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TITLE AND ESCROW MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Insurance Code to address issues related to title and escrow insurance.

Highlighted Provisions:

This bill:

- ▶ modifies definition provisions;
- ▶ changes references from searches to title examinations;
- ▶ addresses duties of the commissioner and the Title and Escrow Commission related to title insurance;
- ▶ addresses adjudication of a title insurance matter and the imposition of penalties;
- ▶ modifies definitions related to licensing;
- ▶ modifies financial requirements for a producer;
- ▶ changes assessment provisions; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **31A-1-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 29 **31A-2-402**, as last amended by Laws of Utah 2013, Chapter 319
- 30 **31A-2-403**, as last amended by Laws of Utah 2013, Chapter 319
- 31 **31A-2-404**, as last amended by Laws of Utah 2013, Chapters 43 and 319
- 32 **31A-19a-209**, as last amended by Laws of Utah 2013, Chapter 319
- 33 **31A-20-110**, as last amended by Laws of Utah 2013, Chapter 319
- 34 **31A-23a-102**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 35 **31A-23a-106**, as last amended by Laws of Utah 2014, Chapter 277
- 36 **31A-23a-204**, as last amended by Laws of Utah 2013, Chapter 319
- 37 **31A-23a-415**, as last amended by Laws of Utah 2013, Chapter 319
- 38 **31A-23a-504**, as last amended by Laws of Utah 2014, Chapter 277
- 39 **31A-41-202**, as last amended by Laws of Utah 2013, Chapter 319
- 40 **31A-41-203**, as enacted by Laws of Utah 2008, Chapter 220

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

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

44 **31A-1-301. Definitions.**

45 As used in this title, unless otherwise specified:

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

48 (i) a medical condition including:

49 (A) a medical care expense; or

50 (B) the risk of disability;

51 (ii) accident; or

52 (iii) sickness.

53 (b) "Accident and health insurance":

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

55 (A) an income replacement contract;

56 (B) a health care contract;

57 (C) an expense reimbursement contract;

58 (D) a credit accident and health contract;

- 59 (E) a continuing care contract; and
60 (F) a long-term care contract; and
61 (ii) may provide:
62 (A) hospital coverage;
63 (B) surgical coverage;
64 (C) medical coverage;
65 (D) loss of income coverage;
66 (E) prescription drug coverage;
67 (F) dental coverage; or
68 (G) vision coverage.
- 69 (c) "Accident and health insurance" does not include workers' compensation insurance.
70 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
71 63G, Chapter 3, Utah Administrative Rulemaking Act.
72 (3) "Administrator" is defined in Subsection (164).
73 (4) "Adult" means an individual who has attained the age of at least 18 years.
74 (5) "Affiliate" means a person who controls, is controlled by, or is under common
75 control with, another person. A corporation is an affiliate of another corporation, regardless of
76 ownership, if substantially the same group of individuals manage the corporations.
77 (6) "Agency" means:
78 (a) a person other than an individual, including a sole proprietorship by which an
79 individual does business under an assumed name; and
80 (b) an insurance organization licensed or required to be licensed under Section
81 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).
82 (7) "Alien insurer" means an insurer domiciled outside the United States.
83 (8) "Amendment" means an endorsement to an insurance policy or certificate.
84 (9) "Annuity" means an agreement to make periodical payments for a period certain or
85 over the lifetime of one or more individuals if the making or continuance of all or some of the
86 series of the payments, or the amount of the payment, is dependent upon the continuance of
87 human life.
88 (10) "Application" means a document:
89 (a) (i) completed by an applicant to provide information about the risk to be insured;

90 and

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

93 (A) insure the risk under:

94 (I) the coverage as originally offered; or

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

96 (B) decline to insure the risk; or

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

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

100 (a) the original articles;

101 (b) a special law;

102 (c) a charter;

103 (d) an amendment;

104 (e) restated articles;

105 (f) articles of merger or consolidation;

106 (g) a trust instrument;

107 (h) another constitutive document for a trust or other entity that is not a corporation;

108 and

109 (i) an amendment to an item listed in Subsections (11)(a) through (h).

110 (12) "Bail bond insurance" means a guarantee that a person will attend court when
111 required, up to and including surrender of the person in execution of a sentence imposed under
112 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

113 (13) "Binder" is defined in Section 31A-21-102.

114 (14) "Blanket insurance policy" means a group policy covering a defined class of
115 persons:

116 (a) without individual underwriting or application; and

117 (b) that is determined by definition without designating each person covered.

118 (15) "Board," "board of trustees," or "board of directors" means the group of persons
119 with responsibility over, or management of, a corporation, however designated.

120 (16) "Bona fide office" means a physical office in this state:

- 121 (a) that is open to the public;
- 122 (b) that is staffed during regular business hours on regular business days; and
- 123 (c) at which the public may appear in person to obtain services.
- 124 (17) "Business entity" means:
- 125 (a) a corporation;
- 126 (b) an association;
- 127 (c) a partnership;
- 128 (d) a limited liability company;
- 129 (e) a limited liability partnership; or
- 130 (f) another legal entity.
- 131 (18) "Business of insurance" is defined in Subsection (88).
- 132 (19) "Business plan" means the information required to be supplied to the
- 133 commissioner under Subsections [31A-5-204](#)(2)(i) and (j), including the information required
- 134 when these subsections apply by reference under:
- 135 (a) Section [31A-7-201](#);
- 136 (b) Section [31A-8-205](#); or
- 137 (c) Subsection [31A-9-205](#)(2).
- 138 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a
- 139 corporation's affairs, however designated.
- 140 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
- 141 corporation.
- 142 (21) "Captive insurance company" means:
- 143 (a) an insurer:
- 144 (i) owned by another organization; and
- 145 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 146 affiliated company; or
- 147 (b) in the case of a group or association, an insurer:
- 148 (i) owned by the insureds; and
- 149 (ii) whose exclusive purpose is to insure risks of:
- 150 (A) a member organization;
- 151 (B) a group member; or

- 152 (C) an affiliate of:
- 153 (I) a member organization; or
- 154 (II) a group member.
- 155 (22) "Casualty insurance" means liability insurance.
- 156 (23) "Certificate" means evidence of insurance given to:
- 157 (a) an insured under a group insurance policy; or
- 158 (b) a third party.
- 159 (24) "Certificate of authority" is included within the term "license."
- 160 (25) "Claim," unless the context otherwise requires, means a request or demand on an
- 161 insurer for payment of a benefit according to the terms of an insurance policy.
- 162 (26) "Claims-made coverage" means an insurance contract or provision limiting
- 163 coverage under a policy insuring against legal liability to claims that are first made against the
- 164 insured while the policy is in force.
- 165 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 166 commissioner.
- 167 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
- 168 supervisory official of another jurisdiction.
- 169 (28) (a) "Continuing care insurance" means insurance that:
- 170 (i) provides board and lodging;
- 171 (ii) provides one or more of the following:
- 172 (A) a personal service;
- 173 (B) a nursing service;
- 174 (C) a medical service; or
- 175 (D) any other health-related service; and
- 176 (iii) provides the coverage described in this Subsection (28)(a) under an agreement
- 177 effective:
- 178 (A) for the life of the insured; or
- 179 (B) for a period in excess of one year.
- 180 (b) Insurance is continuing care insurance regardless of whether or not the board and
- 181 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).
- 182 (29) (a) "Control," "controlling," "controlled," or "under common control" means the

183 direct or indirect possession of the power to direct or cause the direction of the management
184 and policies of a person. This control may be:

- 185 (i) by contract;
186 (ii) by common management;
187 (iii) through the ownership of voting securities; or
188 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

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

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

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

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

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

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

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

204 (i) a corporation doing business:

205 (A) as:

206 (I) an insurance producer;

207 (II) a surplus lines producer;

208 (III) a limited line producer;

209 (IV) a consultant;

210 (V) a managing general agent;

211 (VI) a reinsurance intermediary;

212 (VII) a third party administrator; or

213 (VIII) an adjuster; and

- 214 (B) under:
- 215 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 216 Reinsurance Intermediaries;
- 217 (II) Chapter 25, Third Party Administrators; or
- 218 (III) Chapter 26, Insurance Adjusters; or
- 219 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 220 Holding Companies.
- 221 (b) "Stock corporation" means a stock insurance corporation.
- 222 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 223 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations
- 224 adopted pursuant to the Health Insurance Portability and Accountability Act.
- 225 (b) "Creditable coverage" includes coverage that is offered through a public health plan
- 226 such as:
- 227 (i) the Primary Care Network Program under a Medicaid primary care network
- 228 demonstration waiver obtained subject to Section [26-18-3](#);
- 229 (ii) the Children's Health Insurance Program under Section [26-40-106](#); or
- 230 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
- 231 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
- 232 (35) "Credit accident and health insurance" means insurance on a debtor to provide
- 233 indemnity for payments coming due on a specific loan or other credit transaction while the
- 234 debtor has a disability.
- 235 (36) (a) "Credit insurance" means insurance offered in connection with an extension of
- 236 credit that is limited to partially or wholly extinguishing that credit obligation.
- 237 (b) "Credit insurance" includes:
- 238 (i) credit accident and health insurance;
- 239 (ii) credit life insurance;
- 240 (iii) credit property insurance;
- 241 (iv) credit unemployment insurance;
- 242 (v) guaranteed automobile protection insurance;
- 243 (vi) involuntary unemployment insurance;
- 244 (vii) mortgage accident and health insurance;

245 (viii) mortgage guaranty insurance; and

246 (ix) mortgage life insurance.

247 (37) "Credit life insurance" means insurance on the life of a debtor in connection with
248 an extension of credit that pays a person if the debtor dies.

249 [~~(40)~~] (38) "Creditor" means a person, including an insured, having a claim, whether:

250 (a) matured;

251 (b) unmatured;

252 (c) liquidated;

253 (d) unliquidated;

254 (e) secured;

255 (f) unsecured;

256 (g) absolute;

257 (h) fixed; or

258 (i) contingent.

259 [~~(38)~~] (39) "Credit property insurance" means insurance:

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

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

262 [~~(39)~~] (40) "Credit unemployment insurance" means insurance:

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

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

265 (i) specific loan; or

266 (ii) credit transaction.

267 (41) (a) "Crop insurance" means insurance providing protection against damage to
268 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
269 disease, or other yield-reducing conditions or perils that is:

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

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

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

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

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

- 276 (A) producer;
- 277 (B) surplus lines producer; or
- 278 (C) consultant employer; and
- 279 (ii) to the customer service representative's employer's:
- 280 (A) customer;
- 281 (B) client; or
- 282 (C) organization.
- 283 (b) A customer service representative may only operate within the scope of authority of
- 284 the customer service representative's producer, surplus lines producer, or consultant employer.
- 285 (43) "Deadline" means a final date or time:
- 286 (a) imposed by:
- 287 (i) statute;
- 288 (ii) rule; or
- 289 (iii) order; and
- 290 (b) by which a required filing or payment must be received by the department.
- 291 (44) "Deemer clause" means a provision under this title under which upon the
- 292 occurrence of a condition precedent, the commissioner is considered to have taken a specific
- 293 action. If the statute so provides, a condition precedent may be the commissioner's failure to
- 294 take a specific action.
- 295 (45) "Degree of relationship" means the number of steps between two persons
- 296 determined by counting the generations separating one person from a common ancestor and
- 297 then counting the generations to the other person.
- 298 (46) "Department" means the Insurance Department.
- 299 (47) "Director" means a member of the board of directors of a corporation.
- 300 (48) "Disability" means a physiological or psychological condition that partially or
- 301 totally limits an individual's ability to:
- 302 (a) perform the duties of:
- 303 (i) that individual's occupation; or
- 304 (ii) an occupation for which the individual is reasonably suited by education, training,
- 305 or experience; or
- 306 (b) perform two or more of the following basic activities of daily living:

- 307 (i) eating;
- 308 (ii) toileting;
- 309 (iii) transferring;
- 310 (iv) bathing; or
- 311 (v) dressing.
- 312 (49) "Disability income insurance" is defined in Subsection (79).
- 313 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 314 (51) "Domiciliary state" means the state in which an insurer:
 - 315 (a) is incorporated;
 - 316 (b) is organized; or
 - 317 (c) in the case of an alien insurer, enters into the United States.
- 318 (52) (a) "Eligible employee" means:
 - 319 (i) an employee who:
 - 320 (A) works on a full-time basis; and
 - 321 (B) has a normal work week of 30 or more hours; or
 - 322 (ii) a person described in Subsection (52)(b).
- 323 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 324 plan of a small employer:
 - 325 (i) a sole proprietor;
 - 326 (ii) a partner in a partnership; or
 - 327 (iii) an independent contractor.
- 328 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
 - 329 (i) an individual who works on a temporary or substitute basis for a small employer;
 - 330 (ii) an employer's spouse; or
 - 331 (iii) a dependent of an employer.
- 332 (53) "Employee" means an individual employed by an employer.
- 333 (54) "Employee benefits" means one or more benefits or services provided to:
 - 334 (a) an employee; or
 - 335 (b) a dependent of an employee.
- 336 (55) (a) "Employee welfare fund" means a fund:
 - 337 (i) established or maintained, whether directly or through a trustee, by:

- 338 (A) one or more employers;
- 339 (B) one or more labor organizations; or
- 340 (C) a combination of employers and labor organizations; and
- 341 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 342 from investments of the fund:
- 343 (A) by or on behalf of an employer doing business in this state; or
- 344 (B) for the benefit of a person employed in this state.
- 345 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 346 revenues.
- 347 (56) "Endorsement" means a written agreement attached to a policy or certificate to
- 348 modify the policy or certificate coverage.
- 349 (57) "Enrollment date," with respect to a health benefit plan, means:
- 350 (a) the first day of coverage; or
- 351 (b) if there is a waiting period, the first day of the waiting period.
- 352 (58) (a) "Escrow" means:
- 353 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
- 354 when a person not a party to the transaction, and neither having nor acquiring an interest in the
- 355 title, performs, in accordance with the written instructions or terms of the written agreement
- 356 between the parties to the transaction, any of the following actions:
- 357 (A) the explanation, holding, or creation of a document; or
- 358 (B) the receipt, deposit, and disbursement of money;
- 359 (ii) a settlement or closing involving:
- 360 (A) a mobile home;
- 361 (B) a grazing right;
- 362 (C) a water right; or
- 363 (D) other personal property authorized by the commissioner.
- 364 (b) "Escrow" does not include:
- 365 (i) the following notarial acts performed by a notary within the state:
- 366 (A) an acknowledgment;
- 367 (B) a copy certification;
- 368 (C) jurat; and

369 (D) an oath or affirmation;

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

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

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

375 (60) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
376 excluded.

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

379 (61) "Exclusion" means for the purposes of accident and health insurance that an
380 insurer does not provide insurance coverage, for whatever reason, for one of the following:

381 (a) a specific physical condition;

382 (b) a specific medical procedure;

383 (c) a specific disease or disorder; or

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

385 (62) "Expense reimbursement insurance" means insurance:

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

388 (b) written:

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

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

391 (63) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
392 a position of public or private trust.

393 (64) (a) "Filed" means that a filing is:

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

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

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

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

400 (B) rule.

401 (b) "Filed" does not include a filing that is rejected by the department because it is not
402 submitted in accordance with Subsection (64)(a).

403 (65) "Filing," when used as a noun, means an item required to be filed with the
404 department including:

405 (a) a policy;

406 (b) a rate;

407 (c) a form;

408 (d) a document;

409 (e) a plan;

410 (f) a manual;

411 (g) an application;

412 (h) a report;

413 (i) a certificate;

414 (j) an endorsement;

415 (k) an actuarial certification;

416 (l) a licensee annual statement;

417 (m) a licensee renewal application;

418 (n) an advertisement; or

419 (o) an outline of coverage.

420 (66) "First party insurance" means an insurance policy or contract in which the insurer
421 agrees to pay a claim submitted to it by the insured for the insured's losses.

422 (67) "Foreign insurer" means an insurer domiciled outside of this state, including an
423 alien insurer.

424 (68) (a) "Form" means one of the following prepared for general use:

425 (i) a policy;

426 (ii) a certificate;

427 (iii) an application;

428 (iv) an outline of coverage; or

429 (v) an endorsement.

430 (b) "Form" does not include a document specially prepared for use in an individual

431 case.

432 (69) "Franchise insurance" means an individual insurance policy provided through a
433 mass marketing arrangement involving a defined class of persons related in some way other
434 than through the purchase of insurance.

435 (70) "General lines of authority" include:

436 (a) the general lines of insurance in Subsection (71);

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

438 (i) ~~[search]~~ title examination, including authority to act as a title marketing

439 representative;

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

441 (iii) title marketing representative only;

442 (c) surplus lines;

443 (d) workers' compensation; and

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

446 (71) "General lines of insurance" include:

447 (a) accident and health;

448 (b) casualty;

449 (c) life;

450 (d) personal lines;

451 (e) property; and

452 (f) variable contracts, including variable life and annuity.

453 (72) "Group health plan" means an employee welfare benefit plan to the extent that the
454 plan provides medical care:

455 (a) (i) to an employee; or

456 (ii) to a dependent of an employee; and

457 (b) (i) directly;

458 (ii) through insurance reimbursement; or

459 (iii) through another method.

460 (73) (a) "Group insurance policy" means a policy covering a group of persons that is
461 issued:

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

464 in:

465 (A) the policy; or
466 (B) an agreement that is collateral to the policy.

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

469 (74) "Guaranteed automobile protection insurance" means insurance offered in
470 connection with an extension of credit that pays the difference in amount between the
471 insurance settlement and the balance of the loan if the insured automobile is a total loss.

472 (75) (a) Except as provided in Subsection (75)(b), "health benefit plan" means a policy
473 or certificate that:

474 (i) provides health care insurance;
475 (ii) provides major medical expense insurance; or
476 (iii) is offered as a substitute for hospital or medical expense insurance, such as:

477 (A) a hospital confinement indemnity; or
478 (B) a limited benefit plan.

479 (b) "Health benefit plan" does not include a policy or certificate that:

480 (i) provides benefits solely for:

481 (A) accident;
482 (B) dental;
483 (C) income replacement;
484 (D) long-term care;
485 (E) a Medicare supplement;
486 (F) a specified disease;
487 (G) vision; or

488 (H) a short-term limited duration; or

489 (ii) is offered and marketed as supplemental health insurance.

490 (76) "Health care" means any of the following intended for use in the diagnosis,
491 treatment, mitigation, or prevention of a human ailment or impairment:

492 (a) a professional service;

- 493 (b) a personal service;
- 494 (c) a facility;
- 495 (d) equipment;
- 496 (e) a device;
- 497 (f) supplies; or
- 498 (g) medicine.
- 499 (77) (a) "Health care insurance" or "health insurance" means insurance providing:
 - 500 (i) a health care benefit; or
 - 501 (ii) payment of an incurred health care expense.
- 502 (b) "Health care insurance" or "health insurance" does not include accident and health
- 503 insurance providing a benefit for:
 - 504 (i) replacement of income;
 - 505 (ii) short-term accident;
 - 506 (iii) fixed indemnity;
 - 507 (iv) credit accident and health;
 - 508 (v) supplements to liability;
 - 509 (vi) workers' compensation;
 - 510 (vii) automobile medical payment;
 - 511 (viii) no-fault automobile;
 - 512 (ix) equivalent self-insurance; or
 - 513 (x) a type of accident and health insurance coverage that is a part of or attached to
 - 514 another type of policy.
- 515 (78) "Health Insurance Portability and Accountability Act" means the Health Insurance
- 516 Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended.
- 517 (79) "Income replacement insurance" or "disability income insurance" means insurance
- 518 written to provide payments to replace income lost from accident or sickness.
- 519 (80) "Indemnity" means the payment of an amount to offset all or part of an insured
- 520 loss.
- 521 (81) "Independent adjuster" means an insurance adjuster required to be licensed under
- 522 Section [31A-26-201](#) who engages in insurance adjusting as a representative of an insurer.
- 523 (82) "Independently procured insurance" means insurance procured under Section

524 31A-15-104.

525 (83) "Individual" means a natural person.

526 (84) "Inland marine insurance" includes insurance covering:

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

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

529 (c) bailee liability;

530 (d) fixed transportation property such as bridges, electric transmission systems, radio

531 and television transmission towers and tunnels; and

532 (e) personal and commercial property floaters.

533 (85) "Insolvency" means that:

534 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
535 obligations mature;

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

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

539 (86) (a) "Insurance" means:

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

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

544 (b) "Insurance" includes:

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

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

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

551 (87) "Insurance adjuster" means a person who directs or conducts the investigation,
552 negotiation, or settlement of a claim under an insurance policy other than life insurance or an
553 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

554 (88) "Insurance business" or "business of insurance" includes:

- 555 (a) providing health care insurance by an organization that is or is required to be
556 licensed under this title;
- 557 (b) providing a benefit to an employee in the event of a contingency not within the
558 control of the employee, in which the employee is entitled to the benefit as a right, which
559 benefit may be provided either:
- 560 (i) by a single employer or by multiple employer groups; or
561 (ii) through one or more trusts, associations, or other entities;
- 562 (c) providing an annuity:
563 (i) including an annuity issued in return for a gift; and
564 (ii) except an annuity provided by a person specified in Subsections [31A-22-1305\(2\)](#)
565 and (3);
- 566 (d) providing the characteristic services of a motor club as outlined in Subsection
567 (116);
- 568 (e) providing another person with insurance;
- 569 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
570 or surety, a contract or policy of title insurance;
- 571 (g) transacting or proposing to transact any phase of title insurance, including:
572 (i) solicitation;
573 (ii) negotiation preliminary to execution;
574 (iii) execution of a contract of title insurance;
575 (iv) insuring; and
576 (v) transacting matters subsequent to the execution of the contract and arising out of
577 the contract, including reinsurance;
- 578 (h) transacting or proposing a life settlement; and
579 (i) doing, or proposing to do, any business in substance equivalent to Subsections
580 (88)(a) through (h) in a manner designed to evade this title.
- 581 (89) "Insurance consultant" or "consultant" means a person who:
582 (a) advises another person about insurance needs and coverages;
583 (b) is compensated by the person advised on a basis not directly related to the insurance
584 placed; and
585 (c) except as provided in Section [31A-23a-501](#), is not compensated directly or

586 indirectly by an insurer or producer for advice given.

587 (90) "Insurance holding company system" means a group of two or more affiliated
588 persons, at least one of whom is an insurer.

589 (91) (a) "Insurance producer" or "producer" means a person licensed or required to be
590 licensed under the laws of this state to sell, solicit, or negotiate insurance.

591 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
592 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
593 insurer.

594 (ii) "Producer for the insurer" may be referred to as an "agent."

595 (c) (i) "Producer for the insured" means a producer who:

596 (A) is compensated directly and only by an insurance customer or an insured; and

597 (B) receives no compensation directly or indirectly from an insurer for selling,
598 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
599 insured.

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

601 (92) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
602 promise in an insurance policy and includes:

603 (i) a policyholder;

604 (ii) a subscriber;

605 (iii) a member; and

606 (iv) a beneficiary.

607 (b) The definition in Subsection (92)(a):

608 (i) applies only to this title; and

609 (ii) does not define the meaning of this word as used in an insurance policy or
610 certificate.

611 (93) (a) "Insurer" means a person doing an insurance business as a principal including:

612 (i) a fraternal benefit society;

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

614 [31A-22-1305\(2\)](#) and (3);

615 (iii) a motor club;

616 (iv) an employee welfare plan; and

617 (v) a person purporting or intending to do an insurance business as a principal on that
618 person's own account.

619 (b) "Insurer" does not include a governmental entity to the extent the governmental
620 entity is engaged in an activity described in Section 31A-12-107.

621 (94) "Interinsurance exchange" is defined in Subsection (147).

622 (95) "Involuntary unemployment insurance" means insurance:

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

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

626 (i) specific loan; or

627 (ii) credit transaction.

628 (96) "Large employer," in connection with a health benefit plan, means an employer
629 who, with respect to a calendar year and to a plan year:

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

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

633 (97) "Late enrollee," with respect to an employer health benefit plan, means an
634 individual whose enrollment is a late enrollment.

635 (98) "Late enrollment," with respect to an employer health benefit plan, means
636 enrollment of an individual other than:

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

639 (b) through special enrollment.

640 (99) (a) Except for a retainer contract or legal assistance described in Section
641 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
642 specified legal expense.

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

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

647 (100) (a) "Liability insurance" means insurance against liability:

- 648 (i) for death, injury, or disability of a human being, or for damage to property,
- 649 exclusive of the coverages under:
 - 650 (A) Subsection (110) for medical malpractice insurance;
 - 651 (B) Subsection (138) for professional liability insurance; and
 - 652 (C) Subsection (173) for workers' compensation insurance;
- 653 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
- 654 insured who is injured, irrespective of legal liability of the insured, when issued with or
- 655 supplemental to insurance against legal liability for the death, injury, or disability of a human
- 656 being, exclusive of the coverages under:
 - 657 (A) Subsection (110) for medical malpractice insurance;
 - 658 (B) Subsection (138) for professional liability insurance; and
 - 659 (C) Subsection (173) for workers' compensation insurance;
- 660 (iii) for loss or damage to property resulting from an accident to or explosion of a
- 661 boiler, pipe, pressure container, machinery, or apparatus;
- 662 (iv) for loss or damage to property caused by:
 - 663 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
 - 664 (B) water entering through a leak or opening in a building; or
- 665 (v) for other loss or damage properly the subject of insurance not within another kind
- 666 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.
- 667 (b) "Liability insurance" includes:
 - 668 (i) vehicle liability insurance;
 - 669 (ii) residential dwelling liability insurance; and
 - 670 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
 - 671 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
 - 672 elevator, boiler, machinery, or apparatus.
- 673 (101) (a) "License" means authorization issued by the commissioner to engage in an
- 674 activity that is part of or related to the insurance business.
- 675 (b) "License" includes a certificate of authority issued to an insurer.
- 676 (102) (a) "Life insurance" means:
 - 677 (i) insurance on a human life; and
 - 678 (ii) insurance pertaining to or connected with human life.

- 679 (b) The business of life insurance includes:
- 680 (i) granting a death benefit;
- 681 (ii) granting an annuity benefit;
- 682 (iii) granting an endowment benefit;
- 683 (iv) granting an additional benefit in the event of death by accident;
- 684 (v) granting an additional benefit to safeguard the policy against lapse; and
- 685 (vi) providing an optional method of settlement of proceeds.
- 686 (103) "Limited license" means a license that:
- 687 (a) is issued for a specific product of insurance; and
- 688 (b) limits an individual or agency to transact only for that product or insurance.
- 689 (104) "Limited line credit insurance" includes the following forms of insurance:
- 690 (a) credit life;
- 691 (b) credit accident and health;
- 692 (c) credit property;
- 693 (d) credit unemployment;
- 694 (e) involuntary unemployment;
- 695 (f) mortgage life;
- 696 (g) mortgage guaranty;
- 697 (h) mortgage accident and health;
- 698 (i) guaranteed automobile protection; and
- 699 (j) another form of insurance offered in connection with an extension of credit that:
- 700 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 701 (ii) the commissioner determines by rule should be designated as a form of limited line
- 702 credit insurance.
- 703 (105) "Limited line credit insurance producer" means a person who sells, solicits, or
- 704 negotiates one or more forms of limited line credit insurance coverage to an individual through
- 705 a master, corporate, group, or individual policy.
- 706 (106) "Limited line insurance" includes:
- 707 (a) bail bond;
- 708 (b) limited line credit insurance;
- 709 (c) legal expense insurance;

- 710 (d) motor club insurance;
- 711 (e) car rental related insurance;
- 712 (f) travel insurance;
- 713 (g) crop insurance;
- 714 (h) self-service storage insurance;
- 715 (i) guaranteed asset protection waiver;
- 716 (j) portable electronics insurance; and
- 717 (k) another form of limited insurance that the commissioner determines by rule should
- 718 be designated a form of limited line insurance.

719 (107) "Limited lines authority" includes the lines of insurance listed in Subsection
720 (106).

721 (108) "Limited lines producer" means a person who sells, solicits, or negotiates limited
722 lines insurance.

723 (109) (a) "Long-term care insurance" means an insurance policy or rider advertised,
724 marketed, offered, or designated to provide coverage:

- 725 (i) in a setting other than an acute care unit of a hospital;
- 726 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 727 (A) expenses incurred;
 - 728 (B) indemnity;
 - 729 (C) prepayment; or
 - 730 (D) another method;
- 731 (iii) for one or more necessary or medically necessary services that are:
 - 732 (A) diagnostic;
 - 733 (B) preventative;
 - 734 (C) therapeutic;
 - 735 (D) rehabilitative;
 - 736 (E) maintenance; or
 - 737 (F) personal care; and
- 738 (iv) that may be issued by:
 - 739 (A) an insurer;
 - 740 (B) a fraternal benefit society;

- 741 (C) (I) a nonprofit health hospital; and
- 742 (II) a medical service corporation;
- 743 (D) a prepaid health plan;
- 744 (E) a health maintenance organization; or
- 745 (F) an entity similar to the entities described in Subsections (109)(a)(iv)(A) through (E)
- 746 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 747 (b) "Long-term care insurance" includes:
- 748 (i) any of the following that provide directly or supplement long-term care insurance:
- 749 (A) a group or individual annuity or rider; or
- 750 (B) a life insurance policy or rider;
- 751 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 752 (A) cognitive impairment; or
- 753 (B) functional capacity; or
- 754 (iii) a qualified long-term care insurance contract.
- 755 (c) "Long-term care insurance" does not include:
- 756 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 757 (ii) basic hospital expense coverage;
- 758 (iii) basic medical/surgical expense coverage;
- 759 (iv) hospital confinement indemnity coverage;
- 760 (v) major medical expense coverage;
- 761 (vi) income replacement or related asset-protection coverage;
- 762 (vii) accident only coverage;
- 763 (viii) coverage for a specified:
- 764 (A) disease; or
- 765 (B) accident;
- 766 (ix) limited benefit health coverage; or
- 767 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 768 lump sum payment:
- 769 (A) if the following are not conditioned on the receipt of long-term care:
- 770 (I) benefits; or
- 771 (II) eligibility; and

772 (B) the coverage is for one or more the following qualifying events:

773 (I) terminal illness;

774 (II) medical conditions requiring extraordinary medical intervention; or

775 (III) permanent institutional confinement.

776 (110) "Medical malpractice insurance" means insurance against legal liability incident
777 to the practice and provision of a medical service other than the practice and provision of a
778 dental service.

779 (111) "Member" means a person having membership rights in an insurance
780 corporation.

781 (112) "Minimum capital" or "minimum required capital" means the capital that must be
782 constantly maintained by a stock insurance corporation as required by statute.

783 (113) "Mortgage accident and health insurance" means insurance offered in connection
784 with an extension of credit that provides indemnity for payments coming due on a mortgage
785 while the debtor has a disability.

786 (114) "Mortgage guaranty insurance" means surety insurance under which a mortgagee
787 or other creditor is indemnified against losses caused by the default of a debtor.

788 (115) "Mortgage life insurance" means insurance on the life of a debtor in connection
789 with an extension of credit that pays if the debtor dies.

790 (116) "Motor club" means a person:

791 (a) licensed under:

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

793 (ii) Chapter 11, Motor Clubs; or

794 (iii) Chapter 14, Foreign Insurers; and

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

797 (i) legal services under Subsection [31A-11-102\(1\)\(b\)](#);

798 (ii) bail services under Subsection [31A-11-102\(1\)\(c\)](#); or

799 (iii) (A) trip reimbursement;

800 (B) towing services;

801 (C) emergency road services;

802 (D) stolen automobile services;

803 (E) a combination of the services listed in Subsections (116)(b)(iii)(A) through (D); or

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

805 (117) "Mutual" means a mutual insurance corporation.

806 (118) "Network plan" means health care insurance:

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

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

811 (119) "Nonparticipating" means a plan of insurance under which the insured is not
812 entitled to receive a dividend representing a share of the surplus of the insurer.

813 (120) "Ocean marine insurance" means insurance against loss of or damage to:

814 (a) ships or hulls of ships;

815 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
816 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
817 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

818 (c) earnings such as freight, passage money, commissions, or profits derived from
819 transporting goods or people upon or across the oceans or inland waterways; or

820 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
821 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
822 in connection with maritime activity.

823 (121) "Order" means an order of the commissioner.

824 (122) "Outline of coverage" means a summary that explains an accident and health
825 insurance policy.

826 (123) "Participating" means a plan of insurance under which the insured is entitled to
827 receive a dividend representing a share of the surplus of the insurer.

828 (124) "Participation," as used in a health benefit plan, means a requirement relating to
829 the minimum percentage of eligible employees that must be enrolled in relation to the total
830 number of eligible employees of an employer reduced by each eligible employee who
831 voluntarily declines coverage under the plan because the employee:

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

833 (b) receives:

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

836 (ii) another government health benefit.

837 (125) "Person" includes:

838 (a) an individual;

839 (b) a partnership;

840 (c) a corporation;

841 (d) an incorporated or unincorporated association;

842 (e) a joint stock company;

843 (f) a trust;

844 (g) a limited liability company;

845 (h) a reciprocal;

846 (i) a syndicate; or

847 (j) another similar entity or combination of entities acting in concert.

848 (126) "Personal lines insurance" means property and casualty insurance coverage sold
849 for primarily noncommercial purposes to:

850 (a) an individual; or

851 (b) a family.

852 (127) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

853 (128) "Plan year" means:

854 (a) the year that is designated as the plan year in:

855 (i) the plan document of a group health plan; or

856 (ii) a summary plan description of a group health plan;

857 (b) if the plan document or summary plan description does not designate a plan year or

858 there is no plan document or summary plan description:

859 (i) the year used to determine deductibles or limits;

860 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

861 or

862 (iii) the employer's taxable year if:

863 (A) the plan does not impose deductibles or limits on a yearly basis; and

864 (B) (I) the plan is not insured; or

865 (II) the insurance policy is not renewed on an annual basis; or
866 (c) in a case not described in Subsection (128)(a) or (b), the calendar year.
867 (129) (a) "Policy" means a document, including an attached endorsement or application
868 that:
869 (i) purports to be an enforceable contract; and
870 (ii) memorializes in writing some or all of the terms of an insurance contract.
871 (b) "Policy" includes a service contract issued by:
872 (i) a motor club under Chapter 11, Motor Clubs;
873 (ii) a service contract provided under Chapter 6a, Service Contracts; and
874 (iii) a corporation licensed under:
875 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
876 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
877 (c) "Policy" does not include:
878 (i) a certificate under a group insurance contract; or
879 (ii) a document that does not purport to have legal effect.
880 (130) "Policyholder" means a person who controls a policy, binder, or oral contract by
881 ownership, premium payment, or otherwise.
882 (131) "Policy illustration" means a presentation or depiction that includes
883 nonguaranteed elements of a policy of life insurance over a period of years.
884 (132) "Policy summary" means a synopsis describing the elements of a life insurance
885 policy.
886 (133) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.
887 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and
888 related federal regulations and guidance.
889 (134) "Preexisting condition," with respect to a health benefit plan:
890 (a) means a condition that was present before the effective date of coverage, whether or
891 not medical advice, diagnosis, care, or treatment was recommended or received before that day,
892 and
893 (b) does not include a condition indicated by genetic information unless an actual
894 diagnosis of the condition by a physician has been made.
895 (135) (a) "Premium" means the monetary consideration for an insurance policy.

- 896 (b) "Premium" includes, however designated:
- 897 (i) an assessment;
- 898 (ii) a membership fee;
- 899 (iii) a required contribution; or
- 900 (iv) monetary consideration.
- 901 (c) (i) "Premium" does not include consideration paid to a third party administrator for
- 902 the third party administrator's services.
- 903 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
- 904 insurance on the risks administered by the third party administrator.
- 905 (136) "Principal officers" for a corporation means the officers designated under
- 906 Subsection 31A-5-203(3).
- 907 (137) "Proceeding" includes an action or special statutory proceeding.
- 908 (138) "Professional liability insurance" means insurance against legal liability incident
- 909 to the practice of a profession and provision of a professional service.
- 910 (139) (a) Except as provided in Subsection (139)(b), "property insurance" means
- 911 insurance against loss or damage to real or personal property of every kind and any interest in
- 912 that property:
- 913 (i) from all hazards or causes; and
- 914 (ii) against loss consequential upon the loss or damage including vehicle
- 915 comprehensive and vehicle physical damage coverages.
- 916 (b) "Property insurance" does not include:
- 917 (i) inland marine insurance; and
- 918 (ii) ocean marine insurance.
- 919 (140) "Qualified long-term care insurance contract" or "federally tax qualified
- 920 long-term care insurance contract" means:
- 921 (a) an individual or group insurance contract that meets the requirements of Section
- 922 7702B(b), Internal Revenue Code; or
- 923 (b) the portion of a life insurance contract that provides long-term care insurance:
- 924 (i) (A) by rider; or
- 925 (B) as a part of the contract; and
- 926 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue

927 Code.

928 (141) "Qualified United States financial institution" means an institution that:

929 (a) is:

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

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

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

935 (c) meets the standards of financial condition and standing that are considered
936 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
937 will be acceptable to the commissioner as determined by:

938 (i) the commissioner by rule; or

939 (ii) the Securities Valuation Office of the National Association of Insurance

940 Commissioners.

941 (142) (a) "Rate" means:

942 (i) the cost of a given unit of insurance; or

943 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
944 expressed as:

945 (A) a single number; or

946 (B) a pure premium rate, adjusted before the application of individual risk variations
947 based on loss or expense considerations to account for the treatment of:

948 (I) expenses;

949 (II) profit; and

950 (III) individual insurer variation in loss experience.

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

952 (143) (a) Except as provided in Subsection (143)(b), "rate service organization" means
953 a person who assists an insurer in rate making or filing by:

954 (i) collecting, compiling, and furnishing loss or expense statistics;

955 (ii) recommending, making, or filing rates or supplementary rate information; or

956 (iii) advising about rate questions, except as an attorney giving legal advice.

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

- 958 (i) an employee of an insurer;
- 959 (ii) a single insurer or group of insurers under common control;
- 960 (iii) a joint underwriting group; or
- 961 (iv) an individual serving as an actuarial or legal consultant.
- 962 (144) "Rating manual" means any of the following used to determine initial and
- 963 renewal policy premiums:
 - 964 (a) a manual of rates;
 - 965 (b) a classification;
 - 966 (c) a rate-related underwriting rule; and
 - 967 (d) a rating formula that describes steps, policies, and procedures for determining
 - 968 initial and renewal policy premiums.
- 969 (145) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,
- 970 or give, directly or indirectly:
 - 971 (i) a refund of premium or portion of premium;
 - 972 (ii) a refund of commission or portion of commission;
 - 973 (iii) a refund of all or a portion of a consultant fee; or
 - 974 (iv) providing services or other benefits not specified in an insurance or annuity
 - 975 contract.
- 976 (b) "Rebate" does not include:
 - 977 (i) a refund due to termination or changes in coverage;
 - 978 (ii) a refund due to overcharges made in error by the licensee; or
 - 979 (iii) savings or wellness benefits as provided in the contract by the licensee.
- 980 (146) "Received by the department" means:
 - 981 (a) the date delivered to and stamped received by the department, if delivered in
 - 982 person;
 - 983 (b) the post mark date, if delivered by mail;
 - 984 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
 - 985 (d) the received date recorded on an item delivered, if delivered by:
 - 986 (i) facsimile;
 - 987 (ii) email; or
 - 988 (iii) another electronic method; or

989 (e) a date specified in:

990 (i) a statute;

991 (ii) a rule; or

992 (iii) an order.

993 (147) "Reciprocal" or "interinsurance exchange" means an unincorporated association
994 of persons:

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

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

998 (148) "Reinsurance" means an insurance transaction where an insurer, for
999 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1000 reinsurance transactions, this title sometimes refers to:

1001 (a) the insurer transferring the risk as the "ceding insurer"; and

1002 (b) the insurer assuming the risk as the:

1003 (i) "assuming insurer"; or

1004 (ii) "assuming reinsurer."

1005 (149) "Reinsurer" means a person licensed in this state as an insurer with the authority
1006 to assume reinsurance.

1007 (150) "Residential dwelling liability insurance" means insurance against liability
1008 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
1009 a detached single family residence or multifamily residence up to four units.

1010 (151) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
1011 under a reinsurance contract.

1012 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1013 liability assumed under a reinsurance contract.

1014 (152) "Rider" means an endorsement to:

1015 (a) an insurance policy; or

1016 (b) an insurance certificate.

1017 (153) (a) "Security" means a:

1018 (i) note;

1019 (ii) stock;

- 1020 (iii) bond;
- 1021 (iv) debenture;
- 1022 (v) evidence of indebtedness;
- 1023 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1024 (vii) collateral-trust certificate;
- 1025 (viii) preorganization certificate or subscription;
- 1026 (ix) transferable share;
- 1027 (x) investment contract;
- 1028 (xi) voting trust certificate;
- 1029 (xii) certificate of deposit for a security;
- 1030 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1031 payments out of production under such a title or lease;
- 1032 (xiv) commodity contract or commodity option;
- 1033 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1034 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1035 in Subsections (153)(a)(i) through (xiv); or
- 1036 (xvi) another interest or instrument commonly known as a security.
- 1037 (b) "Security" does not include:
- 1038 (i) any of the following under which an insurance company promises to pay money in a
- 1039 specific lump sum or periodically for life or some other specified period:
- 1040 (A) insurance;
- 1041 (B) an endowment policy; or
- 1042 (C) an annuity contract; or
- 1043 (ii) a burial certificate or burial contract.
- 1044 (154) "Secondary medical condition" means a complication related to an exclusion
- 1045 from coverage in accident and health insurance.
- 1046 (155) (a) "Self-insurance" means an arrangement under which a person provides for
- 1047 spreading its own risks by a systematic plan.
- 1048 (b) Except as provided in this Subsection (155), "self-insurance" does not include an
- 1049 arrangement under which a number of persons spread their risks among themselves.
- 1050 (c) "Self-insurance" includes:

- 1051 (i) an arrangement by which a governmental entity undertakes to indemnify an
1052 employee for liability arising out of the employee's employment; and
- 1053 (ii) an arrangement by which a person with a managed program of self-insurance and
1054 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1055 employees for liability or risk that is related to the relationship or employment.
- 1056 (d) "Self-insurance" does not include an arrangement with an independent contractor.
- 1057 (156) "Sell" means to exchange a contract of insurance:
- 1058 (a) by any means;
- 1059 (b) for money or its equivalent; and
- 1060 (c) on behalf of an insurance company.
- 1061 (157) "Short-term care insurance" means an insurance policy or rider advertised,
1062 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,
1063 but that provides coverage for less than 12 consecutive months for each covered person.
- 1064 (158) "Significant break in coverage" means a period of 63 consecutive days during
1065 each of which an individual does not have creditable coverage.
- 1066 (159) "Small employer" means, in connection with a health benefit plan and with
1067 respect to a calendar year and to a plan year, an employer who:
- 1068 (a) employed at least one employee but not more than an average of 50 eligible
1069 employees on business days during the preceding calendar year; and
- 1070 (b) employs at least one employee on the first day of the plan year.
- 1071 (160) "Special enrollment period," in connection with a health benefit plan, has the
1072 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1073 Portability and Accountability Act.
- 1074 (161) (a) "Subsidiary" of a person means an affiliate controlled by that person either
1075 directly or indirectly through one or more affiliates or intermediaries.
- 1076 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1077 shares are owned by that person either alone or with its affiliates, except for the minimum
1078 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1079 others.
- 1080 (162) Subject to Subsection (86)(b), "surety insurance" includes:
- 1081 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or

1082 perform the principal's obligations to a creditor or other obligee;

1083 (b) bail bond insurance; and

1084 (c) fidelity insurance.

1085 (163) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
1086 liabilities.

1087 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1088 designated by the insurer or organization as permanent.

1089 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require
1090 that insurers or organizations doing business in this state maintain specified minimum levels of
1091 permanent surplus.

1092 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1093 same as the minimum required capital requirement that applies to stock insurers.

1094 (c) "Excess surplus" means:

1095 (i) for a life insurer, accident and health insurer, health organization, or property and
1096 casualty insurer as defined in Section 31A-17-601, the lesser of:

1097 (A) that amount of an insurer's or health organization's total adjusted capital that
1098 exceeds the product of:

1099 (I) 2.5; and

1100 (II) the sum of the insurer's or health organization's minimum capital or permanent
1101 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1102 (B) that amount of an insurer's or health organization's total adjusted capital that
1103 exceeds the product of:

1104 (I) 3.0; and

1105 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1106 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1107 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1108 (A) 1.5; and

1109 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1110 (164) "Third party administrator" or "administrator" means a person who collects
1111 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1112 the state in connection with insurance coverage, annuities, or service insurance coverage,

- 1113 except:
- 1114 (a) a union on behalf of its members;
- 1115 (b) a person administering a:
- 1116 (i) pension plan subject to the federal Employee Retirement Income Security Act of
- 1117 1974;
- 1118 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
- 1119 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1120 (c) an employer on behalf of the employer's employees or the employees of one or
- 1121 more of the subsidiary or affiliated corporations of the employer;
- 1122 (d) an insurer licensed under the following, but only for a line of insurance for which
- 1123 the insurer holds a license in this state:
- 1124 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 1125 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
- 1126 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1127 (iv) Chapter 9, Insurance Fraternal; or
- 1128 (v) Chapter 14, Foreign Insurers;
- 1129 (e) a person:
- 1130 (i) licensed or exempt from licensing under:
- 1131 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 1132 Reinsurance Intermediaries; or
- 1133 (B) Chapter 26, Insurance Adjusters; and
- 1134 (ii) whose activities are limited to those authorized under the license the person holds
- 1135 or for which the person is exempt; or
- 1136 (f) an institution, bank, or financial institution:
- 1137 (i) that is:
- 1138 (A) an institution whose deposits and accounts are to any extent insured by a federal
- 1139 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
- 1140 Credit Union Administration; or
- 1141 (B) a bank or other financial institution that is subject to supervision or examination by
- 1142 a federal or state banking authority; and
- 1143 (ii) that does not adjust claims without a third party administrator license.

1144 (165) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner
1145 of real or personal property or the holder of liens or encumbrances on that property, or others
1146 interested in the property against loss or damage suffered by reason of liens or encumbrances
1147 upon, defects in, or the unmarketability of the title to the property, or invalidity or
1148 unenforceability of any liens or encumbrances on the property.

1149 (166) "Total adjusted capital" means the sum of an insurer's or health organization's
1150 statutory capital and surplus as determined in accordance with:

1151 (a) the statutory accounting applicable to the annual financial statements required to be
1152 filed under Section 31A-4-113; and

1153 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1154 Section 31A-17-601.

1155 (167) (a) "Trustee" means "director" when referring to the board of directors of a
1156 corporation.

1157 (b) "Trustee," when used in reference to an employee welfare fund, means an
1158 individual, firm, association, organization, joint stock company, or corporation, whether acting
1159 individually or jointly and whether designated by that name or any other, that is charged with
1160 or has the overall management of an employee welfare fund.

1161 (168) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
1162 means an insurer:

1163 (i) not holding a valid certificate of authority to do an insurance business in this state;

1164 or

1165 (ii) transacting business not authorized by a valid certificate.

1166 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1167 (i) holding a valid certificate of authority to do an insurance business in this state; and

1168 (ii) transacting business as authorized by a valid certificate.

1169 (169) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1170 (170) "Vehicle liability insurance" means insurance against liability resulting from or
1171 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle
1172 comprehensive or vehicle physical damage coverage under Subsection (139).

1173 (171) "Voting security" means a security with voting rights, and includes a security
1174 convertible into a security with a voting right associated with the security.

1175 (172) "Waiting period" for a health benefit plan means the period that must pass before
1176 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
1177 benefit plan, can become effective.

1178 (173) "Workers' compensation insurance" means:

1179 (a) insurance for indemnification of an employer against liability for compensation
1180 based on:

1181 (i) a compensable accidental injury; and

1182 (ii) occupational disease disability;

1183 (b) employer's liability insurance incidental to workers' compensation insurance and
1184 written in connection with workers' compensation insurance; and

1185 (c) insurance assuring to a person entitled to workers' compensation benefits the
1186 compensation provided by law.

1187 Section 2. Section 31A-2-402 is amended to read:

1188 **31A-2-402. Definitions.**

1189 As used in this part:

1190 (1) "Commission" means the Title and Escrow Commission created in Section
1191 31A-2-403.

1192 (2) "Concurrence" means the entities given a concurring role must jointly agree for the
1193 action to be taken.

1194 (3) "Dual licensed title licensee" means a title licensee who holds:

1195 (a) an individual title insurance producer license as a title licensee; and

1196 (b) a license or certificate under:

1197 (i) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

1198 (ii) Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or

1199 (iii) Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

1200 (4) "Real Estate Commission" means the Real Estate Commission created in Section
1201 61-2f-103.

1202 (5) "Title insurance matter" means a matter related to:

1203 (a) title insurance;

1204 (b) an escrow conducted by an individual title insurance producer or agency title
1205 insurance producer;

1206 (c) licensing, examination, and continuing education of an applicant to be a title
1207 licensee; or

1208 (d) conduct of a title licensee.

1209 ~~[(5)]~~ (6) "Title licensee" means a person licensed under this title as:

1210 (a) an agency title insurance producer with a title insurance line of authority;

1211 (b) an individual title insurance producer with:

1212 (i) a general title insurance line of authority; or

1213 (ii) a specific category of authority for title insurance; or

1214 (c) a title insurance adjuster.

1215 Section 3. Section **31A-2-403** is amended to read:

1216 **31A-2-403. Title and Escrow Commission created.**

1217 (1) (a) Subject to Subsection (1)(b), there is created within the department the Title and
1218 Escrow Commission that is comprised of five members appointed by the governor with the
1219 consent of the Senate as follows [~~beginning July 1, 2013~~]:

1220 (i) two members shall be employees of a title insurer;

1221 (ii) two members shall:

1222 (A) be employees of a Utah agency title insurance producer;

1223 (B) be or have been licensed under the title insurance line of authority;

1224 (C) as of the day on which the member is appointed, be or have been licensed with the
1225 [~~search~~] title examination or escrow subline of authority for at least five years; and

1226 (D) as of the day on which the member is appointed, not be from the same county as
1227 another member appointed under this Subsection (1)(a)(ii); and

1228 (iii) one member shall be a member of the general public from any county in the state.

1229 (b) No more than one commission member may be appointed from a single company
1230 or an affiliate or subsidiary of the company.

1231 (2) (a) Subject to Subsection (2)(c), a commission member shall file with the
1232 commissioner a disclosure of any position of employment or ownership interest that the
1233 commission member has with respect to a person that is subject to the jurisdiction of the
1234 commissioner.

1235 (b) The disclosure statement required by this Subsection (2) shall be:

1236 (i) filed by no later than the day on which the person begins that person's appointment;

1237 and

1238 (ii) amended when a significant change occurs in any matter required to be disclosed
1239 under this Subsection (2).

1240 (c) A commission member is not required to disclose an ownership interest that the
1241 commission member has if the ownership interest is in a publicly traded company or held as
1242 part of a mutual fund, trust, or similar investment.

1243 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
1244 members expire, the governor shall appoint each new commission member to a four-year term
1245 ending on June 30.

1246 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
1247 time of appointment, adjust the length of terms to ensure that the terms of the commission
1248 members are staggered so that approximately half of the members appointed under Subsection
1249 (1)(a)(i) and half of the members appointed under Subsection (1)(a)(ii) are appointed every two
1250 years.

1251 (c) A commission member may not serve more than one consecutive term.

1252 (d) When a vacancy occurs in the membership for any reason, the governor, with the
1253 consent of the Senate, shall appoint a replacement for the unexpired term.

1254 (e) Notwithstanding the other provisions of this Subsection (3), a commission member
1255 serves until a successor is appointed by the governor with the consent of the Senate.

1256 (4) A commission member may not receive compensation or benefits for the
1257 commission member's service, but may receive per diem and travel expenses in accordance
1258 with:

1259 (a) Section [63A-3-106](#);

1260 (b) Section [63A-3-107](#); and

1261 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
1262 [63A-3-107](#).

1263 (5) Members of the commission shall annually select one commission member to serve
1264 as chair.

1265 (6) (a) The commission shall meet at least monthly. Notwithstanding Section
1266 [52-4-207](#), a commission member shall physically attend a regularly scheduled monthly meeting
1267 of the commission and may not attend through electronic means. A commission member may

1268 attend subcommittee meetings, emergency meetings, or other not regularly scheduled meetings
1269 electronically in accordance with Section 52-4-207.

1270 (b) The commissioner may call additional meetings:

1271 (i) at the commissioner's discretion;

1272 (ii) upon the request of the chair of the commission; or

1273 (iii) upon the written request of three or more commission members.

1274 (c) (i) Three commission members constitute a quorum for the transaction of business.

1275 (ii) The action of a majority of the commission members when a quorum is present is
1276 the action of the commission.

1277 (7) The commissioner shall staff the commission.

1278 Section 4. Section 31A-2-404 is amended to read:

1279 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

1280 (1) (a) Notwithstanding the other provisions of this chapter, to the extent provided in
1281 this part, the commissioner shall administer and enforce the provisions in this title related to[:
1282 ~~(a) title insurance; and (b) escrow conducted by a title licensee or title insurer]~~ a title insurance
1283 matter.

1284 (b) (i) The commissioner may impose a penalty:

1285 (A) under this title related to a title insurance matter;

1286 (B) after investigation by the commissioner in accordance with Part 3, Procedures and
1287 Enforcement; and

1288 (C) that is enforced by the commissioner.

1289 (ii) The commissioner shall consult with and seek concurrence of the commission in a
1290 meeting subject to Title 52, Chapter 4, Open and Public Meetings Act, regarding the
1291 imposition of a penalty, and if concurrence cannot be reached, the commissioner has final
1292 authority.

1293 (c) Unless a provision of this title grants specific authority to the commission, the
1294 commissioner has authority over the implementation of this title related to a title insurance
1295 matter. When a provision requires concurrence between the commission and commissioner,
1296 and concurrence cannot be reached, the commissioner has final authority.

1297 (d) Except as provided in Subsection (1)(e), when this title requires concurrence
1298 between the commissioner and commission related to a title insurance matter:

- 1299 (i) the commissioner shall report to and update the commission on a regular basis
 1300 related to that title insurance matter; and
- 1301 (ii) the commission shall review the report submitted by the commissioner under this
 1302 Subsection (1)(d) and concur with the report, or:
- 1303 (A) provide a reason for not concurring with the report; and
 1304 (B) provide recommendations to the commissioner.
- 1305 (e) When this title requires concurrence between the commissioner and commission
 1306 under Subsection (2), (3), or (4):
- 1307 (i) the commission shall report to and update the commissioner on a regular basis
 1308 related to that title insurance matter; and
- 1309 (ii) the commissioner shall review a report submitted by the commission under this
 1310 Subsection (1)(e) and concur with the report or:
- 1311 (A) provide a reason for not concurring with the report; and
 1312 (B) provide recommendations to the commission.
- 1313 (2) The commission shall:
- 1314 (a) [~~in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
 1315 ~~and~~] subject to Subsection (4), make rules for the administration of the provisions in this title
 1316 related to title insurance matters including rules related to:
- 1317 (i) rating standards and rating methods for a title licensee, as provided in Section
 1318 [31A-19a-209](#);
- 1319 (ii) the licensing for a title licensee, including the licensing requirements of Section
 1320 [31A-23a-204](#);
- 1321 (iii) continuing education requirements of Section [31A-23a-202](#); and
- 1322 (iv) standards of conduct for a title licensee;
- 1323 (b) concur in the issuance and renewal of a license in accordance with Section
 1324 [31A-23a-105](#) or [31A-26-203](#);
- 1325 (c) in accordance with Section [31A-3-103](#), establish, with the concurrence of the
 1326 commissioner, the fees imposed by this title on a title licensee;
- 1327 (d) in accordance with Section [31A-23a-415](#) determine, after consulting with the
 1328 commissioner, the assessment on a title insurer as defined in Section [31A-23a-415](#);
- 1329 [~~e) conduct an administrative hearing not delegated by the commission to an~~

1330 ~~administrative law judge related to the:]~~
1331 ~~[(i) licensing of an applicant;]~~
1332 ~~[(ii) conduct of a title licensee; or]~~
1333 ~~[(iii) approval of a continuing education program required by Section [31A-23a-202](#);~~
1334 ~~[(f)] (e) with the concurrence of the commissioner, approve a continuing education~~
1335 ~~program required by Section [31A-23a-202](#);~~
1336 ~~[(g) with the concurrence of the commissioner, impose a penalty:]~~
1337 ~~[(i) under this title related to:]~~
1338 ~~[(A) title insurance; or]~~
1339 ~~[(B) escrow conducted by a title licensee;]~~
1340 ~~[(ii) after investigation by the commissioner in accordance with Part 3, Procedures and~~
1341 ~~Enforcement; and]~~
1342 ~~[(iii) that is enforced by the commissioner;]~~
1343 ~~[(h) advise the commissioner on the administration and enforcement of any matter~~
1344 ~~affecting the title insurance industry;]~~
1345 (f) on a regular basis advise the commissioner of the most critical matters affecting the
1346 title insurance industry and request the commissioner to direct the department's investigative
1347 resources to investigate and enforce those matters;
1348 (g) in accordance with Section [31A-23a-204](#), participate in the annual license testing
1349 evaluation conducted by the commissioner's test administrator;
1350 ~~[(i)] (h) advise the commissioner on matters affecting the commissioner's budget~~
1351 ~~related to title insurance; and~~
1352 ~~[(j)] (i) perform other duties as provided in this title.~~
1353 (3) The commission may make rules establishing an examination for a license that will
1354 satisfy Section [31A-23a-204](#):
1355 (a) after consultation with ~~[the commissioner and]~~ the commissioner's test
1356 administrator; and
1357 ~~[(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
1358 ~~and]~~
1359 ~~[(c)] (b) subject to Subsection (4).~~
1360 (4) (a) The commission may make a rule under this title only;

1361 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1362 (ii) with the concurrence of the commissioner, except that if concurrence cannot be
 1363 reached, the commissioner has final authority; and

1364 (iii) if at the time the commission files its proposed rule and rule analysis with the
 1365 Division of Administrative Rules in accordance with Section 63G-3-301, the commission
 1366 provides the Real Estate Commission that same information.

1367 (b) The commission may not make a rule regarding adjudicative procedures.

1368 (c) In accordance with Section 31A-2-201, the commissioner may make rules regarding
 1369 adjudicative procedures.

1370 (5) (a) The commissioner shall annually report the information described in Subsection
 1371 (5)(b) in writing to the commission.

1372 (b) The information required to be reported under this Subsection (5):

1373 (i) may not identify a person; and

1374 (ii) shall include:

1375 (A) the number of complaints the commissioner receives with regard to transactions
 1376 involving title insurance or a title licensee during the calendar year immediately preceding the
 1377 report;

1378 (B) the type of complaints described in Subsection (5)(b)(ii)(A); and

1379 (C) for each complaint described in Subsection (5)(b)(ii)(A):

1380 (I) any action taken by the commissioner with regard to the complaint; and

1381 (II) the time-period beginning the day on which a complaint is made and ending the
 1382 day on which the commissioner determines it will take no further action with regard to the
 1383 complaint.

1384 ~~[(6) The commission may not impose a penalty in a manner inconsistent with~~
 1385 ~~Subsection (2)(g) or make a rule that conflicts with Subsection (2)(g).]~~

1386 Section 5. Section **31A-19a-209** is amended to read:

1387 **31A-19a-209. Special provisions for title insurance.**

1388 (1) (a) (i) The Title and Escrow Commission shall adopt rules subject to Section
 1389 **31A-2-404**, establishing rate standards and rating methods for individual title insurance
 1390 producers and agency title insurance producers.

1391 (ii) The commissioner shall determine compliance with rate standards and rating

1392 methods for title insurance insurers, individual title insurance producers, and agency title
1393 insurance producers.

1394 (b) In addition to the considerations in determining compliance with rate standards and
1395 rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title
1396 insurers, the commissioner and the Title and Escrow Commission shall consider the costs and
1397 expenses incurred by title insurance insurers, individual title insurance producers, and agency
1398 title insurance producers peculiar to the business of title insurance, including:

1399 (i) the maintenance of title plants; and

1400 (ii) the ~~searching and~~ examining of public records to determine insurability of title to
1401 real redevelopment property.

1402 (2) (a) Every title insurance insurer or agency title insurance producer, and every
1403 individual title insurance producer who is not designated by an agency title insurance producer,
1404 shall file with the commissioner:

1405 (i) a schedule of the escrow charges that the title insurance insurer, individual title
1406 insurance producer, or agency title insurance producer proposes to use in this state for services
1407 performed in connection with the issuance of policies of title insurance; and

1408 (ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).

1409 (b) Except for a schedule filed by a title insurance insurer under this Subsection (2), a
1410 schedule filed under this Subsection (2) is subject to review by the Title and Escrow
1411 Commission.

1412 (c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes
1413 effect on the day on which the schedule of escrow charges is filed.

1414 (ii) Any changes to the schedule of the escrow charges required to be filed by
1415 Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow
1416 charges except that the effective date may not be less than 30 calendar days after the day on
1417 which the change to the schedule of escrow charges is filed.

1418 (3) A title insurance insurer, individual title insurance producer, or agency title
1419 insurance producer may not file or use any rate or other charge relating to the business of title
1420 insurance, including rates or charges filed for escrow that would cause the title insurance
1421 company, individual title insurance producer, or agency title insurance producer to:

1422 (a) operate at less than the cost of doing:

- 1423 (i) the insurance business; or
1424 (ii) the escrow business; or
1425 (b) fail to adequately underwrite a title insurance policy.
- 1426 (4) (a) All or any of the schedule of rates or schedule of charges, including the schedule
1427 of escrow charges, may be changed or amended at any time, subject to the limitations in this
1428 Subsection (4).
- 1429 (b) Each change or amendment shall:
- 1430 (i) be filed with the commissioner, subject to review by the Title and Escrow
1431 Commission; and
- 1432 (ii) state the effective date of the change or amendment, which may not be less than 30
1433 calendar days after the day on which the change or amendment is filed.
- 1434 (c) Any change or amendment remains in force for a period of at least 90 calendar days
1435 from the change or amendment's effective date.
- 1436 (5) While the schedule of rates and schedule of charges are effective, a copy of each
1437 shall be:
- 1438 (a) retained in each of the offices of:
- 1439 (i) the title insurance insurer in this state;
1440 (ii) the title insurance insurer's individual title insurance producers or agency title
1441 insurance producers in this state; and
- 1442 (b) upon request, furnished to the public.
- 1443 (6) Except in accordance with the schedules of rates and charges filed with the
1444 commissioner, a title insurance insurer, individual title insurance producer, or agency title
1445 insurance producer may not make or impose any premium or other charge:
- 1446 (a) in connection with the issuance of a policy of title insurance; or
1447 (b) for escrow services performed in connection with the issuance of a policy of title
1448 insurance.
- 1449 Section 6. Section **31A-20-110** is amended to read:
- 1450 **31A-20-110. Underwriting rules for title insurance.**
- 1451 (1) A title insurance policy may not be written until the title insurer or its individual
1452 title insurance producer or agency title insurance producer has conducted a reasonable [search
1453 and] examination of the title and has made a determination of insurability of title under sound

1454 underwriting principles. Evidence of this [search] examination and reasonable determination
1455 shall be retained in the files of the title insurer or its individual title insurance producer or
1456 agency title insurance producer for not less than 15 years after the policy has been issued, either
1457 in its original form or as recorded by any process which can accurately and reliably reproduce
1458 the original. This section does not apply to a company assuming liability through a contract of
1459 reinsurance, or to a company acting as coinsurer, if another reinsuring company has complied
1460 with this section.

1461 (2) A title insurance policy may not be issued except by a title insurer, an individual
1462 title insurance producer who is appointed by an insurer, or agency title insurance producer
1463 licensed under Section [31A-23a-105](#).

1464 (3) This section is enforceable only by the commissioner. It does not create, eliminate,
1465 or modify any private cause of action or remedy.

1466 Section 7. Section **31A-23a-102** is amended to read:

1467 **31A-23a-102. Definitions.**

1468 As used in this chapter:

1469 (1) "Bail bond producer" is as defined in Section [31A-35-102](#).

1470 (2) "Home state" means a state or territory of the United States or the District of
1471 Columbia in which an insurance producer:

1472 (a) maintains the insurance producer's principal:

1473 (i) place of residence; or

1474 (ii) place of business; and

1475 (b) is licensed to act as an insurance producer.

1476 (3) "Insurer" is as defined in Section [31A-1-301](#), except that the following persons or
1477 similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

1478 (a) a risk retention group as defined in:

1479 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

1480 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

1481 (iii) Chapter 15, Part 2, Risk Retention Groups Act;

1482 (b) a residual market pool;

1483 (c) a joint underwriting authority or association; and

1484 (d) a captive insurer.

- 1485 (4) "License" is defined in Section [31A-1-301](#).
- 1486 (5) (a) "Managing general agent" means a person that:
- 1487 (i) manages all or part of the insurance business of an insurer, including the
- 1488 management of a separate division, department, or underwriting office;
- 1489 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
- 1490 manager, or other similar term;
- 1491 (iii) produces and underwrites an amount of gross direct written premium equal to, or
- 1492 more than, 5% of the policyholder surplus as reported in the last annual statement of the insurer
- 1493 in any one quarter or year:
- 1494 (A) with or without the authority;
- 1495 (B) separately or together with an affiliate; and
- 1496 (C) directly or indirectly; and
- 1497 (iv) (A) adjusts or pays claims in excess of an amount determined by the
- 1498 commissioner; or
- 1499 (B) negotiates reinsurance on behalf of the insurer.
- 1500 (b) Notwithstanding Subsection (5)(a), the following persons may not be considered as
- 1501 managing general agent for the purposes of this chapter:
- 1502 (i) an employee of the insurer;
- 1503 (ii) a United States manager of the United States branch of an alien insurer;
- 1504 (iii) an underwriting manager that, pursuant to contract:
- 1505 (A) manages all the insurance operations of the insurer;
- 1506 (B) is under common control with the insurer;
- 1507 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 1508 (D) is not compensated based on the volume of premiums written; and
- 1509 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
- 1510 insurer or inter-insurance exchange under powers of attorney.
- 1511 (6) "Negotiate" means the act of conferring directly with or offering advice directly to a
- 1512 purchaser or prospective purchaser of a particular contract of insurance concerning a
- 1513 substantive benefit, term, or condition of the contract if the person engaged in that act:
- 1514 (a) sells insurance; or
- 1515 (b) obtains insurance from insurers for purchasers.

- 1516 (7) "Reinsurance intermediary" means:
- 1517 (a) a reinsurance intermediary-broker; or
- 1518 (b) a reinsurance intermediary-manager.
- 1519 (8) "Reinsurance intermediary-broker" means a person other than an officer or
- 1520 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
- 1521 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
- 1522 or power to bind reinsurance on behalf of the insurer.
- 1523 (9) (a) "Reinsurance intermediary-manager" means a person who:
- 1524 (i) has authority to bind or who manages all or part of the assumed reinsurance
- 1525 business of a reinsurer, including the management of a separate division, department, or
- 1526 underwriting office; and
- 1527 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
- 1528 intermediary-manager, manager, or other similar term.
- 1529 (b) Notwithstanding Subsection (9)(a), the following persons may not be considered
- 1530 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:
- 1531 (i) an employee of the reinsurer;
- 1532 (ii) a United States manager of the United States branch of an alien reinsurer;
- 1533 (iii) an underwriting manager that, pursuant to contract:
- 1534 (A) manages all the reinsurance operations of the reinsurer;
- 1535 (B) is under common control with the reinsurer;
- 1536 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 1537 (D) is not compensated based on the volume of premiums written; and
- 1538 (iv) the manager of a group, association, pool, or organization of insurers that:
- 1539 (A) engage in joint underwriting or joint reinsurance; and
- 1540 (B) are subject to examination by the insurance commissioner of the state in which the
- 1541 manager's principal business office is located.
- 1542 (10) "Resident" is as defined by rule made by the commissioner in accordance with
- 1543 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1544 ~~[(11) "Search" means a license subline of authority in conjunction with the title~~
- 1545 ~~insurance line of authority that allows a person to issue title insurance commitments or policies~~
- 1546 ~~on behalf of a title insurer.]~~

- 1547 [~~(12)~~] (11) "Sell" means to exchange a contract of insurance:
- 1548 (a) by any means;
- 1549 (b) for money or its equivalent; and
- 1550 (c) on behalf of an insurance company.
- 1551 [~~(13)~~] (12) "Solicit" means:
- 1552 (a) attempting to sell insurance;
- 1553 (b) asking or urging a person to apply for:
- 1554 (i) a particular kind of insurance; and
- 1555 (ii) insurance from a particular insurance company;
- 1556 (c) advertising insurance, including advertising for the purpose of obtaining leads for
- 1557 the sale of insurance; or
- 1558 (d) holding oneself out as being in the insurance business.
- 1559 [~~(14)~~] (13) "Terminate" means:
- 1560 (a) the cancellation of the relationship between:
- 1561 (i) an individual licensee or agency licensee and a particular insurer; or
- 1562 (ii) an individual licensee and a particular agency licensee; or
- 1563 (b) the termination of:
- 1564 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf
- 1565 of a particular insurance company; or
- 1566 (ii) an individual licensee's authority to transact insurance on behalf of a particular
- 1567 agency licensee.
- 1568 (14) "Title examination" means a license subline of authority in conjunction with the
- 1569 title insurance line of authority that allows a person to issue title insurance commitments or
- 1570 policies on behalf of a title insurer.
- 1571 (15) "Title marketing representative" means a person who:
- 1572 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:
- 1573 (i) title insurance; or
- 1574 (ii) escrow services; and
- 1575 (b) does not have [~~a search~~] a title examination or escrow license as provided in
- 1576 Section [31A-23a-106](#).
- 1577 (16) "Uniform application" means the version of the National Association of Insurance

1578 Commissioners' uniform application for resident and nonresident producer licensing at the time
1579 the application is filed.

1580 (17) "Uniform business entity application" means the version of the National
1581 Association of Insurance Commissioners' uniform business entity application for resident and
1582 nonresident business entities at the time the application is filed.

1583 Section 8. Section **31A-23a-106** is amended to read:

1584 **31A-23a-106. License types.**

1585 (1) (a) A resident or nonresident license issued under this chapter shall be issued under
1586 the license types described under Subsection (2).

1587 (b) A license type and a line of authority pertaining to a license type describe the type
1588 of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license
1589 type is intended to describe the matters to be considered under any education, examination, and
1590 training required of a license applicant under Sections [31A-23a-108](#), [31A-23a-202](#), and
1591 [31A-23a-203](#).

1592 (2) (a) A producer license type includes the following lines of authority:

1593 (i) life insurance, including a nonvariable contract;

1594 (ii) variable contracts, including variable life and annuity, if the producer has the life
1595 insurance line of authority;

1596 (iii) accident and health insurance, including a contract issued to a policyholder under
1597 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
1598 Organizations and Limited Health Plans;

1599 (iv) property insurance;

1600 (v) casualty insurance, including a surety or other bond;

1601 (vi) title insurance under one or more of the following categories:

1602 (A) ~~[search]~~ title examination, including authority to act as a title marketing
1603 representative;

1604 (B) escrow, including authority to act as a title marketing representative; and

1605 (C) title marketing representative only; and

1606 (vii) personal lines insurance.

1607 (b) A surplus lines producer license type includes the following lines of authority:

1608 (i) property insurance, if the person holds an underlying producer license with the

- 1609 property line of insurance; and
- 1610 (ii) casualty insurance, if the person holds an underlying producer license with the
- 1611 casualty line of authority.
- 1612 (c) A limited line producer license type includes the following limited lines of
- 1613 authority:
- 1614 (i) limited line credit insurance;
- 1615 (ii) travel insurance, as set forth in Part 9, Travel Insurance Act;
- 1616 (iii) motor club insurance;
- 1617 (iv) car rental related insurance;
- 1618 (v) legal expense insurance;
- 1619 (vi) crop insurance;
- 1620 (vii) self-service storage insurance;
- 1621 (viii) bail bond producer;
- 1622 (ix) guaranteed asset protection waiver; and
- 1623 (x) portable electronics insurance.
- 1624 (d) A consultant license type includes the following lines of authority:
- 1625 (i) life insurance, including a nonvariable contract;
- 1626 (ii) variable contracts, including variable life and annuity, if the consultant has the life
- 1627 insurance line of authority;
- 1628 (iii) accident and health insurance, including a contract issued to a policyholder under
- 1629 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 1630 Organizations and Limited Health Plans;
- 1631 (iv) property insurance;
- 1632 (v) casualty insurance, including a surety or other bond; and
- 1633 (vi) personal lines insurance.
- 1634 (e) A managing general agent license type includes the following lines of authority:
- 1635 (i) life insurance, including a nonvariable contract;
- 1636 (ii) variable contracts, including variable life and annuity, if the managing general
- 1637 agent has the life insurance line of authority;
- 1638 (iii) accident and health insurance, including a contract issued to a policyholder under
- 1639 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

1640 Organizations and Limited Health Plans;

1641 (iv) property insurance;

1642 (v) casualty insurance, including a surety or other bond; and

1643 (vi) personal lines insurance.

1644 (f) A reinsurance intermediary license type includes the following lines of authority:

1645 (i) life insurance, including a nonvariable contract;

1646 (ii) variable contracts, including variable life and annuity, if the reinsurance

1647 intermediary has the life insurance line of authority;

1648 (iii) accident and health insurance, including a contract issued to a policyholder under

1649 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

1650 Organizations and Limited Health Plans;

1651 (iv) property insurance;

1652 (v) casualty insurance, including a surety or other bond; and

1653 (vi) personal lines insurance.

1654 (g) A person who holds a license under Subsection (2)(a) has the qualifications

1655 necessary to act as a holder of a license under Subsection (2)(c), except that the person may not

1656 act under Subsection (2)(c)(viii) or (ix).

1657 (3) (a) The commissioner may by rule recognize other producer, surplus lines producer,

1658 limited line producer, consultant, managing general agent, or reinsurance intermediary lines of

1659 authority as to kinds of insurance not listed under Subsections (2)(a) through (f).

1660 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and

1661 Escrow Commission may by rule, with the concurrence of the commissioner and subject to

1662 Section [31A-2-404](#), recognize other categories for an individual title insurance producer or

1663 agency title insurance producer line of authority not listed under Subsection (2)(a)(vi).

1664 (4) The variable contracts line of authority requires:

1665 (a) for a producer, licensure by the Financial Industry Regulatory Authority as a:

1666 (i) registered broker-dealer; or

1667 (ii) broker-dealer agent, with a current registration with a broker-dealer; and

1668 (b) for a consultant, registration with the Securities and Exchange Commission or

1669 licensure by the Utah Division of Securities as an:

1670 (i) investment adviser; or

1671 (ii) investment adviser representative, with a current association with an investment
1672 adviser.

1673 (5) A surplus lines producer is a producer who has a surplus lines license.

1674 Section 9. Section **31A-23a-204** is amended to read:

1675 **31A-23a-204. Special requirements for title insurance producers and agencies.**

1676 An individual title insurance producer or agency title insurance producer shall be
1677 licensed in accordance with this chapter, with the additional requirements listed in this section.

1678 (1) (a) A person that receives a new license under this title as an agency title insurance
1679 producer shall at the time of licensure be owned or managed by at least one individual who is
1680 licensed for at least three of the five years immediately preceding the date on which the agency
1681 title insurance producer applies for a license with both:

1682 (i) [~~a search~~] a title examination line of authority; and

1683 (ii) an escrow line of authority.

1684 (b) An agency title insurance producer subject to Subsection (1)(a) may comply with
1685 Subsection (1)(a) by having the agency title insurance producer owned or managed by:

1686 (i) one or more individuals who are licensed with the [~~search~~] title examination line of
1687 authority for the time period provided in Subsection (1)(a); and

1688 (ii) one or more individuals who are licensed with the escrow line of authority for the
1689 time period provided in Subsection (1)(a).

1690 (c) A person licensed as an agency title insurance producer shall at all times during the
1691 term of licensure be owned or managed by at least one individual who is licensed for at least
1692 three years within the preceding five-year period with both:

1693 (i) [~~a search~~] a title examination line of authority; and

1694 (ii) an escrow line of authority.

1695 (d) The Title and Escrow Commission may by rule, subject to Section [31A-2-404](#),
1696 exempt an attorney with real estate experience from the experience requirements in Subsection
1697 (1)(a).

1698 (e) An individual who satisfies the requirements of this Subsection (1) is known as a
1699 "qualifying licensee." At any given time, an individual may be a qualifying licensee for not
1700 more than two agency title insurance producers.

1701 (2) (a) An individual title insurance producer or agency title insurance producer

1702 appointed by an insurer shall maintain:

1703 (i) a fidelity bond;

1704 (ii) a professional liability insurance policy; or

1705 (iii) a financial protection:

1706 (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

1707 (B) that the commissioner considers adequate.

1708 (b) The bond, insurance, or financial protection required by this Subsection (2):

1709 (i) shall be supplied under a contract approved by the commissioner to provide

1710 protection against the improper performance of any service in conjunction with the issuance of
1711 a contract or policy of title insurance; and

1712 (ii) be in a face amount no less than ~~[\$50,000]~~ \$250,000.

1713 (c) The Title and Escrow Commission may by rule, subject to Section [31A-2-404](#),

1714 exempt individual title insurance producer or agency title insurance producers from the

1715 requirements of this Subsection (2) upon a finding that, and only so long as, the required policy

1716 or bond is generally unavailable at reasonable rates.

1717 (3) An individual title insurance producer or agency title insurance producer appointed

1718 by an insurer may maintain a reserve fund to the extent money was deposited before July 1,

1719 2008, and not withdrawn to the income of the individual title insurance producer or agency title

1720 insurance producer.

1721 (4) An examination for licensure shall include questions regarding the ~~[search and]~~

1722 examination of title to real property.

1723 (5) An individual title insurance producer may not perform the functions of escrow

1724 unless the individual title insurance producer has been examined on the fiduciary duties and

1725 procedures involved in those functions.

1726 (6) The Title and Escrow Commission may adopt rules, ~~[subject to Section [31A-2-404](#),~~

1727 ~~after consulting with the commissioner and the commissioner's test administrator,]~~ establishing

1728 an examination for a license that will satisfy this section, subject to Section [31A-2-404](#), and

1729 after consulting with the commissioner's test administrator.

1730 (7) A license may be issued to an individual title insurance producer or agency title

1731 insurance producer who has qualified:

1732 (a) to perform only ~~[searches and]~~ examinations of title as specified in Subsection (4);

1733 (b) to handle only escrow arrangements as specified in Subsection (5); or

1734 (c) to act as a title marketing representative.

1735 (8) (a) A person licensed to practice law in Utah is exempt from the requirements of
1736 Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

1737 (b) In determining the number of policies issued by a person licensed to practice law in
1738 Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a
1739 policy to more than one party to the same closing, the person is considered to have issued only
1740 one policy.

1741 (9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or
1742 not, shall maintain a trust account separate from a law firm trust account for all title and real
1743 estate escrow transactions.

1744 Section 10. Section **31A-23a-415** is amended to read:

1745 **31A-23a-415. Assessment on agency title insurance producers or title insurers --**
1746 **Account created.**

1747 (1) For purposes of this section:

1748 (a) "Premium" is as defined in Subsection [59-9-101\(3\)](#).

1749 (b) "Title insurer" means a person:

1750 (i) making any contract or policy of title insurance as:

1751 (A) insurer;

1752 (B) guarantor; or

1753 (C) surety;

1754 (ii) proposing to make any contract or policy of title insurance as:

1755 (A) insurer;

1756 (B) guarantor; or

1757 (C) surety; or

1758 (iii) transacting or proposing to transact any phase of title insurance, including:

1759 (A) soliciting;

1760 (B) negotiating preliminary to execution;

1761 (C) executing of a contract of title insurance;

1762 (D) insuring; and

1763 (E) transacting matters subsequent to the execution of the contract and arising out of

1764 the contract.

1765 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
1766 personal property located in Utah, an owner of real or personal property, the holders of liens or
1767 encumbrances on that property, or others interested in the property against loss or damage
1768 suffered by reason of:

1769 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
1770 property; or

1771 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

1772 (2) (a) The commissioner may assess each title insurer, each individual title insurance
1773 producer who is not designated by an agency title insurance producer, and each agency title
1774 insurance producer an annual assessment:

1775 (i) determined by the Title and Escrow Commission:

1776 (A) after consultation with the commissioner; and

1777 (B) in accordance with this Subsection (2); and

1778 (ii) to be used for the purposes described in Subsection (3).

1779 (b) An agency title insurance producer and individual title insurance producer who is
1780 not designated by an agency title insurance producer shall be assessed up to:

1781 (i) \$250 for the first office in each county in which the agency title insurance producer
1782 or individual title insurance producer maintains an office; and

1783 (ii) \$150 for each additional office the agency title insurance producer or individual
1784 title insurance producer maintains in the county described in Subsection (2)(b)(i).

1785 (c) A title insurer shall be assessed up to:

1786 (i) \$250 for the first office in each county in which the title insurer maintains an office;

1787 (ii) \$150 for each additional office the title insurer maintains in the county described in
1788 Subsection (2)(c)(i); and

1789 (iii) an amount calculated by:

1790 (A) aggregating the assessments imposed on:

1791 (I) agency title insurance producers and individual title insurance producers under
1792 Subsection (2)(b); and

1793 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

1794 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total

1795 costs and expenses determined under Subsection (2)(d); and

1796 (C) multiplying:

1797 (I) the amount calculated under Subsection (2)(c)(iii)(B); and

1798 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
1799 of the title insurer.

1800 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title
1801 and Escrow Commission by rule shall establish the amount of costs and expenses described
1802 under Subsection (3) that will be covered by the assessment, except the costs or expenses to be
1803 covered by the assessment may not exceed [~~\$80,000~~] \$100,000 annually.

1804 (3) (a) Money received by the state under this section shall be deposited into the Title
1805 Licensee Enforcement Restricted Account.

1806 (b) There is created in the General Fund a restricted account known as the "Title
1807 Licensee Enforcement Restricted Account."

1808 (c) The Title Licensee Enforcement Restricted Account shall consist of the money
1809 received by the state under this section.

1810 (d) The commissioner shall administer the Title Licensee Enforcement Restricted
1811 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
1812 deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or
1813 expense incurred by the department in the administration, investigation, and enforcement of
1814 this part and Part 5, Compensation of Producers and Consultants, related to:

1815 (i) the marketing of title insurance; and

1816 (ii) audits of agency title insurance producers.

1817 (e) An appropriation from the Title Licensee Enforcement Restricted Account is
1818 nonlapsing.

1819 (4) The assessment imposed by this section shall be in addition to any premium
1820 assessment imposed under Subsection 59-9-101(3).

1821 Section 11. Section 31A-23a-504 is amended to read:

1822 **31A-23a-504. Sharing commissions.**

1823 (1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter
1824 or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the
1825 licensee knows that the person is licensed under this chapter as to the particular type of

1826 insurance to act in Utah as:

- 1827 (i) a producer;
- 1828 (ii) a limited line producer;
- 1829 (iii) a consultant;
- 1830 (iv) a managing general agent; or
- 1831 (v) a reinsurance intermediary.

1832 (b) A person may only accept commission compensation or other compensation as a
1833 person described in Subsections (1)(a)(i) through (v) that is directly or indirectly the result of
1834 an insurance transaction if that person is licensed under this chapter to act as described in
1835 Subsection (1)(a).

1836 (2) (a) Except as provided in Section [31A-23a-501](#), a consultant may not pay or receive
1837 a commission or other compensation that is directly or indirectly the result of an insurance
1838 transaction.

1839 (b) A consultant may share a consultant fee or other compensation received for
1840 consulting services performed within Utah only:

- 1841 (i) with another consultant licensed under this chapter; and
- 1842 (ii) to the extent that the other consultant contributed to the services performed.

1843 (3) This section does not prohibit:

1844 (a) the payment of renewal commissions to former licensees under this chapter, former
1845 Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency
1846 sales agreement;

1847 (b) compensation paid to or received by a person for referral of a potential customer
1848 that seeks to purchase or obtain an opinion or advice on an insurance product if:

- 1849 (i) the person is not licensed to sell insurance;
- 1850 (ii) the person does not sell or provide opinions or advice on the product; and
- 1851 (iii) the compensation does not depend on whether the referral results in a purchase or
1852 sale; or

1853 (c) the payment or assignment of a commission, service fee, brokerage, or other
1854 valuable consideration to an agency or a person who does not sell, solicit, or negotiate
1855 insurance in this state, unless the payment would constitute an inducement or commission
1856 rebate under Section [31A-23a-402](#) or [31A-23a-402.5](#).

1857 (4) (a) In selling a policy of title insurance, sharing of commissions under Subsection
1858 (1) may not occur if it will result in:

1859 (i) an unlawful rebate;

1860 (ii) compensation in connection with controlled business; or

1861 (iii) payment of a forwarding fee or finder's fee.

1862 (b) A person may share compensation for the issuance of a title insurance policy only
1863 to the extent that the person contributed to the [~~search and~~] examination of the title or other
1864 services connected with the title insurance policy.

1865 (5) This section does not apply to:

1866 (a) a bail bond producer or bail enforcement agent as defined in Section [31A-35-102](#)
1867 and as described in Subsection [31A-23a-106\(2\)\(c\)](#);

1868 (b) a travel retailer registered pursuant to Part 9, Travel Insurance Act; or

1869 (c) a nonlicensed individual employee or authorized representative of a licensed
1870 limited line producer who holds one or more of the following limited lines of authority as
1871 described in Subsection [31A-23a-106\(2\)\(c\)](#):

1872 (i) car rental related insurance;

1873 (ii) self-service storage insurance;

1874 (iii) portable electronics insurance; or

1875 (iv) travel insurance.

1876 Section 12. Section **31A-41-202** is amended to read:

1877 **31A-41-202. Assessments.**

1878 (1) Beginning January 1, 2009, an agency title insurance producer licensed under this
1879 title shall pay an annual assessment determined by the commission by rule made in accordance
1880 with [~~Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~] [Section 31A-2-404](#), except
1881 that the annual assessment:

1882 (a) may not exceed \$1,000; and

1883 (b) shall be determined on the basis of title insurance premium volume.

1884 (2) Beginning January 1, 2009, an individual who applies for a license or renewal of a
1885 license as an individual title insurance producer, shall pay in addition to any other fee required
1886 by this title, an assessment not to exceed \$20, as determined by the commission by rule made
1887 in accordance with [~~Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~] [Section](#)

1888 [31A-2-404](#), except that if the individual holds more than one license, the total of all
1889 assessments under this Subsection (2) may not exceed \$20 in a fiscal year.

1890 (3) (a) To be licensed as an agency title insurance producer on or after July 1, 2008, a
1891 person shall pay to the department an assessment of \$1,000 before the day on which the person
1892 is licensed as a title insurance agency.

1893 (b) (i) By no later than July 15, 2008, the department shall assess on an agency title
1894 insurance producer licensed as of June 30, 2008, an amount equal to the greater of:

1895 (A) \$1,000; or

1896 (B) subject to Subsection (3)(b)(ii), 2% of the balance as of December 31, 2007, in the
1897 agency title insurance producer's reserve account described in Subsection [31A-23a-204](#)(3).

1898 (ii) The department may assess on an agency title insurance producer an amount less
1899 than 2% of the balance described in Subsection (3)(b)(i)(B) if:

1900 (A) before issuing the assessments under this Subsection (3)(b) the department
1901 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

1902 (B) the amount assessed on the agency title insurance producer is not less than \$1,000;
1903 and

1904 (C) the department reduces the assessment in a proportionate amount for agency title
1905 insurance producers assessed on the basis of the 2% of the balance described in Subsection
1906 (3)(b)(i)(B).

1907 (iii) An agency title insurance producer assessed under this Subsection (3)(b) shall pay
1908 the assessment by no later than August 1, 2008.

1909 (4) The department may not assess a title insurance licensee an assessment for
1910 purposes of the fund if that assessment is not expressly provided for in this section.

1911 Section 13. Section **31A-41-203** is amended to read:

1912 **31A-41-203. Use of money.**

1913 (1) Money in the fund may be used to pay claims made under Part 3, Claims on Fund.

1914 (2) (a) Except as limited by Subsection (2)(b), money in the fund in excess of \$250,000
1915 may be used by the commissioner, with the consent of the commission, to:

1916 (i) investigate violations of this chapter related to fraud by a title insurance licensee;

1917 (ii) conduct education and research in the field of title insurance; or

1918 (iii) examine a title insurance licensee's:

- 1919 (A) escrow and trust account;
- 1920 (B) [~~search and examine~~] examination procedures; or
- 1921 (C) compliance with applicable statutes and rules.
- 1922 (b) The commissioner may not use more than 75% of money collected under this
- 1923 chapter in a fiscal year from assessments and interest for the purposes outlined in this
- 1924 Subsection (2).
- 1925 (3) The disclosure of an examination conducted under this section is governed by
- 1926 Section [31A-2-204](#).

Legislative Review Note
as of 2-2-15 3:06 PM

Office of Legislative Research and General Counsel