

Senator Curtis S. Bramble proposes the following substitute bill:

INSURANCE MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code and provisions citing the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ amends definition provisions;
- ▶ amends the cap on the Captive Insurance Restricted Account;
- ▶ amends service contract provisions to address vehicle protection products;
- ▶ revises provisions related to insurance holding companies, including:
 - addressing subsidiaries;
 - addressing acquisition of control of, divestiture of control of, or merger with domestic insurer;
 - providing for acquisitions involving insurers not otherwise covered;
 - modifying provisions related to registration of insurers;
 - addressing standards and management of an insurer within a holding company system;
 - addressing examination of registered insurers;
 - providing for supervisory colleges;
 - addressing confidentiality of information;



- 26 • imposing sanctions;
- 27 • providing for receivership;
- 28 • providing for recovery;
- 29 • allowing revocation, suspension, or renewal of insurers license;
- 30 • granting rulemaking authority and authority to issue orders;
- 31 • addressing judicial review and mandamus;
- 32 • addressing conflicts with other laws; and
- 33 • providing for severability;
- 34 ▶ addresses provisions related to fidelity bonds;
- 35 ▶ addresses trustee groups;
- 36 ▶ modifies exemption from conversion privileges for insured former spouse;
- 37 ▶ modifies definition of "Medicare Supplement Policy";
- 38 ▶ modifies definitions related to licensing;
- 39 ▶ addresses license lapse and voluntary surrender;
- 40 ▶ amends unfair marketing practices to include the use of certain names;
- 41 ▶ addresses inducements;
- 42 ▶ addresses continuing education requirements for navigators;
- 43 ▶ requires third party administrator to maintain with the commissioner certain
- 44 information related to place of business and contact information;
- 45 ▶ addresses receiver's compliance with financial reporting requirements;
- 46 ▶ restricts subrogation rights against an insolvent insurer's insured;
- 47 ▶ modifies definition provisions related to captive insurance companies;
- 48 ▶ addresses commissioner's ability to adopt rules related to waiver or modification of
- 49 certain public notice or hearings related to captive insurance companies;
- 50 ▶ includes certificate of organization as a document used to apply for a certificate of
- 51 authority;
- 52 ▶ addresses requirements for a captive insurance company to conduct insurance
- 53 business in this state;
- 54 ▶ provides for a limited liability company being a captive insurance company;
- 55 ▶ modifies capital requirements for captive insurance companies;
- 56 ▶ repeals language related to capital stock of a captive insurance company;

- 57 ▶ addresses when a captive insurance company can provide reinsurance;
- 58 ▶ addresses conversion or merger of a captive insurance company;
- 59 ▶ provides for a sponsored cell captive insurance company;
- 60 ▶ addresses fees to be paid by a protected cell captive insurance company;
- 61 ▶ modifies requirements for sponsored captive insurance companies;
- 62 ▶ clarifies participants in sponsored captive insurance companies;
- 63 ▶ addresses reporting requirements for sponsored cell captive insurance companies;
- 64 ▶ modifies the timing of examinations;
- 65 ▶ repeals free surplus provisions related to captive insurance companies;
- 66 ▶ repeals provisions related to a captive reinsurance company;
- 67 ▶ addresses stop-loss insurance coverage standards;
- 68 ▶ extends the Defined Contribution Risk Adjuster Act; and
- 69 ▶ makes technical and conforming amendments.

70 **Money Appropriated in this Bill:**

71 None

72 **Other Special Clauses:**

73 This bill provides a special effective date.

74 **Utah Code Sections Affected:**

75 AMENDS:

76 **31A-1-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300

77 **31A-3-304 (Effective 07/01/15)**, as last amended by Laws of Utah 2014, Chapters 290
78 and 300

79 **31A-6a-101**, as enacted by Laws of Utah 1992, Chapter 203

80 **31A-6a-103**, as last amended by Laws of Utah 2008, Chapter 345

81 **31A-6a-104**, as last amended by Laws of Utah 2011, Chapter 297

82 **31A-6a-105**, as last amended by Laws of Utah 2010, Chapter 274

83 **31A-16-103**, as last amended by Laws of Utah 2014, Chapters 290 and 300

84 **31A-16-105**, as last amended by Laws of Utah 2007, Chapter 306

85 **31A-16-106**, as last amended by Laws of Utah 2010, Chapter 324

86 **31A-16-109**, as last amended by Laws of Utah 1987, Chapter 91

87 **31A-21-313**, as last amended by Laws of Utah 2011, Chapter 297

- 88 **31A-21-314**, as last amended by Laws of Utah 1987, Chapter 95
- 89 **31A-22-504**, as enacted by Laws of Utah 1985, Chapter 242
- 90 **31A-22-612**, as last amended by Laws of Utah 2013, Chapter 319
- 91 **31A-22-620**, as last amended by Laws of Utah 2009, Chapter 349
- 92 **31A-23a-102**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 93 **31A-23a-113**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 94 **31A-23a-402**, as last amended by Laws of Utah 2013, Chapter 319
- 95 **31A-23a-402.5**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 96 **31A-23b-206**, as last amended by Laws of Utah 2014, Chapters 290, 300, 425 and last
- 97 amended by Coordination Clause, Laws of Utah 2014, Chapters 300, and 425
- 98 **31A-27a-116**, as last amended by Laws of Utah 2008, Chapter 382
- 99 **31A-28-213**, as last amended by Laws of Utah 2007, Chapter 309
- 100 **31A-37-102**, as last amended by Laws of Utah 2008, Chapter 302
- 101 **31A-37-106**, as last amended by Laws of Utah 2011, Chapter 297
- 102 **31A-37-202**, as last amended by Laws of Utah 2011, Chapters 284 and 297
- 103 **31A-37-204**, as last amended by Laws of Utah 2004, Chapter 312
- 104 **31A-37-301**, as last amended by Laws of Utah 2011, Chapter 297
- 105 **31A-37-302**, as last amended by Laws of Utah 2011, Chapter 297
- 106 **31A-37-303**, as enacted by Laws of Utah 2003, Chapter 251
- 107 **31A-37-306**, as last amended by Laws of Utah 2011, Chapter 297
- 108 **31A-37-401**, as enacted by Laws of Utah 2003, Chapter 251
- 109 **31A-37-402**, as last amended by Laws of Utah 2011, Chapter 297
- 110 **31A-37-403**, as last amended by Laws of Utah 2004, Chapter 312
- 111 **31A-37-404**, as enacted by Laws of Utah 2004, Chapter 312
- 112 **31A-37-501**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 113 **31A-37-502**, as last amended by Laws of Utah 2009, Chapter 349
- 114 **31A-37-505**, as enacted by Laws of Utah 2003, Chapter 251
- 115 **31A-43-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 116 **63I-2-231**, as last amended by Laws of Utah 2013, Chapter 341
- 117 ENACTS:
- 118 **31A-6a-111**, Utah Code Annotated 1953

- 119 **31A-16-102.5**, Utah Code Annotated 1953
- 120 **31A-16-104.5**, Utah Code Annotated 1953
- 121 **31A-16-108.5**, Utah Code Annotated 1953
- 122 **31A-16-112**, Utah Code Annotated 1953
- 123 **31A-16-113**, Utah Code Annotated 1953
- 124 **31A-16-114**, Utah Code Annotated 1953
- 125 **31A-16-115**, Utah Code Annotated 1953
- 126 **31A-16-116**, Utah Code Annotated 1953
- 127 **31A-16-117**, Utah Code Annotated 1953
- 128 **31A-16-118**, Utah Code Annotated 1953
- 129 **31A-16-119**, Utah Code Annotated 1953
- 130 **31A-25-302.5**, Utah Code Annotated 1953

131 RENUMBERS AND AMENDS:

132 **31A-16-107.5**, (Renumbered from 31A-16-108, as enacted by Laws of Utah 1985,
133 Chapter 242)

134 REPEALS:

- 135 **31A-37-205**, as last amended by Laws of Utah 2004, Chapter 312
- 136 **31A-37-601**, as last amended by Laws of Utah 2011, Chapter 297
- 137 **31A-37-602**, as last amended by Laws of Utah 2008, Chapters 302 and 382
- 138 **31A-37-603**, as last amended by Laws of Utah 2008, Chapter 302
- 139 **31A-37-604**, as enacted by Laws of Utah 2004, Chapter 312



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

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

143 **31A-1-301. Definitions.**

144 As used in this title, unless otherwise specified:

- 145 (1) (a) "Accident and health insurance" means insurance to provide protection against
- 146 economic losses resulting from:
- 147 (i) a medical condition including:
- 148 (A) a medical care expense; or
- 149 (B) the risk of disability;

- 150 (ii) accident; or
151 (iii) sickness.
152 (b) "Accident and health insurance":
153 (i) includes a contract with disability contingencies including:
154 (A) an income replacement contract;
155 (B) a health care contract;
156 (C) an expense reimbursement contract;
157 (D) a credit accident and health contract;
158 (E) a continuing care contract; and
159 (F) a long-term care contract; and
160 (ii) may provide:
161 (A) hospital coverage;
162 (B) surgical coverage;
163 (C) medical coverage;
164 (D) loss of income coverage;
165 (E) prescription drug coverage;
166 (F) dental coverage; or
167 (G) vision coverage.
168 (c) "Accident and health insurance" does not include workers' compensation insurance.
169 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
170 63G, Chapter 3, Utah Administrative Rulemaking Act.
171 (3) "Administrator" is defined in Subsection [~~164~~] (166).
172 (4) "Adult" means an individual who has attained the age of at least 18 years.
173 (5) "Affiliate" means a person who controls, is controlled by, or is under common
174 control with, another person. A corporation is an affiliate of another corporation, regardless of
175 ownership, if substantially the same group of individuals manage the corporations.
176 (6) "Agency" means:
177 (a) a person other than an individual, including a sole proprietorship by which an
178 individual does business under an assumed name; and
179 (b) an insurance organization licensed or required to be licensed under Section
180 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).

- 181 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 182 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 183 (9) "Annuity" means an agreement to make periodical payments for a period certain or
184 over the lifetime of one or more individuals if the making or continuance of all or some of the
185 series of the payments, or the amount of the payment, is dependent upon the continuance of
186 human life.
- 187 (10) "Application" means a document:
- 188 (a) (i) completed by an applicant to provide information about the risk to be insured;
189 and
- 190 (ii) that contains information that is used by the insurer to evaluate risk and decide
191 whether to:
- 192 (A) insure the risk under:
- 193 (I) the coverage as originally offered; or
194 (II) a modification of the coverage as originally offered; or
- 195 (B) decline to insure the risk; or
- 196 (b) used by the insurer to gather information from the applicant before issuance of an
197 annuity contract.
- 198 (11) "Articles" or "articles of incorporation" means:
- 199 (a) the original articles;
200 (b) a special law;
201 (c) a charter;
202 (d) an amendment;
203 (e) restated articles;
204 (f) articles of merger or consolidation;
205 (g) a trust instrument;
206 (h) another constitutive document for a trust or other entity that is not a corporation;
207 and
- 208 (i) an amendment to an item listed in Subsections (11)(a) through (h).
- 209 (12) "Bail bond insurance" means a guarantee that a person will attend court when
210 required, up to and including surrender of the person in execution of a sentence imposed under
211 Subsection [77-20-7\(1\)](#), as a condition to the release of that person from confinement.

- 212 (13) "Binder" is defined in Section [31A-21-102](#).
- 213 (14) "Blanket insurance policy" means a group policy covering a defined class of
214 persons:
- 215 (a) without individual underwriting or application; and
216 (b) that is determined by definition without designating each person covered.
- 217 (15) "Board," "board of trustees," or "board of directors" means the group of persons
218 with responsibility over, or management of, a corporation, however designated.
- 219 (16) "Bona fide office" means a physical office in this state:
- 220 (a) that is open to the public;
221 (b) that is staffed during regular business hours on regular business days; and
222 (c) at which the public may appear in person to obtain services.
- 223 (17) "Business entity" means:
- 224 (a) a corporation;
225 (b) an association;
226 (c) a partnership;
227 (d) a limited liability company;
228 (e) a limited liability partnership; or
229 (f) another legal entity.
- 230 (18) "Business of insurance" is defined in Subsection [~~(88)~~] [\(89\)](#).
- 231 (19) "Business plan" means the information required to be supplied to the
232 commissioner under Subsections [31A-5-204](#)(2)(i) and (j), including the information required
233 when these subsections apply by reference under:
- 234 (a) Section [31A-7-201](#);
235 (b) Section [31A-8-205](#); or
236 (c) Subsection [31A-9-205](#)(2).
- 237 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
238 corporation's affairs, however designated.
- 239 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
240 corporation.
- 241 (21) "Captive insurance company" means:
- 242 (a) an insurer:

- 243 (i) owned by another organization; and
- 244 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 245 affiliated company; or
- 246 (b) in the case of a group or association, an insurer:
 - 247 (i) owned by the insureds; and
 - 248 (ii) whose exclusive purpose is to insure risks of:
 - 249 (A) a member organization;
 - 250 (B) a group member; or
 - 251 (C) an affiliate of:
 - 252 (I) a member organization; or
 - 253 (II) a group member.
- 254 (22) "Casualty insurance" means liability insurance.
- 255 (23) "Certificate" means evidence of insurance given to:
 - 256 (a) an insured under a group insurance policy; or
 - 257 (b) a third party.
- 258 (24) "Certificate of authority" is included within the term "license."
- 259 (25) "Claim," unless the context otherwise requires, means a request or demand on an
- 260 insurer for payment of a benefit according to the terms of an insurance policy.
- 261 (26) "Claims-made coverage" means an insurance contract or provision limiting
- 262 coverage under a policy insuring against legal liability to claims that are first made against the
- 263 insured while the policy is in force.
- 264 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 265 commissioner.
- 266 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
- 267 supervisory official of another jurisdiction.
- 268 (28) (a) "Continuing care insurance" means insurance that:
 - 269 (i) provides board and lodging;
 - 270 (ii) provides one or more of the following:
 - 271 (A) a personal service;
 - 272 (B) a nursing service;
 - 273 (C) a medical service; or

274 (D) any other health-related service; and
275 (iii) provides the coverage described in this Subsection (28)(a) under an agreement
276 effective:

- 277 (A) for the life of the insured; or
- 278 (B) for a period in excess of one year.

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

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

- 284 (i) by contract;
- 285 (ii) by common management;
- 286 (iii) through the ownership of voting securities; or
- 287 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

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

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

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

295 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly
296 controlled by a producer.

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

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

302 (33) (a) "Corporation" means an insurance corporation, except when referring to:

303 (i) a corporation doing business:

304 (A) as:

- 305 (I) an insurance producer;
- 306 (II) a surplus lines producer;
- 307 (III) a limited line producer;
- 308 (IV) a consultant;
- 309 (V) a managing general agent;
- 310 (VI) a reinsurance intermediary;
- 311 (VII) a third party administrator; or
- 312 (VIII) an adjuster; and
- 313 (B) under:
 - 314 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
 - 315 Reinsurance Intermediaries;
 - 316 (II) Chapter 25, Third Party Administrators; or
 - 317 (III) Chapter 26, Insurance Adjusters; or
 - 318 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
 - 319 Holding Companies.
 - 320 (b) "Stock corporation" means a stock insurance corporation.
 - 321 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
 - 322 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations
 - 323 adopted pursuant to the Health Insurance Portability and Accountability Act.
 - 324 (b) "Creditable coverage" includes coverage that is offered through a public health plan
 - 325 such as:
 - 326 (i) the Primary Care Network Program under a Medicaid primary care network
 - 327 demonstration waiver obtained subject to Section [26-18-3](#);
 - 328 (ii) the Children's Health Insurance Program under Section [26-40-106](#); or
 - 329 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
 - 330 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
 - 331 (35) "Credit accident and health insurance" means insurance on a debtor to provide
 - 332 indemnity for payments coming due on a specific loan or other credit transaction while the
 - 333 debtor has a disability.
 - 334 (36) (a) "Credit insurance" means insurance offered in connection with an extension of
 - 335 credit that is limited to partially or wholly extinguishing that credit obligation.

- 336 (b) "Credit insurance" includes:
- 337 (i) credit accident and health insurance;
- 338 (ii) credit life insurance;
- 339 (iii) credit property insurance;
- 340 (iv) credit unemployment insurance;
- 341 (v) guaranteed automobile protection insurance;
- 342 (vi) involuntary unemployment insurance;
- 343 (vii) mortgage accident and health insurance;
- 344 (viii) mortgage guaranty insurance; and
- 345 (ix) mortgage life insurance.
- 346 (37) "Credit life insurance" means insurance on the life of a debtor in connection with
- 347 an extension of credit that pays a person if the debtor dies.
- 348 [~~(40)~~] (38) "Creditor" means a person, including an insured, having a claim, whether:
- 349 (a) matured;
- 350 (b) unmatured;
- 351 (c) liquidated;
- 352 (d) unliquidated;
- 353 (e) secured;
- 354 (f) unsecured;
- 355 (g) absolute;
- 356 (h) fixed; or
- 357 (i) contingent.
- 358 (39) "Credit unemployment insurance" means insurance:
- 359 (a) offered in connection with an extension of credit; and
- 360 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
- 361 (i) specific loan; or
- 362 (ii) credit transaction.
- 363 [~~(38)~~] (40) "Credit property insurance" means insurance:
- 364 (a) offered in connection with an extension of credit; and
- 365 (b) that protects the property until the debt is paid.
- 366 (41) (a) "Crop insurance" means insurance providing protection against damage to

367 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
368 disease, or other yield-reducing conditions or perils that is:

- 369 (i) provided by the private insurance market; or
- 370 (ii) subsidized by the Federal Crop Insurance Corporation.

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

372 (42) (a) "Customer service representative" means a person that provides an insurance
373 service and insurance product information:

- 374 (i) for the customer service representative's:
 - 375 (A) producer;
 - 376 (B) surplus lines producer; or
 - 377 (C) consultant employer; and
- 378 (ii) to the customer service representative's employer's:

- 379 (A) customer;
- 380 (B) client; or
- 381 (C) organization.

382 (b) A customer service representative may only operate within the scope of authority of
383 the customer service representative's producer, surplus lines producer, or consultant employer.

384 (43) "Deadline" means a final date or time:

- 385 (a) imposed by:
 - 386 (i) statute;
 - 387 (ii) rule; or
 - 388 (iii) order; and

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

390 (44) "Deemer clause" means a provision under this title under which upon the
391 occurrence of a condition precedent, the commissioner is considered to have taken a specific
392 action. If the statute so provides, a condition precedent may be the commissioner's failure to
393 take a specific action.

394 (45) "Degree of relationship" means the number of steps between two persons
395 determined by counting the generations separating one person from a common ancestor and
396 then counting the generations to the other person.

397 (46) "Department" means the Insurance Department.

- 398 (47) "Director" means a member of the board of directors of a corporation.
- 399 (48) "Disability" means a physiological or psychological condition that partially or
400 totally limits an individual's ability to:
- 401 (a) perform the duties of:
- 402 (i) that individual's occupation; or
- 403 (ii) an occupation for which the individual is reasonably suited by education, training,
404 or experience; or
- 405 (b) perform two or more of the following basic activities of daily living:
- 406 (i) eating;
- 407 (ii) toileting;
- 408 (iii) transferring;
- 409 (iv) bathing; or
- 410 (v) dressing.
- 411 (49) "Disability income insurance" is defined in Subsection [~~(79)~~] (80).
- 412 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 413 (51) "Domiciliary state" means the state in which an insurer:
- 414 (a) is incorporated;
- 415 (b) is organized; or
- 416 (c) in the case of an alien insurer, enters into the United States.
- 417 (52) (a) "Eligible employee" means:
- 418 (i) an employee who:
- 419 (A) works on a full-time basis; and
- 420 (B) has a normal work week of 30 or more hours; or
- 421 (ii) a person described in Subsection (52)(b).
- 422 (b) "Eligible employee" includes, if the individual is included under a health benefit
423 plan of a small employer:
- 424 (i) a sole proprietor;
- 425 (ii) a partner in a partnership; or
- 426 (iii) an independent contractor.
- 427 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
- 428 (i) an individual who works on a temporary or substitute basis for a small employer;

- 429 (ii) an employer's spouse; or
430 (iii) a dependent of an employer.
- 431 (53) "Employee" means an individual employed by an employer.
- 432 (54) "Employee benefits" means one or more benefits or services provided to:
433 (a) an employee; or
434 (b) a dependent of an employee.
- 435 (55) (a) "Employee welfare fund" means a fund:
436 (i) established or maintained, whether directly or through a trustee, by:
437 (A) one or more employers;
438 (B) one or more labor organizations; or
439 (C) a combination of employers and labor organizations; and
440 (ii) that provides employee benefits paid or contracted to be paid, other than income
441 from investments of the fund:
442 (A) by or on behalf of an employer doing business in this state; or
443 (B) for the benefit of a person employed in this state.
- 444 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
445 revenues.
- 446 (56) "Endorsement" means a written agreement attached to a policy or certificate to
447 modify the policy or certificate coverage.
- 448 (57) "Enrollment date," with respect to a health benefit plan, means:
449 (a) the first day of coverage; or
450 (b) if there is a waiting period, the first day of the waiting period.
- 451 (58) "Enterprise risk" means an activity, circumstance, event, or series of events
452 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
453 material adverse effect upon the financial condition or liquidity of the insurer or its insurance
454 holding company system as a whole, including anything that would cause:
455 (a) the insurer's risk-based capital to fall into an action or control level as set forth in
456 Sections 31A-17-601 through 31A-17-613; or
457 (b) the insurer to be in hazardous financial condition set forth in Section 31A-27a-101.
- 458 ~~[(58)]~~ (59) (a) "Escrow" means:
459 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,

460 when a person not a party to the transaction, and neither having nor acquiring an interest in the
461 title, performs, in accordance with the written instructions or terms of the written agreement
462 between the parties to the transaction, any of the following actions:

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

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

465 (ii) a settlement or closing involving:

466 (A) a mobile home;

467 (B) a grazing right;

468 (C) a water right; or

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

470 (b) "Escrow" does not include:

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

472 (A) an acknowledgment;

473 (B) a copy certification;

474 (C) jurat; and

475 (D) an oath or affirmation;

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

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

478 [~~59~~] (60) "Escrow agent" means an agency title insurance producer meeting the
479 requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an
480 individual title insurance producer licensed with an escrow subline of authority.

481 [~~60~~] (61) (a) "Excludes" is not exhaustive and does not mean that another thing is not
482 also excluded.

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

485 [~~61~~] (62) "Exclusion" means for the purposes of accident and health insurance that an
486 insurer does not provide insurance coverage, for whatever reason, for one of the following:

487 (a) a specific physical condition;

488 (b) a specific medical procedure;

489 (c) a specific disease or disorder; or

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

- 491 [~~(62)~~] (63) "Expense reimbursement insurance" means insurance:
- 492 (a) written to provide a payment for an expense relating to hospital confinement
- 493 resulting from illness or injury; and
- 494 (b) written:
- 495 (i) as a daily limit for a specific number of days in a hospital; and
- 496 (ii) to have a one or two day waiting period following a hospitalization.
- 497 [~~(63)~~] (64) "Fidelity insurance" means insurance guaranteeing the fidelity of a person
- 498 holding a position of public or private trust.
- 499 [~~(64)~~] (65) (a) "Filed" means that a filing is:
- 500 (i) submitted to the department as required by and in accordance with applicable
- 501 statute, rule, or filing order;
- 502 (ii) received by the department within the time period provided in applicable statute,
- 503 rule, or filing order; and
- 504 (iii) accompanied by the appropriate fee in accordance with:
- 505 (A) Section [31A-3-103](#); or
- 506 (B) rule.
- 507 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 508 submitted in accordance with Subsection [~~(64)~~] (65)(a).
- 509 [~~(65)~~] (66) "Filing," when used as a noun, means an item required to be filed with the
- 510 department including:
- 511 (a) a policy;
- 512 (b) a rate;
- 513 (c) a form;
- 514 (d) a document;
- 515 (e) a plan;
- 516 (f) a manual;
- 517 (g) an application;
- 518 (h) a report;
- 519 (i) a certificate;
- 520 (j) an endorsement;
- 521 (k) an actuarial certification;

522 (l) a licensee annual statement;

523 (m) a licensee renewal application;

524 (n) an advertisement; [~~or~~]

525 (o) a binder; or

526 [~~(p)~~] (p) an outline of coverage.

527 [~~(66)~~] (67) "First party insurance" means an insurance policy or contract in which the
528 insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

529 [~~(67)~~] (68) "Foreign insurer" means an insurer domiciled outside of this state, including
530 an alien insurer.

531 [~~(68)~~] (69) (a) "Form" means one of the following prepared for general use:

532 (i) a policy;

533 (ii) a certificate;

534 (iii) an application;

535 (iv) an outline of coverage; or

536 (v) an endorsement.

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

539 [~~(69)~~] (70) "Franchise insurance" means an individual insurance policy provided
540 through a mass marketing arrangement involving a defined class of persons related in some
541 way other than through the purchase of insurance.

542 [~~(70)~~] (71) "General lines of authority" include:

543 (a) the general lines of insurance in Subsection [~~(71)~~] (72);

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

545 (i) search, including authority to act as a title marketing representative;

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

547 (iii) title marketing representative only;

548 (c) surplus lines;

549 (d) workers' compensation; and

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

552 [~~(71)~~] (72) "General lines of insurance" include:

- 553 (a) accident and health;
- 554 (b) casualty;
- 555 (c) life;
- 556 (d) personal lines;
- 557 (e) property; and
- 558 (f) variable contracts, including variable life and annuity.

559 ~~[(72)]~~ (73) "Group health plan" means an employee welfare benefit plan to the extent
560 that the plan provides medical care:

- 561 (a) (i) to an employee; or
- 562 (ii) to a dependent of an employee; and
- 563 (b) (i) directly;
- 564 (ii) through insurance reimbursement; or
- 565 (iii) through another method.

566 ~~[(73)]~~ (74) (a) "Group insurance policy" means a policy covering a group of persons
567 that is issued:

- 568 (i) to a policyholder on behalf of the group; and
- 569 (ii) for the benefit of a member of the group who is selected under a procedure defined
570 in:
 - 571 (A) the policy; or
 - 572 (B) an agreement that is collateral to the policy.

573 (b) A group insurance policy may include a member of the policyholder's family or a
574 dependent.

575 ~~[(74)]~~ (75) "Guaranteed automobile protection insurance" means insurance offered in
576 connection with an extension of credit that pays the difference in amount between the
577 insurance settlement and the balance of the loan if the insured automobile is a total loss.

578 ~~[(75)]~~ (76) (a) Except as provided in Subsection ~~[(75)]~~ (76)(b), "health benefit plan"
579 means a policy or certificate that:

- 580 (i) provides health care insurance;
- 581 (ii) provides major medical expense insurance; or
- 582 (iii) is offered as a substitute for hospital or medical expense insurance, such as:
 - 583 (A) a hospital confinement indemnity; or

- 584 (B) a limited benefit plan.
- 585 (b) "Health benefit plan" does not include a policy or certificate that:
- 586 (i) provides benefits solely for:
- 587 (A) accident;
- 588 (B) dental;
- 589 (C) income replacement;
- 590 (D) long-term care;
- 591 (E) a Medicare supplement;
- 592 (F) a specified disease;
- 593 (G) vision; or
- 594 (H) a short-term limited duration; or
- 595 (ii) is offered and marketed as supplemental health insurance.
- 596 ~~[(76)]~~ (77) "Health care" means any of the following intended for use in the diagnosis,
- 597 treatment, mitigation, or prevention of a human ailment or impairment:
- 598 (a) a professional service;
- 599 (b) a personal service;
- 600 (c) a facility;
- 601 (d) equipment;
- 602 (e) a device;
- 603 (f) supplies; or
- 604 (g) medicine.
- 605 ~~[(77)]~~ (78) (a) "Health care insurance" or "health insurance" means insurance
- 606 providing:
- 607 (i) a health care benefit; or
- 608 (ii) payment of an incurred health care expense.
- 609 (b) "Health care insurance" or "health insurance" does not include accident and health
- 610 insurance providing a benefit for:
- 611 (i) replacement of income;
- 612 (ii) short-term accident;
- 613 (iii) fixed indemnity;
- 614 (iv) credit accident and health;

- 615 (v) supplements to liability;
- 616 (vi) workers' compensation;
- 617 (vii) automobile medical payment;
- 618 (viii) no-fault automobile;
- 619 (ix) equivalent self-insurance; or
- 620 (x) a type of accident and health insurance coverage that is a part of or attached to
- 621 another type of policy.

622 [~~(78)~~] (79) "Health Insurance Portability and Accountability Act" means the Health
623 Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as
624 amended.

625 [~~(79)~~] (80) "Income replacement insurance" or "disability income insurance" means
626 insurance written to provide payments to replace income lost from accident or sickness.

627 [~~(80)~~] (81) "Indemnity" means the payment of an amount to offset all or part of an
628 insured loss.

629 [~~(81)~~] (82) "Independent adjuster" means an insurance adjuster required to be licensed
630 under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

631 [~~(82)~~] (83) "Independently procured insurance" means insurance procured under
632 Section 31A-15-104.

633 [~~(83)~~] (84) "Individual" means a natural person.

634 [~~(84)~~] (85) "Inland marine insurance" includes insurance covering:

- 635 (a) property in transit on or over land;
- 636 (b) property in transit over water by means other than boat or ship;
- 637 (c) bailee liability;
- 638 (d) fixed transportation property such as bridges, electric transmission systems, radio
- 639 and television transmission towers and tunnels; and
- 640 (e) personal and commercial property floaters.

641 [~~(85)~~] (86) "Insolvency" means that:

- 642 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
- 643 obligations mature;
- 644 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
- 645 RBC under Subsection 31A-17-601(8)(c); or

646 (c) an insurer is determined to be hazardous under this title.

647 [~~(86)~~] (87) (a) "Insurance" means:

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

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

652 (b) "Insurance" includes:

653 (i) a risk distributing arrangement providing for compensation or replacement for
654 damages or loss through the provision of a service or a benefit in kind;

655 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
656 business and not as merely incidental to a business transaction; and

657 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
658 but with a class of persons who have agreed to share the risk.

659 [~~(87)~~] (88) "Insurance adjuster" means a person who directs or conducts the
660 investigation, negotiation, or settlement of a claim under an insurance policy other than life
661 insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance
662 policy.

663 [~~(88)~~] (89) "Insurance business" or "business of insurance" includes:

664 (a) providing health care insurance by an organization that is or is required to be
665 licensed under this title;

666 (b) providing a benefit to an employee in the event of a contingency not within the
667 control of the employee, in which the employee is entitled to the benefit as a right, which
668 benefit may be provided either:

669 (i) by a single employer or by multiple employer groups; or

670 (ii) through one or more trusts, associations, or other entities;

671 (c) providing an annuity:

672 (i) including an annuity issued in return for a gift; and

673 (ii) except an annuity provided by a person specified in Subsections [31A-22-1305\(2\)](#)

674 and (3);

675 (d) providing the characteristic services of a motor club as outlined in Subsection

676 [~~(116)~~] (117);

- 677 (e) providing another person with insurance;
- 678 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
679 or surety, a contract or policy of title insurance;
- 680 (g) transacting or proposing to transact any phase of title insurance, including:
- 681 (i) solicitation;
- 682 (ii) negotiation preliminary to execution;
- 683 (iii) execution of a contract of title insurance;
- 684 (iv) insuring; and
- 685 (v) transacting matters subsequent to the execution of the contract and arising out of
686 the contract, including reinsurance;
- 687 (h) transacting or proposing a life settlement; and
- 688 (i) doing, or proposing to do, any business in substance equivalent to Subsections
689 ~~[(88)]~~ (89)(a) through (h) in a manner designed to evade this title.
- 690 ~~[(89)]~~ (90) "Insurance consultant" or "consultant" means a person who:
- 691 (a) advises another person about insurance needs and coverages;
- 692 (b) is compensated by the person advised on a basis not directly related to the insurance
693 placed; and
- 694 (c) except as provided in Section 31A-23a-501, is not compensated directly or
695 indirectly by an insurer or producer for advice given.
- 696 ~~[(90)]~~ (91) "Insurance holding company system" means a group of two or more
697 affiliated persons, at least one of whom is an insurer.
- 698 ~~[(91)]~~ (92) (a) "Insurance producer" or "producer" means a person licensed or required
699 to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 700 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
701 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
702 insurer.
- 703 (ii) "Producer for the insurer" may be referred to as an "agent."
- 704 (c) (i) "Producer for the insured" means a producer who:
- 705 (A) is compensated directly and only by an insurance customer or an insured; and
- 706 (B) receives no compensation directly or indirectly from an insurer for selling,
707 soliciting, or negotiating an insurance product of that insurer to an insurance customer or

708 insured.

709 (ii) "Producer for the insured" may be referred to as a "broker."

710 [~~92~~] (93) (a) "Insured" means a person to whom or for whose benefit an insurer

711 makes a promise in an insurance policy and includes:

712 (i) a policyholder;

713 (ii) a subscriber;

714 (iii) a member; and

715 (iv) a beneficiary.

716 (b) The definition in Subsection [~~92~~] (93)(a):

717 (i) applies only to this title; and

718 (ii) does not define the meaning of this word as used in an insurance policy or

719 certificate.

720 [~~93~~] (94) (a) "Insurer" means a person doing an insurance business as a principal

721 including:

722 (i) a fraternal benefit society;

723 (ii) an issuer of a gift annuity other than an annuity specified in Subsections

724 31A-22-1305(2) and (3);

725 (iii) a motor club;

726 (iv) an employee welfare plan; and

727 (v) a person purporting or intending to do an insurance business as a principal on that

728 person's own account.

729 (b) "Insurer" does not include a governmental entity to the extent the governmental

730 entity is engaged in an activity described in Section 31A-12-107.

731 [~~94~~] (95) "Interinsurance exchange" is defined in Subsection [~~147~~] (148).

732 [~~95~~] (96) "Involuntary unemployment insurance" means insurance:

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

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

735 coming due on a:

736 (i) specific loan; or

737 (ii) credit transaction.

738 [~~96~~] (97) "Large employer," in connection with a health benefit plan, means an

739 employer who, with respect to a calendar year and to a plan year:

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

742 (b) employs at least two employees on the first day of the plan year.

743 ~~[(97)]~~ (98) "Late enrollee," with respect to an employer health benefit plan, means an
744 individual whose enrollment is a late enrollment.

745 ~~[(98)]~~ (99) "Late enrollment," with respect to an employer health benefit plan, means
746 enrollment of an individual other than:

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

749 (b) through special enrollment.

750 ~~[(99)]~~ (100) (a) Except for a retainer contract or legal assistance described in Section
751 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
752 specified legal expense.

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

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

757 ~~[(100)]~~ (101) (a) "Liability insurance" means insurance against liability:

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

760 (A) Subsection ~~[(110)]~~ (111) for medical malpractice insurance;

761 (B) Subsection ~~[(138)]~~ (139) for professional liability insurance; and

762 (C) Subsection ~~[(173)]~~ (175) for workers' compensation insurance;

763 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
764 insured who is injured, irrespective of legal liability of the insured, when issued with or
765 supplemental to insurance against legal liability for the death, injury, or disability of a human
766 being, exclusive of the coverages under:

767 (A) Subsection ~~[(110)]~~ (111) for medical malpractice insurance;

768 (B) Subsection ~~[(138)]~~ (139) for professional liability insurance; and

769 (C) Subsection ~~[(173)]~~ (175) for workers' compensation insurance;

770 (iii) for loss or damage to property resulting from an accident to or explosion of a
771 boiler, pipe, pressure container, machinery, or apparatus;
772 (iv) for loss or damage to property caused by:
773 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
774 (B) water entering through a leak or opening in a building; or
775 (v) for other loss or damage properly the subject of insurance not within another kind
776 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

777 (b) "Liability insurance" includes:
778 (i) vehicle liability insurance;
779 (ii) residential dwelling liability insurance; and
780 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
781 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
782 elevator, boiler, machinery, or apparatus.

783 ~~[(101)]~~ (102) (a) "License" means authorization issued by the commissioner to engage
784 in an activity that is part of or related to the insurance business.

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

786 ~~[(102)]~~ (103) (a) "Life insurance" means:

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

789 (b) The business of life insurance includes:

790 (i) granting a death benefit;
791 (ii) granting an annuity benefit;
792 (iii) granting an endowment benefit;
793 (iv) granting an additional benefit in the event of death by accident;
794 (v) granting an additional benefit to safeguard the policy against lapse; and
795 (vi) providing an optional method of settlement of proceeds.

796 ~~[(103)]~~ (104) "Limited license" means a license that:

797 (a) is issued for a specific product of insurance; and
798 (b) limits an individual or agency to transact only for that product or insurance.

799 ~~[(104)]~~ (105) "Limited line credit insurance" includes the following forms of
800 insurance:

- 801 (a) credit life;
- 802 (b) credit accident and health;
- 803 (c) credit property;
- 804 (d) credit unemployment;
- 805 (e) involuntary unemployment;
- 806 (f) mortgage life;
- 807 (g) mortgage guaranty;
- 808 (h) mortgage accident and health;
- 809 (i) guaranteed automobile protection; and
- 810 (j) another form of insurance offered in connection with an extension of credit that:
- 811 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 812 (ii) the commissioner determines by rule should be designated as a form of limited line
- 813 credit insurance.

814 [~~(105)~~] (106) "Limited line credit insurance producer" means a person who sells,
815 solicits, or negotiates one or more forms of limited line credit insurance coverage to an
816 individual through a master, corporate, group, or individual policy.

817 [~~(106)~~] (107) "Limited line insurance" includes:

- 818 (a) bail bond;
- 819 (b) limited line credit insurance;
- 820 (c) legal expense insurance;
- 821 (d) motor club insurance;
- 822 (e) car rental related insurance;
- 823 (f) travel insurance;
- 824 (g) crop insurance;
- 825 (h) self-service storage insurance;
- 826 (i) guaranteed asset protection waiver;
- 827 (j) portable electronics insurance; and
- 828 (k) another form of limited insurance that the commissioner determines by rule should
- 829 be designated a form of limited line insurance.

830 [~~(107)~~] (108) "Limited lines authority" includes the lines of insurance listed in
831 Subsection [~~(106)~~] (107).

832 [~~(108)~~] (109) "Limited lines producer" means a person who sells, solicits, or negotiates
833 limited lines insurance.

834 [~~(109)~~] (110) (a) "Long-term care insurance" means an insurance policy or rider
835 advertised, marketed, offered, or designated to provide coverage:

836 (i) in a setting other than an acute care unit of a hospital;
837 (ii) for not less than 12 consecutive months for a covered person on the basis of:

838 (A) expenses incurred;

839 (B) indemnity;

840 (C) prepayment; or

841 (D) another method;

842 (iii) for one or more necessary or medically necessary services that are:

843 (A) diagnostic;

844 (B) preventative;

845 (C) therapeutic;

846 (D) rehabilitative;

847 (E) maintenance; or

848 (F) personal care; and

849 (iv) that may be issued by:

850 (A) an insurer;

851 (B) a fraternal benefit society;

852 (C) (I) a nonprofit health hospital; and

853 (II) a medical service corporation;

854 (D) a prepaid health plan;

855 (E) a health maintenance organization; or

856 (F) an entity similar to the entities described in Subsections [~~(109)~~] (110)(a)(iv)(A)

857 through (E) to the extent that the entity is otherwise authorized to issue life or health care
858 insurance.

859 (b) "Long-term care insurance" includes:

860 (i) any of the following that provide directly or supplement long-term care insurance:

861 (A) a group or individual annuity or rider; or

862 (B) a life insurance policy or rider;

- 863 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 864 (A) cognitive impairment; or
- 865 (B) functional capacity; or
- 866 (iii) a qualified long-term care insurance contract.
- 867 (c) "Long-term care insurance" does not include:
- 868 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 869 (ii) basic hospital expense coverage;
- 870 (iii) basic medical/surgical expense coverage;
- 871 (iv) hospital confinement indemnity coverage;
- 872 (v) major medical expense coverage;
- 873 (vi) income replacement or related asset-protection coverage;
- 874 (vii) accident only coverage;
- 875 (viii) coverage for a specified:
- 876 (A) disease; or
- 877 (B) accident;
- 878 (ix) limited benefit health coverage; or
- 879 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 880 lump sum payment:
- 881 (A) if the following are not conditioned on the receipt of long-term care:
- 882 (I) benefits; or
- 883 (II) eligibility; and
- 884 (B) the coverage is for one or more the following qualifying events:
- 885 (I) terminal illness;
- 886 (II) medical conditions requiring extraordinary medical intervention; or
- 887 (III) permanent institutional confinement.
- 888 [~~(H0)~~] (111) "Medical malpractice insurance" means insurance against legal liability
- 889 incident to the practice and provision of a medical service other than the practice and provision
- 890 of a dental service.
- 891 [~~(H1)~~] (112) "Member" means a person having membership rights in an insurance
- 892 corporation.
- 893 [~~(H2)~~] (113) "Minimum capital" or "minimum required capital" means the capital that

894 must be constantly maintained by a stock insurance corporation as required by statute.

895 ~~[(113)]~~ (114) "Mortgage accident and health insurance" means insurance offered in
896 connection with an extension of credit that provides indemnity for payments coming due on a
897 mortgage while the debtor has a disability.

898 ~~[(114)]~~ (115) "Mortgage guaranty insurance" means surety insurance under which a
899 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

900 ~~[(115)]~~ (116) "Mortgage life insurance" means insurance on the life of a debtor in
901 connection with an extension of credit that pays if the debtor dies.

902 ~~[(116)]~~ (117) "Motor club" means a person:

903 (a) licensed under:

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

905 (ii) Chapter 11, Motor Clubs; or

906 (iii) Chapter 14, Foreign Insurers; and

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

909 (i) legal services under Subsection 31A-11-102(1)(b);

910 (ii) bail services under Subsection 31A-11-102(1)(c); or

911 (iii) (A) trip reimbursement;

912 (B) towing services;

913 (C) emergency road services;

914 (D) stolen automobile services;

915 (E) a combination of the services listed in Subsections ~~[(117)]~~ (117)(b)(iii)(A) through
916 (D); or

917 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

918 ~~[(117)]~~ (118) "Mutual" means a mutual insurance corporation.

919 ~~[(118)]~~ (119) "Network plan" means health care insurance:

920 (a) that is issued by an insurer; and

921 (b) under which the financing and delivery of medical care is provided, in whole or in
922 part, through a defined set of providers under contract with the insurer, including the financing
923 and delivery of an item paid for as medical care.

924 ~~[(119)]~~ (120) "Nonparticipating" means a plan of insurance under which the insured is

925 not entitled to receive a dividend representing a share of the surplus of the insurer.

926 [~~(120)~~] (121) "Ocean marine insurance" means insurance against loss of or damage to:

927 (a) ships or hulls of ships;

928 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,

929 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia

930 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

931 (c) earnings such as freight, passage money, commissions, or profits derived from

932 transporting goods or people upon or across the oceans or inland waterways; or

933 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,

934 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons

935 in connection with maritime activity.

936 [~~(121)~~] (122) "Order" means an order of the commissioner.

937 [~~(122)~~] (123) "Outline of coverage" means a summary that explains an accident and
938 health insurance policy.

939 [~~(123)~~] (124) "Participating" means a plan of insurance under which the insured is

940 entitled to receive a dividend representing a share of the surplus of the insurer.

941 [~~(124)~~] (125) "Participation," as used in a health benefit plan, means a requirement

942 relating to the minimum percentage of eligible employees that must be enrolled in relation to

943 the total number of eligible employees of an employer reduced by each eligible employee who

944 voluntarily declines coverage under the plan because the employee:

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

946 (b) receives:

947 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social

948 Security Amendments of 1965; or

949 (ii) another government health benefit.

950 [~~(125)~~] (126) "Person" includes:

951 (a) an individual;

952 (b) a partnership;

953 (c) a corporation;

954 (d) an incorporated or unincorporated association;

955 (e) a joint stock company;

- 956 (f) a trust;
- 957 (g) a limited liability company;
- 958 (h) a reciprocal;
- 959 (i) a syndicate; or
- 960 (j) another similar entity or combination of entities acting in concert.
- 961 [~~(126)~~] (127) "Personal lines insurance" means property and casualty insurance
- 962 coverage sold for primarily noncommercial purposes to:
 - 963 (a) an individual; or
 - 964 (b) a family.
- 965 [~~(127)~~] (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 966 [~~(128)~~] (129) "Plan year" means:
 - 967 (a) the year that is designated as the plan year in:
 - 968 (i) the plan document of a group health plan; or
 - 969 (ii) a summary plan description of a group health plan;
 - 970 (b) if the plan document or summary plan description does not designate a plan year or
 - 971 there is no plan document or summary plan description:
 - 972 (i) the year used to determine deductibles or limits;
 - 973 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 974 or
 - 975 (iii) the employer's taxable year if:
 - 976 (A) the plan does not impose deductibles or limits on a yearly basis; and
 - 977 (B) (I) the plan is not insured; or
 - 978 (II) the insurance policy is not renewed on an annual basis; or
 - 979 (c) in a case not described in Subsection [~~(128)~~] (129)(a) or (b), the calendar year.
- 980 [~~(129)~~] (130) (a) "Policy" means a document, including an attached endorsement or
- 981 application that:
 - 982 (i) purports to be an enforceable contract; and
 - 983 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 984 (b) "Policy" includes a service contract issued by:
 - 985 (i) a motor club under Chapter 11, Motor Clubs;
 - 986 (ii) a service contract provided under Chapter 6a, Service Contracts; and

987 (iii) a corporation licensed under:

988 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

989 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

990 (c) "Policy" does not include:

991 (i) a certificate under a group insurance contract; or

992 (ii) a document that does not purport to have legal effect.

993 ~~[(130)]~~ (131) "Policyholder" means a person who controls a policy, binder, or oral
994 contract by ownership, premium payment, or otherwise.

995 ~~[(131)]~~ (132) "Policy illustration" means a presentation or depiction that includes
996 nonguaranteed elements of a policy of life insurance over a period of years.

997 ~~[(132)]~~ (133) "Policy summary" means a synopsis describing the elements of a life
998 insurance policy.

999 ~~[(133)]~~ (134) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L.
1000 No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152,
1001 and related federal regulations and guidance.

1002 ~~[(134)]~~ (135) "Preexisting condition," with respect to a health benefit plan:

1003 (a) means a condition that was present before the effective date of coverage, whether or
1004 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
1005 and

1006 (b) does not include a condition indicated by genetic information unless an actual
1007 diagnosis of the condition by a physician has been made.

1008 ~~[(135)]~~ (136) (a) "Premium" means the monetary consideration for an insurance policy.

1009 (b) "Premium" includes, however designated:

1010 (i) an assessment;

1011 (ii) a membership fee;

1012 (iii) a required contribution; or

1013 (iv) monetary consideration.

1014 (c) (i) "Premium" does not include consideration paid to a third party administrator for
1015 the third party administrator's services.

1016 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1017 insurance on the risks administered by the third party administrator.

1018 [~~(136)~~] (137) "Principal officers" for a corporation means the officers designated under
1019 Subsection [31A-5-203\(3\)](#).

1020 [~~(137)~~] (138) "Proceeding" includes an action or special statutory proceeding.

1021 [~~(138)~~] (139) "Professional liability insurance" means insurance against legal liability
1022 incident to the practice of a profession and provision of a professional service.

1023 [~~(139)~~] (140) (a) Except as provided in Subsection [~~(139)~~] (140)(b), "property
1024 insurance" means insurance against loss or damage to real or personal property of every kind
1025 and any interest in that property:

1026 (i) from all hazards or causes; and

1027 (ii) against loss consequential upon the loss or damage including vehicle
1028 comprehensive and vehicle physical damage coverages.

1029 (b) "Property insurance" does not include:

1030 (i) inland marine insurance; and

1031 (ii) ocean marine insurance.

1032 [~~(140)~~] (141) "Qualified long-term care insurance contract" or "federally tax qualified
1033 long-term care insurance contract" means:

1034 (a) an individual or group insurance contract that meets the requirements of Section
1035 7702B(b), Internal Revenue Code; or

1036 (b) the portion of a life insurance contract that provides long-term care insurance:

1037 (i) (A) by rider; or

1038 (B) as a part of the contract; and

1039 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1040 Code.

1041 [~~(141)~~] (142) "Qualified United States financial institution" means an institution that:

1042 (a) is:

1043 (i) organized under the laws of the United States or any state; or

1044 (ii) in the case of a United States office of a foreign banking organization, licensed
1045 under the laws of the United States or any state;

1046 (b) is regulated, supervised, and examined by a United States federal or state authority
1047 having regulatory authority over a bank or trust company; and

1048 (c) meets the standards of financial condition and standing that are considered

1049 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1050 will be acceptable to the commissioner as determined by:

- 1051 (i) the commissioner by rule; or
- 1052 (ii) the Securities Valuation Office of the National Association of Insurance

1053 Commissioners.

1054 [~~(142)~~] (143) (a) "Rate" means:

- 1055 (i) the cost of a given unit of insurance; or
- 1056 (ii) for property or casualty insurance, that cost of insurance per exposure unit either

1057 expressed as:

- 1058 (A) a single number; or
- 1059 (B) a pure premium rate, adjusted before the application of individual risk variations

1060 based on loss or expense considerations to account for the treatment of:

- 1061 (I) expenses;
- 1062 (II) profit; and
- 1063 (III) individual insurer variation in loss experience.

1064 (b) "Rate" does not include a minimum premium.

1065 [~~(143)~~] (144) (a) Except as provided in Subsection [~~(143)~~] (144)(b), "rate service
1066 organization" means a person who assists an insurer in rate making or filing by:

- 1067 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1068 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1069 (iii) advising about rate questions, except as an attorney giving legal advice.

1070 (b) "Rate service organization" does not mean:

- 1071 (i) an employee of an insurer;
- 1072 (ii) a single insurer or group of insurers under common control;
- 1073 (iii) a joint underwriting group; or
- 1074 (iv) an individual serving as an actuarial or legal consultant.

1075 [~~(144)~~] (145) "Rating manual" means any of the following used to determine initial and
1076 renewal policy premiums:

- 1077 (a) a manual of rates;
- 1078 (b) a classification;
- 1079 (c) a rate-related underwriting rule; and

1080 (d) a rating formula that describes steps, policies, and procedures for determining
1081 initial and renewal policy premiums.

1082 [~~145~~] (146) (a) "Rebate" means a licensee paying, allowing, giving, or offering to
1083 pay, allow, or give, directly or indirectly:

- 1084 (i) a refund of premium or portion of premium;
- 1085 (ii) a refund of commission or portion of commission;
- 1086 (iii) a refund of all or a portion of a consultant fee; or
- 1087 (iv) providing services or other benefits not specified in an insurance or annuity
1088 contract.

1089 (b) "Rebate" does not include:

- 1090 (i) a refund due to termination or changes in coverage;
- 1091 (ii) a refund due to overcharges made in error by the licensee; or
- 1092 (iii) savings or wellness benefits as provided in the contract by the licensee.

1093 [~~146~~] (147) "Received by the department" means:

- 1094 (a) the date delivered to and stamped received by the department, if delivered in
1095 person;
- 1096 (b) the post mark date, if delivered by mail;
- 1097 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1098 (d) the received date recorded on an item delivered, if delivered by:
 - 1099 (i) facsimile;
 - 1100 (ii) email; or
 - 1101 (iii) another electronic method; or
- 1102 (e) a date specified in:
 - 1103 (i) a statute;
 - 1104 (ii) a rule; or
 - 1105 (iii) an order.

1106 [~~147~~] (148) "Reciprocal" or "interinsurance exchange" means an unincorporated
1107 association of persons:

- 1108 (a) operating through an attorney-in-fact common to all of the persons; and
- 1109 (b) exchanging insurance contracts with one another that provide insurance coverage
1110 on each other.

1111 [~~(148)~~] (149) "Reinsurance" means an insurance transaction where an insurer, for
1112 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1113 reinsurance transactions, this title sometimes refers to:

1114 (a) the insurer transferring the risk as the "ceding insurer"; and

1115 (b) the insurer assuming the risk as the:

1116 (i) "assuming insurer"; or

1117 (ii) "assuming reinsurer."

1118 [~~(149)~~] (150) "Reinsurer" means a person licensed in this state as an insurer with the
1119 authority to assume reinsurance.

1120 [~~(150)~~] (151) "Residential dwelling liability insurance" means insurance against
1121 liability resulting from or incident to the ownership, maintenance, or use of a residential
1122 dwelling that is a detached single family residence or multifamily residence up to four units.

1123 [~~(151)~~] (152) (a) "Retrocession" means reinsurance with another insurer of a liability
1124 assumed under a reinsurance contract.

1125 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1126 liability assumed under a reinsurance contract.

1127 [~~(152)~~] (153) "Rider" means an endorsement to:

1128 (a) an insurance policy; or

1129 (b) an insurance certificate.

1130 [~~(153)~~] (154) (a) "Security" means a:

1131 (i) note;

1132 (ii) stock;

1133 (iii) bond;

1134 (iv) debenture;

1135 (v) evidence of indebtedness;

1136 (vi) certificate of interest or participation in a profit-sharing agreement;

1137 (vii) collateral-trust certificate;

1138 (viii) preorganization certificate or subscription;

1139 (ix) transferable share;

1140 (x) investment contract;

1141 (xi) voting trust certificate;

1142 (xii) certificate of deposit for a security;

1143 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
1144 payments out of production under such a title or lease;

1145 (xiv) commodity contract or commodity option;

1146 (xv) certificate of interest or participation in, temporary or interim certificate for,
1147 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
1148 in Subsections [~~(153)~~] (154)(a)(i) through (xiv); or

1149 (xvi) another interest or instrument commonly known as a security.

1150 (b) "Security" does not include:

1151 (i) any of the following under which an insurance company promises to pay money in a
1152 specific lump sum or periodically for life or some other specified period:

1153 (A) insurance;

1154 (B) an endowment policy; or

1155 (C) an annuity contract; or

1156 (ii) a burial certificate or burial contract.

1157 (155) "Securityholder" means a specified person who owns a security of a person,
1158 including:

1159 (a) common stock;

1160 (b) preferred stock;

1161 (c) debt obligations; and

1162 (d) any other security convertible into or evidencing the right of any of the items listed
1163 in this Subsection (155).

1164 [~~(154)~~] (156) "Secondary medical condition" means a complication related to an
1165 exclusion from coverage in accident and health insurance.

1166 [~~(155)~~] (157) (a) "Self-insurance" means an arrangement under which a person
1167 provides for spreading its own risks by a systematic plan.

1168 (b) Except as provided in this Subsection [~~(155)~~] (157), "self-insurance" does not
1169 include an arrangement under which a number of persons spread their risks among themselves.

1170 (c) "Self-insurance" includes:

1171 (i) an arrangement by which a governmental entity undertakes to indemnify an
1172 employee for liability arising out of the employee's employment; and

1173 (ii) an arrangement by which a person with a managed program of self-insurance and
1174 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1175 employees for liability or risk that is related to the relationship or employment.

1176 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1177 [~~(156)~~] (158) "Sell" means to exchange a contract of insurance:

1178 (a) by any means;

1179 (b) for money or its equivalent; and

1180 (c) on behalf of an insurance company.

1181 [~~(157)~~] (159) "Short-term care insurance" means an insurance policy or rider
1182 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
1183 insurance, but that provides coverage for less than 12 consecutive months for each covered
1184 person.

1185 [~~(158)~~] (160) "Significant break in coverage" means a period of 63 consecutive days
1186 during each of which an individual does not have creditable coverage.

1187 [~~(159)~~] (161) "Small employer" means, in connection with a health benefit plan and
1188 with respect to a calendar year and to a plan year, an employer who:

1189 (a) employed at least one employee but not more than an average of 50 eligible
1190 employees on business days during the preceding calendar year; and

1191 (b) employs at least one employee on the first day of the plan year.

1192 [~~(160)~~] (162) "Special enrollment period," in connection with a health benefit plan, has
1193 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1194 Portability and Accountability Act.

1195 [~~(161)~~] (163) (a) "Subsidiary" of a person means an affiliate controlled by that person
1196 either directly or indirectly through one or more affiliates or intermediaries.

1197 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1198 shares are owned by that person either alone or with its affiliates, except for the minimum
1199 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1200 others.

1201 [~~(162)~~] (164) Subject to Subsection [~~(86)~~] (87)(b), "surety insurance" includes:

1202 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1203 perform the principal's obligations to a creditor or other obligee;

1204 (b) bail bond insurance; and

1205 (c) fidelity insurance.

1206 [~~(163)~~] (165) (a) "Surplus" means the excess of assets over the sum of paid-in capital
1207 and liabilities.

1208 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1209 designated by the insurer or organization as permanent.

1210 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require
1211 that insurers or organizations doing business in this state maintain specified minimum levels of
1212 permanent surplus.

1213 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1214 same as the minimum required capital requirement that applies to stock insurers.

1215 (c) "Excess surplus" means:

1216 (i) for a life insurer, accident and health insurer, health organization, or property and
1217 casualty insurer as defined in Section 31A-17-601, the lesser of:

1218 (A) that amount of an insurer's or health organization's total adjusted capital that
1219 exceeds the product of:

1220 (I) 2.5; and

1221 (II) the sum of the insurer's or health organization's minimum capital or permanent
1222 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1223 (B) that amount of an insurer's or health organization's total adjusted capital that
1224 exceeds the product of:

1225 (I) 3.0; and

1226 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1227 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1228 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1229 (A) 1.5; and

1230 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1231 [~~(164)~~] (166) "Third party administrator" or "administrator" means a person who
1232 collects charges or premiums from, or who, for consideration, adjusts or settles claims of
1233 residents of the state in connection with insurance coverage, annuities, or service insurance
1234 coverage, except:

- 1235 (a) a union on behalf of its members;
- 1236 (b) a person administering a:
 - 1237 (i) pension plan subject to the federal Employee Retirement Income Security Act of
 - 1238 1974;
 - 1239 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
 - 1240 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1241 (c) an employer on behalf of the employer's employees or the employees of one or
- 1242 more of the subsidiary or affiliated corporations of the employer;
- 1243 (d) an insurer licensed under the following, but only for a line of insurance for which
- 1244 the insurer holds a license in this state:
 - 1245 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
 - 1246 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
 - 1247 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
 - 1248 (iv) Chapter 9, Insurance Fraternal; or
 - 1249 (v) Chapter 14, Foreign Insurers;
- 1250 (e) a person:
 - 1251 (i) licensed or exempt from licensing under:
 - 1252 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
 - 1253 Reinsurance Intermediaries; or
 - 1254 (B) Chapter 26, Insurance Adjusters; and
 - 1255 (ii) whose activities are limited to those authorized under the license the person holds
 - 1256 or for which the person is exempt; or
 - 1257 (f) an institution, bank, or financial institution:
 - 1258 (i) that is:
 - 1259 (A) an institution whose deposits and accounts are to any extent insured by a federal
 - 1260 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
 - 1261 Credit Union Administration; or
 - 1262 (B) a bank or other financial institution that is subject to supervision or examination by
 - 1263 a federal or state banking authority; and
 - 1264 (ii) that does not adjust claims without a third party administrator license.
- 1265 [~~(165)~~] (167) "Title insurance" means the insuring, guaranteeing, or indemnifying of an

1266 owner of real or personal property or the holder of liens or encumbrances on that property, or
1267 others interested in the property against loss or damage suffered by reason of liens or
1268 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
1269 or unenforceability of any liens or encumbrances on the property.

1270 ~~[(166)]~~ (168) "Total adjusted capital" means the sum of an insurer's or health
1271 organization's statutory capital and surplus as determined in accordance with:

1272 (a) the statutory accounting applicable to the annual financial statements required to be
1273 filed under Section 31A-4-113; and

1274 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1275 Section 31A-17-601.

1276 ~~[(167)]~~ (169) (a) "Trustee" means "director" when referring to the board of directors of
1277 a corporation.

1278 (b) "Trustee," when used in reference to an employee welfare fund, means an
1279 individual, firm, association, organization, joint stock company, or corporation, whether acting
1280 individually or jointly and whether designated by that name or any other, that is charged with
1281 or has the overall management of an employee welfare fund.

1282 ~~[(168)]~~ (170) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted
1283 insurer" means an insurer:

1284 (i) not holding a valid certificate of authority to do an insurance business in this state;
1285 or

1286 (ii) transacting business not authorized by a valid certificate.

1287 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1288 (i) holding a valid certificate of authority to do an insurance business in this state; and

1289 (ii) transacting business as authorized by a valid certificate.

1290 ~~[(169)]~~ (171) "Underwrite" means the authority to accept or reject risk on behalf of the
1291 insurer.

1292 ~~[(170)]~~ (172) "Vehicle liability insurance" means insurance against liability resulting
1293 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a
1294 vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(139)]~~ (140).

1295 ~~[(171)]~~ (173) "Voting security" means a security with voting rights, and includes a
1296 security convertible into a security with a voting right associated with the security.

1297 [~~(172)~~] (174) "Waiting period" for a health benefit plan means the period that must
1298 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of
1299 the health benefit plan, can become effective.

1300 [~~(173)~~] (175) "Workers' compensation insurance" means:

1301 (a) insurance for indemnification of an employer against liability for compensation
1302 based on:

1303 (i) a compensable accidental injury; and

1304 (ii) occupational disease disability;

1305 (b) employer's liability insurance incidental to workers' compensation insurance and
1306 written in connection with workers' compensation insurance; and

1307 (c) insurance assuring to a person entitled to workers' compensation benefits the
1308 compensation provided by law.

1309 Section 2. Section **31A-3-304 (Effective 07/01/15)** is amended to read:

1310 **31A-3-304 (Effective 07/01/15). Annual fees -- Other taxes or fees prohibited --**
1311 **Captive Insurance Restricted Account.**

1312 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
1313 to obtain or renew a certificate of authority.

1314 (b) The commissioner shall:

1315 (i) determine the annual fee pursuant to Section [31A-3-103](#); and

1316 (ii) consider whether the annual fee is competitive with fees imposed by other states on
1317 captive insurance companies.

1318 (2) A captive insurance company that fails to pay the fee required by this section is
1319 subject to the relevant sanctions of this title.

1320 (3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter
1321 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under
1322 the laws of this state that may be levied or assessed on a captive insurance company:

1323 (i) a fee under this section;

1324 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and

1325 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company
1326 Act.

1327 (b) The state or a county, city, or town within the state may not levy or collect an

1328 occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii)
1329 against a captive insurance company.

1330 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115
1331 against a captive insurance company.

1332 (d) A captive insurance company is subject to real and personal property taxes.

1333 (4) A captive insurance company shall pay the fee imposed by this section to the
1334 commissioner by June 1 of each year.

1335 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be
1336 deposited into the Captive Insurance Restricted Account.

1337 (b) There is created in the General Fund a restricted account known as the "Captive
1338 Insurance Restricted Account."

1339 (c) The Captive Insurance Restricted Account shall consist of the fees described in
1340 Subsection (3)(a).

1341 (d) The commissioner shall administer the Captive Insurance Restricted Account.
1342 Subject to appropriations by the Legislature, the commissioner shall use the money deposited
1343 into the Captive Insurance Restricted Account to:

1344 (i) administer and enforce:

1345 (A) Chapter 37, Captive Insurance Companies Act; and

1346 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1347 (ii) promote the captive insurance industry in Utah.

1348 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
1349 except that at the end of each fiscal year, money received by the commissioner in excess of
1350 ~~[\$1,250,000]~~ the following shall be treated as free revenue in the General Fund~~[-]~~:

1351 (i) for fiscal year 2015-2016, in excess of \$1,250,000;

1352 (ii) for fiscal year 2016-2017, in excess of \$1,250,000; and

1353 (iii) for fiscal year 2017-2018 and subsequent fiscal years, in excess of \$1,850,000.

1354 Section 3. Section 31A-6a-101 is amended to read:

1355 **31A-6a-101. Definitions.**

1356 (1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued
1357 by an insurance company that has complied with either ~~[Title 31A,]~~ Chapter 5, Domestic Stock
1358 and Mutual Insurance Corporations, or ~~[Title 31A,]~~ Chapter 14, Foreign Insurers, that

1359 undertakes to perform or provide repair or replacement service on goods or property, or
1360 indemnification for repair or replacement service, for the operational or structural failure of the
1361 goods or property due to a defect in materials, workmanship, or normal wear and tear.

1362 (2) "Nonmanufacturers' parts" means replacement parts not made for or by the original
1363 manufacturer of the goods commonly referred to as "after market parts."

1364 (3) (a) "Road hazard" means a hazard that is encountered while driving a motor
1365 vehicle.

1366 (b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic,
1367 curbs, or composite scraps.

1368 [~~(3)~~] (4) (a) "Service contract" means a contract or agreement to perform or reimburse
1369 for the repair or maintenance of goods or property, for their operational or structural failure due
1370 to a defect in materials, workmanship, or normal wear and tear, with or without additional
1371 provision for incidental payment of indemnity under limited circumstances.

1372 (b) "Service contract" does not include mechanical breakdown insurance [~~as defined in~~
1373 ~~Subsection (1)].~~

1374 (c) "Service contract" includes any contract or agreement to perform or reimburse the
1375 service contract holder for any one or more of the following services:

1376 (i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a
1377 result of coming into contact with a road hazard;

1378 (ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using
1379 the process of paintless dent removal without affecting the existing paint finish and without
1380 replacing vehicle body panels, sanding, bonding, or painting;

1381 (iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as
1382 a result of damage caused by a road hazard, that is primary to the coverage offered by the motor
1383 vehicle owner's motor vehicle insurance policy; or

1384 (iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes
1385 inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to
1386 only the replacement of a lost or stolen motor vehicle key or key-fob.

1387 [~~(4)~~] (5) "Service contract holder" or "contract holder" means a person who purchases a
1388 service contract.

1389 [~~(5)~~] (6) "Service contract provider" means a person who issues, makes, provides,

1390 administers, sells or offers to sell a service contract, or who is contractually obligated to
1391 provide service under a service contract.

1392 ~~[(6)]~~ (7) "Service contract reimbursement policy" or "reimbursement insurance policy"
1393 means a policy of insurance providing coverage for all obligations and liabilities incurred by
1394 the service contract provider under the terms of the service contract issued by the provider.

1395 (8) (a) "Vehicle protection product" means a device or system that is:

1396 (i) installed on or applied to a motor vehicle; and

1397 (ii) designed to prevent the theft of the vehicle.

1398 (b) "Vehicle protection product" includes:

1399 (i) a vehicle protection product warranty;

1400 (ii) an alarm system;

1401 (iii) a body part marking product;

1402 (iv) a steering lock;

1403 (v) a window etch product;

1404 (vi) a pedal and ignition lock;

1405 (vii) a fuel and ignition kill switch; and

1406 (viii) an electronic, radio, or satellite tracking device.

1407 (9) "Vehicle protection product warranty" means a written agreement by a warrantor
1408 that provides if the vehicle protection product fails to prevent the theft of the motor vehicle,
1409 that the warrantor will reimburse the warranty holder under the warranty in a fixed amount
1410 specified in the warranty, not to exceed \$5,000.

1411 (10) "Warrantor" means a person who is contractually obligated to the warranty holder
1412 under the terms of a vehicle protection product warranty.

1413 (11) "Warranty holder" means the person who purchases a vehicle protection product,
1414 any authorized transferee or assignee of the purchaser, or any other person legally assuming the
1415 purchaser's rights under the vehicle protection product warranty.

1416 Section 4. Section **31A-6a-103** is amended to read:

1417 **31A-6a-103. Requirements for doing business.**

1418 (1) A service contract or vehicle protection product warranty may not be issued, sold,
1419 or offered for sale in this state unless the service contract or vehicle protection product
1420 warranty is insured under a [~~service contract~~] reimbursement insurance policy issued by:

- 1421 (a) an insurer authorized to do business in this state; or
- 1422 (b) a recognized surplus lines carrier.
- 1423 (2) (a) A service contract or vehicle protection product warranty may not be issued,
- 1424 sold, or offered for sale unless the service contract provider or warrantor completes the
- 1425 registration process described in this Subsection (2).
- 1426 (b) To register, a service contract provider or warrantor shall submit to the department
- 1427 the following:
- 1428 (i) an application for registration;
- 1429 (ii) a fee established in accordance with Section [31A-3-103](#);
- 1430 (iii) a copy of any service contract or vehicle protection product warranty that the
- 1431 service contract provider or warrantor offers in this state; and
- 1432 (iv) a copy of the service contract provider's or warrantor's reimbursement insurance
- 1433 policy.
- 1434 (c) A service provider or warrantor shall submit the information described in
- 1435 Subsection (2)(b) no less than 30 days before the day on which the service provider or
- 1436 warrantor issues, sells, offers for sale, or uses a service contract, vehicle protection product
- 1437 warranty, or reimbursement insurance policy in this state.
- 1438 (d) A service provider or warrantor shall file any modification of the terms of a service
- 1439 contract, vehicle protection product warranty, or reimbursement insurance policy 30 days
- 1440 before the day on which it is used in this state.
- 1441 (e) A person complying with this chapter is not required to comply with:
- 1442 (i) Subsections [31A-21-201](#)(1) and [31A-23a-402](#)(3); or
- 1443 (ii) Chapter 19a, Utah Rate Regulation Act.
- 1444 (3) (a) Premiums collected on a service contract are not subject to premium taxes.
- 1445 (b) Premiums collected by an issuer of a reimbursement insurance policy are subject to
- 1446 premium taxes.
- 1447 (4) A person marketing, selling, or offering to sell a service contract or vehicle
- 1448 protection product warranty for a service contract provider or warrantor that complies with this
- 1449 chapter is exempt from the licensing requirements of this title.
- 1450 (5) A service contract provider or warrantor complying with this chapter is not required
- 1451 to comply with:

- 1452 (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 1453 (b) Chapter 7, Nonprofit Health Service Insurance Corporations;
- 1454 (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1455 (d) Chapter 9, Insurance Fraternal;
- 1456 (e) Chapter 10, Annuities;
- 1457 (f) Chapter 11, Motor Clubs;
- 1458 (g) Chapter 12, State Risk Management Fund;
- 1459 (h) Chapter 13, Employee Welfare Funds and Plans;
- 1460 (i) Chapter 14, Foreign Insurers;
- 1461 (j) Chapter 19a, Utah Rate Regulation Act;
- 1462 (k) Chapter 25, Third Party Administrators; and
- 1463 (l) Chapter 28, Guaranty Associations.

1464 Section 5. Section **31A-6a-104** is amended to read:

1465 **31A-6a-104. Required disclosures.**

1466 (1) A service contract reimbursement insurance policy insuring a service contract that
1467 is issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the
1468 service contract provider to perform under the contract, the issuer of the policy shall:

1469 (a) pay on behalf of the service contract provider any sums the service contract
1470 provider is legally obligated to pay according to the service contract provider's contractual
1471 obligations under the service contract issued or sold by the service contract provider; or

1472 (b) provide the service which the service contract provider is legally obligated to
1473 perform, according to the service contract provider's contractual obligations under the service
1474 contract issued or sold by the service contract provider.

1475 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless
1476 the service contract contains the following statements in substantially the following form:

1477 (i) "Obligations of the provider under this service contract are guaranteed under a
1478 service contract reimbursement insurance policy. Should the provider fail to pay or provide
1479 service on any claim within 60 days after proof of loss has been filed, the contract holder is
1480 entitled to make a claim directly against the Insurance Company."; and

1481 (ii) "This service contract or warranty is subject to limited regulation by the Utah
1482 Insurance Department. To file a complaint, contact the Utah Insurance Department."

1483 (b) A service contract or reimbursement insurance policy may not be issued, sold, or
1484 offered for sale in this state unless the contract contains a statement in substantially the
1485 following form, "Coverage afforded under this contract is not guaranteed by the Property and
1486 Casualty Guaranty Association."

1487 (3) A service contract shall:

1488 (a) conspicuously state the name, address, and a toll free claims service telephone
1489 number of the reimbursement insurer;

1490 (b) identify the service contract provider, the seller, and the service contract holder;

1491 (c) conspicuously state the total purchase price and the terms under which the service
1492 contract is to be paid;

1493 (d) conspicuously state the existence of any deductible amount;

1494 (e) specify the merchandise, service to be provided, and any limitation, exception, or
1495 exclusion;

1496 (f) state a term, restriction, or condition governing the transferability of the service
1497 contract; and

1498 (g) state a term, restriction, or condition that governs cancellation of the service
1499 contract as provided in Sections [31A-21-303](#) through [31A-21-305](#) by either the contract holder
1500 or service contract provider.

1501 (4) If prior approval of repair work is required, a service contract shall conspicuously
1502 state the procedure for obtaining prior approval and for making a claim, including:

1503 (a) a toll free telephone number for claim service; and

1504 (b) a procedure for obtaining reimbursement for emergency repairs performed outside
1505 of normal business hours.

1506 (5) A preexisting condition clause in a service contract shall specifically state which
1507 preexisting condition is excluded from coverage.

1508 (6) (a) Except as provided in Subsection (6)(c), a service contract shall state the
1509 conditions upon which the use of a nonmanufacturers' part is allowed.

1510 (b) A condition described in Subsection (6)(a) shall comply with applicable state and
1511 federal laws.

1512 (c) This Subsection (6) does not apply to a home warranty contract.

1513 (7) This section applies to a vehicle protection product warranty, except for the

1514 requirements of Subsection (3)(g). The department may make rules in accordance with Title
1515 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the application of this
1516 section to a vehicle protection product warranty.

1517 (8) A vehicle protection product warranty shall contain a conspicuous statement in
1518 substantially the following form: "Purchase of this product is optional and is not required in
1519 order to finance, lease, or purchase a motor vehicle."

1520 Section 6. Section **31A-6a-105** is amended to read:

1521 **31A-6a-105. Prohibited acts.**

1522 (1) Except as provided in Subsection **31A-6a-104(2)**, a service contract provider may
1523 not use in its name, a contract, or literature:

1524 (a) any of the following words:

1525 (i) "insurance";

1526 (ii) "casualty";

1527 (iii) "surety";

1528 (iv) "mutual"; or

1529 (v) another word descriptive of the insurance, casualty, or surety business; or

1530 (b) a name deceptively similar to the name or description of:

1531 (i) an insurance or surety corporation; or

1532 (ii) another service contract provider.

1533 (2) A service contract provider or the service contract provider's representative may
1534 not:

1535 (a) make, permit, or cause to be made a false or misleading statement in connection
1536 with the sale, offer to sell, or advertisement of a service contract; or

1537 (b) deliberately omit a material statement that would be considered misleading if
1538 omitted, in connection with the sale, offer to sell, or advertisement of a service contract.

1539 (3) A bank, savings and loan association, insurance company, or other lending
1540 institution may not require the purchase of a service contract as a condition of a loan.

1541 (4) Except for a bank, savings and loan association, industrial bank, or credit union, a
1542 service contract provider may not sell, or be the obligated party for:

1543 (a) a guaranteed asset protection waiver, unless registered with the commissioner under
1544 Chapter 6b, Guaranteed Asset Protection Waiver Act;

1545 (b) a debt cancellation agreement, unless licensed by the commissioner; or

1546 (c) a debt suspension agreement, unless licensed by the commissioner.

1547 (5) A warrantor or its representative may not require the purchase of a vehicle
1548 protection product as a condition of the financing, lease, or purchase of a motor vehicle.

1549 Section 7. Section **31A-6a-111** is enacted to read:

1550 **31A-6a-111. Vehicle protection product warranty requirements.**

1551 The fixed amount of reimbursement under a vehicle protection product warranty shall
1552 be uniform for all warranty holders of the same vehicle protection product warranty.

1553 Section 8. Section **31A-16-102.5** is enacted to read:

1554 **31A-16-102.5. Subsidiaries of insurers.**

1555 (1) (a) A domestic insurer may organize or acquire one or more subsidiaries either:

1556 (i) by itself; or

1557 (ii) in cooperation with one or more persons.

1558 (b) A subsidiary of a domestic insurer may conduct any kind of business or businesses
1559 and its authority to do so may not be limited by reason of the fact that it is a subsidiary of a
1560 domestic insurer.

1561 (2) (a) In addition to investments in common stock, preferred stock, debt obligations,
1562 and other securities permitted under all other sections of this chapter, a domestic insurer may
1563 also invest in the following securities of one or more subsidiaries:

1564 (i) common stock;

1565 (ii) preferred stock;

1566 (iii) debt obligations; or

1567 (iv) other securities.

1568 (b) Amounts under Subsection (2)(a) that do not exceed the lesser of 10% of the
1569 insurer's assets or 50% of the insurer's surplus as regards policyholders are permitted, if after
1570 the investments, the insurer's surplus as regards policyholders will be reasonable in relation to
1571 the insurer's outstanding liabilities and adequate to meet its financial needs.

1572 (c) In calculating the amount of the investments described in Subsection (2)(b),
1573 investments in domestic or foreign insurance subsidiaries and health organizations shall be
1574 excluded, and there shall be included:

1575 (i) total net money or other consideration expended and obligations assumed in the

1576 acquisition or formation of a subsidiary, including all organizational expenses and
1577 contributions to capital and surplus of the subsidiary whether or not represented by the
1578 purchase of capital stock or issuance of other securities; and

1579 (ii) the amounts expended in acquiring additional common stock, preferred stock, debt
1580 obligations, and other securities, and all contributions to the capital or surplus of a subsidiary
1581 subsequent to its acquisition or formation.

1582 (d) (i) A domestic insurer may invest any amount in securities described in Subsection
1583 (2)(a) of one or more subsidiaries engaged or organized to engage exclusively in the ownership
1584 and management of assets authorized as investments for the insurer if each subsidiary agrees to
1585 limit its investments in any asset so that the investments will not cause the amount of the total
1586 investment of the insurer to exceed any of the investment limitations specified in Subsection
1587 (2)(b) applicable to the insurer.

1588 (ii) For purposes of this Subsection (2)(d), "the total investment of the insurer" shall
1589 include:

1590 (A) a direct investment by the insurer in an asset; and

1591 (B) the insurer's proportionate share of an investment in an asset by a subsidiary of the
1592 insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by
1593 the percentage of the ownership of the subsidiary.

1594 (e) With the approval of the commissioner, a domestic insurer may invest any greater
1595 amount in securities described in Subsection (2)(a) provided that after the investment the
1596 insurer's surplus as regards policyholders will be reasonable in relation to the insurer's
1597 outstanding liabilities and adequate to its financial needs.

1598 (3) Investments in securities described in Subsection (2)(a) may not be subject to any
1599 of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to
1600 the investments of insurers.

1601 (4) Whether any investment made pursuant to Subsection (2) meets the applicable
1602 requirements of Subsection (2) shall be determined before the investment is made, by
1603 calculating the applicable investment limitations as though the investment had already been
1604 made, taking into account:

1605 (a) the then outstanding principal balance on all previous investments in debt
1606 obligations; and

1607 (b) the value of all previous investments in equity securities as of the day they were
1608 made net of any return of capital invested not including dividends.

1609 (5) (a) Subject to Subsection (5)(b), if an insurer ceases to control a subsidiary, it shall
1610 dispose of any investment in the subsidiary made pursuant to this section:

1611 (i) within three years from the time of the cessation of control; or

1612 (ii) within such further time as the commissioner may prescribe.

1613 (b) Subsection (5)(a) does not apply if at any time after the investment is made, the
1614 investment meets the requirements for investment under any other section of this chapter, and
1615 the insurer has so notified the commissioner.

1616 Section 9. Section **31A-16-103** is amended to read:

1617 **31A-16-103. Acquisition of control of, divestiture of control of, or merger with**
1618 **domestic insurer.**

1619 (1) (a) A person may not take the actions described in Subsections (1)(b) or (c) unless,
1620 at the time any offer, request, or invitation is made or any such agreement is entered into, or
1621 prior to the acquisition of securities if no offer or agreement is involved:

1622 (i) the person files with the commissioner a statement containing the information
1623 required by this section;

1624 (ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the
1625 insurer; and

1626 (iii) the commissioner approves the offer, request, invitation, agreement, or acquisition.

1627 (b) Unless the person complies with Subsection (1)(a), a person other than the issuer
1628 may not make a tender offer for, a request or invitation for tenders of, or enter into any
1629 agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise,
1630 any voting security of a domestic insurer if after the acquisition, the person would directly,
1631 indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

1632 (c) Unless the person complies with Subsection (1)(a), a person may not enter into an
1633 agreement to merge with or otherwise to acquire control of:

1634 (i) a domestic insurer; or

1635 (ii) any person controlling a domestic insurer.

1636 (d) For purposes of this section, a controlling person of a domestic insurer seeking to
1637 divest its controlling interest in the domestic insurer, in any manner, shall file with the

1638 commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least
1639 30 days before the cessation of control. The commissioner shall determine those instances in
1640 which the one or more persons seeking to divest or to acquire a controlling interest in an
1641 insurer, will be required to file for and obtain approval of the transaction. The information
1642 shall remain confidential until the conclusion of the transaction unless the commissioner, in the
1643 commissioner's discretion, determines that confidential treatment will interfere with
1644 enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed,
1645 this Subsection (1)(d) does not apply.

1646 (e) With respect to a transaction subject to this section, the acquiring person shall also
1647 file a pre-acquisition notification with the commissioner, which shall contain the information
1648 set forth in Section [31A-16-104.5](#). A failure to file the notification may be subject to penalties
1649 specified in Section [31A-16-104.5](#).

1650 ~~(f)~~ (f) (i) For purposes of this section, a domestic insurer includes any person
1651 controlling a domestic insurer unless the person as determined by the commissioner is either
1652 directly or through its affiliates primarily engaged in business other than the business of
1653 insurance.

1654 (ii) The controlling person described in Subsection (1)~~(f)~~(f)(i) shall file with the
1655 commissioner a preacquisition notification containing the information required in Subsection
1656 (2) 30 calendar days before the proposed effective date of the acquisition.

1657 (iii) For the purposes of this section, "person" does not include any securities broker
1658 that in the usual and customary brokers function holds less than 20% of:

1659 (A) the voting securities of an insurance company; or

1660 (B) any person that controls an insurance company.

1661 (iv) This section applies to all domestic insurers and other entities licensed under

1662 [~~Chapters 5, 7, 8, 9, and 11.~~]:

1663 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1664 (B) Chapter 7, Nonprofit Health Service Insurance Corporations;

1665 (C) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1666 (D) Chapter 9, Insurance Fraternal; and

1667 (E) Chapter 11, Motor Clubs.

1668 ~~(e)~~ (g) (i) An agreement for acquisition of control or merger as contemplated by this

1669 Subsection (1) is not valid or enforceable unless the agreement:

1670 (A) is in writing; and

1671 (B) includes a provision that the agreement is subject to the approval of the
1672 commissioner upon the filing of any applicable statement required under this chapter.

1673 (ii) A written agreement for acquisition or control that includes the provision described
1674 in Subsection (1)~~(e)~~(g)(i) satisfies the requirements of this Subsection (1).

1675 (2) The statement to be filed with the commissioner under Subsection (1) shall be
1676 made under oath or affirmation and shall contain the following information:

1677 (a) the name and address of the "acquiring party," which means each person by whom
1678 or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to
1679 be effected; and

1680 (i) if the person is an individual:

1681 (A) the person's principal occupation;

1682 (B) a listing of all offices and positions held by the person during the past five years;

1683 and

1684 (C) any conviction of crimes other than minor traffic violations during the past 10
1685 years; and

1686 (ii) if the person is not an individual:

1687 (A) a report of the nature of its business operations during:

1688 (I) the past five years; or

1689 (II) for any lesser period as the person and any of its predecessors has been in
1690 existence;

1691 (B) an informative description of the business intended to be done by the person and
1692 the person's subsidiaries;

1693 (C) a list of all individuals who are or who have been selected to become directors or
1694 executive officers of the person, or individuals who perform, or who will perform functions
1695 appropriate to such positions; and

1696 (D) for each individual described in Subsection (2)(a)(ii)(C), the information required
1697 by Subsection (2)(a)(i) for each individual;

1698 (b) (i) the source, nature, and amount of the consideration used or to be used in
1699 effecting the merger or acquisition of control;

1700 (ii) a description of any transaction in which funds were or are to be obtained for the
1701 purpose of effecting the merger or acquisition of control, including any pledge of:
1702 (A) the insurer's stock; or
1703 (B) the stock of any of the insurer's subsidiaries or controlling affiliates; and
1704 (iii) the identity of persons furnishing the consideration;
1705 (c) (i) fully audited financial information, or other financial information considered
1706 acceptable by the commissioner, of the earnings and financial condition of each acquiring party
1707 for:
1708 (A) the preceding five fiscal years of each acquiring party; or
1709 (B) any lesser period the acquiring party and any of its predecessors shall have been in
1710 existence; and
1711 (ii) unaudited information:
1712 (A) similar to the information described in Subsection (2)(c)(i); and
1713 (B) prepared within the 90 days prior to the filing of the statement;
1714 (d) any plans or proposals which each acquiring party may have to:
1715 (i) liquidate the insurer;
1716 (ii) sell its assets;
1717 (iii) merge or consolidate the insurer with any person; or
1718 (iv) make any other material change in the insurer's:
1719 (A) business;
1720 (B) corporate structure; or
1721 (C) management;
1722 (e) (i) the number of shares of any security referred to in Subsection (1) that each
1723 acquiring party proposes to acquire;
1724 (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in
1725 Subsection (1); and
1726 (iii) a statement as to the method by which the fairness of the proposal was arrived at;
1727 (f) the amount of each class of any security referred to in Subsection (1) that:
1728 (i) is beneficially owned; or
1729 (ii) concerning which there is a right to acquire beneficial ownership by each acquiring
1730 party;

- 1731 (g) a full description of any contract, arrangement, or understanding with respect to any
1732 security referred to in Subsection (1) in which any acquiring party is involved, including:
- 1733 (i) the transfer of any of the securities;
 - 1734 (ii) joint ventures;
 - 1735 (iii) loan or option arrangements;
 - 1736 (iv) puts or calls;
 - 1737 (v) guarantees of loans;
 - 1738 (vi) guarantees against loss or guarantees of profits;
 - 1739 (vii) division of losses or profits; or
 - 1740 (viii) the giving or withholding of proxies;
- 1741 (h) a description of the purchase by any acquiring party of any security referred to in
1742 Subsection (1) during the 12 calendar months preceding the filing of the statement including:
- 1743 (i) the dates of purchase;
 - 1744 (ii) the names of the purchasers; and
 - 1745 (iii) the consideration paid or agreed to be paid for the purchase;
- 1746 (i) a description of:
- 1747 (i) any recommendations to purchase by any acquiring party any security referred to in
1748 Subsection (1) made during the 12 calendar months preceding the filing of the statement; or
 - 1749 (ii) any recommendations made by anyone based upon interviews or at the suggestion
1750 of the acquiring party;
- 1751 (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange
1752 offers for, and agreements to acquire or exchange any securities referred to in Subsection (1);
1753 and
- 1754 (ii) if distributed, copies of additional soliciting material relating to the transactions
1755 described in Subsection (2)(j)(i);
- 1756 (k) (i) the term of any agreement, contract, or understanding made with, or proposed to
1757 be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for
1758 tender; and
- 1759 (ii) the amount of any fees, commissions, or other compensation to be paid to
1760 broker-dealers with regard to any agreement, contract, or understanding described in
1761 Subsection (2)(k)(i); [~~and~~]

1762 (l) an agreement by the person required to file the statement referred to in Subsection
1763 (1) that it will provide the annual report, specified in Section 31A-16-105, for so long as
1764 control exists;

1765 (m) an acknowledgment by the person required to file the statement referred to in
1766 Subsection (1) that the person and all subsidiaries within its control in the insurance holding
1767 company system will provide information to the commissioner upon request as necessary to
1768 evaluate enterprise risk to the insurer; and

1769 ~~(H)~~ (n) any additional information the commissioner requires by rule, which the
1770 commissioner determines to be:

1771 (i) necessary or appropriate for the protection of policyholders of the insurer; or

1772 (ii) in the public interest.

1773 (3) The department may request:

1774 (a) (i) criminal background information maintained pursuant to Title 53, Chapter 10,
1775 Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

1776 (ii) complete Federal Bureau of Investigation criminal background checks through the
1777 national criminal history system.

1778 (b) Information obtained by the department from the review of criminal history records
1779 received under Subsection (3)(a) shall be used by the department for the purpose of:

1780 (i) verifying the information in Subsection (2)(a)(i);

1781 (ii) determining the integrity of persons who would control the operation of an insurer;

1782 and

1783 (iii) preventing persons who violate 18 U.S.C. Sec. 1033 from engaging in the business
1784 of insurance in the state.

1785 (c) If the department requests the criminal background information, the department
1786 shall:

1787 (i) pay to the Department of Public Safety the costs incurred by the Department of
1788 Public Safety in providing the department criminal background information under Subsection
1789 (3)(a)(i);

1790 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
1791 of Investigation in providing the department criminal background information under
1792 Subsection (3)(a)(ii); and

1793 (iii) charge the person required to file the statement referred to in Subsection (1) a fee
1794 equal to the aggregate of Subsections (3)(c)(i) and (ii).

1795 (4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in
1796 the lender's ordinary course of business, the identity of the lender shall remain confidential, if
1797 the person filing the statement so requests.

1798 (b) (i) Under Subsection (2)(e), the commissioner may require a statement of the
1799 adjusted book value assigned by the acquiring party to each security in arriving at the terms of
1800 the offer.

1801 (ii) For purposes of this Subsection (4)(b), "adjusted book value" means each security's
1802 proportional interest in the capital and surplus of the insurer with adjustments that reflect:

1803 (A) market conditions;

1804 (B) business in force; and

1805 (C) other intangible assets or liabilities of the insurer.

1806 (c) The description required by Subsection (2)(g) shall identify the persons with whom
1807 the contracts, arrangements, or understandings have been entered into.

1808 (5) (a) If the person required to file the statement referred to in Subsection (1) is a
1809 partnership, limited partnership, syndicate, or other group, the commissioner may require that
1810 all the information called for by Subsections (2), (3), or (4) shall be given with respect to each:

1811 (i) partner of the partnership or limited partnership;

1812 (ii) member of the syndicate or group; and

1813 (iii) person who controls the partner or member.

1814 (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation,
1815 or if the person required to file the statement referred to in Subsection (1) is a corporation, the
1816 commissioner may require that the information called for by Subsection (2) shall be given with
1817 respect to:

1818 (i) the corporation;

1819 (ii) each officer and director of the corporation; and

1820 (iii) each person who is directly or indirectly the beneficial owner of more than 10% of
1821 the outstanding voting securities of the corporation.

1822 (6) If any material change occurs in the facts set forth in the statement filed with the
1823 commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth

1824 the change, together with copies of all documents and other material relevant to the change,
1825 shall be filed with the commissioner and sent to the insurer within two business days after the
1826 filing person learns of such change.

1827 (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection
1828 (1) is proposed to be made by means of a registration statement under the Securities Act of
1829 1933, or under circumstances requiring the disclosure of similar information under the
1830 Securities Exchange Act of 1934, or under a state law requiring similar registration or
1831 disclosure, a person required to file the statement referred to in Subsection (1) may use copies
1832 of any registration or disclosure documents in furnishing the information called for by the
1833 statement.

1834 (8) (a) The commissioner shall approve any merger or other acquisition of control
1835 referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, the
1836 commissioner finds that:

1837 (i) after the change of control, the domestic insurer referred to in Subsection (1) would
1838 not be able to satisfy the requirements for the issuance of a license to write the line or lines of
1839 insurance for which it is presently licensed;

1840 (ii) the effect of the merger or other acquisition of control would:

1841 (A) substantially lessen competition in insurance in this state; or

1842 (B) tend to create a monopoly in insurance;

1843 (iii) the financial condition of any acquiring party might:

1844 (A) jeopardize the financial stability of the insurer; or

1845 (B) prejudice the interest of:

1846 (I) its policyholders; or

1847 (II) any remaining securityholders who are unaffiliated with the acquiring party;

1848 (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in
1849 Subsection (1) are unfair and unreasonable to the securityholders of the insurer;

1850 (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its
1851 assets, or consolidate or merge it with any person, or to make any other material change in its
1852 business or corporate structure or management, are:

1853 (A) unfair and unreasonable to policyholders of the insurer; and

1854 (B) not in the public interest; or

1855 (vi) the competence, experience, and integrity of those persons who would control the
1856 operation of the insurer are such that it would not be in the interest of the policyholders of the
1857 insurer and the public to permit the merger or other acquisition of control.

1858 (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not
1859 be considered unfair if the adjusted book values under Subsection (2)(e):

1860 (i) are disclosed to the securityholders; and

1861 (ii) determined by the commissioner to be reasonable.

1862 (9) (a) The public hearing referred to in Subsection (8) shall be held within 30 days
1863 after the statement required by Subsection (1) is filed.

1864 (b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the
1865 person filing the statement.

1866 (ii) Affected parties may waive the notice required by this Subsection (9)(b).

1867 (iii) Not less than seven days notice of the public hearing shall be given by the person
1868 filing the statement to:

1869 (A) the insurer; and

1870 (B) any person designated by the commissioner.

1871 (c) The commissioner shall make a determination within 30 days after the conclusion
1872 of the hearing.

1873 (d) At the hearing, the person filing the statement, the insurer, any person to whom
1874 notice of hearing was sent, and any other person whose interest may be affected by the hearing
1875 may:

1876 (i) present evidence;

1877 (ii) examine and cross-examine witnesses; and

1878 (iii) offer oral and written arguments.

1879 (e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery
1880 proceedings in the same manner as is presently allowed in the district courts of this state.

1881 (ii) All discovery proceedings shall be concluded not later than three days before the
1882 commencement of the public hearing.

1883 (10) If the proposed acquisition of control will require the approval of more than one
1884 commissioner, the public hearing referred to in Subsection (9)(a) may be held on a
1885 consolidated basis upon request of the person filing the statement referred to in Subsection (1).

1886 The person shall file the statement referred to in Subsection (1) with the National Association
1887 of Insurance Commissioners within five days of making the request for a public hearing. A
1888 commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of
1889 the opt-out within 10 days of the receipt of the statement referred to in Subsection (1). A
1890 hearing conducted on a consolidated basis shall be public and shall be held within the United
1891 States before the commissioners of the states in which the insurers are domiciled. The
1892 commissioners shall hear and receive evidence. A commissioner may attend a hearing under
1893 this Subsection (10) in person or by telecommunication.

1894 (11) In connection with a change of control of a domestic insurer, any determination by
1895 the commissioner that the person acquiring control of the insurer shall be required to maintain
1896 or restore the capital of the insurer to the level required by the laws and regulations of this state
1897 shall be made not later than 60 days after the date of notification of the change in control
1898 submitted pursuant to Subsection (1).

1899 ~~(10)~~ (12) (a) The commissioner may retain technical experts to assist in reviewing all,
1900 or a portion of, information filed in connection with a proposed merger or other acquisition of
1901 control referred to in Subsection (1).

1902 (b) In determining whether any of the conditions in Subsection (8) exist, the
1903 commissioner may consider the findings of technical experts employed to review applicable
1904 filings.

1905 (c) (i) A technical expert employed under Subsection ~~(10)~~ (12)(a) shall present to the
1906 commissioner a statement of all expenses incurred by the technical expert in conjunction with
1907 the technical expert's review of a proposed merger or other acquisition of control.

1908 (ii) At the commissioner's direction the acquiring person shall compensate the technical
1909 expert at customary rates for time and expenses:

1910 (A) necessarily incurred; and

1911 (B) approved by the commissioner.

1912 (iii) The acquiring person shall:

1913 (A) certify the consolidated account of all charges and expenses incurred for the review
1914 by technical experts;

1915 (B) retain a copy of the consolidated account described in Subsection ~~(10)~~

1916 ~~(10)~~(12)(c)(iii)(A); and

1917 (C) file with the department as a public record a copy of the consolidated account
1918 described in Subsection ~~[(11)]~~ (12)(c)(iii)(A).

1919 ~~[(11)]~~ (13) (a) (i) If a domestic insurer proposes to merge into another insurer, any
1920 securityholder electing to exercise a right of dissent may file with the insurer a written request
1921 for payment of the adjusted book value given in the statement required by Subsection (1) and
1922 approved under Subsection (8), in return for the surrender of the security holder's securities.

1923 (ii) The request described in Subsection ~~[(11)]~~ (13)(a)(i) shall be filed not later than 10
1924 days after the day of the securityholders' meeting where the corporate action is approved.

1925 (b) The dissenting securityholder is entitled to and the insurer is required to pay to the
1926 dissenting securityholder the specified value within 60 days of receipt of the dissenting security
1927 holder's security.

1928 (c) Persons electing under this Subsection ~~[(11)]~~ (13) to receive cash for their securities
1929 waive the dissenting shareholder and appraisal rights otherwise applicable under Title 16,
1930 Chapter 10a, Part 13, Dissenters' Rights.

1931 (d) (i) This Subsection ~~[(11)]~~ (13) provides an elective procedure for dissenting
1932 securityholders to resolve their objections to the plan of merger.

1933 (ii) This section does not restrict the rights of dissenting securityholders under Title 16,
1934 Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this
1935 Subsection ~~[(11)]~~ (13).

1936 ~~[(12)]~~ (14) (a) All statements, amendments, or other material filed under Subsection
1937 (1), and all notices of public hearings held under Subsection (8), shall be mailed by the insurer
1938 to its securityholders within five business days after the insurer has received the statements,
1939 amendments, other material, or notices.

1940 (b) (i) Mailing expenses shall be paid by the person making the filing.

1941 (ii) As security for the payment of mailing expenses, that person shall file with the
1942 commissioner an acceptable bond or other deposit in an amount determined by the
1943 commissioner.

1944 ~~[(13)]~~ (15) This section does not apply to any offer, request, invitation, agreement, or
1945 acquisition that the commissioner by order exempts from the requirements of this section as:

1946 (a) not having been made or entered into for the purpose of, and not having the effect
1947 of, changing or influencing the control of a domestic insurer; or

1948 (b) otherwise not comprehended within the purposes of this section.

1949 [~~(14)~~] (16) The following are violations of this section:

1950 (a) the failure to file any statement, amendment, or other material required to be filed
1951 pursuant to Subsections (1), (2), and (5); or

1952 (b) the effectuation, or any attempt to effectuate, an acquisition of control of,
1953 divestiture of, or merger with a domestic insurer unless the commissioner has given the
1954 commissioner's approval to the acquisition or merger.

1955 [~~(15)~~] (17) (a) The courts of this state are vested with jurisdiction over:

1956 (i) a person who:

1957 (A) files a statement with the commissioner under this section; and

1958 (B) is not resident, domiciled, or authorized to do business in this state; and

1959 (ii) overall actions involving persons described in Subsection [~~(15)~~] (17)(a)(i) arising
1960 out of a violation of this section.

1961 (b) A person described in Subsection [~~(15)~~] (17)(a) is considered to have performed
1962 acts equivalent to and constituting an appointment of the commissioner by that person, to be
1963 that person's lawful agent upon whom may be served all lawful process in any action, suit, or
1964 proceeding arising out of a violation of this section.

1965 (c) A copy of a lawful process described in Subsection [~~(15)~~] (17)(b) shall be:

1966 (i) served on the commissioner; and

1967 (ii) transmitted by registered or certified mail by the commissioner to the person at that
1968 person's last-known address.

1969 Section 10. Section **31A-16-104.5** is enacted to read:

1970 **31A-16-104.5. Acquisitions involving insurers not otherwise covered.**

1971 (1) The following definitions apply for the purposes of this section only:

1972 (a) "Acquisition" means an agreement, arrangement, or activity the consummation of
1973 which results in a person acquiring directly or indirectly the control of another person and
1974 includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and
1975 mergers.

1976 (b) "Insurer" includes any company or group of companies under common
1977 management, ownership, or control.

1978 (c) "Involved insurer" includes an insurer that either acquires or is acquired, is

1979 affiliated with an acquirer or acquired, or is the result of a merger.

1980 (d) (i) "Market" means the relevant product and geographical markets. In determining
1981 the relevant product and geographical markets, the commissioner shall give due consideration
1982 to, among other things, the definitions or guidelines, if any, promulgated by the National
1983 Association of Insurance Commissioners and to information, if any, submitted by parties to the
1984 acquisition. In the absence of sufficient information to the contrary, the relevant product
1985 market is assumed to be the direct written insurance premium for a line of business, such line
1986 being that used in the annual statement required to be filed by insurers doing business in this
1987 state, and the relevant geographical market is assumed to be this state.

1988 (ii) Notwithstanding Subsection (1)(d)(i), for purposes of Subsection (2)(b), "market"
1989 means direct written insurance premium in this state for a line of business as contained in the
1990 annual statement required to be filed by insurers licensed to do business in this state.

1991 (2) (a) This section applies to any acquisition in which there is a change in control of
1992 an insurer authorized to do business in Utah.

1993 (b) This section does not apply to the following:

1994 (i) securities purchased solely for investment purposes so long as the securities are not
1995 used by voting or otherwise to cause or attempt to cause the substantial lessening of
1996 competition in any insurance market in this state;

1997 (ii) if a purchase of securities results in a presumption of control under Subsection
1998 31A-1-301(29)(d), it is not solely for investment purposes unless the commissioner of the
1999 insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control
2000 does not exist and the disclaimer action or affirmative finding is communicated by the
2001 domiciliary commissioner to the commissioner of this state;

2002 (iii) the acquisition of a person by another person when both persons are neither
2003 directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition
2004 notification is filed with the commissioner in accordance with Subsection (3)(a) 30 days before
2005 the proposed effective date of the acquisition;

2006 (iv) the acquisition of an already affiliated person;

2007 (v) an acquisition if, as an immediate result of the acquisition:

2008 (A) in no market would the combined market share of the involved insurers exceed 5%
2009 of the total market;

2010 (B) there would be no increase in any market share; or
2011 (C) in no market would the combined market share of the involved insurers exceeds
2012 12% of the total market, and the market share increase by more than 2% of the total market;
2013 (vi) an acquisition for which a pre-acquisition notification would be required pursuant
2014 to this section due solely to the resulting effect on the ocean marine insurance line of business;
2015 or
2016 (vii) an acquisition of an insurer whose domiciliary commissioner affirmatively finds
2017 that the insurer is in failing condition, and:
2018 (A) there is a lack of feasible alternative to improving such condition;
2019 (B) the public benefits of improving the insurer's condition through the acquisition
2020 exceed the public benefits that would arise from not lessening competition; and
2021 (C) the findings are communicated by the domiciliary commissioner to the
2022 commissioner of this state.
2023 (3) An acquisition covered by Subsection (2) may be subject to an order pursuant to
2024 Subsection (5) unless the acquiring person files a pre-acquisition notification and the waiting
2025 period has expired. The acquired person may file a pre-acquisition notification. The
2026 commissioner shall give confidential treatment to information submitted under this Subsection
2027 (3) in the same manner as provided in Section [31A-16-109](#).
2028 (a) The pre-acquisition notification shall be in the form and contain such information
2029 as prescribed by the National Association of Insurance Commissioners relating to those
2030 markets that, under Subsection (2)(b)(v), cause the acquisition not to be exempted from this
2031 section. The commissioner may require additional material and information as considered
2032 necessary to determine whether the proposed acquisition, if consummated, would violate the
2033 competitive standard of Subsection (4). The required information may include an opinion of an
2034 economist as to the competitive impact of the acquisition in this state accompanied by a
2035 summary of the education and experience of the economist indicating the economist's ability to
2036 render an informed opinion.
2037 (b) The waiting period required shall begin on the date of receipt of the commissioner
2038 of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of
2039 receipt, or termination of the waiting period by the commissioner. Before the end of the
2040 waiting period, the commissioner on a one-time basis may require the submission of additional

2041 needed information relevant to the proposed acquisition, in which event the waiting period
2042 shall end on the earlier of the 30th day after receipt of the additional information by the
2043 commissioner or termination of the waiting period by the commissioner.

2044 (4) (a) The commissioner may enter an order under Subsection (5)(a) with respect to an
2045 acquisition if there is substantial evidence that the effect of the acquisition may be substantially
2046 to lessen competition in any line of insurance in this state, tend to create a monopoly, or if the
2047 insurer fails to file adequate information in compliance with this section.

2048 (b) In determining whether a proposed acquisition would violate the competitive
2049 standard of Subsection (4)(a), the commissioner shall consider the following:

2050 (i) Any acquisition covered under this Subsection (4) involving two or more insurers
2051 competing in the same market is prima facie evidence of violation of the competitive standards
2052 if:

2053 (A) the market is highly concentrated and the involved insurers possess the following
2054 shares of the market:

2055	<u>Insurer A</u>	<u>Insurer B</u>
2056	<u>4%</u>	<u>4% or more</u>
2057	<u>10%</u>	<u>2% or more</u>
2058	<u>15%</u>	<u>1% or more; or</u>

2059 (B) the market is not highly concentrated and the involved insurers possess the
2060 following shares of the market:

2061	<u>Insurer A</u>	<u>Insurer B</u>
2062	<u>5%</u>	<u>5% or more</u>
2063	<u>10%</u>	<u>4% or more</u>
2064	<u>15%</u>	<u>3% or more</u>
2065	<u>19%</u>	<u>1% or more.</u>

2066 (ii) For purposes of this section, a highly concentrated market is one in which the share
2067 of the four largest insurers is 75% or more of the market. Percentages not shown in the tables
2068 are interpolated proportionately to the percentages that are shown. If more than two insurers
2069 are involved, exceeding the total of the two columns in the table is prima facie evidence of
2070 violation of the competitive standard in Subsection (4)(a).

2071 (iii) For purposes of this section, the insurer with the largest share of the market shall
2072 be considered to be Insurer A.

2073 (c) There is a significant trend toward increased concentration when the aggregate
2074 market share of any grouping of the largest insurers in the market, from the two largest to the
2075 eight largest, has increased by 7% or more of the market over a period of time extending from
2076 any base year 5 to 10 years before the acquisition up to the time of the acquisition. Any
2077 acquisition or merger covered under Subsection (1) involving two or more insurers competing
2078 in the same market is prima facie evidence of violation of the competitive standard in
2079 Subsection (4)(a) if:

2080 (i) there is a significant trend toward increased concentration in the market;

2081 (ii) one of the insurers involved is one of the insurers in a grouping of large insurers
2082 showing the requisite increase in the market share; and

2083 (iii) another involved insurer's market is 2% or more.

2084 (d) The burden of showing prima facie evidence of violation of the competitive
2085 standard rests upon the commissioner.

2086 (e) Even though an acquisition is not prima facie violative of the competitive standard
2087 under Subsections (4)(b) and (4)(c), the commissioner may establish the requisite
2088 anticompetitive effect based upon other substantial evidence.

2089 (f) Even though an acquisition is prima facie violative of the competitive standard
2090 under Subsections (4)(b) and (4)(c), a party may establish the absence of the requisite
2091 anticompetitive effect based upon other substantial evidence. Relevant factors in making a
2092 determination under this Subsection (4)(f) include the following:

2093 (i) market shares;

2094 (ii) volatility of ranking of market leaders;

2095 (iii) number of competitors;

2096 (iv) concentration or trend of concentration in the industry; and

2097 (v) ease of entry and exit into the market.

2098 (g) An order may not be entered under Subsection (5) if:

2099 (i) the acquisition will yield substantial economies of scale or economies in resource
2100 use that cannot be feasibly achieved in any other way, and the public benefits that would arise
2101 from the economies exceed the public benefits that would arise from not lessening competition;

2102 or

2103 (ii) the acquisition will substantially increase the availability of insurance, and the
2104 public benefits of the increase exceed the public benefits that would arise from not lessening
2105 competition.

2106 (5) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if an
2107 acquisition violates the standards of this section, the commissioner may enter an order:

2108 (i) requiring an involved insurer to cease and desist from doing business in this state
2109 with respect to the line or lines of insurance involved in the violation; or

2110 (ii) denying the application of an acquired or acquiring insurer for a license to do
2111 business in this state.

2112 (b) The commissioner shall accompany an order issued under this Subsection (5) with
2113 a written decision of the commissioner setting forth findings of fact and conclusions of law.

2114 (c) An order pursuant to this section may not apply if the acquisition is not
2115 consummated.

2116 (d) A person who violates a cease and desist order of the commissioner under
2117 Subsection (5)(a)(i) and while the order is in effect may after notice and hearing and upon order
2118 of the commissioner be subject at the discretion of the commissioner to one or more of the
2119 following:

2120 (i) notwithstanding Section [31A-2-308](#), a monetary penalty of not more than \$10,000
2121 for every day of violation; or

2122 (ii) suspension or revocation of the person's license.

2123 (e) An insurer or other person who fails to make any filing required by this section, and
2124 who fails to demonstrate a good faith effort to comply with a filing requirement, is subject to a
2125 fine of not more than \$50,000 notwithstanding Section [31A-2-308](#).

2126 Section 11. Section **31A-16-105** is amended to read:

2127 **31A-16-105. Registration of insurers.**

2128 (1) (a) [Every] An insurer [~~which~~] that is authorized to do business in this state and
2129 [~~which~~] that is a member of an insurance holding company system shall register with the
2130 commissioner, except a foreign insurer subject to registration requirements and standards
2131 adopted by statute or regulation in the jurisdiction of its domicile, if the requirements and
2132 standards are substantially similar to those contained in this section, Subsections

2133 31A-16-106(1)(a) and (2) and either Subsection 31A-16-106(1)(b) or a statutory provision
2134 similar to the following: "Each registered insurer shall keep current the information required to
2135 be disclosed in its registration statement by reporting all material changes or additions within
2136 15 days after the end of the month in which it learns of each change or addition."

2137 (b) [~~Any~~] An insurer [~~which~~] that is subject to registration under this section shall
2138 register within 15 days after it becomes subject to registration, and annually thereafter by May
2139 1 of each year for the previous calendar year, unless the commissioner for good cause extends
2140 the time for registration and then at the end of the extended time period. The commissioner
2141 may require any insurer authorized to do business in the state, which is a member of a holding
2142 company system, and which is not subject to registration under this section, to furnish a copy of
2143 the registration statement, the summary specified in Subsection (3), or any other information
2144 filed by the insurer with the insurance regulatory authority of domiciliary jurisdiction.

2145 (2) [~~Every~~] An insurer subject to registration shall file the registration statement with
2146 the commissioner on a form and in a format prescribed by the National Association of
2147 Insurance Commissioners, which shall contain the following current information:

2148 (a) the capital structure, general financial condition, and ownership and management of
2149 the insurer and any person controlling the insurer;

2150 (b) the identity and relationship of every member of the insurance holding company
2151 system;

2152 (c) any of the following agreements in force, and transactions currently outstanding or
2153 which have occurred during the last calendar year between the insurer and its affiliates:

2154 (i) loans, other investments, or purchases, sales or exchanges of securities of the
2155 affiliates by the insurer or of securities of the insurer by its affiliates;

2156 (ii) purchases, sales, or exchanges of assets;

2157 (iii) transactions not in the ordinary course of business;

2158 (iv) guarantees or undertakings for the benefit of an affiliate which result in an actual
2159 contingent exposure of the insurer's assets to liability, other than insurance contracts entered
2160 into in the ordinary course of the insurer's business;

2161 (v) all management agreements, service contracts, and all cost-sharing arrangements;

2162 (vi) reinsurance agreements;

2163 (vii) dividends and other distributions to shareholders; and

2164 (viii) consolidated tax allocation agreements;

2165 (d) any pledge of the insurer's stock, including stock of any subsidiary or controlling
2166 affiliate, for a loan made to any member of the insurance holding company system; [~~and~~]

2167 (e) if requested by the commissioner, financial statements of or within an insurance
2168 holding company system, including all affiliates:

2169 (i) which may include annual audited financial statements filed with the United States
2170 Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or
2171 the Securities Exchange Act of 1934, as amended; and

2172 (ii) which request is satisfied by providing the commissioner with the most recently
2173 filed parent corporation financial statements that have been filed with the United States
2174 Securities and Exchange Commission;

2175 [~~(e)~~] (f) any other matters concerning transactions between registered insurers and any
2176 affiliates as may be included in any subsequent registration forms adopted or approved by the
2177 commissioner[?];

2178 (g) statements that the insurer's board of directors oversees corporate governance and
2179 internal controls and that the insurer's officers or senior management have approved,
2180 implemented, and continue to maintain and monitor corporate governance and internal control
2181 procedures; and

2182 (h) any other information required by rule made by the commissioner in accordance
2183 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2184 (3) All registration statements shall contain a summary outlining all items in the
2185 current registration statement representing changes from the prior registration statement.

2186 (4) No information need be disclosed on the registration statement filed pursuant to
2187 Subsection (2) if the information is not material for the purposes of this section. Unless the
2188 commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or
2189 extensions of credit, investments, or guarantees involving one-half of 1%, or less, of an
2190 insurer's admitted assets as of the next preceding December 31 may not be considered material
2191 for purposes of this section.

2192 (5) Subject to Section 31A-16-106, each registered insurer shall report to the
2193 commissioner a dividend or other distribution to shareholders within 15 business days
2194 following the declaration of the dividend or distribution.

2195 ~~[(5)]~~ (6) Any person within an insurance holding company system subject to
2196 registration shall provide complete and accurate information to an insurer if the information is
2197 reasonably necessary to enable the insurer to comply with the provisions of this chapter.

2198 ~~[(6)]~~ (7) The commissioner shall terminate the registration of any insurer which
2199 demonstrates that it no longer is a member of an insurance holding company system.

2200 ~~[(7)]~~ (8) The commissioner may require or allow two or more affiliated insurers subject
2201 to registration under this section to file a consolidated registration statement.

2202 ~~[(8)]~~ (9) The commissioner may allow an insurer which is authorized to do business in
2203 this state, and which is part of an insurance holding company system, to register on behalf of
2204 any affiliated insurer which is required to register under Subsection (1) and to file all
2205 information and material required to be filed under this section.

2206 ~~[(9) The provisions of this]~~ (10) This section ~~[do]~~ does not apply to any insurer,
2207 information, or transaction if, and to the extent that, the commissioner by rule or order exempts
2208 the insurer from ~~[the provisions of]~~ this section.

2209 ~~[(10)]~~ (11) Any person may file with the commissioner a disclaimer of affiliation with
2210 any authorized insurer, or a disclaimer of affiliation may be filed by any insurer or any member
2211 of an insurance holding company system. The disclaimer shall fully disclose all material
2212 relationships and bases for affiliation between the person and the insurer as well as the basis for
2213 disclaiming the affiliation. ~~[After a disclaimer has been filed, the insurer shall be relieved of~~
2214 ~~any duty to register or report under this section which may arise out of the insurer's relationship~~
2215 ~~with the person unless and until the commissioner disallows the disclaimer. The commissioner~~
2216 ~~shall disallow a disclaimer only after furnishing all parties in interest with notice and~~
2217 ~~opportunity to be heard, and after making specific findings of fact to support the disallowance.]~~
2218 A disclaimer of affiliation is considered to have been granted unless the commissioner, within
2219 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is
2220 disallowed. If disallowed, the disclaiming party may request an administrative hearing, which
2221 shall be granted. The disclaiming party shall be relieved of its duty to register under this
2222 section if approval of the disclaimer is granted by the commissioner, or if the disclaimer is
2223 considered to have been approved.

2224 (12) The ultimate controlling person of an insurer subject to registration shall also file
2225 an annual enterprise risk report. The annual enterprise risk report shall, to the best of the

2226 ultimate controlling person's knowledge and belief, identify the material risks within the
2227 insurance holding company that could pose enterprise risk to the insurer. The annual enterprise
2228 risk report shall be filed with the lead state commissioner of the insurance holding company
2229 system as determined by the procedures within the Financial Analysis Handbook adopted by
2230 the National Association of Insurance Commissioners.

2231 [~~(H)~~] (13) The failure to file a registration statement or any summary of the
2232 registration statement or enterprise risk filing required by this section within the time specified
2233 for the filing is a violation of this section.

2234 Section 12. Section **31A-16-106** is amended to read:

2235 **31A-16-106. Standards and management of an insurer within a holding company**
2236 **system.**

2237 (1) (a) Transactions within [~~a~~] an insurance holding company system to which an
2238 insurer subject to registration is a party are subject to the following standards:

2239 (i) the terms shall be fair and reasonable;

2240 (ii) agreements for cost sharing services and management shall include the provisions
2241 required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah
2242 Administrative Rulemaking Act;

2243 [~~(ii)~~] (iii) charges or fees for services performed shall be reasonable;

2244 [~~(iii)~~] (iv) expenses incurred and payment received shall be allocated to the insurer in
2245 conformity with customary insurance accounting practices consistently applied;

2246 [~~(iv)~~] (v) the books, accounts, and records of each party to all transactions shall be so
2247 maintained as to clearly and accurately disclose the nature and details of the transactions,
2248 including the accounting information necessary to support the reasonableness of the charges or
2249 fees to the respective parties; and

2250 [~~(v)~~] (vi) the insurer's surplus held for policyholders, following any dividends or
2251 distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding
2252 liabilities and shall be adequate to its financial needs.

2253 (b) The following transactions involving a domestic insurer and any person in its
2254 insurance holding company system, including amendments or modifications of affiliate
2255 agreements previously filed pursuant to this section, which are subject to any materiality
2256 standards contained in Subsections (1)(a)(i) through (vi), may not be entered into unless the

2257 insurer has notified the commissioner in writing of its intention to enter into the transaction at
2258 least 30 days ~~[prior to]~~ before entering into the transaction, or within any shorter period the
2259 commissioner may permit, if the commissioner has not disapproved the transaction within the
2260 period~~[-]~~. The notice for an amendment or modification shall include the reasons for the change
2261 and financial impact on the domestic insurer. Informal notice shall be reported, within 30 days
2262 after a termination of a previously filed agreement, to the commissioner for determination of
2263 the type of filing required, if any:

2264 (i) sales, purchases, exchanges, loans or extensions of credit, guarantees, or
2265 investments if the transactions are equal to, or exceed as of the next preceding December 31:

2266 (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of
2267 surplus held for policyholders;

2268 (B) for life insurers, 3% of the insurer's admitted assets;

2269 (ii) loans or extensions of credit made to any person who is not an affiliate, if the
2270 insurer makes the loans or extensions of credit with the agreement or understanding that the
2271 proceeds of the transactions, in whole or in substantial part, are to be used to make loans or
2272 extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the
2273 insurer making the loans or extensions of credit if the transactions are equal to, or exceed as of
2274 the next preceding December 31:

2275 (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of
2276 surplus held for policyholders;

2277 (B) for life insurers, 3% of the insurer's admitted assets;

2278 (iii) reinsurance agreements or modifications to reinsurance agreements ~~[in which the~~
2279 ~~reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the~~
2280 ~~insurer's surplus held for policyholders, as of the next preceding December 31, including those~~
2281 ~~agreements which may require as consideration the transfer of assets from an insurer to a~~
2282 ~~nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate~~
2283 ~~that any portion of the assets will be transferred to one or more affiliates of the insurer;]~~
2284 including an agreement in which the reinsurance premium, a change in the insurer's liabilities,
2285 or the projected reinsurance premium or a change in the insurer's liabilities in any of the current
2286 and succeeding three years, equals or exceeds 5% of the insurer's surplus held for
2287 policyholders, as of the next preceding December 31, including those agreements that may

2288 require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement
2289 or understanding exists between the insurer and the non-affiliate that any portion of the assets
2290 will be transferred to one or more affiliates of the reinsurer;

2291 (iv) all management agreements, service contracts, tax allocation agreements, and all
2292 cost-sharing arrangements;

2293 (v) guarantees when made by a domestic insurer, except that:

2294 (A) a guarantee that is quantifiable as to amount is not subject to the notice
2295 requirements of this Subsection (1) unless it exceeds the lesser of .5% of the insurer's admitted
2296 assets or 10% of surplus held for policyholders, as of the next preceding December 31; and

2297 (B) a guarantee that is not quantifiable as to amount is subject to the notice
2298 requirements of this Subsection (1);

2299 (vi) direct or indirect acquisitions or investments in a person that controls the insurer or
2300 in an affiliate of the insurer in an amount that, together with its present holdings in the
2301 investments, exceeds 2.5% of the insurer's surplus to policyholders, except that a direct or
2302 indirect acquisition or investment in a subsidiary acquired pursuant to Section [31A-16-102.5](#),
2303 or in a non-subsidiary insurance affiliate that is subject to this chapter, is exempt from this
2304 Subsection (1)(b)(vi);

2305 [~~(v)~~] (vii) any material transactions, specified by rule, which the commissioner
2306 determines may adversely affect the interests of the insurer's policyholders; and

2307 [~~(vi) this subsection~~] (viii) this Subsection (1) may not be interpreted to authorize or
2308 permit any transactions which would be otherwise contrary to law in the case of an insurer not
2309 a member of the same holding company system.

2310 (c) A domestic insurer may not enter into transactions which are part of a plan or series
2311 of like transactions with persons within the holding company system if the purpose of the
2312 separate transactions is to avoid the statutory threshold amount and thus to avoid the review by
2313 the commissioner that would occur otherwise. If the commissioner determines that the
2314 separate transactions were entered into over any 12 month period for such a purpose, [~~he~~] the
2315 commissioner may exercise [~~his~~] the commissioner's authority under Section [31A-16-110](#).

2316 (d) The commissioner, in reviewing transactions pursuant to Subsection (1)(b), shall
2317 consider whether the transactions comply with the standards set forth in Subsection (1)(a) and
2318 whether they may adversely affect the interests of policyholders.

2319 (e) The commissioner shall be notified within 30 days of any investment of the
2320 domestic insurer in any one corporation, if the total investment in the corporation by the
2321 insurance holding company system exceeds 10% of the corporation's voting securities.

2322 (2) (a) A domestic insurer may not pay any extraordinary dividend or make any other
2323 extraordinary distribution to its shareholders until:

2324 (i) 30 days after the commissioner has received notice of the declaration of the
2325 dividend and has not within the 30-day period disapproved the payment; or

2326 (ii) the commissioner has approved the payment within the 30-day period.

2327 (b) For purposes of this ~~[subsection]~~ Subsection (2), an extraordinary dividend or
2328 distribution includes any dividend or distribution of cash or other property, fair market value of
2329 which, together with that of other dividends or distributions made within the preceding 12
2330 months, exceeds the lesser of:

2331 (i) 10% of the insurer's surplus held for policyholders as of the next preceding
2332 December 31; ~~[or]~~

2333 (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net
2334 income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month
2335 period ending the next preceding December 31; or

2336 (iii) an extraordinary dividend does not include pro rata distributions of any class of the
2337 insurer's own securities.

2338 (c) In determining whether a dividend or distribution is extraordinary, an insurer other
2339 than a life insurer may carry forward net income from the previous two calendar years that has
2340 not already been paid out as dividends. This carry-forward shall be computed by taking the net
2341 income from the second and third preceding calendar years, not including realized capital
2342 gains, less dividends paid in the second and immediate preceding calendar years.

2343 (d) Notwithstanding any other provision of law, an insurer may declare an
2344 extraordinary dividend or distribution, which is conditioned upon the commissioner's approval
2345 of the dividend or distribution, and the declaration shall confer no rights upon shareholders
2346 until:

2347 (i) the commissioner has approved the payment of the dividend or distribution; or

2348 (ii) the commissioner has not disapproved the payment within the 30-day period
2349 referred to in Subsection (2)(a).

2350 (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers
2351 and directors of the insurer may not be relieved of any obligation or liability to which they
2352 would otherwise be subject by law, and the insurer shall be managed so as to assure its separate
2353 operating identity consistent with this chapter.

2354 (b) Nothing in this section precludes a domestic insurer from having or sharing a
2355 common management or cooperative or joint use of personnel, property, or services with one or
2356 more other persons under arrangements meeting the standards of Subsection (1)(a).

2357 (c) (i) Not less than one-third of the directors of a domestic insurer, and not less than
2358 one-third of the members of each committee of the board of directors of a domestic insurer,
2359 shall be persons who are not officers or employees of the insurer or of any entity controlling,
2360 controlled by, or under common control with the insurer and who are not beneficial owners of a
2361 controlling interest in the voting stock of the insurer or entity.

2362 (ii) At least one person described in Subsection (3)(c)(i) shall be included in a quorum
2363 for the transaction of business at a meeting of the board of directors or a committee of the
2364 board of directors.

2365 (d) Subsection (3)(c) does not apply to a domestic insurer if the person controlling the
2366 insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation,
2367 has a board of directors and committees of the board of directors that meet the requirements of
2368 Subsection (3)(c) with respect to the controlling entity.

2369 (e) An insurer may make application to the commissioner for a waiver from the
2370 requirements of this Subsection (3) if the insurer's annual direct written and assumed premium,
2371 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood
2372 Program, is less than \$300,000,000. An insurer may also make application to the
2373 commissioner for a waiver from the requirements of this Subsection (3) based upon unique
2374 circumstances. The commissioner may consider various factors, including:

2375 (i) the type of business entity;

2376 (ii) the volume of business written;

2377 (iii) the availability of qualified board members; or

2378 (iv) the ownership or organizational structure of the entity.

2379 (4) (a) For purposes of this chapter, in determining whether an insurer's surplus as
2380 regards policyholders is reasonable in relation to the insurer's outstanding liabilities and

2381 adequate to meet its financial needs, the following factors, among others, shall be considered:

2382 (i) the size of the insurer as measured by its assets, capital and surplus, reserves,

2383 premium writings, insurance in force, and other appropriate criteria;

2384 (ii) the extent to which the insurer's business is diversified among several lines of

2385 insurance;

2386 (iii) the number and size of risks insured in each line of business;

2387 (iv) the extent of the geographical dispersion of the insurer's insured risks;

2388 (v) the nature and extent of the insurer's reinsurance program;

2389 (vi) the quality, diversification, and liquidity of the insurer's investment portfolio;

2390 (vii) the recent past and projected future trend in the size of the insurer's investment

2391 portfolio;

2392 (viii) the surplus as regards policyholders maintained by other comparable insurers;

2393 (ix) the adequacy of the insurer's reserves; and

2394 (x) the quality and liquidity of investments in affiliates.

2395 (b) The commissioner may treat an investment described in Subsection (4)(a)(x) as a

2396 disallowed asset for purposes of determining the adequacy of surplus as regards policyholders

2397 whenever in the judgment of the commissioner the investment so warrants.

2398 Section 13. Section **31A-16-107.5**, which is renumbered from Section 31A-16-108 is

2399 renumbered and amended to read:

2400 ~~[31A-16-108].~~ **31A-16-107.5. Examination of registered insurers.**

2401 (1) Subject to the limitation contained in this section and the powers which the

2402 commissioner has under Chapter 2, Administration of the Insurance Laws, relating to the

2403 examination of insurers, the commissioner has the power to ~~[order any]~~ examine an insurer

2404 registered under Section **31A-16-105** ~~[to produce the records, books, or other informational~~

2405 ~~papers in the possession of the insurer or its affiliates which the commissioner considers~~

2406 necessary] and its affiliates to ascertain the financial condition ~~[or legality of conduct]~~ of the

2407 insurer~~[. If an insurer fails to comply with this order, the commissioner may examine the~~

2408 ~~affiliates to obtain the information.],~~ including the enterprise risk to the insurer by the ultimate

2409 controlling party, or by the insurance holding company system on a consolidated basis.

2410 ~~[(2) The commissioner shall exercise his power under Subsection (1) only if the~~

2411 ~~examination of the insurer under Chapter 2 is inadequate, or the interests of the policyholders~~

2412 of the insurer may be adversely affected if the commissioner fails to exercise his power.]

2413 (2) (a) The commissioner may order an insurer registered under Section 31A-16-105 to
2414 produce the records, books, or other information papers in the possession of the insurer or its
2415 affiliates as are reasonably necessary to determine compliance with this chapter.

2416 (b) To determine compliance with this chapter, the commissioner may order an insurer
2417 registered under Section 31A-16-105 to produce information not in the possession of the
2418 insurer if the insurer can obtain access to the information pursuant to contractual relationships,
2419 statutory obligations, or other methods.

2420 (c) If an insurer cannot obtain the information requested by the commissioner, the
2421 insurer shall provide the commissioner a detailed explanation of the reason that the insurer
2422 cannot obtain the information and the identity of the holder of the information.

2423 (d) Whenever it appears to the commissioner that the detailed explanation is without
2424 merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of
2425 \$5,000 for each day's delay, or may suspend or revoke the insurer's license.

2426 (3) The commissioner may retain, at the registered insurer's expense, attorneys,
2427 actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, if
2428 they are necessary to assist in the conduct of the examination under Subsection (1). Any
2429 persons so retained are under the direction and control of the commissioner and shall act in a
2430 purely advisory capacity.

2431 (4) ~~Each~~ A registered insurer who produces records, books, and papers under
2432 Subsection (1) for examination is liable for and shall pay the expense of the examination under
2433 Section 31A-2-205.

2434 (5) If an insurer fails to comply with an order issued under this section, the
2435 commissioner may:

2436 (a) examine the affiliates to obtain the information; or

2437 (b) issue subpoenas, administer oaths, and examine under oath any person for purposes
2438 of determining compliance with this section.

2439 (6) Upon the failure or refusal of any person to obey a subpoena under Subsection (5),
2440 the commissioner may petition the Third District Court of Salt Lake County to enter an order
2441 compelling the witness to appear and testify or produce documentary evidence. A person shall
2442 be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed,

2443 anywhere within the state. A person subpoenaed is entitled to the same fees and mileage, if
2444 claimed, as a witness in the Third District Court of Salt Lake County, which fees, mileage, and
2445 actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their
2446 testimony, shall be itemized and charged against, and be paid by, the company being examined.

2447 Section 14. Section **31A-16-108.5** is enacted to read:

2448 **31A-16-108.5. Supervisory colleges.**

2449 (1) (a) For an insurer registered under Section [31A-16-105](#) and in accordance with
2450 Subsection (3), the commissioner may participate in a supervisory college for a domestic
2451 insurer that is part of an insurance holding company system with international operations to
2452 determine compliance by the insurer with this chapter. The powers of the commissioner with
2453 respect to supervisory colleges include the following:

2454 (i) initiating the establishment of a supervisory college;

2455 (ii) clarifying the membership and participation of other supervisors in the supervisory
2456 college;

2457 (iii) clarifying the functions of the supervisory college and the role of other regulators,
2458 including the establishment of a group-wide supervisor;

2459 (iv) coordinating the ongoing activities of the supervisory college, including:

2460 (A) planning meetings;

2461 (B) supervisory activities; and

2462 (C) processes for information sharing; and

2463 (v) establishing a crisis management plan.

2464 (2) (a) A registered insurer subject to this section is liable for and shall pay the
2465 reasonable expenses of the commissioner's participation in a supervisory college in accordance
2466 with Subsection (3), including reasonable travel expenses.

2467 (b) For purposes of this section, a supervisory college may be convened as either a
2468 temporary or permanent forum for communication and cooperation between the regulators
2469 charged with supervision of the insurer or its affiliates and the commissioner may establish a
2470 regular assessment to the insurer for the payment of these expenses.

2471 (3) (a) The commissioner may participate in a supervisory college with other regulators
2472 charged with supervision of the insurer or its affiliates, including:

2473 (i) other state regulatory agencies;

2474 (ii) federal regulatory agencies; or

2475 (iii) international regulatory agencies.

2476 (b) The commissioner may enter into agreements in accordance with Section

2477 31A-16-109 providing the basis for cooperation between the commissioner and other

2478 regulatory agencies, and the activities of the supervisory college, in order to assess:

2479 (i) the business strategy;

2480 (ii) financial position;

2481 (iii) legal and regulatory position;

2482 (iv) risk exposure; and

2483 (v) management and governance processes.

2484 (c) Nothing in this section shall delegate to the supervisory college the authority of the

2485 commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

2486 Section 15. Section **31A-16-109** is amended to read:

2487 **31A-16-109. Confidentiality of information obtained by commissioner.**

2488 ~~[All information]~~ (1) Information, documents, and copies of these ~~[which]~~ that are

2489 obtained by or disclosed to the commissioner or any other person in the course of an

2490 examination or investigation made under Section ~~[31A-16-108]~~ 31A-16-107.5, and all

2491 information reported under Section 31A-16-105, is confidential. It is not subject to subpoena

2492 and may not be made public by the commissioner or any other person, except it may be

2493 provided to the insurance departments of other states, without the prior written consent of the

2494 insurer to which it pertains. The confidentiality of this section does not apply if the

2495 commissioner, after giving the insurer and its affiliates who would be affected by the

2496 disclosure, proper notice and an opportunity to be heard, and determines that the interests of

2497 policyholders, shareholders, or the public will be served by the publication of the information.

2498 In this situation, the commissioner may publish all or any part of the information in any manner

2499 ~~[he]~~ the commissioner considers appropriate.

2500 (2) The commissioner and any person who received documents, materials, or other

2501 information while acting under the authority of the commissioner or with whom the

2502 documents, materials, or other information are shared pursuant to this chapter shall keep

2503 confidential any confidential documents, materials, or information subject to Subsection (1).

2504 (3) (a) To assist in the performance of the commissioner's duties, the commissioner:

2505 (i) may share documents, materials, or other information, including the confidential
2506 documents, materials, or information subject to Subsection (1), with the following if the
2507 recipient agrees in writing to maintain the confidentiality status of the document, material, or
2508 other information, and has verified in writing the legal authority to maintain confidentiality:
2509 (A) other state, federal, and international regulatory agencies;
2510 (B) the National Association of Insurance Commissioners and its affiliates and
2511 subsidiaries; and
2512 (C) state, federal, and international law enforcement authorities, including members of
2513 a supervisory college described in Section [31A-16-108.5](#);
2514 (ii) notwithstanding Subsection (1), may only share confidential documents, material,
2515 or information reported pursuant to Section [31A-16-105](#) with commissioners of states having
2516 statutes or regulations substantially similar to Subsection (1) and who have agreed in writing
2517 not to disclose the documents, material, or information;
2518 (iii) may receive documents, materials, or information, including otherwise
2519 confidential documents, materials, or information from the National Association of Insurance
2520 Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement
2521 officials of other foreign or domestic jurisdictions, and shall maintain as confidential any
2522 document, material, or information received with notice or the understanding that it is
2523 confidential under the laws of the jurisdiction that is the source of the document, material, or
2524 information; and
2525 (iv) shall enter into written agreements with the National Association of Insurance
2526 Commissioners governing sharing and use of information provided pursuant to this chapter
2527 consistent with this Subsection (3) that shall:
2528 (A) specify procedures and protocols regarding the confidentiality and security of
2529 information shared with the National Association of Insurance Commissioners and its affiliates
2530 and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the
2531 National Association of Insurance Commissioners with other state, federal, or international
2532 regulators;
2533 (B) specify that ownership of information shared with the National Association of
2534 Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter remains
2535 with the commissioner and the National Association of Insurance Commissioner's use of the

2536 information is subject to the direction of the commissioner;

2537 (C) require prompt notice to be given to an insurer whose confidential information in
2538 the possession of the National Association of Insurance Commissioners pursuant to this chapter
2539 is subject to a request or subpoena to the National Association of Insurance Commissioners for
2540 disclosure or production; and

2541 (D) require the National Association of Insurance Commissioners and its affiliates and
2542 subsidiaries to consent to intervention by an insurer in any judicial or administrative action in
2543 which the National Association of Insurance Commissioners and its affiliates and subsidiaries
2544 may be required to disclose confidential information about the insurer shared with the National
2545 Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this
2546 chapter.

2547 (4) The sharing of information by the commissioner pursuant to this chapter does not
2548 constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely
2549 responsible for the administration, execution, and enforcement of this chapter.

2550 (5) A waiver of any applicable claim of confidentiality in the documents, materials, or
2551 information does not occur as a result of disclosure to the commissioner under this section or
2552 as a result of sharing as authorized in Subsection (3).

2553 (6) Documents, materials, or other information in the possession or control of the
2554 National Association of Insurance Commissioners pursuant to this chapter are:

2555 (a) confidential, not public records, and not open to public inspection; and

2556 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
2557 Act.

2558 Section 16. Section **31A-16-112** is enacted to read:

2559 **31A-16-112. Sanctions.**

2560 (1) (a) Notwithstanding Section [31A-2-308](#), the following sanctions apply:

2561 (i) An insurer failing, without just cause, to file a registration statement required by this
2562 chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to
2563 be recovered by the commissioner and the penalty so recovered shall be paid into the General
2564 Fund.

2565 (ii) The maximum penalty under this section is \$250,000.

2566 (b) The commissioner may reduce the penalty if the insurer demonstrates to the

2567 commissioner that the imposition of the penalty would constitute a financial hardship to the
2568 insurer.

2569 (2) A director or officer of an insurance holding company system who knowingly
2570 violates, participates in, or assents to, or who knowingly shall permit any of the officers or
2571 agents of the insurer to engage in transactions or make investments that have not been properly
2572 reported or submitted pursuant to Subsection [31A-16-105\(1\)](#), [31A-16-106\(1\)\(b\)](#), or
2573 [31A-16-106\(2\)](#), or that violates this chapter, shall pay, in the director's or officer's individual
2574 capacity, a civil forfeiture of not more than \$10,000 per violation, notwithstanding Section
2575 [31A-2-308](#), after notice and hearing before the commissioner. In determining the amount of
2576 the civil forfeiture, the commissioner shall take into account the appropriateness of the
2577 forfeiture with respect to the gravity of the violation, the history of previous violations, and
2578 such other matters as justice may require.

2579 (3) Whenever it appears to the commissioner that any insurer subject to this chapter or
2580 a director, officer, employee, or agent of the insurer has engaged in any transaction or entered
2581 into a contract that is subject to Section [31A-16-106](#) and that would not have been approved
2582 had the approval been requested, the commissioner may order the insurer to cease and desist
2583 immediately any further activity under that transaction or contract. After notice and hearing,
2584 the commissioner may also order the insurer to void any contract and restore the status quo if
2585 the action is in the best interest of the policyholders, creditors, or the public.

2586 (4) Whenever it appears to the commissioner that an insurer or any director, officer,
2587 employee, or agent of the insurer has committed a willful violation of this chapter, the
2588 commissioner may refer the case to the appropriate prosecutor. Venue for the criminal action
2589 shall be in the Third District Court of Salt Lake County, against the insurer or the responsible
2590 director, officer, employee, or agent of the insurer. An insurer that willfully violates this
2591 chapter may be fined not more than \$250,000 notwithstanding Section [31A-2-308](#). An
2592 individual who willfully violates this chapter may be fined in the individual's individual
2593 capacity not more than \$100,000 notwithstanding Section [31A-2-308](#) and is guilty of a
2594 third-degree felony.

2595 (5) An officer, director, or employee of an insurance holding company system who
2596 willfully and knowingly subscribes to or makes or causes to be made any false statements, false
2597 reports, or false filings with the intent to deceive the commissioner in the performances of the

2598 commissioner's duties under this chapter, is guilty of a third-degree felony. Any fines imposed
2599 shall be paid by the officer, director, or employee in the officer's, director's, or employee's
2600 individual capacity.

2601 (6) Whenever it appears to the commissioner that a person has committed a violation
2602 of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the
2603 insurer by affiliates or by the insurance holding company system, the violation may serve as an
2604 independent basis for disapproving dividends or distributions and for placing the insurer under
2605 an order of supervision in accordance with Section 31A-27-503.

2606 Section 17. Section 31A-16-113 is enacted to read:

2607 **31A-16-113. Receivership.**

2608 Whenever it appears to the commissioner that a person has committed a violation of
2609 this chapter that so impairs the financial condition of a domestic insurer as to threaten
2610 insolvency or make the further transaction of business by it hazardous to its policyholders,
2611 creditors, shareholders, or the public, then the commissioner may proceed as provided in
2612 Section 31A-16-114 to take possession of the property of the domestic insurer and to conduct
2613 its business.

2614 Section 18. Section 31A-16-114 is enacted to read:

2615 **31A-16-114. Recovery.**

2616 (1) If an order for liquidation or rehabilitation of a domestic insurer is entered, the
2617 receiver appointed under the order shall have a right to recover on behalf of the insurer:

2618 (a) from any parent corporation, holding company, or person or affiliate who otherwise
2619 controlled the insurer, the amount of distributions other than distributions of shares of the same
2620 class of stock paid by the insurer on its capital stock; or

2621 (b) any payment in the form of a bonus, termination settlement, or extraordinary lump
2622 sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee,
2623 when the distribution or payment pursuant to Subsection (1)(a) or this Subsection (1)(b) is
2624 made at any time during the one year preceding the petition for liquidation, conservation, or
2625 rehabilitation, as the case may be, subject to the limitations of Subsections (2), (3), and (4).

2626 (2) A distribution may not be recovered if the parent or affiliate shows that when paid
2627 the distribution was lawful and reasonable and that the insurer did not know and could not
2628 reasonably have known that the distribution might adversely affect the ability of the insurer to

2629 fulfill its contractual obligations.

2630 (3) A person who was a parent corporation or holding company or a person who
2631 otherwise controlled the insurer or affiliate at the time the distributions were paid shall be
2632 liable up to the amount of distributions or payments under Subsection (1) that the person
2633 received. A person who otherwise controlled the insurer at the time the distributions were
2634 declared is liable up to the amount of distributions that would have been received if they had
2635 been paid immediately. If two or more persons are liable with respect to the same
2636 distributions, they shall be jointly and severally liable.

2637 (4) The maximum amount recoverable under this section shall be the amount needed in
2638 excess of all other available assets of the impaired or insolvent insurer to pay the contractual
2639 obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

2640 (5) To the extent that any person liable under Subsection (3) is insolvent or otherwise
2641 fails to pay claims due from the person, its parent corporation, holding company, or person who
2642 otherwise controlled it at the time the distribution was paid, are jointly and severally liable for
2643 any resulting deficiency in the amount recovered from the parent corporation or holding
2644 company or person who otherwise controlled it.

2645 Section 19. Section **31A-16-115** is enacted to read:

2646 **31A-16-115. Revocation, suspension, or nonrenewal of insurer's license.**

2647 Whenever it appears to the commissioner that a person has committed a violation of
2648 this chapter that makes the continued operation of an insurer contrary to the interests of
2649 policyholders or the public, the commissioner may, after giving notice and an opportunity to be
2650 heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in
2651 this state for such period as the commissioner finds is required for the protection of
2652 policyholders or the public. Any such determination shall be accompanied by specific findings
2653 of fact and conclusions of law.

2654 Section 20. Section **31A-16-116** is enacted to read:

2655 **31A-16-116. Rules and orders.**

2656 The commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
2657 Rulemaking Act, may make rules necessary to carry out this chapter. The commissioner may
2658 issue orders as is necessary to carry out this chapter.

2659 Section 21. Section **31A-16-117** is enacted to read:

2660 **31A-16-117. Judicial review -- Mandamus.**

2661 (1) A person aggrieved by an act, determination, rule, or order or any other action of
2662 the commissioner pursuant to this chapter may seek judicial review in accordance with Title
2663 63G, Chapter 4, Administrative Procedures Act.

2664 (2) The filing of an appeal pursuant to this section shall stay the application of any rule,
2665 order, or other action of the commissioner to the appealing party unless the court, after giving
2666 party notice and an opportunity to be heard, determines that a stay would be detrimental to the
2667 interest of policyholders, shareholders, creditors, or the public.

2668 (3) A person aggrieved by a failure of the commissioner to act or make a determination
2669 required by this chapter may petition the Third District Court of Salt Lake County for writ in
2670 the nature of a mandamus or a peremptory mandamus directing the commissioner to act or
2671 make a determination.

2672 Section 22. Section **31A-16-118** is enacted to read:

2673 **31A-16-118. Conflict with other laws.**

2674 If any law or part of a law of this state is inconsistent with this chapter, this chapter
2675 governs.

2676 Section 23. Section **31A-16-119** is enacted to read:

2677 **31A-16-119. Severability.**

2678 If any chapter, section, or subsection of this chapter or the application of any chapter,
2679 section, or subsection to any person or circumstance is held invalid, the remainder of the
2680 provisions of this chapter shall be given effect without the invalid provision or application.
2681 The provisions of this chapter are severable.

2682 Section 24. Section **31A-21-313** is amended to read:

2683 **31A-21-313. Limitation of actions.**

2684 (1) (a) An action on a written policy or contract of first party insurance shall be
2685 commenced within three years after the inception of the loss.

2686 (b) The inception of the loss on a fidelity bond is the date the insurer first denies all or
2687 part of a claim made under the fidelity bond.

2688 (2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to
2689 limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on
2690 insurance policies.

2691 (3) An insurance policy may not:
 2692 (a) limit the time for beginning an action on the policy to a time less than that
 2693 authorized by statute;
 2694 (b) prescribe in what court an action may be brought on the policy; or
 2695 (c) provide that no action may be brought, subject to permissible arbitration provisions
 2696 in contracts.

2697 (4) Unless by verified complaint it is alleged that prejudice to the complainant will
 2698 arise from a delay in bringing suit against an insurer, which prejudice is other than the delay
 2699 itself, no action may be brought against an insurer on an insurance policy to compel payment
 2700 under the policy until the earlier of:

- 2701 (a) 60 days after proof of loss has been furnished as required under the policy;
- 2702 (b) waiver by the insurer of proof of loss; or
- 2703 (c) the insurer's denial of full payment.

2704 (5) The period of limitation is tolled during the period in which the parties conduct an
 2705 appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by
 2706 the parties.

2707 Section 25. Section **31A-21-314** is amended to read:

2708 **31A-21-314. Prohibited provisions.**

2709 ~~[(1)]~~ (1) An insurance policy subject to this chapter may contain any provision:

2710 ~~[(1)]~~ (a) requiring it to be construed according to the laws of another jurisdiction
 2711 except as necessary to meet the requirements of compulsory insurance laws of other
 2712 jurisdictions;

2713 ~~[(2)]~~ (b) depriving Utah courts of jurisdiction over an action against the insurer, except
 2714 as provided in permissible arbitration provisions; or

2715 ~~[(3)]~~ (c) limiting the right of action against the insurer to less than three years from the
 2716 date the cause of action accrues.

2717 (2) For purposes of Subsection (1)(c), the cause of action accrues on a fidelity bond on
 2718 the date the insurer first denies all or part of a claim made under the fidelity bond.

2719 Section 26. Section **31A-22-504** is amended to read:

2720 **31A-22-504. Trustee groups.**

2721 (1) Group life insurance policies may be issued to:

2722 (a) policyholders who are the trustees of a fund established by two or more employers,
2723 by one or more labor unions, or similar employee organizations, or by one or more employers
2724 and one or more labor unions or similar employee organizations, to insure employees of the
2725 employers or members of the unions or the organizations for the benefit of persons other than
2726 the employers, the unions, or the organizations[-]; or

2727 (b) notwithstanding Subsection [31A-22-501\(2\)](#), a Taft Hartley trust created in
2728 accordance with Section 302(c)(5) of the Federal Labor Management Relations Act.

2729 (2) These policies are subject to the following requirements:

2730 [+] (a) The persons eligible for insurance are all of the employees of the employers or
2731 all of the members of the unions or organizations, or all of any classes of employees or
2732 members. The policy may include retired employees, elected and appointed officials of a
2733 public agency if the employees of the agency are insured, and individual proprietors or partners
2734 who are employers. The policy may include the trustees or their employees, or both, if their
2735 duties are principally connected with the trusteeship.

2736 [+] (b) The premiums for the policy are paid by the policyholders from funds
2737 contributed by the employers, unions, or similar employee organizations, or from funds
2738 contributed by the insured persons, or any combination of these. Except as provided under
2739 Section [31A-22-512](#), a policy on which no part of the premium is contributed by the insured
2740 persons specifically for their insurance is required to insure all eligible persons.

2741 Section 27. Section [31A-22-612](#) is amended to read:

2742 **[31A-22-612. Conversion privileges for insured former spouse.](#)**

2743 (1) An accident and health insurance policy, which in addition to covering the insured
2744 also provides coverage to the spouse of the insured, may not contain a provision for
2745 termination of coverage of a spouse covered under the policy, except by entry of a valid decree
2746 of divorce or annulment between the parties.

2747 (2) Every policy which contains this type of provision shall provide that upon the entry
2748 of the divorce decree the spouse is entitled to have issued an individual policy of accident and
2749 health insurance without evidence of insurability, upon application to the company and
2750 payment of the appropriate premium. The policy shall provide the coverage being issued
2751 which is most nearly similar to the terminated coverage. Probationary or waiting periods in the
2752 policy are considered satisfied to the extent the coverage was in force under the prior policy.

2753 (3) When the insurer receives actual notice that the coverage of a spouse is to be
2754 terminated because of a divorce or annulment, the insurer shall promptly provide the spouse
2755 written notification of the right to obtain individual coverage as provided in Subsection (2), the
2756 premium amounts required, and the manner, place, and time in which premiums may be paid.
2757 The premium is determined in accordance with the insurer's table of premium rates applicable
2758 to the age and class of risk of the persons to be covered and to the type and amount of coverage
2759 provided. If the spouse applies and tenders the first monthly premium to the insurer within 30
2760 days after receiving the notice provided by this Subsection (3), the spouse shall receive
2761 individual coverage that commences immediately upon termination of coverage under the
2762 insured's policy.

2763 (4) This section does not apply to accident and health insurance policies offered on a
2764 group blanket basis or a health benefit plan.

2765 Section 28. Section **31A-22-620** is amended to read:

2766 **31A-22-620. Medicare Supplement Insurance Minimum Standards Act.**

2767 (1) As used in this section:

2768 (a) "Applicant" means:

2769 (i) in the case of an individual Medicare supplement policy, the person who seeks to
2770 contract for insurance benefits; and

2771 (ii) in the case of a group Medicare supplement policy, the proposed certificate holder.

2772 (b) "Certificate" means any certificate delivered or issued for delivery in this state
2773 under a group Medicare supplement policy.

2774 (c) "Certificate form" means the form on which the certificate is delivered or issued for
2775 delivery by the issuer.

2776 (d) "Issuer" includes insurance companies, fraternal benefit societies, health care
2777 service plans, health maintenance organizations, and any other entity delivering, or issuing for
2778 delivery in this state, Medicare supplement policies or certificates.

2779 (e) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the
2780 Social Security Amendments of 1965, as then constituted or later amended.

2781 (f) "Medicare Supplement Policy":

2782 (i) means a group or individual policy of [~~disability~~] health insurance, other than a
2783 policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42

2784 U.S.C. [~~Section~~] Sec. 1395 et seq., or an issued policy under a demonstration project specified
2785 in 42 U.S.C. [~~Section~~] Sec. 1395ss(g)(1), that is advertised, marketed, or designed primarily as
2786 a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses
2787 of persons eligible for Medicare; and

2788 (ii) does not include Medicare Advantage plans established under Medicare Part C,
2789 outpatient prescription drug plans established under Medicare Part D, or any health care
2790 prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A)
2791 of the Social Security Act.

2792 (g) "Policy form" means the form on which the policy is delivered or issued for
2793 delivery by the issuer.

2794 (2) (a) Except as otherwise specifically provided, this section applies to:

2795 (i) all Medicare supplement policies delivered or issued for delivery in this state on or
2796 after the effective date of this section;

2797 (ii) all certificates issued under group Medicare supplement policies, that have been
2798 delivered or issued for delivery in this state on or after the effective date of this section; and

2799 (iii) policies or certificates that were in force prior to the effective date of this section,
2800 with respect to requirements for benefits, claims payment, and policy reporting practice under
2801 Subsection (3)(d), and loss ratios under Subsection (4).

2802 (b) This section does not apply to a policy of one or more employers or labor
2803 organizations, or of the trustees of a fund established by one or more employers or labor
2804 organizations, or a combination of employers and labor unions, for employees or former
2805 employees or a combination of employees and former employees, or for members or former
2806 members of the labor organizations, or a combination of members and former members of
2807 labor organizations.

2808 (c) This section does not prohibit, nor does it apply to insurance policies or health care
2809 benefit plans, including group conversion policies, provided to Medicare eligible persons that
2810 are not marketed or held out to be Medicare supplement policies or benefit plans.

2811 (3) (a) A Medicare supplement policy or certificate in force in the state may not contain
2812 benefits that duplicate benefits provided by Medicare.

2813 (b) Notwithstanding any other provision of law of this state, a Medicare supplement
2814 policy or certificate may not exclude or limit benefits for loss incurred more than six months

2815 from the effective date of coverage because it involved a preexisting condition. The policy or
2816 certificate may not define a preexisting condition more restrictively than: "A condition for
2817 which medical advice was given or treatment was recommended by or received from a
2818 physician within six months before the effective date of coverage."

2819 (c) The commissioner shall adopt rules to establish specific standards for policy
2820 provisions of Medicare supplement policies and certificates. The standards adopted shall be in
2821 addition to and in accordance with applicable laws of this state. A requirement of this title
2822 relating to minimum required policy benefits, other than the minimum standards contained in
2823 this section, may not apply to Medicare supplement policies and certificates. The standards
2824 may include:

- 2825 (i) terms of renewability;
- 2826 (ii) initial and subsequent conditions of eligibility;
- 2827 (iii) nonduplication of coverage;
- 2828 (iv) probationary periods;
- 2829 (v) benefit limitations, exceptions, and reductions;
- 2830 (vi) elimination periods;
- 2831 (vii) requirements for replacement;
- 2832 (viii) recurrent conditions; and
- 2833 (ix) definitions of terms.

2834 (d) The commissioner shall adopt rules establishing minimum standards for benefits,
2835 claims payment, marketing practices, compensation arrangements, and reporting practices for
2836 Medicare supplement policies and certificates.

2837 (e) The commissioner may adopt rules to conform Medicare supplement policies and
2838 certificates to the requirements of federal law and regulations, including:

- 2839 (i) requiring refunds or credits if the policies do not meet loss ratio requirements;
- 2840 (ii) establishing a uniform methodology for calculating and reporting loss ratios;
- 2841 (iii) assuring public access to policies, premiums, and loss ratio information of issuers
2842 of Medicare supplement insurance;
- 2843 (iv) establishing a process for approving or disapproving policy forms and certificate
2844 forms and proposed premium increases;
- 2845 (v) establishing a policy for holding public hearings prior to approval of premium

2846 increases;

2847 (vi) establishing standards for Medicare select policies and certificates; and

2848 (vii) nondiscrimination for genetic testing or genetic information.

2849 (f) The commissioner may adopt rules that prohibit policy provisions not otherwise
2850 specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or
2851 unfairly discriminatory to any person insured or proposed to be insured under a Medicare
2852 supplement policy or certificate.

2853 (4) Medicare supplement policies shall return to policyholders benefits that are
2854 reasonable in relation to the premium charged. The commissioner shall make rules to establish
2855 minimum standards for loss ratios of Medicare supplement policies on the basis of incurred
2856 claims experience, or incurred health care expenses where coverage is provided by a health
2857 maintenance organization on a service basis rather than on a reimbursement basis, and earned
2858 premiums in accordance with accepted actuarial principles and practices.

2859 (5) (a) To provide for full and fair disclosure in the sale of Medicare supplement
2860 policies, a Medicare supplement policy or certificate may not be delivered in this state unless
2861 an outline of coverage is delivered to the applicant at the time application is made.

2862 (b) The commissioner shall prescribe the format and content of the outline of coverage
2863 required by Subsection (5)(a).

2864 (c) For purposes of this section, "format" means style arrangements and overall
2865 appearance, including such items as the size, color, and prominence of type and arrangement of
2866 text and captions. The outline of coverage shall include:

2867 (i) a description of the principal benefits and coverage provided in the policy;

2868 (ii) a statement of the renewal provisions, including any reservation by the issuer of a
2869 right to change premiums; and disclosure of the existence of any automatic renewal premium
2870 increases based on the policyholder's age; and

2871 (iii) a statement that the outline of coverage is a summary of the policy issued or
2872 applied for and that the policy should be consulted to determine governing contractual
2873 provisions.

2874 (d) The commissioner may make rules for captions or notice if the commissioner finds
2875 that the rules are:

2876 (i) in the public interest; and

2877 (ii) designed to inform prospective insureds that particular insurance coverages are not
2878 Medicare supplement coverages, for all accident and health insurance policies sold to persons
2879 eligible for Medicare, other than:

2880 (A) a medicare supplement policy; or

2881 (B) a disability income policy.

2882 (e) The commissioner may prescribe by rule a standard form and the contents of an
2883 informational brochure for persons eligible for Medicare, that is intended to improve the
2884 buyer's ability to select the most appropriate coverage and improve the buyer's understanding of
2885 Medicare. Except in the case of direct response insurance policies, the commissioner may
2886 require by rule that the informational brochure be provided concurrently with delivery of the
2887 outline of coverage to any prospective insureds eligible for Medicare. With respect to direct
2888 response insurance policies, the commissioner may require by rule that the prescribed brochure
2889 be provided upon request to any prospective insureds eligible for Medicare, but in no event
2890 later than the time of policy delivery.

2891 (f) The commissioner may adopt reasonable rules to govern the full and fair disclosure
2892 of the information in connection with the replacement of accident and health policies,
2893 subscriber contracts, or certificates by persons eligible for Medicare.

2894 (6) Notwithstanding Subsection (1), Medicare supplement policies and certificates
2895 shall have a notice prominently printed on the first page of the policy or certificate, or attached
2896 to the front page, stating in substance that the applicant has the right to return the policy or
2897 certificate within 30 days of its delivery and to have the premium refunded if, after examination
2898 of the policy or certificate, the applicant is not satisfied for any reason. Any refund made
2899 pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

2900 (7) Every issuer of Medicare supplement insurance policies or certificates in this state
2901 shall provide a copy of any Medicare supplement advertisement intended for use in this state,
2902 whether through written or broadcast medium, to the commissioner for review.

2903 (8) The commissioner may adopt rules to conform Medicare and Medicare supplement
2904 policies and certificates to the marketing requirements of federal law and regulation.

2905 Section 29. Section **31A-23a-102** is amended to read:

2906 **31A-23a-102. Definitions.**

2907 As used in this chapter:

2908 (1) "Bail bond producer" is as defined in Section [31A-35-102](#).

2909 (2) "Designated home state" means the state or territory of the United States or the

2910 District of Columbia:

2911 (a) in which an insurance producer, limited lines producer, consultant, managing

2912 general agent, or reinsurance intermediary licensee does not maintain the licensee's principal:

2913 (i) place of residence; or

2914 (ii) place of business;

2915 (b) if the resident state, territory, or District of Columbia of the licensee does not

2916 license for the line of authority sought, the licensee has qualified for the license as if the person

2917 were a resident in the state, territory, or District of Columbia described in Subsection (2)(a),

2918 including an applicable:

2919 (i) examination requirement;

2920 (ii) fingerprint background check requirement; and

2921 (iii) continuing education requirement; and

2922 (c) if the licensee has designated the state, territory, or District of Columbia as the

2923 designated home state.

2924 ~~[(2)]~~ (3) "Home state" means:

2925 (a) a state or territory of the United States or the District of Columbia in which an

2926 insurance producer, limited lines producer, consultant, managing general agent, or reinsurance

2927 intermediary licensee:

2928 ~~[(a)]~~ (i) maintains the ~~[insurance producer's]~~ licensee's principal:

2929 ~~[(+)]~~ (A) place of residence; or

2930 ~~[(+)]~~ (B) place of business; and

2931 ~~[(b)]~~ (ii) is licensed to act as ~~[an insurance producer]~~ a resident licensee; or

2932 (b) if the resident state, territory, or the District of Columbia described in Subsection

2933 (3)(a) does not license for the line of authority sought, a state, territory, or the District of

2934 Columbia:

2935 (i) in which the licensee is licensed;

2936 (ii) in which the licensee is in good standing; and

2937 (iii) that the licensee has designated as the licensee's designated home state.

2938 ~~[(3)]~~ (4) "Insurer" is as defined in Section [31A-1-301](#), except that the following

2939 persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

2940 (a) a risk retention group as defined in:

2941 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

2942 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

2943 (iii) Chapter 15, Part 2, Risk Retention Groups Act;

2944 (b) a residual market pool;

2945 (c) a joint underwriting authority or association; and

2946 (d) a captive insurer.

2947 [~~4~~] (5) "License" is defined in Section 31A-1-301.

2948 [~~5~~] (6) (a) "Managing general agent" means a person that:

2949 (i) manages all or part of the insurance business of an insurer, including the
2950 management of a separate division, department, or underwriting office;

2951 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
2952 manager, or other similar term;

2953 (iii) produces and underwrites an amount of gross direct written premium equal to, or
2954 more than, 5% of the policyholder surplus as reported in the last annual statement of the insurer
2955 in any one quarter or year:

2956 (A) with or without the authority;

2957 (B) separately or together with an affiliate; and

2958 (C) directly or indirectly; and

2959 (iv) (A) adjusts or pays claims in excess of an amount determined by the
2960 commissioner; or

2961 (B) negotiates reinsurance on behalf of the insurer.

2962 (b) Notwithstanding Subsection [~~5~~] (6)(a), the following persons may not be
2963 considered as managing general agent for the purposes of this chapter:

2964 (i) an employee of the insurer;

2965 (ii) a United States manager of the United States branch of an alien insurer;

2966 (iii) an underwriting manager that, pursuant to contract:

2967 (A) manages all the insurance operations of the insurer;

2968 (B) is under common control with the insurer;

2969 (C) is subject to Chapter 16, Insurance Holding Companies; and

- 2970 (D) is not compensated based on the volume of premiums written; and
- 2971 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
- 2972 insurer or inter-insurance exchange under powers of attorney.
- 2973 ~~[(6)]~~ (7) "Negotiate" means the act of conferring directly with or offering advice
- 2974 directly to a purchaser or prospective purchaser of a particular contract of insurance concerning
- 2975 a substantive benefit, term, or condition of the contract if the person engaged in that act:
- 2976 (a) sells insurance; or
- 2977 (b) obtains insurance from insurers for purchasers.
- 2978 ~~[(7)]~~ (8) "Reinsurance intermediary" means:
- 2979 (a) a reinsurance intermediary-broker; or
- 2980 (b) a reinsurance intermediary-manager.
- 2981 ~~[(8)]~~ (9) "Reinsurance intermediary-broker" means a person other than an officer or
- 2982 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
- 2983 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
- 2984 or power to bind reinsurance on behalf of the insurer.
- 2985 ~~[(9)]~~ (10) (a) "Reinsurance intermediary-manager" means a person who:
- 2986 (i) has authority to bind or who manages all or part of the assumed reinsurance
- 2987 business of a reinsurer, including the management of a separate division, department, or
- 2988 underwriting office; and
- 2989 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
- 2990 intermediary-manager, manager, or other similar term.
- 2991 (b) Notwithstanding Subsection ~~[(9)]~~ (10)(a), the following persons may not be
- 2992 considered reinsurance intermediary-managers for the purpose of this chapter with respect to
- 2993 the reinsurer:
- 2994 (i) an employee of the reinsurer;
- 2995 (ii) a United States manager of the United States branch of an alien reinsurer;
- 2996 (iii) an underwriting manager that, pursuant to contract:
- 2997 (A) manages all the reinsurance operations of the reinsurer;
- 2998 (B) is under common control with the reinsurer;
- 2999 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 3000 (D) is not compensated based on the volume of premiums written; and

- 3001 (iv) the manager of a group, association, pool, or organization of insurers that:
- 3002 (A) engage in joint underwriting or joint reinsurance; and
- 3003 (B) are subject to examination by the insurance commissioner of the state in which the
- 3004 manager's principal business office is located.
- 3005 [~~(10)~~] (11) "Resident" is as defined by rule made by the commissioner in accordance
- 3006 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3007 [~~(11)~~] (12) "Search" means a license subline of authority in conjunction with the title
- 3008 insurance line of authority that allows a person to issue title insurance commitments or policies
- 3009 on behalf of a title insurer.
- 3010 [~~(12)~~] (13) "Sell" means to exchange a contract of insurance:
- 3011 (a) by any means;
- 3012 (b) for money or its equivalent; and
- 3013 (c) on behalf of an insurance company.
- 3014 [~~(13)~~] (14) "Solicit" means:
- 3015 (a) attempting to sell insurance;
- 3016 (b) asking or urging a person to apply for:
- 3017 (i) a particular kind of insurance; and
- 3018 (ii) insurance from a particular insurance company;
- 3019 (c) advertising insurance, including advertising for the purpose of obtaining leads for
- 3020 the sale of insurance; or
- 3021 (d) holding oneself out as being in the insurance business.
- 3022 [~~(14)~~] (15) "Terminate" means:
- 3023 (a) the cancellation of the relationship between:
- 3024 (i) an individual licensee or agency licensee and a particular insurer; or
- 3025 (ii) an individual licensee and a particular agency licensee; or
- 3026 (b) the termination of:
- 3027 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf
- 3028 of a particular insurance company; or
- 3029 (ii) an individual licensee's authority to transact insurance on behalf of a particular
- 3030 agency licensee.
- 3031 [~~(15)~~] (16) "Title marketing representative" means a person who:

3032 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

3033 (i) title insurance; or

3034 (ii) escrow services; and

3035 (b) does not have a search or escrow license as provided in Section 31A-23a-106.

3036 ~~[(16)]~~ (17) "Uniform application" means the version of the National Association of
3037 Insurance Commissioners' uniform application for resident and nonresident producer licensing
3038 at the time the application is filed.

3039 ~~[(17)]~~ (18) "Uniform business entity application" means the version of the National
3040 Association of Insurance Commissioners' uniform business entity application for resident and
3041 nonresident business entities at the time the application is filed.

3042 Section 30. Section 31A-23a-113 is amended to read:

3043 **31A-23a-113. License lapse and voluntary surrender.**

3044 (1) (a) A license issued under this chapter, including a line of authority, shall lapse if
3045 the licensee fails to:

3046 (i) pay when due a fee under Section 31A-3-103;

3047 (ii) complete continuing education requirements under Section 31A-23a-202 before
3048 submitting the license renewal application;

3049 (iii) submit a completed renewal application as required by Section 31A-23a-104;

3050 (iv) submit additional documentation required to complete the licensing process as
3051 related to a specific license type or line of authority; or

3052 (v) maintain an active license in a licensee's home state if the licensee is a nonresident
3053 licensee.

3054 (b) (i) A licensee whose license lapses may request reinstatement of the license and
3055 line of authority no more than one year after the day on which the license lapses.

3056 (ii) A licensee whose license lapses due to the following may request an action
3057 described in Subsection (1)(b)~~[(ii)]~~(iii):

3058 (A) military service;

3059 (B) voluntary service for a period of time designated by the person for whom the
3060 licensee provides voluntary service; or

3061 (C) some other extenuating circumstances, such as long-term medical disability.

3062 ~~[(ii)]~~ (iii) A licensee described in Subsection (1)(b)~~[(ii)]~~(ii) may request:

3063 (A) reinstatement of the license and line of authority no later than one year after the
3064 day on which the license lapses; and

3065 (B) waiver of any of the following imposed for failure to comply with renewal
3066 procedures:

3067 (I) an examination requirement;

3068 (II) reinstatement fees set under Section 31A-3-103;

3069 (III) continuing education requirements; or

3070 (IV) other sanction imposed for failure to comply with renewal procedures.

3071 (2) If a license or line of authority issued under this chapter is voluntarily surrendered,
3072 the license or line of authority may be reinstated:

3073 (a) during the license period in which the license or line of authority is voluntarily
3074 surrendered; and

3075 (b) no later than one year after the day on which the license or line of authority is
3076 voluntarily surrendered.

3077 Section 31. Section 31A-23a-402 is amended to read:

3078 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**
3079 **discrimination -- Coercion or intimidation -- Restriction on choice.**

3080 (1) (a) (i) Any of the following may not make or cause to be made any communication
3081 that contains false or misleading information, relating to an insurance product or contract, any
3082 insurer, or any licensee under this title, including information that is false or misleading
3083 because it is incomplete:

3084 (A) a person who is or should be licensed under this title;

3085 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

3086 (C) a person whose primary interest is as a competitor of a person licensed under this
3087 title; and

3088 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

3089 (ii) As used in this Subsection (1), "false or misleading information" includes:

3090 (A) assuring the nonobligatory payment of future dividends or refunds of unused
3091 premiums in any specific or approximate amounts, but reporting fully and accurately past
3092 experience is not false or misleading information; and

3093 (B) with intent to deceive a person examining it:

- 3094 (I) filing a report;
- 3095 (II) making a false entry in a record; or
- 3096 (III) wilfully refraining from making a proper entry in a record.
- 3097 (iii) A licensee under this title may not:
- 3098 (A) use any business name, slogan, emblem, or related device that is misleading or
- 3099 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
- 3100 already in business; or
- 3101 (B) use any name, advertisement or other insurance promotional material that would
- 3102 cause a reasonable person to mistakenly believe that a state or federal government agency,
- 3103 including the Health Insurance Exchange, also called the "Utah Health Exchange[;]" or
- 3104 "Avenue H," created in Section [63M-1-2504](#), the Comprehensive Health Insurance Pool
- 3105 created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health
- 3106 Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act:
- 3107 (I) is responsible for the insurance sales activities of the person;
- 3108 (II) stands behind the credit of the person;
- 3109 (III) guarantees any returns on insurance products of or sold by the person; or
- 3110 (IV) is a source of payment of any insurance obligation of or sold by the person.
- 3111 (iv) A person who is not an insurer may not assume or use any name that deceptively
- 3112 implies or suggests that person is an insurer.
- 3113 (v) A person other than persons licensed as health maintenance organizations under
- 3114 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
- 3115 itself.
- 3116 (b) A licensee's violation creates a rebuttable presumption that the violation was also
- 3117 committed by the insurer if:
- 3118 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
- 3119 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
- 3120 insurer:
- 3121 (A) that the licensee represents; or
- 3122 (B) for whom the licensee processes claims; and
- 3123 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
- 3124 insurer.

3125 (2) (a) A title insurer, individual title insurance producer, or agency title insurance
3126 producer or any officer or employee of the title insurer, individual title insurance producer, or
3127 agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give,
3128 directly or indirectly, as an inducement to obtaining any title insurance business:

3129 (i) any rebate, reduction, or abatement of any rate or charge made incident to the
3130 issuance of the title insurance;

3131 (ii) any special favor or advantage not generally available to others;

3132 (iii) any money or other consideration, except if approved under Section 31A-2-405; or

3133 (iv) material inducement.

3134 (b) "Charge made incident to the issuance of the title insurance" includes escrow
3135 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
3136 after consultation with the commissioner and subject to Section 31A-2-404.

3137 (c) An insured or any other person connected, directly or indirectly, with the
3138 transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to
3139 in Subsection (2)(a), including:

3140 (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices
3141 and Licensing Act;

3142 (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices
3143 Act;

3144 (iii) a builder;

3145 (iv) an attorney; or

3146 (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

3147 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
3148 different premiums or by offering different terms of coverage, except on the basis of
3149 classifications related to the nature and the degree of the risk covered or the expenses involved.

3150 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
3151 insured under a group, blanket, or franchise policy, and the terms of those policies are not
3152 unfairly discriminatory merely because they are more favorable than in similar individual
3153 policies.

3154 (4) (a) This Subsection (4) applies to:

3155 (i) a person who is or should be licensed under this title;

- 3156 (ii) an employee of that licensee or person who should be licensed;
- 3157 (iii) a person whose primary interest is as a competitor of a person licensed under this
3158 title; and
- 3159 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).
- 3160 (b) A person described in Subsection (4)(a) may not commit or enter into any
3161 agreement to participate in any act of boycott, coercion, or intimidation that:
- 3162 (i) tends to produce:
- 3163 (A) an unreasonable restraint of the business of insurance; or
- 3164 (B) a monopoly in that business; or
- 3165 (ii) results in an applicant purchasing or replacing an insurance contract.
- 3166 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
3167 insurer or licensee under this chapter, another person who is required to pay for insurance as a
3168 condition for the conclusion of a contract or other transaction or for the exercise of any right
3169 under a contract.
- 3170 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
3171 coverage selected on reasonable grounds.
- 3172 (b) The form of corporate organization of an insurer authorized to do business in this
3173 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
3174 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
3175 declining an application for insurance.
- 3176 (6) A person may not make any charge other than insurance premiums and premium
3177 financing charges for the protection of property or of a security interest in property, as a
3178 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
3179 the lending of money on the security of an interest in the property.
- 3180 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
3181 agency to the principal on demand.
- 3182 (b) A licensee whose license is suspended, limited, or revoked under Section
3183 [31A-2-308](#), [31A-23a-111](#), or [31A-23a-112](#) may not refuse or fail to return the license to the
3184 commissioner on demand.
- 3185 (8) (a) A person may not engage in an unfair method of competition or any other unfair
3186 or deceptive act or practice in the business of insurance, as defined by the commissioner by

3187 rule, after a finding that the method of competition, the act, or the practice:

- 3188 (i) is misleading;
- 3189 (ii) is deceptive;
- 3190 (iii) is unfairly discriminatory;
- 3191 (iv) provides an unfair inducement; or
- 3192 (v) unreasonably restrains competition.

3193 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
3194 Title and Escrow Commission shall make rules, subject to Section [31A-2-404](#), that define an
3195 unfair method of competition or unfair or deceptive act or practice after a finding that the
3196 method of competition, the act, or the practice:

- 3197 (i) is misleading;
- 3198 (ii) is deceptive;
- 3199 (iii) is unfairly discriminatory;
- 3200 (iv) provides an unfair inducement; or
- 3201 (v) unreasonably restrains competition.

3202 Section 32. Section **31A-23a-402.5** is amended to read:

3203 **31A-23a-402.5. Inducements.**

3204 (1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee
3205 under this title, or an officer or employee of a licensee, may not induce a person to enter into,
3206 continue, or terminate an insurance contract by offering a benefit that is not:

- 3207 (i) specified in the insurance contract; or
- 3208 (ii) directly related to the insurance contract.

3209 (b) An insurer may not make or knowingly allow an agreement of insurance that is not
3210 clearly expressed in the insurance contract to be issued or renewed.

3211 (c) A licensee under this title may not absorb the tax under Section [31A-3-301](#).

3212 (2) This section does not apply to a title insurer, an individual title insurance producer,
3213 or agency title insurance producer, or an officer or employee of a title insurer, an individual
3214 title insurance producer, or an agency title insurance producer.

3215 (3) Items not prohibited by Subsection (1) include an insurer:

- 3216 (a) reducing premiums because of expense savings;
- 3217 (b) providing to a policyholder or insured one or more incentives, as defined by the

3218 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
3219 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim
3220 expenses, including:

3221 (i) a premium discount offered to a small or large employer group based on a wellness
3222 program if:

3223 (A) the premium discount for the employer group does not exceed 20% of the group
3224 premium; and

3225 (B) the premium discount based on the wellness program is offered uniformly by the
3226 insurer to all employer groups in the large or small group market;

3227 (ii) a premium discount offered to employees of a small or large employer group in an
3228 amount that does not exceed federal limits on wellness program incentives; or

3229 (iii) a combination of premium discounts offered to the employer group and the
3230 employees of an employer group, based on a wellness program, if:

3231 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);
3232 and

3233 (B) the premium discounts for the employees of an employer group comply with
3234 Subsection (3)(b)(ii); or

3235 (c) receiving premiums under an installment payment plan.

3236 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other
3237 licensee, or an officer or employee of a licensee, either directly or through a third party:

3238 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
3239 conditioned on a quote or the purchase of a particular insurance product;

3240 (b) extending credit on a premium to the insured:

3241 (i) without interest, for no more than 90 days from the effective date of the insurance
3242 contract;

3243 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
3244 balance after the time period described in Subsection (4)(b)(i); and

3245 (iii) except that an installment or payroll deduction payment of premiums on an
3246 insurance contract issued under an insurer's mass marketing program is not considered an
3247 extension of credit for purposes of this Subsection (4)(b);

3248 (c) preparing or conducting a survey that:

- 3249 (i) is directly related to an accident and health insurance policy purchased from the
3250 licensee; or
- 3251 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,
3252 employers, or employees directly related to an insurance product sold by the licensee;
- 3253 (d) providing limited human resource services that are directly related to an insurance
3254 product sold by the licensee, including:
 - 3255 (i) answering questions directly related to:
 - 3256 (A) an employee benefit offering or administration, if the insurance product purchased
3257 from the licensee is accident and health insurance or health insurance; and
 - 3258 (B) employment practices liability, if the insurance product offered by or purchased
3259 from the licensee is property or casualty insurance; and
 - 3260 (ii) providing limited human resource compliance training and education directly
3261 pertaining to an insurance product purchased from the licensee;
 - 3262 (e) providing the following types of information or guidance:
 - 3263 (i) providing guidance directly related to compliance with federal and state laws for an
3264 insurance product purchased from the licensee;
 - 3265 (ii) providing a workshop or seminar addressing an insurance issue that is directly
3266 related to an insurance product purchased from the licensee; or
 - 3267 (iii) providing information regarding:
 - 3268 (A) employee benefit issues;
 - 3269 (B) directly related insurance regulatory and legislative updates; or
 - 3270 (C) similar education about an insurance product sold by the licensee and how the
3271 insurance product interacts with tax law;
 - 3272 (f) preparing or providing a form that is directly related to an insurance product
3273 purchased from, or offered by, the licensee;
 - 3274 (g) preparing or providing documents directly related to a premium only cafeteria plan
3275 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but
3276 not providing ongoing administration of a flexible spending account;
 - 3277 (h) providing enrollment and billing assistance, including:
 - 3278 (i) providing benefit statements or new hire insurance benefits packages; and
 - 3279 (ii) providing technology services such as an electronic enrollment platform or

3280 application system;

3281 (i) communicating coverages in writing and in consultation with the insured and
3282 employees;

3283 (j) providing employee communication materials and notifications directly related to an
3284 insurance product purchased from a licensee;

3285 (k) providing claims management and resolution to the extent permitted under the
3286 licensee's license;

3287 (l) providing underwriting or actuarial analysis or services;

3288 (m) negotiating with an insurer regarding the placement and pricing of an insurance
3289 product;

3290 (n) recommending placement and coverage options;

3291 (o) providing a health fair or providing assistance or advice on establishing or
3292 operating a wellness program, but not providing any payment for or direct operation of the
3293 wellness program;

3294 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other
3295 services directly related to an insurance product purchased from the licensee;

3296 (q) assisting with a summary plan description, including providing a summary plan
3297 description wraparound;

3298 (r) providing information necessary for the preparation of documents directly related to
3299 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as
3300 amended;

3301 (s) providing information or services directly related to the Health Insurance Portability
3302 and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services
3303 directly related to health care access, portability, and renewability when offered in connection
3304 with accident and health insurance sold by a licensee;

3305 (t) sending proof of coverage to a third party with a legitimate interest in coverage;

3306 (u) providing information in a form approved by the commissioner and directly related
3307 to determining whether an insurance product sold by the licensee meets the requirements of a
3308 third party contract that requires or references insurance coverage;

3309 (v) facilitating risk management services directly related to property and casualty
3310 insurance products sold or offered for sale by the licensee, including;

- 3311 (i) risk management;
- 3312 (ii) claims and loss control services;
- 3313 (iii) risk assessment consulting, including analysis of:
- 3314 (A) employer's job descriptions; or
- 3315 (B) employer's safety procedures or manuals; and
- 3316 (iv) providing information and training on best practices;
- 3317 (w) otherwise providing services that are legitimately part of servicing an insurance
- 3318 product purchased from a licensee; and
- 3319 (x) providing other directly related services approved by the department.
- 3320 (5) An inducement prohibited under Subsection (1) includes a producer, consultant, or
- 3321 other licensee, or an officer or employee of a licensee:
- 3322 (a) (i) providing a rebate;
- 3323 (ii) paying the salary of an employee of a person who purchases an insurance product
- 3324 from the licensee; or
- 3325 (iii) if the licensee is an insurer, or a third party administrator who contracts with an
- 3326 insurer, paying the salary for an onsite staff member to perform an act prohibited under
- 3327 Subsection (5)(b)(xii); or
- 3328 (b) engaging in one or more of the following unless a fee is paid in accordance with
- 3329 Subsection (8):
- 3330 (i) performing background checks of prospective employees;
- 3331 (ii) providing legal services by a person licensed to practice law;
- 3332 (iii) performing drug testing that is directly related to an insurance product purchased
- 3333 from the licensee;
- 3334 (iv) preparing employer or employee handbooks, except that a licensee may:
- 3335 (A) provide information for a medical benefit section of an employee handbook;
- 3336 (B) provide information for the section of an employee handbook directly related to an
- 3337 employment practices liability insurance product purchased from the licensee; or
- 3338 (C) prepare or print an employee benefit enrollment guide;
- 3339 (v) providing job descriptions, postings, and applications for a person;
- 3340 (vi) providing payroll services;
- 3341 (vii) providing performance reviews or performance review training;

- 3342 (viii) providing union advice;
- 3343 (ix) providing accounting services;
- 3344 (x) providing data analysis information technology programs, except as provided in
3345 Subsection (4)(h)(ii);
- 3346 (xi) providing administration of health reimbursement accounts or health savings
3347 accounts; or
- 3348 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
3349 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
3350 the following prohibited benefits:
- 3351 (A) performing background checks of prospective employees;
- 3352 (B) providing legal services by a person licensed to practice law;
- 3353 (C) performing drug testing that is directly related to an insurance product purchased
3354 from the insurer;
- 3355 (D) preparing employer or employee handbooks;
- 3356 (E) providing job descriptions postings, and applications;
- 3357 (F) providing payroll services;
- 3358 (G) providing performance reviews or performance review training;
- 3359 (H) providing union advice;
- 3360 (I) providing accounting services;
- 3361 (J) providing discrimination testing; or
- 3362 (K) providing data analysis information technology programs.
- 3363 (6) A producer, consultant, or other licensee or an officer or employee of a licensee
3364 shall itemize and bill separately from any other insurance product or service offered or
3365 provided under Subsection (5)(b).
- 3366 (7) (a) A de minimis gift or meal not to exceed a fair market value of [~~\$25~~] \$100 for
3367 each individual receiving the gift or meal is presumed to be a social courtesy not conditioned
3368 on a quote or purchase of a particular insurance product for purposes of Subsection (4)(a).
- 3369 (b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10
3370 may be conditioned on receipt of a quote of a particular insurance product.
- 3371 (8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee is
3372 paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with

3373 Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal
3374 or exceed the fair market value of the item.

3375 (9) For purposes of this section, "fair market value" [~~is determined on the basis of what~~
3376 ~~an individual insured or policyholder would pay on the open market for that item]~~ means what
3377 a knowledgeable, willing, and unpressured buyer would pay for a product or service to a
3378 knowledgeable, willing, and unpressured seller in the open market without any connection to
3379 other goods, services, including insurance services, or contracts, including insurance contracts,
3380 sold by the producer, consultant, or other licensee, or an officer or employee of the licensee.

3381 Section 33. Section 31A-23b-206 is amended to read:

3382 **31A-23b-206. Continuing education requirements.**

3383 (1) The commissioner shall, by rule, prescribe continuing education requirements for a
3384 navigator.

3385 (2) (a) The commissioner may not require a degree from an institution of higher
3386 education as part of continuing education.

3387 (b) The commissioner may state a continuing education requirement in terms of hours
3388 of instruction received in:

- 3389 (i) accident and health insurance;
- 3390 (ii) qualification for and enrollment in public programs;
- 3391 (iii) qualification for and enrollment in premium subsidies;
- 3392 (iv) cultural competency;
- 3393 (v) conflict of interest standards; and
- 3394 (vi) other exchange functions.

3395 (3) (a) For a navigator line of authority, continuing education requirements shall
3396 require:

3397 (i) that a licensee complete 12 credit hours of continuing education for every one-year
3398 licensing period;

3399 (ii) that at least two of the 12 credit hours described in Subsection (3)(a)(i) be ethics
3400 courses;

3401 (iii) that at least one of the 12 credit hours described in Subsection (3)(a)(i) be training
3402 on defined contribution arrangements and the use of the small employer health insurance
3403 exchange; and

3404 (iv) that a licensee complete the annual navigator training and certification program
3405 developed by the Centers for Medicare and Medicaid Services.

3406 (b) For a certified application counselor, the continuing education requirements shall
3407 require:

3408 (i) that a licensee complete six credit hours of continuing education for every one-year
3409 licensing period;

3410 (ii) that at least two of the six credit hours described in Subsection (3)(b)(i) be on
3411 ethics courses;

3412 (iii) that at least one of the six credit hours described in Subsection (3)(b)(i) be training
3413 on defined contribution arrangements and the use of the small employer health insurance
3414 exchange; and

3415 (iv) that a licensee complete the annual certified application counselor training and
3416 certification program developed by the Centers for Medicare and Medicaid Services.

3417 (c) An hour of continuing education in accordance with Subsections (3)(a)(i) and (b)(i)
3418 may be obtained through:

3419 (i) classroom attendance;

3420 (ii) home study;

3421 (iii) watching a video recording; or

3422 (iv) another method approved by rule.

3423 (d) A licensee may obtain continuing education hours at any time during the one-year
3424 license period.

3425 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3426 commissioner shall, by rule, authorize one or more continuing education providers, including a
3427 state or national professional producer or consultant associations, to:

3428 (i) offer a qualified program on a geographically accessible basis; and

3429 (ii) collect a reasonable fee for funding and administration of a continuing education
3430 program, subject to the review and approval of the commissioner.

3431 (4) The commissioner shall approve a continuing education provider or a continuing
3432 education course that satisfies the requirements of this section.

3433 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3434 commissioner shall by rule establish the procedures for continuing education provider

3435 registration and course approval.

3436 (6) This section applies only to a navigator who is a natural person.

3437 (7) A navigator shall keep documentation of completing the continuing education
3438 requirements of this section for [~~two years~~] one year after the end of the [~~two-year~~] one-year
3439 licensing period to which the continuing education applies.

3440 Section 34. Section **31A-25-302.5** is enacted to read:

3441 **31A-25-302.5. Place of business and residence address.**

3442 (1) A third-party administrator licensed under this chapter shall register and maintain
3443 with the commissioner:

3444 (a) the address and one or more telephone numbers of the licensee's principal place of
3445 business;

3446 (b) a valid business email address at which the commissioner may contact the licensee;
3447 and

3448 (c) if the licensee is an individual, the licensee's residence address and telephone
3449 number.

3450 (2) A licensee shall notify the commissioner within 30 days of a change of any of the
3451 following required to be registered with the commissioner under this section:

3452 (a) an address;

3453 (b) a telephone number; or

3454 (c) a business email address.

3455 Section 35. Section **31A-27a-116** is amended to read:

3456 **31A-27a-116. Financial reporting.**

3457 (1) (a) The receiver shall comply with all requirements for receivership financial
3458 reporting in this section and as may be specified by the commissioner by rule or ordered by the
3459 court within:

3460 (i) 180 days after the day on which the receivership court enters an order of
3461 receivership; and

3462 (ii) 45 days following each calendar quarter after the period specified in Subsection

3463 (1)(a)(i).

3464 (b) The rule described in this Subsection (1) shall:

3465 (i) comply with this section;

3466 (ii) be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
3467 Act; and

3468 (iii) require the receiver to file any financial report with the receivership court in
3469 addition to any other person specified in the rule.

3470 (c) A financial report shall include, at a minimum, a statement of:

3471 (i) the assets and liabilities of the insurer;

3472 (ii) the changes in those assets and liabilities; and

3473 (iii) all funds received or disbursed by the receiver during that reporting period.

3474 (d) The receiver may qualify a financial report or provide notes to the financial
3475 statement for further explanation.

3476 (e) The receivership court may order the receiver to provide any additional information
3477 as the receivership court considers appropriate.

3478 (2) Each affected guaranty association shall file one or more reports with the liquidator:

3479 (a) (i) within 180 days after the day on which the receivership court enters an order of
3480 liquidation; and

3481 (ii) (A) within 45 days following each calendar quarter after the period described in
3482 Subsection (2)(a)(i); or

3483 (B) at an interval:

3484 (I) agreed to between the liquidator and the affected guaranty association; or

3485 (II) required by the receivership court; and

3486 (b) in no event less than annually.

3487 (3) For good cause shown, the receivership court may grant:

3488 (a) relief for an extension or modification of time to comply with Subsection (1) or (2);

3489 or

3490 (b) such other relief as may be appropriate.

3491 Section 36. Section **31A-28-213** is amended to read:

3492 **31A-28-213. Miscellaneous provisions.**

3493 (1) (a) Any person who has a claim against an insurer, whether or not the insurer is a
3494 member insurer, under any provision in an insurance policy, other than a policy of an insolvent
3495 insurer that is also a covered claim, is required to first exhaust that person's right under that
3496 person's policy.

3497 (b) Any amount payable on a covered claim under this part under an insurance policy is
3498 reduced by the amount of any recovery under the insurance policy described in Subsection
3499 (1)(a).

3500 (c) (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be
3501 recovered under more than one insurance guaranty association or its equivalent shall first seek
3502 recovery from the association of the place of residence of the insured.

3503 (ii) If the person's claim is:

3504 (A) a first-party claim for damage to property with a permanent location, the person
3505 shall seek recovery first from the association of the location of the property; and

3506 (B) a workers' compensation claim, the person shall seek recovery first from the
3507 association of the residence of the claimant.

3508 (iii) Any recovery under this part shall be reduced by the amount of recovery from any
3509 other insurance guaranty association or its equivalent.

3510 (2) An insurer may not exercise any right of subrogation against an insolvent insurer's
3511 insured if exercise of the right would require the insured, or a guaranty fund under this chapter,
3512 to pay an amount the insolvent insurer is obligated to pay under an insurance policy issued to
3513 the insured, except that an insurer may exercise a right of subrogation for the amount the
3514 subrogation claim exceeds the guaranty association obligation limitations.

3515 [~~2~~] (3) This part may not be construed to reduce the liability for unpaid assessments of
3516 the insureds of an impaired or insolvent insurer operating under a plan with assessment
3517 liability.

3518 [~~3~~] (4) (a) Records shall be kept of all negotiations and meetings in which the
3519 association or its representatives are involved to discuss the activities of the association in
3520 carrying out the association's powers and duties under Section 31A-28-207. Records of these
3521 negotiations or meetings shall be made public only upon:

3522 (i) ~~upon~~ the termination of a liquidation, rehabilitation, or conservation proceeding
3523 involving the insolvent insurer;

3524 (ii) the termination of the insolvency of the insurer; or

3525 (iii) the order of a court of competent jurisdiction.

3526 (b) This Subsection [~~3~~] (4) does not limit the duty of the association to render a report
3527 of its activities under Section 31A-28-214.

3528 ~~[(4)]~~ (5) For the purpose of carrying out its obligations under this part, the association
3529 is considered to be a creditor of the insolvent insurer, except to the extent of any amounts the
3530 association is entitled as subrogee under Section 31A-28-207.

3531 ~~[(5)]~~ (6) (a) Before the termination of any liquidation, rehabilitation, or conservation
3532 proceeding, the court may take into consideration the contributions of the respective parties,
3533 including:

3534 (i) the association;

3535 (ii) the shareholders;

3536 (iii) the policyowners of the insolvent insurer; and

3537 (iv) any other party with a bona fide interest, in making an equitable distribution of the
3538 ownership rights of the insolvent insurer.

3539 (b) In making the determination described in Subsection ~~[(5)]~~ (6)(a), the court shall
3540 consider the welfare of the policyholders of the continuing or successor insurer.

3541 (c) A distribution to stockholders, if any, of an insolvent insurer may not be made until
3542 the total amount of valid claims of the association with interest on those claims for funds
3543 expended in carrying out its powers and duties under Section 31A-28-207 regarding this
3544 insurer have been fully recovered by the association.

3545 ~~[(6)]~~ (7) A rehabilitator, liquidator, or conservator appointed under any section of this
3546 part may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant
3547 to Section 31A-27a-502.

3548 Section 37. Section 31A-37-102 is amended to read:

3549 **31A-37-102. Definitions.**

3550 As used in this chapter:

3551 (1) "Affiliated company" means a business entity that because of common ownership,
3552 control, operation, or management is in the same corporate or limited liability company system
3553 as:

3554 (a) a parent;

3555 (b) an industrial insured; or

3556 (c) a member organization.

3557 (2) "Alien captive insurance company" means an insurer:

3558 (a) formed to write insurance business for a parent or affiliate of the insurer; and

3559 (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or
3560 regulatory standards:

3561 (i) on a business entity transacting the business of insurance in the alien jurisdiction;
3562 and

3563 (ii) in a form acceptable to the commissioner.

3564 (3) "Association" means a legal association of two or more persons that has been in
3565 continuous existence for at least one year if:

3566 (a) the association or its member organizations:

3567 (i) own, control, or hold with power to vote all of the outstanding voting securities of
3568 an association captive insurance company incorporated as a stock insurer; or

3569 (ii) have complete voting control over an association captive insurance company
3570 incorporated as a mutual insurer;

3571 (b) the association's member organizations collectively constitute all of the subscribers
3572 of an association captive insurance company formed as a reciprocal insurer; or

3573 (c) the association or its member organizations have complete voting control over an
3574 association captive insurance company formed as a limited liability company.

3575 (4) "Association captive insurance company" means a business entity that insures risks
3576 of:

3577 (a) a member organization of the association;

3578 (b) an affiliate of a member organization of the association; and

3579 (c) the association.

3580 (5) "Branch business" means an insurance business transacted by a branch captive
3581 insurance company in this state.

3582 (6) "Branch captive insurance company" means an alien captive insurance company
3583 that has a certificate of authority from the commissioner to transact the business of insurance in
3584 this state through a business unit with a principal place of business in this state.

3585 (7) "Branch operation" means a business operation of a branch captive insurance
3586 company in this state.

3587 (8) "Captive insurance company" means any of the following formed or holding a
3588 certificate of authority under this chapter:

3589 (a) a branch captive insurance company;

- 3590 (b) a pure captive insurance company;
- 3591 (c) an association captive insurance company;
- 3592 (d) a sponsored captive insurance company;
- 3593 (e) an industrial insured captive insurance company;
- 3594 [~~(f) a captive reinsurance company;~~]
- 3595 [~~(g)~~ (f) a special purpose captive insurance company; or
- 3596 [~~(h)~~ (g) a special purpose financial captive insurance company.
- 3597 [~~(9) "Captive reinsurance company" means a reinsurer that is:~~]
- 3598 [~~(a) formed or has a certificate of authority pursuant to this chapter;~~]
- 3599 [~~(b) wholly owned by a qualifying reinsurer parent company; and~~]
- 3600 [~~(c) a stock corporation.~~]
- 3601 [~~(H)~~ (9) "Commissioner" means [~~the~~] Utah's Insurance Commissioner or the
- 3602 commissioner's designee.
- 3603 (10) "Common ownership and control" means that two or more captive insurance
- 3604 companies are owned or controlled by the same person or group of persons as follows:
- 3605 (a) in the case of a captive insurance company that is a stock corporation, the direct or
- 3606 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;
- 3607 (b) in the case of a captive insurance company that is a mutual corporation, the direct
- 3608 or indirect ownership of 80% or more of the surplus and the voting power of the mutual
- 3609 corporation;
- 3610 (c) in the case of a captive insurance company that is a limited liability company, the
- 3611 direct or indirect ownership by the same member or members of 80% or more of the
- 3612 membership interests in the limited liability company; or
- 3613 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
- 3614 captive insurance company owned and controlled by the protected cell's participant, only if:
- 3615 (i) the participant is the only participant with respect to the protected cell; and
- 3616 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
- 3617 captive insurance company through common ownership and control.
- 3618 [~~(12)~~ (11) "Consolidated debt to total capital ratio" means the ratio of Subsection
- 3619 [~~(12)~~ (11)(a) to (b).
- 3620 (a) This Subsection [~~(12)~~ (11)(a) is an amount equal to the sum of all debts and hybrid

3621 capital instruments including:

3622 (i) all borrowings from depository institutions;

3623 (ii) all senior debt;

3624 (iii) all subordinated debts;

3625 (iv) all trust preferred shares; and

3626 (v) all other hybrid capital instruments that are not included in the determination of

3627 consolidated GAAP net worth issued and outstanding.

3628 (b) This Subsection [~~(12)~~] (11)(b) is an amount equal to the sum of:

3629 (i) total capital consisting of all debts and hybrid capital instruments as described in

3630 Subsection [~~(12)~~] (11)(a); and

3631 (ii) shareholders' equity determined in accordance with generally accepted accounting
3632 principles for reporting to the United States Securities and Exchange Commission.

3633 [~~(13)~~] (12) "Consolidated GAAP net worth" means the consolidated shareholders' or
3634 members' equity determined in accordance with generally accepted accounting principles for
3635 reporting to the United States Securities and Exchange Commission.

3636 [~~(14)~~] (13) "Controlled unaffiliated business" means a business entity:

3637 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or
3638 limited liability company system of a parent or the parent's affiliate; or

3639 (ii) in the case of an industrial insured captive insurance company, that is not in the
3640 corporate or limited liability company system of an industrial insured or an affiliated company
3641 of the industrial insured;

3642 (b) (i) in the case of a pure captive insurance company, that has a contractual
3643 relationship with a parent or affiliate; or

3644 (ii) in the case of an industrial insured captive insurance company, that has a
3645 contractual relationship with an industrial insured or an affiliated company of the industrial
3646 insured; and

3647 (c) whose risks are managed by one of the following in accordance with Subsection
3648 31A-37-106(1)[~~(k)~~](j):

3649 (i) a pure captive insurance company; or

3650 (ii) an industrial insured captive insurance company.

3651 [~~(15)~~] (14) "Department" means the Insurance Department.

- 3652 [~~(16)~~] (15) "Industrial insured" means an insured:
- 3653 (a) that produces insurance:
- 3654 (i) by the services of a full-time employee acting as a risk manager or insurance
- 3655 manager; or
- 3656 (ii) using the services of a regularly and continuously qualified insurance consultant;
- 3657 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
- 3658 and
- 3659 (c) that has at least 25 full-time employees.
- 3660 [~~(17)~~] (16) "Industrial insured captive insurance company" means a business entity
- 3661 that:
- 3662 (a) insures risks of the industrial insureds that comprise the industrial insured group;
- 3663 and
- 3664 (b) may insure the risks of:
- 3665 (i) an affiliated company of an industrial insured; or
- 3666 (ii) a controlled unaffiliated business of:
- 3667 (A) an industrial insured; or
- 3668 (B) an affiliated company of an industrial insured.
- 3669 [~~(18)~~] (17) "Industrial insured group" means:
- 3670 (a) a group of industrial insureds that collectively:
- 3671 (i) own, control, or hold with power to vote all of the outstanding voting securities of
- 3672 an industrial insured captive insurance company incorporated or organized as a limited liability
- 3673 company as a stock insurer; or
- 3674 (ii) have complete voting control over an industrial insured captive insurance company
- 3675 incorporated or organized as a limited liability company as a mutual insurer;
- 3676 (b) a group that is:
- 3677 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. [~~Section~~]
- 3678 Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and
- 3679 (ii) taxable under this title as a:
- 3680 (A) stock corporation; or
- 3681 (B) mutual insurer; or
- 3682 (c) a group that has complete voting control over an industrial captive insurance

3683 company formed as a limited liability company.

3684 ~~[(19)]~~ (18) "Member organization" means a person that belongs to an association.

3685 ~~[(20)]~~ (19) "Parent" means a person that directly or indirectly owns, controls, or holds
3686 with power to vote more than 50% of:

3687 (a) the outstanding voting securities of a pure captive insurance company; or

3688 (b) the pure captive insurance company, if the pure captive insurance company is
3689 formed as a limited liability company.

3690 ~~[(21)]~~ (20) "Participant" means an entity that is insured by a sponsored captive
3691 insurance company:

3692 (a) if the losses of the participant are limited through a participant contract to the assets
3693 of a protected cell; and

3694 (b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

3695 (ii) the entity is an affiliate of an entity permitted to be a participant under Section
3696 31A-37-403.

3697 ~~[(22)]~~ (21) "Participant contract" means a contract by which a sponsored captive
3698 insurance company:

3699 (a) insures the risks of a participant; and

3700 (b) limits the losses of the participant to the assets of a protected cell.

3701 ~~[(23)]~~ (22) "Protected cell" means a separate account established and maintained by a
3702 sponsored captive insurance company for one participant.

3703 ~~[(24)]~~ (23) "Pure captive insurance company" means a business entity that insures risks
3704 of a parent or affiliate of the business entity.

3705 ~~[(25) "Qualifying reinsurer parent company" means a reinsurer:]~~

3706 ~~[(a) authorized to write reinsurance by this state; and]~~

3707 ~~[(b) that has:]~~

3708 ~~[(i) a consolidated GAAP net worth of not less than \$500,000,000; and]~~

3709 ~~[(ii) a consolidated debt to total capital ratio not greater than .50:]~~

3710 ~~[(26)]~~ (24) "Special purpose financial captive insurance company" is as defined in
3711 Section 31A-37a-102.

3712 ~~[(27)]~~ (25) "Sponsor" means an entity that:

3713 (a) meets the requirements of Section 31A-37-402; and

3714 (b) is approved by the commissioner to:

3715 (i) provide all or part of the capital and surplus required by applicable law in an amount
3716 of not less than \$350,000, which amount the commissioner may increase by order if the
3717 commissioner considers it necessary; and

3718 (ii) organize and operate a sponsored captive insurance company.

3719 ~~[(28)]~~ (26) "Sponsored captive insurance company" means a captive insurance
3720 company:

3721 (a) in which the minimum capital and surplus required by applicable law is provided by
3722 one or more sponsors;

3723 (b) that is formed or holding a certificate of authority under this chapter;

3724 (c) that insures the risks of a separate participant through the contract; and

3725 (d) that segregates each participant's liability through one or more protected cells.

3726 ~~[(29)]~~ (27) "Treasury rates" means the United States Treasury strip asked yield as
3727 published in the Wall Street Journal as of a balance sheet date.

3728 Section 38. Section **31A-37-106** is amended to read:

3729 **31A-37-106. Authority to make rules -- Authority to issue orders.**

3730 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3731 commissioner may adopt rules to:

3732 (a) determine circumstances under which a branch captive insurance company is not
3733 required to be a pure captive insurance company;

3734 (b) require a statement, document, or information that a captive insurance company
3735 shall provide to the commissioner to obtain a certificate of authority;

3736 (c) determine a factor a captive insurance company shall provide evidence of under
3737 Subsection **31A-37-202(4)(c)**;

3738 (d) prescribe one or more capital requirements for a captive insurance company in
3739 addition to those required under Section **31A-37-204** based on the type, volume, and nature of
3740 insurance business transacted by the captive insurance company;

3741 ~~[(e) establish:]~~

3742 ~~[(i) the amount of capital or surplus required to be retained under Subsection~~
3743 ~~**31A-37-205(4)** at the payment of a dividend or other distribution by a captive insurance~~
3744 ~~company; or]~~

3745 ~~[(ii) a formula to determine the amount described in Subsection 31A-37-205(4);]~~
3746 ~~[(f)]~~ (e) waive or modify a requirement for public notice and hearing for the following
3747 by a captive insurance company:
3748 (i) merger;
3749 (ii) consolidation;
3750 (iii) conversion;
3751 (iv) mutualization; ~~[or]~~
3752 (v) redomestication; or
3753 (vi) acquisition;
3754 ~~[(g)]~~ (f) approve the use of one or more reliable methods of valuation and rating for:
3755 (i) an association captive insurance company;
3756 (ii) a sponsored captive insurance company; or
3757 (iii) an industrial insured group;
3758 ~~[(h)]~~ (g) prohibit or limit an investment that threatens the solvency or liquidity of:
3759 (i) a pure captive insurance company; or
3760 (ii) an industrial insured captive insurance company;
3761 ~~[(i)]~~ (h) determine the financial reports a sponsored captive insurance company shall
3762 annually file with the commissioner;
3763 ~~[(j)]~~ (i) prescribe the required forms and reports under Section 31A-37-501; and
3764 ~~[(k)]~~ (j) establish one or more standards to ensure that:
3765 (i) one of the following is able to exercise control of the risk management function of a
3766 controlled unaffiliated business to be insured by a pure captive insurance company:
3767 (A) a parent; or
3768 (B) an affiliated company of a parent; or
3769 (ii) one of the following is able to exercise control of the risk management function of
3770 a controlled unaffiliated business to be insured by an industrial insured captive insurance
3771 company:
3772 (A) an industrial insured; or
3773 (B) an affiliated company of the industrial insured.
3774 (2) Notwithstanding Subsection (1)~~[(k)]~~(j), until the commissioner adopts the rules
3775 authorized under Subsection (1)~~[(k)]~~(j), the commissioner may by temporary order grant

3776 authority to insure risks to:

3777 (a) a pure captive insurance company; or

3778 (b) an industrial insured captive insurance company.

3779 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a
3780 captive insurance company as necessary to enable the commissioner to secure compliance with
3781 this chapter.

3782 Section 39. Section **31A-37-202** is amended to read:

3783 **31A-37-202. Permissive areas of insurance.**

3784 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of
3785 incorporation, certificate of organization, or charter, a captive insurance company may apply to
3786 the commissioner for a certificate of authority to do all insurance authorized by this title except
3787 workers' compensation insurance.

3788 (b) Notwithstanding Subsection (1)(a):

3789 (i) a pure captive insurance company may not insure a risk other than a risk of:

3790 (A) its parent or affiliate;

3791 (B) a controlled unaffiliated business; or

3792 (C) a combination of Subsections (1)(b)(i)(A) and (B);

3793 (ii) an association captive insurance company may not insure a risk other than a risk of:

3794 (A) an affiliate;

3795 (B) a member organization of its association; and

3796 (C) an affiliate of a member organization of its association;

3797 (iii) an industrial insured captive insurance company may not insure a risk other than a
3798 risk of:

3799 (A) an industrial insured that is part of the industrial insured group;

3800 (B) an affiliate of an industrial insured that is part of the industrial insured group; and

3801 (C) a controlled unaffiliated business of:

3802 (I) an industrial insured that is part of the industrial insured group; or

3803 (II) an affiliate of an industrial insured that is part of the industrial insured group;

3804 (iv) a special purpose captive insurance company may only insure a risk of its parent;

3805 (v) a captive insurance company may not provide:

3806 (A) personal motor vehicle insurance coverage;

- 3807 (B) homeowner's insurance coverage; or
- 3808 (C) a component of a coverage described in this Subsection (1)(b)(v); and
- 3809 (vi) a captive insurance company may not accept or cede reinsurance except as
- 3810 provided in Section [31A-37-303](#).
- 3811 (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a
- 3812 special purpose captive insurance company may provide:
- 3813 (i) insurance;
- 3814 (ii) reinsurance; or
- 3815 (iii) both insurance and reinsurance.
- 3816 (2) To conduct insurance business in this state a captive insurance company shall:
- 3817 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
- 3818 insurance business in this state;
- 3819 (b) hold at least once each year in this state:
- 3820 (i) a board of directors meeting; ~~or~~
- 3821 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting; or
- 3822 (iii) in the case of a limited liability company, a meeting of the managers;
- 3823 (c) maintain in this state:
- 3824 (i) the principal place of business of the captive insurance company; or
- 3825 (ii) in the case of a branch captive insurance company, the principal place of business
- 3826 for the branch operations of the branch captive insurance company; and
- 3827 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
- 3828 service of process and to otherwise act on behalf of the captive insurance company in this state.
- 3829 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company
- 3830 formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable
- 3831 diligence be found at the registered office of the captive insurance company, the commissioner
- 3832 is the agent of the captive insurance company upon whom process, notice, or demand may be
- 3833 served.
- 3834 (4) (a) Before receiving a certificate of authority, a captive insurance company:
- 3835 (i) formed as a corporation shall file with the commissioner:
- 3836 (A) a certified copy of:
- 3837 (I) articles of incorporation or the charter of the corporation; and

- 3838 (II) bylaws of the corporation;
- 3839 (B) a statement under oath of the president and secretary of the corporation showing
- 3840 the financial condition of the corporation; and
- 3841 (C) any other statement or document required by the commissioner under Section
- 3842 [31A-37-106](#);
- 3843 (ii) formed as a reciprocal shall:
- 3844 (A) file with the commissioner:
- 3845 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;
- 3846 (II) a certified copy of the subscribers' agreement of the reciprocal;
- 3847 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the
- 3848 financial condition of the reciprocal; and
- 3849 (IV) any other statement or document required by the commissioner under Section
- 3850 [31A-37-106](#); and
- 3851 (B) submit to the commissioner for approval a description of the:
- 3852 (I) coverages;
- 3853 (II) deductibles;
- 3854 (III) coverage limits;
- 3855 (IV) rates; and
- 3856 (V) any other information the commissioner requires under Section [31A-37-106](#)~~[-]~~; and
- 3857 (iii) formed as a limited liability company shall file with the commissioner:
- 3858 (A) a certified copy of the certificate of organization and the operating agreement of
- 3859 the organization;
- 3860 (B) a statement under oath of the president and secretary of the organization showing
- 3861 the financial condition of the organization;
- 3862 (C) evidence that the limited liability company is manager-managed; and
- 3863 (D) any other statement or document required by the commissioner under Section
- 3864 [31A-37-106](#).
- 3865 (b) (i) If there is a subsequent material change in an item in the description required
- 3866 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal
- 3867 captive insurance company shall submit to the commissioner for approval an appropriate
- 3868 revision to the description required under Subsection (4)(a)(ii)(B).

3869 (ii) A reciprocal captive insurance company that is required to submit a revision under
3870 Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner
3871 approves a revision of the description.

3872 (iii) A reciprocal captive insurance company shall inform the commissioner of a
3873 material change in a rate within 30 days of the adoption of the change.

3874 (c) In addition to the information required by Subsection (4)(a), an applicant captive
3875 insurance company shall file with the commissioner evidence of:

3876 (i) the amount and liquidity of the assets of the applicant captive insurance company
3877 relative to the risks to be assumed by the applicant captive insurance company;

3878 (ii) the adequacy of the expertise, experience, and character of the person who will
3879 manage the applicant captive insurance company;

3880 (iii) the overall soundness of the plan of operation of the applicant captive insurance
3881 company;

3882 (iv) the adequacy of the loss prevention programs for the following of the applicant
3883 captive insurance company:

3884 (A) a parent;

3885 (B) a member organization; or

3886 (C) an industrial insured; and

3887 (v) any other factor the commissioner:

3888 (A) adopts by rule under Section [31A-37-106](#); and

3889 (B) considers relevant in ascertaining whether the applicant captive insurance company
3890 will be able to meet the policy obligations of the applicant captive insurance company.

3891 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an
3892 applicant sponsored captive insurance company shall file with the commissioner:

3893 (i) a business plan at the level of detail required by the commissioner under Section
3894 [31A-37-106](#) demonstrating:

3895 (A) the manner in which the applicant sponsored captive insurance company will
3896 account for the losses and expenses of each protected cell; and

3897 (B) the manner in which the applicant sponsored captive insurance company will report
3898 to the commissioner the financial history, including losses and expenses, of each protected cell;

3899 (ii) a statement acknowledging that the applicant sponsored captive insurance company

3900 will make all financial records of the applicant sponsored captive insurance company,
3901 including records pertaining to a protected cell, available for inspection or examination by the
3902 commissioner;

3903 (iii) a contract or sample contract between the applicant sponsored captive insurance
3904 company and a participant; and

3905 (iv) evidence that expenses will be allocated to each protected cell in an equitable
3906 manner.

3907 (5) (a) Information submitted pursuant to Subsection (4) is classified as a protected
3908 record under Title 63G, Chapter 2, Government Records Access and Management Act.

3909 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and
3910 Management Act, the commissioner may disclose information submitted pursuant to
3911 Subsection (4) to a public official having jurisdiction over the regulation of insurance in
3912 another state if:

3913 (i) the public official receiving the information agrees in writing to maintain the
3914 confidentiality of the information; and

3915 (ii) the laws of the state in which the public official serves require the information to be
3916 confidential.

3917 (c) This Subsection (5) does not apply to information provided by an industrial insured
3918 captive insurance company insuring the risks of an industrial insured group.

3919 (6) (a) A captive insurance company shall pay to the department the following
3920 nonrefundable fees established by the department under Sections [31A-3-103](#), [31A-3-304](#), and
3921 [63J-1-504](#):

3922 (i) a fee for examining, investigating, and processing, by a department employee, of an
3923 application for a certificate of authority made by a captive insurance company;

3924 (ii) a fee for obtaining a certificate of authority for the year the captive insurance
3925 company is issued a certificate of authority by the department; and

3926 (iii) a certificate of authority renewal fee.

3927 (b) The commissioner may:

3928 (i) assign a department employee or retain legal, financial, and examination services
3929 from outside the department to perform the services described in:

3930 (A) Subsection (6)(a); and

3931 (B) Section 31A-37-502; and
3932 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the
3933 applicant captive insurance company.

3934 (7) If the commissioner is satisfied that the documents and statements filed by the
3935 applicant captive insurance company comply with this chapter, the commissioner may grant a
3936 certificate of authority authorizing the company to do insurance business in this state.

3937 (8) A certificate of authority granted under this section expires annually and shall be
3938 renewed by July 1 of each year.

3939 Section 40. Section 31A-37-204 is amended to read:

3940 **31A-37-204. Paid-in capital -- Other capital.**

3941 (1) (a) The commissioner may not issue a certificate of authority to a company
3942 described in Subsection (1)(c) unless the company possesses and thereafter maintains
3943 unimpaired paid-in capital and unimpaired paid-in surplus of:

3944 (i) in the case of a pure captive insurance company, not less than [~~\$100,000~~] \$250,000;

3945 (ii) in the case of an association captive insurance company incorporated as a stock
3946 insurer, not less than [~~\$400,000~~] \$750,000;

3947 (iii) in the case of an industrial insured captive insurance company incorporated as a
3948 stock insurer, not less than [~~\$200,000~~] \$700,000;

3949 (iv) in the case of a sponsored captive insurance company, not less than [~~\$500,000~~]
3950 \$1,000,000, of which a minimum of \$350,000 is provided by the sponsor; or

3951 (v) in the case of a special purpose captive insurance company, an amount determined
3952 by the commissioner after giving due consideration to the company's business plan, feasibility
3953 study, and pro-formas, including the nature of the risks to be insured.

3954 (b) The paid-in capital and surplus required under this Subsection (1) may be in the
3955 form of:

3956 (i) (A) cash; or

3957 (B) cash equivalent; or

3958 (ii) an irrevocable letter of credit:

3959 (A) issued by:

3960 (I) a bank chartered by this state; or

3961 (II) a member bank of the Federal Reserve System; and

- 3962 (B) approved by the commissioner.
- 3963 (c) This Subsection (1) applies to:
- 3964 (i) a pure captive insurance company;
- 3965 (ii) a sponsored captive insurance company;
- 3966 (iii) a special purpose captive insurance company;
- 3967 (iv) an association captive insurance company incorporated as a stock insurer; or
- 3968 (v) an industrial insured captive insurance company incorporated as a stock insurer.
- 3969 (2) (a) The commissioner may, under Section [31A-37-106](#), prescribe additional capital
- 3970 based on the type, volume, and nature of insurance business transacted.
- 3971 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the
- 3972 form of:
- 3973 (i) cash; or
- 3974 (ii) an irrevocable letter of credit issued by:
- 3975 (A) a bank chartered by this state; or
- 3976 (B) a member bank of the Federal Reserve System.
- 3977 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as
- 3978 security for the payment of liabilities attributable to branch operations, shall, through its branch
- 3979 operations, establish and maintain a trust fund:
- 3980 (i) funded by an irrevocable letter of credit or other acceptable asset; and
- 3981 (ii) in the United States for the benefit of:
- 3982 (A) United States policyholders; and
- 3983 (B) United States ceding insurers under:
- 3984 (I) insurance policies issued; or
- 3985 (II) reinsurance contracts issued or assumed.
- 3986 (b) The amount of the security required under this Subsection (3) shall be no less than:
- 3987 (i) the capital and surplus required by this chapter; and
- 3988 (ii) the reserves on the insurance policies or reinsurance contracts, including:
- 3989 (A) reserves for losses;
- 3990 (B) allocated loss adjustment expenses;
- 3991 (C) incurred but not reported losses; and
- 3992 (D) unearned premiums with regard to business written through branch operations.

3993 (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may
3994 permit a branch captive insurance company that is required to post security for loss reserves on
3995 branch business by its reinsurer to reduce the funds in the trust account required by this section
3996 by the same amount as the security posted if the security remains posted with the reinsurer.

3997 (4) (a) A captive insurance company may not pay the following without the prior
3998 approval of the commissioner:

3999 (i) a dividend out of capital or surplus in excess of the limits under Section
4000 16-10a-640; or

4001 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
4002 16-10a-640.

4003 (b) The commissioner shall condition approval of an ongoing plan for the payment of
4004 dividends or other distributions on the retention, at the time of each payment, of capital or
4005 surplus in excess of:

4006 (i) amounts specified by the commissioner under Section 31A-37-106; or

4007 (ii) determined in accordance with formulas approved by the commissioner under
4008 Section 31A-37-106.

4009 (5) Notwithstanding Subsection (1), a captive insurance company organized as a
4010 reciprocal insurer under this chapter may not be issued a certificate of authority unless the
4011 captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.

4012 (6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based
4013 upon the type, volume, and nature of the insurance business transacted.

4014 (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the
4015 form of an irrevocable letter of credit issued by:

4016 (i) a bank chartered by this state; or

4017 (ii) a member bank of the Federal Reserve System.

4018 Section 41. Section 31A-37-301 is amended to read:

4019 **31A-37-301. Incorporation -- Organization.**

4020 (1) A pure captive insurance company or a sponsored captive insurance company shall
4021 be incorporated as a stock insurer with the capital of the pure captive insurance company or
4022 sponsored captive insurance company:

4023 (a) divided into shares; and

4024 (b) held by the stockholders of the pure captive insurance company or sponsored
4025 captive insurance company.

4026 (2) A pure captive insurance company or a sponsored captive insurance company
4027 formed as a limited liability company shall be organized as a members' interest insurer with the
4028 capital of the pure captive insurance company or sponsored captive insurance company:

4029 (a) divided into interests; and

4030 (b) held by the members of the pure captive insurance company or sponsored captive
4031 insurance company.

4032 [~~2~~] (3) An association captive insurance company or an industrial insured captive
4033 insurance company may be:

4034 (a) incorporated as a stock insurer with the capital of the association captive insurance
4035 company or industrial insured captive insurance company:

4036 (i) divided into shares; and

4037 (ii) held by the stockholders of the association captive insurance company or industrial
4038 insured captive insurance company;

4039 (b) incorporated as a mutual insurer without capital stock, with a governing body
4040 elected by the member organizations of the association captive insurance company or industrial
4041 insured captive insurance company; or

4042 (c) organized as a reciprocal.

4043 [~~3~~] (4) A captive insurance company formed as a corporation may not have fewer
4044 than three incorporators of whom [~~not fewer than two shall be residents~~] one shall be a resident
4045 of this state.

4046 (5) A captive insurance company formed as a limited liability company may not have
4047 fewer than three organizers of whom one shall be a resident of this state.

4048 [~~4~~] (6) (a) Before a captive insurance company formed as a corporation files the
4049 corporation's articles of incorporation with the Division of Corporations and Commercial
4050 Code, the incorporators shall obtain from the commissioner a certificate finding that the
4051 establishment and maintenance of the proposed corporation will promote the general good of
4052 the state.

4053 (b) In considering a request for a certificate under Subsection [~~4~~] (6)(a), the
4054 commissioner shall consider:

4055 (i) the character, reputation, financial standing, and purposes of the incorporators;
4056 (ii) the character, reputation, financial responsibility, insurance experience, and
4057 business qualifications of the officers and directors;

4058 (iii) any information in:
4059 (A) the application for a certificate of authority; or
4060 (B) the department's files; and

4061 (iv) other aspects that the commissioner considers advisable.

4062 (7) (a) Before a captive insurance company formed as a limited liability company files
4063 the limited liability company's articles of organization with the Division of Corporations and
4064 Commercial Code, the limited liability company shall obtain from the commissioner a
4065 certificate finding that the establishment and maintenance of the proposed limited liability
4066 company will promote the general good of the state.

4067 (b) In considering a request for a certificate under Subsection (7)(a), the commissioner
4068 shall consider:

4069 (i) the character, reputation, financial standing, and purposes of the organizers;
4070 (ii) the character, reputation, financial responsibility, insurance experience, and
4071 business qualifications of the managers;

4072 (iii) any information in:
4073 (A) the application for a certificate of authority; or
4074 (B) the department's files; and
4075 (iv) other aspects that the commissioner considers advisable.

4076 ~~[(5)]~~ (8) (a) A captive insurance company formed as a corporation shall file with the
4077 Division of Corporations and Commercial Code:

4078 (i) the captive insurance company's articles of incorporation;
4079 (ii) the certificate issued pursuant to Subsection ~~[(4)]~~ (6); and
4080 (iii) the fees required by the Division of Corporations and Commercial Code.

4081 (b) The Division of Corporations and Commercial Code shall file both the articles of
4082 incorporation and the certificate described in Subsection ~~[(4)]~~ (6) for a captive insurance
4083 company that complies with this section.

4084 (9) (a) A captive insurance company formed as a limited liability company shall file
4085 with the Division of Corporations and Commercial Code:

4086 (i) the captive insurance company's certificate of organization;
4087 (ii) the certificate issued pursuant to Subsection (7); and
4088 (iii) the fees required by the Division of Corporations and Commercial Code.
4089 (b) The Division of Corporations and Commercial Code shall file both the certificate
4090 of organization and the certificate described in Subsection (7) for a captive insurance company
4091 that complies with this section.

4092 [~~6~~] (10) (a) The organizers of a captive insurance company formed as a reciprocal
4093 insurer shall obtain from the commissioner a certificate finding that the establishment and
4094 maintenance of the proposed association will promote the general good of the state.

4095 (b) In considering a request for a certificate under Subsection [~~6~~] (10)(a), the
4096 commissioner shall consider:

4097 (i) the character, reputation, financial standing, and purposes of the incorporators;
4098 (ii) the character, reputation, financial responsibility, insurance experience, and
4099 business qualifications of the officers and directors;

4100 (iii) any information in:

4101 (A) the application for a certificate of authority; or

4102 (B) the department's files; and

4103 (iv) other aspects that the commissioner considers advisable.

4104 [~~7~~] (11) (a) An alien captive insurance company that has received a certificate of
4105 authority to act as a branch captive insurance company shall obtain from the commissioner a
4106 certificate finding that:

4107 (i) the home state of the alien captive insurance company imposes statutory or
4108 regulatory standards in a form acceptable to the commissioner on companies transacting the
4109 business of insurance in that state; and

4110 (ii) after considering the character, reputation, financial responsibility, insurance
4111 experience, and business qualifications of the officers and directors of the alien captive
4112 insurance company, and other relevant information, the establishment and maintenance of the
4113 branch operations will promote the general good of the state.

4114 (b) After the commissioner issues a certificate under Subsection [~~7~~] (11)(a) to an
4115 alien captive insurance company, the alien captive insurance company may register to do
4116 business in this state.

4117 ~~[(8) The capital stock of a captive insurance company incorporated as a stock insurer~~
4118 ~~may not be issued at less than par value.]~~

4119 ~~[(9)]~~ (12) At least one of the members of the board of directors of a captive insurance
4120 company formed as a corporation shall be a resident of this state.

4121 (13) At least one of the managers of a limited liability company shall be a resident of
4122 this state.

4123 ~~[(10)]~~ (14) At least one of the members of the subscribers' advisory committee of a
4124 captive insurance company formed as a reciprocal insurer shall be a resident of this state.

4125 ~~[(11)]~~ (15) (a) A captive insurance company formed as a corporation under this chapter
4126 has the privileges and is subject to the provisions of the general corporation law as well as the
4127 applicable provisions contained in this chapter.

4128 (b) If a conflict exists between a provision of the general corporation law and a
4129 provision of this chapter, this chapter shall control.

4130 (c) Except as provided in Subsection ~~[(11)]~~ (15)(d), the provisions of this title
4131 pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in
4132 determining the procedures to be followed by a captive insurance company in carrying out any
4133 of the transactions described in those provisions.

4134 (d) Notwithstanding Subsection ~~[(11)]~~ (15)(c), the commissioner may waive or modify
4135 the requirements for public notice and hearing in accordance with rules adopted under Section
4136 [31A-37-106](#).

4137 (e) If a notice of public hearing is required, but no one requests a hearing, the
4138 commissioner may cancel the public hearing.

4139 (16) (a) A captive insurance company formed as a limited liability company under this
4140 chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability
4141 Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act,
4142 as appropriate pursuant to Section [48-3a-1405](#), as well as the applicable provisions in this
4143 chapter.

4144 (b) If a conflict exists between a provision of the limited liability company law and a
4145 provision of this chapter, this chapter controls.

4146 (c) The provisions of this title pertaining to a merger, consolidation, conversion,
4147 mutualization, and redomestication apply in determining the procedures to be followed by a

4148 captive insurance company in carrying out any of the transactions described in those
4149 provisions.

4150 (d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the
4151 requirements for public notice and hearing in accordance with rules adopted under Section
4152 31A-37-106.

4153 (e) If a notice of public hearing is required, but no one requests a hearing, the
4154 commissioner may cancel the public hearing.

4155 [~~(12)~~] (17) (a) A captive insurance company formed as a reciprocal insurer under this
4156 chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions
4157 of this chapter.

4158 (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions
4159 of this chapter with respect to a captive insurance company, this chapter shall control.

4160 (c) To the extent a reciprocal insurer is made subject to other provisions of this title
4161 pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer
4162 formed under this chapter unless the provisions are expressly made applicable to a captive
4163 insurance company under this chapter.

4164 (d) In addition to the provisions of this Subsection [~~(12)~~] (17), a captive insurance
4165 company organized as a reciprocal insurer that is an industrial insured group has the privileges
4166 of Section 31A-4-114 in addition to applicable provisions of this title.

4167 [~~(13)~~] (18) (a) The articles of incorporation or bylaws of a captive insurance company
4168 formed as a corporation may not authorize a quorum of a board of directors to consist of fewer
4169 than one-third of the fixed or prescribed number of directors as provided in Section
4170 16-10a-824.

4171 (b) The certificate of organization of a captive insurance company formed as a limited
4172 liability company may not authorize a quorum of a board of managers to consist of fewer than
4173 one-third of the fixed or prescribed number of directors required in Section 16-10a-824.

4174 Section 42. Section 31A-37-302 is amended to read:

4175 **31A-37-302. Investment requirements.**

4176 (1) (a) Except as provided in Subsection (1)(b), an association captive insurance
4177 company, a sponsored captive insurance company, and an industrial insured group shall
4178 comply with the investment requirements contained in this title.

4179 (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the
 4180 commissioner may approve the use of alternative reliable methods of valuation and rating
 4181 under Section 31A-37-106 for:

- 4182 (i) an association captive insurance company;
- 4183 (ii) a sponsored captive insurance company; or
- 4184 (iii) an industrial insured group.

4185 (2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or
 4186 industrial insured captive insurance company is not subject to any restrictions on allowable
 4187 investments contained in this title.

4188 (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section
 4189 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

- 4190 (i) a pure captive insurance company; or
- 4191 (ii) an industrial insured captive insurance company.

4192 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may
 4193 not make loans to:

- 4194 (A) the parent company of the captive insurance company; or
- 4195 (B) an affiliate of the captive insurance company.

4196 (ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make
 4197 loans to:

- 4198 (A) the parent company of the pure captive insurance company; or
- 4199 (B) an affiliate of the pure captive insurance company.

4200 (b) A loan under Subsection (3)(a):

- 4201 (i) may be made only on the prior written approval of the commissioner; and
- 4202 (ii) shall be evidenced by a note in a form approved by the commissioner.

4203 (c) A pure captive insurance company may not make a loan from ~~[-(i)]~~ the paid-in
 4204 capital required under Subsection 31A-37-204(1) ~~[-or]~~.

4205 ~~[(ii) the free surplus required under Subsection 31A-37-205(1).]~~

4206 Section 43. Section 31A-37-303 is amended to read:

4207 **31A-37-303. Reinsurance.**

4208 (1) A captive insurance company may provide reinsurance, as authorized in this title,
 4209 on risks ceded ~~[by any other insurer]~~ for the benefit of a parent, affiliate, or controlled

4210 unaffiliated business.

4211 (2) (a) A captive insurance company may take credit for reserves on risks or portions of
4212 risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404.

4213 (b) Unless the reinsurer is in compliance with Section 31A-17-404, a captive insurance
4214 company may not take credit for:

4215 (i) reserves on risks ceded to a reinsurer; or

4216 (ii) portions of risks ceded to a reinsurer.

4217 Section 44. Section 31A-37-306 is amended to read:

4218 **31A-37-306. Conversion or merger.**

4219 (1) An association captive insurance company or industrial insured group formed as a
4220 stock or mutual corporation may be:

4221 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

4222 (b) merged with and into a reciprocal insurer in accordance with a plan and this
4223 section.

4224 (2) An association captive insurance company or industrial group formed as a limited
4225 liability company may be:

4226 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

4227 (b) merged with and into a reciprocal insurer in accordance with a plan and this
4228 section.

4229 [~~2~~] (3) A plan for a conversion or merger under this section:

4230 (a) shall be fair and equitable to:

4231 (i) the shareholders, in the case of a stock insurer; [or]

4232 (ii) the policyholders, in the case of a mutual insurer; and

4233 (iii) the members, in the case of a limited liability company insurer; and

4234 (b) shall provide for the purchase of:

4235 (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the
4236 same manner and subject to the same rights and conditions as are provided a dissenting
4237 shareholder; or

4238 (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in
4239 substantially the same manner and subject to the same rights and conditions as are provided a
4240 dissenting policyholder.

4241 ~~[(3)]~~ (4) In the case of a conversion authorized under Subsection (1) or (2):

4242 (a) the conversion shall be accomplished under a reasonable plan and procedure that

4243 are approved by the commissioner;

4244 (b) the commissioner may not approve the plan of conversion under this section unless

4245 the plan:

4246 (i) satisfies Subsections ~~[(2)]~~ (3) and ~~[(6)]~~ (7);

4247 (ii) provides for the conversion of existing stockholder ~~[or]~~, policyholder, or member

4248 interests into subscriber interests in the resulting reciprocal insurer, proportionate to

4249 stockholder ~~[or]~~, policyholder, or member interests in the stock or mutual insurer or limited

4250 liability company; and

4251 (iii) is approved:

4252 (A) in the case of a stock insurer, by a majority of the shares entitled to vote

4253 represented in person or by proxy at a duly called regular or special meeting at which a quorum

4254 is present; ~~[or]~~

4255 (B) in the case of a mutual insurer, by a majority of the voting interests of

4256 policyholders represented in person or by proxy at a duly called regular or special meeting at

4257 which a quorum is present; or

4258 (C) in the case of a limited liability company insurer, by a majority of the voting

4259 managers represented in person or by proxy at a duly called regular or special meeting at which

4260 a quorum is present;

4261 (c) the commissioner shall approve a plan of conversion if the commissioner finds that

4262 the conversion will promote the general good of the state in conformity with the standards

4263 under ~~[Subsection]~~ Section 31A-37-301~~[(4)]~~;

4264 (d) if the commissioner approves a plan of conversion, the commissioner shall amend

4265 the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and

4266 issue the amended certificate of authority to the company's attorney-in-fact;

4267 (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the

4268 commissioner, the conversion is effective; and

4269 (f) upon the effectiveness of the conversion:

4270 (i) the corporate existence of the converting insurer shall cease; and

4271 (ii) the resulting reciprocal insurer shall notify the Division of Corporations and

4272 Commercial Code of the conversion.

4273 ~~[(4)]~~ (5) A merger authorized under Subsection (1) or (2) shall be accomplished
4274 substantially in accordance with the procedures set forth in this title except that, solely for
4275 purposes of the merger:

4276 (a) the plan or merger shall satisfy Subsection ~~[(2)]~~ (3);

4277 (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the
4278 board of directors of a stock or mutual insurance company;

4279 (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of
4280 a mutual insurance company;

4281 (d) if a subscribers' advisory committee does not have a president or secretary, the
4282 officers of the committee having substantially equivalent duties are the president and secretary
4283 of the committee;

4284 (e) the commissioner shall approve the articles of merger if the commissioner finds that
4285 the merger will promote the general good of the state in conformity with the standards under
4286 ~~[Subsection]~~ Section 31A-37-301~~[(4)]~~;

4287 (f) notwithstanding ~~[Sections]~~ Section 31A-37-204 ~~[and 31A-37-205]~~, the
4288 commissioner may permit the formation, without capital and surplus, of a captive insurance
4289 company organized as a reciprocal insurer, into which an existing captive insurance company
4290 may be merged to facilitate a transaction under this section, if there is no more than one
4291 authorized insurance company surviving the merger; and

4292 (g) an alien insurer may be a party to a merger authorized under Subsection (1) or (2)
4293 if:

4294 (i) the requirements for the merger between a domestic and a foreign insurer under
4295 Chapter 16, Insurance Holding Companies, are applied to the merger; and

4296 (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding
4297 Companies.

4298 ~~[(5)]~~ (6) If the commissioner approves the articles of merger under this section:

4299 (a) the commissioner shall endorse the commissioner's approval on the articles; and

4300 (b) the surviving insurer shall present the name to the Division of Corporations and
4301 Commercial Code.

4302 ~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), a conversion authorized

4303 under Subsection (1) shall provide for a hearing, of which notice has been given to the insurer,
4304 its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the
4305 case of a mutual insurer, all of whom have the right to appear at the hearing.

4306 (b) Notwithstanding Subsection [~~(6)~~] (7)(a), the commissioner may waive or modify
4307 the requirements for the hearing.

4308 (c) If a notice of hearing is required, but no hearing is requested, after notice has been
4309 given under Subsection [~~(6)~~] (7)(a), the commissioner may cancel the hearing.

4310 Section 45. Section 31A-37-401 is amended to read:

4311 **31A-37-401. Sponsored captive insurance companies -- Formation.**

4312 (1) One or more sponsors may form a sponsored captive insurance company under this
4313 chapter.

4314 (2) A sponsored captive insurance company formed under this chapter may establish
4315 and maintain a protected cell to insure risks of a participant if:

4316 (a) the shareholders of a sponsored captive insurance company are limited to:

4317 (i) the participants of the sponsored captive insurance company; and

4318 (ii) the sponsors of the sponsored captive insurance company;

4319 (b) each protected cell is accounted for separately on the books and records of the
4320 sponsored cell captive insurance company to reflect:

4321 (i) the financial condition of [~~the~~] each individual protected cell;

4322 (ii) the results of operations of [~~the~~] each individual protected cell;

4323 (iii) the net income or loss of [~~the~~] each individual protected cell;

4324 (iv) the dividends or other distributions to participants of [~~the~~] each individual
4325 protected cell; and

4326 (v) other factors that may be:

4327 (A) provided in the participant contract; or

4328 (B) required by the commissioner;

4329 (c) the assets of a protected cell are not chargeable with liabilities arising out of any
4330 other insurance business the sponsored captive insurance company may conduct;

4331 (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive
4332 insurance company between or among any of the protected cells of the sponsored captive
4333 insurance company without the consent of the protected cells;

4334 (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a
4335 protected cell to a sponsor or participant without the commissioner's approval, which may not
4336 be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or
4337 impairment with respect to a protected cell;

4338 (f) a sponsored captive insurance company annually files with the commissioner
4339 financial reports the commissioner requires under Section [31A-37-106](#), including accounting
4340 statements detailing the financial experience of each protected cell;

4341 (g) a sponsored captive insurance company notifies the commissioner in writing within
4342 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or
4343 expense obligations of the protected cell;

4344 (h) a participant contract does not take effect without the commissioner's prior written
4345 approval; [~~and~~]

4346 (i) the addition of each new protected cell and withdrawal of a participant of any
4347 existing protected cell does not take effect without the commissioner's prior written
4348 approval[-]; and

4349 (j) (i) a protected cell captive insurance company shall pay to the department the
4350 following nonrefundable fees established by the department under Sections [31A-3-103](#),
4351 [31A-3-304](#), and [63J-1-504](#):

4352 (A) a fee for examining, investigating, and processing by a department employee of an
4353 application for a certificate of authority made by a protected cell captive insurance company;

4354 (B) a fee for obtaining a certificate of authority for the year the protected cell captive
4355 insurance company is issued a certificate of authority by the department; and

4356 (C) a certificate of authority renewal fee; and

4357 (ii) a protected cell may be created by the sponsor or the sponsor may create a pooling
4358 insurance arrangement to provide for pooling of risks to allow for risk distribution upon written
4359 approval from every protected cell under the sponsor and written approval of the
4360 commissioner.

4361 Section 46. Section [31A-37-402](#) is amended to read:

4362 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**
4363 **mandatory.**

4364 (1) A sponsor of a sponsored captive insurance company shall be:

- 4365 (a) an insurer authorized or approved under the laws of a state;
- 4366 (b) a reinsurer authorized or approved under the laws of a state;
- 4367 (c) a captive insurance company holding a certificate of authority under this chapter;
- 4368 (d) an insurance holding company that:
 - 4369 (i) controls an insurer licensed pursuant to the laws of a state; and
 - 4370 (ii) is subject to registration pursuant to the holding company system of laws of the
 - 4371 state of domicile of the insurer described in Subsection (1)(d)(i); [~~or~~]
 - 4372 (e) an approved captive management firm in Utah or its affiliates; or
 - 4373 [~~(e)~~] (f) another person approved by the commissioner after finding that the approval of
 - 4374 the person as a sponsor is not inconsistent with the purposes of this chapter.
- 4375 (2) (a) The business written by a sponsored captive insurance company with respect to
- 4376 a protected cell shall be fronted by the sponsor insurance company through a controlled
- 4377 unaffiliated contract or an insurer that is:
 - 4378 (i) authorized or approved:
 - 4379 (A) under the laws of a state; or
 - 4380 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an
 - 4381 insurance company licensed pursuant to the laws of a state;
 - 4382 (ii) reinsured by a reinsurer authorized or approved by this state; or
 - 4383 (iii) subject to Subsection (2)(b), secured by a trust fund:
 - 4384 (A) in the United States;
 - 4385 (B) for the benefit of policyholders and claimants; [~~and~~]
 - 4386 (C) funded by an irrevocable letter of credit or other asset acceptable to the
 - 4387 commissioner[~~;~~]; and
 - 4388 (D) held by the sponsor as provided in Subsection [31A-17-404\(1\)](#).
 - 4389 (b) (i) The amount of security provided by the trust fund described in Subsection
 - 4390 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,
 - 4391 including:
 - 4392 (A) reserves for losses;
 - 4393 (B) allocated loss adjustment expenses;
 - 4394 (C) incurred but unreported losses; and
 - 4395 (D) unearned premiums for business written through the participant's protected cell.

4396 (ii) The commissioner may require the sponsored captive insurance company to
4397 increase the funding of a trust established pursuant to this Subsection (2).

4398 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of
4399 credit, the letter of credit shall be established, issued, or confirmed by a bank that is:

4400 (A) chartered in this state;

4401 (B) a member of the federal reserve system; or

4402 (C) chartered by another state if that state-chartered bank is acceptable to the
4403 commissioner.

4404 (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a
4405 form and upon terms approved by the commissioner.

4406 (3) A risk retention group may not be either a sponsor or a participant of a sponsored
4407 captive insurance company.

4408 Section 47. Section **31A-37-403** is amended to read:

4409 **31A-37-403. Participants in sponsored captive insurance companies.**

4410 (1) Any of the following may be a participant in a sponsored captive insurance
4411 company holding a certificate of authority under this chapter:

4412 (a) an association;

4413 (b) a corporation that is for profit or nonprofit;

4414 (c) a limited liability company;

4415 (d) a partnership;

4416 (e) a trust; or

4417 (f) any other business entity.

4418 (2) A sponsor may be a participant in a sponsored captive insurance company.

4419 (3) A participant need not be:

4420 (a) a shareholder of the sponsored captive insurance company; or

4421 (b) an affiliate of the sponsored captive insurance company.

4422 (4) A participant shall insure only the participant's own risks through a sponsored
4423 captive insurance company unless otherwise approved by the commissioner.

4424 Section 48. Section **31A-37-404** is amended to read:

4425 **31A-37-404. Discounting of loss and loss adjustment expense reserves.**

4426 (1) [~~The following~~] A sponsored captive insurance company may discount its loss and

4427 loss adjustment expense reserves at treasury rates applied to the applicable payments projected
4428 through the use of the expected payment pattern associated with the reserves[?].

4429 ~~[(a) a sponsored captive insurance company; and]~~

4430 ~~[(b) a captive reinsurance company.]~~

4431 (2) (a) ~~[The following]~~ A sponsored captive insurance company shall annually file with
4432 the department an actuarial opinion provided by an independent actuary on loss and loss
4433 adjustment expense reserves[?].

4434 ~~[(i) a sponsored captive insurance company; and]~~

4435 ~~[(ii) a captive reinsurance company.]~~

4436 (b) The independent actuary described in Subsection (2)(a) may not be an employee of:

4437 (i) the company filing the actuarial opinion; or

4438 (ii) an affiliate of the company filing the actuarial opinion.

4439 (3) The commissioner may disallow the discounting of reserves by ~~[the following]~~ a
4440 sponsored captive insurance company if the sponsored captive insurance company violates this
4441 title[?].

4442 ~~[(a) a sponsored captive insurance company; or]~~

4443 ~~[(b) a captive reinsurance company.]~~

4444 Section 49. Section **31A-37-501** is amended to read:

4445 **31A-37-501. Reports to commissioner.**

4446 (1) A captive insurance company is not required to make a report except those
4447 provided in this chapter.

4448 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the
4449 commissioner a report of the financial condition of the captive insurance company, verified by
4450 oath of two of the executive officers of the captive insurance company.

4451 (b) Except as provided in ~~[Sections]~~ Section 31A-37-204 ~~[and 31A-37-205]~~, a captive
4452 insurance company shall report:

4453 (i) using generally accepted accounting principles, except to the extent that the
4454 commissioner requires, approves, or accepts the use of a statutory accounting principle;

4455 (ii) using a useful or necessary modification or adaptation to an accounting principle
4456 that is required, approved, or accepted by the commissioner for the type of insurance and kind
4457 of insurer to be reported upon; and

- 4458 (iii) supplemental or additional information required by the commissioner.
4459 (c) Except as otherwise provided:
4460 (i) a licensed captive insurance company shall file the report required by Section
4461 [31A-4-113](#); and
4462 (ii) an industrial insured group shall comply with Section [31A-4-113.5](#).
4463 (3) (a) A pure captive insurance company may make written application to file the
4464 required report on a fiscal year end that is consistent with the fiscal year of the parent company
4465 of the pure captive insurance company.
4466 (b) If the commissioner grants an alternative reporting date for a pure captive insurance
4467 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal
4468 year end.
4469 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall
4470 file with the commissioner a copy of the reports and statements required to be filed under the
4471 laws of the jurisdiction in which the alien captive insurance company is formed, verified by
4472 oath by two of the alien captive insurance company's executive officers.
4473 (b) If the commissioner is satisfied that the annual report filed by the alien captive
4474 insurance company in the jurisdiction in which the alien captive insurance company is formed
4475 provides adequate information concerning the financial condition of the alien captive insurance
4476 company, the commissioner may waive the requirement for completion of the annual statement
4477 required for a captive insurance company under this section with respect to business written in
4478 the alien jurisdiction.
4479 (c) A waiver by the commissioner under Subsection (4)(b):
4480 (i) shall be in writing; and
4481 (ii) is subject to public inspection.
4482 (5) Before March 1 of each year, a sponsored cell captive insurance company shall
4483 submit to the commissioner a consolidated report of the financial condition of each individual
4484 protected cell, including a financial statement for each protected cell.
4485 Section 50. Section [31A-37-502](#) is amended to read:
4486 **31A-37-502. Examination.**
4487 (1) (a) As provided in this section, the commissioner, or a person appointed by the
4488 commissioner, shall examine each captive insurance company in each [~~three-year~~] five-year

4489 period.

4490 (b) The [~~three-year~~] five-year period described in Subsection (1)(a) shall be determined
4491 on the basis of [~~three~~] five full annual accounting periods of operation.

4492 (c) The examination is to be made as of:

4493 (i) December 31 of the full three-year period; or

4494 (ii) the last day of the month of an annual accounting period authorized for a captive
4495 insurance company under this section.

4496 (d) In addition to an examination required under this Subsection (1), the commissioner,
4497 or a person appointed by the commissioner may examine a captive insurance company
4498 whenever the commissioner determines it to be prudent.

4499 (2) During an examination under this section the commissioner, or a person appointed
4500 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance
4501 company to ascertain:

4502 (a) the financial condition of the captive insurance company;

4503 (b) the ability of the captive insurance company to fulfill the obligations of the captive
4504 insurance company; and

4505 (c) whether the captive insurance company has complied with this chapter.

4506 [~~(3) The commissioner upon application may enlarge the three-year period described in~~
4507 ~~Subsection (1) to five years, if a captive insurance company is subject to a comprehensive~~
4508 ~~annual audit during that period:]~~

4509 [~~(a) of a scope satisfactory to the commissioner; and]~~

4510 [~~(b) performed by independent auditors approved by the commissioner.]~~

4511 [~~(4)]~~ (3) The commissioner may accept a comprehensive annual independent audit in
4512 lieu of an examination:

4513 (a) of a scope satisfactory to the commissioner; and

4514 (b) performed by an independent auditor approved by the commissioner.

4515 [~~(5)]~~ (4) A captive insurance company that is inspected and examined under this
4516 section shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an
4517 inspection and examination.

4518 Section 51. Section 31A-37-505 is amended to read:

4519 **31A-37-505. Suspension or revocation -- Grounds.**

- 4520 (1) The commissioner may suspend or revoke the certificate of authority of a captive
4521 insurance company to conduct an insurance business in this state for:
- 4522 (a) insolvency or impairment of capital or surplus;
 - 4523 (b) failure to meet the requirements of Section [31A-37-204](#) [~~or [31A-37-205](#)];~~
 - 4524 (c) refusal or failure to submit:
 - 4525 (i) an annual report required by Section [31A-37-501](#); or
 - 4526 (ii) any other report or statement required by law or by lawful order of the
4527 commissioner;
 - 4528 (d) failure to comply with the charter, bylaws, or other organizational document of the
4529 captive insurance company;
 - 4530 (e) failure to submit to:
 - 4531 (i) an examination under Section [31A-37-502](#); or
 - 4532 (ii) any legal obligation relative to an examination under Section [31A-37-502](#);
 - 4533 (f) refusal or failure to pay the cost of examination under Section [31A-37-502](#);
 - 4534 (g) use of methods that, although not otherwise specifically prohibited by law, render:
 - 4535 (i) the operation of the captive insurance company detrimental to the public or the
4536 policyholders of the captive insurance company; or
 - 4537 (ii) the condition of the captive insurance company unsound with respect to the public
4538 or to the policyholders of the captive insurance company; or
 - 4539 (h) failure otherwise to comply with laws of this state.
- 4540 (2) Notwithstanding any other provision of this title, if the commissioner finds, upon
4541 examination, hearing, or other evidence, that a captive insurance company has committed any
4542 of the acts specified in Subsection (1), the commissioner may suspend or revoke the certificate
4543 of authority of the captive insurance company if the commissioner considers it in the best
4544 interest of the public and the policyholders of the captive insurance company to revoke the
4545 certificate of authority.

4546 Section 52. Section [31A-43-301](#) is amended to read:

4547 **31A-43-301. Stop-loss insurance coverage standards.**

- 4548 (1) A small employer stop-loss insurance contract shall:
- 4549 (a) be issued to the small employer to provide insurance to the group health benefit
4550 plan, not the employees of the small employer;

4551 ~~[(b) use a standard application form developed by the commissioner by administrative~~
4552 ~~rule;]~~

4553 ~~[(e)]~~ (b) have a contract term with guaranteed rates for at least 12 months, without
4554 adjustment, unless there is a change in the benefits provided under the small employer's health
4555 plan during the contract period;

4556 ~~[(d)]~~ (c) include both a specific attachment point and an aggregate attachment point in
4557 a contract;

4558 ~~[(e)]~~ (d) align stop-loss plan benefit limitations and exclusions with a small employer's
4559 health plan benefit limitations and exclusions, including any annual or lifetime limits in the
4560 employer's health plan;

4561 ~~[(f)]~~ (e) have an annual specific attachment point that is at least \$10,000;

4562 ~~[(g)]~~ (f) have an annual aggregate attachment point that may not be less than 85% of
4563 expected claims;

4564 ~~[(h)]~~ (g) pay stop-loss claims:

4565 (i) incurred during the contract period; and

4566 (ii) paid within 12 months after the expiration date of the contract; and

4567 ~~[(i)]~~ (h) include provisions to cover incurred and unpaid stop-loss claims ~~[if a]~~ when
4568 the small [employer] employer's stop-loss plan terminates.

4569 (2) A small employer stop-loss contract shall not:

4570 (a) include lasering; and

4571 (b) pay claims directly to an individual employee, member, or participant.

4572 Section 53. Section **63I-2-231** is amended to read:

4573 **63I-2-231. Repeal dates, Title 31A.**

4574 (1) Section **31A-22-315.5** is repealed July 1, 2016.

4575 (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed July 1,
4576 ~~[2015]~~ 2016.

4577 Section 54. **Repealer.**

4578 This bill repeals:

4579 Section **31A-37-205, Free surplus.**

4580 Section **31A-37-601, Incorporation of a captive reinsurance company.**

4581 Section **31A-37-602, Requirements of a captive reinsurance company.**

4582 Section [31A-37-603](#), **Minimum capitalization or reserves for a captive reinsurance**
4583 **company.**

4584 Section [31A-37-604](#), **Management of assets of a captive reinsurance company.**

4585 Section 55. **Effective date.**

4586 This bill takes effect on May 12, 2015, except that:

4587 (1) the amendments in this bill to Section [31A-3-304](#) (Effective 07/01/15) take effect
4588 on July 1, 2015; and

4589 (2) the actions affecting the following sections in this bill take effect on October 1,
4590 2015:

4591 (a) Section [31A-16-102.5](#);

4592 (b) Section [31A-16-103](#);

4593 (c) Section [31A-16-104.5](#);

4594 (d) Section [31A-16-105](#);

4595 (e) Section [31A-16-106](#);

4596 (f) Section [31A-16-107.5](#);

4597 (g) Section [31A-16-108.5](#);

4598 (h) Section [31A-16-109](#);

4599 (i) Section [31A-16-112](#);

4600 (j) Section [31A-16-113](#);

4601 (k) Section [31A-16-114](#);

4602 (l) Section [31A-16-115](#);

4603 (m) Section [31A-16-116](#);

4604 (n) Section [31A-16-117](#);

4605 (o) Section [31A-16-118](#); and

4606 (p) Section [31A-16-119](#).