

HB0410S02 compared with HB0410

~~text~~ shows text that was in HB0410 but was deleted in HB0410S02.

text shows text that was not in HB0410 but was inserted into HB0410S02.

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Representative James A. Dunnigan proposes the following substitute bill:

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;

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- 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;
 - enacts provisions requiring certain reporting for insurers that offer large employer health benefit plans;
 - 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;
 - clarify provisions related to title insurance companies' deposit of trust money in federally-insured depository institutions in Utah;
 - eliminate the requirement that the Title and Escrow Commission (commission) establish in rule an amount of costs and expenses that are covered by the annual assessment on agency title insurance producers and title insurers (annual assessment);
 - allow the commission to approve costs and expenses covered by the annual assessment for the prior fiscal year;
 - eliminate the limitation on the amount of costs covered by the annual assessment;
 - create the State Mandated Insurer Payments Restricted Account (account) and provide that appropriations from the account are nonlapsing;
 - amend requirements for the method of reporting insurance fraud;
 - eliminate the requirement that an association of captives be in continuous existence for at least one year;
 - change requirements for a captive insurer's paid-in capital;
 - prohibit insuring an award of punitive damages against a third party; and
 - amend the requirements for pure captive insurance companies to which the commissioner issues a certificate of authority;
- ▶ amends provisions related to certain recommendations for benefit and rate adjustments for state employees that the Public Employees' Benefit and Insurance

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Program is required to submit;

- ▶ makes technical and conforming changes; and
- ▶ defines terms.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 31A-2-204**, as last amended by Laws of Utah 2018, Chapter 319
- 31A-2-310**, as last amended by Laws of Utah 1995, Chapter 20
- 31A-3-304**, as last amended by Laws of Utah 2019, Chapter 193
- 31A-4-113.5**, as last amended by Laws of Utah 2003, Chapter 252
- 31A-16-103**, as last amended by Laws of Utah 2018, Chapter 319
- 31A-17-404**, as last amended by Laws of Utah 2021, Chapter 252
- 31A-19a-209**, as last amended by Laws of Utah 2015, Chapters 312, 330
- 31A-23a-106**, as last amended by Laws of Utah 2015, Chapter 330
- 31A-23a-111**, as last amended by Laws of Utah 2022, Chapter 198
- 31A-23a-406**, as last amended by Laws of Utah 2021, Chapter 252
- 31A-23a-409**, as last amended by Laws of Utah 2021, Chapter 252
- 31A-23a-415**, as last amended by Laws of Utah 2020, Chapter 32
- 31A-23b-401**, as last amended by Laws of Utah 2020, Chapter 32
- 31A-25-208**, as last amended by Laws of Utah 2020, Chapter 32
- 31A-26-213**, as last amended by Laws of Utah 2020, Chapter 32
- 31A-30-118**, as last amended by Laws of Utah 2020, Chapter 32
- 31A-31-110**, as last amended by Laws of Utah 2008, Chapter 150
- 31A-35-504**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4
- 31A-37-102**, as last amended by Laws of Utah 2021, Chapter 252
- 31A-37-202**, as last amended by Laws of Utah 2021, Chapter 252
- 31A-37-204**, as last amended by Laws of Utah 2021, Chapter 252
- 49-20-401**, as last amended by Laws of Utah 2022, Chapter 302

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63J-1-602.1, as last amended by Laws of Utah 2022, Chapters 48, 191, 255, 335, 415, and 451

ENACTS:

31A-22-728, Utah Code Annotated 1953

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

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

31A-2-204. Conducting examinations.

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

- (a) during the course of an examination conducted under Section 31A-2-203; ~~or~~
- (b) in drafting an examination report~~[-]~~; or
- (c) in requesting, responding to a request, or reviewing a response to a request under

Section 31A-2-202.

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

- (i) stating the scope of the examination; and
- (ii) designating the examiner in charge.
- (b) The commissioner need not give advance notice of an examination to an examinee.
- (c) The examiner in charge shall give the examinee a copy of the order issued under

this Subsection (2).

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

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

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

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

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

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

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

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

(a) the examinee; and

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

(i) an officer of the examinee;

(ii) any other person who:

(A) has executive authority over the examinee; or

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

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

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

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

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

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

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

(ii) the examiner's recommendations.

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

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

(8) (a) The commissioner shall serve a copy of the examination report described in

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Subsection (7) upon the examinee.

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

- (i) accept the examination report as written; or
- (ii) request agency action to modify the examination report.

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

(d) If the examination report is accepted:

- (i) the examination report immediately becomes a public document; and
- (ii) the commissioner shall distribute the examination report to all jurisdictions in which the examinee is authorized to do business.

(e) (i) Any adjudicative proceeding held as a result of the examinee's request for agency action shall, upon the examinee's demand, be closed to the public, except that the commissioner need not exclude any participating examiner from this closed hearing.

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

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

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

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

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

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

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

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

(ii) adjudicative proceeding under this section.

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

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

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- (a) a member of the board of the examinee; or
- (b) one or more newspapers in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Proof of service shall be evidenced by a certificate by the official designated in

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Section 31A-2-309, showing service made upon him and mailing by him, and attached to a copy of the process presented to him for that purpose.

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

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

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

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

(b) The commissioner shall:

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

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

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

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

(i) a fee under this section;

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

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

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

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

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

(5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be

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deposited into the Captive Insurance Restricted Account.

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

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

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

(i) administer and enforce:

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

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

(ii) promote the captive insurance industry in Utah.

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

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

~~[and]~~

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

and

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

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

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

Commissioners.

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

(i) annual statement convention blank ~~{f; and}~~ on or before March 1; ~~[and]~~

(ii) market conduct annual statements:

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

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

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

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(b) (i) The information filed with the [~~National Association of Insurance Commissioners~~] NAIC under Subsection [~~(1)(a)~~] (1)(a)(i) shall:

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

~~[(A)]~~ be prepared in accordance with the NAIC's:

(I) annual statement instructions; and

(II) Accounting Practices and Procedures Manual; and

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

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

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

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

~~[(c)] (c) [Any amendments and addendums to an annual statement that are filed with the commissioner shall be filed by the insurer with the National Association of Insurance Commissioners.]~~

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

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

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

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

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

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

(i) the commissioner; or

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

(b) pay by the time specified in Subsection (3)(a) a fee the insurer is required to pay

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under this section to:

- (i) the commissioner; or
- (ii) the [~~National Association of Insurance Commissioners~~] NAIC.

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

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

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

- (i) the person files with the commissioner a statement containing the information required by this section;
- (ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the insurer; and
- (iii) the commissioner approves the offer, request, invitation, agreement, or acquisition.

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

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

- (i) a domestic insurer; or
- (ii) any person controlling a domestic insurer.

(d) For purposes of this section, a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days before the cessation of control. The commissioner shall determine those instances in which the one or more persons seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion, determines that confidential treatment will interfere with

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enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed, this Subsection (1)(d) does not apply.

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

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

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

(iii) For the purposes of this section, "person" does not include any securities broker that in the usual and customary brokers function holds less than 20% of:

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

(B) any person that controls an insurance company.

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

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

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

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

(D) Chapter 9, Insurance Fraternal; and

(E) Chapter 11, Motor Clubs.

(g) (i) An agreement for acquisition of control or merger as contemplated by this Subsection (1) is not valid or enforceable unless the agreement:

(A) is in writing; and

(B) includes a provision that the agreement is subject to the approval of the commissioner upon the filing of any applicable statement required under this chapter.

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

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

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

(i) if the person is an individual:

(A) the person's principal occupation;

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

and

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

(ii) if the person is not an individual:

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

(I) the past five years; or

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

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

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

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

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

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

(A) the insurer's stock; or

(B) the stock of any of the insurer's subsidiaries or controlling affiliates; and

(iii) the identity of persons furnishing the consideration;

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

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- (A) the preceding five fiscal years of each acquiring party; or
- (B) any lesser period the acquiring party and any of its predecessors shall have been in existence; and
 - (ii) unaudited information:
 - (A) similar to the information described in Subsection (2)(c)(i); and
 - (B) prepared within the 90 days prior to the filing of the statement;
 - (d) any plans or proposals which each acquiring party may have to:
 - (i) liquidate the insurer;
 - (ii) sell its assets;
 - (iii) merge or consolidate the insurer with any person; or
 - (iv) make any other material change in the insurer's:
 - (A) business;
 - (B) corporate structure; or
 - (C) management;
 - (e) (i) the number of shares of any security referred to in Subsection (1) that each acquiring party proposes to acquire;
 - (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1); and
 - (iii) a statement as to the method by which the fairness of the proposal was arrived at;
 - (f) the amount of each class of any security referred to in Subsection (1) that:
 - (i) is beneficially owned; or
 - (ii) concerning which there is a right to acquire beneficial ownership by each acquiring party;
 - (g) a full description of any contract, arrangement, or understanding with respect to any security referred to in Subsection (1) in which any acquiring party is involved, including:
 - (i) the transfer of any of the securities;
 - (ii) joint ventures;
 - (iii) loan or option arrangements;
 - (iv) puts or calls;
 - (v) guarantees of loans;
 - (vi) guarantees against loss or guarantees of profits;

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- (vii) division of losses or profits; or
- (viii) the giving or withholding of proxies;
- (h) a description of the purchase by any acquiring party of any security referred to in Subsection (1) during the 12 calendar months preceding the filing of the statement including:
 - (i) the dates of purchase;
 - (ii) the names of the purchasers; and
 - (iii) the consideration paid or agreed to be paid for the purchase;
- (i) a description of:
 - (i) any recommendations to purchase by any acquiring party any security referred to in Subsection (1) made during the 12 calendar months preceding the filing of the statement; or
 - (ii) any recommendations made by anyone based upon interviews or at the suggestion of the acquiring party;
- (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (1); and
 - (ii) if distributed, copies of additional soliciting material relating to the transactions described in Subsection (2)(j)(i);
- (k) (i) the term of any agreement, contract, or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for tender; and
 - (ii) the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to any agreement, contract, or understanding described in Subsection (2)(k)(i);
- (l) an agreement by the person required to file the statement referred to in Subsection (1) that it will provide the annual report, specified in Section 31A-16-105, for so long as control exists;
- (m) an acknowledgment by the person required to file the statement referred to in Subsection (1) that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and
- (n) any additional information the commissioner requires by rule, which the

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commissioner determines to be:

- (i) necessary or appropriate for the protection of policyholders of the insurer; or
- (ii) in the public interest.

(3) (a) The department may request:

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

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

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

- (i) verifying the information in Subsection (2)(a)(i);
- (ii) determining the integrity of persons who would control the operation of an insurer;

and

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

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

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

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

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

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

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

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

- (A) market conditions;
- (B) business in force; and
- (C) other intangible assets or liabilities of the insurer.

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

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

- (i) partner of the partnership or limited partnership;
- (ii) member of the syndicate or group; and
- (iii) person who controls the partner or member.

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

- (i) the corporation;
- (ii) each officer and director of the corporation; and
- (iii) each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

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

(7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933, or under circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, a person required to file the statement referred to in Subsection (1) may use copies

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of any registration or disclosure documents in furnishing the information called for by the statement.

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

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

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

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

(B) tend to create a monopoly in insurance;

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

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

(B) prejudice the interest of:

(I) its policyholders; or

(II) any remaining securityholders who are unaffiliated with the acquiring party;

(iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1) are unfair and unreasonable to the securityholders of the insurer;

(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are:

(A) unfair and unreasonable to policyholders of the insurer; and

(B) not in the public interest; or

(vi) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders of the insurer and the public to permit the merger or other acquisition of control.

(b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not be considered unfair if the adjusted book values under Subsection (2)(e):

(i) are disclosed to the securityholders; and

(ii) determined by the commissioner to be reasonable.

(9) For a merger or other acquisition of control described in Subsection (1), the commissioner:

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(a) may hold a public hearing on the merger or other acquisition at the commissioner's discretion; and

(b) shall hold a public hearing on the merger or other acquisition upon request by the acquiring party, the insurer, or ~~[any other]~~ an interested party.

~~§(10) (a) [The commissioner shall hold a public hearing under Subsection (9) no later than 45 days after the day on which the statement required by Subsection (1) is filed.]~~
§(10) (a) If the commissioner does not hold a hearing described in Subsection (9), the commissioner shall approve or deny the merger or other acquisition within 30 days after the day on which the department deems the statement required under Subsection (1) complete.

(b) (i) The commissioner shall give at least 20 ~~[days notice of the hearing to the person filing the statement]~~ days' notice of a hearing described in Subsection (9) to the person filing the statement described in Subsection (1).

~~§(ii) [Affected parties may waive the notice required by this Subsection (9)(b).]~~
§(ii) The commissioner shall hold a hearing described in Subsection (9) within 30 days after the day on which the department deems the statement required under Subsection (1) complete.

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

- (A) the insurer; and
- (B) any person designated by the commissioner.

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

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

- (A) present evidence;
- (B) examine and cross-examine witnesses; and
- (C) offer oral and written arguments.

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

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

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

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

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

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

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

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

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

(11) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing described in Subsection (9) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection (1). The person shall file the statement referred to in Subsection (1) with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in Subsection (1). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend a hearing under this Subsection (11) in person or by telecommunication.

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

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

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

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

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

(A) necessarily incurred; and

(B) approved by the commissioner.

(iii) The acquiring person shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) The following are violations of this section:

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

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

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

(i) a person who:

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

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

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

(b) A person described in Subsection (18)(a) is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person, to be that person's lawful agent upon whom may be served all lawful process in any action, suit, or

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proceeding arising out of a violation of this section.

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

(i) served on the commissioner; and

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

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

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

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

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

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

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

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

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

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

(b) only to the extent that the accounting:

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

(ii) clearly reflects:

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

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

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

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

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

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

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

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

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

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

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

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

(A) annual statement filed with the insurance department of the insurer's state of domicile; and

(B) most recent audited financial statement; and

(v) (A) (I) has not had the insurer's accreditation denied by the commissioner within 90 days after the day on which the insurer submits the information required by this Subsection (4); and

(II) maintains a surplus with regard to policyholders in an amount not less than \$20,000,000; or

(B) (I) has the insurer's accreditation approved by the commissioner; and

(II) maintains a surplus with regard to policyholders in an amount less than \$20,000,000.

(c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation is revoked by the commissioner after a notice and hearing.

(5) (a) A domestic ceding insurer is allowed a credit if:

(i) the reinsurance is ceded to an assuming insurer that is:

(A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or

(B) in the case of a United States branch of an alien assuming insurer, is entered through a state meeting the requirements of Subsection (5)(a)(ii);

(ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for

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reinsurance substantially similar to those applicable under this section; and

(iii) the assuming insurer or United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than \$20,000,000; and

(B) submits to the authority of the commissioner to examine the insurer's books and records.

(b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded and assumed pursuant to a pooling arrangement among insurers in the same holding company system.

(6) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that maintains a trust fund:

(i) created in accordance with rules made by the commissioner pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) in a qualified United States financial institution for the payment of a valid claim of:

(A) a United States ceding insurer of the assuming insurer;

(B) an assign of the United States ceding insurer; and

(C) a successor in interest to the United States ceding insurer.

(b) To enable the commissioner to determine the sufficiency of the trust fund described in Subsection (6)(a), the assuming insurer shall:

(i) report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by a licensed insurer; and

(ii) (A) submit to examination of its books and records by the commissioner; and

(B) pay the cost of an examination.

(c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the form of the trust and any amendment to the trust is approved by:

(A) the commissioner of the state where the trust is domiciled; or

(B) the commissioner of another state who, pursuant to the terms of the trust instrument, accepts principal regulatory oversight of the trust.

(ii) The form of the trust and an amendment to the trust shall be filed with the commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.

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(iii) The trust instrument shall provide that a contested claim is valid and enforceable upon the final order of a court of competent jurisdiction in the United States.

(iv) The trust shall vest legal title to the trust's assets in one or more of the trust's trustees for the benefit of:

(A) a United States ceding insurer of the assuming insurer;

(B) an assign of the United States ceding insurer; or

(C) a successor in interest to the United States ceding insurer.

(v) The trust and the assuming insurer are subject to examination as determined by the commissioner.

(vi) The trust shall remain in effect for as long as the assuming insurer has an outstanding obligation due under a reinsurance agreement subject to the trust.

(vii) No later than February 28 of each year, the trustee of the trust shall:

(A) report to the commissioner in writing the balance of the trust;

(B) list the trust's investments at the end of the preceding calendar year; and

(C) (I) certify the date of termination of the trust, if so planned; or

(II) certify that the trust will not expire before the following December 31.

(d) The following requirements apply to the following categories of assuming insurer:

(i) For a single assuming insurer:

(A) the trust fund shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and

(B) the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000, except as provided in Subsection (6)(d)(ii).

(ii) (A) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

(B) The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the

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effect of the surplus requirements on the assuming insurer's liquidity or solvency.

(C) The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(iii) For a group acting as assuming insurer, including incorporated and individual unincorporated underwriters:

(A) for reinsurance ceded under a reinsurance agreement with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by the one or more United States domiciled ceding insurers to an underwriter of the group;

(B) for reinsurance ceded under a reinsurance agreement with an inception date on or before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the other provisions of this chapter, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States;

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

(D) the incorporated members of the group:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) maintain financial strength ratings from two or more rating agencies considered acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter

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3, Utah Administrative Rulemaking Act; and

(iv) agree to:

(A) submit to the jurisdiction of this state;

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

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

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

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

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

(i) satisfies the requirements of Subsections (7)(a) and (b);

(ii) satisfies the association's minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and the association's members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of the association's members in an amount determined by the commissioner to provide adequate protection;

(iii) does not have incorporated members of the association engaged in any business other than underwriting as a member of the association;

(iv) is subject to the same level of regulation and solvency control of the incorporated members of the association by the association's domiciliary regulator as are the unincorporated members; and

(v) within 90 days after the day on which the association's financial statements are due to be filed with the association's domiciliary regulator, provides to the commissioner:

(A) an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(B) if a certification described in Subsection (7)(c)(v)(A) is unavailable, financial statements prepared by independent public accountants, of each underwriter member of the association.

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(d) (i) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(ii) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:

(A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis;

(B) shall consider the rights, the benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States;

(C) shall require the qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and

(D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.

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

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

(v) The commissioner shall:

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

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

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

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

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revocation.

(e) The commissioner shall:

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

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

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

(i) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with Section 31A-17-404.1, or in a multibeneficiary trust in accordance with Subsections (5), (6), and (9), except as otherwise provided in this Subsection (7).

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

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

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

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

(iv) The minimum trusteed surplus requirements provided in Subsections (5), (6), and

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(9) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this Subsection (7), except that the trust shall maintain a minimum trusteed surplus of \$10,000,000.

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

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

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

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

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

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

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

(i) defer to that jurisdiction's certification;

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

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

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

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

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

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

(i) "Covered agreement" means an agreement entered into pursuant to Dodd-Frank

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Wall Street Reform and Consumer Protection Act, 31 U.S.C. Sections 313 and 314, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process, however the commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement and nothing in this provision shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

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

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

(E) the assuming insurer must confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement which involved this state's ceding insurers,

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and agree to notify the ceding insurer and the commissioner and to provide security:

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

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

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

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

(viii) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in Subsections (8)(c) and (d).

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

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

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

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

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

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

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

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

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

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

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

(f) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or the ceding insurer's representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order

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requiring that the assuming insurer post security for all outstanding ceded liabilities.

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

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

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

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

(ii) This Subsection (8) does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this Subsection (8), as long as the reinsurance qualifies for credit under any other applicable provision of this chapter.

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

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

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

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

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

(i) the valuation of assets or reserve credits;

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

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

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

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

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

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

(A) cash;

(B) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

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

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

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

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

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

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

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

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(c) agreeing in the reinsurance contract:

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

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

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

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

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

(12) Submitting to the jurisdiction of Utah courts under Subsection (11) does not override a duty or right of a party under the reinsurance contract, including a requirement that the parties arbitrate their disputes.

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

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

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

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

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

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

(B) the grantor of the trust is:

(I) declared insolvent; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's

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obligations under the contract are secured in accordance with Subsection (7)(f) or Section 31A-17-404.1.

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

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

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

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

(ii) The notification required by Subsection (15)(b)(i) shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

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

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

(A) single assuming insurer; or

(B) group of affiliated assuming insurers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the maintenance of title plants; and

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

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

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

~~[(ii) any changes to the schedule of the escrow charges described in Subsection~~

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~~(2)(a)(i):]~~

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

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

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

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

~~(a) operate at less than the cost of doing~~[:]~~~~

~~[(i)] the insurance business; or~~

~~[(ii) the escrow business; or]~~

~~(b) fail to adequately underwrite a title insurance policy.~~

~~[(4) (a) All or any of the schedule of rates or schedule of charges, including the schedule of escrow charges, may be changed or amended at any time, subject to the limitations in this Subsection (4).]~~

~~[(b) Each change or amendment shall:]~~

~~[(i) be filed with the commissioner, subject to review by the Title and Escrow Commission; and]~~

~~[(ii) state the effective date of the change or amendment, which may not be less than 30 calendar days after the day on which the change or amendment is filed.]~~

~~[(c) Any change or amendment remains in force for a period of at least 90 calendar days from the change or amendment's effective date.]~~

~~[(5) While the schedule of rates and schedule of charges are effective, a copy of each shall be:]~~

~~[(a) retained in each of the offices of:]~~

~~[(i) the title insurer in this state;]~~

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~~[(ii) the title insurer's individual title insurance producers or agency title insurance producers in this state; and]~~

~~[(b) upon request, furnished to the public.]~~

~~[(6) Except in accordance with the schedules of rates and charges filed with the commissioner, a title insurer, individual title insurance producer, or agency title insurance producer may not make or impose any premium or other charge:]~~

~~[(a) in connection with the issuance of a policy of title insurance; or]~~

~~[(b) for escrow services performed in connection with the issuance of a policy of title insurance:]~~

Section 8. Section ~~{31A-23a-106}~~31A-22-728 is ~~{amended}~~enacted to read:

31A-22-728. Large employer health benefit plan required report.

(1) As used in this section:

(a) "Claims run-out period" means the period beginning on the first day following the last day of a plan year and ending on the 90th day following the last day of a plan year.

(b) "Large employer" means an employer who:

(i) with respect to a calendar year and to a plan year:

(A) employed an average of at least 51 employees on a business day during the preceding calendar year; and

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

(ii) has at least 51 but fewer than 100 enrolled eligible employees enrolled in a group health benefit plan during each consecutive month during the plan year.

(c) "Medical loss ratio" means a group health benefit plan's paid claims incurred during a plan year, including the claims run-out period, divided by the total premium revenue collected for the plan year.

(2) Except as provided in Subsections (6), beginning on January 1, 2024, an insurer that offers a large employer health benefit plan to a large employer shall annually provide a report, upon request of:

(a) the large employer;

(b) the large employer's appointed producer; or

(c) the large employer's consultant.

(3) The report described in Subsection (2) shall include:

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(a) after the first renewal, the health benefit plan's aggregate performance from the immediately preceding plan year that describes whether the health benefit plan had a medical loss ratio of:

- (i) less than 85%;
- (ii) between 85% and 125%; or
- (iii) greater than 125%; and

(b) after the second renewal and each subsequent renewal thereafter, a summary of the health benefit plan's aggregate 24-month medical loss ratio from the immediately preceding two plan years combined.

(4) An insurer that offers a large employer health benefit plan shall provide the requested report described in Subsection (2) not less than 30 days after the claims run-out period.

(5) (a) The report described in Subsection (2) is proprietary to the large employer, the large employer's appointed producer, or the large employer's consultant.

(b) A person may not share the report described in Subsection (2) with a party other than a party described in Subsection (5)(a).

(6) An insurer is not required to provide a report as described in this section if:

(a) the health benefit plan is a qualified health plan as defined in 45 C.F.R. Sec. 155.20;

(b) the health benefit plan is issued to a group other than an employee group described in Section 31A-22-502;

(c) the large employer has not had continuous large employer health benefit plan coverage with the insurer for at least 18 months before the date on which the large employer requests the report;

(d) the large employer does not renew coverage with the insurer; or

(e) the insurer reasonably believes that providing the report would disclose information described in Subsection 13-61-102(2)(g).

(7) An insurer that provides a report in compliance with this section is immune from civil liability for the insurer's acts or omissions in providing information required under Subsection (3).

Section 9. Section 31A-23a-106 is amended to read:

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31A-23a-106. License types.

(1) (a) A resident or nonresident license issued under this chapter shall be issued under the license types described under Subsection (2).

(b) A license type and a line of authority pertaining to a license type describe the type of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license type is intended to describe the matters to be considered under any education, examination, and training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and 31A-23a-203.

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

(i) life insurance, including a nonvariable contract;

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

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

(iv) property insurance;

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

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

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

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

(C) title marketing representative only; and

(vii) personal lines insurance.

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

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

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

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

(i) limited line credit insurance;

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

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- (iii) motor club insurance;
- (iv) car rental related insurance;
- (v) legal expense insurance;
- (vi) crop insurance;
- (vii) self-service storage insurance;
- (viii) bail bond producer;
- (ix) guaranteed asset protection waiver; [~~and~~]
- (x) portable electronics insurance[-]; and
- (xi) pet insurance.

(d) A consultant license type includes the following lines of authority:

- (i) life insurance, including a nonvariable contract;
- (ii) variable contracts, including variable life and annuity, if the consultant has the life insurance line of authority;

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

- (iv) property insurance;
- (v) casualty insurance, including a surety or other bond; and
- (vi) personal lines insurance.

(e) A managing general agent license type includes the following lines of authority:

- (i) life insurance, including a nonvariable contract;
- (ii) variable contracts, including variable life and annuity, if the managing general agent has the life insurance line of authority;

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

- (iv) property insurance;
- (v) casualty insurance, including a surety or other bond; and
- (vi) personal lines insurance.

(f) A reinsurance intermediary license type includes the following lines of authority:

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

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(ii) variable contracts, including variable life and annuity, if the reinsurance intermediary has the life insurance line of authority;

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

(iv) property insurance;

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

(vi) personal lines insurance.

(g) A person who holds a license under Subsection (2)(a) has the qualifications necessary to act as a holder of a license under Subsection (2)(c), except that the person may not act under Subsection (2)(c)(viii) or (ix).

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

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

(4) The variable contracts line of authority requires:

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

(i) registered broker-dealer; or

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

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

(i) investment adviser; or

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

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

Section ~~9~~10. Section 31A-23a-111 is amended to read:

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

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

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

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

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

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

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

(d) lapsed under Section 31A-23a-113; or

(e) voluntarily surrendered.

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

(a) a lapsed license; or

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

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

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act.

(4) A line of authority issued under this chapter remains in force until:

(a) the qualifications pertaining to a line of authority are no longer met by the licensee;

[or]

(b) the supporting license type:

(i) is revoked or suspended under Subsection (5);

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(iii) lapses under Section 31A-23a-113; or

(iv) is voluntarily surrendered; or

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

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- (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.

(5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

- (i) revoke:
 - (A) a license; or
 - (B) a line of authority;
- (ii) suspend for a specified period of 12 months or less:
 - (A) a license; or
 - (B) a line of authority;
- (iii) limit in whole or in part:
 - (A) a license; or
 - (B) a line of authority;
- (iv) deny a license application;
- (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and Subsection (5)(a)(v).

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

- (i) is unqualified for a license or line of authority under Section 31A-23a-104, 31A-23a-105, or 31A-23a-107;
- (ii) violates:
 - (A) an insurance statute;
 - (B) a rule that is valid under Subsection 31A-2-201(3); or
 - (C) an order that is valid under Subsection 31A-2-201(4);
- (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;
- (iv) fails to pay a final judgment rendered against the person within 60 days after the day on which the judgment became final;

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

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

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the insurance producer's affairs; or

(B) perform any other legal obligation as to an examination;

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

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) violates an insurance law, valid rule, or valid order of another regulatory agency in any jurisdiction;

(xi) obtains or attempts to obtain a license through misrepresentation or fraud;

(xii) improperly withholds, misappropriates, or converts money or properties received in the course of doing insurance business;

(xiii) intentionally misrepresents the terms of an actual or proposed:

(A) insurance contract;

(B) application for insurance; or

(C) life settlement;

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

(A) a felony; or

(B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;

(xv) admits or is found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere:

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(A) uses fraudulent, coercive, or dishonest practices; or
(B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
(xvii) has had an insurance license or other professional or occupational license, or an equivalent to an insurance license or registration, or other professional or occupational license or registration:

- (A) denied;
- (B) suspended;
- (C) revoked; or
- (D) surrendered to resolve an administrative action;
- (xviii) forges another's name to:

- (A) an application for insurance; or
- (B) a document related to an insurance transaction;

(xix) improperly uses notes or another reference material to complete an examination for an insurance license;

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

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

(xxii) fails to:

- (A) pay state income tax; or
- (B) comply with an administrative or court order directing payment of state income

tax;

(xxiii) has been convicted of violating the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and has not obtained written consent to engage in the business of insurance or participate in such business as required by 18 U.S.C. Sec. 1033;

(xxiv) engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public; or

(xxv) has been convicted of any criminal felony involving dishonesty or breach of trust and has not obtained written consent to engage in the business of insurance or participate in such business as required by 18 U.S.C. Sec. 1033.

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

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

(i) the individual;

(ii) the agency, if the agency:

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

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

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

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

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

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

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

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

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

(i) fraud;

(ii) deceit;

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- (iii) misrepresentation; or
- (iv) a violation of an insurance law or rule.

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

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

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

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

Section ~~(10)~~11. Section **31A-23a-406** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

- (i) the title line of authority; and
- (ii) the escrow subline of authority;

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

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

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

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- (ii) a lender's policy offering title insurance; or
 - (iii) if the transaction does not involve a transfer of ownership, an endorsement to an owner's or a lender's policy offering title insurance;
 - (d) money deposited with the individual title insurance producer or agency title insurance producer in connection with any escrow is deposited:
 - (i) in a federally insured depository institution, as defined in Section 7-1-103, that:
 - (A) has [~~an office~~] a branch in this state, if the individual title insurance producer or agency title insurance producer depositing the money is a resident licensee; and
 - (B) is authorized by the depository institution's primary regulator to engage in trust business, as defined in Section 7-5-1, in this state; and
 - (ii) in a trust account that is separate from all other trust account money that is not related to real estate transactions;
 - (e) money deposited with the individual title insurance producer or agency title insurance producer in connection with any escrow is the property of the one or more persons entitled to the money under the provisions of the escrow; [~~and~~]
 - (f) money deposited with the individual title insurance producer or agency title insurance producer in connection with an escrow is segregated escrow by escrow in the records of the individual title insurance producer or agency title insurance producer;
 - (g) earnings on money held in escrow may be paid out of the escrow account to any person in accordance with the conditions of the escrow;
 - (h) the escrow does not require the individual title insurance producer or agency title insurance producer to hold:
 - (i) construction money; or
 - (ii) money held for exchange under Section 1031, Internal Revenue Code; and
 - (i) the individual title insurance producer or agency title insurance producer shall maintain a physical office in Utah staffed by a person with an escrow subline of authority who processes the escrow.
- [~~(2)~~] (3) Notwithstanding Subsection [~~(1)~~] (2), an individual title insurance producer or agency title insurance producer may engage in the escrow business if:
- (a) the escrow involves:
 - (i) a mobile home;

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- (ii) a grazing right;
- (iii) a water right; or
- (iv) other personal property authorized by the commissioner; and

(b) the individual title insurance producer or agency title insurance producer complies with this section except for Subsection ~~[(1)(e)]~~ (2)(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) the proceeds of one or more of the following financial instruments may be disbursed on the same day the financial instruments are deposited if received from a single party to the real estate transaction and if the aggregate of the financial instruments for the real estate transaction is less than \$10,000:

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

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

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

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

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

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

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

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

(D) either the ACH network payment type or the title insurance producer's systems prevent the transaction from being unilaterally canceled or reversed by the consumer once the

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transferred funds are deposited to the individual title insurance producer or agency title producer:

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

(A) the Federal Reserve Bank through the Federal Reserve's funds transfer system; or

(B) a funds transfer system provided by an association of banks.

(c) A check or deposit not described in Subsection ~~[(6)(b)]~~ (7)(b) may be disbursed:

(i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or
(ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.

~~[(7)]~~ (8) An individual title insurance producer or agency title insurance producer shall maintain a record of a receipt or disbursement of escrow money.

~~[(8)]~~ (9) An individual title insurance producer or agency title insurance producer shall comply with:

(a) Section 31A-23a-409;

(b) Title 46, Chapter 1, Notaries Public Reform Act; and

(c) any rules adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows.

~~[(9)]~~ (10) If an individual title insurance producer or agency title insurance producer conducts a search for real estate located in the state, the individual title insurance producer or agency title insurance producer shall conduct a reasonable search of the public records.

Section ~~[(11)]~~ 12. Section **31A-23a-409** is amended to read:

31A-23a-409. Trust obligation for money collected.

(1) (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to, received by, or collected by a licensee for forwarding to insurers or to insureds.

(b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust funds with:

(A) the licensee's own money; or

(B) money held in any other capacity.

(ii) This Subsection (1)(b) does not apply to:

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(A) amounts necessary to pay bank charges; and

(B) money paid by insureds and belonging in part to the licensee as a fee or commission.

(c) Except as provided under Subsection (4), a licensee owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the licensee.

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

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

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

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

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

(ii) has federal deposit insurance; and

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

(b) in some other account, that:

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

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

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

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

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

(6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any

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portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4, Theft. Section 76-6-412 applies in determining the classification of the offense. Sanctions under Section 31A-2-308 also apply.

(7) A nonresident licensee:

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

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

Section ~~{12}~~13. Section **31A-23a-415** is amended to read:

31A-23a-415. Assessment on agency title insurance producers or title insurers --

Account created.

(1) For purposes of this section:

(a) "Premium" is as described in Subsection 59-9-101(3).

(b) "Title insurer" means a person:

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

(A) insurer;

(B) guarantor; or

(C) surety;

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

(A) insurer;

(B) guarantor; or

(C) surety; or

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

(A) soliciting;

(B) negotiating preliminary to execution;

(C) executing of a contract of title insurance;

(D) insuring; and

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

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

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suffered by reason of:

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

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

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

(i) determined by the Title and Escrow Commission:

(A) after consultation with the commissioner; and

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

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

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

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

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

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

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

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

(iii) an amount calculated by:

(A) aggregating the assessments imposed on:

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

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

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

(C) multiplying:

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

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

(d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, during the first quarter of each fiscal year the Title and Escrow Commission [~~by rule shall establish~~] shall approve the amount of costs and expenses described under Subsection (3) for the prior fiscal year that will be covered by the assessment[~~, except the costs or expenses to be covered by the assessment may not exceed the cost of one full-time equivalent position~~].

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

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

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

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

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

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

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

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

Section ~~13~~14. Section **31A-23b-401** is amended to read:

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

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- (1) A license as a navigator under this chapter remains in force until:
 - (a) revoked or suspended under Subsection (4);
 - (b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;
 - (c) the licensee dies or is adjudicated incompetent as defined under:
 - (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
 - (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;
 - (d) lapsed under this section; or
 - (e) voluntarily surrendered.
- (2) The following may be reinstated within one year after the day on which the license is no longer in force:
 - (a) a lapsed license; or
 - (b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.
- (3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:
 - (a) this title; or
 - (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:
 - (i) revoke a license;
 - (ii) suspend a license for a specified period of 12 months or less;
 - (iii) limit a license in whole or in part;
 - (iv) deny a license application;
 - (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
 - (vi) take a combination of actions under Subsections (4)(a)(i) through (iv) and Subsection (4)(a)(v).

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

(i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or 31A-23b-206;

(ii) violated:

(A) an insurance statute;

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

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

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

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

(v) refused:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(vi) had an officer who refused to:

(A) give information with respect to the navigator's affairs; or

(B) perform any other legal obligation as to an examination;

(vii) provided information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(viii) violated an insurance law, valid rule, or valid order of another regulatory agency in any jurisdiction;

(ix) obtained or attempted to obtain a license through misrepresentation or fraud;

(x) improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;

(xi) intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract;

(B) application for insurance; or

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(C) application for public program;

(xii) has been convicted of, or has entered a plea in abeyance as defined in Section 77-2a-1 to:

(A) a felony; or

(B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;

(xiii) admitted or is found to have committed an insurance unfair trade practice or fraud;

(xiv) in the conduct of business in this state or elsewhere:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xv) has had an insurance license, navigator license, or other professional or occupational license or registration, or an equivalent of the same denied, suspended, revoked, or surrendered to resolve an administrative action;

(xvi) forged another's name to:

(A) an application for insurance;

(B) a document related to an insurance transaction;

(C) a document related to an application for a public program; or

(D) a document related to an application for premium subsidies;

(xvii) improperly used notes or another reference material to complete an examination for a license;

(xviii) knowingly accepted insurance business from an individual who is not licensed;

(xix) failed to comply with an administrative or court order imposing a child support obligation;

(xx) failed to:

(A) pay state income tax; or

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

(xxi) has been convicted of violating the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and has not obtained written consent to engage in the business of insurance or participate in such business as required by 18 U.S.C. Sec. 1033;

(xxii) engaged in a method or practice in the conduct of business that endangered the

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legitimate interests of customers and the public; or

(xxiii) has been convicted of any criminal felony involving dishonesty or breach of trust and has not obtained written consent to engage in the business of insurance or participate in such business as required by 18 U.S.C. Sec. 1033.

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

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

(i) the individual;

(ii) the agency, if the agency:

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

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

(iii) (A) the individual; and

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

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

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) surrendered in lieu of administrative action;

(iv) lapsed; or

(v) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

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

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

(b) the imposition of a disciplinary sanction imposed on that person by another state,

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the District of Columbia, or a territory of the United States; or

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

- (i) fraud;
- (ii) deceit;
- (iii) misrepresentation; or
- (iv) a violation of an insurance law or rule.

(7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.

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

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

Section ~~{14}~~15. Section **31A-25-208** is amended to read:

31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal and reinstatement.

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

- (a) revoked or suspended under Subsection (4);
- (b) surrendered to the commissioner and accepted by the commissioner in lieu of

administrative action;

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

- (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

Minors;

(d) lapsed under Section 31A-25-210; or

(e) voluntarily surrendered.

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

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is no longer in force:

(a) a lapsed license; or

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

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

(a) this title; or

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

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

(i) revoke a license;

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

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

(iv) deny a license application.

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

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

(ii) has violated:

(A) an insurance statute;

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

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

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

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

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

(vi) is affiliated with and under the same general management or interlocking

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directorship or ownership as another third party administrator that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the third party administrator's affairs; or

(B) perform any other legal obligation as to an examination;

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

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

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

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

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

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

(A) insurance contract; or

(B) application for insurance;

(xiv) has been convicted of, or has entered a plea in abeyance as defined in Section

77-2a-1 to:

(A) a felony; or

(B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;

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

(xvi) in the conduct of business in this state or elsewhere has:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has had an insurance license or other professional or occupational license or

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registration, or an equivalent of the same, denied, suspended, revoked, or surrendered to resolve an administrative action;

(xviii) has forged another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) has improperly used notes or any other reference material to complete an examination for an insurance license;

(xx) has knowingly accepted insurance business from an individual who is not licensed;

(xxi) has failed to comply with an administrative or court order imposing a child support obligation;

(xxii) has failed to:

(A) pay state income tax; or

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

(xxiii) is convicted of violating the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and has not obtained written consent to engage in the business of insurance or participate in such business as required under 18 U.S.C. Sec. 1033;

(xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public; or

(xxv) has been convicted of a criminal felony involving dishonesty or breach of trust and has not obtained written consent to engage in the business of insurance or participate in such business as required under 18 U.S.C. Sec. 1033.

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

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

(i) the individual;

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(ii) the agency if the agency:

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

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

(iii) (A) the individual; and

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

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

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

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

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

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

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

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

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

(7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within

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

(b) If no time is specified in the order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.

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

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

Section ~~{15}~~16. Section **31A-26-213** is amended to read:

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

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

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

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

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

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

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

(d) lapsed under Section 31A-26-214.5; or

(e) voluntarily surrendered.

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

(a) a lapsed license; or

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

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

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah

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Administrative Rulemaking Act.

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

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

(b) the supporting license type:

(i) is revoked or suspended under Subsection (5); or

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action.

(5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke:

(A) a license; or

(B) a license classification;

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

(A) a license; or

(B) a license classification;

(iii) limit in whole or in part:

(A) a license; or

(B) a license classification;

(iv) deny a license application;

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

(vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and Subsection (5)(a)(v).

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

(i) is unqualified for a license or license classification under Section 31A-26-202, 31A-26-203, 31A-26-204, or 31A-26-205;

(ii) has violated:

(A) an insurance statute;

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

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- (C) an order that is valid under Subsection 31A-2-201(4);
- (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;
- (iv) fails to pay a final judgment rendered against the person in this state within 60 days after the judgment became final;
- (v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;
- (vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance adjuster that transacts business in this state without a license;
- (vii) refuses:
 - (A) to be examined; or
 - (B) to produce its accounts, records, and files for examination;
- (viii) has an officer who refuses to:
 - (A) give information with respect to the insurance adjuster's affairs; or
 - (B) perform any other legal obligation as to an examination;
- (ix) provides information in the license application that is:
 - (A) incorrect;
 - (B) misleading;
 - (C) incomplete; or
 - (D) materially untrue;
- (x) has violated an insurance law, valid rule, or valid order of another regulatory agency in any jurisdiction;
- (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- (xii) has improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;
- (xiii) has intentionally misrepresented the terms of an actual or proposed:
 - (A) insurance contract; or
 - (B) application for insurance;
- (xiv) has been convicted of, or has entered a plea in abeyance as defined in Section 77-2a-1 to:

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- (A) a felony; or
- (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- (xv) has admitted or been found to have committed an insurance unfair trade practice or fraud;
- (xvi) in the conduct of business in this state or elsewhere has:
 - (A) used fraudulent, coercive, or dishonest practices; or
 - (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- (xvii) has had an insurance license or other professional or occupational license or registration, or equivalent, denied, suspended, revoked, or surrendered to resolve an administrative action;
- (xviii) has forged another's name to:
 - (A) an application for insurance; or
 - (B) a document related to an insurance transaction;
- (xix) has improperly used notes or any other reference material to complete an examination for an insurance license;
- (xx) has knowingly accepted insurance business from an individual who is not licensed;
- (xxi) has failed to comply with an administrative or court order imposing a child support obligation;
- (xxii) has failed to:
 - (A) pay state income tax; or
 - (B) comply with an administrative or court order directing payment of state income tax;
- (xxiii) has been convicted of a violation of the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and has not obtained written consent in accordance with 18 U.S.C. Sec. 1033 to engage in the business of insurance or participate in such business;
- (xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public; or
- (xxv) has been convicted of any criminal felony involving dishonesty or breach of trust and has not obtained written consent in accordance with 18 U.S.C. Sec. 1033 to engage in the

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business of insurance or participate in such business.

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

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

(i) the individual;

(ii) the agency, if the agency:

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

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

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

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

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

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

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

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

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

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involving:

- (i) fraud;
- (ii) deceit;
- (iii) misrepresentation; or
- (iv) a violation of an insurance law or rule.

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

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

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

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

Section ~~16~~17. Section **31A-30-118** is amended to read:

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

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

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

- (i) calculated in accordance with generally accepted actuarial principles and methodologies;
- (ii) conducted by a member of the American Academy of Actuaries; and
- (iii) reported to the commissioner and to the individual exchange operating in the state.

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

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

(a) the state shall make the required payments:

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

(ii) directly to the qualified health plan issuer in accordance with 45 C.F.R. 155.170;

(b) an issuer of a qualified health plan that receives a payment under the provisions of Subsection (1) and 45 C.F.R. 155.170 shall:

(i) reduce the premium charged to the individual on whose behalf the issuer will be paid under Subsection (1), in an amount equal to the amount of the payment under Subsection (1); or

(ii) notwithstanding Subsection 31A-23a-402.5(5), provide a premium rebate to an individual on whose behalf the issuer received a payment under Subsection (1), in an amount equal to the amount of the payment under Subsection (1); and

(c) a premium rebate made under this section is not a prohibited inducement under Section 31A-23a-402.5.

(3) A payment required under 45 C.F.R. 155.170(c) shall:

(a) unless otherwise required by PPACA, be based on a statewide average of the cost of the additional benefit for all issuers who are entitled to payment under the provisions of 45 C.F.R. 155.170; and

(b) be submitted to an issuer through a process established by the commissioner.

(4) (a) As used in this Subsection (4), "account" means the State Mandated Insurer Payments Restricted Account created in Subsection (4)(b).

(b) There is created in the General Fund a restricted account known as the "State Mandated Insurer Payments Restricted Account."

(c) The account shall consist of:

(i) money appropriated to the account by the Legislature; and

(ii) interest earned on money in the account.

(d) ~~{The}~~ **Subject to appropriations from the Legislature, the** commissioner shall administer the account for the sole benefit of a qualified health plan issuer who is eligible to receive payments under this section.

(e) An appropriation from the account is nonlapsing.

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(5) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

- (a) administer the provisions of this section and 45 C.F.R. 155.170; and
- (b) establish or implement a process for submitting a payment to an issuer under

Subsection (3)(b).

Section ~~{17}~~18. Section **31A-31-110** is amended to read:

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

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

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

(ii) the person is:

(A) an insurer; or

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

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

(i) be in writing;

(ii) be submitted through:

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

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

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

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

(A) the fraudulent insurance act; and

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

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

(I) the attorney general;

(II) a state law enforcement agency;

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

(IV) a district attorney; or

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

(B) if the person reported the fraudulent insurance act as provided in Subsection (1)(b)(iii)(A), state the agency to which the person reported the fraudulent insurance act.

(c) A person required to submit a written report under this Subsection (1) shall submit the written report to the department by no later than 90 days from the day on which the person required to report the fraudulent insurance act has a good faith belief on the basis of a preponderance of the evidence that the fraudulent insurance act is being, will be, or has been committed.

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

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

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

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

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

Section ~~18~~19. Section **31A-35-504** is amended to read:

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

(1) As used in this section:

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

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

(2) (a) (i) An agency shall pay a judgment not later than 15 days following service of

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notice upon the agency from a prosecutor of the entry of the judgment.

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

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

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

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

(c) If notice of entry of judgment is served upon the agency by mail, three additional days are added to the 15 days provided in Subsections (2)(a), (2)(b), and (2)(d).

(d) A prosecutor may not proceed under Subsection (2)(b) if an agency, within 15 days after service of notice of the entry of judgment is served:

(i) files a motion to set aside the judgment or files an application for an extraordinary writ; and

(ii) provides proof that the agency has posted the judgment amount with the court in the form of cash, a cashier's check, or certified funds.

(e) As used in this section, the filing of the following tolls the time within which an agency is required to pay a judgment if the motion or application is filed within 15 days after the day on which service of notice of the entry of a judgment is served:

(i) a motion to set aside a judgment; or

(ii) an application for extraordinary writ.

(3) The commissioner shall suspend the license of the agency not later than five days following the agency's failure to satisfy the judgment as required under Subsection (2)(b).

(4) If the prosecutor receives proof of or notice of payment of the judgment during the suspension period under Subsection (3), the prosecutor shall immediately notify the commissioner of the payment. The notice shall be in writing and by the most expeditious means possible, including facsimile or other electronic means.

(5) The commissioner shall lift a suspension under Subsection (3) within five days of the day on which all of the following conditions are met:

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- (a) the suspension has been in place for no fewer than 14 days;
- (b) the commissioner has received written notice of payment of the unpaid forfeiture from the prosecutor; and
- (c) the commissioner has received:
 - (i) no other notice of any unpaid forfeiture from a prosecutor; or
 - (ii) if a notice of unpaid forfeiture is received, written notice from the prosecutor that the unpaid forfeiture has been paid.
- (6) The commissioner shall commence an administrative proceeding and revoke the license of an agency that fails to meet the conditions under Subsection (5) within 60 days following the initial date of suspension.
- (7) This section does not restrict or otherwise affect the rights of a prosecutor to commence collection proceedings under Subsection 77-20-505(5).

Section ~~19~~20. Section **31A-37-102** is amended to read:

31A-37-102. Definitions.

As used in this chapter:

- (1) (a) "Affiliated company" means a business entity that because of common ownership, control, operation, or management is in the same corporate or limited liability company system as:
 - (i) a parent;
 - (ii) an industrial insured; or
 - (iii) a member organization.
- (b) "Affiliated company" does not include a business entity for which the commissioner issues an order finding that the business entity is not an affiliated company.
- (2) "Alien captive insurance company" means an insurer:
 - (a) formed to write insurance business for a parent or affiliate of the insurer; and
 - (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes statutory or regulatory standards:
 - (i) on a business entity transacting the business of insurance in the alien or foreign jurisdiction; and
 - (ii) in a form acceptable to the commissioner.
- (3) "Applicant captive insurance company" means an entity that has submitted an

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application for a certificate of authority for a captive insurance company, unless the application has been denied or withdrawn.

(4) "Association" means a legal association of two or more persons that ~~[has been in continuous existence for at least one year if]~~ meets the following requirements:

(a) the persons are exposed to similar or related liability because of related, similar, or common business trade, products, services, premises, or operations; and

(b) ~~[(a)]~~ ~~[(b)]~~ (i) the association or ~~[its]~~ the association's member organizations:

~~[(i)]~~ (A) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; ~~[(or)]~~

~~[(ii)]~~ (B) have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(C) have complete voting control over an association captive insurance company formed as a limited liability company; or

~~[(b)]~~ (ii) the association's member organizations collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer~~[(, or)]~~.

~~[(c) the association or the association's member organizations have complete voting control over an association captive insurance company formed as a limited liability company.]~~

(5) "Association captive insurance company" means a business entity that insures risks of:

(a) a member organization of the association;

(b) an affiliate of a member organization of the association; and

(c) the association.

(6) "Branch business" means an insurance business transacted by a branch captive insurance company in this state.

(7) "Branch captive insurance company" means an alien captive insurance company that has a certificate of authority from the commissioner to transact the business of insurance in this state through a captive insurance company that is domiciled outside of this state.

(8) "Branch operation" means a business operation of a branch captive insurance company in this state.

(9) (a) "Captive insurance company" means the same as that term is defined in Section 31A-1-301.

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(b) "Captive insurance company" includes any of the following formed or holding a certificate of authority under this chapter:

- (i) a branch captive insurance company;
- (ii) a pure captive insurance company;
- (iii) an association captive insurance company;
- (iv) a sponsored captive insurance company;

(v) an industrial insured captive insurance company, including an industrial insured captive insurance company formed as a risk retention group captive in this state pursuant to the provisions of the Federal Liability Risk Retention Act of 1986;

- (vi) a special purpose captive insurance company; or
- (vii) a special purpose financial captive insurance company.

(10) "Commissioner" means Utah's Insurance Commissioner or the commissioner's designee.

(11) "Common ownership and control" means that two or more captive insurance companies are owned or controlled by the same person or group of persons as follows:

(a) in the case of a captive insurance company that is a stock corporation, the direct or indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

(b) in the case of a captive insurance company that is a mutual corporation, the direct or indirect ownership of 80% or more of the surplus and the voting power of the mutual corporation;

(c) in the case of a captive insurance company that is a limited liability company, the direct or indirect ownership by the same member or members of 80% or more of the membership interests in the limited liability company; or

(d) in the case of a sponsored captive insurance company, a protected cell is a separate captive insurance company owned and controlled by the protected cell's participant, only if:

- (i) the participant is the only participant with respect to the protected cell; and
- (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored captive insurance company through common ownership and control.

(12) "Consolidated debt to total capital ratio" means the ratio of Subsection (12)(a) to (b).

- (a) This Subsection (12)(a) is an amount equal to the sum of all debts and hybrid

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capital instruments including:

- (i) all borrowings from depository institutions;
- (ii) all senior debt;
- (iii) all subordinated debts;
- (iv) all trust preferred shares; and
- (v) all other hybrid capital instruments that are not included in the determination of

consolidated GAAP net worth issued and outstanding.

(b) This Subsection (12)(b) is an amount equal to the sum of:

(i) total capital consisting of all debts and hybrid capital instruments as described in Subsection (12)(a); and

(ii) shareholders' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(13) "Consolidated GAAP net worth" means the consolidated shareholders' or members' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(14) "Controlled unaffiliated business" means a business entity:

(a) (i) in the case of a pure captive insurance company, that is not in the corporate or limited liability company system of a parent or the parent's affiliate; or

(ii) in the case of an industrial insured captive insurance company, that is not in the corporate or limited liability company system of an industrial insured or an affiliated company of the industrial insured;

(b) (i) in the case of a pure captive insurance company, that has a contractual relationship with a parent or affiliate; or

(ii) in the case of an industrial insured captive insurance company, that has a contractual relationship with an industrial insured or an affiliated company of the industrial insured; and

(c) whose risks that are or will be insured by a pure captive insurance company, an industrial insured captive insurance company, or both, are managed in accordance with Subsection 31A-37-106(1)(j) by:

(i) (A) a pure captive insurance company; or

(B) an industrial insured captive insurance company; or

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(ii) a parent or affiliate of:

(A) a pure captive insurance company; or

(B) an industrial insured captive insurance company.

(15) "Criminal act" means an act for which a person receives a verdict or finding of guilt after a criminal trial or a plea of guilty or nolo contendere to a criminal charge.

(16) "Establisher" means a person who establishes a business entity or a trust.

(17) "Governing body" means the persons who hold the ultimate authority to direct and manage the affairs of an entity.

(18) "Industrial insured" means an insured:

(a) that produces insurance:

(i) by the services of a full-time employee acting as a risk manager or insurance manager; or

(ii) using the services of a regularly and continuously qualified insurance consultant;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;

and

(c) that has at least 25 full-time employees.

(19) "Industrial insured captive insurance company" means a business entity that:

(a) insures risks of the industrial insureds that comprise the industrial insured group;

and

(b) may insure the risks of:

(i) an affiliated company of an industrial insured; or

(ii) a controlled unaffiliated business of:

(A) an industrial insured; or

(B) an affiliated company of an industrial insured.

(20) "Industrial insured group" means:

(a) a group of industrial insureds that collectively:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated or organized as a limited liability company as a stock insurer; or

(ii) have complete voting control over an industrial insured captive insurance company incorporated or organized as a limited liability company as a mutual insurer;

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(b) a group that is:

(i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and

(ii) taxable under this title as a:

(A) stock corporation; or

(B) mutual insurer; or

(c) a group that has complete voting control over an industrial captive insurance company formed as a limited liability company.

(21) "Member organization" means a person that belongs to an association.

(22) "Parent" means a person that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding securities of an organization.

(23) "Participant" means an entity that is insured by a sponsored captive insurance company:

(a) if the losses of the participant are limited through a participant contract to the assets of a protected cell; and

(b) (i) the entity is permitted to be a participant under Section 31A-37-403; or

(ii) the entity is an affiliate of an entity permitted to be a participant under Section 31A-37-403.

(24) "Participant contract" means a contract by which a sponsored captive insurance company:

(a) insures the risks of a participant; and

(b) limits the losses of the participant to the assets of a protected cell.

(25) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant.

(26) "Pure captive insurance company" means a business entity that insures risks of a parent or affiliate of the business entity.

(27) "Special purpose financial captive insurance company" means the same as that term is defined in Section 31A-37a-102.

(28) "Sponsor" means an entity that:

(a) meets the requirements of Section 31A-37-402; and

(b) is approved by the commissioner to:

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(i) provide all or part of the capital and surplus required by applicable law in an amount of not less than \$350,000, which amount the commissioner may increase by order if the commissioner considers it necessary; and

(ii) organize and operate a sponsored captive insurance company.

(29) "Sponsored captive insurance company" means a captive insurance company:

(a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(b) that is formed or holding a certificate of authority under this chapter;

(c) that insures the risks of a separate participant through the contract; and

(d) that segregates each participant's liability through one or more protected cells.

(30) "Treasury rates" means the United States Treasury strip asked yield as published in the Wall Street Journal as of a balance sheet date.

Section ~~20~~21. Section **31A-37-202** is amended to read:

31A-37-202. Permissive areas of insurance.

(1) Except as provided in Subsections (2) and (3), a captive insurance company may not directly insure a risk other than the risk of the captive insurance company's parent or affiliated company.

(2) In addition to the risks described in Subsection (1), an association captive insurance company may insure the risk of:

(a) a member organization of the association captive insurance company's association;

or

(b) an affiliate of a member organization of the association captive insurance company's association.

(3) The following may insure a risk of a controlled unaffiliated business:

(a) an industrial insured captive insurance company;

(b) a protected cell;

(c) a pure captive insurance company; or

(d) a sponsored captive insurance company.

(4) To the extent allowed by a captive insurance company's organizational charter, a captive insurance company may provide any type of insurance described in this title, except:

(a) workers' compensation insurance;

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- (b) personal motor vehicle insurance;
- (c) homeowners' insurance; and
- (d) any component of the types of insurance described in Subsections (4)(a) through (c).

(5) A captive insurance company may not provide coverage for:

- (a) a wager or gaming risk;
- (b) loss of an election; or
- (c) the penal consequences of a crime.

(6) Unless the punitive damages award arises out of a criminal act of an insured, a captive insurance company may provide coverage for punitive damages awarded, including through adjudication or compromise, against the captive insurance company's:

- (a) parent; or
- (b) affiliated company[~~;~~or].
- ~~[(c) controlled unaffiliated business.]~~

(7) Notwithstanding Subsection (4), if approved by the commissioner, a captive insurance company may insure as a reimbursement a limited layer or deductible of workers' compensation coverage.

Section ~~{21}~~22. Section **31A-37-204** is amended to read:

31A-37-204. Paid-in capital -- Other capital.

(1) (a) The commissioner may not issue a certificate of authority to a company described in Subsection (1)(c) unless the company possesses and thereafter maintains unimpaired paid-in capital and unimpaired paid-in surplus of:

- (i) in the case of a pure captive insurance company[~~;~~]:
 - (A) except as provided in Subsection (1)(a)(i)(B), not less than \$250,000; or
 - (B) if the pure captive insurance company is not acting as a pool that facilitates risk

distribution for other captive insurers, an amount that is the greater of:

- (I) not less than 20% of the company's total aggregate risk; or
- (II) \$50,000;

(ii) in the case of an association captive insurance company, not less than \$750,000;

(iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than \$700,000;

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(iv) in the case of a sponsored captive insurance company, not less than \$500,000, of which a minimum of \$200,000 is provided by the sponsor; or

(v) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured.

(b) The paid-in capital and surplus required under this Subsection (1) may be in the form of:

(i) (A) cash; or

(B) cash equivalent;

(ii) an irrevocable letter of credit:

(A) issued by:

(I) a bank chartered by this state; [~~or~~]

(II) a member bank of the Federal Reserve System; [~~and~~] or

(III) a member bank of the Federal Deposit Insurance Corporation;

(B) approved by the commissioner;

(iii) marketable securities as determined by Subsection (5); or

(iv) some other thing of value approved by the commissioner, for a period not to exceed 45 days, to facilitate the formation of a captive insurance company in this state pursuant to an approved plan of liquidation and reorganization of another captive insurance company or alien captive insurance company in another jurisdiction.

(c) This Subsection (1) applies to:

(i) a pure captive insurance company;

(ii) a sponsored captive insurance company;

(iii) a special purpose captive insurance company;

(iv) an association captive insurance company; or

(v) an industrial insured captive insurance company.

(2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.

(b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:

(i) cash;

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(ii) an irrevocable letter of credit issued by:

(A) a bank chartered by this state; or

(B) a member bank of the Federal Reserve System; or

(iii) marketable securities as determined by Subsection (5).

(3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, shall, through its branch operations, establish and maintain a trust fund:

(i) funded by an irrevocable letter of credit or other acceptable asset; and

(ii) in the United States for the benefit of:

(A) United States policyholders; and

(B) United States ceding insurers under:

(I) insurance policies issued; or

(II) reinsurance contracts issued or assumed.

(b) The amount of the security required under this Subsection (3) shall be no less than:

(i) the capital and surplus required by this chapter; and

(ii) the reserves on the insurance policies or reinsurance contracts, including:

(A) reserves for losses;

(B) allocated loss adjustment expenses;

(C) incurred but not reported losses; and

(D) unearned premiums with regard to business written through branch operations.

(c) Notwithstanding the other provisions of this Subsection (3):

(i) the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount as the security posted if the security remains posted with the reinsurer; and

(ii) a branch captive insurance company that is the result of the licensure of an alien captive insurance company that is not formed in an alien jurisdiction is not subject to the requirements of this Subsection (3).

(4) (a) A captive insurance company may not pay the following without the prior approval of the commissioner:

(i) a dividend out of capital or surplus in excess of the limits under Section

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16-10a-640; or

(ii) a distribution with respect to capital or surplus in excess of the limits under Section 16-10a-640.

(b) The commissioner shall condition approval of an ongoing plan for the payment of dividends or other distributions on the retention, at the time of each payment, of capital or surplus in excess of:

(i) amounts specified by the commissioner under Section 31A-37-106; or

(ii) determined in accordance with formulas approved by the commissioner under Section 31A-37-106.

(5) For purposes of this section, marketable securities means:

(a) a bond or other evidence of indebtedness of a governmental unit in the United States or Canada or any instrumentality of the United States or Canada; or

(b) securities:

(i) traded on one or more of the following exchanges in the United States:

(A) New York;

(B) American; or

(C) NASDAQ;

(ii) when no particular security, or a substantially related security, applied toward the required minimum capital and surplus requirement of Subsection (1) represents more than 50% of the minimum capital and surplus requirement; and

(iii) when no group of up to four particular securities, consolidating substantially related securities, applied toward the required minimum capital and surplus requirement of Subsection (1) represents more than 90% of the minimum capital and surplus requirement.

(6) Notwithstanding Subsection (5), to protect the solvency and liquidity of a captive insurance company, the commissioner may reject the application of specific assets or amounts of specific assets to satisfying the requirement of Subsection (1).

Section ~~42~~23. Section **49-20-401** is amended to read:

49-20-401. Program -- Powers and duties.

(1) The program shall:

(a) act as a self-insurer of employee benefit plans and administer those plans;

(b) enter into contracts with private insurers or carriers to underwrite employee benefit

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plans as considered appropriate by the program;

(c) indemnify employee benefit plans or purchase commercial reinsurance as considered appropriate by the program;

(d) provide descriptions of all employee benefit plans under this chapter in cooperation with covered employers;

(e) process claims for all employee benefit plans under this chapter or enter into contracts, after competitive bids are taken, with other benefit administrators to provide for the administration of the claims process;

(f) obtain an annual actuarial review of all health and dental benefit plans and a periodic review of all other employee benefit plans;

(g) consult with the covered employers to evaluate employee benefit plans and develop recommendations for benefit changes;

(h) annually submit a budget and audited financial statements to the governor and Legislature that includes total projected benefit costs and administrative costs;

(i) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the employee benefit plans as certified by the program's consulting actuary;

(j) submit, in advance, the program's recommended benefit and rate adjustments for state employees, which may include actuarially substantiated member premium differentials between networks to:

(i) the Legislature; and

(ii) the director of the state Division of Human Resource Management;

(k) determine benefits and rates, upon approval of the board, for multi-employer risk pools, retiree coverage, and conversion coverage;

(l) determine benefits and rates based on the total estimated costs and the employee premium share established by the Legislature, upon approval of the board, for state employees;

(m) administer benefits and rates, upon ratification of the board, for single-employer risk pools;

(n) request proposals for one or more out-of-state provider networks and a dental health plan administered by a third-party carrier at least once every three years for the purposes of:

(i) stimulating competition for the benefit of covered individuals;

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- (ii) establishing better geographical coverage of medical care services; and
- (iii) providing coverage for both active and retired covered individuals;
- (o) for a proposal that meets the criteria specified in a request for proposals and is

accepted by the program:

- (i) offer the proposal to active and retired state-covered individuals; and
- (ii) at the option of the covered employer, offer the proposal to active and retired

covered individuals of other covered employers;

(p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for the Department of Health and Human Services if the program provides program benefits to children enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act;

(q) establish rules and procedures governing the admission of political subdivisions or educational institutions and their employees to the program;

(r) (i) contract directly with medical providers to provide services for covered individuals at commercially competitive rates; and

(ii) (A) discontinue the preferred network, which offers in-network access to all in-state hospitals, for the state risk pool created in Subsection 49-20-202(1)(a) for plan years starting on or after July 1, 2022; and

(B) for an employee in the state risk pool who fails to elect one of the remaining networks before July 1, 2022, enroll the employee and the employee's dependents into the network that best reflects the utilization pattern of that employee and the employee's dependents;

(s) (i) require state employees and the state employees' dependents to participate in the electronic exchange of clinical health records in accordance with Section 26-1-37 unless the enrollee opts out of participation; and

(ii) prior to enrolling the state employee, each time the state employee logs onto the program's website, and each time the enrollee receives written enrollment information from the program, provide notice to the enrollee of the enrollee's participation in the electronic exchange of clinical health records and the option to opt out of participation at any time;

(t) at the request of a procurement unit, as that term is defined in Section 63G-6a-103, that administers benefits to program recipients who are not covered by Title 26, Utah Health

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Code, provide services for:

- (i) drugs;
- (ii) medical devices; or
- (iii) other types of medical care; and
- (u) take additional actions necessary or appropriate to carry out the purposes of this

chapter.

(2) (a) Funds budgeted and expended shall accrue from rates paid by the covered employers and covered individuals.

(b) The board shall approve administrative costs and report the administrative costs to the governor and the Legislature.

(3) The Division of Human Resource Management shall include the benefit and rate adjustments described in Subsection (1)(j) in the total compensation plan recommended to the governor required under Subsection 63A-17-307(5)(a).

(4) The program may establish a partnership with a public entity in a different state to purchase or share services related to the administration of medical benefits if:

- (a) the program receives approval for the partnership from the board; and
- (b) the partnership:
 - (i) creates cost savings for Utah;
 - (ii) does not commingle state funds with funds of the public entity in the other state;

and

(iii) does not pose a greater actuarial risk to Utah than the program has already assumed.

Section ~~{23}~~24. Section **63J-1-602.1** is amended to read:

63J-1-602.1. List of nonlapsing appropriations from accounts and funds.

Appropriations made from the following accounts or funds are nonlapsing:

(1) The Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account created in Section 4-42-102.

(2) The Native American Repatriation Restricted Account created in Section 9-9-407.

(3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.

(4) The National Professional Men's Soccer Team Support of Building Communities

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Restricted Account created in Section 9-19-102.

(5) Funds collected for directing and administering the C-PACE district created in Section 11-42a-106.

(6) Money received by the Utah Inland Port Authority, as provided in Section 11-58-105.

(7) The "Latino Community Support Restricted Account" created in Section 13-1-16.

(8) The Clean Air Support Restricted Account created in Section 19-1-109.

(9) The Division of Air Quality Oil, Gas, and Mining Restricted Account created in Section 19-2a-106.

(10) The Division of Water Quality Oil, Gas, and Mining Restricted Account created in Section 19-5-126.

(11) The "Support for State-Owned Shooting Ranges Restricted Account" created in Section 23-14-13.5.

(12) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.

(13) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.

(14) The Children with Cancer Support Restricted Account created in Section 26-21a-304.

(15) State funds for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.

(16) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.

(17) The Technology Development Restricted Account created in Section 31A-3-104.

(18) The Criminal Background Check Restricted Account created in Section 31A-3-105.

(19) The Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

(20) The Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.

(21) The Health Insurance Actuarial Review Restricted Account created in Section

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31A-30-115.

~~(22)~~ (22) The State Mandated Insurer Payments Restricted Account created in Section 31A-30-118.

~~(23)~~ (23) The Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.

~~(23)~~ (24) The Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306.

~~(24)~~ (25) The Drinking While Pregnant Prevention Media and Education Campaign Restricted Account created in Section 32B-2-308.

~~(25)~~ (26) The School Readiness Restricted Account created in Section 35A-15-203.

~~(26)~~ (27) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.

~~(27)~~ (28) The Oil and Gas Administrative Penalties Account created in Section 40-6-11.

~~(28)~~ (29) The Oil and Gas Conservation Account created in Section 40-6-14.5.

~~(29)~~ (30) The Division of Oil, Gas, and Mining Restricted account created in Section 40-6-23.

~~(30)~~ (31) The Electronic Payment Fee Restricted Account created by Section 41-1a-121 to the Motor Vehicle Division.

~~(31)~~ (32) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account created by Section 41-3-110 to the State Tax Commission.

~~(32)~~ (33) The Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120.

~~(33)~~ (34) The State Disaster Recovery Restricted Account to the Division of Emergency Management, as provided in Section 53-2a-603.

~~(34)~~ (35) The Post Disaster Recovery and Mitigation Restricted Account created in Section 53-2a-1302.

~~(35)~~ (36) The Department of Public Safety Restricted Account to the Department of Public Safety, as provided in Section 53-3-106.

~~(36)~~ (37) The Utah Highway Patrol Aero Bureau Restricted Account created in Section 53-8-303.

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~~[(37)]~~ (38) The DNA Specimen Restricted Account created in Section 53-10-407.

~~[(38)]~~ (39) The Canine Body Armor Restricted Account created in Section 53-16-201.

~~[(39)]~~ (40) The Technical Colleges Capital Projects Fund created in Section 53B-2a-118.

~~[(40)]~~ (41) The Higher Education Capital Projects Fund created in Section 53B-22-202.

~~[(41)]~~ (42) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

~~[(42)]~~ (43) The Public Utility Regulatory Restricted Account created in Section 54-5-1.5, subject to Subsection 54-5-1.5(4)(d).

~~[(43)]~~ (44) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-3a-105.

~~[(44)]~~ (45) Certain fines collected by the Division of Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

~~[(45)]~~ (46) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-22-104.

~~[(46)]~~ (47) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-55-106.

~~[(47)]~~ (48) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-56-3.5.

~~[(48)]~~ (49) Certain fines collected by the Division of Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

~~[(49)]~~ (50) The Relative Value Study Restricted Account created in Section 59-9-105.

~~[(50)]~~ (51) The Cigarette Tax Restricted Account created in Section 59-14-204.

~~[(51)]~~ (52) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

~~[(52)]~~ (53) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

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~~[(53)]~~ (54) Certain funds donated to the Department of Health and Human Services, as provided in Section 26B-1-202.

~~[(54)]~~ (55) The National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 26B-1-302.

~~[(55)]~~ (56) Certain funds donated to the Division of Child and Family Services, as provided in Section 80-2-404.

~~[(56)]~~ (57) The Choose Life Adoption Support Restricted Account created in Section 80-2-502.

~~[(57)]~~ (58) Funds collected by the Office of Administrative Rules for publishing, as provided in Section 63G-3-402.

~~[(58)]~~ (59) The Immigration Act Restricted Account created in Section 63G-12-103.

~~[(59)]~~ (60) Money received by the military installation development authority, as provided in Section 63H-1-504.

~~[(60)]~~ (61) The Computer Aided Dispatch Restricted Account created in Section 63H-7a-303.

~~[(61)]~~ (62) The Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304.

~~[(62)]~~ (63) The Utah Statewide Radio System Restricted Account created in Section 63H-7a-403.

~~[(63)]~~ (64) The Utah Capital Investment Restricted Account created in Section 63N-6-204.

~~[(64)]~~ (65) The Motion Picture Incentive Account created in Section 63N-8-103.

~~[(65)]~~ (66) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.

~~[(66)]~~ (67) Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).

~~[(67)]~~ (68) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.

~~[(68)]~~ (69) The Amusement Ride Safety Restricted Account, as provided in Section 72-16-204.

~~[(69)]~~ (70) Certain funds received by the Office of the State Engineer for well drilling

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finances or bonds, as provided in Section 73-3-25.

~~[(70)]~~ (71) The Water Resources Conservation and Development Fund, as provided in Section 73-23-2.

~~[(71)]~~ (72) Funds donated or paid to a juvenile court by private sources, as provided in Subsection 78A-6-203(1)(c).

~~[(72)]~~ (73) Fees for certificate of admission created under Section 78A-9-102.

~~[(73)]~~ (74) Funds collected for adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

~~[(74)]~~ (75) Funds collected for indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

~~[(75)]~~ (76) The Utah Geological Survey Oil, Gas, and Mining Restricted Account created in Section 79-3-403.

~~[(76)]~~ (77) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, and Green River State Park, as provided under Section 79-4-403.

~~[(77)]~~ (78) Funds donated as described in Section 41-1a-422 for the State Park Fees Restricted Account created in Section 79-4-402 for support of the Division of State Parks' dark sky initiative.

~~[(78)]~~ (79) Certain funds received by the Division of State Parks from the sale or disposal of buffalo, as provided under Section 79-4-1001.