 Section 31A-2-202.

91 (2) (a) For each examination under Section 31A-2-203, the commissioner shall issue an
92 order:

93 (i) stating the scope of the examination; and

94 (ii) designating the examiner in charge.

95 (b) The commissioner need not give advance notice of an examination to an examinee.

96 (c) The examiner in charge shall give the examinee a copy of the order issued under
97 this Subsection (2).

98 (d) (i) The commissioner may alter the scope or nature of an examination at any time
99 without advance notice to the examinee.

100 (ii) If the commissioner amends an order described in this Subsection (2), the
101 commissioner shall provide a copy of any amended order to the examinee.

102 (e) Statements in the commissioner's examination order concerning examination scope
103 are for the examiner's guidance only.

104 (f) Examining relevant matters not mentioned in an order issued under this Subsection
105 (2) is not a violation of this title.

106 (3) The commissioner shall, whenever practicable, cooperate with the insurance
107 regulators of other states by conducting joint examinations of:

108 (a) multistate insurers doing business in this state; or

109 (b) other multistate licensees doing business in this state.

110 (4) An examiner authorized by the commissioner shall, when necessary to the purposes
111 of the examination, have access at all reasonable hours to the premises and to any books,
112 records, files, securities, documents, or property of:

113 (a) the examinee; and

114 (b) any of the following if the premises, books, records, files, securities, documents, or
115 property relate to the affairs of the examinee:

116 (i) an officer of the examinee;

117 (ii) any other person who:

118 (A) has executive authority over the examinee; or

119 (B) is in charge of any segment of the examinee's affairs; or

120 (iii) any affiliate of the examinee under Subsection 31A-2-203(1)(b).

121 (5) (a) The officers, employees, and agents of the examinee and of persons under
122 Subsection 31A-2-203(1)(b) shall comply with every reasonable request of the examiners for
123 assistance in any matter relating to the examination.

124 (b) A person may not obstruct or interfere with the examination except by legal
125 process.

126 (6) If the commissioner finds the accounts or records to be inadequate for proper
127 examination of the condition and affairs of the examinee or improperly kept or posted, the
128 commissioner may employ experts to rewrite, post, or balance the accounts or records at the
129 expense of the examinee.

130 (7) (a) The examiner in charge of an examination shall make a report of the
131 examination no later than 60 days after the completion of the examination that shall include:

132 (i) the information and analysis ordered under Subsection (2); and

133 (ii) the examiner's recommendations.

134 (b) At the option of the examiner in charge, preparation of the report may include
135 conferences with the examinee or representatives of the examinee.

136 (c) The report is confidential until the report becomes a public document under
137 Subsection (8), except the commissioner may use information from the report as a basis for
138 action under Chapter 27a, Insurer Receivership Act.

139 (8) (a) The commissioner shall serve a copy of the examination report described in
140 Subsection (7) upon the examinee.

141 (b) Within 20 days after service, the examinee shall:

142 (i) accept the examination report as written; or

143 (ii) request agency action to modify the examination report.

144 (c) The report is considered accepted under this Subsection (8) if the examinee does
145 not file a request for agency action to modify the report within 20 days after service of the
146 report.

147 (d) If the examination report is accepted:

148 (i) the examination report immediately becomes a public document; and

149 (ii) the commissioner shall distribute the examination report to all jurisdictions in
150 which the examinee is authorized to do business.

151 (e) (i) Any adjudicative proceeding held as a result of the examinee's request for

152 agency action shall, upon the examinee's demand, be closed to the public, except that the
153 commissioner need not exclude any participating examiner from this closed hearing.

154 (ii) Within 20 days after the hearing held under this Subsection (8)(e), the
155 commissioner shall:

156 (A) adopt the examination report with any necessary modifications; and

157 (B) serve a copy of the adopted report upon the examinee.

158 (iii) Unless the examinee seeks judicial relief, the adopted examination report:

159 (A) shall become a public document 10 days after service; and

160 (B) may be distributed as described in this section.

161 (f) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, to the extent
162 that this section is in conflict with Title 63G, Chapter 4, Administrative Procedures Act, this
163 section governs:

164 (i) a request for agency action under this section; or

165 (ii) adjudicative proceeding under this section.

166 (9) The examinee shall promptly furnish copies of the adopted examination report
167 described in Subsection (8) to each member of the examinee's board.

168 (10) After an examination report becomes a public document under Subsection (8), the
169 commissioner may furnish, without cost or at a reasonable price set under Section [31A-3-103](#),
170 a copy of the examination report to interested persons, including:

171 (a) a member of the board of the examinee; or

172 (b) one or more newspapers in this state.

173 (11) (a) In a proceeding by or against the examinee, or any officer or agent of the
174 examinee, the examination report as adopted by the commissioner is admissible as evidence of
175 the facts stated in the report.

176 (b) In any proceeding commenced under Chapter 27a, Insurer Receivership Act, the
177 examination report, whether adopted by the commissioner or not, is admissible as evidence of
178 the facts stated in the examination report.

179 (12) Work papers are protected records under Title 63G, Chapter 2, Government
180 Records Access and Management Act.

181 Section 2. Section **31A-2-310** is amended to read:

182 **31A-2-310. Procedure for service of process through state officer.**

183 (1) Service upon the commissioner or lieutenant governor under Section 31A-2-309 is
184 service on the principal, if:

185 (a) ~~[two copies of the process]~~ the following are delivered personally or to the office of
186 the official designated in Section 31A-2-309~~[, and]~~:

187 (i) two copies of the process to be served; and

188 (ii) a certificate of proof of service that meets the requirements of Subsection (3), dated
189 and signed by the official designated in Section 31A-2-309; and

190 (b) that official mails a copy of the process to the person to be served according to
191 Subsection (2)(b).

192 (2) (a) The commissioner and the lieutenant governor shall give receipts for and keep
193 records of all process served through them.

194 (b) The commissioner or the lieutenant governor shall immediately send by certified
195 mail one copy of the process received to the person to be served at that person's last known
196 principal place of business, residence, or post-office address. The commissioner or the
197 lieutenant governor shall retain the other copy for his files.

198 (c) No plaintiff or complainant may take a judgment by default in any proceeding in
199 which process is served under this section and Section 31A-2-309 until the expiration of 40
200 days from the date of service of process under Subsection (2)(b).

201 (3) Proof of service shall be evidenced by a certificate by the official designated in
202 Section 31A-2-309, showing service made upon him and mailing by him, and attached to a
203 copy of the process presented to him for that purpose.

204 (4) When process is served under this section, the words "twenty days" in the first
205 sentence of Rule 12(a) of the Utah Rules of Civil Procedure shall be changed to read "forty
206 days."

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

208 **31A-3-304. Annual fees -- Other taxes or fees prohibited -- Captive Insurance**
209 **Restricted Account.**

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

212 (b) The commissioner shall:

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

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

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

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

221 (i) a fee under this section;

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

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

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

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

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

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

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

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

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

241 (i) administer and enforce:

242 (A) Chapter 37, Captive Insurance Companies Act; and

243 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

244 (ii) promote the captive insurance industry in Utah.

245 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
246 except that at the end of each fiscal year, money received by the commissioner in excess of the
247 following shall be treated as free revenue in the General Fund:

248 (i) for fiscal year 2018-2019 and subsequent fiscal years, in excess of \$1,600,000;

249 [~~and~~]

250 (ii) for fiscal year 2019-2020 and subsequent fiscal years, in excess of \$1,450,000~~[-];~~;

251 and

252 (iii) for fiscal year 2023-2024 and subsequent fiscal years, in excess of \$1,650,000.

253 Section 4. Section 31A-4-113.5 is amended to read:

254 **31A-4-113.5. Filing requirements -- National Association of Insurance**

255 **Commissioners.**

256 (1) (a) Each domestic, foreign, and alien insurer who is authorized to transact insurance
257 business in this state shall annually~~[-, on or before March 1, file with the National Association~~
258 ~~of Insurance Commissioners]~~ file with the NAIC a copy of the insurer's:

259 (i) annual statement convention blank~~[-; and]~~ on or before March 1;

260 (ii) market conduct annual statements:

261 (A) on or before April 30, for all lines of business except health; and

262 (B) on or before June 30, for the health line of business; and

263 ~~[(ii)]~~ (iii) any additional filings required by the commissioner for the preceding year.

264 (b) (i) The information filed with the ~~[National Association of Insurance~~

265 ~~Commissioners]~~ NAIC under Subsection ~~[(1)(a)]~~ (1)(a)(i) shall:

266 ~~[(i) be in the format and scope required by the commissioner; and]~~

267 (A) be prepared in accordance with the NAIC's:

268 (I) annual statement instructions; and

269 (II) Accounting Practices and Procedures Manual; and

270 ~~[(ii)]~~ (B) include:

271 ~~[(A)]~~ (I) the signed jurat page; and

272 ~~[(B)]~~ (II) the actuarial certification.

273 (ii) An insurer shall file with the NAIC amendments and addenda to information filed
274 with the commissioner under Subsection (1)(a)(i).

275 ~~[(c) Any amendments and addendums to an annual statement that are filed with the~~

276 ~~commissioner shall be filed by the insurer with the National Association of Insurance~~
277 ~~Commissioners.]~~

278 (c) The information filed with the NAIC under Subsection (1)(a)(ii) shall be prepared
279 in accordance with the NAIC's Market Conduct Annual Statement Industry User Guide.

280 (d) At the time an insurer makes a filing under this Subsection (1), the insurer shall pay
281 any filing fees assessed by the ~~[National Association of Insurance Commissioners]~~ NAIC.

282 (e) A foreign insurer that is domiciled in a state that has a law substantially similar to
283 this section shall be considered to be in compliance with this section.

284 (2) All financial analysis ratios and examination synopses concerning insurance
285 companies that are submitted to the department by the Insurance Regulatory Information
286 System are confidential and may not be disclosed by the department.

287 (3) The commissioner may suspend, revoke, or refuse to renew the certificate of
288 authority of any insurer failing to:

289 (a) ~~[file the annual statement as required by]~~ submit the filings under Subsection (1)(a)
290 when due or within any extension of time granted for good cause by:

291 (i) the commissioner; or

292 (ii) the ~~[National Association of Insurance Commissioners]~~ NAIC; or

293 (b) pay by the time specified in Subsection (3)(a) a fee the insurer is required to pay
294 under this section to:

295 (i) the commissioner; or

296 (ii) the ~~[National Association of Insurance Commissioners]~~ NAIC.

297 Section 5. Section **31A-16-103** is amended to read:

298 **31A-16-103. Acquisition of control of, divestiture of control of, or merger with**
299 **domestic insurer.**

300 (1) (a) A person may not take the actions described in Subsection (1)(b) or (c) unless,
301 at the time any offer, request, or invitation is made or any such agreement is entered into, or
302 prior to the acquisition of securities if no offer or agreement is involved:

303 (i) the person files with the commissioner a statement containing the information
304 required by this section;

305 (ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the
306 insurer; and

307 (iii) the commissioner approves the offer, request, invitation, agreement, or acquisition.

308 (b) Unless the person complies with Subsection (1)(a), a person other than the issuer
309 may not make a tender offer for, a request or invitation for tenders of, or enter into any
310 agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise,
311 any voting security of a domestic insurer if after the acquisition, the person would directly,
312 indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

313 (c) Unless the person complies with Subsection (1)(a), a person may not enter into an
314 agreement to merge with or otherwise to acquire control of:

315 (i) a domestic insurer; or

316 (ii) any person controlling a domestic insurer.

317 (d) For purposes of this section, a controlling person of a domestic insurer seeking to
318 divest its controlling interest in the domestic insurer, in any manner, shall file with the
319 commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least
320 30 days before the cessation of control. The commissioner shall determine those instances in
321 which the one or more persons seeking to divest or to acquire a controlling interest in an
322 insurer, will be required to file for and obtain approval of the transaction. The information
323 shall remain confidential until the conclusion of the transaction unless the commissioner, in the
324 commissioner's discretion, determines that confidential treatment will interfere with
325 enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed,
326 this Subsection (1)(d) does not apply.

327 (e) With respect to a transaction subject to this section, the acquiring person shall also
328 file a pre-acquisition notification with the commissioner, which shall contain the information
329 set forth in Section [31A-16-104.5](#). A failure to file the notification may be subject to penalties
330 specified in Section [31A-16-104.5](#).

331 (f) (i) For purposes of this section, a domestic insurer includes any person controlling a
332 domestic insurer unless the person as determined by the commissioner is either directly or
333 through its affiliates primarily engaged in business other than the business of insurance.

334 (ii) The controlling person described in Subsection (1)(f)(i) shall file with the
335 commissioner a preacquisition notification containing the information required in Subsection
336 (2) 30 calendar days before the proposed effective date of the acquisition.

337 (iii) For the purposes of this section, "person" does not include any securities broker

338 that in the usual and customary brokers function holds less than 20% of:

339 (A) the voting securities of an insurance company; or

340 (B) any person that controls an insurance company.

341 (iv) This section applies to all domestic insurers and other entities licensed under:

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

343 (B) Chapter 7, Nonprofit Health Service Insurance Corporations;

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

345 (D) Chapter 9, Insurance Fraternal; and

346 (E) Chapter 11, Motor Clubs.

347 (g) (i) An agreement for acquisition of control or merger as contemplated by this

348 Subsection (1) is not valid or enforceable unless the agreement:

349 (A) is in writing; and

350 (B) includes a provision that the agreement is subject to the approval of the

351 commissioner upon the filing of any applicable statement required under this chapter.

352 (ii) A written agreement for acquisition or control that includes the provision described
353 in Subsection (1)(g)(i) satisfies the requirements of this Subsection (1).

354 (2) The statement to be filed with the commissioner under Subsection (1) shall be
355 made under oath or affirmation and shall contain the following information:

356 (a) the name and address of the "acquiring party," which means each person by whom
357 or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to
358 be effected; and

359 (i) if the person is an individual:

360 (A) the person's principal occupation;

361 (B) a listing of all offices and positions held by the person during the past five years;

362 and

363 (C) any conviction of crimes other than minor traffic violations during the past 10
364 years; and

365 (ii) if the person is not an individual:

366 (A) a report of the nature of its business operations during:

367 (I) the past five years; or

368 (II) for any lesser period as the person and any of its predecessors has been in

369 existence;

370 (B) an informative description of the business intended to be done by the person and
371 the person's subsidiaries;

372 (C) a list of all individuals who are or who have been selected to become directors or
373 executive officers of the person, or individuals who perform, or who will perform functions
374 appropriate to such positions; and

375 (D) for each individual described in Subsection (2)(a)(ii)(C), the information required
376 by Subsection (2)(a)(i) for each individual;

377 (b) (i) the source, nature, and amount of the consideration used or to be used in
378 effecting the merger or acquisition of control;

379 (ii) a description of any transaction in which funds were or are to be obtained for the
380 purpose of effecting the merger or acquisition of control, including any pledge of:

381 (A) the insurer's stock; or
382 (B) the stock of any of the insurer's subsidiaries or controlling affiliates; and
383 (iii) the identity of persons furnishing the consideration;

384 (c) (i) fully audited financial information, or other financial information considered
385 acceptable by the commissioner, of the earnings and financial condition of each acquiring party
386 for:

387 (A) the preceding five fiscal years of each acquiring party; or
388 (B) any lesser period the acquiring party and any of its predecessors shall have been in
389 existence; and

390 (ii) unaudited information:

391 (A) similar to the information described in Subsection (2)(c)(i); and
392 (B) prepared within the 90 days prior to the filing of the statement;

393 (d) any plans or proposals which each acquiring party may have to:

394 (i) liquidate the insurer;
395 (ii) sell its assets;
396 (iii) merge or consolidate the insurer with any person; or
397 (iv) make any other material change in the insurer's:

398 (A) business;
399 (B) corporate structure; or

400 (C) management;

401 (e) (i) the number of shares of any security referred to in Subsection (1) that each
402 acquiring party proposes to acquire;

403 (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in
404 Subsection (1); and

405 (iii) a statement as to the method by which the fairness of the proposal was arrived at;

406 (f) the amount of each class of any security referred to in Subsection (1) that:

407 (i) is beneficially owned; or

408 (ii) concerning which there is a right to acquire beneficial ownership by each acquiring
409 party;

410 (g) a full description of any contract, arrangement, or understanding with respect to any
411 security referred to in Subsection (1) in which any acquiring party is involved, including:

412 (i) the transfer of any of the securities;

413 (ii) joint ventures;

414 (iii) loan or option arrangements;

415 (iv) puts or calls;

416 (v) guarantees of loans;

417 (vi) guarantees against loss or guarantees of profits;

418 (vii) division of losses or profits; or

419 (viii) the giving or withholding of proxies;

420 (h) a description of the purchase by any acquiring party of any security referred to in
421 Subsection (1) during the 12 calendar months preceding the filing of the statement including:

422 (i) the dates of purchase;

423 (ii) the names of the purchasers; and

424 (iii) the consideration paid or agreed to be paid for the purchase;

425 (i) a description of:

426 (i) any recommendations to purchase by any acquiring party any security referred to in
427 Subsection (1) made during the 12 calendar months preceding the filing of the statement; or

428 (ii) any recommendations made by anyone based upon interviews or at the suggestion
429 of the acquiring party;

430 (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange

431 offers for, and agreements to acquire or exchange any securities referred to in Subsection (1);
432 and

433 (ii) if distributed, copies of additional soliciting material relating to the transactions
434 described in Subsection (2)(j)(i);

435 (k) (i) the term of any agreement, contract, or understanding made with, or proposed to
436 be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for
437 tender; and

438 (ii) the amount of any fees, commissions, or other compensation to be paid to
439 broker-dealers with regard to any agreement, contract, or understanding described in
440 Subsection (2)(k)(i);

441 (l) an agreement by the person required to file the statement referred to in Subsection
442 (1) that it will provide the annual report, specified in Section 31A-16-105, for so long as
443 control exists;

444 (m) an acknowledgment by the person required to file the statement referred to in
445 Subsection (1) that the person and all subsidiaries within its control in the insurance holding
446 company system will provide information to the commissioner upon request as necessary to
447 evaluate enterprise risk to the insurer; and

448 (n) any additional information the commissioner requires by rule, which the
449 commissioner determines to be:

450 (i) necessary or appropriate for the protection of policyholders of the insurer; or

451 (ii) in the public interest.

452 (3) (a) The department may request:

453 ~~(a)~~ (i) criminal background information maintained pursuant to Title 53, Chapter 10,
454 Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

455 (ii) complete Federal Bureau of Investigation criminal background checks through the
456 national criminal history system.

457 (b) Information obtained by the department from the review of criminal history records
458 received under Subsection (3)(a) shall be used by the department for the purpose of:

459 (i) verifying the information in Subsection (2)(a)(i);

460 (ii) determining the integrity of persons who would control the operation of an insurer;

461 and

462 (iii) preventing persons who violate 18 U.S.C. Sec. 1033 from engaging in the business
463 of insurance in the state.

464 (c) If the department requests the criminal background information, the department
465 shall:

466 (i) pay to the Department of Public Safety the costs incurred by the Department of
467 Public Safety in providing the department criminal background information under Subsection
468 (3)(a)(i);

469 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
470 of Investigation in providing the department criminal background information under
471 Subsection (3)(a)(ii); and

472 (iii) charge the person required to file the statement referred to in Subsection (1) a fee
473 equal to the aggregate of Subsections (3)(c)(i) and (ii).

474 (4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in
475 the lender's ordinary course of business, the identity of the lender shall remain confidential, if
476 the person filing the statement so requests.

477 (b) (i) Under Subsection (2)(e), the commissioner may require a statement of the
478 adjusted book value assigned by the acquiring party to each security in arriving at the terms of
479 the offer.

480 (ii) For purposes of this Subsection (4)(b), "adjusted book value" means each security's
481 proportional interest in the capital and surplus of the insurer with adjustments that reflect:

482 (A) market conditions;

483 (B) business in force; and

484 (C) other intangible assets or liabilities of the insurer.

485 (c) The description required by Subsection (2)(g) shall identify the persons with whom
486 the contracts, arrangements, or understandings have been entered into.

487 (5) (a) If the person required to file the statement referred to in Subsection (1) is a
488 partnership, limited partnership, syndicate, or other group, the commissioner may require that
489 all the information called for by Subsection (2), (3), or (4) shall be given with respect to each:

490 (i) partner of the partnership or limited partnership;

491 (ii) member of the syndicate or group; and

492 (iii) person who controls the partner or member.

493 (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation,
494 or if the person required to file the statement referred to in Subsection (1) is a corporation, the
495 commissioner may require that the information called for by Subsection (2) shall be given with
496 respect to:

497 (i) the corporation;

498 (ii) each officer and director of the corporation; and

499 (iii) each person who is directly or indirectly the beneficial owner of more than 10% of
500 the outstanding voting securities of the corporation.

501 (6) If any material change occurs in the facts set forth in the statement filed with the
502 commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth
503 the change, together with copies of all documents and other material relevant to the change,
504 shall be filed with the commissioner and sent to the insurer within two business days after the
505 filing person learns of such change.

506 (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection
507 (1) is proposed to be made by means of a registration statement under the Securities Act of
508 1933, or under circumstances requiring the disclosure of similar information under the
509 Securities Exchange Act of 1934, or under a state law requiring similar registration or
510 disclosure, a person required to file the statement referred to in Subsection (1) may use copies
511 of any registration or disclosure documents in furnishing the information called for by the
512 statement.

513 (8) (a) The commissioner shall approve any merger or other acquisition of control
514 referred to in Subsection (1), unless the commissioner finds that:

515 (i) after the change of control, the domestic insurer referred to in Subsection (1) would
516 not be able to satisfy the requirements for the issuance of a license to write the line or lines of
517 insurance for which it is presently licensed;

518 (ii) the effect of the merger or other acquisition of control would:

519 (A) substantially lessen competition in insurance in this state; or

520 (B) tend to create a monopoly in insurance;

521 (iii) the financial condition of any acquiring party might:

522 (A) jeopardize the financial stability of the insurer; or

523 (B) prejudice the interest of:

524 (I) its policyholders; or
525 (II) any remaining securityholders who are unaffiliated with the acquiring party;
526 (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in
527 Subsection (1) are unfair and unreasonable to the securityholders of the insurer;
528 (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its
529 assets, or consolidate or merge it with any person, or to make any other material change in its
530 business or corporate structure or management, are:
531 (A) unfair and unreasonable to policyholders of the insurer; and
532 (B) not in the public interest; or
533 (vi) the competence, experience, and integrity of those persons who would control the
534 operation of the insurer are such that it would not be in the interest of the policyholders of the
535 insurer and the public to permit the merger or other acquisition of control.
536 (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not
537 be considered unfair if the adjusted book values under Subsection (2)(e):
538 (i) are disclosed to the securityholders; and
539 (ii) determined by the commissioner to be reasonable.
540 (9) For a merger or other acquisition of control described in Subsection (1), the
541 commissioner:
542 (a) may hold a public hearing on the merger or other acquisition at the commissioner's
543 discretion; and
544 (b) shall hold a public hearing on the merger or other acquisition upon request by the
545 acquiring party, the insurer, or ~~[any other]~~ an interested party.
546 ~~[(10) (a) The commissioner shall hold a public hearing under Subsection (9) no later~~
547 ~~than 45 days after the day on which the statement required by Subsection (1) is filed.]~~
548 (10) (a) If the commissioner does not hold a hearing described in Subsection (9), the
549 commissioner shall approve or deny the merger or other acquisition within 30 days after the
550 day on which the department deems the statement required under Subsection (1) complete.
551 (b) (i) The commissioner shall give at least 20 [days notice of the hearing to the person
552 filing the statement] days' notice of a hearing described in Subsection (9) to the person filing
553 the statement described in Subsection (1).
554 ~~[(ii) Affected parties may waive the notice required by this Subsection (9)(b).]~~

555 (ii) The commissioner shall hold a hearing described in Subsection (9) within 30 days
556 after the day on which the department deems the statement required under Subsection (1)
557 complete.

558 (iii) Not less than seven [~~days~~] days' notice of the [~~public~~] hearing shall be given by the
559 person filing the statement under Subsection (1) to:

560 (A) the insurer; and

561 (B) any person designated by the commissioner.

562 (iv) Affected parties may waive the notice required under this Subsection (10)(b).

563 (v) At the hearing, the person filing the statement under Subsection (1), the insurer, any
564 person to whom notice of hearing was sent, and any person whose interest may be affected by
565 the hearing may:

566 (A) present evidence;

567 (B) examine and cross-examine witnesses; and

568 (C) offer oral and written arguments.

569 (vi) (A) A person or insurer described in Subsection (10)(b)(v) may conduct discovery
570 in the same manner as is allowed in the district courts of this state.

571 (B) All discovery shall be concluded not later than three days before the
572 commencement of the hearing.

573 [~~(c) The commissioner shall make a determination within 30 days after the conclusion~~
574 ~~of the hearing.]~~

575 [~~(d) At the hearing, the person filing the statement, the insurer, any person to whom~~
576 ~~notice of hearing was sent, and any other person whose interest may be affected by the hearing~~
577 ~~may:]~~

578 [~~(i) present evidence;]~~

579 [~~(ii) examine and cross-examine witnesses; and]~~

580 [~~(iii) offer oral and written arguments.]~~

581 [~~(e) (i) A person or insurer described in Subsection (10)(d) may conduct discovery~~
582 ~~proceedings in the same manner as is presently allowed in the district courts of this state.]~~

583 [~~(ii) All discovery proceedings shall be concluded not later than three days before the~~
584 ~~commencement of the public hearing.]~~

585 (11) If the proposed acquisition of control will require the approval of more than one

586 commissioner, the public hearing described in Subsection (9) may be held on a consolidated
587 basis upon request of the person filing the statement referred to in Subsection (1). The person
588 shall file the statement referred to in Subsection (1) with the National Association of Insurance
589 Commissioners within five days of making the request for a public hearing. A commissioner
590 may opt out of a consolidated hearing and shall provide notice to the applicant of the opt-out
591 within 10 days of the receipt of the statement referred to in Subsection (1). A hearing
592 conducted on a consolidated basis shall be public and shall be held within the United States
593 before the commissioners of the states in which the insurers are domiciled. The commissioners
594 shall hear and receive evidence. A commissioner may attend a hearing under this Subsection
595 (11) in person or by telecommunication.

596 (12) In connection with a change of control of a domestic insurer, any determination by
597 the commissioner that the person acquiring control of the insurer shall be required to maintain
598 or restore the capital of the insurer to the level required by the laws and regulations of this state
599 shall be made not later than 60 days after the date of notification of the change in control
600 submitted pursuant to Subsection (1).

601 (13) (a) The commissioner may retain technical experts to assist in reviewing all, or a
602 portion of, information filed in connection with a proposed merger or other acquisition of
603 control referred to in Subsection (1).

604 (b) In determining whether any of the conditions in Subsection (8) exist, the
605 commissioner may consider the findings of technical experts employed to review applicable
606 filings.

607 (c) (i) A technical expert employed under Subsection (13)(a) shall present to the
608 commissioner a statement of all expenses incurred by the technical expert in conjunction with
609 the technical expert's review of a proposed merger or other acquisition of control.

610 (ii) At the commissioner's direction the acquiring person shall compensate the technical
611 expert at customary rates for time and expenses:

612 (A) necessarily incurred; and

613 (B) approved by the commissioner.

614 (iii) The acquiring person shall:

615 (A) certify the consolidated account of all charges and expenses incurred for the review
616 by technical experts;

617 (B) retain a copy of the consolidated account described in Subsection (13)(c)(iii)(A);
618 and

619 (C) file with the department as a public record a copy of the consolidated account
620 described in Subsection (13)(c)(iii)(A).

621 (14) (a) (i) If a domestic insurer proposes to merge into another insurer, any
622 securityholder electing to exercise a right of dissent may file with the insurer a written request
623 for payment of the adjusted book value given in the statement required by Subsection (1) and
624 approved under Subsection (8), in return for the surrender of the security holder's securities.

625 (ii) The request described in Subsection (14)(a)(i) shall be filed not later than 10 days
626 after the day of the securityholders' meeting where the corporate action is approved.

627 (b) The dissenting securityholder is entitled to and the insurer is required to pay to the
628 dissenting securityholder the specified value within 60 days of receipt of the dissenting security
629 holder's security.

630 (c) Persons electing under this Subsection (14) to receive cash for their securities waive
631 the dissenting shareholder and appraisal rights otherwise applicable under Title 16, Chapter
632 10a, Part 13, Dissenters' Rights.

633 (d) (i) This Subsection (14) provides an elective procedure for dissenting
634 securityholders to resolve their objections to the plan of merger.

635 (ii) This section does not restrict the rights of dissenting securityholders under Title 16,
636 Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this
637 Subsection (14).

638 (15) (a) All statements, amendments, or other material filed under Subsection (1), and
639 all notices of public hearings held under Subsection [~~(8)~~] (10), shall be mailed by the insurer to
640 its securityholders within five business days after the insurer has received the statements,
641 amendments, other material, or notices.

642 (b) (i) Mailing expenses shall be paid by the person making the filing.

643 (ii) As security for the payment of mailing expenses, that person shall file with the
644 commissioner an acceptable bond or other deposit in an amount determined by the
645 commissioner.

646 (16) This section does not apply to any offer, request, invitation, agreement, or
647 acquisition that the commissioner by order exempts from the requirements of this section as:

648 (a) not having been made or entered into for the purpose of, and not having the effect
649 of, changing or influencing the control of a domestic insurer; or

650 (b) otherwise not comprehended within the purposes of this section.

651 (17) The following are violations of this section:

652 (a) the failure to file any statement, amendment, or other material required to be filed
653 pursuant to Subsections (1), (2), and (5); or

654 (b) the effectuation, or any attempt to effectuate, an acquisition of control of,
655 divestiture of, or merger with a domestic insurer unless the commissioner has given the
656 commissioner's approval to the acquisition or merger.

657 (18) (a) The courts of this state are vested with jurisdiction over:

658 (i) a person who:

659 (A) files a statement with the commissioner under this section; and

660 (B) is not resident, domiciled, or authorized to do business in this state; and

661 (ii) overall actions involving persons described in Subsection (18)(a)(i) arising out of a
662 violation of this section.

663 (b) A person described in Subsection (18)(a) is considered to have performed acts
664 equivalent to and constituting an appointment of the commissioner by that person, to be that
665 person's lawful agent upon whom may be served all lawful process in any action, suit, or
666 proceeding arising out of a violation of this section.

667 (c) A copy of a lawful process described in Subsection (18)(b) shall be:

668 (i) served on the commissioner; and

669 (ii) transmitted by registered or certified mail by the commissioner to the person at that
670 person's last-known address.

671 Section 6. Section **31A-17-404** is amended to read:

672 **31A-17-404. Credit allowed a domestic ceding insurer against reserves for**
673 **reinsurance.**

674 (1) (a) Subject to Subsections (1)(b) and (c), a domestic ceding insurer is allowed
675 credit for reinsurance as either an asset or a reduction from liability for reinsurance ceded only
676 if the reinsurer meets the requirements of Subsection (3), (4), (5), (6), (7), (8), or (9).

677 (b) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of
678 a kind or class of business that the assuming insurer is licensed or otherwise permitted to write

679 or assume:

680 (i) in the assuming insurer's state of domicile; or

681 (ii) in the case of a United States branch of an alien assuming insurer, in the state
682 through which the assuming insurer is entered and licensed to transact insurance or
683 reinsurance.

684 (c) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of
685 Subsection (11) are met.

686 (2) A domestic ceding insurer is allowed credit for reinsurance ceded:

687 (a) only if the reinsurance is payable in a manner consistent with Section [31A-22-1201](#);

688 (b) only to the extent that the accounting:

689 (i) is consistent with the terms of the reinsurance contract; and

690 (ii) clearly reflects:

691 (A) the amount and nature of risk transferred; and

692 (B) liability, including contingent liability, of the ceding insurer;

693 (c) only to the extent the reinsurance contract shifts insurance policy risk from the
694 ceding insurer to the assuming reinsurer in fact and not merely in form; and

695 (d) only if the reinsurance contract contains a provision placing on the reinsurer the
696 credit risk of all dealings with intermediaries regarding the reinsurance contract.

697 (3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
698 assuming insurer that is licensed to transact insurance or reinsurance in this state.

699 (4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
700 assuming insurer that is accredited by the commissioner as a reinsurer in this state.

701 (b) An insurer is accredited as a reinsurer if the insurer:

702 (i) files with the commissioner evidence of the insurer's submission to this state's
703 jurisdiction;

704 (ii) submits to the commissioner's authority to examine the insurer's books and records;

705 (iii) (A) is licensed to transact insurance or reinsurance in at least one state; or

706 (B) in the case of a United States branch of an alien assuming insurer, is entered
707 through and licensed to transact insurance or reinsurance in at least one state;

708 (iv) files annually with the commissioner a copy of the insurer's:

709 (A) annual statement filed with the insurance department of the insurer's state of

710 domicile; and
711 (B) most recent audited financial statement; and
712 (v) (A) (I) has not had the insurer's accreditation denied by the commissioner within 90
713 days after the day on which the insurer submits the information required by this Subsection (4);
714 and
715 (II) maintains a surplus with regard to policyholders in an amount not less than
716 \$20,000,000; or
717 (B) (I) has the insurer's accreditation approved by the commissioner; and
718 (II) maintains a surplus with regard to policyholders in an amount less than
719 \$20,000,000.
720 (c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's
721 accreditation is revoked by the commissioner after a notice and hearing.
722 (5) (a) A domestic ceding insurer is allowed a credit if:
723 (i) the reinsurance is ceded to an assuming insurer that is:
724 (A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or
725 (B) in the case of a United States branch of an alien assuming insurer, is entered
726 through a state meeting the requirements of Subsection (5)(a)(ii);
727 (ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for
728 reinsurance substantially similar to those applicable under this section; and
729 (iii) the assuming insurer or United States branch of an alien assuming insurer:
730 (A) maintains a surplus with regard to policyholders in an amount not less than
731 \$20,000,000; and
732 (B) submits to the authority of the commissioner to examine the insurer's books and
733 records.
734 (b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded
735 and assumed pursuant to a pooling arrangement among insurers in the same holding company
736 system.
737 (6) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
738 assuming insurer that maintains a trust fund:
739 (i) created in accordance with rules made by the commissioner pursuant to Title 63G,
740 Chapter 3, Utah Administrative Rulemaking Act; and

- 741 (ii) in a qualified United States financial institution for the payment of a valid claim of:
742 (A) a United States ceding insurer of the assuming insurer;
743 (B) an assign of the United States ceding insurer; and
744 (C) a successor in interest to the United States ceding insurer.
- 745 (b) To enable the commissioner to determine the sufficiency of the trust fund described
746 in Subsection (6)(a), the assuming insurer shall:
- 747 (i) report annually to the commissioner information substantially the same as that
748 required to be reported on the National Association of Insurance Commissioners Annual
749 Statement form by a licensed insurer; and
- 750 (ii) (A) submit to examination of its books and records by the commissioner; and
751 (B) pay the cost of an examination.
- 752 (c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the
753 form of the trust and any amendment to the trust is approved by:
- 754 (A) the commissioner of the state where the trust is domiciled; or
755 (B) the commissioner of another state who, pursuant to the terms of the trust
756 instrument, accepts principal regulatory oversight of the trust.
- 757 (ii) The form of the trust and an amendment to the trust shall be filed with the
758 commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.
- 759 (iii) The trust instrument shall provide that a contested claim is valid and enforceable
760 upon the final order of a court of competent jurisdiction in the United States.
- 761 (iv) The trust shall vest legal title to the trust's assets in one or more of the trust's
762 trustees for the benefit of:
- 763 (A) a United States ceding insurer of the assuming insurer;
764 (B) an assign of the United States ceding insurer; or
765 (C) a successor in interest to the United States ceding insurer.
- 766 (v) The trust and the assuming insurer are subject to examination as determined by the
767 commissioner.
- 768 (vi) The trust shall remain in effect for as long as the assuming insurer has an
769 outstanding obligation due under a reinsurance agreement subject to the trust.
- 770 (vii) No later than February 28 of each year, the trustee of the trust shall:
771 (A) report to the commissioner in writing the balance of the trust;

772 (B) list the trust's investments at the end of the preceding calendar year; and
773 (C) (I) certify the date of termination of the trust, if so planned; or
774 (II) certify that the trust will not expire before the following December 31.
775 (d) The following requirements apply to the following categories of assuming insurer:
776 (i) For a single assuming insurer:
777 (A) the trust fund shall consist of funds in trust in an amount not less than the assuming
778 insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and
779 (B) the assuming insurer shall maintain a trusted surplus of not less than \$20,000,000,
780 except as provided in Subsection (6)(d)(ii).
781 (ii) (A) At any time after the assuming insurer has permanently discontinued
782 underwriting new business secured by the trust for at least three full years, the commissioner
783 with principal regulatory oversight of the trust may authorize a reduction in the required
784 trusted surplus, but only after a finding, based on an assessment of the risk, that the new
785 required surplus level is adequate for the protection of United States ceding insurers,
786 policyholders, and claimants in light of reasonably foreseeable adverse loss development.
787 (B) The risk assessment may involve an actuarial review, including an independent
788 analysis of reserves and cash flows, and shall consider all material risk factors, including, when
789 applicable, the lines of business involved, the stability of the incurred loss estimates, and the
790 effect of the surplus requirements on the assuming insurer's liquidity or solvency.
791 (C) The minimum required trusted surplus may not be reduced to an amount less than
792 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States
793 ceding insurers covered by the trust.
794 (iii) For a group acting as assuming insurer, including incorporated and individual
795 unincorporated underwriters:
796 (A) for reinsurance ceded under a reinsurance agreement with an inception,
797 amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusted
798 account in an amount not less than the respective underwriters' several liabilities attributable to
799 business ceded by the one or more United States domiciled ceding insurers to an underwriter of
800 the group;
801 (B) for reinsurance ceded under a reinsurance agreement with an inception date on or
802 before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the

803 other provisions of this chapter, the trust shall consist of a trusteed account in an amount not
804 less than the respective underwriters' several insurance and reinsurance liabilities attributable to
805 business written in the United States;

806 (C) in addition to a trust described in Subsection (6)(d)(iii)(A) or (B), the group shall
807 maintain in trust a trusteed surplus of which \$100,000,000 is held jointly for the benefit of the
808 one or more United States domiciled ceding insurers of a member of the group for all years of
809 account;

810 (D) the incorporated members of the group:

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

813 (II) are subject to the same level of regulation and solvency control by the group's
814 domiciliary regulator as are the unincorporated members; and

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

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

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

821 (iv) For a group of incorporated underwriters under common administration, the group
822 shall:

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

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

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

830 (D) in addition to complying with the other provisions of this Subsection (6)(d)(iv),
831 maintain a joint trusteed surplus of which \$100,000,000 is held jointly for the benefit of the one
832 or more United States domiciled ceding insurers of a member of the group as additional
833 security for these liabilities; and

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

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

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

840 (7) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
841 assuming insurer that secures the assuming insurer's obligations in accordance with this
842 Subsection (7):

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

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

845 (i) be domiciled and licensed to transact insurance or reinsurance in a qualified
846 jurisdiction, as determined by the commissioner pursuant to Subsection (7)(d);

847 (ii) maintain minimum capital and surplus, or its equivalent, in an amount to be
848 determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter
849 3, Utah Administrative Rulemaking Act;

850 (iii) maintain financial strength ratings from two or more rating agencies considered
851 acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter
852 3, Utah Administrative Rulemaking Act; and

853 (iv) agree to:

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

855 (B) appoint the commissioner as the assuming insurer's agent for service of process in
856 this state;

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

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

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

863 (c) An association, including incorporated and individual unincorporated underwriters,
864 may be a certified reinsurer, if the association:

- 865 (i) satisfies the requirements of Subsections (7)(a) and (b);
- 866 (ii) satisfies the association's minimum capital and surplus requirements through the
867 capital and surplus equivalents, net of liabilities, of the association and the association's
868 members, which shall include a joint central fund that may be applied to any unsatisfied
869 obligation of the association or any of the association's members in an amount determined by
870 the commissioner to provide adequate protection;
- 871 (iii) does not have incorporated members of the association engaged in any business
872 other than underwriting as a member of the association;
- 873 (iv) is subject to the same level of regulation and solvency control of the incorporated
874 members of the association by the association's domiciliary regulator as are the unincorporated
875 members; and
- 876 (v) within 90 days after the day on which the association's financial statements are due
877 to be filed with the association's domiciliary regulator, provides to the commissioner:
- 878 (A) an annual certification by the association's domiciliary regulator of the solvency of
879 each underwriter member; or
- 880 (B) if a certification described in Subsection (7)(c)(v)(A) is unavailable, financial
881 statements prepared by independent public accountants, of each underwriter member of the
882 association.
- 883 (d) (i) The commissioner shall create and publish a list of qualified jurisdictions under
884 which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be
885 considered for certification by the commissioner as a certified reinsurer.
- 886 (ii) To determine whether the domiciliary jurisdiction of a non-United States assuming
887 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:
- 888 (A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory
889 system of the jurisdiction, both initially and on an ongoing basis;
- 890 (B) shall consider the rights, the benefits, and the extent of reciprocal recognition
891 afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the
892 United States;
- 893 (C) shall require the qualified jurisdiction to share information and cooperate with the
894 commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and
- 895 (D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has

896 determined that the jurisdiction does not adequately and promptly enforce final United States
897 judgments and arbitration awards.

898 (iii) The commissioner may consider additional factors in determining a qualified
899 jurisdiction.

900 (iv) A list of qualified jurisdictions shall be published through the National Association
901 of Insurance Commissioners' Committee Process.

902 (v) The commissioner shall:

903 (A) consider the National Association of Insurance Commissioners' list of qualified
904 jurisdictions in determining qualified jurisdictions; and

905 (B) if the commissioner approves a jurisdiction as qualified that does not appear on the
906 National Association of Insurance Commissioners' list of qualified jurisdictions, provide
907 thoroughly documented justification in accordance with criteria to be developed by rule made
908 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

909 (vi) United States jurisdictions that meet the requirement for accreditation under the
910 National Association of Insurance Commissioners' financial standards and accreditation
911 program shall be recognized as qualified jurisdictions.

912 (vii) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified
913 jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of
914 revocation.

915 (e) The commissioner shall:

916 (i) assign a rating to each certified reinsurer, giving due consideration to the financial
917 strength ratings that have been assigned by rating agencies considered acceptable to the
918 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
919 Rulemaking Act; and

920 (ii) publish a list of all certified reinsurers and their ratings.

921 (f) A certified reinsurer shall secure obligations assumed from United States ceding
922 insurers under this Subsection (7) at a level consistent with the certified reinsurer's rating, as
923 specified in rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah
924 Administrative Rulemaking Act.

925 (i) For a domestic ceding insurer to qualify for full financial statement credit for
926 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a

927 form acceptable to the commissioner and consistent with Section 31A-17-404.1, or in a
928 multibeneficiary trust in accordance with Subsections (5), (6), and (9), except as otherwise
929 provided in this Subsection (7).

930 (ii) If a certified reinsurer maintains a trust to fully secure the certified reinsurer's
931 obligations subject to Subsections (5), (6), and (9), and chooses to secure the certified
932 reinsurer's obligations incurred as a certified reinsurer in the form of a multibeneficiary trust,
933 the certified reinsurer shall maintain separate trust accounts for the certified reinsurer's
934 obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer
935 with reduced security as permitted by this Subsection (7) or comparable laws of other United
936 States jurisdictions and for the certified reinsurer's obligations subject to Subsections (5), (6),
937 and (9).

938 (iii) It shall be a condition to the grant of certification under this Subsection (7) that the
939 certified reinsurer shall have bound itself:

940 (A) by the language of the trust and agreement with the commissioner with principal
941 regulatory oversight of the trust account; and

942 (B) upon termination of the trust account, to fund, out of the remaining surplus of the
943 trust, any deficiency of any other trust account.

944 (iv) The minimum trustee surplus requirements provided in Subsections (5), (6), and
945 (9) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer
946 for the purpose of securing obligations incurred under this Subsection (7), except that the trust
947 shall maintain a minimum trustee surplus of \$10,000,000.

948 (v) With respect to obligations incurred by a certified reinsurer under this Subsection
949 (7), if the security is insufficient, the commissioner:

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

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

953 (vi) (A) For purposes of this Subsection (7), a certified reinsurer whose certification
954 has been terminated for any reason shall be treated as a certified reinsurer required to secure
955 100% of the certified reinsurer's obligations.

956 (B) As used in this Subsection (7), the term "terminated" refers to revocation,
957 suspension, voluntary surrender, and inactive status.

958 (C) If the commissioner continues to assign a higher rating as permitted by other
959 provisions of this section, the requirement under this Subsection (7)(f)(vi) does not apply to a
960 certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

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

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

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

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

966 (h) (i) A certified reinsurer that ceases to assume new business in this state may request
967 to maintain the certified reinsurer's certification in inactive status in order to continue to qualify
968 for a reduction in security for its in-force business.

969 (ii) An inactive certified reinsurer shall continue to comply with all applicable
970 requirements of this Subsection (7).

971 (iii) The commissioner shall assign a rating to a reinsurer that qualifies under this
972 Subsection (7)(h), that takes into account, if relevant, the reasons why the reinsurer is not
973 assuming new business.

974 (8) (a) As used in this Subsection (8):

975 (i) "Covered agreement" means an agreement entered into pursuant to Dodd-Frank
976 Wall Street Reform and Consumer Protection Act, 31 U.S.C. Sections 313 and 314, that:

977 (A) is currently in effect or in a period of provisional application; and

978 (B) addresses the elimination, under specified conditions, of collateral requirements as
979 a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this
980 state or for allowing the ceding insurer to recognize credit for reinsurance.

981 (ii) "Reciprocal jurisdiction" means a jurisdiction that is:

982 (A) a non-United States jurisdiction that is subject to an in-force covered agreement
983 with the United States, each within its legal authority, or, in the case of a covered agreement
984 between the United States and European Union, is a member state of the European Union;

985 (B) a United States jurisdiction that meets the requirements for accreditation under the
986 National Association of Insurance Commissioners' financial standards and accreditation
987 program; or

988 (C) a qualified jurisdiction, as determined by the commissioner in accordance with

989 Subsection (7)(d), that is not otherwise described in this Subsection (8)(a)(ii) and meets certain
990 additional requirements, consistent with the terms and conditions of in-force covered
991 agreements, as specified by the commissioner in rule made in accordance with Title 63G,
992 Chapter 3, Utah Administrative Rulemaking Act.

993 (b) (i) Credit is allowed when the reinsurance is ceded to an assuming insurer meeting
994 each of the conditions set forth in this Subsection (8)(b).

995 (ii) The assuming insurer must have the assuming insurer's head office in or be
996 domiciled in, as applicable, and be licensed in a reciprocal jurisdiction.

997 (iii) (A) The assuming insurer shall have and maintain, on an ongoing basis, minimum
998 capital and surplus, or its equivalent, calculated according to the methodology of the assuming
999 insurer's domiciliary jurisdiction, in an amount to be set forth in regulation.

1000 (B) If the assuming insurer is an association, including incorporated and individual
1001 unincorporated underwriters, the assuming insurer shall have and maintain, on an ongoing
1002 basis, minimum capital and surplus equivalents (net of liabilities), calculated according to the
1003 methodology applicable in the assuming insurer's domiciliary jurisdiction, and a central fund
1004 containing a balance in amounts set forth in regulation.

1005 (iv) (A) The assuming insurer must have and maintain, on an ongoing basis, a
1006 minimum solvency or capital ration, as applicable, which will be set forth in regulation.

1007 (B) If the assuming insurer is an association, including incorporated and individual
1008 unincorporated underwriters, the assuming insurer must have and maintain, on an ongoing
1009 basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming
1010 insurer has the assuming insurer's head office or is domiciled, as applicable, and is also
1011 licensed.

1012 (v) The assuming insurer must agree and provide adequate assurance to the
1013 commissioner, in a form specified by the commissioner by rule made in accordance with Title
1014 63G, Chapter 3, Utah Administrative Rulemaking Act, as follows:

1015 (A) the assuming insurer must provide prompt written notice and explanation to the
1016 commissioner if the assuming insurer falls below the minimum requirements set forth in
1017 Subsection (8)(c) or (d), or if any regulatory action is taken against the assuming insurer for
1018 serious noncompliance with applicable law;

1019 (B) the assuming insurer must consent in writing to the jurisdiction of the courts of this

1020 state and to the appointment of the commissioner as agent for service of process, however the
1021 commissioner may require that consent for service of process be provided to the commissioner
1022 and included in each reinsurance agreement and nothing in this provision shall limit, or in any
1023 way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute
1024 resolution mechanisms, except to the extent such agreements are unenforceable under
1025 applicable insolvency or delinquency laws;

1026 (C) the assuming insurer must consent in writing to pay all final judgments, wherever
1027 enforcement is sought, obtained by a ceding insurer or the ceding insurer's legal successor, that
1028 have been declared enforceable in the jurisdiction where the judgment was obtained;

1029 (D) each reinsurance agreement must include a provision requiring the assuming
1030 insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities
1031 attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists
1032 enforcement of a final judgment that is enforceable under the law of the jurisdiction in which
1033 the final judgement was obtained or a properly enforceable arbitration award, whether obtained
1034 by the ceding insurer or by the ceding insurer's legal successor on behalf of the ceding insurer's
1035 resolution estate; and

1036 (E) the assuming insurer must confirm that the assuming insurer is not presently
1037 participating in any solvent scheme of arrangement which involved this state's ceding insurers,
1038 and agree to notify the ceding insurer and the commissioner and to provide security:

1039 (I) in an amount equal to 100% of the assuming insurer's liabilities to the ceding
1040 insurer, should the assuming insurer enter into such a solvent scheme of arrangement; and

1041 (II) in a form consistent with the provisions of Subsections (7) and (10) and as
1042 specified by the commissioner in regulation.

1043 (vi) The assuming insurer or the assuming insurer's legal successor must provide, if
1044 requested by the commissioner, on behalf of the assuming insurer and any legal predecessors,
1045 certain documentation to the commissioner, as specified by the commissioner by rule made in
1046 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1047 (vii) The assuming insurer must maintain a practice of prompt payment of claims under
1048 reinsurance agreements, pursuant to criteria set forth in rule made in accordance with Title
1049 63G, Chapter 3, Utah Administrative Rulemaking Act.

1050 (viii) The assuming insurer's supervisory authority must confirm to the commissioner

1051 on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily
1052 reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements
1053 set forth in Subsections (8)(c) and (d).

1054 (ix) Nothing in this provision precludes an assuming insurer from providing the
1055 commissioner with information on a voluntary basis.

1056 (c) (i) The commissioner shall timely create and publish a list of reciprocal
1057 jurisdictions.

1058 (ii) (A) A list of reciprocal jurisdictions is published through the National Association
1059 of Insurance Commissioners' Committee Process.

1060 (B) The commissioner's list of reciprocal jurisdictions shall include any reciprocal
1061 jurisdiction as defined in this Subsection (8), and shall consider any other reciprocal
1062 jurisdictions in accordance with the criteria developed under rule made in accordance with
1063 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1064 (iii) (A) The commissioner may remove a jurisdiction from the list of reciprocal
1065 jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a
1066 reciprocal jurisdiction, in accordance with a process set forth in rule made in accordance with
1067 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the commissioner may
1068 not remove from the list a reciprocal jurisdiction.

1069 (B) Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance
1070 ceded to an assuming insurer whose home office or domicile is in that jurisdiction is allowed, if
1071 otherwise allowed under this chapter.

1072 (d) (i) The commissioner shall timely create and publish a list of assuming insurers that
1073 have satisfied the conditions set forth in this subsection and to which cessions shall be granted
1074 credit in accordance with this Subsection (8).

1075 (ii) The commissioner may add an assuming insurer to such list if a National
1076 Association of Insurance Commissioners accredited jurisdiction has added such assuming
1077 insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer
1078 submits the information to the commissioner as required under this Subsection (8) and
1079 complies with any additional requirements that the commissioner may impose by rule made in
1080 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except to the
1081 extent that they conflict with an applicable covered agreement.

1082 (e) (i) If the commissioner determines that an assuming insurer no longer meets one or
1083 more of the requirements under this Subsection (8), the commissioner may revoke or suspend
1084 the eligibility of the assuming insurer for recognition under this Subsection (8) in accordance
1085 with procedures established in rule made in accordance with Title 63G, Chapter 3, Utah
1086 Administrative Rulemaking Act.

1087 (ii) (A) While an assuming insurer's eligibility is suspended, no reinsurance agreement
1088 issued, amended, or renewed after the day on which the suspension is effective qualifies for
1089 credit except to the extent that the assuming insurer's obligations under the contract are secured
1090 in accordance with Subsection (10).

1091 (B) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be
1092 granted after the day on which the revocation is effective with respect to any reinsurance
1093 agreements entered into by the assuming insurer, including reinsurance agreements entered into
1094 before the day on which the revocation is effective, except to the extent that the assuming
1095 insurer's obligations under the contract are secured in a form acceptable to the commissioner
1096 and consistent with the provisions of Subsection (10).

1097 (f) If subject to a legal process of rehabilitation, liquidation, or conservation, as
1098 applicable, the ceding insurer, or the ceding insurer's representative, may seek and, if
1099 determined appropriate by the court in which the proceedings are pending, may obtain an order
1100 requiring that the assuming insurer post security for all outstanding ceded liabilities.

1101 (g) Nothing in this Subsection (8) limits or in any way alters the capacity of parties to a
1102 reinsurance agreement to agree on requirements for security or other terms in that reinsurance
1103 agreement, except as expressly prohibited by this chapter or other applicable law or regulation.

1104 (h) (i) Credit may be taken under this Subsection (8) only for reinsurance agreements
1105 entered into, amended, or renewed on or after the effective date of the statute adding this
1106 Subsection (8), and only with respect to losses incurred and reserves reported on or after the
1107 later of:

1108 (A) the day on which the assuming insurer has met all eligibility requirements pursuant
1109 to Subsection (8)(b); and

1110 (B) the day on which the new reinsurance agreement, amendment, or renewal is
1111 effective.

1112 (ii) This Subsection (8) does not alter or impair a ceding insurer's right to take credit

1113 for reinsurance, to the extent that credit is not available under this Subsection (8), as long as the
1114 reinsurance qualifies for credit under any other applicable provision of this chapter.

1115 (iii) Nothing in this Subsection (8) authorizes an assuming insurer to withdraw or
1116 reduce the security provided under any reinsurance agreement except as permitted by the terms
1117 of the agreement.

1118 (iv) Nothing in this Subsection (8) limits, or in any way alters, the capacity of parties to
1119 any reinsurance agreement to renegotiate the agreement.

1120 (9) If reinsurance is ceded to an assuming insurer not meeting the requirements of
1121 Subsection (3), (4), (5), (6), (7), or (8), a domestic ceding insurer is allowed credit only as to
1122 the insurance of a risk located in a jurisdiction where the reinsurance is required by applicable
1123 law or regulation of that jurisdiction.

1124 (10) (a) An asset or a reduction from liability for the reinsurance ceded by a domestic
1125 insurer to an assuming insurer not meeting the requirements of Subsection (3), (4), (5), (6), (7),
1126 or (8) shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer.

1127 (b) The commissioner may adopt by rule made in accordance with Title 63G, Chapter
1128 3, Utah Administrative Rulemaking Act, specific additional requirements relating to or setting
1129 forth:

1130 (i) the valuation of assets or reserve credits;

1131 (ii) the amount and forms of security supporting reinsurance arrangements; and

1132 (iii) the circumstances pursuant to which credit will be reduced or eliminated.

1133 (c) (i) The reduction shall be in the amount of funds held by or on behalf of the ceding
1134 insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with
1135 the assuming insurer as security for the payment of obligations thereunder, if the security is:

1136 (A) held in the United States subject to withdrawal solely by, and under the exclusive
1137 control of, the ceding insurer; or

1138 (B) in the case of a trust, held in a qualified United States financial institution.

1139 (ii) The security described in this Subsection (10)(c) may be in the form of:

1140 (A) cash;

1141 (B) securities listed by the Securities Valuation Office of the National Association of
1142 Insurance Commissioners, including those deemed exempt from filing as defined by the

1143 Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted

1144 assets;

1145 (C) clean, irrevocable, unconditional letters of credit, issued or confirmed by a
1146 qualified United States financial institution effective no later than December 31 of the year for
1147 which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or
1148 before the filing date of its annual statement;

1149 (D) letters of credit meeting applicable standards of issuer acceptability as of the dates
1150 of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's
1151 subsequent failure to meet applicable standards of issuer acceptability, continue to be
1152 acceptable as security until their expiration, extension, renewal, modification or amendment,
1153 whichever first occurs; or

1154 (E) any other form of security acceptable to the commissioner.

1155 (11) Reinsurance credit is not allowed a domestic ceding insurer unless the assuming
1156 insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:

1157 (a) (i) being an admitted insurer; and

1158 (ii) submitting to jurisdiction under Section 31A-2-309;

1159 (b) having irrevocably appointed the commissioner as the domestic ceding insurer's
1160 agent for service of process in an action arising out of or in connection with the reinsurance,
1161 which appointment is made under Section 31A-2-309; or

1162 (c) agreeing in the reinsurance contract:

1163 (i) that if the assuming insurer fails to perform the assuming insurer's obligations under
1164 the terms of the reinsurance contract, the assuming insurer, at the request of the ceding insurer,
1165 shall:

1166 (A) submit to the jurisdiction of a court of competent jurisdiction in a state of the
1167 United States;

1168 (B) comply with all requirements necessary to give the court jurisdiction; and

1169 (C) abide by the final decision of the court or of an appellate court in the event of an
1170 appeal; and

1171 (ii) to designate the commissioner or a specific attorney licensed to practice law in this
1172 state as its attorney upon whom may be served lawful process in an action, suit, or proceeding
1173 instituted by or on behalf of the ceding company.

1174 (12) Submitting to the jurisdiction of Utah courts under Subsection (11) does not

1175 override a duty or right of a party under the reinsurance contract, including a requirement that
1176 the parties arbitrate their disputes.

1177 (13) (a) If an assuming insurer does not meet the requirements of Subsection (3), (4),
1178 (5), or (8), the credit permitted by Subsection (6) or (7) may not be allowed unless the
1179 assuming insurer agrees in the trust instrument to the conditions described in Subsections
1180 (13)(b) through (e).

1181 (b) (i) Notwithstanding any other provision in the trust instrument, if an event
1182 described in Subsection (13)(b)(ii) occurs the trustee shall comply with:

1183 (A) an order of the commissioner with regulatory oversight over the trust; or

1184 (B) an order of a court of competent jurisdiction directing the trustee to transfer to the
1185 commissioner with regulatory oversight all of the assets of the trust fund.

1186 (ii) This Subsection (13)(b) applies if:

1187 (A) the trust fund is inadequate because the trust contains an amount less than the
1188 amount required by Subsection (6)(d); or

1189 (B) the grantor of the trust is:

1190 (I) declared insolvent; or

1191 (II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the
1192 laws of its state or country of domicile.

1193 (c) The assets of a trust fund described in Subsection (13)(b) shall be distributed by and
1194 a claim shall be filed with and valued by the commissioner with regulatory oversight in
1195 accordance with the laws of the state in which the trust is domiciled that are applicable to the
1196 liquidation of a domestic insurance company.

1197 (d) If the commissioner with regulatory oversight determines that the assets of the trust
1198 fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United
1199 States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be
1200 returned by the commissioner with regulatory oversight to the trustee for distribution in
1201 accordance with the trust instrument.

1202 (e) A grantor shall waive any right otherwise available to the grantor under United
1203 States law that is inconsistent with this Subsection (13).

1204 (14) (a) If an accredited or certified reinsurer ceases to meet the requirements for
1205 accreditation or certification, the commissioner may suspend or revoke the reinsurer's

1206 accreditation or certification.

1207 (b) The commissioner shall give the reinsurer notice and opportunity for hearing.

1208 (c) The suspension or revocation may not take effect until after the day on which the
1209 commissioner issues an order after a hearing, unless:

1210 (i) the reinsurer waives the reinsurer's right to hearing;

1211 (ii) the commissioner's order is based on:

1212 (A) regulatory action by the reinsurer's domiciliary jurisdiction; or

1213 (B) the voluntary surrender or termination of the reinsurer's eligibility to transact
1214 insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state
1215 under Subsection (7)(g); or

1216 (iii) the commissioner's finding that an emergency requires immediate action and a
1217 court of competent jurisdiction has not stayed the commissioner's action.

1218 (d) While a reinsurer's accreditation or certification is suspended, no reinsurance
1219 contract issued or renewed after the effective date of the suspension qualifies for credit except
1220 to the extent that the reinsurer's obligations under the contract are secured in accordance with
1221 Section [31A-17-404.1](#).

1222 (e) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance
1223 may be granted after the effective date of the revocation except to the extent that the reinsurer's
1224 obligations under the contract are secured in accordance with Subsection (7)(f) or Section
1225 [31A-17-404.1](#).

1226 (15) (a) A ceding insurer shall take steps to manage the ceding insurer's reinsurance
1227 recoverables proportionate to the ceding insurer's own book of business.

1228 (b) (i) A domestic ceding insurer shall notify the commissioner within 30 days after the
1229 day on which reinsurance recoverables from any single assuming insurer, or group of affiliated
1230 assuming insurers:

1231 (A) exceeds 50% of the domestic ceding insurer's last reported surplus to
1232 policyholders; or

1233 (B) after it is determined that reinsurance recoverables from any single assuming
1234 insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding
1235 insurer's last reported surplus to policyholders.

1236 (ii) The notification required by Subsection (15)(b)(i) shall demonstrate that the

1237 exposure is safely managed by the domestic ceding insurer.

1238 (c) A ceding insurer shall take steps to diversify the ceding insurer's reinsurance
1239 program.

1240 (d) (i) A domestic ceding insurer shall notify the commissioner within 30 days after the
1241 day on which the ceding insurer cedes or is likely to cede more than 20% of the ceding insurer's
1242 gross written premium in the prior calendar year to any:

1243 (A) single assuming insurer; or

1244 (B) group of affiliated assuming insurers.

1245 (ii) The notification shall demonstrate that the exposure is safely managed by the
1246 domestic ceding insurer.

1247 (16) A ceding insurer licensed under Chapter 5, Domestic Stock and Mutual Insurance
1248 Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health
1249 Maintenance Organizations and Limited Health Plans, or Chapter 9, Insurance Fraternal, [~~or~~
1250 ~~Chapter 14, Foreign Insurers is not~~] may be allowed credit if:

1251 (a) the reinsurance is ceded to an assuming domestic [~~or foreign~~] captive insurer[;
1252 ~~unless~~]; and

1253 (b) the assuming domestic [~~or foreign~~] captive insurer complies with:

1254 (i) Sections 31A-2-202 through 31A-2-205;

1255 [~~(a)~~] (ii) Chapter 4, Insurers in General;

1256 [~~(b)~~] (iii) Chapter 16, Insurance Holding Companies;

1257 [~~(c)~~] (iv) Chapter 16a, Risk Management and Own Risk and Solvency Assessment Act;

1258 [~~(d)~~] (v) Chapter 17, Determination of Financial Condition; [~~and~~]

1259 [~~(e)~~] (vi) Chapter 18, Investments[.]; and

1260 (vii) any other requirement that, in the commissioner's discretion, is necessary to
1261 promote the captive insurer's solvency.

1262 Section 7. Section **31A-19a-209** is amended to read:

1263 **31A-19a-209. Special provisions for title insurance.**

1264 (1) (a) (i) The Title and Escrow Commission [~~shall adopt rules~~] may make rules, in
1265 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to
1266 Section **31A-2-404**, establishing rate standards and rating methods [~~for individual title~~
1267 ~~insurance producers and agency title insurance producers~~].

1268 (ii) The commissioner shall determine compliance with rate standards and rating
1269 methods for title insurers, individual title insurance producers, and agency title insurance
1270 producers.

1271 (b) In addition to the considerations in determining compliance with rate standards and
1272 rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title
1273 insurers, the commissioner and the Title and Escrow Commission shall consider the costs and
1274 expenses incurred by title insurers, individual title insurance producers, and agency title
1275 insurance producers [~~peculiar~~] pertaining to the business of title insurance including:

1276 (i) the maintenance of title plants; and

1277 (ii) the examining of public records to determine insurability of title to real
1278 [~~redevelopment~~] property.

1279 [~~(2)(a) A title insurer, an agency title insurance producer, or an individual title
1280 insurance producer who is not an employee of a title insurer or who is not designated by an
1281 agency title insurance producer shall file with the commissioner.]~~

1282 [~~(i) a schedule of the escrow charges that the title insurer, individual title insurance
1283 producer, or agency title insurance producer proposes to use in this state for services performed
1284 in connection with the issuance of policies of title insurance; and]~~

1285 [~~(ii) any changes to the schedule of the escrow charges described in Subsection
1286 (2)(a)(i).]~~

1287 [~~(b) Except for a schedule filed by a title insurer under this Subsection (2), a schedule
1288 filed under this Subsection (2) is subject to review by the Title and Escrow Commission.]~~

1289 [~~(c)(i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i)
1290 takes effect on the day on which the schedule of escrow charges is filed.]~~

1291 [~~(ii) Any changes to the schedule of the escrow charges required to be filed by
1292 Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow
1293 charges except that the effective date may not be less than 30 calendar days after the day on
1294 which the change to the schedule of escrow charges is filed.]~~

1295 [~~(3)~~] (2) A title insurer, individual title insurance producer, or agency title insurance
1296 producer may not [~~file or~~] use any rate or other charge relating to the business of title
1297 insurance, including rates or charges [~~filed~~] for escrow that would cause the title insurance
1298 company, individual title insurance producer, or agency title insurance producer to:

- 1299 (a) operate at less than the cost of doing~~[(i)]~~ the insurance business; or
 1300 ~~[(ii) the escrow business; or]~~
 1301 (b) fail to adequately underwrite a title insurance policy.
 1302 ~~[(4) (a) All or any of the schedule of rates or schedule of charges, including the~~
 1303 ~~schedule of escrow charges, may be changed or amended at any time, subject to the limitations~~
 1304 ~~in this Subsection (4).]~~
 1305 ~~[(b) Each change or amendment shall:]~~
 1306 ~~[(i) be filed with the commissioner, subject to review by the Title and Escrow~~
 1307 ~~Commission; and]~~
 1308 ~~[(ii) state the effective date of the change or amendment, which may not be less than 30~~
 1309 ~~calendar days after the day on which the change or amendment is filed.]~~
 1310 ~~[(c) Any change or amendment remains in force for a period of at least 90 calendar~~
 1311 ~~days from the change or amendment's effective date.]~~
 1312 ~~[(5) While the schedule of rates and schedule of charges are effective, a copy of each~~
 1313 ~~shall be:]~~
 1314 ~~[(a) retained in each of the offices of:]~~
 1315 ~~[(i) the title insurer in this state;]~~
 1316 ~~[(ii) the title insurer's individual title insurance producers or agency title insurance~~
 1317 ~~producers in this state; and]~~
 1318 ~~[(b) upon request, furnished to the public.]~~
 1319 ~~[(6) Except in accordance with the schedules of rates and charges filed with the~~
 1320 ~~commissioner, a title insurer, individual title insurance producer, or agency title insurance~~
 1321 ~~producer may not make or impose any premium or other charge:]~~
 1322 ~~[(a) in connection with the issuance of a policy of title insurance; or]~~
 1323 ~~[(b) for escrow services performed in connection with the issuance of a policy of title~~
 1324 ~~insurance.]~~
 1325 Section 8. Section **31A-23a-106** is amended to read:
 1326 **31A-23a-106. License types.**
 1327 (1) (a) A resident or nonresident license issued under this chapter shall be issued under
 1328 the license types described under Subsection (2).
 1329 (b) A license type and a line of authority pertaining to a license type describe the type

1330 of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license
1331 type is intended to describe the matters to be considered under any education, examination, and
1332 training required of a license applicant under Sections [31A-23a-108](#), [31A-23a-202](#), and
1333 [31A-23a-203](#).

1334 (2) (a) A producer license type includes the following lines of authority:

1335 (i) life insurance, including a nonvariable contract;

1336 (ii) variable contracts, including variable life and annuity, if the producer has the life
1337 insurance line of authority;

1338 (iii) accident and health insurance, including a contract issued to a policyholder under
1339 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
1340 Organizations and Limited Health Plans;

1341 (iv) property insurance;

1342 (v) casualty insurance, including a surety or other bond;

1343 (vi) title insurance under one or more of the following categories:

1344 (A) title examination, including authority to act as a title marketing representative;

1345 (B) escrow, including authority to act as a title marketing representative; and

1346 (C) title marketing representative only; and

1347 (vii) personal lines insurance.

1348 (b) A surplus lines producer license type includes the following lines of authority:

1349 (i) property insurance, if the person holds an underlying producer license with the
1350 property line of insurance; and

1351 (ii) casualty insurance, if the person holds an underlying producer license with the
1352 casualty line of authority.

1353 (c) A limited line producer license type includes the following limited lines of
1354 authority:

1355 (i) limited line credit insurance;

1356 (ii) travel insurance, as set forth in Part 9, Travel Insurance Act;

1357 (iii) motor club insurance;

1358 (iv) car rental related insurance;

1359 (v) legal expense insurance;

1360 (vi) crop insurance;

- 1361 (vii) self-service storage insurance;
- 1362 (viii) bail bond producer;
- 1363 (ix) guaranteed asset protection waiver; [~~and~~]
- 1364 (x) portable electronics insurance[-]; and
- 1365 (xi) pet insurance.
- 1366 (d) A consultant license type includes the following lines of authority:
- 1367 (i) life insurance, including a nonvariable contract;
- 1368 (ii) variable contracts, including variable life and annuity, if the consultant has the life
- 1369 insurance line of authority;
- 1370 (iii) accident and health insurance, including a contract issued to a policyholder under
- 1371 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 1372 Organizations and Limited Health Plans;
- 1373 (iv) property insurance;
- 1374 (v) casualty insurance, including a surety or other bond; and
- 1375 (vi) personal lines insurance.
- 1376 (e) A managing general agent license type includes the following lines of authority:
- 1377 (i) life insurance, including a nonvariable contract;
- 1378 (ii) variable contracts, including variable life and annuity, if the managing general
- 1379 agent has the life insurance line of authority;
- 1380 (iii) accident and health insurance, including a contract issued to a policyholder under
- 1381 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 1382 Organizations and Limited Health Plans;
- 1383 (iv) property insurance;
- 1384 (v) casualty insurance, including a surety or other bond; and
- 1385 (vi) personal lines insurance.
- 1386 (f) A reinsurance intermediary license type includes the following lines of authority:
- 1387 (i) life insurance, including a nonvariable contract;
- 1388 (ii) variable contracts, including variable life and annuity, if the reinsurance
- 1389 intermediary has the life insurance line of authority;
- 1390 (iii) accident and health insurance, including a contract issued to a policyholder under
- 1391 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

1392 Organizations and Limited Health Plans;

1393 (iv) property insurance;

1394 (v) casualty insurance, including a surety or other bond; and

1395 (vi) personal lines insurance.

1396 (g) A person who holds a license under Subsection (2)(a) has the qualifications

1397 necessary to act as a holder of a license under Subsection (2)(c), except that the person may not

1398 act under Subsection (2)(c)(viii) or (ix).

1399 (3) (a) The commissioner may by rule recognize other producer, surplus lines producer,
1400 limited line producer, consultant, managing general agent, or reinsurance intermediary lines of
1401 authority as to kinds of insurance not listed under Subsections (2)(a) through (f).

1402 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and
1403 Escrow Commission may by rule, with the concurrence of the commissioner and subject to
1404 Section 31A-2-404, recognize other categories for an individual title insurance producer or
1405 agency title insurance producer line of authority not listed under Subsection (2)(a)(vi).

1406 (4) The variable contracts line of authority requires:

1407 (a) for a producer, licensure by the Financial Industry Regulatory Authority as a:

1408 (i) registered broker-dealer; or

1409 (ii) broker-dealer agent, with a current registration with a broker-dealer; and

1410 (b) for a consultant, registration with the Securities and Exchange Commission or
1411 licensure by the Utah Division of Securities as an:

1412 (i) investment adviser; or

1413 (ii) investment adviser representative, with a current association with an investment
1414 adviser.

1415 (5) A surplus lines producer is a producer who has a surplus lines license.

1416 Section 9. Section 31A-23a-111 is amended to read:

1417 **31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
1418 **terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.**

1419 (1) A license type issued under this chapter remains in force until:

1420 (a) revoked or suspended under Subsection (5);

1421 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
1422 administrative action;

- 1423 (c) the licensee dies or is adjudicated incompetent as defined under:
- 1424 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- 1425 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
- 1426 Minors;
- 1427 (d) lapsed under Section 31A-23a-113; or
- 1428 (e) voluntarily surrendered.
- 1429 (2) The following may be reinstated within one year after the day on which the license
- 1430 is no longer in force:
- 1431 (a) a lapsed license; or
- 1432 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
- 1433 not be reinstated after the license period in which the license is voluntarily surrendered.
- 1434 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
- 1435 license, submission and acceptance of a voluntary surrender of a license does not prevent the
- 1436 department from pursuing additional disciplinary or other action authorized under:
- 1437 (a) this title; or
- 1438 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
- 1439 Administrative Rulemaking Act.
- 1440 (4) A line of authority issued under this chapter remains in force until:
- 1441 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;
- 1442 [or]
- 1443 (b) the supporting license type:
- 1444 (i) is revoked or suspended under Subsection (5);
- 1445 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
- 1446 administrative action;
- 1447 (iii) lapses under Section 31A-23a-113; or
- 1448 (iv) is voluntarily surrendered; or
- 1449 (c) the licensee dies or is adjudicated incompetent as defined under:
- 1450 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- 1451 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
- 1452 Minors.
- 1453 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an

1454 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
1455 commissioner may:

1456 (i) revoke:

1457 (A) a license; or

1458 (B) a line of authority;

1459 (ii) suspend for a specified period of 12 months or less:

1460 (A) a license; or

1461 (B) a line of authority;

1462 (iii) limit in whole or in part:

1463 (A) a license; or

1464 (B) a line of authority;

1465 (iv) deny a license application;

1466 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or

1467 (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and

1468 Subsection (5)(a)(v).

1469 (b) The commissioner may take an action described in Subsection (5)(a) if the
1470 commissioner finds that the licensee or license applicant:

1471 (i) is unqualified for a license or line of authority under Section 31A-23a-104,

1472 31A-23a-105, or 31A-23a-107;

1473 (ii) violates:

1474 (A) an insurance statute;

1475 (B) a rule that is valid under Subsection 31A-2-201(3); or

1476 (C) an order that is valid under Subsection 31A-2-201(4);

1477 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
1478 delinquency proceedings in any state;

1479 (iv) fails to pay a final judgment rendered against the person within 60 days after the
1480 day on which the judgment became final;

1481 (v) fails to meet the same good faith obligations in claims settlement that is required of
1482 admitted insurers;

1483 (vi) is affiliated with and under the same general management or interlocking
1484 directorate or ownership as another insurance producer that transacts business in this state

- 1485 without a license;
- 1486 (vii) refuses:
- 1487 (A) to be examined; or
- 1488 (B) to produce its accounts, records, and files for examination;
- 1489 (viii) has an officer who refuses to:
- 1490 (A) give information with respect to the insurance producer's affairs; or
- 1491 (B) perform any other legal obligation as to an examination;
- 1492 (ix) provides information in the license application that is:
- 1493 (A) incorrect;
- 1494 (B) misleading;
- 1495 (C) incomplete; or
- 1496 (D) materially untrue;
- 1497 (x) violates an insurance law, valid rule, or valid order of another regulatory agency in
- 1498 any jurisdiction;
- 1499 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
- 1500 (xii) improperly withholds, misappropriates, or converts money or properties received
- 1501 in the course of doing insurance business;
- 1502 (xiii) intentionally misrepresents the terms of an actual or proposed:
- 1503 (A) insurance contract;
- 1504 (B) application for insurance; or
- 1505 (C) life settlement;
- 1506 (xiv) has been convicted of, or has entered a plea in abeyance as defined in Section
- 1507 77-2a-1 to:
- 1508 (A) a felony; or
- 1509 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 1510 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
- 1511 (xvi) in the conduct of business in this state or elsewhere:
- 1512 (A) uses fraudulent, coercive, or dishonest practices; or
- 1513 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
- 1514 (xvii) has had an insurance license or other professional or occupational license, or an
- 1515 equivalent to an insurance license or registration, or other professional or occupational license

1516 or registration:

1517 (A) denied;

1518 (B) suspended;

1519 (C) revoked; or

1520 (D) surrendered to resolve an administrative action;

1521 (xviii) forges another's name to:

1522 (A) an application for insurance; or

1523 (B) a document related to an insurance transaction;

1524 (xix) improperly uses notes or another reference material to complete an examination

1525 for an insurance license;

1526 (xx) knowingly accepts insurance business from an individual who is not licensed;

1527 (xxi) fails to comply with an administrative or court order imposing a child support

1528 obligation;

1529 (xxii) fails to:

1530 (A) pay state income tax; or

1531 (B) comply with an administrative or court order directing payment of state income

1532 tax;

1533 (xxiii) has been convicted of violating the federal Violent Crime Control and Law

1534 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and has not obtained written consent to engage

1535 in the business of insurance or participate in such business as required by 18 U.S.C. Sec. 1033;

1536 (xxiv) engages in a method or practice in the conduct of business that endangers the

1537 legitimate interests of customers and the public; or

1538 (xxv) has been convicted of any criminal felony involving dishonesty or breach of trust

1539 and has not obtained written consent to engage in the business of insurance or participate in

1540 such business as required by 18 U.S.C. Sec. 1033.

1541 (c) For purposes of this section, if a license is held by an agency, both the agency itself

1542 and any individual designated under the license are considered to be the holders of the license.

1543 (d) If an individual designated under the agency license commits an act or fails to

1544 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,

1545 the commissioner may suspend, revoke, or limit the license of:

1546 (i) the individual;

- 1547 (ii) the agency, if the agency:
- 1548 (A) is reckless or negligent in its supervision of the individual; or
- 1549 (B) knowingly participates in the act or failure to act that is the ground for suspending,
- 1550 revoking, or limiting the license; or
- 1551 (iii) (A) the individual; and
- 1552 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- 1553 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
- 1554 without a license if:
- 1555 (a) the licensee's license is:
- 1556 (i) revoked;
- 1557 (ii) suspended;
- 1558 (iii) limited;
- 1559 (iv) surrendered in lieu of administrative action;
- 1560 (v) lapsed; or
- 1561 (vi) voluntarily surrendered; and
- 1562 (b) the licensee:
- 1563 (i) continues to act as a licensee; or
- 1564 (ii) violates the terms of the license limitation.
- 1565 (7) A licensee under this chapter shall immediately report to the commissioner:
- 1566 (a) a revocation, suspension, or limitation of the person's license in another state, the
- 1567 District of Columbia, or a territory of the United States;
- 1568 (b) the imposition of a disciplinary sanction imposed on that person by another state,
- 1569 the District of Columbia, or a territory of the United States; or
- 1570 (c) a judgment or injunction entered against that person on the basis of conduct
- 1571 involving:
- 1572 (i) fraud;
- 1573 (ii) deceit;
- 1574 (iii) misrepresentation; or
- 1575 (iv) a violation of an insurance law or rule.
- 1576 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
- 1577 license in lieu of administrative action may specify a time, not to exceed five years, within

1578 which the former licensee may not apply for a new license.

1579 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
1580 former licensee may not apply for a new license for five years from the day on which the order
1581 or agreement is made without the express approval by the commissioner.

1582 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
1583 a license issued under this part if so ordered by a court.

1584 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
1585 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1586 Section 10. Section **31A-23a-406** is amended to read:

1587 **31A-23a-406. Title insurance producer's business.**

1588 (1) As used in this section:

1589 (a) "Automated clearing house network" or "ACH network" means a national
1590 electronic funds transfer system regulated by the Federal Reserve and the Office of the
1591 Comptroller of the Currency.

1592 (b) "Depository institution" means the same as that term is defined in Section [7-1-103](#).

1593 (c) "Funds transfer system" means the same as that term is defined in Section [7-1-103](#).

1594 ~~[(1)]~~ (2) An individual title insurance producer or agency title insurance producer may
1595 do escrow involving real property transactions if all of the following exist:

1596 (a) the individual title insurance producer or agency title insurance producer is licensed
1597 with:

1598 (i) the title line of authority; and

1599 (ii) the escrow subline of authority;

1600 (b) the individual title insurance producer or agency title insurance producer is
1601 appointed by a title insurer authorized to do business in the state;

1602 (c) except as provided in Subsection ~~[(3)]~~ (4), the individual title insurance producer or
1603 agency title insurance producer issues one or more of the following as part of the transaction:

1604 (i) an owner's policy offering title insurance;

1605 (ii) a lender's policy offering title insurance; or

1606 (iii) if the transaction does not involve a transfer of ownership, an endorsement to an
1607 owner's or a lender's policy offering title insurance;

1608 (d) money deposited with the individual title insurance producer or agency title

1609 insurance producer in connection with any escrow is deposited:

1610 (i) in a federally insured depository institution, as defined in Section 7-1-103, that:

1611 (A) has ~~[an office]~~ a branch in this state, if the individual title insurance producer or
1612 agency title insurance producer depositing the money is a resident licensee; and

1613 (B) is authorized by the depository institution's primary regulator to engage in trust
1614 business, as defined in Section 7-5-1, in this state; and

1615 (ii) in a trust account that is separate from all other trust account money that is not
1616 related to real estate transactions;

1617 (e) money deposited with the individual title insurance producer or agency title
1618 insurance producer in connection with any escrow is the property of the one or more persons
1619 entitled to the money under the provisions of the escrow; ~~[and]~~

1620 (f) money deposited with the individual title insurance producer or agency title
1621 insurance producer in connection with an escrow is segregated escrow by escrow in the records
1622 of the individual title insurance producer or agency title insurance producer;

1623 (g) earnings on money held in escrow may be paid out of the escrow account to any
1624 person in accordance with the conditions of the escrow;

1625 (h) the escrow does not require the individual title insurance producer or agency title
1626 insurance producer to hold:

1627 (i) construction money; or

1628 (ii) money held for exchange under Section 1031, Internal Revenue Code; and

1629 (i) the individual title insurance producer or agency title insurance producer shall
1630 maintain a physical office in Utah staffed by a person with an escrow subline of authority who
1631 processes the escrow.

1632 ~~[(2)]~~ (3) Notwithstanding Subsection ~~[(1)]~~ (2), an individual title insurance producer or
1633 agency title insurance producer may engage in the escrow business if:

1634 (a) the escrow involves:

1635 (i) a mobile home;

1636 (ii) a grazing right;

1637 (iii) a water right; or

1638 (iv) other personal property authorized by the commissioner; and

1639 (b) the individual title insurance producer or agency title insurance producer complies

1640 with this section except for Subsection ~~[(1)(e)]~~ (2)(c).

1641 ~~[(3)]~~ (4) (a) Subsection ~~[(1)(e)]~~ (2)(c) does not apply if the transaction is for the
1642 transfer of real property from the School and Institutional Trust Lands Administration.

1643 (b) This subsection does not prohibit an individual title insurance producer or agency
1644 title insurance producer from issuing a policy described in Subsection ~~[(1)(e)]~~ (2)(c) as part of a
1645 transaction described in Subsection ~~[(3)(a)]~~ (4)(a).

1646 ~~[(4)]~~ (5) Money held in escrow:

1647 (a) is not subject to any debts of the individual title insurance producer or agency title
1648 insurance producer;

1649 (b) may only be used to fulfill the terms of the individual escrow under which the
1650 money is accepted; and

1651 (c) may not be used until the conditions of the escrow are met.

1652 ~~[(5)]~~ (6) Assets or property other than escrow money received by an individual title
1653 insurance producer or agency title insurance producer in accordance with an escrow shall be
1654 maintained in a manner that will:

1655 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;
1656 and

1657 (b) otherwise comply with the general duties and responsibilities of a fiduciary or
1658 bailee.

1659 ~~[(6)]~~ (7) (a) A check from the trust account described in Subsection ~~[(1)(d)]~~ (2)(d) may
1660 not be drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow
1661 account from which money is to be disbursed contains a sufficient credit balance consisting of
1662 collected and cleared money at the time the check is drawn, executed, or dated, or money is
1663 otherwise disbursed.

1664 (b) As used in this Subsection ~~[(6)]~~ (7), money is considered to be "collected and
1665 cleared," and may be disbursed as follows:

1666 (i) cash may be disbursed on the same day the cash is deposited;

1667 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;

1668 ~~[and]~~

1669 (iii) the proceeds of one or more of the following financial instruments may be
1670 disbursed on the same day the financial instruments are deposited if received from a single

1671 party to the real estate transaction and if the aggregate of the financial instruments for the real
1672 estate transaction is less than \$10,000:

1673 (A) a cashier's check, certified check, or official check that is drawn on an existing
1674 account at a federally insured financial institution;

1675 (B) a check drawn on the trust account of a principal broker or associate broker
1676 licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the individual
1677 title insurance producer or agency title insurance producer has reasonable and prudent grounds
1678 to believe sufficient money will be available from the trust account on which the check is
1679 drawn at the time of disbursement of proceeds from the individual title insurance producer or
1680 agency title insurance producer's escrow account;

1681 (C) a personal check not to exceed \$500 per closing; or

1682 (D) a check drawn on the escrow account of another individual title insurance producer
1683 or agency title insurance producer, if the individual title insurance producer or agency title
1684 insurance producer in the escrow transaction has reasonable and prudent grounds to believe
1685 that sufficient money will be available for withdrawal from the account upon which the check
1686 is drawn at the time of disbursement of money from the escrow account of the individual title
1687 insurance producer or agency title insurance producer in the escrow transaction[-];

1688 (iv) deposits made through the ACH network may be disbursed on the same day the
1689 deposit is made if:

1690 (A) the transferred funds remain uniquely designated and traceable throughout the
1691 entire ACH network transfer process;

1692 (B) except as a function of the ACH network process, the transferred funds are not
1693 subject to comingling or third party access during the transfer process;

1694 (C) the transferred funds are deposited into the title insurance producer's escrow
1695 account and are available for disbursement; and

1696 (D) either the ACH network payment type or the title insurance producer's systems
1697 prevent the transaction from being unilaterally canceled or reversed by the consumer once the
1698 transferred funds are deposited to the individual title insurance producer or agency title
1699 producer;

1700 (v) deposits may be disbursed on the same day the deposit is made if the deposit is
1701 made via:

- 1702 (A) the Federal Reserve Bank through the Federal Reserve's funds transfer system; or
1703 (B) a funds transfer system provided by an association of banks.
- 1704 (c) A check or deposit not described in Subsection ~~[(6)(b)]~~ (7)(b) may be disbursed:
1705 (i) within the time limits provided under the Expedited Funds Availability Act, 12
1706 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or
1707 (ii) upon notification from the financial institution to which the money has been
1708 deposited that final settlement has occurred on the deposited financial instrument.
- 1709 ~~[(7)]~~ (8) An individual title insurance producer or agency title insurance producer shall
1710 maintain a record of a receipt or disbursement of escrow money.
- 1711 ~~[(8)]~~ (9) An individual title insurance producer or agency title insurance producer shall
1712 comply with:
- 1713 (a) Section 31A-23a-409;
1714 (b) Title 46, Chapter 1, Notaries Public Reform Act; and
1715 (c) any rules adopted by the Title and Escrow Commission, subject to Section
1716 31A-2-404, that govern escrows.
- 1717 ~~[(9)]~~ (10) If an individual title insurance producer or agency title insurance producer
1718 conducts a search for real estate located in the state, the individual title insurance producer or
1719 agency title insurance producer shall conduct a reasonable search of the public records.
- 1720 Section 11. Section 31A-23a-409 is amended to read:
1721 **31A-23a-409. Trust obligation for money collected.**
- 1722 (1) (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to,
1723 received by, or collected by a licensee for forwarding to insurers or to insureds.
- 1724 (b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust
1725 funds with:
- 1726 (A) the licensee's own money; or
1727 (B) money held in any other capacity.
- 1728 (ii) This Subsection (1)(b) does not apply to:
1729 (A) amounts necessary to pay bank charges; and
1730 (B) money paid by insureds and belonging in part to the licensee as a fee or
1731 commission.
- 1732 (c) Except as provided under Subsection (4), a licensee owes to insureds and insurers

1733 the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds
1734 through the licensee.

1735 (d) (i) Unless money is sent to the appropriate payee by the close of the next business
1736 day after their receipt, the licensee shall deposit them in an account authorized under
1737 Subsection (2).

1738 (ii) Money deposited under this Subsection (1)(d) shall remain in an account
1739 authorized under Subsection (2) until sent to the appropriate payee.

1740 (2) Money required to be deposited under Subsection (1) shall be deposited:

1741 (a) in a federally insured trust account in a depository institution, as defined in Section
1742 7-1-103, which:

1743 (i) has ~~[an office]~~ a branch in this state, if the ~~[licensee]~~ individual title insurance
1744 producer or agency title insurance producer depositing the money is a resident licensee;

1745 (ii) has federal deposit insurance; and

1746 (iii) is authorized by its primary regulator to engage in the trust business, as defined by
1747 Section 7-5-1, in this state; or

1748 (b) in some other account, that:

1749 (i) the commissioner approves by rule or order; and

1750 (ii) provides safety comparable to an account described in Subsection (2)(a).

1751 (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the
1752 amount of the federal insurance on the accounts.

1753 (4) A trust account into which money is deposited may be interest bearing. The
1754 interest accrued on the account may be paid to the licensee, so long as the licensee otherwise
1755 complies with this section and with the contract with the insurer.

1756 (5) A depository institution or other organization holding trust funds under this section
1757 may not offset or impound trust account funds against debts and obligations incurred by the
1758 licensee.

1759 (6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any
1760 portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft
1761 under Title 76, Chapter 6, Part 4, Theft. Section 76-6-412 applies in determining the
1762 classification of the offense. Sanctions under Section 31A-2-308 also apply.

1763 (7) A nonresident licensee:

1764 (a) shall comply with Subsection (1)(a) by complying with the trust account
1765 requirements of the nonresident licensee's home state; and

1766 (b) is not required to comply with the other provisions of this section.

1767 Section 12. Section **31A-23a-415** is amended to read:

1768 **31A-23a-415. Assessment on agency title insurance producers or title insurers --**
1769 **Account created.**

1770 (1) For purposes of this section:

1771 (a) "Premium" is as described in Subsection [59-9-101\(3\)](#).

1772 (b) "Title insurer" means a person:

1773 (i) making any contract or policy of title insurance as:

1774 (A) insurer;

1775 (B) guarantor; or

1776 (C) surety;

1777 (ii) proposing to make any contract or policy of title insurance as:

1778 (A) insurer;

1779 (B) guarantor; or

1780 (C) surety; or

1781 (iii) transacting or proposing to transact any phase of title insurance, including:

1782 (A) soliciting;

1783 (B) negotiating preliminary to execution;

1784 (C) executing of a contract of title insurance;

1785 (D) insuring; and

1786 (E) transacting matters subsequent to the execution of the contract and arising out of
1787 the contract.

1788 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
1789 personal property located in Utah, an owner of real or personal property, the holders of liens or
1790 encumbrances on that property, or others interested in the property against loss or damage
1791 suffered by reason of:

1792 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
1793 property; or

1794 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

1795 (2) (a) The commissioner may assess each title insurer, each individual title insurance
1796 producer who is not an employee of a title insurer or who is not designated by an agency title
1797 insurance producer, and each agency title insurance producer an annual assessment:

1798 (i) determined by the Title and Escrow Commission:

1799 (A) after consultation with the commissioner; and

1800 (B) in accordance with this Subsection (2); and

1801 (ii) to be used for the purposes described in Subsection (3).

1802 (b) An agency title insurance producer and individual title insurance producer who is
1803 not an employee of a title insurer or who is not designated by an agency title insurance
1804 producer shall be assessed up to:

1805 (i) \$250 for the first office in each county in which the agency title insurance producer
1806 or individual title insurance producer maintains an office; and

1807 (ii) \$150 for each additional office the agency title insurance producer or individual
1808 title insurance producer maintains in the county described in Subsection (2)(b)(i).

1809 (c) A title insurer shall be assessed up to:

1810 (i) \$250 for the first office in each county in which the title insurer maintains an office;

1811 (ii) \$150 for each additional office the title insurer maintains in the county described in
1812 Subsection (2)(c)(i); and

1813 (iii) an amount calculated by:

1814 (A) aggregating the assessments imposed on:

1815 (I) agency title insurance producers and individual title insurance producers under
1816 Subsection (2)(b); and

1817 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

1818 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total
1819 costs and expenses determined under Subsection (2)(d); and

1820 (C) multiplying:

1821 (I) the amount calculated under Subsection (2)(c)(iii)(B); and

1822 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
1823 of the title insurer.

1824 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, during the
1825 first quarter of each fiscal year the Title and Escrow Commission [~~by rule shall establish~~] shall

1826 approve the amount of costs and expenses described under Subsection (3) for the prior fiscal
1827 year that will be covered by the assessment~~[, except the costs or expenses to be covered by the~~
1828 ~~assessment may not exceed the cost of one full-time equivalent position].~~

1829 (e) (i) An individual licensed to practice law in Utah is exempt from the requirements
1830 of this Subsection (2) if that person issues 12 or less policies during a 12-month period.

1831 (ii) In determining the number of policies issued by an individual licensed to practice
1832 law in Utah for purposes of Subsection (2)(e)(i), if the individual issues a policy to more than
1833 one party to the same closing, the individual is considered to have issued only one policy.

1834 (3) (a) Money received by the state under this section shall be deposited into the Title
1835 Licensee Enforcement Restricted Account.

1836 (b) There is created in the General Fund a restricted account known as the "Title
1837 Licensee Enforcement Restricted Account."

1838 (c) The Title Licensee Enforcement Restricted Account shall consist of the money
1839 received by the state under this section.

1840 (d) The commissioner shall administer the Title Licensee Enforcement Restricted
1841 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
1842 deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or
1843 expense incurred by the department in the administration, investigation, and enforcement of
1844 laws governing individual title insurance producers, agency title insurance producers, or title
1845 insurers.

1846 (e) An appropriation from the Title Licensee Enforcement Restricted Account is
1847 nonlapsing.

1848 (4) The assessment imposed by this section shall be in addition to any premium
1849 assessment imposed under Subsection 59-9-101(3).

1850 Section 13. Section 31A-23b-401 is amended to read:

1851 **31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
1852 **terminating a license -- Rulemaking for renewal or reinstatement.**

1853 (1) A license as a navigator under this chapter remains in force until:

1854 (a) revoked or suspended under Subsection (4);

1855 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
1856 administrative action;

1857 (c) the licensee dies or is adjudicated incompetent as defined under:
1858 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
1859 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
1860 Minors;
1861 (d) lapsed under this section; or
1862 (e) voluntarily surrendered.
1863 (2) The following may be reinstated within one year after the day on which the license
1864 is no longer in force:
1865 (a) a lapsed license; or
1866 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
1867 not be reinstated after the license period in which the license is voluntarily surrendered.
1868 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
1869 license, submission and acceptance of a voluntary surrender of a license does not prevent the
1870 department from pursuing additional disciplinary or other action authorized under:
1871 (a) this title; or
1872 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
1873 Administrative Rulemaking Act.
1874 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
1875 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
1876 commissioner may:
1877 (i) revoke a license;
1878 (ii) suspend a license for a specified period of 12 months or less;
1879 (iii) limit a license in whole or in part;
1880 (iv) deny a license application;
1881 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
1882 (vi) take a combination of actions under Subsections (4)(a)(i) through (iv) and
1883 Subsection (4)(a)(v).
1884 (b) The commissioner may take an action described in Subsection (4)(a) if the
1885 commissioner finds that the licensee or license applicant:
1886 (i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or
1887 31A-23b-206;

- 1888 (ii) violated:
- 1889 (A) an insurance statute;
- 1890 (B) a rule that is valid under Subsection [31A-2-201\(3\)](#); or
- 1891 (C) an order that is valid under Subsection [31A-2-201\(4\)](#);
- 1892 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 1893 delinquency proceedings in any state;
- 1894 (iv) failed to pay a final judgment rendered against the person in this state within 60
- 1895 days after the day on which the judgment became final;
- 1896 (v) refused:
- 1897 (A) to be examined; or
- 1898 (B) to produce its accounts, records, and files for examination;
- 1899 (vi) had an officer who refused to:
- 1900 (A) give information with respect to the navigator's affairs; or
- 1901 (B) perform any other legal obligation as to an examination;
- 1902 (vii) provided information in the license application that is:
- 1903 (A) incorrect;
- 1904 (B) misleading;
- 1905 (C) incomplete; or
- 1906 (D) materially untrue;
- 1907 (viii) violated an insurance law, valid rule, or valid order of another regulatory agency
- 1908 in any jurisdiction;
- 1909 (ix) obtained or attempted to obtain a license through misrepresentation or fraud;
- 1910 (x) improperly withheld, misappropriated, or converted money or properties received
- 1911 in the course of doing insurance business;
- 1912 (xi) intentionally misrepresented the terms of an actual or proposed:
- 1913 (A) insurance contract;
- 1914 (B) application for insurance; or
- 1915 (C) application for public program;
- 1916 (xii) has been convicted of, or has entered a plea in abeyance as defined in Section
- 1917 [77-2a-1](#) to:
- 1918 (A) a felony; or

1919 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
1920 (xiii) admitted or is found to have committed an insurance unfair trade practice or
1921 fraud;
1922 (xiv) in the conduct of business in this state or elsewhere:
1923 (A) used fraudulent, coercive, or dishonest practices; or
1924 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
1925 (xv) has had an insurance license, navigator license, or other professional or
1926 occupational license or registration, or an equivalent of the same denied, suspended, revoked,
1927 or surrendered to resolve an administrative action;
1928 (xvi) forged another's name to:
1929 (A) an application for insurance;
1930 (B) a document related to an insurance transaction;
1931 (C) a document related to an application for a public program; or
1932 (D) a document related to an application for premium subsidies;
1933 (xvii) improperly used notes or another reference material to complete an examination
1934 for a license;
1935 (xviii) knowingly accepted insurance business from an individual who is not licensed;
1936 (xix) failed to comply with an administrative or court order imposing a child support
1937 obligation;
1938 (xx) failed to:
1939 (A) pay state income tax; or
1940 (B) comply with an administrative or court order directing payment of state income
1941 tax;
1942 (xxi) has been convicted of violating the federal Violent Crime Control and Law
1943 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and has not obtained written consent to engage
1944 in the business of insurance or participate in such business as required by 18 U.S.C. Sec. 1033;
1945 (xxii) engaged in a method or practice in the conduct of business that endangered the
1946 legitimate interests of customers and the public; or
1947 (xxiii) has been convicted of any criminal felony involving dishonesty or breach of
1948 trust and has not obtained written consent to engage in the business of insurance or participate
1949 in such business as required by 18 U.S.C. Sec. 1033.

1950 (c) For purposes of this section, if a license is held by an agency, both the agency itself
1951 and any individual designated under the license are considered to be the holders of the license.

1952 (d) If an individual designated under the agency license commits an act or fails to
1953 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
1954 the commissioner may suspend, revoke, or limit the license of:

1955 (i) the individual;

1956 (ii) the agency, if the agency:

1957 (A) is reckless or negligent in its supervision of the individual; or

1958 (B) knowingly participates in the act or failure to act that is the ground for suspending,
1959 revoking, or limiting the license; or

1960 (iii) (A) the individual; and

1961 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

1962 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
1963 without a license if:

1964 (a) the licensee's license is:

1965 (i) revoked;

1966 (ii) suspended;

1967 (iii) surrendered in lieu of administrative action;

1968 (iv) lapsed; or

1969 (v) voluntarily surrendered; and

1970 (b) the licensee:

1971 (i) continues to act as a licensee; or

1972 (ii) violates the terms of the license limitation.

1973 (6) A licensee under this chapter shall immediately report to the commissioner:

1974 (a) a revocation, suspension, or limitation of the person's license in another state, the
1975 District of Columbia, or a territory of the United States;

1976 (b) the imposition of a disciplinary sanction imposed on that person by another state,
1977 the District of Columbia, or a territory of the United States; or

1978 (c) a judgment or injunction entered against that person on the basis of conduct
1979 involving:

1980 (i) fraud;

1981 (ii) deceit;

1982 (iii) misrepresentation; or

1983 (iv) a violation of an insurance law or rule.

1984 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a

1985 license in lieu of administrative action may specify a time, not to exceed five years, within

1986 which the former licensee may not apply for a new license.

1987 (b) If no time is specified in an order or agreement described in Subsection (7)(a), the

1988 former licensee may not apply for a new license for five years from the day on which the order

1989 or agreement is made without the express approval of the commissioner.

1990 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of

1991 a license issued under this chapter if so ordered by a court.

1992 (9) The commissioner shall by rule prescribe the license renewal and reinstatement

1993 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1994 Section 14. Section **31A-25-208** is amended to read:

1995 **31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**

1996 **terminating a license -- Rulemaking for renewal and reinstatement.**

1997 (1) A license type issued under this chapter remains in force until:

1998 (a) revoked or suspended under Subsection (4);

1999 (b) surrendered to the commissioner and accepted by the commissioner in lieu of

2000 administrative action;

2001 (c) the licensee dies or is adjudicated incompetent as defined under:

2002 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2003 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

2004 Minors;

2005 (d) lapsed under Section [31A-25-210](#); or

2006 (e) voluntarily surrendered.

2007 (2) The following may be reinstated within one year after the day on which the license

2008 is no longer in force:

2009 (a) a lapsed license; or

2010 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may

2011 not be reinstated after the license period in which the license is voluntarily surrendered.

2012 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
2013 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2014 department from pursuing additional disciplinary or other action authorized under:

2015 (a) this title; or

2016 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2017 Administrative Rulemaking Act.

2018 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
2019 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
2020 commissioner may:

2021 (i) revoke a license;

2022 (ii) suspend a license for a specified period of 12 months or less;

2023 (iii) limit a license in whole or in part; or

2024 (iv) deny a license application.

2025 (b) The commissioner may take an action described in Subsection (4)(a) if the
2026 commissioner finds that the licensee or license applicant:

2027 (i) is unqualified for a license under Section [31A-25-202](#), [31A-25-203](#), or [31A-25-204](#);

2028 (ii) has violated:

2029 (A) an insurance statute;

2030 (B) a rule that is valid under Subsection [31A-2-201](#)(3); or

2031 (C) an order that is valid under Subsection [31A-2-201](#)(4);

2032 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
2033 delinquency proceedings in any state;

2034 (iv) fails to pay a final judgment rendered against the person in this state within 60
2035 days after the day on which the judgment became final;

2036 (v) fails to meet the same good faith obligations in claims settlement that is required of
2037 admitted insurers;

2038 (vi) is affiliated with and under the same general management or interlocking
2039 directorate or ownership as another third party administrator that transacts business in this state
2040 without a license;

2041 (vii) refuses:

2042 (A) to be examined; or

- 2043 (B) to produce its accounts, records, and files for examination;
- 2044 (viii) has an officer who refuses to:
- 2045 (A) give information with respect to the third party administrator's affairs; or
- 2046 (B) perform any other legal obligation as to an examination;
- 2047 (ix) provides information in the license application that is:
- 2048 (A) incorrect;
- 2049 (B) misleading;
- 2050 (C) incomplete; or
- 2051 (D) materially untrue;
- 2052 (x) has violated an insurance law, valid rule, or valid order of another regulatory
- 2053 agency in any jurisdiction;
- 2054 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 2055 (xii) has improperly withheld, misappropriated, or converted money or properties
- 2056 received in the course of doing insurance business;
- 2057 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 2058 (A) insurance contract; or
- 2059 (B) application for insurance;
- 2060 (xiv) has been convicted of, or has entered a plea in abeyance as defined in Section
- 2061 [77-2a-1](#) to:
- 2062 (A) a felony; or
- 2063 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 2064 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 2065 or fraud;
- 2066 (xvi) in the conduct of business in this state or elsewhere has:
- 2067 (A) used fraudulent, coercive, or dishonest practices; or
- 2068 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 2069 (xvii) has had an insurance license or other professional or occupational license or
- 2070 registration, or an equivalent of the same, denied, suspended, revoked, or surrendered to
- 2071 resolve an administrative action;
- 2072 (xviii) has forged another's name to:
- 2073 (A) an application for insurance; or

2074 (B) a document related to an insurance transaction;
2075 (xix) has improperly used notes or any other reference material to complete an
2076 examination for an insurance license;
2077 (xx) has knowingly accepted insurance business from an individual who is not
2078 licensed;
2079 (xxi) has failed to comply with an administrative or court order imposing a child
2080 support obligation;
2081 (xxii) has failed to:
2082 (A) pay state income tax; or
2083 (B) comply with an administrative or court order directing payment of state income
2084 tax;
2085 (xxiii) is convicted of violating the federal Violent Crime Control and Law
2086 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and has not obtained written consent to engage
2087 in the business of insurance or participate in such business as required under 18 U.S.C. Sec.
2088 1033;
2089 (xxiv) has engaged in methods and practices in the conduct of business that endanger
2090 the legitimate interests of customers and the public; or
2091 (xxv) has been convicted of a criminal felony involving dishonesty or breach of trust
2092 and has not obtained written consent to engage in the business of insurance or participate in
2093 such business as required under 18 U.S.C. Sec. 1033.
2094 (c) For purposes of this section, if a license is held by an agency, both the agency itself
2095 and any individual designated under the license are considered to be the holders of the agency
2096 license.
2097 (d) If an individual designated under the agency license commits an act or fails to
2098 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
2099 the commissioner may suspend, revoke, or limit the license of:
2100 (i) the individual;
2101 (ii) the agency if the agency:
2102 (A) is reckless or negligent in its supervision of the individual; or
2103 (B) knowingly participated in the act or failure to act that is the ground for suspending,
2104 revoking, or limiting the license; or

2105 (iii) (A) the individual; and
2106 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
2107 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
2108 without a license if:
2109 (a) the licensee's license is:
2110 (i) revoked;
2111 (ii) suspended;
2112 (iii) limited;
2113 (iv) surrendered in lieu of administrative action;
2114 (v) lapsed; or
2115 (vi) voluntarily surrendered; and
2116 (b) the licensee:
2117 (i) continues to act as a licensee; or
2118 (ii) violates the terms of the license limitation.
2119 (6) A licensee under this chapter shall immediately report to the commissioner:
2120 (a) a revocation, suspension, or limitation of the person's license in any other state, the
2121 District of Columbia, or a territory of the United States;
2122 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
2123 the District of Columbia, or a territory of the United States; or
2124 (c) a judgment or injunction entered against the person on the basis of conduct
2125 involving:
2126 (i) fraud;
2127 (ii) deceit;
2128 (iii) misrepresentation; or
2129 (iv) a violation of an insurance law or rule.
2130 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
2131 license in lieu of administrative action may specify a time, not to exceed five years, within
2132 which the former licensee may not apply for a new license.
2133 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
2134 former licensee may not apply for a new license for five years from the day on which the order
2135 or agreement is made without the express approval of the commissioner.

2136 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2137 a license issued under this part if so ordered by the court.

2138 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
2139 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2140 Section 15. Section **31A-26-213** is amended to read:

2141 **31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
2142 **terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.**

2143 (1) A license type issued under this chapter remains in force until:

2144 (a) revoked or suspended under Subsection (5);

2145 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
2146 administrative action;

2147 (c) the licensee dies or is adjudicated incompetent as defined under:

2148 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2149 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
2150 Minors;

2151 (d) lapsed under Section [31A-26-214.5](#); or

2152 (e) voluntarily surrendered.

2153 (2) The following may be reinstated within one year after the day on which the license
2154 is no longer in force:

2155 (a) a lapsed license; or

2156 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
2157 not be reinstated after the license period in which it is voluntarily surrendered.

2158 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
2159 license, submission and acceptance of a voluntary surrender of a license does not prevent the
2160 department from pursuing additional disciplinary or other action authorized under:

2161 (a) this title; or

2162 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
2163 Administrative Rulemaking Act.

2164 (4) A license classification issued under this chapter remains in force until:

2165 (a) the qualifications pertaining to a license classification are no longer met by the
2166 licensee; or

- 2167 (b) the supporting license type:
- 2168 (i) is revoked or suspended under Subsection (5); or
- 2169 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
- 2170 administrative action.
- 2171 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an
- 2172 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
- 2173 commissioner may:
- 2174 (i) revoke:
- 2175 (A) a license; or
- 2176 (B) a license classification;
- 2177 (ii) suspend for a specified period of 12 months or less:
- 2178 (A) a license; or
- 2179 (B) a license classification;
- 2180 (iii) limit in whole or in part:
- 2181 (A) a license; or
- 2182 (B) a license classification;
- 2183 (iv) deny a license application;
- 2184 (v) assess a forfeiture under Subsection [31A-2-308\(1\)\(b\)\(i\)](#) or [\(1\)\(c\)\(i\)](#); or
- 2185 (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and
- 2186 Subsection (5)(a)(v).
- 2187 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 2188 commissioner finds that the licensee or license applicant:
- 2189 (i) is unqualified for a license or license classification under Section [31A-26-202](#),
- 2190 [31A-26-203](#), [31A-26-204](#), or [31A-26-205](#);
- 2191 (ii) has violated:
- 2192 (A) an insurance statute;
- 2193 (B) a rule that is valid under Subsection [31A-2-201\(3\)](#); or
- 2194 (C) an order that is valid under Subsection [31A-2-201\(4\)](#);
- 2195 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
- 2196 delinquency proceedings in any state;
- 2197 (iv) fails to pay a final judgment rendered against the person in this state within 60

2198 days after the judgment became final;

2199 (v) fails to meet the same good faith obligations in claims settlement that is required of
2200 admitted insurers;

2201 (vi) is affiliated with and under the same general management or interlocking
2202 directorate or ownership as another insurance adjuster that transacts business in this state
2203 without a license;

2204 (vii) refuses:

2205 (A) to be examined; or
2206 (B) to produce its accounts, records, and files for examination;

2207 (viii) has an officer who refuses to:

2208 (A) give information with respect to the insurance adjuster's affairs; or
2209 (B) perform any other legal obligation as to an examination;

2210 (ix) provides information in the license application that is:

2211 (A) incorrect;
2212 (B) misleading;
2213 (C) incomplete; or
2214 (D) materially untrue;

2215 (x) has violated an insurance law, valid rule, or valid order of another regulatory
2216 agency in any jurisdiction;

2217 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

2218 (xii) has improperly withheld, misappropriated, or converted money or properties
2219 received in the course of doing insurance business;

2220 (xiii) has intentionally misrepresented the terms of an actual or proposed:

2221 (A) insurance contract; or
2222 (B) application for insurance;

2223 (xiv) has been convicted of, or has entered a plea in abeyance as defined in Section
2224 [77-2a-1](#) to:

2225 (A) a felony; or
2226 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;

2227 (xv) has admitted or been found to have committed an insurance unfair trade practice
2228 or fraud;

- 2229 (xvi) in the conduct of business in this state or elsewhere has:
- 2230 (A) used fraudulent, coercive, or dishonest practices; or
- 2231 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 2232 (xvii) has had an insurance license or other professional or occupational license or
- 2233 registration, or equivalent, denied, suspended, revoked, or surrendered to resolve an
- 2234 administrative action;
- 2235 (xviii) has forged another's name to:
- 2236 (A) an application for insurance; or
- 2237 (B) a document related to an insurance transaction;
- 2238 (xix) has improperly used notes or any other reference material to complete an
- 2239 examination for an insurance license;
- 2240 (xx) has knowingly accepted insurance business from an individual who is not
- 2241 licensed;
- 2242 (xxi) has failed to comply with an administrative or court order imposing a child
- 2243 support obligation;
- 2244 (xxii) has failed to:
- 2245 (A) pay state income tax; or
- 2246 (B) comply with an administrative or court order directing payment of state income
- 2247 tax;
- 2248 (xxiii) has been convicted of a violation of the federal Violent Crime Control and Law
- 2249 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and has not obtained written consent in
- 2250 accordance with 18 U.S.C. Sec. 1033 to engage in the business of insurance or participate in
- 2251 such business;
- 2252 (xxiv) has engaged in methods and practices in the conduct of business that endanger
- 2253 the legitimate interests of customers and the public; or
- 2254 (xxv) has been convicted of any criminal felony involving dishonesty or breach of trust
- 2255 and has not obtained written consent in accordance with 18 U.S.C. Sec. 1033 to engage in the
- 2256 business of insurance or participate in such business.
- 2257 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 2258 and any individual designated under the license are considered to be the holders of the license.
- 2259 (d) If an individual designated under the agency license commits an act or fails to

2260 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
2261 the commissioner may suspend, revoke, or limit the license of:

- 2262 (i) the individual;
- 2263 (ii) the agency, if the agency:
 - 2264 (A) is reckless or negligent in its supervision of the individual; or
 - 2265 (B) knowingly participated in the act or failure to act that is the ground for suspending,
2266 revoking, or limiting the license; or
- 2267 (iii) (A) the individual; and
- 2268 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

2269 (6) A licensee under this chapter is subject to the penalties for conducting an insurance
2270 business without a license if:

- 2271 (a) the licensee's license is:
 - 2272 (i) revoked;
 - 2273 (ii) suspended;
 - 2274 (iii) limited;
 - 2275 (iv) surrendered in lieu of administrative action;
 - 2276 (v) lapsed; or
 - 2277 (vi) voluntarily surrendered; and
- 2278 (b) the licensee:
 - 2279 (i) continues to act as a licensee; or
 - 2280 (ii) violates the terms of the license limitation.

2281 (7) A licensee under this chapter shall immediately report to the commissioner:

- 2282 (a) a revocation, suspension, or limitation of the person's license in any other state, the
2283 District of Columbia, or a territory of the United States;
- 2284 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
2285 the District of Columbia, or a territory of the United States; or
- 2286 (c) a judgment or injunction entered against that person on the basis of conduct
2287 involving:
 - 2288 (i) fraud;
 - 2289 (ii) deceit;
 - 2290 (iii) misrepresentation; or

2291 (iv) a violation of an insurance law or rule.

2292 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
2293 license in lieu of administrative action may specify a time not to exceed five years within
2294 which the former licensee may not apply for a new license.

2295 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
2296 former licensee may not apply for a new license for five years without the express approval of
2297 the commissioner.

2298 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
2299 a license issued under this part if so ordered by a court.

2300 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
2301 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2302 Section 16. Section **31A-30-118** is amended to read:

2303 **31A-30-118. Patient Protection and Affordable Care Act -- State insurance**
2304 **mandates -- Cost of additional benefits.**

2305 (1) (a) The commissioner shall identify a new mandated benefit that is in excess of the
2306 essential health benefits required by PPACA.

2307 (b) The state shall quantify the cost attributable to each additional mandated benefit
2308 specified in Subsection (1)(a) based on a qualified health plan issuer's calculation of the cost
2309 associated with the mandated benefit, which shall be:

2310 (i) calculated in accordance with generally accepted actuarial principles and
2311 methodologies;

2312 (ii) conducted by a member of the American Academy of Actuaries; and

2313 (iii) reported to the commissioner and to the individual exchange operating in the state.

2314 (c) The commissioner may require a proponent of a new mandated benefit under
2315 Subsection (1)(a) to provide the commissioner with a cost analysis conducted in accordance
2316 with Subsection (1)(b). The commissioner may use the cost information provided under this
2317 Subsection (1)(c) to establish estimates of the cost to the state under Subsection (2).

2318 (2) If the state is required to defray the cost of additional required benefits under the
2319 provisions of 45 C.F.R. 155.170:

2320 (a) the state shall make the required payments:

2321 (i) in accordance with Subsection (3); and

- 2322 (ii) directly to the qualified health plan issuer in accordance with 45 C.F.R. 155.170;
- 2323 (b) an issuer of a qualified health plan that receives a payment under the provisions of
- 2324 Subsection (1) and 45 C.F.R. 155.170 shall:
- 2325 (i) reduce the premium charged to the individual on whose behalf the issuer will be
- 2326 paid under Subsection (1), in an amount equal to the amount of the payment under Subsection
- 2327 (1); or
- 2328 (ii) notwithstanding Subsection 31A-23a-402.5(5), provide a premium rebate to an
- 2329 individual on whose behalf the issuer received a payment under Subsection (1), in an amount
- 2330 equal to the amount of the payment under Subsection (1); and
- 2331 (c) a premium rebate made under this section is not a prohibited inducement under
- 2332 Section 31A-23a-402.5.
- 2333 (3) A payment required under 45 C.F.R. 155.170(c) shall:
- 2334 (a) unless otherwise required by PPACA, be based on a statewide average of the cost
- 2335 of the additional benefit for all issuers who are entitled to payment under the provisions of 45
- 2336 C.F.R. 155.170; and
- 2337 (b) be submitted to an issuer through a process established by the commissioner.
- 2338 (4) (a) As used in this Subsection (4), "account" means the State Mandated Insurer
- 2339 Payments Restricted Account created in Subsection (4)(b).
- 2340 (b) There is created in the General Fund a restricted account known as the "State
- 2341 Mandated Insurer Payments Restricted Account."
- 2342 (c) The account shall consist of:
- 2343 (i) money appropriated to the account by the Legislature; and
- 2344 (ii) interest earned on money in the account.
- 2345 (d) The commissioner shall administer the account for the sole benefit of a qualified
- 2346 health plan issuer who is eligible to receive payments under this section.
- 2347 (e) An appropriation from the account is nonlapsing.
- 2348 (5) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah
- 2349 Administrative Rulemaking Act, to:
- 2350 (a) administer the provisions of this section and 45 C.F.R. 155.170; and
- 2351 (b) establish or implement a process for submitting a payment to an issuer under
- 2352 Subsection (3)(b).

2353 Section 17. Section **31A-31-110** is amended to read:

2354 **31A-31-110. Mandatory reporting of fraudulent insurance acts.**

2355 (1) (a) A person shall report a fraudulent insurance act to the department if:

2356 (i) the person has a good faith belief on the basis of a preponderance of the evidence
2357 that a fraudulent insurance act is being, will be, or has been committed by a person other than
2358 the person making the report; and

2359 (ii) the person is:

2360 (A) an insurer; or

2361 (B) in relation to the business of title insurance, an auditor that is employed by a title
2362 insurer.

2363 (b) The report required by this Subsection (1) shall:

2364 (i) be in writing;

2365 (ii) be submitted through:

2366 (A) the National Insurance Crime Bureau fraud reporting system;

2367 (B) the NAIC's online fraud reporting system; or

2368 (C) email using an email address established by the department for the purpose of
2369 submitting the report required by this Subsection (1);

2370 [~~(ii)~~] (iii) provide information in detail relating to:

2371 (A) the fraudulent insurance act; and

2372 (B) the perpetrator of the fraudulent insurance act; and

2373 [~~(iii)~~] (iv) (A) state whether the person required to report under Subsection (1)(a) also
2374 reported the fraudulent insurance act in writing to:

2375 (I) the attorney general;

2376 (II) a state law enforcement agency;

2377 (III) a criminal investigative department or agency of the United States;

2378 (IV) a district attorney; or

2379 (V) the prosecuting attorney of a municipality or county; and

2380 (B) if the person reported the fraudulent insurance act as provided in Subsection

2381 (1)(b)(iii)(A), state the agency to which the person reported the fraudulent insurance act.

2382 (c) A person required to submit a written report under this Subsection (1) shall submit

2383 the written report to the department by no later than 90 days from the day on which the person

2384 required to report the fraudulent insurance act has a good faith belief on the basis of a
2385 preponderance of the evidence that the fraudulent insurance act is being, will be, or has been
2386 committed.

2387 (2) An action brought under Section 31A-2-201, 31A-2-308, or 31A-31-109, for failure
2388 to comply with Subsection (1) shall be commenced within four years from the date on which a
2389 person described in Subsection (1):

2390 (a) has a good faith belief on the basis of a preponderance of the evidence that a
2391 fraudulent insurance act is being, will be, or has been committed; and

2392 (b) willfully fails to report the fraudulent insurance act.

2393 (3) The department may by rule made in accordance with Title 63G, Chapter 3, Utah
2394 Administrative Rulemaking Act, provide a process by which a person described in Subsection
2395 (1)(a)(ii)(B) may comply with the requirements of Subsection (1) by reporting a fraudulent
2396 insurance act to the insurer with whom the person is employed, except that the rule shall
2397 provide that if the person reports the fraudulent insurance act to the insurer, the insurer is
2398 required to report the fraudulent insurance act to the department.

2399 (4) A person described in Subsection (1)(a)(ii) who in good faith makes a report under
2400 this section, in accordance with Section 31A-31-105, is immune from civil action, civil
2401 penalty, or damages for making that report.

2402 Section 18. Section 31A-35-504 is amended to read:

2403 **31A-35-504. Failure to pay bail bond forfeiture -- Grounds for suspension and**
2404 **revocation of bail bond agency license.**

2405 (1) As used in this section:

2406 (a) "Agency" means a bail bond agency.

2407 (b) "Judgment" means a judgment of bail bond forfeiture issued under Section
2408 77-20-505.

2409 (2) (a) (i) An agency shall pay a judgment not later than 15 days following service of
2410 notice upon the agency from a prosecutor of the entry of the judgment.

2411 (ii) An agency may pay a bail bond forfeiture to the court prior to judgment.

2412 (b) (i) A prosecutor who does not receive proof of or notice of payment of the
2413 judgment within 15 days after the service of notice to the agency of a judgment shall notify the
2414 commissioner of the failure to pay the judgment.

2415 (ii) The commissioner shall notify the agency, by the most expeditious means
2416 available, of the nonpayment of the judgment.

2417 (iii) The agency shall satisfy the judgment within five business days after receiving
2418 notice under Subsection (2)(b)(ii). ~~[If the judgment is not satisfied at the end of the five days,~~
2419 ~~the commissioner may suspend the agency's license under Subsection (3).]~~

2420 (c) If notice of entry of judgment is served upon the agency by mail, three additional
2421 days are added to the 15 days provided in Subsections (2)(a), (2)(b), and (2)(d).

2422 (d) A prosecutor may not proceed under Subsection (2)(b) if an agency, within 15 days
2423 after service of notice of the entry of judgment is served:

2424 (i) files a motion to set aside the judgment or files an application for an extraordinary
2425 writ; and

2426 (ii) provides proof that the agency has posted the judgment amount with the court in
2427 the form of cash, a cashier's check, or certified funds.

2428 (e) As used in this section, the filing of the following tolls the time within which an
2429 agency is required to pay a judgment if the motion or application is filed within 15 days after
2430 the day on which service of notice of the entry of a judgment is served:

2431 (i) a motion to set aside a judgment; or

2432 (ii) an application for extraordinary writ.

2433 (3) The commissioner shall suspend the license of the agency not later than five days
2434 following the agency's failure to satisfy the judgment as required under Subsection (2)(b).

2435 (4) If the prosecutor receives proof of or notice of payment of the judgment during the
2436 suspension period under Subsection (3), the prosecutor shall immediately notify the
2437 commissioner of the payment. The notice shall be in writing and by the most expeditious
2438 means possible, including facsimile or other electronic means.

2439 (5) The commissioner shall lift a suspension under Subsection (3) within five days of
2440 the day on which all of the following conditions are met:

2441 (a) the suspension has been in place for no fewer than 14 days;

2442 (b) the commissioner has received written notice of payment of the unpaid forfeiture
2443 from the prosecutor; and

2444 (c) the commissioner has received:

2445 (i) no other notice of any unpaid forfeiture from a prosecutor; or

2446 (ii) if a notice of unpaid forfeiture is received, written notice from the prosecutor that
2447 the unpaid forfeiture has been paid.

2448 (6) The commissioner shall commence an administrative proceeding and revoke the
2449 license of an agency that fails to meet the conditions under Subsection (5) within 60 days
2450 following the initial date of suspension.

2451 (7) This section does not restrict or otherwise affect the rights of a prosecutor to
2452 commence collection proceedings under Subsection 77-20-505(5).

2453 Section 19. Section 31A-37-102 is amended to read:

2454 **31A-37-102. Definitions.**

2455 As used in this chapter:

2456 (1) (a) "Affiliated company" means a business entity that because of common
2457 ownership, control, operation, or management is in the same corporate or limited liability
2458 company system as:

- 2459 (i) a parent;
- 2460 (ii) an industrial insured; or
- 2461 (iii) a member organization.

2462 (b) "Affiliated company" does not include a business entity for which the
2463 commissioner issues an order finding that the business entity is not an affiliated company.

2464 (2) "Alien captive insurance company" means an insurer:

- 2465 (a) formed to write insurance business for a parent or affiliate of the insurer; and
- 2466 (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes
2467 statutory or regulatory standards:

2468 (i) on a business entity transacting the business of insurance in the alien or foreign
2469 jurisdiction; and

2470 (ii) in a form acceptable to the commissioner.

2471 (3) "Applicant captive insurance company" means an entity that has submitted an
2472 application for a certificate of authority for a captive insurance company, unless the application
2473 has been denied or withdrawn.

2474 (4) "Association" means a legal association of two or more persons that ~~[has been in~~
2475 ~~continuous existence for at least one year if]~~ meets the following requirements:

- 2476 (a) the persons are exposed to similar or related liability because of related, similar, or

2477 common business trade, products, services, premises, or operations; and

2478 ~~[(a)]~~ (b) (i) the association or ~~[its]~~ the association's member organizations:

2479 ~~[(i)]~~ (A) own, control, or hold with power to vote all of the outstanding voting

2480 securities of an association captive insurance company incorporated as a stock insurer; ~~[or]~~

2481 ~~[(ii)]~~ (B) have complete voting control over an association captive insurance company

2482 incorporated as a mutual insurer; or

2483 (C) have complete voting control over an association captive insurance company

2484 formed as a limited liability company; or

2485 ~~[(b)]~~ (ii) the association's member organizations collectively constitute all of the

2486 subscribers of an association captive insurance company formed as a reciprocal insurer~~[, or]~~.

2487 ~~[(c) the association or the association's member organizations have complete voting~~

2488 ~~control over an association captive insurance company formed as a limited liability company.]~~

2489 (5) "Association captive insurance company" means a business entity that insures risks

2490 of:

2491 (a) a member organization of the association;

2492 (b) an affiliate of a member organization of the association; and

2493 (c) the association.

2494 (6) "Branch business" means an insurance business transacted by a branch captive

2495 insurance company in this state.

2496 (7) "Branch captive insurance company" means an alien captive insurance company

2497 that has a certificate of authority from the commissioner to transact the business of insurance in

2498 this state through a captive insurance company that is domiciled outside of this state.

2499 (8) "Branch operation" means a business operation of a branch captive insurance

2500 company in this state.

2501 (9) (a) "Captive insurance company" means the same as that term is defined in Section

2502 [31A-1-301](#).

2503 (b) "Captive insurance company" includes any of the following formed or holding a

2504 certificate of authority under this chapter:

2505 (i) a branch captive insurance company;

2506 (ii) a pure captive insurance company;

2507 (iii) an association captive insurance company;

- 2508 (iv) a sponsored captive insurance company;
- 2509 (v) an industrial insured captive insurance company, including an industrial insured
- 2510 captive insurance company formed as a risk retention group captive in this state pursuant to the
- 2511 provisions of the Federal Liability Risk Retention Act of 1986;
- 2512 (vi) a special purpose captive insurance company; or
- 2513 (vii) a special purpose financial captive insurance company.
- 2514 (10) "Commissioner" means Utah's Insurance Commissioner or the commissioner's
- 2515 designee.
- 2516 (11) "Common ownership and control" means that two or more captive insurance
- 2517 companies are owned or controlled by the same person or group of persons as follows:
- 2518 (a) in the case of a captive insurance company that is a stock corporation, the direct or
- 2519 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;
- 2520 (b) in the case of a captive insurance company that is a mutual corporation, the direct
- 2521 or indirect ownership of 80% or more of the surplus and the voting power of the mutual
- 2522 corporation;
- 2523 (c) in the case of a captive insurance company that is a limited liability company, the
- 2524 direct or indirect ownership by the same member or members of 80% or more of the
- 2525 membership interests in the limited liability company; or
- 2526 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
- 2527 captive insurance company owned and controlled by the protected cell's participant, only if:
- 2528 (i) the participant is the only participant with respect to the protected cell; and
- 2529 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
- 2530 captive insurance company through common ownership and control.
- 2531 (12) "Consolidated debt to total capital ratio" means the ratio of Subsection (12)(a) to
- 2532 (b).
- 2533 (a) This Subsection (12)(a) is an amount equal to the sum of all debts and hybrid
- 2534 capital instruments including:
- 2535 (i) all borrowings from depository institutions;
- 2536 (ii) all senior debt;
- 2537 (iii) all subordinated debts;
- 2538 (iv) all trust preferred shares; and

2539 (v) all other hybrid capital instruments that are not included in the determination of
2540 consolidated GAAP net worth issued and outstanding.

2541 (b) This Subsection (12)(b) is an amount equal to the sum of:

2542 (i) total capital consisting of all debts and hybrid capital instruments as described in
2543 Subsection (12)(a); and

2544 (ii) shareholders' equity determined in accordance with generally accepted accounting
2545 principles for reporting to the United States Securities and Exchange Commission.

2546 (13) "Consolidated GAAP net worth" means the consolidated shareholders' or
2547 members' equity determined in accordance with generally accepted accounting principles for
2548 reporting to the United States Securities and Exchange Commission.

2549 (14) "Controlled unaffiliated business" means a business entity:

2550 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or
2551 limited liability company system of a parent or the parent's affiliate; or

2552 (ii) in the case of an industrial insured captive insurance company, that is not in the
2553 corporate or limited liability company system of an industrial insured or an affiliated company
2554 of the industrial insured;

2555 (b) (i) in the case of a pure captive insurance company, that has a contractual
2556 relationship with a parent or affiliate; or

2557 (ii) in the case of an industrial insured captive insurance company, that has a
2558 contractual relationship with an industrial insured or an affiliated company of the industrial
2559 insured; and

2560 (c) whose risks that are or will be insured by a pure captive insurance company, an
2561 industrial insured captive insurance company, or both, are managed in accordance with
2562 Subsection [31A-37-106\(1\)\(j\)](#) by:

2563 (i) (A) a pure captive insurance company; or

2564 (B) an industrial insured captive insurance company; or

2565 (ii) a parent or affiliate of:

2566 (A) a pure captive insurance company; or

2567 (B) an industrial insured captive insurance company.

2568 (15) "Criminal act" means an act for which a person receives a verdict or finding of
2569 guilt after a criminal trial or a plea of guilty or nolo contendere to a criminal charge.

- 2570 (16) "Establisher" means a person who establishes a business entity or a trust.
- 2571 (17) "Governing body" means the persons who hold the ultimate authority to direct and
- 2572 manage the affairs of an entity.
- 2573 (18) "Industrial insured" means an insured:
- 2574 (a) that produces insurance:
- 2575 (i) by the services of a full-time employee acting as a risk manager or insurance
- 2576 manager; or
- 2577 (ii) using the services of a regularly and continuously qualified insurance consultant;
- 2578 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
- 2579 and
- 2580 (c) that has at least 25 full-time employees.
- 2581 (19) "Industrial insured captive insurance company" means a business entity that:
- 2582 (a) insures risks of the industrial insureds that comprise the industrial insured group;
- 2583 and
- 2584 (b) may insure the risks of:
- 2585 (i) an affiliated company of an industrial insured; or
- 2586 (ii) a controlled unaffiliated business of:
- 2587 (A) an industrial insured; or
- 2588 (B) an affiliated company of an industrial insured.
- 2589 (20) "Industrial insured group" means:
- 2590 (a) a group of industrial insureds that collectively:
- 2591 (i) own, control, or hold with power to vote all of the outstanding voting securities of
- 2592 an industrial insured captive insurance company incorporated or organized as a limited liability
- 2593 company as a stock insurer; or
- 2594 (ii) have complete voting control over an industrial insured captive insurance company
- 2595 incorporated or organized as a limited liability company as a mutual insurer;
- 2596 (b) a group that is:
- 2597 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901
- 2598 et seq., as amended, as a corporation or other limited liability association; and
- 2599 (ii) taxable under this title as a:
- 2600 (A) stock corporation; or

- 2601 (B) mutual insurer; or
- 2602 (c) a group that has complete voting control over an industrial captive insurance
2603 company formed as a limited liability company.
- 2604 (21) "Member organization" means a person that belongs to an association.
- 2605 (22) "Parent" means a person that directly or indirectly owns, controls, or holds with
2606 power to vote more than 50% of the outstanding securities of an organization.
- 2607 (23) "Participant" means an entity that is insured by a sponsored captive insurance
2608 company:
- 2609 (a) if the losses of the participant are limited through a participant contract to the assets
2610 of a protected cell; and
- 2611 (b) (i) the entity is permitted to be a participant under Section 31A-37-403; or
2612 (ii) the entity is an affiliate of an entity permitted to be a participant under Section
2613 31A-37-403.
- 2614 (24) "Participant contract" means a contract by which a sponsored captive insurance
2615 company:
- 2616 (a) insures the risks of a participant; and
2617 (b) limits the losses of the participant to the assets of a protected cell.
- 2618 (25) "Protected cell" means a separate account established and maintained by a
2619 sponsored captive insurance company for one participant.
- 2620 (26) "Pure captive insurance company" means a business entity that insures risks of a
2621 parent or affiliate of the business entity.
- 2622 (27) "Special purpose financial captive insurance company" means the same as that
2623 term is defined in Section 31A-37a-102.
- 2624 (28) "Sponsor" means an entity that:
- 2625 (a) meets the requirements of Section 31A-37-402; and
2626 (b) is approved by the commissioner to:
- 2627 (i) provide all or part of the capital and surplus required by applicable law in an amount
2628 of not less than \$350,000, which amount the commissioner may increase by order if the
2629 commissioner considers it necessary; and
- 2630 (ii) organize and operate a sponsored captive insurance company.
- 2631 (29) "Sponsored captive insurance company" means a captive insurance company:

2632 (a) in which the minimum capital and surplus required by applicable law is provided by
2633 one or more sponsors;

2634 (b) that is formed or holding a certificate of authority under this chapter;

2635 (c) that insures the risks of a separate participant through the contract; and

2636 (d) that segregates each participant's liability through one or more protected cells.

2637 (30) "Treasury rates" means the United States Treasury strip asked yield as published
2638 in the Wall Street Journal as of a balance sheet date.

2639 Section 20. Section **31A-37-202** is amended to read:

2640 **31A-37-202. Permissive areas of insurance.**

2641 (1) Except as provided in Subsections (2) and (3), a captive insurance company may
2642 not directly insure a risk other than the risk of the captive insurance company's parent or
2643 affiliated company.

2644 (2) In addition to the risks described in Subsection (1), an association captive insurance
2645 company may insure the risk of:

2646 (a) a member organization of the association captive insurance company's association;
2647 or

2648 (b) an affiliate of a member organization of the association captive insurance
2649 company's association.

2650 (3) The following may insure a risk of a controlled unaffiliated business:

2651 (a) an industrial insured captive insurance company;

2652 (b) a protected cell;

2653 (c) a pure captive insurance company; or

2654 (d) a sponsored captive insurance company.

2655 (4) To the extent allowed by a captive insurance company's organizational charter, a
2656 captive insurance company may provide any type of insurance described in this title, except:

2657 (a) workers' compensation insurance;

2658 (b) personal motor vehicle insurance;

2659 (c) homeowners' insurance; and

2660 (d) any component of the types of insurance described in Subsections (4)(a) through
2661 (c).

2662 (5) A captive insurance company may not provide coverage for:

2663 (a) a wager or gaming risk;
 2664 (b) loss of an election; or
 2665 (c) the penal consequences of a crime.
 2666 (6) Unless the punitive damages award arises out of a criminal act of an insured, a
 2667 captive insurance company may provide coverage for punitive damages awarded, including
 2668 through adjudication or compromise, against the captive insurance company's:

2669 (a) parent; or
 2670 (b) affiliated company[~~;~~or].
 2671 [~~(c) controlled unaffiliated business.~~]

2672 (7) Notwithstanding Subsection (4), if approved by the commissioner, a captive
 2673 insurance company may insure as a reimbursement a limited layer or deductible of workers'
 2674 compensation coverage.

2675 Section 21. Section **31A-37-204** is amended to read:

2676 **31A-37-204. Paid-in capital -- Other capital.**

2677 (1) (a) The commissioner may not issue a certificate of authority to a company
 2678 described in Subsection (1)(c) unless the company possesses and thereafter maintains
 2679 unimpaired paid-in capital and unimpaired paid-in surplus of:

2680 (i) in the case of a pure captive insurance company[~~;~~]:
 2681 (A) except as provided in Subsection (1)(a)(i)(B), not less than \$250,000; or
 2682 (B) if the pure captive insurance company is not acting as a pool that facilitates risk
 2683 distribution for other captive insurers, an amount that is the greater of:

2684 (I) not less than 20% of the company's total aggregate risk; or

2685 (II) \$50,000;

2686 (ii) in the case of an association captive insurance company, not less than \$750,000;

2687 (iii) in the case of an industrial insured captive insurance company incorporated as a
 2688 stock insurer, not less than \$700,000;

2689 (iv) in the case of a sponsored captive insurance company, not less than \$500,000, of
 2690 which a minimum of \$200,000 is provided by the sponsor; or

2691 (v) in the case of a special purpose captive insurance company, an amount determined
 2692 by the commissioner after giving due consideration to the company's business plan, feasibility
 2693 study, and pro-formas, including the nature of the risks to be insured.

- 2694 (b) The paid-in capital and surplus required under this Subsection (1) may be in the
2695 form of:
- 2696 (i) (A) cash; or
2697 (B) cash equivalent;
2698 (ii) an irrevocable letter of credit:
2699 (A) issued by:
2700 (I) a bank chartered by this state; [~~or~~]
2701 (II) a member bank of the Federal Reserve System; [~~and~~] or
2702 (III) a member bank of the Federal Deposit Insurance Corporation;
2703 (B) approved by the commissioner;
2704 (iii) marketable securities as determined by Subsection (5); or
2705 (iv) some other thing of value approved by the commissioner, for a period not to
2706 exceed 45 days, to facilitate the formation of a captive insurance company in this state pursuant
2707 to an approved plan of liquidation and reorganization of another captive insurance company or
2708 alien captive insurance company in another jurisdiction.
- 2709 (c) This Subsection (1) applies to:
2710 (i) a pure captive insurance company;
2711 (ii) a sponsored captive insurance company;
2712 (iii) a special purpose captive insurance company;
2713 (iv) an association captive insurance company; or
2714 (v) an industrial insured captive insurance company.
- 2715 (2) (a) The commissioner may, under Section [31A-37-106](#), prescribe additional capital
2716 based on the type, volume, and nature of insurance business transacted.
- 2717 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the
2718 form of:
- 2719 (i) cash;
2720 (ii) an irrevocable letter of credit issued by:
2721 (A) a bank chartered by this state; or
2722 (B) a member bank of the Federal Reserve System; or
2723 (iii) marketable securities as determined by Subsection (5).
2724 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as

2725 security for the payment of liabilities attributable to branch operations, shall, through its branch
2726 operations, establish and maintain a trust fund:

- 2727 (i) funded by an irrevocable letter of credit or other acceptable asset; and
- 2728 (ii) in the United States for the benefit of:
 - 2729 (A) United States policyholders; and
 - 2730 (B) United States ceding insurers under:
 - 2731 (I) insurance policies issued; or
 - 2732 (II) reinsurance contracts issued or assumed.
 - 2733 (b) The amount of the security required under this Subsection (3) shall be no less than:
 - 2734 (i) the capital and surplus required by this chapter; and
 - 2735 (ii) the reserves on the insurance policies or reinsurance contracts, including:
 - 2736 (A) reserves for losses;
 - 2737 (B) allocated loss adjustment expenses;
 - 2738 (C) incurred but not reported losses; and
 - 2739 (D) unearned premiums with regard to business written through branch operations.
 - 2740 (c) Notwithstanding the other provisions of this Subsection (3):
 - 2741 (i) the commissioner may permit a branch captive insurance company that is required
 - 2742 to post security for loss reserves on branch business by its reinsurer to reduce the funds in the
 - 2743 trust account required by this section by the same amount as the security posted if the security
 - 2744 remains posted with the reinsurer; and
 - 2745 (ii) a branch captive insurance company that is the result of the licensure of an alien
 - 2746 captive insurance company that is not formed in an alien jurisdiction is not subject to the
 - 2747 requirements of this Subsection (3).
 - 2748 (4) (a) A captive insurance company may not pay the following without the prior
 - 2749 approval of the commissioner:
 - 2750 (i) a dividend out of capital or surplus in excess of the limits under Section
 - 2751 16-10a-640; or
 - 2752 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
 - 2753 16-10a-640.
 - 2754 (b) The commissioner shall condition approval of an ongoing plan for the payment of
 - 2755 dividends or other distributions on the retention, at the time of each payment, of capital or

2756 surplus in excess of:

- 2757 (i) amounts specified by the commissioner under Section 31A-37-106; or
- 2758 (ii) determined in accordance with formulas approved by the commissioner under
- 2759 Section 31A-37-106.

2760 (5) For purposes of this section, marketable securities means:

2761 (a) a bond or other evidence of indebtedness of a governmental unit in the United

2762 States or Canada or any instrumentality of the United States or Canada; or

2763 (b) securities:

2764 (i) traded on one or more of the following exchanges in the United States:

2765 (A) New York;

2766 (B) American; or

2767 (C) NASDAQ;

2768 (ii) when no particular security, or a substantially related security, applied toward the

2769 required minimum capital and surplus requirement of Subsection (1) represents more than 50%

2770 of the minimum capital and surplus requirement; and

2771 (iii) when no group of up to four particular securities, consolidating substantially

2772 related securities, applied toward the required minimum capital and surplus requirement of

2773 Subsection (1) represents more than 90% of the minimum capital and surplus requirement.

2774 (6) Notwithstanding Subsection (5), to protect the solvency and liquidity of a captive

2775 insurance company, the commissioner may reject the application of specific assets or amounts

2776 of specific assets to satisfying the requirement of Subsection (1).

2777 Section 22. Section 49-20-401 is amended to read:

2778 **49-20-401. Program -- Powers and duties.**

2779 (1) The program shall:

2780 (a) act as a self-insurer of employee benefit plans and administer those plans;

2781 (b) enter into contracts with private insurers or carriers to underwrite employee benefit

2782 plans as considered appropriate by the program;

2783 (c) indemnify employee benefit plans or purchase commercial reinsurance as

2784 considered appropriate by the program;

2785 (d) provide descriptions of all employee benefit plans under this chapter in cooperation

2786 with covered employers;

- 2787 (e) process claims for all employee benefit plans under this chapter or enter into
2788 contracts, after competitive bids are taken, with other benefit administrators to provide for the
2789 administration of the claims process;
- 2790 (f) obtain an annual actuarial review of all health and dental benefit plans and a
2791 periodic review of all other employee benefit plans;
- 2792 (g) consult with the covered employers to evaluate employee benefit plans and develop
2793 recommendations for benefit changes;
- 2794 (h) annually submit a budget and audited financial statements to the governor and
2795 Legislature that includes total projected benefit costs and administrative costs;
- 2796 (i) maintain reserves sufficient to liquidate the unrevealed claims liability and other
2797 liabilities of the employee benefit plans as certified by the program's consulting actuary;
- 2798 (j) submit, in advance, the program's recommended benefit and rate adjustments for
2799 state employees, which may include actuarially substantiated member premium differentials
2800 between networks to:
- 2801 (i) the Legislature; and
- 2802 (ii) the director of the state Division of Human Resource Management;
- 2803 (k) determine benefits and rates, upon approval of the board, for multi-employer risk
2804 pools, retiree coverage, and conversion coverage;
- 2805 (l) determine benefits and rates based on the total estimated costs and the employee
2806 premium share established by the Legislature, upon approval of the board, for state employees;
- 2807 (m) administer benefits and rates, upon ratification of the board, for single-employer
2808 risk pools;
- 2809 (n) request proposals for one or more out-of-state provider networks and a dental
2810 health plan administered by a third-party carrier at least once every three years for the purposes
2811 of:
- 2812 (i) stimulating competition for the benefit of covered individuals;
- 2813 (ii) establishing better geographical coverage of medical care services; and
- 2814 (iii) providing coverage for both active and retired covered individuals;
- 2815 (o) for a proposal that meets the criteria specified in a request for proposals and is
2816 accepted by the program:
- 2817 (i) offer the proposal to active and retired state-covered individuals; and

2818 (ii) at the option of the covered employer, offer the proposal to active and retired
2819 covered individuals of other covered employers;

2820 (p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for
2821 the Department of Health and Human Services if the program provides program benefits to
2822 children enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter
2823 40, Utah Children's Health Insurance Act;

2824 (q) establish rules and procedures governing the admission of political subdivisions or
2825 educational institutions and their employees to the program;

2826 (r) (i) contract directly with medical providers to provide services for covered
2827 individuals at commercially competitive rates; and

2828 (ii) (A) discontinue the preferred network, which offers in-network access to all
2829 in-state hospitals, for the state risk pool created in Subsection 49-20-202(1)(a) for plan years
2830 starting on or after July 1, 2022; and

2831 (B) for an employee in the state risk pool who fails to elect one of the remaining
2832 networks before July 1, 2022, enroll the employee and the employee's dependents into the
2833 network that best reflects the utilization pattern of that employee and the employee's
2834 dependents;

2835 (s) (i) require state employees and the state employees' dependents to participate in the
2836 electronic exchange of clinical health records in accordance with Section 26-1-37 unless the
2837 enrollee opts out of participation; and

2838 (ii) prior to enrolling the state employee, each time the state employee logs onto the
2839 program's website, and each time the enrollee receives written enrollment information from the
2840 program, provide notice to the enrollee of the enrollee's participation in the electronic exchange
2841 of clinical health records and the option to opt out of participation at any time;

2842 (t) at the request of a procurement unit, as that term is defined in Section 63G-6a-103,
2843 that administers benefits to program recipients who are not covered by Title 26, Utah Health
2844 Code, provide services for:

2845 (i) drugs;

2846 (ii) medical devices; or

2847 (iii) other types of medical care; and

2848 (u) take additional actions necessary or appropriate to carry out the purposes of this

2849 chapter.

2850 (2) (a) Funds budgeted and expended shall accrue from rates paid by the covered
2851 employers and covered individuals.

2852 (b) The board shall approve administrative costs and report the administrative costs to
2853 the governor and the Legislature.

2854 (3) The Division of Human Resource Management shall include the benefit and rate
2855 adjustments described in Subsection (1)(j) in the total compensation plan recommended to the
2856 governor required under Subsection [63A-17-307\(5\)\(a\)](#).

2857 (4) The program may establish a partnership with a public entity in a different state to
2858 purchase or share services related to the administration of medical benefits if:

2859 (a) the program receives approval for the partnership from the board; and

2860 (b) the partnership:

2861 (i) creates cost savings for Utah;

2862 (ii) does not commingle state funds with funds of the public entity in the other state;

2863 and

2864 (iii) does not pose a greater actuarial risk to Utah than the program has already
2865 assumed.

2866 Section 23. Section **63J-1-602.1** is amended to read:

2867 **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

2868 Appropriations made from the following accounts or funds are nonlapsing:

2869 (1) The Utah Intracurricular Student Organization Support for Agricultural Education
2870 and Leadership Restricted Account created in Section [4-42-102](#).

2871 (2) The Native American Repatriation Restricted Account created in Section [9-9-407](#).

2872 (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in
2873 Section [9-18-102](#).

2874 (4) The National Professional Men's Soccer Team Support of Building Communities
2875 Restricted Account created in Section [9-19-102](#).

2876 (5) Funds collected for directing and administering the C-PACE district created in
2877 Section [11-42a-106](#).

2878 (6) Money received by the Utah Inland Port Authority, as provided in Section
2879 [11-58-105](#).

- 2880 (7) The "Latino Community Support Restricted Account" created in Section [13-1-16](#).
- 2881 (8) The Clean Air Support Restricted Account created in Section [19-1-109](#).
- 2882 (9) The Division of Air Quality Oil, Gas, and Mining Restricted Account created in
2883 Section [19-2a-106](#).
- 2884 (10) The Division of Water Quality Oil, Gas, and Mining Restricted Account created in
2885 Section [19-5-126](#).
- 2886 (11) The "Support for State-Owned Shooting Ranges Restricted Account" created in
2887 Section [23-14-13.5](#).
- 2888 (12) Award money under the State Asset Forfeiture Grant Program, as provided under
2889 Section [24-4-117](#).
- 2890 (13) Funds collected from the program fund for local health department expenses
2891 incurred in responding to a local health emergency under Section [26-1-38](#).
- 2892 (14) The Children with Cancer Support Restricted Account created in Section
2893 [26-21a-304](#).
- 2894 (15) State funds for matching federal funds in the Children's Health Insurance Program
2895 as provided in Section [26-40-108](#).
- 2896 (16) The Children with Heart Disease Support Restricted Account created in Section
2897 [26-58-102](#).
- 2898 (17) The Technology Development Restricted Account created in Section [31A-3-104](#).
- 2899 (18) The Criminal Background Check Restricted Account created in Section
2900 [31A-3-105](#).
- 2901 (19) The Captive Insurance Restricted Account created in Section [31A-3-304](#), except
2902 to the extent that Section [31A-3-304](#) makes the money received under that section free revenue.
- 2903 (20) The Title Licensee Enforcement Restricted Account created in Section
2904 [31A-23a-415](#).
- 2905 (21) The Health Insurance Actuarial Review Restricted Account created in Section
2906 [31A-30-115](#).
- 2907 (22) The State Mandated Insurer Payments Restricted Account created in Section
2908 [31A-30-118](#).
- 2909 [~~22~~] (23) The Insurance Fraud Investigation Restricted Account created in Section
2910 [31A-31-108](#).

- 2911 [~~(23)~~] (24) The Underage Drinking Prevention Media and Education Campaign
2912 Restricted Account created in Section [32B-2-306](#).
- 2913 [~~(24)~~] (25) The Drinking While Pregnant Prevention Media and Education Campaign
2914 Restricted Account created in Section [32B-2-308](#).
- 2915 [~~(25)~~] (26) The School Readiness Restricted Account created in Section [35A-15-203](#).
2916 [~~(26)~~] (27) Money received by the Utah State Office of Rehabilitation for the sale of
2917 certain products or services, as provided in Section [35A-13-202](#).
- 2918 [~~(27)~~] (28) The Oil and Gas Administrative Penalties Account created in Section
2919 [40-6-11](#).
- 2920 [~~(28)~~] (29) The Oil and Gas Conservation Account created in Section [40-6-14.5](#).
2921 [~~(29)~~] (30) The Division of Oil, Gas, and Mining Restricted account created in Section
2922 [40-6-23](#).
- 2923 [~~(30)~~] (31) The Electronic Payment Fee Restricted Account created by Section
2924 [41-1a-121](#) to the Motor Vehicle Division.
- 2925 [~~(31)~~] (32) The Motor Vehicle Enforcement Division Temporary Permit Restricted
2926 Account created by Section [41-3-110](#) to the State Tax Commission.
- 2927 [~~(32)~~] (33) The Utah Law Enforcement Memorial Support Restricted Account created
2928 in Section [53-1-120](#).
- 2929 [~~(33)~~] (34) The State Disaster Recovery Restricted Account to the Division of
2930 Emergency Management, as provided in Section [53-2a-603](#).
- 2931 [~~(34)~~] (35) The Post Disaster Recovery and Mitigation Restricted Account created in
2932 Section [53-2a-1302](#).
- 2933 [~~(35)~~] (36) The Department of Public Safety Restricted Account to the Department of
2934 Public Safety, as provided in Section [53-3-106](#).
- 2935 [~~(36)~~] (37) The Utah Highway Patrol Aero Bureau Restricted Account created in
2936 Section [53-8-303](#).
- 2937 [~~(37)~~] (38) The DNA Specimen Restricted Account created in Section [53-10-407](#).
2938 [~~(38)~~] (39) The Canine Body Armor Restricted Account created in Section [53-16-201](#).
2939 [~~(39)~~] (40) The Technical Colleges Capital Projects Fund created in Section
2940 [53B-2a-118](#).
- 2941 [~~(40)~~] (41) The Higher Education Capital Projects Fund created in Section

2942 [53B-22-202](#).

2943 ~~[(41)]~~ (42) A certain portion of money collected for administrative costs under the
2944 School Institutional Trust Lands Management Act, as provided under Section [53C-3-202](#).

2945 ~~[(42)]~~ (43) The Public Utility Regulatory Restricted Account created in Section
2946 [54-5-1.5](#), subject to Subsection [54-5-1.5\(4\)\(d\)](#).

2947 ~~[(43)]~~ (44) Funds collected from a surcharge fee to provide certain licensees with
2948 access to an electronic reference library, as provided in Section [58-3a-105](#).

2949 ~~[(44)]~~ (45) Certain fines collected by the Division of Professional Licensing for
2950 violation of unlawful or unprofessional conduct that are used for education and enforcement
2951 purposes, as provided in Section [58-17b-505](#).

2952 ~~[(45)]~~ (46) Funds collected from a surcharge fee to provide certain licensees with
2953 access to an electronic reference library, as provided in Section [58-22-104](#).

2954 ~~[(46)]~~ (47) Funds collected from a surcharge fee to provide certain licensees with
2955 access to an electronic reference library, as provided in Section [58-55-106](#).

2956 ~~[(47)]~~ (48) Funds collected from a surcharge fee to provide certain licensees with
2957 access to an electronic reference library, as provided in Section [58-56-3.5](#).

2958 ~~[(48)]~~ (49) Certain fines collected by the Division of Professional Licensing for use in
2959 education and enforcement of the Security Personnel Licensing Act, as provided in Section
2960 [58-63-103](#).

2961 ~~[(49)]~~ (50) The Relative Value Study Restricted Account created in Section [59-9-105](#).

2962 ~~[(50)]~~ (51) The Cigarette Tax Restricted Account created in Section [59-14-204](#).

2963 ~~[(51)]~~ (52) Funds paid to the Division of Real Estate for the cost of a criminal
2964 background check for a mortgage loan license, as provided in Section [61-2c-202](#).

2965 ~~[(52)]~~ (53) Funds paid to the Division of Real Estate for the cost of a criminal
2966 background check for principal broker, associate broker, and sales agent licenses, as provided
2967 in Section [61-2f-204](#).

2968 ~~[(53)]~~ (54) Certain funds donated to the Department of Health and Human Services, as
2969 provided in Section [26B-1-202](#).

2970 ~~[(54)]~~ (55) The National Professional Men's Basketball Team Support of Women and
2971 Children Issues Restricted Account created in Section [26B-1-302](#).

2972 ~~[(55)]~~ (56) Certain funds donated to the Division of Child and Family Services, as

2973 provided in Section [80-2-404](#).

2974 ~~[(56)]~~ [\(57\)](#) The Choose Life Adoption Support Restricted Account created in Section
2975 [80-2-502](#).

2976 ~~[(57)]~~ [\(58\)](#) Funds collected by the Office of Administrative Rules for publishing, as
2977 provided in Section [63G-3-402](#).

2978 ~~[(58)]~~ [\(59\)](#) The Immigration Act Restricted Account created in Section [63G-12-103](#).

2979 ~~[(59)]~~ [\(60\)](#) Money received by the military installation development authority, as
2980 provided in Section [63H-1-504](#).

2981 ~~[(60)]~~ [\(61\)](#) The Computer Aided Dispatch Restricted Account created in Section
2982 [63H-7a-303](#).

2983 ~~[(61)]~~ [\(62\)](#) The Unified Statewide 911 Emergency Service Account created in Section
2984 [63H-7a-304](#).

2985 ~~[(62)]~~ [\(63\)](#) The Utah Statewide Radio System Restricted Account created in Section
2986 [63H-7a-403](#).

2987 ~~[(63)]~~ [\(64\)](#) The Utah Capital Investment Restricted Account created in Section
2988 [63N-6-204](#).

2989 ~~[(64)]~~ [\(65\)](#) The Motion Picture Incentive Account created in Section [63N-8-103](#).

2990 ~~[(65)]~~ [\(66\)](#) Certain money payable for expenses of the Pete Suazo Utah Athletic
2991 Commission, as provided under Section [63N-10-301](#).

2992 ~~[(66)]~~ [\(67\)](#) Funds collected by the housing of state probationary inmates or state parole
2993 inmates, as provided in Subsection [64-13e-104\(2\)](#).

2994 ~~[(67)]~~ [\(68\)](#) Certain forestry and fire control funds utilized by the Division of Forestry,
2995 Fire, and State Lands, as provided in Section [65A-8-103](#).

2996 ~~[(68)]~~ [\(69\)](#) The Amusement Ride Safety Restricted Account, as provided in Section
2997 [72-16-204](#).

2998 ~~[(69)]~~ [\(70\)](#) Certain funds received by the Office of the State Engineer for well drilling
2999 fines or bonds, as provided in Section [73-3-25](#).

3000 ~~[(70)]~~ [\(71\)](#) The Water Resources Conservation and Development Fund, as provided in
3001 Section [73-23-2](#).

3002 ~~[(71)]~~ [\(72\)](#) Funds donated or paid to a juvenile court by private sources, as provided in
3003 Subsection [78A-6-203\(1\)\(c\)](#).

- 3004 [~~(72)~~] (73) Fees for certificate of admission created under Section [78A-9-102](#).
- 3005 [~~(73)~~] (74) Funds collected for adoption document access as provided in Sections
- 3006 [78B-6-141](#), [78B-6-144](#), and [78B-6-144.5](#).
- 3007 [~~(74)~~] (75) Funds collected for indigent defense as provided in Title 78B, Chapter 22,
- 3008 Part 4, Utah Indigent Defense Commission.
- 3009 [~~(75)~~] (76) The Utah Geological Survey Oil, Gas, and Mining Restricted Account
- 3010 created in Section [79-3-403](#).
- 3011 [~~(76)~~] (77) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades
- 3012 State Park, and Green River State Park, as provided under Section [79-4-403](#).
- 3013 [~~(77)~~] (78) Funds donated as described in Section [41-1a-422](#) for the State Park Fees
- 3014 Restricted Account created in Section [79-4-402](#) for support of the Division of State Parks' dark
- 3015 sky initiative.
- 3016 [~~(78)~~] (79) Certain funds received by the Division of State Parks from the sale or
- 3017 disposal of buffalo, as provided under Section [79-4-1001](#).