

**INSURANCE RELATED AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies the Insurance Code and related provisions to make various amendments.

**Highlighted Provisions:**

This bill:

- ▶ modifies definitions;
- ▶ addresses fees, nonlapsing money, and the creation of restricted accounts;
- ▶ removes outdated language related to reporting;
- ▶ allows a member of the Title and Escrow Commission to continue to serve until replaced;
- ▶ modifies duties of the Title and Escrow Commission;
- ▶ modifies provisions related to variable contract law;
- ▶ modifies provisions related to approval of forms;
- ▶ addresses requirements for purchasing groups;
- ▶ clarifies language related to underinsured motorist coverage;
- ▶ prohibits certain conduct related insurance premium finance agreements;
- ▶ modifies provisions related to catastrophic coverage of mental health conditions;
- ▶ addresses issuance of group or blanket accident and health insurance;
- ▶ modifies Utah's mini-COBRA provisions;
- ▶ addresses special enrollment periods relating to Medicaid and Children's Health Insurance Program;
- ▶ addresses provisions related to licensure and insurance adjusting;
- ▶ modifies definitions related to life settlements;
- ▶ provides for rulemaking and other processes related to surrender of a professional employer organization license;
- ▶ addresses the board of directors for the Utah Defined Contribution Risk Adjuster;
- and

33           ▶ makes technical and conforming amendments.

34   **Monies Appropriated in this Bill:**

35           None

36   **Other Special Clauses:**

37           This bill provides an effective date.

38   **Utah Code Sections Affected:**

39   AMENDS:

40           **31A-1-301**, as last amended by Laws of Utah 2009, Chapter 349

41           **31A-2-403**, as last amended by Laws of Utah 2008, Chapter 345

42           **31A-2-404**, as last amended by Laws of Utah 2008, Chapter 382

43           **31A-3-103**, as last amended by Laws of Utah 2009, Chapters 183 and 368

44           **31A-3-104**, as last amended by Laws of Utah 2006, Chapter 117

45           **31A-3-304 (Superseded 07/01/10)**, as last amended by Laws of Utah 2009, Chapter  
46           183

47           **31A-3-304 (Effective 07/01/10)**, as last amended by Laws of Utah 2009, Chapter 183

48           **31A-5-217.5**, as enacted by Laws of Utah 1992, Chapter 230

49           **31A-15-208**, as enacted by Laws of Utah 1992, Chapter 258

50           **31A-20-106**, as enacted by Laws of Utah 1985, Chapter 242

51           **31A-21-201**, as last amended by Laws of Utah 2005, Chapter 123

52           **31A-21-301**, as last amended by Laws of Utah 2001, Chapter 116

53           **31A-22-305.3**, as last amended by Laws of Utah 2009, Chapter 231

54           **31A-22-411**, as last amended by Laws of Utah 1991, Chapter 74

55           **31A-22-625**, as last amended by Laws of Utah 2008, Chapters 345 and 382

56           **31A-22-701**, as last amended by Laws of Utah 2007, Chapter 307

57           **31A-22-722**, as last amended by Laws of Utah 2009, Chapter 12

58           **31A-23a-415**, as last amended by Laws of Utah 2007, Chapter 325

59           **31A-26-201**, as last amended by Laws of Utah 2003, Chapter 298

60           **31A-35-401**, as last amended by Laws of Utah 2009, Chapter 183

61           **31A-35-406**, as last amended by Laws of Utah 2009, Chapters 183 and 349

62           **31A-36-102**, as last amended by Laws of Utah 2009, Chapter 355

63           **31A-40-103**, as enacted by Laws of Utah 2008, Chapter 318

64           **31A-40-302**, as enacted by Laws of Utah 2008, Chapter 318

65           **31A-42-201**, as enacted by Laws of Utah 2009, Chapter 12

66           **63J-1-602**, as enacted by Laws of Utah 2009, Chapter 368

67 ENACTS:

68           **31A-3-105**, Utah Code Annotated 1953

69           **31A-22-429**, Utah Code Annotated 1953

70           **31A-22-725**, Utah Code Annotated 1953

71           **31A-40-307**, Utah Code Annotated 1953

72 ENACTS UNCODIFIED MATERIAL

73

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

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

76           **31A-1-301. Definitions.**

77           As used in this title, unless otherwise specified:

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

80           (i) a medical condition including:

81           (A) a medical care expense; or

82           (B) the risk of disability;

83           (ii) accident; or

84           (iii) sickness.

85           (b) "Accident and health insurance":

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

87           (A) an income replacement contract;

88           (B) a health care contract;

89           (C) an expense reimbursement contract;

90           (D) a credit accident and health contract;

91           (E) a continuing care contract; and

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

93           (ii) may provide:

- 94 (A) hospital coverage;
- 95 (B) surgical coverage;
- 96 (C) medical coverage;
- 97 (D) loss of income coverage;
- 98 (E) prescription drug coverage;
- 99 (F) dental coverage; or
- 100 (G) vision coverage.
- 101 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 102 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 103 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 104 (3) "Administrator" is defined in Subsection (159).
- 105 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 106 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 107 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 108 ownership, if substantially the same group of individuals manage the corporations.
- 109 (6) "Agency" means:
- 110 (a) a person other than an individual, including a sole proprietorship by which an
- 111 individual does business under an assumed name; and
- 112 (b) an insurance organization licensed or required to be licensed under Section
- 113 31A-23a-301.
- 114 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 115 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 116 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 117 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 118 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 119 human life.
- 120 (10) "Application" means a document:
- 121 (a) (i) completed by an applicant to provide information about the risk to be insured;
- 122 and
- 123 (ii) that contains information that is used by the insurer to evaluate risk and decide
- 124 whether to:

- 125 (A) insure the risk under:
- 126 (I) the coverage as originally offered; or
- 127 (II) a modification of the coverage as originally offered; or
- 128 (B) decline to insure the risk; or
- 129 (b) used by the insurer to gather information from the applicant before issuance of an
- 130 annuity contract.
- 131 (11) "Articles" or "articles of incorporation" means:
- 132 (a) the original articles;
- 133 (b) a special law;
- 134 (c) a charter;
- 135 (d) an amendment;
- 136 (e) restated articles;
- 137 (f) articles of merger or consolidation;
- 138 (g) a trust instrument;
- 139 (h) another constitutive document for a trust or other entity that is not a corporation;
- 140 and
- 141 (i) an amendment to an item listed in Subsections (11)(a) through (h).
- 142 (12) "Bail bond insurance" means a guarantee that a person will attend court when
- 143 required, up to and including surrender of the person in execution of a sentence imposed under
- 144 Subsection 77-20-7(1), as a condition to the release of that person from confinement.
- 145 (13) "Binder" is defined in Section 31A-21-102.
- 146 (14) "Blanket insurance policy" means a group policy covering a defined class of
- 147 persons:
- 148 (a) without individual underwriting or application; and
- 149 (b) that is determined by definition with or without designating each person covered.
- 150 (15) "Board," "board of trustees," or "board of directors" means the group of persons
- 151 with responsibility over, or management of, a corporation, however designated.
- 152 (16) "Business entity" means:
- 153 (a) a corporation;
- 154 (b) an association;
- 155 (c) a partnership;

- 156 (d) a limited liability company;
- 157 (e) a limited liability partnership; or
- 158 (f) another legal entity.
- 159 (17) "Business of insurance" is defined in Subsection (85).
- 160 (18) "Business plan" means the information required to be supplied to the
- 161 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
- 162 when these subsections apply by reference under:
- 163 (a) Section 31A-7-201;
- 164 (b) Section 31A-8-205; or
- 165 (c) Subsection 31A-9-205(2).
- 166 (19) (a) "Bylaws" means the rules adopted for the regulation or management of a
- 167 corporation's affairs, however designated.
- 168 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
- 169 corporation.
- 170 (20) "Captive insurance company" means:
- 171 (a) an insurer:
- 172 (i) owned by another organization; and
- 173 (ii) whose exclusive purpose is to insure risks of the parent organization and an
- 174 affiliated company; or
- 175 (b) in the case of a group or association, an insurer:
- 176 (i) owned by the insureds; and
- 177 (ii) whose exclusive purpose is to insure risks of:
- 178 (A) a member organization;
- 179 (B) a group member; or
- 180 (C) an affiliate of:
- 181 (I) a member organization; or
- 182 (II) a group member.
- 183 (21) "Casualty insurance" means liability insurance.
- 184 (22) "Certificate" means evidence of insurance given to:
- 185 (a) an insured under a group insurance policy; or
- 186 (b) a third party.

187 (23) "Certificate of authority" is included within the term "license."

188 (24) "Claim," unless the context otherwise requires, means a request or demand on an  
189 insurer for payment of a benefit according to the terms of an insurance policy.

190 (25) "Claims-made coverage" means an insurance contract or provision limiting  
191 coverage under a policy insuring against legal liability to claims that are first made against the  
192 insured while the policy is in force.

193 (26) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance  
194 commissioner.

195 (b) When appropriate, the terms listed in Subsection (26)(a) apply to the equivalent  
196 supervisory official of another jurisdiction.

197 (27) (a) "Continuing care insurance" means insurance that:

198 (i) provides board and lodging;

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

200 (A) a personal service;

201 (B) a nursing service;

202 (C) a medical service; or

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

204 (iii) provides the coverage described in this Subsection (27)(a) under an agreement  
205 effective:

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

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

208 (b) Insurance is continuing care insurance regardless of whether or not the board and  
209 lodging are provided at the same location as a service described in Subsection (27)(a)(ii).

210 (28) (a) "Control," "controlling," "controlled," or "under common control" means the  
211 direct or indirect possession of the power to direct or cause the direction of the management  
212 and policies of a person. This control may be:

213 (i) by contract;

214 (ii) by common management;

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

216 (iv) by a means other than those described in Subsections (28)(a)(i) through (iii).

217 (b) There is no presumption that an individual holding an official position with another

218 person controls that person solely by reason of the position.

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

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

224 (29) "Controlled insurer" means a licensed insurer that is either directly or indirectly  
225 controlled by a producer.

226 (30) "Controlling person" means a person that directly or indirectly has the power to  
227 direct or cause to be directed, the management, control, or activities of a reinsurance  
228 intermediary.

229 (31) "Controlling producer" means a producer who directly or indirectly controls an  
230 insurer.

231 (32) (a) "Corporation" means an insurance corporation, except when referring to:

232 (i) a corporation doing business:

233 (A) as:

234 (I) an insurance producer;

235 (II) a limited line producer;

236 (III) a consultant;

237 (IV) a managing general agent;

238 (V) a reinsurance intermediary;

239 (VI) a third party administrator; or

240 (VII) an adjuster; and

241 (B) under:

242 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
243 Reinsurance Intermediaries;

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

245 (III) Chapter 26, Insurance Adjusters; or

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

248 (b) "Stock corporation" means a stock insurance corporation.

249 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.

250 (33) (a) "Creditable coverage" has the same meaning as provided in federal regulations  
251 adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L.  
252 104-191, 110 Stat. 1936.

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

255 (i) the Primary Care Network Program under a Medicaid primary care network  
256 demonstration waiver obtained subject to Section 26-18-3;

257 (ii) the Children's Health Insurance Program under Section 26-40-106; or

258 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.  
259 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

260 (34) "Credit accident and health insurance" means insurance on a debtor to provide  
261 indemnity for payments coming due on a specific loan or other credit transaction while the  
262 debtor is disabled.

263 (35) (a) "Credit insurance" means insurance offered in connection with an extension of  
264 credit that is limited to partially or wholly extinguishing that credit obligation.

265 (b) "Credit insurance" includes:

266 (i) credit accident and health insurance;

267 (ii) credit life insurance;

268 (iii) credit property insurance;

269 (iv) credit unemployment insurance;

270 (v) guaranteed automobile protection insurance;

271 (vi) involuntary unemployment insurance;

272 (vii) mortgage accident and health insurance;

273 (viii) mortgage guaranty insurance; and

274 (ix) mortgage life insurance.

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

277 (37) "Credit property insurance" means insurance:

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

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

- 280 (38) "Credit unemployment insurance" means insurance:  
281 (a) offered in connection with an extension of credit; and  
282 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:  
283 (i) specific loan; or  
284 (ii) credit transaction.
- 285 (39) "Creditor" means a person, including an insured, having a claim, whether:  
286 (a) matured;  
287 (b) unmatured;  
288 (c) liquidated;  
289 (d) unliquidated;  
290 (e) secured;  
291 (f) unsecured;  
292 (g) absolute;  
293 (h) fixed; or  
294 (i) contingent.
- 295 (40) (a) "Customer service representative" means a person that provides an insurance  
296 service and insurance product information:  
297 (i) for the customer service representative's:  
298 (A) producer; or  
299 (B) consultant employer; and  
300 (ii) to the customer service representative's employer's:  
301 (A) customer;  
302 (B) client; or  
303 (C) organization.
- 304 (b) A customer service representative may only operate within the scope of authority of  
305 the customer service representative's producer or consultant employer.
- 306 (41) "Deadline" means a final date or time:  
307 (a) imposed by:  
308 (i) statute;  
309 (ii) rule; or  
310 (iii) order; and

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

312 (42) "Deemer clause" means a provision under this title under which upon the  
313 occurrence of a condition precedent, the commissioner is considered to have taken a specific  
314 action. If the statute so provides, a condition precedent may be the commissioner's failure to  
315 take a specific action.

316 (43) "Degree of relationship" means the number of steps between two persons  
317 determined by counting the generations separating one person from a common ancestor and  
318 then counting the generations to the other person.

319 (44) "Department" means the Insurance Department.

320 (45) "Director" means a member of the board of directors of a corporation.

321 (46) "Disability" means a physiological or psychological condition that partially or  
322 totally limits an individual's ability to:

323 (a) perform the duties of:

324 (i) that individual's occupation; or

325 (ii) any occupation for which the individual is reasonably suited by education, training,  
326 or experience; or

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

328 (i) eating;

329 (ii) toileting;

330 (iii) transferring;

331 (iv) bathing; or

332 (v) dressing.

333 (47) "Disability income insurance" is defined in Subsection (76).

334 (48) "Domestic insurer" means an insurer organized under the laws of this state.

335 (49) "Domiciliary state" means the state in which an insurer:

336 (a) is incorporated;

337 (b) is organized; or

338 (c) in the case of an alien insurer, enters into the United States.

339 (50) (a) "Eligible employee" means:

340 (i) an employee who:

341 (A) works on a full-time basis; and

- 342 (B) has a normal work week of 30 or more hours; or  
343 (ii) a person described in Subsection (50)(b).  
344 (b) "Eligible employee" includes, if the individual is included under a health benefit  
345 plan of a small employer:  
346 (i) a sole proprietor;  
347 (ii) a partner in a partnership; or  
348 (iii) an independent contractor.  
349 (c) "Eligible employee" does not include, unless eligible under Subsection (50)(b):  
350 (i) an individual who works on a temporary or substitute basis for a small employer;  
351 (ii) an employer's spouse; or  
352 (iii) a dependent of an employer.  
353 (51) "Employee" means an individual employed by an employer.  
354 (52) "Employee benefits" means one or more benefits or services provided to:  
355 (a) an employee; or  
356 (b) a dependent of an employee.  
357 (53) (a) "Employee welfare fund" means a fund:  
358 (i) established or maintained, whether directly or through a trustee, by:  
359 (A) one or more employers;  
360 (B) one or more labor organizations; or  
361 (C) a combination of employers and labor organizations; and  
362 (ii) that provides employee benefits paid or contracted to be paid, other than income  
363 from investments of the fund:  
364 (A) by or on behalf of an employer doing business in this state; or  
365 (B) for the benefit of a person employed in this state.  
366 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax  
367 revenues.  
368 (54) "Endorsement" means a written agreement attached to a policy or certificate to  
369 modify the policy or certificate coverage.  
370 (55) "Enrollment date," with respect to a health benefit plan, means:  
371 (a) the first day of coverage; or  
372 (b) if there is a waiting period, the first day of the waiting period.

- 373 (56) (a) "Escrow" means:
- 374 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
- 375 the requirements of a written agreement between the parties in a real estate transaction; or
- 376 (ii) a settlement or closing involving:
- 377 (A) a mobile home;
- 378 (B) a grazing right;
- 379 (C) a water right; or
- 380 (D) other personal property authorized by the commissioner.
- 381 (b) "Escrow" includes the act of conducting a:
- 382 (i) real estate settlement; or
- 383 (ii) real estate closing.
- 384 (57) "Escrow agent" means:
- 385 (a) an insurance producer with:
- 386 (i) a title insurance line of authority; and
- 387 (ii) an escrow subline of authority; or
- 388 (b) a person defined as an escrow agent in Section 7-22-101.
- 389 (58) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
- 390 excluded.
- 391 (b) The items listed in a list using the term "excludes" are representative examples for
- 392 use in interpretation of this title.
- 393 (59) "Exclusion" means for the purposes of accident and health insurance that an
- 394 insurer does not provide insurance coverage, for whatever reason, for one of the following:
- 395 (a) a specific physical condition;
- 396 (b) a specific medical procedure;
- 397 (c) a specific disease or disorder; or
- 398 (d) a specific prescription drug or class of prescription drugs.
- 399 (60) "Expense reimbursement insurance" means insurance:
- 400 (a) written to provide a payment for an expense relating to hospital confinement
- 401 resulting from illness or injury; and
- 402 (b) written:
- 403 (i) as a daily limit for a specific number of days in a hospital; and

- 404 (ii) to have a one or two day waiting period following a hospitalization.
- 405 (61) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding  
406 a position of public or private trust.
- 407 (62) (a) "Filed" means that a filing is:
- 408 (i) submitted to the department as required by and in accordance with applicable  
409 statute, rule, or filing order;
- 410 (ii) received by the department within the time period provided in applicable statute,  
411 rule, or filing order; and
- 412 (iii) accompanied by the appropriate fee in accordance with:
- 413 (A) Section 31A-3-103; or
- 414 (B) rule.
- 415 (b) "Filed" does not include a filing that is rejected by the department because it is not  
416 submitted in accordance with Subsection (62)(a).
- 417 (63) "Filing," when used as a noun, means an item required to be filed with the  
418 department including:
- 419 (a) a policy;
- 420 (b) a rate;
- 421 (c) a form;
- 422 (d) a document;
- 423 (e) a plan;
- 424 (f) a manual;
- 425 (g) an application;
- 426 (h) a report;
- 427 (i) a certificate;
- 428 (j) an endorsement;
- 429 (k) an actuarial certification;
- 430 (l) a licensee annual statement;
- 431 (m) a licensee renewal application;
- 432 (n) an advertisement; or
- 433 (o) an outline of coverage.
- 434 (64) "First party insurance" means an insurance policy or contract in which the insurer

435 agrees to pay a claim submitted to it by the insured for the insured's losses.

436 (65) "Foreign insurer" means an insurer domiciled outside of this state, including an  
437 alien insurer.

438 (66) (a) "Form" means one of the following prepared for general use:

439 (i) a policy;

440 (ii) a certificate;

441 (iii) an application;

442 (iv) an outline of coverage; or

443 (v) an endorsement.

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

446 (67) "Franchise insurance" means an individual insurance policy provided through a  
447 mass marketing arrangement involving a defined class of persons related in some way other  
448 than through the purchase of insurance.

449 (68) "General lines of authority" include:

450 (a) the general lines of insurance in Subsection (69);

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

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

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

454 (iii) title marketing representative only;

455 (c) surplus lines;

456 (d) workers' compensation; and

457 (e) any other line of insurance that the commissioner considers necessary to recognize  
458 in the public interest.

459 (69) "General lines of insurance" include:

460 (a) accident and health;

461 (b) casualty;

462 (c) life;

463 (d) personal lines;

464 (e) property; and

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

466 (70) "Group health plan" means an employee welfare benefit plan to the extent that the  
467 plan provides medical care:

- 468 (a) (i) to an employee; or
- 469 (ii) to a dependent of an employee; and
- 470 (b) (i) directly;
- 471 (ii) through insurance reimbursement; or
- 472 (iii) through another method.

473 (71) (a) "Group insurance policy" means a policy covering a group of persons that is  
474 issued:

- 475 (i) to a policyholder on behalf of the group; and
- 476 (ii) for the benefit of a member of the group who is selected under a procedure defined  
477 in:
  - 478 (A) the policy; or
  - 479 (B) an agreement that is collateral to the policy.

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

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

485 (73) (a) Except as provided in Subsection (73)(b), "health benefit plan" means a policy  
486 or certificate that:

- 487 (i) provides health care insurance;
- 488 (ii) provides major medical expense insurance; or
- 489 (iii) is offered as a substitute for hospital or medical expense insurance, such as:
  - 490 (A) a hospital confinement indemnity; or
  - 491 (B) a limited benefit plan.

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

- 493 (i) provides benefits solely for:
  - 494 (A) accident;
  - 495 (B) dental;
  - 496 (C) income replacement;

- 497 (D) long-term care;
- 498 (E) a Medicare supplement;
- 499 (F) a specified disease;
- 500 (G) vision; or
- 501 (H) a short-term limited duration; or
- 502 (ii) is offered and marketed as supplemental health insurance.
- 503 (74) "Health care" means any of the following intended for use in the diagnosis,
- 504 treatment, mitigation, or prevention of a human ailment or impairment:
- 505 (a) a professional service;
- 506 (b) a personal service;
- 507 (c) a facility;
- 508 (d) equipment;
- 509 (e) a device;
- 510 (f) supplies; or
- 511 (g) medicine.
- 512 (75) (a) "Health care insurance" or "health insurance" means insurance providing:
- 513 (i) a health care benefit; or
- 514 (ii) payment of an incurred health care expense.
- 515 (b) "Health care insurance" or "health insurance" does not include accident and health
- 516 insurance providing a benefit for:
- 517 (i) replacement of income;
- 518 (ii) short-term accident;
- 519 (iii) fixed indemnity;
- 520 (iv) credit accident and health;
- 521 (v) supplements to liability;
- 522 (vi) workers' compensation;
- 523 (vii) automobile medical payment;
- 524 (viii) no-fault automobile;
- 525 (ix) equivalent self-insurance; or
- 526 (x) a type of accident and health insurance coverage that is a part of or attached to
- 527 another type of policy.

528 (76) "Income replacement insurance" or "disability income insurance" means insurance  
529 written to provide payments to replace income lost from accident or sickness.

530 (77) "Indemnity" means the payment of an amount to offset all or part of an insured  
531 loss.

532 (78) "Independent adjuster" means an insurance adjuster required to be licensed under  
533 Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

534 (79) "Independently procured insurance" means insurance procured under Section  
535 31A-15-104.

536 (80) "Individual" means a natural person.

537 (81) "Inland marine insurance" includes insurance covering:

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

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

540 (c) bailee liability;

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

543 (e) personal and commercial property floaters.

544 (82) "Insolvency" means that:

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

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

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

550 (83) (a) "Insurance" means:

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

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

555 (b) "Insurance" includes:

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

558 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a

559 business and not as merely incidental to a business transaction; and

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

562 (84) "Insurance adjuster" means a person who directs the investigation, negotiation, or  
563 settlement of a claim under an insurance policy other than life insurance or an annuity, on  
564 behalf of an insurer, policyholder, or a claimant under an insurance policy.

565 (85) "Insurance business" or "business of insurance" includes:

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

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

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

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

573 (c) providing an annuity:

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

575 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)

576 and (3);

577 (d) providing the characteristic services of a motor club as outlined in Subsection  
578 (113);

579 (e) providing another person with insurance;

580 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,  
581 or surety, a contract or policy of title insurance;

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

583 (i) solicitation;

584 (ii) negotiation preliminary to execution;

585 (iii) execution of a contract of title insurance;

586 (iv) insuring; [~~and~~]

587 (v) transacting matters subsequent to the execution of the contract and arising out of  
588 the contract, including reinsurance; and

589 (vi) transacting or proposing a life settlement; and

590 (h) doing, or proposing to do, any business in substance equivalent to Subsections  
591 (85)(a) through (g) in a manner designed to evade this title.

592 (86) "Insurance consultant" or "consultant" means a person who:

593 (a) advises another person about insurance needs and coverages;

594 (b) is compensated by the person advised on a basis not directly related to the insurance  
595 placed; and

596 (c) except as provided in Section 31A-23a-501, is not compensated directly or  
597 indirectly by an insurer or producer for advice given.

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

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

602 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an  
603 insurance customer or an insured:

604 (i) "producer for the insurer" means a producer who is compensated directly or  
605 indirectly by an insurer for selling, soliciting, or negotiating a product of that insurer; and

606 (ii) "producer for the insured" means a producer who:

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

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

610 (89) (a) "Insured" means a person to whom or for whose benefit an insurer makes a  
611 promise in an insurance policy and includes:

612 (i) a policyholder;

613 (ii) a subscriber;

614 (iii) a member; and

615 (iv) a beneficiary.

616 (b) The definition in Subsection (89)(a):

617 (i) applies only to this title; and

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

620 (90) (a) "Insurer" means a person doing an insurance business as a principal including:

- 621 (i) a fraternal benefit society;
- 622 (ii) an issuer of a gift annuity other than an annuity specified in Subsections  
623 31A-22-1305(2) and (3);
- 624 (iii) a motor club;
- 625 (iv) an employee welfare plan; and
- 626 (v) a person purporting or intending to do an insurance business as a principal on that  
627 person's own account.
- 628 (b) "Insurer" does not include a governmental entity to the extent the governmental  
629 entity is engaged in an activity described in Section 31A-12-107.
- 630 (91) "Interinsurance exchange" is defined in Subsection (142).
- 631 (92) "Involuntary unemployment insurance" means insurance:
- 632 (a) offered in connection with an extension of credit; and
- 633 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
634 coming due on a:
- 635 (i) specific loan; or
- 636 (ii) credit transaction.
- 637 (93) "Large employer," in connection with a health benefit plan, means an employer  
638 who, with respect to a calendar year and to a plan year:
- 639 (a) employed an average of at least 51 eligible employees on each business day during  
640 the preceding calendar year; and
- 641 (b) employs at least two employees on the first day of the plan year.
- 642 (94) "Late enrollee," with respect to an employer health benefit plan, means an  
643 individual whose enrollment is a late enrollment.
- 644 (95) "Late enrollment," with respect to an employer health benefit plan, means  
645 enrollment of an individual other than:
- 646 (a) on the earliest date on which coverage can become effective for the individual  
647 under the terms of the plan; or
- 648 (b) through special enrollment.
- 649 (96) (a) Except for a retainer contract or legal assistance described in Section  
650 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a  
651 specified legal expense.

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

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

656 (97) (a) "Liability insurance" means insurance against liability:

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

659 (A) Subsection (107) for medical malpractice insurance;

660 (B) Subsection (134) for professional liability insurance; and

661 (C) Subsection (168) for workers' compensation insurance;

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

666 (A) Subsection (107) for medical malpractice insurance;

667 (B) Subsection (134) for professional liability insurance; and

668 (C) Subsection (168) for workers' compensation insurance;

669 (iii) for loss or damage to property resulting from an accident to or explosion of a  
670 boiler, pipe, pressure container, machinery, or apparatus;

671 (iv) for loss or damage to property caused by:

672 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or

673 (B) water entering through a leak or opening in a building; or

674 (v) for other loss or damage properly the subject of insurance not within another kind  
675 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

676 (b) "Liability insurance" includes:

677 (i) vehicle liability insurance;

678 (ii) residential dwelling liability insurance; and

679 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,  
680 boiler, machinery, or apparatus of any kind when done in connection with insurance on the  
681 elevator, boiler, machinery, or apparatus.

682 (98) (a) "License" means authorization issued by the commissioner to engage in an

683 activity that is part of or related to the insurance business.

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

685 (99) (a) "Life insurance" means:

686 (i) insurance on a human life; and

687 (ii) insurance pertaining to or connected with human life.

688 (b) The business of life insurance includes:

689 (i) granting a death benefit;

690 (ii) granting an annuity benefit;

691 (iii) granting an endowment benefit;

692 (iv) granting an additional benefit in the event of death by accident;

693 (v) granting an additional benefit to safeguard the policy against lapse; and

694 (vi) providing an optional method of settlement of proceeds.

695 (100) "Limited license" means a license that:

696 (a) is issued for a specific product of insurance; and

697 (b) limits an individual or agency to transact only for that product or insurance.

698 (101) "Limited line credit insurance" includes the following forms of insurance:

699 (a) credit life;

700 (b) credit accident and health;

701 (c) credit property;

702 (d) credit unemployment;

703 (e) involuntary unemployment;

704 (f) mortgage life;

705 (g) mortgage guaranty;

706 (h) mortgage accident and health;

707 (i) guaranteed automobile protection; and

708 (j) another form of insurance offered in connection with an extension of credit that:

709 (i) is limited to partially or wholly extinguishing the credit obligation; and

710 (ii) the commissioner determines by rule should be designated as a form of limited line  
711 credit insurance.

712 (102) "Limited line credit insurance producer" means a person who sells, solicits, or

713 negotiates one or more forms of limited line credit insurance coverage to an individual through

714 a master, corporate, group, or individual policy.

715 (103) "Limited line insurance" includes:

716 (a) bail bond;

717 (b) limited line credit insurance;

718 (c) legal expense insurance;

719 (d) motor club insurance;

720 (e) rental car-related insurance;

721 (f) travel insurance;

722 (g) crop insurance;

723 (h) self-service storage insurance; and

724 (i) another form of limited insurance that the commissioner determines by rule should

725 be designated a form of limited line insurance.

726 (104) "Limited lines authority" includes:

727 (a) the lines of insurance listed in Subsection (103); and

728 (b) a customer service representative.

729 (105) "Limited lines producer" means a person who sells, solicits, or negotiates limited  
730 lines insurance.

731 (106) (a) "Long-term care insurance" means an insurance policy or rider advertised,  
732 marketed, offered, or designated to provide coverage:

733 (i) in a setting other than an acute care unit of a hospital;

734 (ii) for not less than 12 consecutive months for a covered person on the basis of:

735 (A) expenses incurred;

736 (B) indemnity;

737 (C) prepayment; or

738 (D) another method;

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

740 (A) diagnostic;

741 (B) preventative;

742 (C) therapeutic;

743 (D) rehabilitative;

744 (E) maintenance; or

- 745 (F) personal care; and  
746 (iv) that may be issued by:  
747 (A) an insurer;  
748 (B) a fraternal benefit society;  
749 (C) (I) a nonprofit health hospital; and  
750 (II) a medical service corporation;  
751 (D) a prepaid health plan;  
752 (E) a health maintenance organization; or  
753 (F) an entity similar to the entities described in Subsections (106)(a)(iv)(A) through (E)  
754 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 755 (b) "Long-term care insurance" includes:  
756 (i) any of the following that provide directly or supplement long-term care insurance:  
757 (A) a group or individual annuity or rider; or  
758 (B) a life insurance policy or rider;  
759 (ii) a policy or rider that provides for payment of benefits on the basis of:  
760 (A) cognitive impairment; or  
761 (B) functional capacity; or  
762 (iii) a qualified long-term care insurance contract.
- 763 (c) "Long-term care insurance" does not include:  
764 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;  
765 (ii) basic hospital expense coverage;  
766 (iii) basic medical/surgical expense coverage;  
767 (iv) hospital confinement indemnity coverage;  
768 (v) major medical expense coverage;  
769 (vi) income replacement or related asset-protection coverage;  
770 (vii) accident only coverage;  
771 (viii) coverage for a specified:  
772 (A) disease; or  
773 (B) accident;  
774 (ix) limited benefit health coverage; or  
775 (x) a life insurance policy that accelerates the death benefit to provide the option of a

776 lump sum payment:

777 (A) if the following are not conditioned on the receipt of long-term care:

778 (I) benefits; or

779 (II) eligibility; and

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

781 (I) terminal illness;

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

783 (III) permanent institutional confinement.

784 (107) "Medical malpractice insurance" means insurance against legal liability incident  
785 to the practice and provision of a medical service other than the practice and provision of a  
786 dental service.

787 (108) "Member" means a person having membership rights in an insurance  
788 corporation.

789 (109) "Minimum capital" or "minimum required capital" means the capital that must be  
790 constantly maintained by a stock insurance corporation as required by statute.

791 (110) "Mortgage accident and health insurance" means insurance offered in connection  
792 with an extension of credit that provides indemnity for payments coming due on a mortgage  
793 while the debtor is disabled.

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

796 (112) "Mortgage life insurance" means insurance on the life of a debtor in connection  
797 with an extension of credit that pays if the debtor dies.

798 (113) "Motor club" means a person:

799 (a) licensed under:

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

801 (ii) Chapter 11, Motor Clubs; or

802 (iii) Chapter 14, Foreign Insurers; and

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

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

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

- 807 (iii) (A) trip reimbursement;
- 808 (B) towing services;
- 809 (C) emergency road services;
- 810 (D) stolen automobile services;
- 811 (E) a combination of the services listed in Subsections (113)(b)(iii)(A) through (D); or
- 812 (F) other services given in Subsections 31A-11-102(1)(b) through (f).
- 813 (114) "Mutual" means a mutual insurance corporation.
- 814 (115) "Network plan" means health care insurance:
- 815 (a) that is issued by an insurer; and
- 816 (b) under which the financing and delivery of medical care is provided, in whole or in
- 817 part, through a defined set of providers under contract with the insurer, including the financing
- 818 and delivery of an item paid for as medical care.
- 819 (116) "Nonparticipating" means a plan of insurance under which the insured is not
- 820 entitled to receive a dividend representing a share of the surplus of the insurer.
- 821 (117) "Ocean marine insurance" means insurance against loss of or damage to:
- 822 (a) ships or hulls of ships;
- 823 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,
- 824 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
- 825 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
- 826 (c) earnings such as freight, passage money, commissions, or profits derived from
- 827 transporting goods or people upon or across the oceans or inland waterways; or
- 828 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
- 829 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
- 830 in connection with maritime activity.
- 831 (118) "Order" means an order of the commissioner.
- 832 (119) "Outline of coverage" means a summary that explains an accident and health
- 833 insurance policy.
- 834 (120) "Participating" means a plan of insurance under which the insured is entitled to
- 835 receive a dividend representing a share of the surplus of the insurer.
- 836 (121) "Participation," as used in a health benefit plan, means a requirement relating to
- 837 the minimum percentage of eligible employees that must be enrolled in relation to the total

- 838 number of eligible employees of an employer reduced by each eligible employee who  
839 voluntarily declines coverage under the plan because the employee:
- 840 (a) has other group health care insurance coverage; or
  - 841 (b) receives:
    - 842 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social  
843 Security Amendments of 1965; or
    - 844 (ii) another government health benefit.
- 845 (122) "Person" includes:
- 846 (a) an individual;
  - 847 (b) a partnership;
  - 848 (c) a corporation;
  - 849 (d) an incorporated or unincorporated association;
  - 850 (e) a joint stock company;
  - 851 (f) a trust;
  - 852 (g) a limited liability company;
  - 853 (h) a reciprocal;
  - 854 (i) a syndicate; or
  - 855 (j) another similar entity or combination of entities acting in concert.
- 856 (123) "Personal lines insurance" means property and casualty insurance coverage sold  
857 for primarily noncommercial purposes to:
- 858 (a) an individual; or
  - 859 (b) a family.
- 860 (124) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 861 (125) "Plan year" means:
- 862 (a) the year that is designated as the plan year in:
    - 863 (i) the plan document of a group health plan; or
    - 864 (ii) a summary plan description of a group health plan;
  - 865 (b) if the plan document or summary plan description does not designate a plan year or  
866 there is no plan document or summary plan description:
    - 867 (i) the year used to determine deductibles or limits;
    - 868 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

869 or

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

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

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

873 (II) the insurance policy is not renewed on an annual basis; or

874 (c) in a case not described in Subsection (125)(a) or (b), the calendar year.

875 (126) (a) "Policy" means a document, including ~~any~~ an attached endorsement or

876 application that:

877 (i) purports to be an enforceable contract; and

878 (ii) memorializes in writing some or all of the terms of an insurance contract.

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

880 (i) a motor club under Chapter 11, Motor Clubs;

881 (ii) a service contract provided under Chapter 6a, Service Contracts; and

882 (iii) a corporation licensed under:

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

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

885 (c) "Policy" does not include:

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

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

888 (127) "Policyholder" means a person who controls a policy, binder, or oral contract by

889 ownership, premium payment, or otherwise.

890 (128) "Policy illustration" means a presentation or depiction that includes

891 nonguaranteed elements of a policy of life insurance over a period of years.

892 (129) "Policy summary" means a synopsis describing the elements of a life insurance

893 policy.

894 (130) "Preexisting condition," with respect to a health benefit plan:

895 (a) means a condition that was present before the effective date of coverage, whether or

896 not medical advice, diagnosis, care, or treatment was recommended or received before that day;

897 and

898 (b) does not include a condition indicated by genetic information unless an actual

899 diagnosis of the condition by a physician has been made.

- 900 (131) (a) "Premium" means the monetary consideration for an insurance policy.
- 901 (b) "Premium" includes, however designated:
- 902 (i) an assessment;
- 903 (ii) a membership fee;
- 904 (iii) a required contribution; or
- 905 (iv) monetary consideration.
- 906 (c) (i) "Premium" does not include consideration paid to a third party administrator for
- 907 the third party administrator's services.
- 908 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
- 909 insurance on the risks administered by the third party administrator.
- 910 (132) "Principal officers" for a corporation means the officers designated under
- 911 Subsection 31A-5-203(3).
- 912 (133) "Proceeding" includes an action or special statutory proceeding.
- 913 (134) "Professional liability insurance" means insurance against legal liability incident
- 914 to the practice of a profession and provision of a professional service.
- 915 (135) (a) Except as provided in Subsection (135)(b), "property insurance" means
- 916 insurance against loss or damage to real or personal property of every kind and any interest in
- 917 that property:
- 918 (i) from all hazards or causes; and
- 919 (ii) against loss consequential upon the loss or damage including vehicle
- 920 comprehensive and vehicle physical damage coverages.
- 921 (b) "Property insurance" does not include:
- 922 (i) inland marine insurance; and
- 923 (ii) ocean marine insurance.
- 924 (136) "Qualified long-term care insurance contract" or "federally tax qualified
- 925 long-term care insurance contract" means:
- 926 (a) an individual or group insurance contract that meets the requirements of Section
- 927 7702B(b), Internal Revenue Code; or
- 928 (b) the portion of a life insurance contract that provides long-term care insurance:
- 929 (i) (A) by rider; or
- 930 (B) as a part of the contract; and

- 931 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue  
932 Code.
- 933 (137) "Qualified United States financial institution" means an institution that:  
934 (a) is:  
935 (i) organized under the laws of the United States or any state; or  
936 (ii) in the case of a United States office of a foreign banking organization, licensed  
937 under the laws of the United States or any state;  
938 (b) is regulated, supervised, and examined by a United States federal or state authority  
939 having regulatory authority over a bank or trust company; and  
940 (c) meets the standards of financial condition and standing that are considered  
941 necessary and appropriate to regulate the quality of a financial institution whose letters of credit  
942 will be acceptable to the commissioner as determined by:  
943 (i) the commissioner by rule; or  
944 (ii) the Securities Valuation Office of the National Association of Insurance  
945 Commissioners.
- 946 (138) (a) "Rate" means:  
947 (i) the cost of a given unit of insurance; or  
948 (ii) for property or casualty insurance, that cost of insurance per exposure unit either  
949 expressed as:  
950 (A) a single number; or  
951 (B) a pure premium rate, adjusted before the application of individual risk variations  
952 based on loss or expense considerations to account for the treatment of:  
953 (I) expenses;  
954 (II) profit; and  
955 (III) individual insurer variation in loss experience.  
956 (b) "Rate" does not include a minimum premium.
- 957 (139) (a) Except as provided in Subsection (139)(b), "rate service organization" means  
958 a person who assists an insurer in rate making or filing by:  
959 (i) collecting, compiling, and furnishing loss or expense statistics;  
960 (ii) recommending, making, or filing rates or supplementary rate information; or  
961 (iii) advising about rate questions, except as an attorney giving legal advice.

- 962 (b) "Rate service organization" does not mean:
- 963 (i) an employee of an insurer;
- 964 (ii) a single insurer or group of insurers under common control;
- 965 (iii) a joint underwriting group; or
- 966 (iv) an individual serving as an actuarial or legal consultant.
- 967 (140) "Rating manual" means any of the following used to determine initial and
- 968 renewal policy premiums:
- 969 (a) a manual of rates;
- 970 (b) a classification;
- 971 (c) a rate-related underwriting rule; and
- 972 (d) a rating formula that describes steps, policies, and procedures for determining
- 973 initial and renewal policy premiums.
- 974 (141) "Received by the department" means:
- 975 (a) the date delivered to and stamped received by the department, if delivered in
- 976 person;
- 977 (b) the post mark date, if delivered by mail;
- 978 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 979 (d) the received date recorded on an item delivered, if delivered by:
- 980 (i) facsimile;
- 981 (ii) email; or
- 982 (iii) another electronic method; or
- 983 (e) a date specified in:
- 984 (i) a statute;
- 985 (ii) a rule; or
- 986 (iii) an order.
- 987 (142) "Reciprocal" or "interinsurance exchange" means an unincorporated association
- 988 of persons:
- 989 (a) operating through an attorney-in-fact common to all of the persons; and
- 990 (b) exchanging insurance contracts with one another that provide insurance coverage
- 991 on each other.
- 992 (143) "Reinsurance" means an insurance transaction where an insurer, for

993 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to  
994 reinsurance transactions, this title sometimes refers to:

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

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

997 (i) "assuming insurer"; or

998 (ii) "assuming reinsurer."

999 (144) "Reinsurer" means a person licensed in this state as an insurer with the authority  
1000 to assume reinsurance.

1001 (145) "Residential dwelling liability insurance" means insurance against liability  
1002 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is  
1003 a detached single family residence or multifamily residence up to four units.

1004 (146) (a) "Retrocession" means reinsurance with another insurer of a liability assumed  
1005 under a reinsurance contract.

1006 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a  
1007 liability assumed under a reinsurance contract.

1008 (147) "Rider" means an endorsement to:

1009 (a) an insurance policy; or

1010 (b) an insurance certificate.

1011 (148) (a) "Security" means a:

1012 (i) note;

1013 (ii) stock;

1014 (iii) bond;

1015 (iv) debenture;

1016 (v) evidence of indebtedness;

1017 (vi) certificate of interest or participation in a profit-sharing agreement;

1018 (vii) collateral-trust certificate;

1019 (viii) preorganization certificate or subscription;

1020 (ix) transferable share;

1021 (x) investment contract;

1022 (xi) voting trust certificate;

1023 (xii) certificate of deposit for a security;

- 1024 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in  
1025 payments out of production under such a title or lease;
- 1026 (xiv) commodity contract or commodity option;
- 1027 (xv) certificate of interest or participation in, temporary or interim certificate for,  
1028 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed  
1029 in Subsections (148)(a)(i) through (xiv); or
- 1030 (xvi) another interest or instrument commonly known as a security.
- 1031 (b) "Security" does not include:
- 1032 (i) any of the following under which an insurance company promises to pay money in a  
1033 specific lump sum or periodically for life or some other specified period:
- 1034 (A) insurance;
- 1035 (B) an endowment policy; or
- 1036 (C) an annuity contract; or
- 1037 (ii) a burial certificate or burial contract.
- 1038 (149) "Secondary medical condition" means a complication related to an exclusion  
1039 from coverage in accident and health insurance.
- 1040 (150) "Self-insurance" means an arrangement under which a person provides for  
1041 spreading its own risks by a systematic plan.
- 1042 (a) Except as provided in this Subsection (150), "self-insurance" does not include an  
1043 arrangement under which a number of persons spread their risks among themselves.
- 1044 (b) "Self-insurance" includes:
- 1045 (i) an arrangement by which a governmental entity undertakes to indemnify an  
1046 employee for liability arising out of the employee's employment; and
- 1047 (ii) an arrangement by which a person with a managed program of self-insurance and  
1048 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or  
1049 employees for liability or risk that is related to the relationship or employment.
- 1050 (c) "Self-insurance" does not include an arrangement with an independent contractor.
- 1051 (151) "Sell" means to exchange a contract of insurance:
- 1052 (a) by any means;
- 1053 (b) for money or its equivalent; and
- 1054 (c) on behalf of an insurance company.

1055 (152) "Short-term care insurance" means an insurance policy or rider advertised,  
1056 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,  
1057 but that provides coverage for less than 12 consecutive months for each covered person.

1058 (153) "Significant break in coverage" means a period of 63 consecutive days during  
1059 each of which an individual does not have creditable coverage.

1060 (154) "Small employer," in connection with a health benefit plan, means an employer  
1061 who, with respect to a calendar year and to a plan year:

1062 (a) employed an average of at least two employees but not more than 50 eligible  
1063 employees on each business day during the preceding calendar year; and

1064 (b) employs at least two employees on the first day of the plan year.

1065 (155) "Special enrollment period," in connection with a health benefit plan, has the  
1066 same meaning as provided in federal regulations adopted pursuant to the Health Insurance  
1067 Portability and Accountability Act of 1996, Pub. L. [~~No.~~] 104-191, 110 Stat. 1936.

1068 (156) (a) "Subsidiary" of a person means an affiliate controlled by that person either  
1069 directly or indirectly through one or more affiliates or intermediaries.

1070 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting  
1071 shares are owned by that person either alone or with its affiliates, except for the minimum  
1072 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
1073 others.

1074 (157) Subject to Subsection (83)(b), "surety insurance" includes:

1075 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or  
1076 perform the principal's obligations to a creditor or other obligee;

1077 (b) bail bond insurance; and

1078 (c) fidelity insurance.

1079 (158) (a) "Surplus" means the excess of assets over the sum of paid-in capital and  
1080 liabilities.

1081 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by  
1082 the insurer as permanent.

1083 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require  
1084 that mutuals doing business in this state maintain specified minimum levels of permanent  
1085 surplus.

1086 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the  
1087 same as the minimum required capital requirement that applies to stock insurers.

1088 (c) "Excess surplus" means:

1089 (i) for a life insurer, accident and health insurer, health organization, or property and  
1090 casualty insurer as defined in Section 31A-17-601, the lesser of:

1091 (A) that amount of an insurer's or health organization's total adjusted capital that  
1092 exceeds the product of:

1093 (I) 2.5; and

1094 (II) the sum of the insurer's or health organization's minimum capital or permanent  
1095 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1096 (B) that amount of an insurer's or health organization's total adjusted capital that  
1097 exceeds the product of:

1098 (I) 3.0; and

1099 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1100 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer  
1101 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1102 (A) 1.5; and

1103 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1104 (159) "Third party administrator" or "administrator" means a person who collects  
1105 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of  
1106 the state in connection with insurance coverage, annuities, or service insurance coverage,  
1107 except:

1108 (a) a union on behalf of its members;

1109 (b) a person administering a:

1110 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1111 1974;

1112 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1113 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1114 (c) an employer on behalf of the employer's employees or the employees of one or  
1115 more of the subsidiary or affiliated corporations of the employer;

1116 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance

1117 for which the insurer holds a license in this state; or

1118 (e) a person:

1119 (i) licensed or exempt from licensing under:

1120 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
1121 Reinsurance Intermediaries; or

1122 (B) Chapter 26, Insurance Adjusters; and

1123 (ii) whose activities are limited to those authorized under the license the person holds  
1124 or for which the person is exempt.

1125 (160) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner  
1126 of real or personal property or the holder of liens or encumbrances on that property, or others  
1127 interested in the property against loss or damage suffered by reason of liens or encumbrances  
1128 upon, defects in, or the unmarketability of the title to the property, or invalidity or  
1129 unenforceability of any liens or encumbrances on the property.

1130 (161) "Total adjusted capital" means the sum of an insurer's or health organization's  
1131 statutory capital and surplus as determined in accordance with:

1132 (a) the statutory accounting applicable to the annual financial statements required to be  
1133 filed under Section 31A-4-113; and

1134 (b) another item provided by the RBC instructions, as RBC instructions is defined in  
1135 Section 31A-17-601.

1136 (162) (a) "Trustee" means "director" when referring to the board of directors of a  
1137 corporation.

1138 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1139 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1140 individually or jointly and whether designated by that name or any other, that is charged with  
1141 or has the overall management of an employee welfare fund.

1142 (163) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"  
1143 means an insurer:

1144 (i) not holding a valid certificate of authority to do an insurance business in this state;  
1145 or

1146 (ii) transacting business not authorized by a valid certificate.

1147 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1148 (i) holding a valid certificate of authority to do an insurance business in this state; and  
 1149 (ii) transacting business as authorized by a valid certificate.

1150 (164) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1151 (165) "Vehicle liability insurance" means insurance against liability resulting from or  
 1152 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle  
 1153 comprehensive or vehicle physical damage coverage under Subsection (135).

1154 (166) "Voting security" means a security with voting rights, and includes a security  
 1155 convertible into a security with a voting right associated with the security.

1156 (167) "Waiting period" for a health benefit plan means the period that must pass before  
 1157 coverage for an individual, who is otherwise eligible to enroll under the terms of the health  
 1158 benefit plan, can become effective.

1159 (168) "Workers' compensation insurance" means:

1160 (a) insurance for indemnification of an employer against liability for compensation  
 1161 based on:

1162 (i) a compensable accidental injury; and

1163 (ii) occupational disease disability;

1164 (b) employer's liability insurance incidental to workers' compensation insurance and  
 1165 written in connection with workers' compensation insurance; and

1166 (c) insurance assuring to a person entitled to workers' compensation benefits the  
 1167 compensation provided by law.

1168 Section 2. Section **31A-2-403** is amended to read:

1169 **31A-2-403. Title and Escrow Commission created.**

1170 (1) (a) Subject to Subsection (1)(b), there is created within the department the Title and  
 1171 Escrow Commission that is comprised of five members appointed by the governor with the  
 1172 consent of the Senate as follows:

1173 (i) four members shall each:

1174 (A) be or have been licensed under the title insurance line of authority; ~~and~~

1175 (B) as of the day on which the member is appointed, be or have been licensed with the  
 1176 search or escrow subline of authority for at least five years; and

1177 (C) as of the day on which the member is appointed, not be from the same county as  
 1178 another member appointed under this Subsection (1)(a)(i); and

1179 (ii) one member shall be a member of the general public from any county in the state.

1180 (b) No more than one commission member may be appointed from a single company.

1181 (2) (a) Subject to Subsection (2)(c), a [~~member of the~~] commission member shall file  
1182 with the [~~department~~] commissioner a disclosure of any position of employment or ownership  
1183 interest that the [~~member of the~~] commission member has with respect to a person that is  
1184 subject to the jurisdiction of the [~~department~~] commissioner.

1185 (b) The disclosure statement required by this Subsection (2) shall be:

1186 (i) filed by no later than the day on which the person begins that person's appointment;  
1187 and

1188 (ii) amended when a significant change occurs in any matter required to be disclosed  
1189 under this Subsection (2).

1190 (c) A [~~member of the~~] commission member is not required to disclose an ownership  
1191 interest that the [~~member of the~~] commission member has if the ownership interest is held as  
1192 part of a mutual fund, trust, or similar investment.

1193 (3) (a) Except as required by Subsection (3)(b), as terms of current commission  
1194 members expire, the governor shall appoint each new commission member to a four-year term  
1195 ending on June 30.

1196 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
1197 time of appointment, adjust the length of terms to ensure that the terms of the commission  
1198 members are staggered so that approximately half of the commission is appointed every two  
1199 years.

1200 (c) A commission member may not serve more than one consecutive term.

1201 (d) When a vacancy occurs in the membership for any reason, the governor, with the  
1202 consent of the Senate, shall appoint a replacement for the unexpired term.

1203 (e) Notwithstanding the other provisions of this Subsection (3), a commission member  
1204 serves until a successor is appointed by the governor with the consent of the Senate.

1205 (4) (a) A [~~member of the~~] commission member may not receive compensation or  
1206 benefits for the commission member's services, but may receive per diem and expenses  
1207 incurred in the performance of the commission member's official duties at the rates established  
1208 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1209 (b) A commission member may decline to receive per diem and expenses for the

1210 commission member's service.

1211 (5) Members of the commission shall annually select one commission member to serve  
1212 as chair.

1213 (6) (a) The commission shall meet at least monthly.

1214 (b) The commissioner may call additional meetings:

1215 (i) at the commissioner's discretion;

1216 (ii) upon the request of the chair of the commission; or

1217 (iii) upon the written request of three or more commission members.

1218 (c) (i) Three [~~members of the~~] commission members constitute a quorum for the  
1219 transaction of business.

1220 (ii) The action of a majority of the commission members when a quorum is present is  
1221 the action of the commission.

1222 (7) The [~~department~~] commissioner shall staff the commission.

1223 Section 3. Section **31A-2-404** is amended to read:

1224 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

1225 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this  
1226 part, the commissioner shall administer and enforce the provisions in this title related to:

1227 (a) title insurance; and

1228 (b) escrow conducted by a title licensee or title insurer.

1229 (2) The commission shall:

1230 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
1231 subject to Subsection (3), make rules for the administration of the provisions in this title related  
1232 to title insurance including rules related to:

1233 (i) rating standards and rating methods for a title [~~agencies and producers~~] licensee, as  
1234 provided in Section 31A-19a-209;

1235 (ii) the licensing for a title licensee, including the licensing requirements of Sections  
1236 31A-23a-203 and 31A-23a-204;

1237 (iii) continuing education requirements of Section 31A-23a-202;

1238 (iv) examination procedures, after consultation with the [~~department~~] commissioner  
1239 and the [~~department's~~] commissioner's test administrator when required by Section

1240 31A-23a-204; and

1241 (v) standards of conduct for a title licensee;

1242 (b) concur in the issuance and renewal of [~~licenses~~] a license in accordance with

1243 Section 31A-23a-105 or 31A-26-203;

1244 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the

1245 [~~department~~] commissioner, [~~all~~] the fees imposed by this title on a title licensee;

1246 (d) in accordance with Section 31A-23a-415 determine, after consulting with the

1247 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

1248 (e) conduct [~~all~~] an administrative [~~hearings~~] hearing not delegated by the commission

1249 to an administrative law judge related to the:

1250 (i) licensing of [~~any~~] an applicant;

1251 (ii) conduct of [~~any~~] a title licensee; or

1252 (iii) approval of a continuing education [~~programs~~] program required by Section

1253 31A-23a-202;

1254 [~~(f) with the concurrence of the commissioner, approve assets that can be included in a~~

1255 ~~reserve fund required by Section 31A-23a-204;~~

1256 [~~(g)~~] (f) with the concurrence of the commissioner, approve a continuing education

1257 [~~programs~~] program required by Section 31A-23a-202;

1258 [~~(h)~~] (g) with the concurrence of the commissioner, impose [~~penalties~~] a penalty:

1259 (i) under this title related to:

1260 (A) title insurance; or

1261 (B) escrow conducted by a title licensee;

1262 (ii) after investigation by the [~~department~~] commissioner in accordance with Part 3,

1263 Procedures and Enforcement; and

1264 (iii) that [~~are~~] is enforced by the commissioner;

1265 [~~(i)~~] (h) advise the commissioner on the administration and enforcement of any

1266 [~~matters~~] matter affecting the title insurance industry;

1267 [~~(j)~~] (i) advise the commissioner on matters affecting the [~~department's~~]

1268 commissioner's budget related to title insurance; and

1269 [~~(k)~~] (j) perform other duties as provided in this title.

1270 (3) The commission may make a rule under this title only if at the time the commission

1271 files its proposed rule and rule analysis with the Division of Administrative Rules in

1272 accordance with Section 63G-3-301, the commission provides the Real Estate Commission that  
1273 same information.

1274 (4) (a) The commissioner shall annually report the information described in Subsection  
1275 (4)(b) in writing to:

1276 (i) the commission; and

1277 (ii) the Business and Labor Interim Committee.

1278 (b) The information required to be reported under this Subsection (4):

1279 (i) may not identify a person; and

1280 (ii) shall include:

1281 (A) the number of complaints the [~~department~~] commissioner receives with regard to  
1282 transactions involving title insurance or a title licensee during the calendar year immediately  
1283 proceeding the report;

1284 (B) the type of complaints described in Subsection (4)(b)(ii)(A); and

1285 (C) for each complaint described in Subsection (4)(b)(ii)(A):

1286 (D) any action taken by the [~~department~~] commissioner with regard to the complaint;

1287 and

1288 (II) the time-period beginning the day on which a complaint is made and ending the  
1289 day on which the [~~department~~] commissioner determines it will take no further action with  
1290 regard to the complaint.

1291 Section 4. Section **31A-3-103** is amended to read:

1292 **31A-3-103. Fees.**

1293 (1) For purposes of this section [~~:(a) "Services"~~], "services" means functions that are  
1294 reasonable and necessary to enable the commissioner to perform the duties imposed by this title  
1295 including:

1296 [~~(i)~~] (a) issuing [~~and~~] or renewing [~~licenses and certificates~~] a license or certificate of  
1297 authority;

1298 [~~(ii)~~] (b) filing a policy [~~forms~~] form;

1299 [~~(iii)~~] (c) reporting [~~agent appointments and terminations~~] a producer appointment or  
1300 termination; and

1301 [~~(iv)~~] (d) filing an annual [~~statements~~] statement.

1302 (2) Except as otherwise provided by this title:

1303 (a) the commissioner may set and collect a fee for services provided by the  
1304 commissioner;

1305 (b) ~~[Fees]~~ a fee related to the renewal of ~~[licenses]~~ a license may be imposed no more  
1306 frequently than once each year~~[-]; and~~

1307 ~~[(2) A]~~ (c) a fee charged by the ~~[department]~~ commissioner shall be set in accordance  
1308 with Section 63J-1-504.

1309 (3) ~~[(a) A fee approved by the Legislature]~~ Except as otherwise provided in this title, a  
1310 fee established pursuant to this section shall be deposited into the General Fund for  
1311 appropriation by the Legislature.

1312 ~~[(b) A fee approved pursuant to this section that relates to the use of electronic or other~~  
1313 ~~similar technology to provide the services of the department shall be deposited into the~~  
1314 ~~General Fund as a dedicated credit to be used by the department to provide services through~~  
1315 ~~use of electronic commerce or other similar technology.]~~

1316 (4) (a) The commissioner shall ~~[separately]~~ publish ~~[the]~~ a schedule of fees ~~[approved~~  
1317 ~~by the Legislature and make it available upon request for \$1 per copy. This fee schedule shall~~  
1318 ~~also be included in any compilation of rules promulgated by the commissioner]~~ established  
1319 pursuant to this section.

1320 ~~[(5)]~~ (b) The commissioner shall, by rule, establish the deadlines for payment of ~~[any]~~  
1321 a fee established ~~[by the department in accordance with]~~ pursuant to this section.

1322 Section 5. Section **31A-3-104** is amended to read:

1323 **31A-3-104. Technology fees -- Restricted account.**

1324 (1) The ~~[department may charge]~~ commissioner may impose a fee for requests for  
1325 information:

1326 (a) that is obtained from an electronic database of the ~~[department]~~ commissioner; or

1327 (b) derived from data that is generated by electronic means.

1328 (2) In addition to any fee authorized in this title, the ~~[department]~~ commissioner shall  
1329 impose a supplemental fee on the issuance or renewal of any of the following issued by the  
1330 department:

1331 (a) a license;

1332 (b) a registration; or

1333 (c) a certificate of authority.

- 1334 (3) A fee imposed under this section shall be:
- 1335 (a) established in accordance with [~~Subsection 31A-3-103(3)~~] Section 31A-3-103; and
- 1336 (b) deposited into the [~~General Fund as a dedicated credit in accordance with~~
- 1337 ~~Subsection 31A-3-103(3)~~] Technology Development Restricted Account.
- 1338 (4) (a) There is created in the General Fund a restricted account known as the
- 1339 "Technology Development Restricted Account."
- 1340 (b) The Technology Development Restricted Account shall consist of the fees imposed
- 1341 by the commissioner in accordance with this section.
- 1342 (c) The commissioner shall administer the Technology Development Restricted
- 1343 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
- 1344 deposited into the Technology Development Restricted Account to provide services through
- 1345 use of electronic commerce or other similar technology.
- 1346 (d) The money in the Technology Development Restricted Account is nonlapsing.
- 1347 Section 6. Section **31A-3-105** is enacted to read:
- 1348 **31A-3-105. Criminal Background Check Restricted Account.**
- 1349 (1) There is created in the General Fund a restricted account known as the "Criminal
- 1350 Background Check Restricted Account."
- 1351 (2) The Criminal Background Check Restricted Account shall consist of the fees
- 1352 imposed by the commissioner in accordance with:
- 1353 (a) Subsection 31A-16-103(3);
- 1354 (b) Subsection 31A-23a-105(3);
- 1355 (c) Subsection 31A-25-203(3); and
- 1356 (d) Subsection 31A-26-203(3).
- 1357 (3) The commissioner shall administer the Criminal Background Check Restricted
- 1358 Account. Subject to appropriations by the Legislature, the commissioner shall use the money
- 1359 deposited into the Criminal Background Check Restricted Account to pay the costs the
- 1360 department is required to pay related to obtaining criminal background information in
- 1361 accordance with the provisions listed in Subsection (2)(a).
- 1362 (4) The money in the Criminal Background Check Restricted Account is nonlapsing.
- 1363 Section 7. Section **31A-3-304 (Superseded 07/01/10)** is amended to read:
- 1364 **31A-3-304 (Superseded 07/01/10). Annual fees -- Other taxes or fees prohibited.**

1365 (1) (a) A captive insurance company shall pay an annual fee imposed under this section  
1366 to obtain or renew a certificate of authority.

1367 (b) The commissioner shall:

1368 (i) determine the annual fee pursuant to [~~Sections~~] Section 31A-3-103 [~~and~~  
1369 ~~63J-1-504~~]; and

1370 (ii) consider whether the annual fee is competitive with fees imposed by other states on  
1371 captive insurance companies.

1372 (2) A captive insurance company that fails to pay the fee required by this section is  
1373 subject to the relevant sanctions of this title.

1374 (3) (a) Except as provided in Subsection (3)(b) and notwithstanding Title 59, Chapter  
1375 9, Taxation of Admitted Insurers, the fee provided for in this section constitutes the sole tax or  
1376 fee under the laws of this state that may be otherwise levied or assessed on a captive insurance  
1377 company, and no other occupation tax or other tax or fee may be levied or collected from a  
1378 captive insurance company by the state or a county, city, or municipality within this state.

1379 (b) Notwithstanding Subsection (3)(a), a captive insurance company is subject to real  
1380 and personal property taxes.

1381 (4) A captive insurance company shall pay the fee imposed by this section to the  
1382 [~~department~~] commissioner by March 31 of each year.

1383 [~~(5) (a) The funds received pursuant to Subsection (2) shall be deposited into the~~  
1384 ~~General Fund as a dedicated credit to be used by the department to:~~]

1385 (5) (a) Money received pursuant to Subsection (2) shall be deposited into the Captive  
1386 Insurance Restricted Account.

1387 (b) There is created in the General Fund a restricted account known as the "Captive  
1388 Insurance Restricted Account."

1389 (c) The Captive Insurance Restricted Account shall consist of the fees imposed by the  
1390 commissioner in accordance with this Subsection (2).

1391 (d) The commissioner shall administer the Captive Insurance Restricted Account.  
1392 Subject to appropriations by the Legislature, the commissioner shall use the money deposited  
1393 into the Captive Insurance Restricted Account to:

1394 (i) administer and enforce Chapter 37, Captive Insurance Companies Act; and

1395 (ii) promote the captive insurance industry in Utah.

1396 ~~[(b) At]~~ (e) The money in the Captive Insurance Restricted Account is nonlapsing,  
 1397 except that at the end of each fiscal year, [funds] money received by the [department]  
 1398 commissioner in excess of \$250,000 shall be treated as free revenue in the General Fund.

1399 Section 8. Section **31A-3-304 (Effective 07/01/10)** is amended to read:

1400 **31A-3-304 (Effective 07/01/10). Annual fees -- Other taxes or fees prohibited.**

1401 (1) (a) A captive insurance company shall pay an annual fee imposed under this section  
 1402 to obtain or renew a certificate of authority.

1403 (b) The commissioner shall:

1404 (i) determine the annual fee pursuant to ~~[Sections-]~~ Section 31A-3-103 ~~[and~~  
 1405 ~~63J-1-504]~~; and

1406 (ii) consider whether the annual fee is competitive with fees imposed by other states on  
 1407 captive insurance companies.

1408 (2) A captive insurance company that fails to pay the fee required by this section is  
 1409 subject to the relevant sanctions of this title.

1410 (3) (a) Except as provided in Subsection (3)(b) and notwithstanding Title 59, Chapter  
 1411 9, Taxation of Admitted Insurers, the fee provided for in this section constitutes the sole tax or  
 1412 fee under the laws of this state that may be otherwise levied or assessed on a captive insurance  
 1413 company, and no other occupation tax or other tax or fee may be levied or collected from a  
 1414 captive insurance company by the state or a county, city, or municipality within this state.

1415 (b) Notwithstanding Subsection (3)(a), a captive insurance company is subject to real  
 1416 and personal property taxes.

1417 (4) A captive insurance company shall pay the fee imposed by this section to the  
 1418 ~~[department]~~ commissioner by March 31 of each year.

1419 ~~[(5)(a) The funds received pursuant to Subsection (2) shall be deposited into the~~  
 1420 ~~General Fund as a dedicated credit to be used by the department to:]~~

1421 (5) (a) Money received pursuant to Subsection (2) shall be deposited into the Captive  
 1422 Insurance Restricted Account.

1423 (b) There is created in the General Fund a restricted account known as the "Captive  
 1424 Insurance Restricted Account."

1425 (c) The Captive Insurance Restricted Account shall consist of the fees imposed by the  
 1426 commissioner in accordance with this Subsection (2).

1427 (d) The commissioner shall administer the Captive Insurance Restricted Account.

1428 Subject to appropriations by the Legislature, the commissioner shall use the money deposited  
 1429 into the Captive Insurance Restricted Account to:

1430 (i) administer and enforce Chapter 37, Captive Insurance Companies Act; and

1431 (ii) promote the captive insurance industry in Utah.

1432 ~~[(b) At]~~ (e) The money in the Captive Insurance Restricted Account is nonlapsing,

1433 except that at the end of each fiscal year, [funds] money received by the [department]

1434 commissioner in excess of \$750,000 shall be treated as free revenue in the General Fund.

1435 Section 9. Section **31A-5-217.5** is amended to read:

1436 **31A-5-217.5. Variable contract law.**

1437 (1) This section applies to ~~[all]~~ a separate [accounts] account that ~~[are]~~ is used to

1438 support ~~[any]~~ one or more of the following:

1439 (a) a variable life insurance [policies] policy that ~~[satisfy]~~ satisfies the requirements of

1440 Section 817, Internal Revenue Code;

1441 (b) a variable annuity [contracts] policy, including a modified guaranteed [annuities]

1442 annuity; or

1443 (c) benefits under ~~[plans]~~ a plan governed by the Employee Retirement Income

1444 Security Act of 1974.

1445 (2) ~~[In the event of]~~ If there is a conflict between this section and [any other] another

1446 section of this title as it relates to ~~[these accounts]~~ a separate account described in Subsection

1447 (1), this section prevails.

1448 (3) ~~[A]~~ (a) Subject to the other provisions of this Subsection (3), a domestic life

1449 ~~[insurance company]~~ insurer may:

1450 (i) establish one or more separate accounts~~[-];~~ and ~~[may]~~

1451 (ii) allocate to those separate accounts amounts, which include:

1452 (A) proceeds applied under optional modes of settlement or under dividend options, to

1453 provide for life insurance or annuities~~[-];~~ and

1454 (B) benefits incidental to life insurance or annuities, payable in fixed ~~[or]~~, variable, or

1455 both fixed and variable amounts ~~[or both, subject to the following:]~~.

1456 ~~[(a) The]~~ (b) An insurer shall credit to or charge against a separate account the income,

1457 gains, and losses, realized or unrealized, from assets allocated to ~~[a]~~ the separate account ~~[shall]~~

1458 ~~be credited to or charged against the account~~], without regard to other income, gains, or losses  
 1459 of the ~~[company]~~ insurer.

1460 ~~[(b)]~~ (c) Except as may be provided with respect to reserves for guaranteed benefits  
 1461 and funds referred to in Subsection ~~[(c)]~~ (3)(d):

1462 (i) an insurer may invest or reinvest amounts allocated to ~~[any]~~ a separate account and  
 1463 accumulations on ~~[such]~~ those amounts ~~[may be invested and reinvested]~~ without regard to  
 1464 ~~[any]~~ the requirements or limitations prescribed by the laws of this state governing the  
 1465 investments of a life ~~[insurance companies]~~ insurer; and

1466 (ii) an insurer may not take into account the investments in ~~[any such]~~ a separate  
 1467 account ~~[may not be taken into account]~~ in applying the investment limitations that otherwise  
 1468 apply to the investments of the ~~[company]~~ insurer.

1469 ~~[(c)]~~ (d) Except with the approval of the commissioner and under any ~~[conditions]~~  
 1470 condition the commissioner prescribes as to investments and other matters ~~[as he may~~  
 1471 prescribe], which shall recognize the guaranteed nature of the benefits provided, an insurer may  
 1472 not maintain in a separate account reserves for:

1473 (i) benefits guaranteed as to dollar amount and duration~~];~~; and

1474 (ii) funds guaranteed as to principal amount or stated rate of interest ~~[may not be~~  
 1475 maintained in a separate account].

1476 ~~[(d) Unless]~~ (e) (i) Except as provided in Subsection (3)(e)(ii) and unless otherwise  
 1477 approved by the commissioner, assets allocated to a separate account shall be valued:

1478 (A) at their market value on the date of valuation~~];~~; or

1479 (B) if there is no readily available market, then as provided under the terms of the  
 1480 contract ~~[or the]~~, rules, or other written agreement that applies to the separate account.

1481 ~~[However, unless]~~

1482 (ii) Unless otherwise approved by the commissioner, the portion of ~~[any of]~~ the assets  
 1483 of ~~[the]~~ a separate account that are equal to the ~~[company's]~~ insurer's reserve liability with  
 1484 regard to the guaranteed benefits and funds referred to in Subsection ~~[(c)]~~ (3)(d) shall be valued  
 1485 in accordance with the rules that otherwise apply to the company's assets.

1486 ~~[(c) Amounts allocated]~~ (f)(i) An insurer owns the amounts it allocates to a separate  
 1487 account in the exercise of the power granted by this section ~~[shall be owned by the company,~~  
 1488 and the insurer], and the insurer may not be, nor hold itself out to be, a trustee with respect to

1489 those amounts. [~~If, and to~~]

1490 (ii) To the extent provided under the applicable [~~contracts, that~~] insurance policy, an  
1491 insurer may not charge the portion of the assets of [~~any~~] a separate account that is equal to the  
1492 reserves and other [~~contract~~] insurance liabilities with respect to the separate account [~~may not~~  
1493 ~~be chargeable~~] with liabilities arising out of any other business the [~~company~~] insurer may  
1494 conduct.

1495 [(f)] (g) (i) A sale, exchange, or other transfer of assets may not be made by [a  
1496 company] an insurer between any of its separate accounts or between any other investment  
1497 account and one or more of its separate accounts unless[;]:

1498 (A) in case of a transfer into a separate account, the transfer is made solely to establish  
1499 the account or to support the operation of the [~~contracts~~] insurance policies with respect to the  
1500 separate account to which the transfer is made[;]; and [~~unless~~]

1501 (B) the transfer, whether into or from a separate account, is made by:

1502 (I) a transfer of cash[;]; or [~~by~~]

1503 (II) if the transfer of securities is approved by the commissioner, a transfer of securities  
1504 having a readily determinable market value[~~, if the transfer of securities is approved by the~~  
1505 ~~commissioner~~].

1506 (ii) The commissioner may approve [~~other transfers~~] a transfer not described in  
1507 Subsection (2)(g)(i) among [~~such~~] the accounts described in Subsection (2)(g)(i) if, in [~~his~~] the  
1508 commissioner's opinion, the [~~transfers~~] transfer would not be inequitable.

1509 [(g)] (h) To the extent [~~a company~~] an insurer considers it necessary to comply with  
1510 [~~any~~] an applicable federal or state [~~laws, the company,~~] law, the insurer with respect to [~~any~~] a  
1511 separate account, including [~~any~~] a separate account which is a management investment  
1512 company or a unit investment trust, may provide for [~~persons~~] a person having an interest in the  
1513 separate account to have appropriate voting and other rights and special procedures for the  
1514 conduct of the business of the separate account, including:

1515 (i) special rights and procedures relating to investment policy[;];

1516 (ii) investment advisory services[;];

1517 (iii) selection of independent public accountants[;]; and

1518 (iv) the selection of a committee, the members of which need not be otherwise  
1519 affiliated with the [~~company~~] insurer, to manage the business of the separate account.

1520 ~~[(4) Any contract providing benefits payable in variable amounts delivered or issued~~  
1521 ~~for delivery in this state shall contain a statement of the essential features of the procedures to~~  
1522 ~~be followed by the insurance company in determining the dollar amount of the variable~~  
1523 ~~benefits. Any contract under which the benefits vary to reflect investment experience,~~  
1524 ~~including a group contract and any certificate in evidence of variable benefits issued under a~~  
1525 ~~group contract, shall state that the dollar amount will vary according to investment experience.~~  
1526 ~~The contract shall contain on its first page a statement to the effect that the benefits under the~~  
1527 ~~contract are on a variable basis.]~~

1528 ~~[(5) (a) A company may not deliver or issue for delivery within this state variable~~  
1529 ~~contracts unless it is licensed or organized to do a life insurance or annuity business in this~~  
1530 ~~state, and the commissioner is satisfied that its condition or method of operation in connection~~  
1531 ~~with the issuance of such contracts will not render its operation hazardous to the public or its~~  
1532 ~~policyholders in this state. In this connection, the commissioner shall consider among other~~  
1533 ~~things:]~~

1534 ~~[(i) the history and financial condition of the company;]~~

1535 ~~[(ii) the character, responsibility, and fitness of the officers and directors of the~~  
1536 ~~company; and]~~

1537 ~~[(iii) (A) the law and regulation under which the company is authorized in the state of~~  
1538 ~~domicile to issue variable contracts.]~~

1539 ~~[(B) The state of entry of an alien company shall be considered its place of domicile for~~  
1540 ~~the purposes of Subsection (iii)(A).]~~

1541 ~~[(b) If the company is a subsidiary of an admitted life insurance company, or affiliated~~  
1542 ~~with such a company through common management or ownership, it may be considered by the~~  
1543 ~~commissioner to have met the provisions of this section if either it or the parent or the affiliated~~  
1544 ~~company meets the requirements of this section.]~~

1545 ~~[(6) Notwithstanding any other provision of law, the commissioner shall have sole~~  
1546 ~~authority to regulate the issuance and sale of variable contracts, and to make rules necessary~~  
1547 ~~and appropriate to carry out the purposes and provisions of this chapter.]~~

1548 ~~[(7) (a) Except for Sections 31A-22-402, 31A-22-407, and 31A-22-409, in the case of~~  
1549 ~~a variable annuity contract and Sections 31A-22-402, 31A-22-407, and 31A-22-408 in the case~~  
1550 ~~of a variable life insurance policy, and except as otherwise provided in this chapter, all~~

1551 ~~pertinent provisions of this title apply to separate accounts and contracts relating to the separate~~  
1552 ~~accounts. Any individual variable life insurance contract, delivered or issued for delivery in~~  
1553 ~~this state shall contain grace, reinstatement, and nonforfeiture provisions appropriate to the~~  
1554 ~~contract.]~~

1555 ~~[(b) The reserve liability for variable contracts shall be established in accordance with~~  
1556 ~~actuarial procedures that recognize the variable nature of the benefits provided and any~~  
1557 ~~mortality guarantees.]~~

1558 Section 10. Section **31A-15-208** is amended to read:

1559 **31A-15-208. Purchasing groups -- Filing and registration requirements.**

1560 (1) A purchasing group ~~[which]~~ that intends to do business in this state shall, prior to  
1561 doing business, furnish notice to the insurance commissioner:

1562 (a) identifying the state in which the purchasing group is domiciled;

1563 (b) identifying ~~[all other states]~~ any state in which the purchasing group intends to do  
1564 business;

1565 (c) specifying the lines and classifications of liability insurance ~~[which]~~ that the  
1566 purchasing group intends to purchase;

1567 (d) identifying the ~~[insurance companies]~~ insurers from which the group intends to  
1568 purchase its insurance and the domicile of the ~~[company]~~ insurers;

1569 (e) specifying the method by which, and any persons through whom, insurance will be  
1570 offered to group members whose risks are resident or located in this state;

1571 (f) identifying the principal place of business of the purchasing group; and

1572 (g) providing any other information required by the ~~[insurance]~~ commissioner to verify  
1573 that the purchasing group is ~~[qualified within the definition in Subsection]~~ a "purchasing  
1574 group," as defined in Section 31A-15-202~~[(10)]~~.

1575 (2) A purchasing group shall notify the commissioner of ~~[any changes in any of the~~  
1576 ~~items]~~ a change in an item listed in Subsection (1) within ten days of the change.

1577 (3) ~~[The]~~ (a) A purchasing group shall annually register with the commissioner and  
1578 pay a filing fee. ~~[The]~~

1579 (b) A purchasing group shall designate the commissioner as its agent solely for the  
1580 purpose of receiving service of legal documents or process.

1581 (c) The registration and fee requirements of this Subsection (3) do not apply to a

1582 purchasing group ~~[which]~~ that only purchases insurance that was authorized under the Product  
 1583 Liability Risk Retention Act of 1981, and ~~[which]~~ that:

1584 ~~[(a)]~~ (i) in any state of the United States:

1585 ~~[(+)]~~ (A) was domiciled before April 1, 1986; and

1586 ~~[(+)]~~ (B) is domiciled after October 27, 1986;

1587 ~~[(b)-(+)]~~ (ii) (A) before October 27, 1986, purchased insurance from an [~~insurance~~  
 1588 ~~carrier~~] insurer licensed in any state; and

1589 ~~[(+)]~~ (B) since October 27, 1986, purchased its insurance from an [~~insurance carrier~~]  
 1590 insurer licensed in any state; or

1591 ~~[(c)]~~ (iii) was a purchasing group under the requirements of the Product Liability Risk  
 1592 Retention Act of 1981 before October 27, 1986.

1593 (4) ~~[Each]~~ A purchasing group that is required to give notice under Subsection (1) shall  
 1594 also furnish information required by the commissioner to:

1595 (a) verify that the entity qualifies as a purchasing group;

1596 (b) determine where the purchasing group is located; and

1597 (c) determine appropriate tax treatment of the purchasing group.

1598 Section 11. Section **31A-20-106** is amended to read:

1599 **31A-20-106. Variable contracts.**

1600 ~~[No]~~ (1) (a) An insurer may not deliver or issue for delivery within this state [~~any~~  
 1601 ~~contract providing~~] an insurance policy that provides a life or annuity [benefits in variable  
 1602 ~~amounts]~~ benefit in a variable amount until the insurer [~~has satisfied~~]:

1603 (i) is licensed to do a life insurance or annuity business in this state; and

1604 (ii) satisfies the commissioner that [its] the insurer's condition and methods of  
 1605 operation in connection with those types of [contracts] insurance policies do not render [its] the  
 1606 insurer's operation hazardous to the public or its policyholders in [Utah] this state.

1607 (b) Notwithstanding any other provision of law, the commissioner has sole authority  
 1608 to:

1609 (i) regulate the issuance and sale of a variable contract; and

1610 (ii) make rules necessary and appropriate to carry out this chapter in relation to a  
 1611 variable contract.

1612 (2) In determining the qualification of an insurer requesting authority to deliver [~~those~~

1613 ~~contracts in Utah~~ an insurance policy described in Subsection (1) in this state, the  
 1614 commissioner shall consider:

1615 ~~(1)~~ (a) the history and financial condition of the insurer;

1616 ~~(2)~~ (b) the character, responsibility, and general fitness of the insurer's officers and  
 1617 directors; and

1618 ~~(3)~~ (c) in the case of a foreign insurer, whether the regulation provided by the state of  
 1619 its domicile or the jurisdiction in which its head office is located provides protection to  
 1620 policyholders and the public substantially equal to that provided by ~~the Insurance Code~~ this  
 1621 title and the rules issued under ~~it~~ this title.

1622 (3) If an insurer is a subsidiary of an admitted life insurer, or affiliated with an admitted  
 1623 life insurer through common management or ownership, the commissioner may consider the  
 1624 insurer to have met the requirements of this section if:

1625 (a) the insurer meets the requirements of this section; or

1626 (b) the parent or the affiliated insurer meets the requirements of this section.

1627 (4) This title applies to a separate account or a contract relating to the separate account,  
 1628 except:

1629 (a) Sections 31A-22-402, 31A-22-407, and 31A-22-409, in the case of a variable  
 1630 annuity policy;

1631 (b) Sections 31A-22-402, 31A-22-407, and 31A-22-408, in the case of a variable life  
 1632 insurance policy; and

1633 (c) as otherwise provided in this title.

1634 Section 12. Section **31A-21-201** is amended to read:

1635 **31A-21-201. Filing of forms.**

1636 (1) (a) Except as exempted under Subsections 31A-21-101(2) through (6), a form may  
 1637 not be used, sold, or offered for sale ~~unless~~ until the form ~~has been~~ is filed with the  
 1638 commissioner.

1639 (b) A form is considered filed with the commissioner when the commissioner receives:

1640 (i) the form;

1641 (ii) the applicable filing fee as prescribed under Section 31A-3-103; and

1642 (iii) the applicable transmittal forms as required by the commissioner.

1643 (2) In filing a form for use in this state the insurer is responsible for assuring that the

1644 form is in compliance with this title and rules adopted by the commissioner.

1645 (3) (a) The commissioner may prohibit the use of a form at any time upon a finding

1646 that:

1647 (i) the form [~~is~~]:

1648 (A) is inequitable;

1649 (B) is unfairly discriminatory;

1650 (C) is misleading;

1651 (D) is deceptive;

1652 (E) is obscure;

1653 (F) is unfair;

1654 (G) encourages misrepresentation; or

1655 (H) is not in the public interest;

1656 (ii) the form provides benefits or contains [~~other provisions that endanger~~] another

1657 provision that endangers the solidity of the insurer;

1658 (iii) [~~in the case of the basic policy and the application for a basic policy, the basic~~]

1659 except an application required by Section 31A-22-635, the form is an insurance policy or

1660 application for [~~the basic~~] an insurance policy that fails to conspicuously, as defined by rule,

1661 provide:

1662 (A) the exact name of the insurer;

1663 (B) the state of domicile of the insurer filing the [~~basic~~] insurance policy or application

1664 for the [~~basic~~] insurance policy; and

1665 (C) for a life insurance and annuity [~~policies~~] insurance policy only, the address of the

1666 administrative office of the insurer filing the [~~basic~~] insurance policy or application for the

1667 [~~basic~~] insurance policy;

1668 (iv) the form violates a statute or a rule adopted by the commissioner; or

1669 (v) the form is otherwise contrary to law.

1670 (b) Subsection (3)(a)(iii) does not apply to [~~riders and endorsements~~] an endorsement

1671 to [~~a basic~~] an insurance policy.

1672 (c) (i) [~~Whenever~~] When the commissioner prohibits the use of a form under

1673 Subsection (3)(a), the commissioner may order that, on or before a date not less than 15 days

1674 after the order, the use of the form be discontinued.

1675 (ii) Once use of a form [~~has been~~] is prohibited, the form may not be used [~~unless~~] until  
1676 appropriate changes are filed with and reviewed by the commissioner.

1677 (iii) [~~Whenever~~] When the commissioner prohibits the use of a form under Subsection  
1678 (3)(a), the commissioner may require the insurer to disclose contract deficiencies to the  
1679 existing policyholders.

1680 (d) If the commissioner prohibits use of a form under this Subsection (3), the  
1681 prohibition shall:

1682 (i) be in writing;

1683 (ii) constitute an order; and

1684 (iii) state the reasons for the prohibition.

1685 (4) (a) If, after a hearing, the commissioner determines that it is in the public interest,  
1686 the commissioner may require by rule or order that [~~certain forms~~] a form be subject to the  
1687 commissioner's approval [~~prior to their~~] before its use.

1688 (b) The rule or order described in Subsection (4)(a) shall prescribe the filing  
1689 procedures for [~~the forms~~] a form if the procedures are different [~~than~~] from the procedures  
1690 stated in this section.

1691 (c) The [~~types of forms that may be addressed~~] type of form that under Subsection  
1692 (4)(a) [~~include~~] the commissioner may require approval of before use includes:

1693 (i) a form for a particular class of insurance;

1694 (ii) a form for a specific line of insurance;

1695 (iii) a specific type of form; or

1696 (iv) a form for a specific market segment.

1697 (5) (a) An insurer shall maintain a complete and accurate record of the following for  
1698 the time period described in Subsection (5)(b):

1699 (i) [~~any~~] a form:

1700 (A) filed under this section for use; [~~and~~] or

1701 (B) that is in use; and

1702 (ii) [~~any~~] a document filed under this section with a form described in Subsection  
1703 (5)(a)(i).

1704 (b) The insurer shall maintain a record required under Subsection (5)(a) for the balance  
1705 of the current year, plus five years from:

- 1706 (i) the last day on which the form is used; or  
 1707 (ii) the last day ~~[any]~~ an insurance policy that is issued using the form is in effect.  
 1708 Section 13. Section **31A-21-301** is amended to read:  
 1709 **31A-21-301. Clauses required to be in a prominent position.**  
 1710 (1) The following portions of insurance policies shall appear conspicuously in the  
 1711 policy:  
 1712 (a) as required by Subsection 31A-21-201(3)(a)(iii):  
 1713 (i) the exact name of the insurer;  
 1714 (ii) the state of domicile of the insurer; and  
 1715 (iii) for life insurance and annuity policies only, the address of the administrative office  
 1716 of the insurer;  
 1717 (b) information that two or more insurers under Subsection (1)(a) undertake only  
 1718 several liability, as required by Section 31A-21-306;  
 1719 (c) if a policy is assessable, a statement of that;  
 1720 (d) a statement that benefits are variable, as required by ~~[Subsection]~~ Section  
 1721 31A-22-411~~[(+)]~~; however, the methods of calculation need not be in a prominent position;  
 1722 (e) the right to return a life or accident and health insurance policy under Sections  
 1723 31A-22-423 and 31A-22-606; and  
 1724 (f) the beginning and ending dates of insurance protection.  
 1725 (2) Each clause listed in Subsection (1) shall be displayed conspicuously and separately  
 1726 from any other clause.  
 1727 Section 14. Section **31A-22-305.3** is amended to read:  
 1728 **31A-22-305.3. Underinsured motorist coverage.**  
 1729 (1) As used in this section:  
 1730 (a) "Covered person" has the same meaning as defined in Section 31A-22-305.  
 1731 (b) (i) "Underinsured motor vehicle" includes a motor vehicle, the operation,  
 1732 maintenance, or use of which is covered under a liability policy at the time of an injury-causing  
 1733 occurrence, but which has insufficient liability coverage to compensate fully the injured party  
 1734 for all special and general damages.  
 1735 (ii) The term "underinsured motor vehicle" does not include:  
 1736 (A) a motor vehicle that is covered under the liability coverage of the same policy that

1737 also contains the underinsured motorist coverage;

1738 (B) an uninsured motor vehicle as defined in Subsection 31A-22-305(2); or

1739 (C) a motor vehicle owned or leased by:

1740 (I) ~~the~~ a named insured;

1741 (II) ~~the~~ a named insured's spouse; or

1742 (III) ~~any~~ a dependent of ~~the~~ a named insured.

1743 (2) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c)

1744 provides coverage for a covered ~~persons~~ person who ~~are~~ is legally entitled to recover

1745 damages from ~~owners or operators~~ an owner or operator of an underinsured motor ~~vehicles~~

1746 vehicle because of bodily injury, sickness, disease, or death.

1747 (ii) A covered person occupying or using a motor vehicle owned, leased, or furnished

1748 to the covered person, the covered person's spouse, or covered person's resident relative may

1749 recover underinsured benefits only if the motor vehicle is:

1750 (A) described in the policy under which a claim is made; or

1751 (B) a newly acquired or replacement motor vehicle covered under the terms of the

1752 policy.

1753 (b) For new policies written on or after January 1, 2001, the limits of underinsured

1754 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle

1755 liability coverage or the maximum underinsured motorist coverage limits available by the

1756 insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a

1757 lesser amount by signing an acknowledgment form that:

1758 (i) is filed with the department;

1759 (ii) is provided by the insurer;

1760 (iii) waives the higher coverage;

1761 (iv) reasonably explains the purpose of underinsured motorist coverage; and

1762 (v) discloses the additional premiums required to purchase underinsured motorist

1763 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability

1764 coverage or the maximum underinsured motorist coverage limits available by the insurer under

1765 the insured's motor vehicle policy.

1766 (c) A self-insured, including a governmental entity, may elect to provide underinsured

1767 motorist coverage in an amount that is less than its maximum self-insured retention under

1768 Subsections (2)(b) and (2)(g) by issuing a declaratory memorandum or policy statement from  
1769 the chief financial officer or chief risk officer that declares the:

1770 (i) self-insured entity's coverage level; and

1771 (ii) process for filing an underinsured motorist claim.

1772 (d) Underinsured motorist coverage may not be sold with limits that are less than:

1773 (i) \$10,000 for one person in any one accident; and

1774 (ii) at least \$20,000 for two or more persons in any one accident.

1775 (e) ~~[The]~~ An acknowledgment under Subsection (2)(b) continues for that issuer of the  
1776 underinsured motorist coverage until the insured, in writing, requests different underinsured  
1777 motorist coverage from the insurer.

1778 (f) (i) The named insured's underinsured motorist coverage, as described in Subsection  
1779 (2)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor  
1780 vehicle, as described in Subsection (1).

1781 (ii) Underinsured motorist coverage may not be set off against the liability coverage of  
1782 the owner or operator of an underinsured motor vehicle, but shall be added to, combined with,  
1783 or stacked upon the liability coverage of the owner or operator of the underinsured motor  
1784 vehicle to determine the limit of coverage available to the injured person.

1785 (g) (i) A named insured may reject underinsured motorist coverage by an express  
1786 writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

1787 (ii) ~~[This]~~ A written rejection under this Subsection (2)(g) shall be on a form provided  
1788 by the insurer that includes a reasonable explanation of the purpose of underinsured motorist  
1789 coverage and when it would be applicable.

1790 (iii) ~~[This]~~ A written rejection under this Subsection (2)(g) continues for that issuer of  
1791 the liability coverage until the insured in writing requests underinsured motorist coverage from  
1792 that liability insurer.

1793 ~~[(h) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
1794 policies existing on that date, the insurer shall disclose in the same medium as the premium  
1795 renewal notice, an explanation of:]~~

1796 ~~[(A) the purpose of underinsured motorist coverage; and]~~

1797 ~~[(B) the costs associated with increasing the coverage in amounts up to and including  
1798 the maximum amount available by the insurer under the insured's motor vehicle policy.]~~

1799           ~~[(ii) The disclosure required by this Subsection (2)(h) shall be sent to all insureds that~~  
1800 ~~carry underinsured motorist coverage limits in an amount less than the insured's motor vehicle~~  
1801 ~~liability policy limits or the maximum underinsured motorist coverage limits available by the~~  
1802 ~~insurer under the insured's motor vehicle policy.]~~

1803           (3) (a) (i) Except as provided in this Subsection (3), a covered person injured in a  
1804 motor vehicle described in a policy that includes underinsured motorist benefits may not elect  
1805 to collect underinsured motorist coverage benefits from ~~[any other]~~ another motor vehicle  
1806 insurance policy.

1807           (ii) The limit of liability for underinsured motorist coverage for two or more motor  
1808 vehicles may not be added together, combined, or stacked to determine the limit of insurance  
1809 coverage available to an injured person for any one accident.

1810           (iii) Subsection (3)(a)(ii) applies to all persons except a covered person described  
1811 under Subsections (3)(b)(i) and (ii).

1812           (b) (i) Except as provided in Subsection (3)(b)(ii), a covered person injured while  
1813 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the  
1814 covered person, the covered person's spouse, or the covered person's resident parent or resident  
1815 sibling, may also recover benefits under any one other policy under which ~~[they are]~~ the  
1816 covered person is also a covered person.

1817           (ii) (A) A covered person may recover benefits from no more than two additional  
1818 policies, one additional policy from each parent's household if the covered person is:

1819           (I) a dependent minor of parents who reside in separate households; and

1820           (II) injured while occupying or using a motor vehicle that is not owned, leased, or  
1821 furnished to the covered person, the covered person's resident parent, or the covered person's  
1822 resident sibling.

1823           (B) Each parent's policy under this Subsection (3)(b)(ii) is liable only for the  
1824 percentage of the damages that the limit of liability of each parent's policy of underinsured  
1825 motorist coverage bears to the total of both parents' underinsured coverage applicable to the  
1826 accident.

1827           (iii) A covered person's recovery under any available policies may not exceed the full  
1828 amount of damages.

1829           (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident

1830 [~~shall be~~] is primary coverage, and the coverage elected by a person described under  
1831 Subsections 31A-22-305(1)(a) and (b) [~~shall be~~] is secondary coverage.

1832 (v) The primary and the secondary coverage may not be set off against the other.

1833 (vi) A covered person as described under Subsection (3)(b)(i) is entitled to the highest  
1834 limits of underinsured motorist coverage under only one additional policy per household  
1835 applicable to that covered person as a named insured, spouse, or relative.

1836 (vii) A covered injured person is not barred against making subsequent elections if  
1837 recovery is unavailable under previous elections.

1838 (viii) (A) As used in this section, "interpolicy stacking" means recovering benefits for a  
1839 single incident of loss under more than one insurance policy.

1840 (B) Except to the extent permitted by this Subsection (3), interpolicy stacking is  
1841 prohibited for underinsured motorist coverage.

1842 (c) Underinsured motorist coverage:

1843 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'  
1844 Compensation Act;

1845 (ii) may not be subrogated by [~~the~~] a workers' compensation insurance carrier;

1846 (iii) may not be reduced by [~~any~~] benefits provided by workers' compensation  
1847 insurance;

1848 (iv) may be reduced by health insurance subrogation only after the covered person [~~has~~  
1849 ~~been~~] is made whole;

1850 (v) may not be collected for bodily injury or death sustained by a person:

1851 (A) while committing a violation of Section 41-1a-1314;

1852 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated  
1853 in violation of Section 41-1a-1314; or

1854 (C) while committing a felony; and

1855 (vi) notwithstanding Subsection (3)(c)(v), may be recovered:

1856 (A) for a person under 18 years of age who is injured within the scope of Subsection  
1857 (3)(c)(v), but is limited to medical and funeral expenses; or

1858 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured  
1859 within the course and scope of the law enforcement officer's duties.

1860 (4) The inception of the loss under Subsection 31A-21-313(1) for underinsured

1861 motorist claims occurs upon the date of the last liability policy payment.

1862 (5) (a) Within five business days after notification that all liability insurers have  
1863 tendered their liability policy limits, the underinsured carrier shall either:

1864 (i) waive any subrogation claim the underinsured carrier may have against the person  
1865 liable for the injuries caused in the accident; or

1866 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

1867 (b) If neither option is exercised under Subsection (5)(a), the subrogation claim is  
1868 considered to be waived by the underinsured carrier.

1869 (6) Except as otherwise provided in this section, a covered person may seek, subject to  
1870 the terms and conditions of the policy, additional coverage under any policy:

1871 (a) that provides coverage for damages resulting from motor vehicle accidents; and  
1872 (b) that is not required to conform to Section 31A-22-302.

1873 (7) (a) When a claim is brought by a named insured or a person described in  
1874 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist  
1875 carrier, the claimant may elect to resolve the claim:

1876 (i) by submitting the claim to binding arbitration; or  
1877 (ii) through litigation.

1878 (b) Unless otherwise provided in the policy under which underinsured benefits are  
1879 claimed, the election provided in Subsection (7)(a) is available to the claimant only.

1880 (c) Once ~~the~~ a claimant ~~has elected~~ elects to commence litigation under Subsection  
1881 (7)(a)(ii), the claimant may not elect to resolve the claim through binding arbitration under this  
1882 section without the written consent of the underinsured motorist coverage carrier.

1883 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to  
1884 binding arbitration under Subsection (7)(a)(i) shall be resolved by a single arbitrator.

1885 (ii) All parties shall agree on the single arbitrator selected under Subsection (7)(d)(i).  
1886 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection  
1887 (7)(d)(ii), the parties shall select a panel of three arbitrators.

1888 (e) If the parties select a panel of three arbitrators under Subsection (7)(d)(iii):  
1889 (i) each side shall select one arbitrator; and  
1890 (ii) the arbitrators appointed under Subsection (7)(e)(i) shall select one additional  
1891 arbitrator to be included in the panel.

- 1892 (f) Unless otherwise agreed to in writing:
- 1893 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 1894 under Subsection (7)(d)(i); or
- 1895 (ii) if an arbitration panel is selected under Subsection (7)(d)(iii):
- 1896 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
- 1897 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 1898 under Subsection (7)(e)(ii).
- 1899 (g) Except as otherwise provided in this section or unless otherwise agreed to in
- 1900 writing by the parties, an arbitration proceeding conducted under this section [~~shall be~~] is
- 1901 governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- 1902 (h) [~~The~~] An arbitration shall be conducted in accordance with Rules 26 through 37,
- 1903 54, and 68 of the Utah Rules of Civil Procedure.
- 1904 (i) [~~All issues~~] An issue of discovery shall be resolved by the arbitrator or the
- 1905 arbitration panel.
- 1906 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
- 1907 [~~shall constitute~~] constitutes a final decision.
- 1908 (k) (i) The amount of an arbitration award may not exceed the underinsured motorist
- 1909 policy limits of all applicable underinsured motorist policies, including applicable underinsured
- 1910 motorist umbrella policies.
- 1911 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
- 1912 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
- 1913 equal to the combined underinsured motorist policy limits of all applicable underinsured
- 1914 motorist policies.
- 1915 (l) The arbitrator or arbitration panel may not decide [~~the issues~~] an issue of coverage
- 1916 or extra-contractual damages, including:
- 1917 (i) whether the claimant is a covered person;
- 1918 (ii) whether the policy extends coverage to the loss; or
- 1919 (iii) [~~any allegations or claims~~] an allegation or claim asserting consequential damages
- 1920 or bad faith liability.
- 1921 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
- 1922 class-representative basis.

1923 (n) If the arbitrator or arbitration panel finds that the [~~action was~~] arbitration is not  
1924 brought, pursued, or defended in good faith, the arbitrator or arbitration panel may award  
1925 reasonable attorney fees and costs against the party that failed to bring, pursue, or defend the  
1926 [~~claim~~] arbitration in good faith.

1927 (o) An arbitration award issued under this section shall be the final resolution of all  
1928 claims not excluded by Subsection (7)(l) between the parties unless:

1929 (i) the award [~~was~~] is procured by corruption, fraud, or other undue means; or

1930 (ii) either party, within 20 days after service of the arbitration award:

1931 (A) files a complaint requesting a trial de novo in the district court; and

1932 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
1933 under Subsection (7)(o)(ii)(A).

1934 (p) (i) Upon filing a complaint for a trial de novo under Subsection (7)(o), [~~the~~] a claim  
1935 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules  
1936 of Evidence in the district court.

1937 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may  
1938 request a jury trial with a complaint requesting a trial de novo under Subsection (7)(o)(ii)(A).

1939 (q) (i) If the claimant, as the moving party in a trial de novo requested under  
1940 Subsection (7)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater  
1941 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

1942 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo requested  
1943 under Subsection (7)(o), does not obtain a verdict that is at least 20% less than the arbitration  
1944 award, the underinsured motorist carrier is responsible for all of the nonmoving party's costs.

1945 (iii) Except as provided in Subsection (7)(q)(iv), the costs under this Subsection (7)(q)  
1946 shall include:

1947 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

1948 (B) the costs of expert witnesses and depositions.

1949 (iv) An award of costs under this Subsection (7)(q) may not exceed \$2,500.

1950 (r) For purposes of determining whether a party's verdict is greater or less than the  
1951 arbitration award under Subsection (7)(q), a court may not consider any recovery or other relief  
1952 granted on a claim for damages if the claim for damages:

1953 (i) was not fully disclosed in writing prior to the arbitration proceeding; or

1954 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil  
1955 Procedure.

1956 (s) If a district court determines, upon a motion of the nonmoving party, that ~~the~~ a  
1957 moving party's use of the trial de novo process ~~was~~ is filed in bad faith in accordance with  
1958 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving  
1959 party.

1960 (t) Nothing in this section is intended to limit ~~any~~ a claim under ~~any other~~ another  
1961 portion of an applicable insurance policy.

1962 (u) If there are multiple underinsured motorist policies, as set forth in Subsection (3),  
1963 the claimant may elect to arbitrate in one hearing the claims against all the underinsured  
1964 motorist carriers.

1965 Section 15. Section **31A-22-411** is amended to read:

1966 **31A-22-411. Contracts providing variable benefits.**

1967 (1) ~~[(a) Any contract which]~~ An insurance policy that provides for payment of [benefits  
1968 in variable amounts] a benefit in a variable amount shall contain a statement of the essential  
1969 features of the procedure to be followed by the insurer in determining the dollar amount of the  
1970 variable benefits. ~~[The contract shall contain:]~~

1971 (2) A variable insurance policy shall contain:

1972 ~~[(i)]~~ (a) an appropriate nonforfeiture ~~[benefits]~~ benefit in lieu of those required by  
1973 either Section 31A-22-408 or 31A-22-409;

1974 ~~[(ii)]~~ (b) an appropriate reinstatement ~~[provisions]~~ provision in lieu of those required  
1975 by Section 31A-22-407; and

1976 ~~[(iii)]~~ (c) a grace period ~~[provisions]~~ provision appropriate to that type of ~~[contract]~~  
1977 insurance policy in lieu of those required by Section 31A-22-402.

1978 ~~[(b) This]~~ (3) An individual [contract and any] insurance policy and a certificate issued  
1979 under a group [contract shall state that] insurance policy shall conspicuously state on its first  
1980 page that:

1981 (a) the dollar amount may decrease or increase [and shall conspicuously display on its  
1982 first page a statement that the benefits under the contract are] according to investment  
1983 experience; and

1984 (b) a benefit under the insurance policy is payable on a variable basis[; with a statement

1985 ~~specifying where the details of the variable provisions are found in the contract].~~

1986 ~~[(c) Life]~~ (4) A life insurance ~~[and] or~~ annuity ~~[policies] policy~~ with a variable  
 1987 ~~[benefits] benefit~~ issued under a separate account shall, on either the application or the  
 1988 insurance policy, state that the insurer's liabilities with respect to a variable ~~[benefits] benefit~~  
 1989 under the insurance policy are subject to satisfaction only out of the insurer's variable account  
 1990 assets.

1991 ~~[(2) Any contract subject to Subsection (1)]~~

1992 (5)(a) A variable insurance policy shall state whether it may be amended as to:

1993 (i) investment policy~~;~~;

1994 (ii) voting rights~~;~~; and

1995 (iii) conduct of the business and affairs of ~~[any segregated]~~ a separate account.

1996 (b) Subject to any preemptive provision of federal law, ~~[this type of]~~ an amendment of  
 1997 the type described in this Subsection (5) is subject to:

1998 (i) filing under Section 31A-21-201; and

1999 (ii) approval by a majority of the policyholders in the ~~[segregated]~~ separate account.

2000 Section 16. Section **31A-22-429** is enacted to read:

2001 **31A-22-429. Insurance premium finance agreement.**

2002 (1) As used in this section:

2003 (a) "Insurance policy" means:

2004 (i) an individual or group life insurance or annuity policy; or

2005 (ii) a group life insurance or group annuity certificate.

2006 (b) "Insurance premium finance agreement" means an agreement for financing an  
 2007 insurance policy premium payment.

2008 (2) A person who provides premium financing for an insurance policy may not receive  
 2009 proceeds, fees, or other consideration from the insurance policy or the insurance policyholder  
 2010 that is in addition to the amounts required to pay the principal, interest, and reasonable  
 2011 expenses incurred by a lender or borrower in connection with a premium finance agreement.

2012 Section 17. Section **31A-22-625** is amended to read:

2013 **31A-22-625. Catastrophic coverage of mental health conditions.**

2014 (1) As used in this section:

2015 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan

2016 [~~or health maintenance organization contract~~] that does not impose a lifetime limit, annual  
 2017 payment limit, episodic limit, inpatient or outpatient service limit, or maximum out-of-pocket  
 2018 limit that places a greater financial burden on an insured for the evaluation and treatment of a  
 2019 mental health condition than for the evaluation and treatment of a physical health condition.

2020 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing  
 2021 factors, such as deductibles, copayments, or coinsurance, [~~prior to~~] before reaching [~~any~~] a  
 2022 maximum out-of-pocket limit.

2023 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket  
 2024 limit for physical health conditions and another maximum out-of-pocket limit for mental health  
 2025 conditions, [~~provided that,~~] except that if separate out-of-pocket limits are established, the  
 2026 out-of-pocket limit for mental health conditions may not exceed the out-of-pocket limit for  
 2027 physical health conditions.

2028 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan [~~or~~  
 2029 ~~health maintenance organization contract~~] that pays for at least 50% of covered services for the  
 2030 diagnosis and treatment of mental health conditions.

2031 (ii) "50/50 mental health coverage" may include a restriction on:

2032 (A) episodic limits;

2033 (B) inpatient or outpatient service limits; or

2034 (C) maximum out-of-pocket limits.

2035 (c) "Large employer," [~~is as defined in Section 31A-1-301~~] is as defined in 42 U.S.C.  
 2036 Sec. 300gg-91.

2037 (d) (i) "Mental health condition" means [~~any~~] a condition or disorder involving mental  
 2038 illness that falls under [~~any of the~~] a diagnostic [~~categories~~] category listed in the Diagnostic  
 2039 and Statistical Manual, as periodically revised.

2040 (ii) "Mental health condition" does not include the following when diagnosed as the  
 2041 primary or substantial reason or need for treatment:

2042 (A) a marital or family problem;

2043 (B) a social, occupational, religious, or other social maladjustment;

2044 (C) a conduct disorder;

2045 (D) a chronic adjustment disorder;

2046 (E) a psychosexual disorder;

2047 (F) a chronic organic brain syndrome;

2048 (G) a personality disorder;

2049 (H) a specific developmental disorder or learning disability; or

2050 (I) mental retardation.

2051 (e) "Small employer" is as defined in [~~Section 31A-1-301~~] 42 U.S.C. Sec. 300gg-91.

2052 (2) (a) At the time of purchase and renewal, an insurer shall offer to [~~each~~] a small

2053 employer that it insures or seeks to insure a choice between catastrophic mental health

2054 coverage and 50/50 mental health coverage.

2055 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:

2056 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels

2057 that exceed the minimum requirements of this section; or

2058 (ii) coverage that excludes benefits for mental health conditions.

2059 (c) A small employer may, at its option, choose either catastrophic mental health

2060 coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b),

2061 regardless of the employer's previous coverage for mental health conditions.

2062 (d) [~~An insurer is exempt from the 30% index rating restriction in Subsection~~

2063 ~~31A-30-106(1)(b) and, for the first year only that catastrophic mental health coverage is~~

2064 ~~chosen, the 15% annual adjustment restriction in Subsection 31A-30-106(1)(c)(ii), for any] For~~

2065 a small employer with 20 or less enrolled employees who chooses coverage that meets or

2066 exceeds catastrophic mental health coverage[-] an insurer is exempt from:

2067 [~~(3)(a) At the time of purchase and renewal of a health benefit plan, an insurer shall~~

2068 ~~offer catastrophic mental health coverage to each large employer that it insures or seeks to~~

2069 ~~insure.]~~

2070 [~~(b) In addition to Subsection (3)(a), an insurer may offer to provide catastrophic~~

2071 ~~mental health coverage at levels that exceed the minimum requirements of this section.]~~

2072 [~~(c) A large employer may, at its option, choose either catastrophic mental health~~

2073 ~~coverage, coverage that excludes benefits for mental health conditions, or coverage offered~~

2074 ~~under Subsection (3)(b).]~~

2075 (i) the 30% index rating restriction in Subsection 31A-30-106(1)(b); and

2076 (ii) for the first year only that catastrophic mental health coverage is chosen, the 15%

2077 annual adjustment restriction in Subsection 31A-30-106(1)(c)(ii).

2078 (3) An insurer shall offer a large employer mental health and substance use disorder  
2079 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.  
2080 300gg-5, and federal regulations adopted pursuant to that act.

2081 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer  
2082 through a managed care organization or system in a manner consistent with [~~the provisions in~~]  
2083 Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether  
2084 the insurance policy [~~or contract~~] uses a managed care organization or system for the treatment  
2085 of physical health conditions.

2086 (b) (i) Notwithstanding any other provision of this title, an insurer may:

2087 (A) establish a closed panel of providers for catastrophic mental health coverage; and

2088 (B) refuse to provide [~~any~~] a benefit to be paid for services rendered by a nonpanel  
2089 provider unless:

2090 (I) the insured is referred to a nonpanel provider with the prior authorization of the  
2091 insurer; and

2092 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment  
2093 guidelines.

2094 (ii) If an insured receives services from a nonpanel provider in the manner permitted by  
2095 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the  
2096 average amount paid by the insurer for comparable services of panel providers under a  
2097 noncapitated arrangement who are members of the same class of health care providers.

2098 (iii) [~~Nothing in this~~] This Subsection (4)(b) may not be construed as requiring an  
2099 insurer to authorize a referral to a nonpanel provider.

2100 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a  
2101 mental health condition must be rendered:

2102 (i) by a mental health therapist as defined in Section 58-60-102; or

2103 (ii) in a health care facility:

2104 (A) licensed or otherwise authorized to provide mental health services pursuant to:

2105 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act[;]; or

2106 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities[;]; and

2107 (B) that provides a program for the treatment of a mental health condition pursuant to a  
2108 written plan.

2109 (5) The commissioner may prohibit ~~[a]~~ an insurance policy ~~[or contract]~~ that provides  
2110 mental health coverage in a manner that is inconsistent with this section.

2111 (6) The commissioner shall:

2112 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
2113 Rulemaking Act, as necessary to ensure compliance with this section; and

2114 (b) provide general figures on the percentage of ~~[contracts and]~~ insurance policies that  
2115 include:

2116 (i) no mental health coverage~~;~~];

2117 (ii) 50/50 mental health coverage~~;~~];

2118 (iii) catastrophic mental health coverage~~;~~]; and

2119 (iv) coverage that exceeds the minimum requirements of this section.

2120 ~~[(7) The Health and Human Services Interim Committee shall review:]~~

2121 ~~[(a) the impact of this section on insurers, employers, providers, and consumers of~~  
2122 ~~mental health services before January 1, 2004; and]~~

2123 ~~[(b) make a recommendation as to whether the provisions of this section should be~~  
2124 ~~modified and whether the cost-sharing requirements for mental health conditions should be the~~  
2125 ~~same as for physical health conditions.]~~

2126 ~~[(8)(a) An insurer shall offer catastrophic mental health coverage as part of a health~~  
2127 ~~maintenance organization contract that is governed by Chapter 8, Health Maintenance~~  
2128 ~~Organizations and Limited Health Plans, that is in effect on or after January 1, 2001.]~~

2129 ~~[(b) An insurer shall offer catastrophic mental health coverage as a part of a health~~  
2130 ~~benefit plan that is not governed by Chapter 8, Health Maintenance Organizations and Limited~~  
2131 ~~Health Plans, that is in effect on or after July 1, 2001.]~~

2132 ~~[(c) This section does not apply to the purchase or renewal of an individual insurance~~  
2133 ~~policy or contract.]~~

2134 ~~[(d) Notwithstanding Subsection (8)(c), nothing in this]~~

2135 (7) This section may not be construed as discouraging or otherwise preventing  
2136 ~~[insurers]~~ an insurer from ~~[continuing to provide]~~ providing mental health coverage in  
2137 connection with an individual insurance policy ~~[or contract]~~.

2138 ~~[(9)]~~ (8) This section shall be repealed in accordance with Section 63I-1-231.

2139 Section 18. Section **31A-22-701** is amended to read:

2140 **31A-22-701. Groups eligible for group or blanket insurance.**

2141 (1) As used in this section, "association group" means a lawfully formed association of  
 2142 individuals or business entities that:

2143 (a) purchases insurance on a group basis on behalf of members; and

2144 (b) is formed and maintained in good faith for purposes other than obtaining insurance.

2145 ~~(1)~~ (2) A group or blanket accident and health insurance policy may be issued to:

2146 (a) ~~any~~ a group~~[:(1)]~~ to which a group life insurance policy may be issued under

2147 Sections 31A-22-502 ~~[through]~~, 31A-22-503, 31A-22-504, 31A-22-506, 31A-22-507, and

2148 31A-22-509; and

2149 (i) that is formed for a reason other than the purchase of insurance; ~~[or]~~

2150 (b) an association group that:

2151 (i) has been actively in existence for at least five years;

2152 (ii) has a constitution and bylaws;

2153 (iii) is formed and maintained in good faith for purposes other than obtaining

2154 insurance;

2155 (iv) does not condition membership in the association group on any health

2156 status-related factor relating to an individual, including an employee of an employer or a

2157 dependent of an employee;

2158 (v) makes accident and health insurance coverage offered through the association

2159 group available to all members regardless of any health status-related factor relating to the

2160 members or individuals eligible for coverage through a member; and

2161 (vi) does not make accident and health insurance coverage offered through the

2162 association group available other than in connection with a member of the association group;

2163 ~~[(b) any]~~ (c) a group specifically authorized by the commissioner under Section

2164 31A-22-509, upon a finding that:

2165 (i) authorization is not contrary to the public interest;

2166 (ii) the proposed group is actuarially sound;

2167 (iii) formation of the proposed group may result in economies of scale in acquisition,

2168 administrative, marketing, and brokerage costs;

2169 (iv) the ~~[health]~~ insurance policy, insurance certificate, or other indicia of coverage that

2170 will be offered to the proposed group is substantially equivalent to insurance policies that are

2171 otherwise available to similar groups; ~~[and]~~  
2172 ~~[(v) the proposed group is formed for a reason other than the purchase of insurance.]~~  
2173 (v) the group would not present hazards of adverse selection; and  
2174 (vi) the premiums for the insurance policy and any contributions by or on behalf of the  
2175 insured persons are reasonable in relation to the benefits provided.  
2176 ~~[(2)]~~ (3) A blanket insurance policy may also be issued to:  
2177 (a) ~~[any]~~ a common carrier or ~~[any]~~ an operator, owner, or lessee of a means of  
2178 transportation, as policyholder, covering persons who may become passengers as defined by  
2179 reference to their travel status;  
2180 (b) an employer, as policyholder, covering any group of employees, dependents, or  
2181 guests, as defined by reference to specified hazards incident to any activities of the  
2182 policyholder;  
2183 (c) an institution of learning, including a school district, school jurisdictional units, or  
2184 the head, principal, or governing board of any of those units, as policyholder, covering  
2185 students, teachers, or employees;  
2186 (d) ~~[any]~~ a religious, charitable, recreational, educational, or civic organization, or  
2187 branch of those organizations, as policyholder, covering any group of members or participants  
2188 as defined by reference to specified hazards incident to the activities sponsored or supervised  
2189 by the policyholder;  
2190 (e) a sports team, camp, or sponsor of the team or camp, as policyholder, covering  
2191 members, campers, employees, officials, or supervisors;  
2192 (f) ~~[any]~~ a volunteer fire department, first aid, civil defense, or other similar volunteer  
2193 organization, as policyholder, covering any group of members or participants as defined by  
2194 reference to specified hazards incident to activities sponsored, supervised, or participated in by  
2195 the policyholder;  
2196 (g) a newspaper or other publisher, as policyholder, covering its carriers;  
2197 (h) an association, including a labor union, which has a constitution and bylaws and  
2198 which has been organized in good faith for purposes other than that of obtaining insurance, as  
2199 policyholder, covering any group of members or participants as defined by reference to  
2200 specified hazards incident to the activities or operations sponsored or supervised by the  
2201 policyholder;

2202 (i) a health insurance purchasing association, as defined in Section 31A-34-103,  
 2203 organized and controlled solely by participating employers; and

2204 (j) any other class of risks [~~which~~] that, in the judgment of the commissioner, may be  
 2205 properly eligible for blanket accident and health insurance.

2206 [~~(3)~~] (4) The judgment of the commissioner may be exercised on the basis of:

2207 (a) individual risks;

2208 (b) a class of risks; or

2209 (c) both Subsections [~~(3)~~] (4)(a) and (b).

2210 Section 19. Section **31A-22-722** is amended to read:

2211 **31A-22-722. Utah mini-COBRA benefits for employer group coverage.**

2212 (1) An insured [~~has the right to~~] may extend the employee's coverage under the current  
 2213 employer's group policy for a period of 12 months, except as provided in Subsection (2). The  
 2214 right to extend coverage includes:

2215 (a) voluntary termination;

2216 (b) involuntary termination;

2217 (c) retirement;

2218 (d) death;

2219 (e) divorce or legal separation;

2220 (f) loss of dependent status;

2221 (g) sabbatical;

2222 (h) [~~any~~] a disability;

2223 (i) leave of absence; or

2224 (j) reduction of hours.

2225 (2) (a) Notwithstanding [~~the provisions of~~] Subsection (1), an employee [~~does not have~~  
 2226 ~~the right to~~] may not extend coverage under the current employer's group insurance policy if  
 2227 the employee:

2228 (i) [~~failed~~] fails to pay [~~any required individual contribution~~] premiums or  
 2229 contributions in accordance with the terms of the insurance policy;

2230 (ii) acquires other group coverage covering all preexisting conditions including  
 2231 maternity, if the coverage exists;

2232 (iii) [~~performed~~] performs an act or practice that constitutes fraud in connection with

- 2233 the coverage;
- 2234 (iv) ~~[made]~~ makes an intentional misrepresentation of material fact under the terms of
- 2235 the coverage;
- 2236 (v) ~~[was]~~ is terminated from employment for gross misconduct;
- 2237 (vi) ~~[has not been]~~ is not continuously covered under the current employer's group
- 2238 policy for a period of three months immediately ~~[prior to]~~ before the termination of the
- 2239 insurance policy due to [the events] an event set forth in Subsection (1);
- 2240 (vii) is eligible for ~~[any]~~ an extension of coverage required by federal law; ~~[or]~~
- 2241 (viii) establishes residence outside of this state;
- 2242 (ix) moves out of the insurer's service area;
- 2243 (x) is eligible for similar coverage under another group insurance policy;
- 2244 (xi) has the employee's coverage terminated because the employer's coverage is
- 2245 terminated, except as provided in Subsection (8); or
- 2246 ~~[(viii) elected]~~ (xii) elects alternative coverage under Section 31A-22-724.
- 2247 (b) The right to extend coverage under Subsection (1) applies to ~~[any]~~ spouse or
- 2248 dependent ~~[coverages]~~ coverage, including a surviving spouse or dependents whose coverage
- 2249 under the insurance policy terminates by reason of the death of the employee or member.
- 2250 (3) (a) The employer shall ~~[provide written notification]~~ notify the following in writing
- 2251 of the right to extend group coverage and the payment amounts required for extension of
- 2252 coverage, including the manner, place, and time in which the payments shall be made ~~[to]~~:
- 2253 (i) ~~[the]~~ a terminated insured;
- 2254 (ii) ~~[the]~~ an ex-spouse of an insured; or
- 2255 (iii) if Subsection (2)(b) applies:
- 2256 (A) ~~[to]~~ a surviving spouse; and
- 2257 (B) the guardian of surviving dependents, if different from a surviving spouse.
- 2258 (b) The notification required in Subsection (3)(a) shall be sent first class mail within 30
- 2259 days after the termination date of the group coverage to:
- 2260 (i) the terminated insured's home address as shown on the records of the employer;
- 2261 (ii) the address of the surviving spouse, if different from the insured's address and if
- 2262 shown on the records of the employer;
- 2263 (iii) the guardian of any dependents address, if different from the insured's address, and

2264 if shown on the records of the employer; and

2265 (iv) the address of the ex-spouse, if shown on the records of the employer.

2266 (4) The insurer shall provide the employee, spouse, or any eligible dependent the  
2267 opportunity to extend the group coverage at the payment amount stated in Subsection (5) if:

2268 (a) the employer policyholder does not provide the terminated insured the written  
2269 notification required by Subsection (3)(a); and

2270 (b) the employee or other individual eligible for extension contacts the insurer within  
2271 60 days of coverage termination.

2272 (5) ~~[The]~~ A premium amount for extended group coverage may not exceed 102% of  
2273 the group rate in effect for a group member, including an employer's contribution, if any, for a  
2274 group insurance policy.

2275 (6) Except as provided in this Subsection (6), ~~[the]~~ coverage extends without  
2276 interruption for 12 months and may not terminate if the terminated insured or, with respect to a  
2277 minor, the parent or guardian of the terminated insured:

2278 (a) elects to extend group coverage within 60 days of losing group coverage; and

2279 (b) tenders the amount required to the employer or insurer.

2280 (7) The insured's coverage may be terminated ~~[prior to]~~ before 12 months if the  
2281 terminated insured:

2282 (a) establishes residence outside of this state;

2283 (b) moves out of the insurer's service area;

2284 (c) fails to pay premiums or contributions in accordance with the terms of the insurance  
2285 policy, including any timeliness requirements;

2286 (d) performs an act or practice that constitutes fraud in connection with the coverage;

2287 (e) makes an intentional misrepresentation of material fact under the terms of the  
2288 coverage;

2289 (f) becomes eligible for similar coverage under another group insurance policy; or

2290 (g) has the coverage terminated because the employer's coverage is terminated, except  
2291 as provided in Subsection (8).

2292 (8) If the current employer coverage is terminated and the employer replaces coverage  
2293 with similar coverage under another group insurance policy, without interruption, the

2294 terminated insured, spouse, or the surviving spouse and guardian of dependents if Subsection

2295 (2)(b) applies, [~~have the right to~~] may obtain extension of coverage under the replacement  
2296 group insurance policy:

2297 (a) for the balance of the period the terminated insured would have extended coverage  
2298 under the replaced group insurance policy; and

2299 (b) if the terminated insured is otherwise eligible for extension of coverage.

2300 (9) (a) Within 30 days of the insured's exhaustion of extension of coverage, the  
2301 employer shall provide the terminated insured and the ex-spouse, or, in the case of the death of  
2302 the insured, the surviving spouse, or guardian of any dependents, written notification of the  
2303 right to an individual conversion policy under Section 31A-22-723.

2304 (b) The notification required by Subsection (9)(a):

2305 (i) shall be sent first class mail to:

2306 (A) the insured's last-known address as shown on the records of the employer;

2307 (B) the address of the surviving spouse, if different from the insured's address, and if  
2308 shown on the records of the employer;

2309 (C) the guardian of any dependents last known address as shown on the records of the  
2310 employer, if different from the address of the surviving spouse; and

2311 (D) the address of the ex-spouse as shown on the records of the employer, if  
2312 applicable; and

2313 (ii) shall contain the name, address, and telephone number of the insurer that will  
2314 provide the conversion coverage.

2315 Section 20. Section **31A-22-725** is enacted to read:

2316 **31A-22-725. Special enrollment periods relating to Medicaid and Children's**  
2317 **Health Insurance Program.**

2318 (1) A person is eligible to enroll for coverage under the terms of an employer's group  
2319 health benefit plan if:

2320 (a) the person is:

2321 (i) an employee who is eligible, but not enrolled, for coverage under the terms of the  
2322 employer's group health benefit plan; or

2323 (ii) a dependent of an employee, if the dependent is eligible, but not enrolled, for  
2324 coverage under the terms of the employer's group health benefit plan; and

2325 (b) the conditions of either Subsection (2) or (3) are met.

- 2326 (2) Subsection (1) applies if:  
 2327 (a) the employee or dependent is covered under:  
 2328 (i) a Medicaid health benefit plan under Title XIX of the Social Security Act; or  
 2329 (ii) a state child health benefit plan under Title XXI of the Social Security Act;  
 2330 (b) coverage of the employee or dependent described in Subsection (2)(a) is terminated  
 2331 as a result of loss of eligibility for the coverage; and  
 2332 (c) the employee requests coverage under the employer's group health plan no later  
 2333 than 60 days after the date of termination of the coverage described in Subsection (2)(a).  
 2334 (3) Subsection (1) applies if:  
 2335 (a) the employee or dependent becomes eligible for assistance, with respect to coverage  
 2336 under the employer's group health plan under a plan described in Subsection (2)(a), including  
 2337 under a waiver or demonstration project conducted under or in relation to a plan described in  
 2338 Subsection (2)(a); and  
 2339 (b) the employee requests coverage under the employer's group health plan no later  
 2340 than 60 days after the date the employee or dependent is determined to be eligible for the  
 2341 assistance described in Subsection (3)(a).

2342 Section 21. Section **31A-23a-415** is amended to read:

2343 **31A-23a-415. Assessment on title insurance agencies or title insurers.**

- 2344 (1) For purposes of this section:  
 2345 (a) "Premium" is as defined in Subsection 59-9-101(3).  
 2346 (b) "Title insurer" means a person:  
 2347 (i) making any contract or policy of title insurance as:  
 2348 (A) insurer;  
 2349 (B) guarantor; or  
 2350 (C) surety;  
 2351 (ii) proposing to make any contract or policy of title insurance as:  
 2352 (A) insurer;  
 2353 (B) guarantor; or  
 2354 (C) surety; or  
 2355 (iii) transacting or proposing to transact any phase of title insurance, including:  
 2356 (A) soliciting;

- 2357 (B) negotiating preliminary to execution;
- 2358 (C) executing of a contract of title insurance;
- 2359 (D) insuring; and
- 2360 (E) transacting matters subsequent to the execution of the contract and arising out of
- 2361 the contract.
- 2362 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
- 2363 personal property located in Utah, an owner of real or personal property, the holders of liens or
- 2364 encumbrances on that property, or others interested in the property against loss or damage
- 2365 suffered by reason of:
- 2366 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
- 2367 property; or
- 2368 (ii) invalidity or unenforceability of any liens or encumbrances on the property.
- 2369 (2) (a) [~~Beginning on July 1, 1998, the~~] The commissioner may assess each title insurer
- 2370 and each title insurance agency an annual assessment:
- 2371 (i) determined by the Title and Escrow Commission:
- 2372 (A) after consultation with the commissioner; and
- 2373 (B) in accordance with this Subsection (2); and
- 2374 (ii) to be used for the purposes described in Subsection (3).
- 2375 (b) A title insurance agency shall be assessed up to:
- 2376 (i) \$200 for the first office in each county in which the title insurance agency maintains
- 2377 an office; and
- 2378 (ii) \$100 for each additional office the title insurance agency maintains in the county
- 2379 described in Subsection (2)(b)(i).
- 2380 (c) A title insurer shall be assessed up to:
- 2381 (i) \$200 for the first office in each county in which the title insurer maintains an office;
- 2382 (ii) \$100 for each additional office the title insurer maintains in the county described in
- 2383 Subsection (2)(c)(i); and
- 2384 (iii) an amount calculated by:
- 2385 (A) aggregating the assessments imposed on:
- 2386 (I) title insurance agencies under Subsection (2)(b); and
- 2387 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

2388 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total  
2389 costs and expenses determined under Subsection (2)(d); and

2390 (C) multiplying:

2391 (I) the amount calculated under Subsection (2)(c)(iii)(B); and

2392 (II) the percentage of total premiums for title insurance on Utah risk that are premiums  
2393 of the title insurer.

2394 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title  
2395 and Escrow Commission by rule shall establish the amount of costs and expenses described  
2396 under Subsection (3) that will be covered by the assessment, except the costs or expenses to be  
2397 covered by the assessment may not exceed \$75,000 annually.

2398 (3) (a) ~~[All money]~~ Money received by the state under this section ~~[: (a) shall be~~  
2399 ~~deposited in the General Fund as a dedicated credit of the department; and (b) may be~~  
2400 ~~expended by the department]~~ shall be deposited into the Title Licensee Enforcement Restricted  
2401 Account.

2402 (b) There is created in the General Fund a restricted account known as the "Title  
2403 Licensee Enforcement Restricted Account."

2404 (c) The Title Licensee Enforcement Restricted Account shall consist of the money  
2405 received by the state under this section.

2406 (d) The commissioner shall administer the Title Licensee Enforcement Restricted  
2407 Account. Subject to appropriations by the Legislature, the commissioner shall use the money  
2408 deposited into the Title Licensee Enforcement Restricted Account only to pay for [any] a cost  
2409 or expense incurred by the department in the administration, investigation, and enforcement of  
2410 this part and Part 5, Compensation of Producers and Consultants, related to:

2411 (i) the marketing of title insurance; and

2412 (ii) audits of agencies.

2413 (e) The money in the Title Licensee Enforcement Restricted Account is nonlapsing.

2414 (4) The assessment imposed by this section shall be in addition to any premium  
2415 assessment imposed under Subsection 59-9-101(3).

2416 Section 22. Section **31A-26-201** is amended to read:

2417 **31A-26-201. Requirement of license.**

2418 (1) Except as provided in Subsection (2)~~[, no]~~:

2419 (a) a person may not perform, offer to perform, or solicit the opportunity to perform  
2420 [~~any~~] an act of insurance adjusting without a valid license under Section 31A-26-203; and [~~no~~]

2421 (b) a person may not use the insurance adjusting services of another if the person  
2422 knows or should know that the one providing these services does not have a license as required  
2423 by law.

2424 (2) The following are exempt from the license requirement of Subsection (1), when  
2425 acting in the indicated [~~capacities~~] capacity:

2426 (a) [~~a person~~] an individual engaged in insurance adjusting as a regular salaried  
2427 employee of, and not an independent contractor for, an insurer;

2428 (b) an arbitrator or an umpire selected by the claimant and insurer to decide, alone or  
2429 with others, whether a claim should be paid and how much should be paid;

2430 (c) an attorney at law acting in an attorney-client relationship;

2431 (d) an insurance producer, but only as to [~~the classes~~];

2432 (i) a class of insurance for which [~~he~~] the insurance producer is licensed under Section  
2433 31A-23a-106; and [~~only as to claims~~]

2434 (ii) a claim adjusted on the request of an insurer for which [~~he~~] the insurance producer  
2435 is a producer;

2436 (e) a regular salaried employee of, and not an independent contractor for, a  
2437 policyholder or claimant under an insurance policy;

2438 (f) an employee of a licensed insurance adjuster who provides only administrative or  
2439 clerical assistance;

2440 (g) [~~person~~] an individual who does not do insurance adjusting under Section  
2441 31A-26-102, but who is specially employed to obtain facts about a loss for or furnish technical  
2442 assistance to a licensed adjuster or a company adjuster, including:

2443 (i) a photographer[;];

2444 (ii) an estimator [~~or~~];

2445 (iii) an appraiser[;];

2446 (iv) a marine surveyor[;];

2447 (v) a private detective[;];

2448 (vi) an engineer[;]; and

2449 (vii) a handwriting expert;

2450 (h) a holder of a group insurance policy, with respect to administrative activities in  
 2451 connection with that insurance policy, who receives no compensation for ~~[his]~~ the  
 2452 policyholder's services beyond the actual expenses estimated on a reasonable basis;

2453 (i) ~~[a person]~~ an individual engaged in insurance adjusting as a regular salaried  
 2454 employee of, and not an independent contractor for, an administrator licensed under Chapter  
 2455 25~~[-and]~~, Third Party Administrators; or

2456 (j) a person who gives advice or assistance without compensation or expectation of  
 2457 compensation, direct or indirect.

2458 (3) ~~[No]~~ A claim settlement between an insurer and an insured or a claimant under an  
 2459 insurance ~~[contract is]~~ policy may not be considered invalid as a result of a violation of this  
 2460 section.

2461 Section 23. Section **31A-35-401** is amended to read:

2462 **31A-35-401. Requirement for license or certificate of authority -- Process -- Fees**  
 2463 **-- Limitations.**

2464 (1) (a) A person may not engage in the bail bond surety insurance business unless that  
 2465 person:

2466 (i) is a bail bond surety company licensed under this chapter;

2467 (ii) is a surety insurer that is granted a certificate under this section in the same manner  
 2468 as other insurers doing business in this state are granted certificates of authority under this title;  
 2469 or

2470 (iii) is a bail bond producer licensed in accordance with this section.

2471 (b) A bail bond surety company shall be licensed under this chapter as an agency.

2472 (c) A bail bond producer shall be licensed under Chapter 23a, Insurance Marketing -  
 2473 Licensing Producers, Consultants, and Reinsurance Intermediaries, as a limited lines producer.

2474 (2) A person applying for a bail bond surety company license under this chapter shall  
 2475 submit to the commissioner:

2476 (a) a completed application form as prescribed by the commissioner;

2477 (b) a fee as determined by the commissioner in accordance with Section ~~[63J-1-504]~~  
 2478 31A-3-103; and

2479 (c) any additional information required by rule.

2480 (3) ~~[Fees]~~ A fee required under this section ~~[are]~~ is not refundable.

2481 (4) [~~Fees~~] A fee collected from a bail bond surety company shall be deposited in a  
2482 restricted account created in Section 31A-35-407.

2483 (5) (a) A bail bond surety company shall be domiciled in Utah.

2484 (b) A bail bond producer shall be a resident of Utah.

2485 (c) A foreign surety insurer that is granted a certificate to issue bail bonds may only  
2486 issue bail bonds through a bail bond surety company licensed under this chapter.

2487 Section 24. Section ~~31A-35-406~~ is amended to read:

2488 **31A-35-406. Renewal and reinstatement.**

2489 (1) (a) To renew its license under this chapter, on or before the last day of the month in  
2490 which the license expires a bail bond surety company shall:

2491 (i) complete and submit a renewal application to the department; and

2492 (ii) pay the department the applicable renewal fee established in accordance with  
2493 Section [~~63J-1-504~~] 31A-3-103.

2494 (b) A bail bond surety company shall renew its license under this chapter annually as  
2495 established by department rule, regardless of when the license is issued.

2496 (2) A bail bond surety company may apply for reinstatement of an expired bail bond  
2497 surety company license within one year following the expiration of the license under

2498 Subsection (1) by:

2499 (a) submitting the renewal application required by Subsection (1); and

2500 (b) paying a license reinstatement fee established in accordance with Section  
2501 [~~63J-1-504~~] 31A-3-103.

2502 (3) If a bail bond surety company license has been expired for more than one year, the  
2503 person applying for reinstatement of the bail bond surety license shall:

2504 (a) submit a new application form to the commissioner; and

2505 (b) pay the application fee established in accordance with Section [~~63J-1-504~~]  
2506 31A-3-103.

2507 (4) If a bail bond surety company license is suspended, the applicant may not submit an  
2508 application for a bail bond surety company license until after the end of the period of  
2509 suspension.

2510 (5) [~~Fees~~] A fee collected under this section shall be deposited in the restricted account  
2511 created in Section 31A-35-407.

2512 Section 25. Section **31A-36-102** is amended to read:

2513 **31A-36-102. Definitions.**

2514 As used in this chapter:

2515 (1) (a) "Advertising" means a communication placed before the public to:

2516 (i) create an interest in a life settlement; or

2517 (ii) induce a person pursuant to a life settlement to sell, assign, devise, bequest, or  
2518 transfer the death benefit or ownership of:

2519 (A) a policy; or

2520 (B) an interest in a policy.

2521 (b) "Advertising" includes the following, if the requirements of Subsection (1)(a) are  
2522 met:

2523 (i) a written, electronic, or printed communication;

2524 (ii) a communication by means of a recorded telephone message;

2525 (iii) a communication transmitted on radio, television, the Internet, or similar  
2526 communications media; and

2527 (iv) a film strip, motion picture, or video.

2528 (2) "Business of life settlements" includes the following:

2529 (a) offering a life settlement;

2530 (b) soliciting a life settlement;

2531 (c) negotiating a life settlement;

2532 (d) procuring a life settlement;

2533 (e) effectuating a life settlement;

2534 (f) purchasing a life settlement;

2535 (g) investing in a life settlement;

2536 (h) financing a life settlement;

2537 (i) monitoring a life settlement;

2538 (j) tracking a life settlement;

2539 (k) underwriting a life settlement;

2540 (l) selling a life settlement;

2541 (m) transferring a life settlement;

2542 (n) assigning a life settlement;

- 2543 (o) pledging a life settlement;
- 2544 (p) hypothecating a life settlement; or
- 2545 (q) in any other manner acquiring an interest in [a] an insurance policy by means of a
- 2546 life settlement.
- 2547 (3) "Chronically ill" means:
- 2548 (a) being unable to perform at least two activities of daily living, such as eating,
- 2549 toileting, moving from one place to another, bathing, dressing, or continence;
- 2550 (b) requiring substantial supervision for protection from threats to health and safety
- 2551 because of severe cognitive impairment; or
- 2552 (c) having a level of disability similar to that described in Subsection (3)(a).
- 2553 (4) "Depository institution" is as defined in Section 7-1-103.
- 2554 (5) (a) "Financing entity" means a person:
- 2555 (i) who has direct ownership in a policy that is the subject of a life settlement;
- 2556 (ii) whose principal activity related to a life settlement is providing money to effect the
- 2557 life settlement or the purchase of one or more settled policies; and
- 2558 (iii) who has an agreement in writing with one or more licensed life settlement
- 2559 providers to finance the acquisition of one or more life settlements.
- 2560 (b) "Financing entity" includes, if the requirements of Subsection (5)(a) are met, the
- 2561 following:
- 2562 (i) an underwriter;
- 2563 (ii) a placement agent;
- 2564 (iii) an enhancer of credit;
- 2565 (iv) a lender;
- 2566 (v) a purchaser of securities; and
- 2567 (vi) a purchaser of a policy from a life settlement provider.
- 2568 (c) "Financing entity" does not include:
- 2569 (i) a nonaccredited investor; or
- 2570 (ii) a life settlement purchaser.
- 2571 (6) "Form" means, in addition to a form as defined in Section 31A-1-301:
- 2572 (a) a life settlement;
- 2573 (b) a disclosure to an owner;

- 2574 (c) a notice of intent to settle; or
- 2575 (d) a verification of coverage.
- 2576 (7) "Life expectancy" means the mean number of months an individual insured under a
- 2577 policy to be settled can be expected to live considering medical records and appropriate
- 2578 experiential data.
- 2579 (8) (a) "Life settlement" means a written agreement:
- 2580 (i) between an owner and a life settlement provider; and
- 2581 (ii) ~~[for] that establishes the terms for the payment of anything of value, [that is less~~
- 2582 ~~than the expected death benefit of the policy,]~~ in exchange for the owner assigning, selling,
- 2583 transferring, devising, releasing, or bequeathing, at the time of or after the exchange, the death
- 2584 benefit or ownership of:
- 2585 (A) any portion of a policy; or
- 2586 (B) a beneficial interest in the policy.
- 2587 (b) "Life settlement" includes:
- 2588 (i) the transfer for compensation or value of ownership or beneficial interest in a trust
- 2589 or other entity that owns a policy if the trust or other entity is formed or operated for the
- 2590 principal purpose of acquiring one or more policies; or
- 2591 (ii) a premium finance loan made for a policy by a lender to an owner on, before, or
- 2592 after the date of issuance of the policy if the owner:
- 2593 (A) receives on the date of the premium finance loan a guarantee of a future life
- 2594 settlement value of the policy; or
- 2595 (B) agrees on the date of the premium finance loan to sell the policy or any portion of
- 2596 the policy's death benefit on a date following the issuance of the policy.
- 2597 (c) An agreement described in Subsection (8)(a) is a "life settlement" even if it is
- 2598 referred to by a different name, including:
- 2599 (i) a ~~["life]~~ "viatical settlement"; or
- 2600 (ii) a "senior settlement."
- 2601 (d) "Life settlement" does not include:
- 2602 (i) a loan or accelerated death benefit by an insurer pursuant to the terms of a policy;
- 2603 (ii) loan proceeds that are used solely to pay:
- 2604 (A) premiums for a policy; and

- 2605 (B) the loan costs or other expenses incurred by the lender, including:  
2606 (I) interest;  
2607 (II) an arrangement fee;  
2608 (III) a use fee;  
2609 (IV) closing costs;  
2610 (V) attorney fees and expenses;  
2611 (VI) trustee fees and expenses; and  
2612 (VII) third party collateral provider fees and expenses, including fees payable to a letter  
2613 of credit issuer;
- 2614 (iii) (A) a loan made by a licensed lender in which the licensed lender takes an interest  
2615 in a policy solely to secure repayment of a loan; or  
2616 (B) the transfer of a policy by a lender, if:  
2617 (I) the loan is:  
2618 (Aa) a loan described in Subsection (8)(d)(iii)(A); or  
2619 (Bb) a premium finance loan that is not a life settlement;  
2620 (II) the loan is defaulted on;  
2621 (III) the policy is transferred; and  
2622 (IV) neither the default itself nor the transfer of the policy in connection with the  
2623 default is pursuant to an agreement with any other person for the purpose of evading regulation  
2624 under this chapter;
- 2625 (iv) an agreement where all the participants in the agreement:  
2626 (A) (I) are closely related to the insured by blood or law; or  
2627 (II) have a lawful substantial economic interest in the continued life, health, and bodily  
2628 safety of the person insured; and  
2629 (B) are trusts established primarily for the benefit of the participants in the agreement;
- 2630 (v) a designation, consent, or agreement by an insured who is an employee of an  
2631 employer in connection with the purchase by the employer, or trust established by the  
2632 employer, of life insurance on the life of the employee; or  
2633 (vi) a business succession planning arrangement not made for the purpose of evading  
2634 regulation under this chapter:  
2635 (A) (I) between one or more shareholders in a corporation; or

- 2636 (II) between a corporation and:  
2637 (Aa) one or more of its shareholders; or  
2638 (Bb) one or more trusts established by its shareholders;  
2639 (B) (I) between one or more partners in a partnership; or  
2640 (II) between a partnership and:  
2641 (Aa) one or more of its partners; or  
2642 (Bb) one or more trusts established by its partners; or  
2643 (C) (I) between one or more members in a limited liability company; or  
2644 (II) between a limited liability company and:  
2645 (Aa) one or more of its members; or  
2646 (Bb) one or more trusts established by its members.
- 2647 (9) (a) "Life settlement producer" means a person licensed in the state as a life  
2648 insurance producer that on behalf of an owner and for consideration offers or attempts to  
2649 negotiate a life settlement between the owner and one or more life settlement providers.
- 2650 (b) "Life settlement producer" does not include an attorney licensed to practice law in  
2651 any state, a certified public accountant, or a financial planner accredited by a nationally  
2652 recognized accrediting agency:
- 2653 (i) that is retained to represent an owner; and  
2654 (ii) whose compensation is not paid directly or indirectly by:  
2655 (A) a life settlement provider; or  
2656 (B) a life settlement purchaser.
- 2657 (10) (a) "Life settlement provider" means a person other than an owner that enters into  
2658 or effectuates a life settlement.
- 2659 (b) "Life settlement provider" does not include:  
2660 (i) a licensed lender that takes an assignment of a policy as security for a loan,  
2661 including a:  
2662 (A) depository institution; or  
2663 (B) lender that makes a premium finance loan that is not described in Subsection  
2664 (8)(b)(ii);  
2665 (ii) the issuer of a policy;  
2666 (iii) an authorized or eligible insurer that provides stop-loss coverage to:

- 2667 (A) a life settlement provider;
- 2668 (B) a life settlement purchaser;
- 2669 (C) a financing entity;
- 2670 (D) a special purpose entity; or
- 2671 (E) a related provider trust;
- 2672 (iv) a financing entity;
- 2673 (v) a special purpose entity;
- 2674 (vi) a related provider trust;
- 2675 (vii) a life settlement purchaser; or
- 2676 (viii) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A
- 2677 that purchases a settled policy from a life settlement provider.
- 2678 (11) (a) "Life settlement purchaser" means a person that, to derive an economic benefit:
- 2679 (i) provides a sum of money as consideration for a policy or an interest in the death
- 2680 benefits of a policy; or
- 2681 (ii) owns, acquires, or is entitled to a beneficial interest in a trust that:
- 2682 (A) owns a life settlement; or
- 2683 (B) is the beneficiary of a policy that has been or will be the subject of a life settlement.
- 2684 (b) "Life settlement purchaser" does not include:
- 2685 (i) a life settlement provider;
- 2686 (ii) a life settlement producer;
- 2687 (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
- 2688 230.501;
- 2689 (iv) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;
- 2690 (v) a financing entity;
- 2691 (vi) a special purpose entity; or
- 2692 (vii) a related provider trust.
- 2693 (12) (a) "Owner" means any of the following who resides in this state and seeks to
- 2694 enter into a life settlement:
- 2695 (i) the owner of a policy; or
- 2696 (ii) the holder of a certificate of [~~insurance under~~] a group policy [~~of group insurance~~].
- 2697 (b) "Owner" is not limited to [~~a person~~] an individual who is terminally ill or

2698 chronically ill except when the limitation is expressly provided in this chapter.

2699 (c) "Owner" does not include:

2700 (i) a life settlement provider;

2701 (ii) a life settlement producer;

2702 (iii) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;

2703 (iv) a financing entity;

2704 (v) a special purpose entity; or

2705 (vi) a related provider trust.

2706 (13) "Policy" means:

2707 (a) an individual or group life insurance policy;

2708 (b) an individual or group annuity policy;

2709 [~~(b)~~] (c) a group life insurance certificate [for life insurance; or];

2710 (d) a group annuity certificate; or

2711 [~~(c)~~] (e) a [contract or arrangement of] life insurance policy or an annuity policy,

2712 whether or not delivered or issued for delivery in Utah:

2713 (i) affecting the rights of a resident of Utah; or

2714 (ii) bearing a reasonable relation to Utah.

2715 (14) "Premium finance loan" is a loan made primarily for the purpose of making

2716 premium payments on a policy if the loan is secured by an interest in the policy.

2717 (15) "Related provider trust" means a trust established by a licensed life settlement

2718 provider or a financing entity solely to hold the ownership of or beneficial interests in

2719 purchased policies in connection with financing.

2720 (16) "Settled policy" means a policy that is acquired by a life settlement provider

2721 pursuant to a life settlement.

2722 (17) "Special purpose entity" means an entity formed by a licensed life settlement

2723 provider solely to enable the life settlement provider to gain access to institutional markets for

2724 capital.

2725 (18) (a) "Stranger-originated life insurance" means an act, practice, or arrangement to

2726 initiate a policy for the benefit of a third party investor or other person who has no insurable

2727 interest in the insured resulting in the requirements of Section 31A-21-104 not being met.

2728 (b) "Stranger-originated life insurance" includes when:

2729 (i) a policy is purchased with resources or guarantees from or through a person who, at  
2730 the time of policy origination, could not lawfully initiate the policy itself; and

2731 (ii) at the time of policy origination, there is an agreement, whether oral or written, to  
2732 directly or indirectly transfer to a third party the ownership of a policy, policy benefits, or both.

2733 (c) "Stranger-originated life insurance" does not include:

2734 (i) a life settlement that complies with:

2735 (A) this chapter; and

2736 (B) Section 31A-21-104; or

2737 (ii) an act, practice, or arrangement described in Subsection (8)(d).

2738 (19) "Terminally ill" means having a condition that reasonably may be expected to  
2739 result in death within 24 months.

2740 Section 26. Section **31A-40-103** is amended to read:

2741 **31A-40-103. Duties of the commissioner.**

2742 (1) (a) The commissioner shall maintain a list of professional employer organizations  
2743 that are licensed under this chapter.

2744 (b) The commissioner shall make the list required by this Subsection (1) available to  
2745 the public by electronic or other means.

2746 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2747 commissioner:

2748 (a) shall make rules to prescribe the requirements for forms required under this chapter;  
2749 [~~and~~]

2750 (b) may make rules to prescribe the requirements and process for correcting under  
2751 Section 31A-40-205:

2752 (i) a deficiency in working capital; or

2753 (ii) negative working capital;

2754 [~~(b)~~] (c) may make rules to prescribe the requirements for the review and submission of  
2755 a financial statement under Section 31A-40-305:

2756 (i) that are consistent with generally accepted accounting principles; and

2757 (ii) including the timeliness of a financial statement[~~;~~]; and

2758 (d) may make rules to prescribe the requirements and process for when a professional  
2759 employer organization license is terminated by:

2760 (i) voluntary surrender of the professional organization license; or

2761 (ii) involuntary surrender of the professional organization license.

2762 (3) A rule in effect on May 5, 2008 under the repealed Title 58, Chapter 59,  
2763 Professional Employer Organization Registration Act, [~~shall be: (a) renumbered as a rule made~~  
2764 ~~under this chapter; and (b) remain~~] remains in effect until such time as the commissioner  
2765 modifies or repeals the rule.

2766 [~~(4) The commissioner shall report to the Business and Labor Committee by no later~~  
2767 ~~than the November 2009 interim meeting as to whether the commissioner recommends that the~~  
2768 ~~working capital requirements of Section 31A-40-205 be modified.]~~

2769 Section 27. Section **31A-40-302** is amended to read:

2770 **31A-40-302. Licensing process.**

2771 (1) To apply for an initial or renewal license under this chapter, a person shall:

2772 (a) (i) [~~file~~] submit an application with the commissioner on a form and in a manner  
2773 the commissioner shall determine by rule made in accordance with Title 63G, Chapter 3, Utah  
2774 Administrative Rulemaking Act; and

2775 (ii) pay a license fee determined in accordance with Section 31A-3-103 that is not  
2776 refunded if the application:

2777 (A) is denied; [~~or~~]

2778 (B) does not comply with Section 31A-40-303; or

2779 [~~(B)~~] (C) if incomplete, is never completed by the person filing the application; or

2780 (b) comply with Section 31A-40-303.

2781 (2) In the application described in Subsection (1)(a), the person shall provide:

2782 (a) any name under which the professional employer organization will engage in a  
2783 professional employer service;

2784 (b) the address of the principal place of business of the professional employer  
2785 organization;

2786 (c) the address of each location the professional employer organization maintains in  
2787 this state;

2788 (d) the professional employer organization's federal taxpayer or employer identification  
2789 number;

2790 (e) the following information by jurisdiction of each name under which the

2791 professional employer organization operated in the five years preceding the day on which the  
2792 person ~~[files]~~ submits the application:

2793 (i) the name;

2794 (ii) an alternative name, if any;

2795 (iii) a name of a predecessor; and

2796 (iv) if known, a successor business entity;

2797 (f) a statement of ownership that includes the name and evidence of the business  
2798 experience of a person that, individually or acting in concert with one or more other persons,  
2799 owns or controls, directly or indirectly, 10% or more of the equity interests of the professional  
2800 employer organization;

2801 (g) a statement of management that includes the name and evidence of the business  
2802 experience of ~~[a person]~~ an individual who:

2803 (i) serves as president of the professional employer organization;

2804 (ii) serves as chief executive officer of the professional employer organization; or

2805 (iii) may act as a senior executive officer of the professional employer organization;

2806 and

2807 (h) a financial statement that:

2808 (i) sets forth the financial condition of:

2809 (A) the professional employer organization; or

2810 (B) a professional employer organization group in which the professional employer  
2811 organization is a member;

2812 (ii) states whether or not the professional employer organization complies with Section  
2813 31A-40-205; and

2814 (iii) complies with Section 31A-40-305.

2815 ~~[(3) A professional employer organization that is registered by the Division of  
2816 Occupations and Professional Licensing as of May 4, 2008 shall comply with this section by no  
2817 later than November 5, 2008. An initial license obtained under this Subsection (3) is valid  
2818 until the end of the professional employer organization's first full fiscal year that immediately  
2819 follows the day on which the initial license application is filed.]~~

2820 ~~[(4) Within 180 days after the day on which a professional employer organization's  
2821 fiscal year ends, a]~~

2822 (3) A professional employer organization shall renew its license [~~by complying with~~  
2823 ~~Subsection (1)] by no later than October 1 of each year.~~

2824 Section 28. Section **31A-40-307** is enacted to read:

2825 **31A-40-307. Voluntary surrender of professional employer organization license.**

2826 (1) When a professional employer organization wants to voluntarily surrender its  
2827 professional employer organization license, the professional employer organization shall:

2828 (a) notify in writing each coemployer regarding the impending loss of the following  
2829 provided under the professional employer agreement:

2830 (i) workers' compensation insurance coverage;

2831 (ii) health care benefits, if a coemployers' employee welfare plan includes fully insured  
2832 or partially insured health insurance benefits; and

2833 (iii) any other insurance benefit provided to coemployers by the professional employer  
2834 organization; and

2835 (b) submit a letter of intent to voluntarily surrender the license to the commissioner:

2836 (i) after providing the notice to coemployers under Subsection (1)(a); and

2837 (ii) not less than 45 days before the day on which the professional employer  
2838 organization surrenders its professional employer organization license.

2839 (2) The letter of intent to voluntarily surrender a professional employer organization  
2840 license shall include the following:

2841 (a) the reason the professional employer organization license is being surrendered;

2842 (b) a discussion of each process or plan to handle the obligations to coemployers and  
2843 employees;

2844 (c) a list of coemployers as of the date of the letter;

2845 (d) a copy of the notice sent to the coemployers under Subsection (1)(a);

2846 (e) certification that the professional employer organization has notified the  
2847 coemployers located in Utah of the professional employer organization's intent to cease doing  
2848 business in Utah; and

2849 (f) the signature of the professional employer organization's chief executive officer or  
2850 controlling individual.

2851 Section 29. Section **31A-42-201** is amended to read:

2852 **31A-42-201. Creation of defined contribution market risk adjuster mechanism --**

2853 **Board of directors -- Appointment -- Terms -- Quorum -- Plan preparation.**

2854 (1) There is created the "Utah Defined Contribution Risk Adjuster," a nonprofit entity  
2855 within the ~~[Insurance Department]~~ department.

2856 (2) (a) The risk adjuster ~~[shall be]~~ is under the direction of a board of directors  
2857 composed of up to nine members described in Subsection (2)(b).

2858 (b) The board of directors shall consist of:

2859 ~~[(b) The]~~ (i) following directors ~~[shall be]~~ appointed by the governor with the consent  
2860 of the Senate:

2861 ~~[(i)]~~ (A) at least three, but up to five, directors with actuarial experience who represent  
2862 ~~[insurance carriers]~~ insurers:

2863 ~~[(A)]~~ (I) that are participating or have committed to participate in the defined  
2864 contribution arrangement market in the state; and

2865 ~~[(B)]~~ (II) including at least one and up to two directors who represent ~~[a carrier]~~ an  
2866 insurer that has a small percentage of lives in the defined contribution market;

2867 ~~[(ii)]~~ (B) one director who represents either an individual employee or employer  
2868 participant in the defined contribution market;

2869 ~~[(iii)]~~ (C) one director ~~[appointed by the governor to represent]~~ who represents the  
2870 Office of Consumer Health Services within the Governor's Office of Economic Development;

2871 ~~[(iv)]~~ (ii) one director representing the Public Employee's Health ~~[Benefit]~~ Program  
2872 with actuarial experience, ~~[chosen]~~ appointed by the director of the Public Employee's Health  
2873 ~~[Benefit]~~ Program ~~[who shall serve as an ex officio member]~~; and

2874 ~~[(v)]~~ (iii) the commissioner, or a representative ~~[from the department with actuarial~~  
2875 experience] of the commissioner who:

2876 (A) is appointed by the commissioner; and

2877 (B) has actuarial experience.

2878 (c) The commissioner or a representative appointed by the commissioner~~[, who will~~  
2879 only have voting privileges] may vote only in the event of a tie vote.

2880 (3) (a) Except as required by Subsection (3)(b), as terms of current board members  
2881 appointed by the governor expire, the governor shall appoint each new member or reappointed  
2882 member to a four-year term.

2883 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the

2884 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
 2885 board members are staggered so that approximately half of the board is appointed every two  
 2886 years.

2887 (c) Notwithstanding the requirements of Subsection (3)(a), a board member shall  
 2888 continue to serve until the board member is reappointed or replaced by another individual in  
 2889 accordance with this section.

2890 (4) When a vacancy occurs in the membership for any reason, the replacement shall be  
 2891 appointed for the unexpired term in the same manner as the original appointment was made.

2892 (5) (a) [~~Members who are not government employees shall receive no~~] A board  
 2893 member who is not a government employee may not receive compensation or benefits for the  
 2894 [~~members'~~] board member's services.

2895 (b) A state government member who is a board member because of the board member's  
 2896 state government position may not receive per diem or expenses for the member's service.

2897 (6) The board shall elect annually a chair and vice chair from its membership.

2898 (7) [~~Six~~] One-half of the board members are a quorum for the transaction of business.

2899 (8) The action of a majority of the members of the quorum is the action of the board.

2900 Section 30. Section **63J-1-602** is amended to read:

2901 **63J-1-602. Nonlapsing accounts and funds.**

2902 (1) The following revenue collections, appropriations from a fund or account, and  
 2903 appropriations to a program are nonlapsing:

2904 (a) appropriations made to the Legislature and its committees;

2905 (b) funds collected by the grain grading program, as provided in Section 4-2-2;

2906 (c) the Salinity Offset Fund created in Section 4-2-8.5;

2907 (d) the Invasive Species Mitigation Fund created in Section 4-2-8.7;

2908 (e) funds collected by pesticide dealer license registration fees, as provided in Section  
 2909 4-14-3;

2910 (f) funds collected by pesticide applicator business registration fees, as provided in  
 2911 Section 4-14-13;

2912 (g) the Rangeland Improvement Fund created in Section 4-20-2;

2913 (h) funds deposited as dedicated credits under the Insect Infestation Emergency Control  
 2914 Act, as provided in Section 4-35-6;

- 2915 (i) the Percent-for-Art Program created in Section 9-6-404;
- 2916 (j) the Centennial History Fund created in Section 9-8-604;
- 2917 (k) the Uintah Basin Revitalization Fund, as provided in Section 9-10-108;
- 2918 (l) the Navajo Revitalization Fund created in Section 9-11-104;
- 2919 (m) the LeRay McAllister Critical Land Conservation Program created in Section  
2920 11-38-301;
- 2921 (n) the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403;
- 2922 (o) fees deposited as dedicated credits for hazardous waste plan reviews, as provided in  
2923 Section 19-6-120;
- 2924 (p) an appropriation made to the Division of Wildlife Resources for the appraisal and  
2925 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6;
- 2926 (q) award monies under the Crime Reduction Assistance Program, as provided under  
2927 Section 24-1-19;
- 2928 (r) funds collected from the emergency medical services grant program, as provided in  
2929 Section 26-8a-207;
- 2930 (s) fees and other funding available to purchase training equipment and to administer  
2931 tests and conduct quality assurance reviews, as provided in Section 26-8a-208;
- 2932 (t) funds collected as a result of a sanction under Section 1919 of Title XIX of the  
2933 federal Social Security Act, as provided in Section 26-18-3;
- 2934 (u) the Utah Health Care Workforce Financial Assistance Program created in Section  
2935 26-46-102;
- 2936 (v) monies collected from subscription fees for publications prepared or distributed by  
2937 the insurance commissioner, as provided in Section 31A-2-208;
- 2938 (w) the Technology Development Restricted Account created in Section 31A-3-104;
- 2939 (x) the Criminal Background Check Restricted Account created in Section 31A-3-105;
- 2940 (y) the Captive Insurance Restricted Account created in Section 31A-3-304, except to  
2941 the extent that Section 31A-3-304 makes the money received under that section free revenue;
- 2942 (z) the Title Licensee Enforcement Restricted Account created in Section 31a-23a-415;
- 2943 [~~w~~] (aa) monies received by the Insurance Department for administering,  
2944 investigating under, and enforcing the Insurance Fraud Act, as provided in Section  
2945 31A-31-108;

2946           ~~[(x)]~~ (bb) certain monies received for penalties paid under the Insurance Fraud Act, as  
2947 provided in Section 31A-31-109;

2948           ~~[(y)]~~ (cc) the fund for operating the state's Federal Health Care Tax Credit Program, as  
2949 provided in Section 31A-38-104;

2950           ~~[(z)]~~ (dd) certain funds in the Department of Workforce Services' program for the  
2951 education, training, and transitional counseling of displaced homemakers, as provided in  
2952 Section 35A-3-114;

2953           ~~[(aa)]~~ (ee) the Employment Security Administration Fund created in Section  
2954 35A-4-505;

2955           ~~[(bb)]~~ (ff) the Special Administrative Expense Fund created in Section 35A-4-506;  
2956           ~~[(cc)]~~ (gg) funding for a new program or agency that is designated as nonlapsing under  
2957 Section 36-24-101;

2958           ~~[(dd)]~~ (hh) the Oil and Gas Conservation Account created in Section 40-6-14.5;  
2959           ~~[(ee)]~~ (ii) funds available to the State Tax Commission for purchase and distribution of  
2960 license plates and decals, as provided in Section 41-1a-1201;

2961           ~~[(ff)]~~ (jj) certain fees for the cost of electronic payments under the Motor Vehicle Act,  
2962 as provided in Section 41-1a-1221;

2963           ~~[(gg)]~~ (kk) certain fees collected for administering and enforcing the Motor Vehicle  
2964 Business Regulation Act, as provided in Section 41-3-601;

2965           ~~[(hh)]~~ (ll) certain fees for the cost of electronic payments under the Motor Vehicle  
2966 Business Regulation Act, as provided in Section 41-3-604;

2967           ~~[(ii)]~~ (mm) the Off-Highway Access and Education Restricted Account created in  
2968 Section 41-22-19.5;

2969           ~~[(jj)]~~ (nn) certain fees for the cost of electronic payments under the Motor Vehicle Act,  
2970 as provided in Section 41-22-36;

2971           ~~[(kk)]~~ (oo) monies collected under the Notaries Public Reform Act, as provided under  
2972 46-1-23;

2973           ~~[(ll)]~~ (pp) certain funds associated with the Law Enforcement Operations Account, as  
2974 provided in Section 51-9-411;

2975           ~~[(mm)]~~ (qq) the Public Safety Honoring Heroes Restricted Account created in Section  
2976 53-1-118;

2977            [~~(mm)~~] (rr) funding for the Search and Rescue Financial Assistance Program, as  
2978 provided in Section 53-2-107;

2979            [~~(oo)~~] (ss) appropriations made to the Department of Public Safety from the  
2980 Department of Public Safety Restricted Account, as provided in Section 53-3-106;

2981            [~~(pp)~~] (tt) appropriations to the Motorcycle Rider Education Program, as provided in  
2982 Section 53-3-905;

2983            [~~(qq)~~] (uu) fees collected by the State Fire Marshal Division under the Utah Fire  
2984 Prevention and Safety Act, as provided in Section 53-7-314;

2985            [~~(rr)~~] (vv) the DNA Specimen Restricted Account created in Section 53-10-407;

2986            [~~(ss)~~] (ww) the minimum school program, as provided in Section 53A-17a-105;

2987            [~~(tt)~~] (xx) certain funds appropriated from the Uniform School Fund to the State Board  
2988 of Education for new teacher bonus and performance-based compensation plans, as provided in  
2989 Section 53A-17a-148;

2990            [~~(uu)~~] (yy) certain funds appropriated from the Uniform School Fund to the State  
2991 Board of Education for implementation of proposals to improve mathematics achievement test  
2992 scores, as provided in Section 53A-17a-152;

2993            [~~(vv)~~] (zz) the School Building Revolving Account created in Section 53A-21-401;

2994            [~~(ww)~~] (aaa) monies received by the State Office of Rehabilitation for the sale of  
2995 certain products or services, as provided in Section 53A-24-105;

2996            [~~(xx)~~] (bbb) the State Board of Regents, as provided in Section 53B-6-104;

2997            [~~(yy)~~] (ccc) certain funds appropriated from the General Fund to the State Board of  
2998 Regents for teacher preparation programs, as provided in Section 53B-6-104;

2999            [~~(zz)~~] (ddd) a certain portion of monies collected for administrative costs under the  
3000 School Institutional Trust Lands Management Act, as provided under Section 53C-3-202;

3001            [~~(aaa)~~] (eee) certain surcharges on residence and business telecommunications access  
3002 lines imposed by the Public Service Commission, as provided in Section 54-8b-10;

3003            [~~(bbb)~~] (fff) certain fines collected by the Division of Occupational and Professional  
3004 Licensing for violation of unlawful or unprofessional conduct that are used for education and  
3005 enforcement purposes, as provided in Section 58-17b-505;

3006            [~~(ccc)~~] (ggg) the Nurse Education and Enforcement Fund created in Section  
3007 58-31b-103;

3008            [~~(ddd)~~] (hhh) funding of the controlled substance database, as provided in Section  
3009 58-37-7.7;

3010            [~~(eee)~~] (iii) the Certified Nurse Midwife Education and Enforcement Fund created in  
3011 Section 58-44a-103;

3012            [~~(fff)~~] (jjj) funding for the building inspector's education program, as provided in  
3013 Section 58-56-9;

3014            [~~(ggg)~~] (kkk) certain fines collected by the Division of Occupational and Professional  
3015 Licensing for use in education and enforcement of the Security Personnel Licensing Act, as  
3016 provided in Section 58-63-103;

3017            [~~(hhh)~~] (lll) the Professional Geologist Education and Enforcement Fund created in  
3018 Section 58-76-103;

3019            [~~(iii)~~] (mmm) certain monies in the Water Resources Conservation and Development  
3020 Fund, as provided in Section 59-12-103;

3021            [~~(jjj)~~] (nnn) funds paid to the Division of Real Estate for the cost of a criminal  
3022 background check for broker and sales agent licenses, as provided in Section 61-2-9;

3023            [~~(kkk)~~] (ooo) the Utah Housing Opportunity Restricted Account created in Section  
3024 61-2-28;

3025            [~~(HH)~~] (ppp) funds paid to the Division of Real Estate for the cost of a criminal  
3026 background check for a mortgage loan license, as provided in Section 61-2c-202;

3027            [~~(mmm)~~] (qqq) funds paid to the Division of Real Estate in relation to examination of  
3028 records in an investigation, as provided in Section 61-2c-401;

3029            [~~(mmn)~~] (rrr) certain funds donated to the Department of Human Services, as provided  
3030 in Section 62A-1-111;

3031            [~~(ooo)~~] (sss) certain funds donated to the Division of Child and Family Services, as  
3032 provided in Section 62A-4a-110;

3033            [~~(ppp)~~] (ttt) the Mental Health Therapist Grant and Scholarship Program, as provided  
3034 in Section 62A-13-109;

3035            [~~(qqq)~~] (uuu) assessments for DUI violations that are forwarded to an account created  
3036 by a county treasurer, as provided in Section 62A-15-503;

3037            [~~(rrr)~~] (vvv) appropriations to the Division of Services for People with Disabilities, as  
3038 provided in Section 62A-5-102;

3039            [~~(sss)~~] (www) certain donations to the Division of Substance Abuse and Mental  
3040 Health, as provided in Section 62A-15-103;

3041            [~~(ttt)~~] (xxx) certain funds received by the Division of Parks and Recreation from the  
3042 sale or disposal of buffalo, as provided under Section 63-11-19.2;

3043            [~~(uuu)~~] (yyy) revenue for golf user fees at the Wasatch Mountain State Park, Palisades  
3044 State Park, or Jordan River State Park, as provided under Section 63-11-19.5;

3045            [~~(vvv)~~] (zzz) revenue for golf user fees at the Green River State Park, as provided  
3046 under Section 63-11-19.6;

3047            [~~(www)~~] (aaa) the Centennial Nonmotorized Paths and Trail Crossings Program  
3048 created under Section 63-11a-503;

3049            [~~(xxx)~~] (bbb) the Bonneville Shoreline Trail Program created under Section  
3050 63-11a-504;

3051            [~~(yyy)~~] (ccc) the account for the Utah Geological Survey, as provided in Section  
3052 63-73-10;

3053            [~~(zzz)~~] (ddd) the Risk Management Fund created under Section 63A-4-201;

3054            [~~(aaa)~~] (eee) the Child Welfare Parental Defense Fund created in Section  
3055 63A-11-203;

3056            [~~(bbb)~~] (fff) the Constitutional Defense Restricted Account created in Section  
3057 63C-4-103;

3058            [~~(ccc)~~] (ggg) a portion of the funds appropriated to the Utah Seismic Safety  
3059 Commission, as provided in Section 63C-6-104;

3060            [~~(ddd)~~] (hhh) funding for the Medical Education Program administered by the  
3061 Medical Education Council, as provided in Section 63C-8-102;

3062            [~~(eee)~~] (iii) certain monies payable for commission expenses of the Pete Suazo Utah  
3063 Athletic Commission, as provided under Section 63C-11-301;

3064            [~~(fff)~~] (jjj) funds collected for publishing the Division of Administrative Rules'  
3065 publications, as provided in Section 63G-3-402;

3066            [~~(ggg)~~] (kkk) the appropriation to fund the Governor's Office of Economic  
3067 Development's Enterprise Zone Act, as provided in Section 63M-1-416;

3068            [~~(hhh)~~] (lll) the Tourism Marketing Performance Account, as provided in Section  
3069 63M-1-1406;

3070            [~~(iiii)~~] (mmmm) certain funding for rural development provided to the Office of Rural  
3071 Development in the Governor's Office of Economic Development, as provided in Section  
3072 63M-1-1604;

3073            [~~(jjjj)~~] (nnnn) certain monies in the Development for Disadvantaged Rural  
3074 Communities Restricted Account, as provided in Section 63M-1-2003;

3075            [~~(kkkk)~~] (oooo) appropriations to the Utah Science Technology and Research  
3076 Governing Authority, created under Section 63M-2-301, as provided under Section  
3077 63M-3-302;

3078            [~~(hhh)~~] (pppp) certain monies in the Rural Broadband Service Fund, as provided in  
3079 Section 63M-1-2303;

3080            [~~(mmmmm)~~] (qqqq) funds collected from monthly offender supervision fees, as provided  
3081 in Section 64-13-21.2;

3082            [~~(mmm)~~] (rrrr) funds collected by the housing of state probationary inmates or state  
3083 parole inmates, as provided in Subsection 64-13e-104(2);

3084            [~~(sssss)~~] (ssss) the Sovereign Lands Management account created in Section 65A-5-1;  
3085            [~~(pppp)~~] (tttt) certain forestry and fire control funds utilized by the Division of  
3086 Forestry, Fire, and State Lands, as provided in Section 65A-8-103;

3087            [~~(qqqq)~~] (uuuu) the Department of Human Resource Management user training  
3088 program, as provided in Section 67-19-6;

3089            [~~(rrrr)~~] (vvvv) funds for the University of Utah Poison Control Center program, as  
3090 provided in Section 69-2-5.5;

3091            [~~(ssss)~~] (www) appropriations to the Transportation Corridor Preservation Revolving  
3092 Loan Fund, as provided in Section 72-2-117;

3093            [~~(tttt)~~] (xxxx) appropriations to the Local Transportation Corridor Preservation Fund,  
3094 as provided in Section 72-2-117.5;

3095            [~~(uuuu)~~] (yyyy) appropriations to the Tollway Restricted Special Revenue Fund, as  
3096 provided in Section 77-2-120;

3097            [~~(vvvv)~~] (zzzz) appropriations to the Aeronautics Construction Revolving Loan Fund,  
3098 as provided in Section 77-2-122;

3099            [~~(wwww)~~] (aaaa) appropriations to the State Park Access Highways Improvement  
3100 Program, as provided in Section 72-3-207;

3101            [(xxxxx)] (b) the Traffic Noise Abatement Program created in Section 72-6-112;  
3102            [(yyyyy)] (c) certain funds received by the Office of the State Engineer for well  
3103 drilling fines or bonds, as provided in Section 73-3-25;  
3104            [(zzzzz)] (d) certain monies appropriated to increase the carrying capacity of the  
3105 Jordan River that are transferred to the Division of Parks and Recreation, as provided in  
3106 Section 73-10e-1;  
3107            [(aaaaa)] (e) certain fees for the cost of electronic payments under the State  
3108 Boating Act, as provided in Section 73-18-25;  
3109            [(bbbbb)] (f) certain monies appropriated from the Water Resources Conservation  
3110 and Development Fund, as provided in Section 73-23-2;  
3111            [(ccccc)] (g) the Lake Powell Pipeline Project Operation and Maintenance Fund  
3112 created in Section 73-28-404;  
3113            [(ddddd)] (h) certain funds in the Water Development and Flood Mitigation  
3114 Reserve Account, as provided in Section 73-103-1;  
3115            [(eeeee)] (i) certain funds appropriated for compensation for special prosecutors, as  
3116 provided in Section 77-10a-19;  
3117            [(fffff)] (j) the Indigent Aggravated Murder Defense Trust Fund created in Section  
3118 77-32-601;  
3119            [(ggggg)] (k) the Indigent Felony Defense Trust Fund created in Section  
3120 77-32-701;  
3121            [(hhhhh)] (l) funds donated or paid to a juvenile court by private sources, as  
3122 provided in Subsection 78A-6-203(c);  
3123            [(iiiiii)] (m) a state rehabilitative employment program, as provided in Section  
3124 78A-6-210; and  
3125            [(jjjjj)] (n) fees from the issuance and renewal of licenses for certified court  
3126 interpreters, as provided in Section 78B-1-146.  
3127            (2) No revenue collection, appropriation from a fund or account, or appropriation to a  
3128 program may be treated as nonlapsing unless:  
3129            (a) it is expressly referenced by this section;  
3130            (b) it is designated in a condition of appropriation in the appropriations bill; or  
3131            (c) nonlapsing authority is granted under Section 63J-1-603.

3132 (3) Each legislative appropriations subcommittee shall review the accounts and funds  
3133 that have been granted nonlapsing authority under this section or Section 63J-1-603.

3134 Section 31. **Intent language regarding lapsing of money.**

3135 It is the intent of the Legislature that money received by the Insurance Department  
3136 during fiscal year 2009-10 under the following shall be considered dedicated credits and in  
3137 closing out fiscal year 2009-10 the unspent dedicated credits shall lapse to the appropriate  
3138 restricted account created by the amendments made by this bill:

3139 (1) Section 31A-3-104;

3140 (2) Section 31A-3-304 (Superseded 07/01/10);

3141 (3) Subsection 31A-16-103(3);

3142 (4) Subsection 31A-23a-105(3);

3143 (5) Section 31A-23a-415;

3144 (6) Subsection 31A-25-203(3); and

3145 (7) Subsection 31A-26-203(3).

3146 Section 32. **Effective date.**

3147 This bill takes effect on May 11, 2010, except the amendments in this bill to Section  
3148 31A-3-304 (Effective 07/01/10) take effect on July 1, 2010.