

INSURANCE MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill modifies the Insurance Code.

Highlighted Provisions:

This bill:

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



- 28 • providing for receivership;
- 29 • providing for recovery;
- 30 • allowing revocation, suspension, or renewal of insurers license;
- 31 • granting rulemaking authority and authority to issue orders;
- 32 • addressing judicial review and mandamus;
- 33 • addressing conflicts with other laws; and
- 34 • providing for severability;
- 35 ▶ enacts the Own Risk and Solvency Assessment Act, including:
 - 36 • providing the scope of the chapter;
 - 37 • defining terms;
 - 38 • requiring a risk management framework;
 - 39 • requiring own risk and solvency assessments to be conducted;
 - 40 • requiring reporting;
 - 41 • providing for exemptions;
 - 42 • addressing confidentiality of information;
 - 43 • imposing sanctions; and
 - 44 • providing for severability;
- 45 ▶ modifies exemption from conversion privileges for insured former spouse;
- 46 ▶ modifies definition of "Medicare Supplement Policy";
- 47 ▶ modifies definitions related to licensing;
- 48 ▶ addresses license lapse and voluntary surrender;
- 49 ▶ amends unfair marketing practices to include the use of certain names;
- 50 ▶ addresses continuing education requirements for navigators;
- 51 ▶ requires third party administrator to maintain with the commissioner certain
- 52 information related to place of business and contact information;
- 53 ▶ addresses receiver's compliance with financial reporting requirements;
- 54 ▶ restricts subrogation rights against an insolvent insurer's insured;
- 55 ▶ modifies definition provisions related to captive insurance companies;
- 56 ▶ addresses commissioner's ability to adopt rules related to waiver or modification of
- 57 certain public notice or hearings related to captive insurance companies;
- 58 ▶ includes certificate of organization as a document used to apply for a certificate of

- 59 authority;
- 60 ▶ addresses requirements for a captive insurance company to conduct insurance
- 61 business in this state;
- 62 ▶ provides for a limited liability company being a captive insurance company;
- 63 ▶ modifies capital requirements for captive insurance companies;
- 64 ▶ repeals language related to capital stock of a captive insurance company;
- 65 ▶ addresses when a captive insurance company can provide reinsurance;
- 66 ▶ addresses conversion or merger of a captive insurance company;
- 67 ▶ provides for a sponsored cell captive insurance company;
- 68 ▶ addresses fees to be paid by a protected cell captive insurance company;
- 69 ▶ modifies requirements for sponsored captive insurance companies;
- 70 ▶ clarifies participants in sponsored captive insurance companies;
- 71 ▶ addresses reporting requirements for sponsored cell captive insurance companies;
- 72 ▶ modifies the timing of examinations;
- 73 ▶ repeals free surplus provisions related to captive insurance companies;
- 74 ▶ repeals provisions related to a captive reinsurance company;
- 75 ▶ addresses stop-loss insurance coverage standards; and
- 76 ▶ makes technical and conforming amendments.

77 **Money Appropriated in this Bill:**

78 None

79 **Other Special Clauses:**

80 This bill provides a special effective date.

81 **Utah Code Sections Affected:**

82 AMENDS:

83 **31A-1-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300

84 **31A-3-304 (Effective 07/01/15)**, as last amended by Laws of Utah 2014, Chapters 290

85 and 300

86 **31A-16-103**, as last amended by Laws of Utah 2014, Chapters 290 and 300

87 **31A-16-105**, as last amended by Laws of Utah 2007, Chapter 306

88 **31A-16-106**, as last amended by Laws of Utah 2010, Chapter 324

89 **31A-16-109**, as last amended by Laws of Utah 1987, Chapter 91

- 90 **31A-22-612**, as last amended by Laws of Utah 2013, Chapter 319
- 91 **31A-22-620**, as last amended by Laws of Utah 2009, Chapter 349
- 92 **31A-23a-102**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 93 **31A-23a-113**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 94 **31A-23a-402**, as last amended by Laws of Utah 2013, Chapter 319
- 95 **31A-23b-206**, as last amended by Laws of Utah 2014, Chapters 290, 300, 425 and last
- 96 amended by Coordination Clause, Laws of Utah 2014, Chapters 300, and 425
- 97 **31A-27a-116**, as last amended by Laws of Utah 2008, Chapter 382
- 98 **31A-28-213**, as last amended by Laws of Utah 2007, Chapter 309
- 99 **31A-37-102**, as last amended by Laws of Utah 2008, Chapter 302
- 100 **31A-37-106**, as last amended by Laws of Utah 2011, Chapter 297
- 101 **31A-37-202**, as last amended by Laws of Utah 2011, Chapters 284 and 297
- 102 **31A-37-204**, as last amended by Laws of Utah 2004, Chapter 312
- 103 **31A-37-301**, as last amended by Laws of Utah 2011, Chapter 297
- 104 **31A-37-302**, as last amended by Laws of Utah 2011, Chapter 297
- 105 **31A-37-303**, as enacted by Laws of Utah 2003, Chapter 251
- 106 **31A-37-306**, as last amended by Laws of Utah 2011, Chapter 297
- 107 **31A-37-401**, as enacted by Laws of Utah 2003, Chapter 251
- 108 **31A-37-402**, as last amended by Laws of Utah 2011, Chapter 297
- 109 **31A-37-403**, as last amended by Laws of Utah 2004, Chapter 312
- 110 **31A-37-404**, as enacted by Laws of Utah 2004, Chapter 312
- 111 **31A-37-501**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 112 **31A-37-502**, as last amended by Laws of Utah 2009, Chapter 349
- 113 **31A-37-505**, as enacted by Laws of Utah 2003, Chapter 251
- 114 **31A-43-301**, as last amended by Laws of Utah 2014, Chapters 290 and 300

115 ENACTS:

- 116 **31A-16-102.5**, Utah Code Annotated 1953
- 117 **31A-16-104.5**, Utah Code Annotated 1953
- 118 **31A-16-108.5**, Utah Code Annotated 1953
- 119 **31A-16-112**, Utah Code Annotated 1953
- 120 **31A-16-113**, Utah Code Annotated 1953

- 121 [31A-16-114](#), Utah Code Annotated 1953
- 122 [31A-16-115](#), Utah Code Annotated 1953
- 123 [31A-16-116](#), Utah Code Annotated 1953
- 124 [31A-16-117](#), Utah Code Annotated 1953
- 125 [31A-16-118](#), Utah Code Annotated 1953
- 126 [31A-16-119](#), Utah Code Annotated 1953
- 127 [31A-16a-101](#), Utah Code Annotated 1953
- 128 [31A-16a-102](#), Utah Code Annotated 1953
- 129 [31A-16a-103](#), Utah Code Annotated 1953
- 130 [31A-16a-104](#), Utah Code Annotated 1953
- 131 [31A-16a-105](#), Utah Code Annotated 1953
- 132 [31A-16a-106](#), Utah Code Annotated 1953
- 133 [31A-16a-107](#), Utah Code Annotated 1953
- 134 [31A-16a-108](#), Utah Code Annotated 1953
- 135 [31A-16a-109](#), Utah Code Annotated 1953
- 136 [31A-16a-110](#), Utah Code Annotated 1953
- 137 [31A-25-302.5](#), Utah Code Annotated 1953

138 RENUMBERS AND AMENDS:

139 [31A-16-107.5](#), (Renumbered from 31A-16-108, as enacted by Laws of Utah 1985,
140 Chapter 242)

141 REPEALS:

- 142 [31A-37-205](#), as last amended by Laws of Utah 2004, Chapter 312
- 143 [31A-37-601](#), as last amended by Laws of Utah 2011, Chapter 297
- 144 [31A-37-602](#), as last amended by Laws of Utah 2008, Chapters 302 and 382
- 145 [31A-37-603](#), as last amended by Laws of Utah 2008, Chapter 302
- 146 [31A-37-604](#), as enacted by Laws of Utah 2004, Chapter 312



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

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

150 **31A-1-301. Definitions.**

151 As used in this title, unless otherwise specified:

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

154 (i) a medical condition including:

155 (A) a medical care expense; or

156 (B) the risk of disability;

157 (ii) accident; or

158 (iii) sickness.

159 (b) "Accident and health insurance":

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

161 (A) an income replacement contract;

162 (B) a health care contract;

163 (C) an expense reimbursement contract;

164 (D) a credit accident and health contract;

165 (E) a continuing care contract; and

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

167 (ii) may provide:

168 (A) hospital coverage;

169 (B) surgical coverage;

170 (C) medical coverage;

171 (D) loss of income coverage;

172 (E) prescription drug coverage;

173 (F) dental coverage; or

174 (G) vision coverage.

175 (c) "Accident and health insurance" does not include workers' compensation insurance.

176 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
177 63G, Chapter 3, Utah Administrative Rulemaking Act.

178 (3) "Administrator" is defined in Subsection [~~(164)~~] (166).

179 (4) "Adult" means an individual who has attained the age of at least 18 years.

180 (5) "Affiliate" means a person who controls, is controlled by, or is under common
181 control with, another person. A corporation is an affiliate of another corporation, regardless of
182 ownership, if substantially the same group of individuals manage the corporations.

- 183 (6) "Agency" means:
- 184 (a) a person other than an individual, including a sole proprietorship by which an
185 individual does business under an assumed name; and
- 186 (b) an insurance organization licensed or required to be licensed under Section
187 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).
- 188 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 189 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 190 (9) "Annuity" means an agreement to make periodical payments for a period certain or
191 over the lifetime of one or more individuals if the making or continuance of all or some of the
192 series of the payments, or the amount of the payment, is dependent upon the continuance of
193 human life.
- 194 (10) "Application" means a document:
- 195 (a) (i) completed by an applicant to provide information about the risk to be insured;
196 and
- 197 (ii) that contains information that is used by the insurer to evaluate risk and decide
198 whether to:
- 199 (A) insure the risk under:
- 200 (I) the coverage as originally offered; or
- 201 (II) a modification of the coverage as originally offered; or
- 202 (B) decline to insure the risk; or
- 203 (b) used by the insurer to gather information from the applicant before issuance of an
204 annuity contract.
- 205 (11) "Articles" or "articles of incorporation" means:
- 206 (a) the original articles;
- 207 (b) a special law;
- 208 (c) a charter;
- 209 (d) an amendment;
- 210 (e) restated articles;
- 211 (f) articles of merger or consolidation;
- 212 (g) a trust instrument;
- 213 (h) another constitutive document for a trust or other entity that is not a corporation;

214 and

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

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

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

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

222 (a) without individual underwriting or application; and

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

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

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

227 (a) that is open to the public;

228 (b) that is staffed during regular business hours on regular business days; and

229 (c) at which the public may appear in person to obtain services.

230 (17) "Business entity" means:

231 (a) a corporation;

232 (b) an association;

233 (c) a partnership;

234 (d) a limited liability company;

235 (e) a limited liability partnership; or

236 (f) another legal entity.

237 (18) "Business of insurance" is defined in Subsection [~~(88)~~] (89).

238 (19) "Business plan" means the information required to be supplied to the
239 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
240 when these subsections apply by reference under:

241 (a) Section 31A-7-201;

242 (b) Section 31A-8-205; or

243 (c) Subsection 31A-9-205(2).

244 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a

245 corporation's affairs, however designated.

246 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
247 corporation.

248 (21) "Captive insurance company" means:

249 (a) an insurer:

250 (i) owned by another organization; and

251 (ii) whose exclusive purpose is to insure risks of the parent organization and an
252 affiliated company; or

253 (b) in the case of a group or association, an insurer:

254 (i) owned by the insureds; and

255 (ii) whose exclusive purpose is to insure risks of:

256 (A) a member organization;

257 (B) a group member; or

258 (C) an affiliate of:

259 (I) a member organization; or

260 (II) a group member.

261 (22) "Casualty insurance" means liability insurance.

262 (23) "Certificate" means evidence of insurance given to:

263 (a) an insured under a group insurance policy; or

264 (b) a third party.

265 (24) "Certificate of authority" is included within the term "license."

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

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

271 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
272 commissioner.

273 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
274 supervisory official of another jurisdiction.

275 (28) (a) "Continuing care insurance" means insurance that:

276 (i) provides board and lodging;
277 (ii) provides one or more of the following:
278 (A) a personal service;
279 (B) a nursing service;
280 (C) a medical service; or
281 (D) any other health-related service; and
282 (iii) provides the coverage described in this Subsection (28)(a) under an agreement
283 effective:
284 (A) for the life of the insured; or
285 (B) for a period in excess of one year.
286 (b) Insurance is continuing care insurance regardless of whether or not the board and
287 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).
288 (29) (a) "Control," "controlling," "controlled," or "under common control" means the
289 direct or indirect possession of the power to direct or cause the direction of the management
290 and policies of a person. This control may be:
291 (i) by contract;
292 (ii) by common management;
293 (iii) through the ownership of voting securities; or
294 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).
295 (b) There is no presumption that an individual holding an official position with another
296 person controls that person solely by reason of the position.
297 (c) A person having a contract or arrangement giving control is considered to have
298 control despite the illegality or invalidity of the contract or arrangement.
299 (d) There is a rebuttable presumption of control in a person who directly or indirectly
300 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
301 voting securities of another person.
302 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly
303 controlled by a producer.
304 (31) "Controlling person" means a person that directly or indirectly has the power to
305 direct or cause to be directed, the management, control, or activities of a reinsurance
306 intermediary.

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

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

310 (i) a corporation doing business:

311 (A) as:

312 (I) an insurance producer;

313 (II) a surplus lines producer;

314 (III) a limited line producer;

315 (IV) a consultant;

316 (V) a managing general agent;

317 (VI) a reinsurance intermediary;

318 (VII) a third party administrator; or

319 (VIII) an adjuster; and

320 (B) under:

321 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

322 Reinsurance Intermediaries;

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

324 (III) Chapter 26, Insurance Adjusters; or

325 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance

326 Holding Companies.

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

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

329 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations

330 adopted pursuant to the Health Insurance Portability and Accountability Act.

331 (b) "Creditable coverage" includes coverage that is offered through a public health plan

332 such as:

333 (i) the Primary Care Network Program under a Medicaid primary care network

334 demonstration waiver obtained subject to Section [26-18-3](#);

335 (ii) the Children's Health Insurance Program under Section [26-40-106](#); or

336 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.

337 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

338 (35) "Credit accident and health insurance" means insurance on a debtor to provide
339 indemnity for payments coming due on a specific loan or other credit transaction while the
340 debtor has a disability.

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

343 (b) "Credit insurance" includes:

- 344 (i) credit accident and health insurance;
- 345 (ii) credit life insurance;
- 346 (iii) credit property insurance;
- 347 (iv) credit unemployment insurance;
- 348 (v) guaranteed automobile protection insurance;
- 349 (vi) involuntary unemployment insurance;
- 350 (vii) mortgage accident and health insurance;
- 351 (viii) mortgage guaranty insurance; and
- 352 (ix) mortgage life insurance.

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

355 [~~(40)~~] (38) "Creditor" means a person, including an insured, having a claim, whether:

- 356 (a) matured;
- 357 (b) unmatured;
- 358 (c) liquidated;
- 359 (d) unliquidated;
- 360 (e) secured;
- 361 (f) unsecured;
- 362 (g) absolute;
- 363 (h) fixed; or
- 364 (i) contingent.

365 (39) "Credit unemployment insurance" means insurance:

- 366 (a) offered in connection with an extension of credit; and
- 367 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
368 (i) specific loan; or

369 (ii) credit transaction.

370 [~~38~~] (40) "Credit property insurance" means insurance:

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

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

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

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

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

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

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

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

382 (A) producer;

383 (B) surplus lines producer; or

384 (C) consultant employer; and

385 (ii) to the customer service representative's employer's:

386 (A) customer;

387 (B) client; or

388 (C) organization.

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

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

392 (a) imposed by:

393 (i) statute;

394 (ii) rule; or

395 (iii) order; and

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

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

400 take a specific action.

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

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

405 (47) "Director" means a member of the board of directors of a corporation.

406 (48) "Disability" means a physiological or psychological condition that partially or
407 totally limits an individual's ability to:

408 (a) perform the duties of:

409 (i) that individual's occupation; or

410 (ii) an occupation for which the individual is reasonably suited by education, training,
411 or experience; or

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

413 (i) eating;

414 (ii) toileting;

415 (iii) transferring;

416 (iv) bathing; or

417 (v) dressing.

418 (49) "Disability income insurance" is defined in Subsection [~~(79)~~] (80).

419 (50) "Domestic insurer" means an insurer organized under the laws of this state.

420 (51) "Domiciliary state" means the state in which an insurer:

421 (a) is incorporated;

422 (b) is organized; or

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

424 (52) (a) "Eligible employee" means:

425 (i) an employee who:

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

427 (B) has a normal work week of 30 or more hours; or

428 (ii) a person described in Subsection (52)(b).

429 (b) "Eligible employee" includes, if the individual is included under a health benefit
430 plan of a small employer:

- 431 (i) a sole proprietor;
- 432 (ii) a partner in a partnership; or
- 433 (iii) an independent contractor.
- 434 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
- 435 (i) an individual who works on a temporary or substitute basis for a small employer;
- 436 (ii) an employer's spouse; or
- 437 (iii) a dependent of an employer.
- 438 (53) "Employee" means an individual employed by an employer.
- 439 (54) "Employee benefits" means one or more benefits or services provided to:
- 440 (a) an employee; or
- 441 (b) a dependent of an employee.
- 442 (55) (a) "Employee welfare fund" means a fund:
- 443 (i) established or maintained, whether directly or through a trustee, by:
- 444 (A) one or more employers;
- 445 (B) one or more labor organizations; or
- 446 (C) a combination of employers and labor organizations; and
- 447 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 448 from investments of the fund:
- 449 (A) by or on behalf of an employer doing business in this state; or
- 450 (B) for the benefit of a person employed in this state.
- 451 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 452 revenues.
- 453 (56) "Endorsement" means a written agreement attached to a policy or certificate to
- 454 modify the policy or certificate coverage.
- 455 (57) "Enrollment date," with respect to a health benefit plan, means:
- 456 (a) the first day of coverage; or
- 457 (b) if there is a waiting period, the first day of the waiting period.
- 458 (58) "Enterprise risk" means an activity, circumstance, event, or series of events
- 459 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
- 460 material adverse effect upon the financial condition or liquidity of the insurer or its insurance
- 461 holding company system as a whole, including anything that would cause:

462 (a) the insurer's risk-based capital to fall into an action or control level as set forth in
463 Sections 31A-17-601 through 31A-17-613; or

464 (b) the insurer to be in hazardous financial condition set forth in Section 31A-27a-101.

465 [~~58~~] (59) (a) "Escrow" means:

466 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
467 when a person not a party to the transaction, and neither having nor acquiring an interest in the
468 title, performs, in accordance with the written instructions or terms of the written agreement
469 between the parties to the transaction, any of the following actions:

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

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

472 (ii) a settlement or closing involving:

473 (A) a mobile home;

474 (B) a grazing right;

475 (C) a water right; or

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

477 (b) "Escrow" does not include:

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

479 (A) an acknowledgment;

480 (B) a copy certification;

481 (C) jurat; and

482 (D) an oath or affirmation;

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

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

485 [~~59~~] (60) "Escrow agent" means an agency title insurance producer meeting the
486 requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an
487 individual title insurance producer licensed with an escrow subline of authority.

488 [~~60~~] (61) (a) "Excludes" is not exhaustive and does not mean that another thing is not
489 also excluded.

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

492 [~~61~~] (62) "Exclusion" means for the purposes of accident and health insurance that an

493 insurer does not provide insurance coverage, for whatever reason, for one of the following:

- 494 (a) a specific physical condition;
- 495 (b) a specific medical procedure;
- 496 (c) a specific disease or disorder; or
- 497 (d) a specific prescription drug or class of prescription drugs.

498 ~~[(62)]~~ (63) "Expense reimbursement insurance" means insurance:

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

501 (b) written:

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

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

504 ~~[(63)]~~ (64) "Fidelity insurance" means insurance guaranteeing the fidelity of a person
505 holding a position of public or private trust.

506 ~~[(64)]~~ (65) (a) "Filed" means that a filing is:

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

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

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

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

513 (B) rule.

514 (b) "Filed" does not include a filing that is rejected by the department because it is not
515 submitted in accordance with Subsection ~~[(64)]~~ (65)(a).

516 ~~[(65)]~~ (66) "Filing," when used as a noun, means an item required to be filed with the
517 department including:

518 (a) a policy;

519 (b) a rate;

520 (c) a form;

521 (d) a document;

522 (e) a plan;

523 (f) a manual;

- 524 (g) an application;
- 525 (h) a report;
- 526 (i) a certificate;
- 527 (j) an endorsement;
- 528 (k) an actuarial certification;
- 529 (l) a licensee annual statement;
- 530 (m) a licensee renewal application;
- 531 (n) an advertisement; ~~[or]~~
- 532 (o) a binder; or
- 533 ~~[(o)]~~ (p) an outline of coverage.

534 ~~[(66)]~~ (67) "First party insurance" means an insurance policy or contract in which the
535 insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

536 ~~[(67)]~~ (68) "Foreign insurer" means an insurer domiciled outside of this state, including
537 an alien insurer.

538 ~~[(68)]~~ (69) (a) "Form" means one of the following prepared for general use:

- 539 (i) a policy;
- 540 (ii) a certificate;
- 541 (iii) an application;
- 542 (iv) an outline of coverage; or
- 543 (v) an endorsement.

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

546 ~~[(69)]~~ (70) "Franchise insurance" means an individual insurance policy provided
547 through a mass marketing arrangement involving a defined class of persons related in some
548 way other than through the purchase of insurance.

549 ~~[(70)]~~ (71) "General lines of authority" include:

- 550 (a) the general lines of insurance in Subsection ~~[(71)]~~ (72);
- 551 (b) title insurance under one of the following sublines of authority:
 - 552 (i) search, including authority to act as a title marketing representative;
 - 553 (ii) escrow, including authority to act as a title marketing representative; and
 - 554 (iii) title marketing representative only;

555 (c) surplus lines;
556 (d) workers' compensation; and
557 (e) another line of insurance that the commissioner considers necessary to recognize in
558 the public interest.

559 [~~(71)~~] (72) "General lines of insurance" include:

560 (a) accident and health;
561 (b) casualty;
562 (c) life;
563 (d) personal lines;
564 (e) property; and
565 (f) variable contracts, including variable life and annuity.

566 [~~(72)~~] (73) "Group health plan" means an employee welfare benefit plan to the extent
567 that the plan provides medical care:

568 (a) (i) to an employee; or
569 (ii) to a dependent of an employee; and
570 (b) (i) directly;
571 (ii) through insurance reimbursement; or
572 (iii) through another method.

573 [~~(73)~~] (74) (a) "Group insurance policy" means a policy covering a group of persons
574 that is issued:

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

577 in:

578 (A) the policy; or
579 (B) an agreement that is collateral to the policy.

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

582 [~~(74)~~] (75) "Guaranteed automobile protection insurance" means insurance offered in
583 connection with an extension of credit that pays the difference in amount between the
584 insurance settlement and the balance of the loan if the insured automobile is a total loss.

585 [~~(75)~~] (76) (a) Except as provided in Subsection [~~(75)~~] (76)(b), "health benefit plan"

586 means a policy or certificate that:

- 587 (i) provides health care insurance;
- 588 (ii) provides major medical expense insurance; or
- 589 (iii) is offered as a substitute for hospital or medical expense insurance, such as:
 - 590 (A) a hospital confinement indemnity; or
 - 591 (B) a limited benefit plan.

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

- 593 (i) provides benefits solely for:
 - 594 (A) accident;
 - 595 (B) dental;
 - 596 (C) income replacement;
 - 597 (D) long-term care;
 - 598 (E) a Medicare supplement;
 - 599 (F) a specified disease;
 - 600 (G) vision; or
 - 601 (H) a short-term limited duration; or

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

603 [~~76~~] (77) "Health care" means any of the following intended for use in the diagnosis,
604 treatment, mitigation, or prevention of a human ailment or impairment:

- 605 (a) a professional service;
- 606 (b) a personal service;
- 607 (c) a facility;
- 608 (d) equipment;
- 609 (e) a device;
- 610 (f) supplies; or
- 611 (g) medicine.

612 [~~77~~] (78) (a) "Health care insurance" or "health insurance" means insurance
613 providing:

- 614 (i) a health care benefit; or
- 615 (ii) payment of an incurred health care expense.
- 616 (b) "Health care insurance" or "health insurance" does not include accident and health

617 insurance providing a benefit for:

- 618 (i) replacement of income;
- 619 (ii) short-term accident;
- 620 (iii) fixed indemnity;
- 621 (iv) credit accident and health;
- 622 (v) supplements to liability;
- 623 (vi) workers' compensation;
- 624 (vii) automobile medical payment;
- 625 (viii) no-fault automobile;
- 626 (ix) equivalent self-insurance; or
- 627 (x) a type of accident and health insurance coverage that is a part of or attached to
- 628 another type of policy.

629 ~~[(78)]~~ (79) "Health Insurance Portability and Accountability Act" means the Health
630 Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as
631 amended.

632 ~~[(79)]~~ (80) "Income replacement insurance" or "disability income insurance" means
633 insurance written to provide payments to replace income lost from accident or sickness.

634 ~~[(80)]~~ (81) "Indemnity" means the payment of an amount to offset all or part of an
635 insured loss.

636 ~~[(81)]~~ (82) "Independent adjuster" means an insurance adjuster required to be licensed
637 under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

638 ~~[(82)]~~ (83) "Independently procured insurance" means insurance procured under
639 Section 31A-15-104.

640 ~~[(83)]~~ (84) "Individual" means a natural person.

641 ~~[(84)]~~ (85) "Inland marine insurance" includes insurance covering:

- 642 (a) property in transit on or over land;
- 643 (b) property in transit over water by means other than boat or ship;
- 644 (c) bailee liability;
- 645 (d) fixed transportation property such as bridges, electric transmission systems, radio
- 646 and television transmission towers and tunnels; and
- 647 (e) personal and commercial property floaters.

648 [~~(85)~~] (86) "Insolvency" means that:

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

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

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

654 [~~(86)~~] (87) (a) "Insurance" means:

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

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

659 (b) "Insurance" includes:

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

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

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

666 [~~(87)~~] (88) "Insurance adjuster" means a person who directs or conducts the
667 investigation, negotiation, or settlement of a claim under an insurance policy other than life
668 insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance
669 policy.

670 [~~(88)~~] (89) "Insurance business" or "business of insurance" includes:

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

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

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

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

678 (c) providing an annuity:

- 679 (i) including an annuity issued in return for a gift; and
680 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
681 and (3);
- 682 (d) providing the characteristic services of a motor club as outlined in Subsection
683 [~~(116)~~] (117);
- 684 (e) providing another person with insurance;
- 685 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
686 or surety, a contract or policy of title insurance;
- 687 (g) transacting or proposing to transact any phase of title insurance, including:
688 (i) solicitation;
689 (ii) negotiation preliminary to execution;
690 (iii) execution of a contract of title insurance;
691 (iv) insuring; and
692 (v) transacting matters subsequent to the execution of the contract and arising out of
693 the contract, including reinsurance;
- 694 (h) transacting or proposing a life settlement; and
695 (i) doing, or proposing to do, any business in substance equivalent to Subsections
696 [~~(88)~~] (89)(a) through (h) in a manner designed to evade this title.
- 697 [~~(89)~~] (90) "Insurance consultant" or "consultant" means a person who:
698 (a) advises another person about insurance needs and coverages;
699 (b) is compensated by the person advised on a basis not directly related to the insurance
700 placed; and
701 (c) except as provided in Section 31A-23a-501, is not compensated directly or
702 indirectly by an insurer or producer for advice given.
- 703 [~~(90)~~] (91) "Insurance holding company system" means a group of two or more
704 affiliated persons, at least one of whom is an insurer.
- 705 [~~(91)~~] (92) (a) "Insurance producer" or "producer" means a person licensed or required
706 to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
707 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
708 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
709 insurer.

- 710 (ii) "Producer for the insurer" may be referred to as an "agent."
- 711 (c) (i) "Producer for the insured" means a producer who:
 - 712 (A) is compensated directly and only by an insurance customer or an insured; and
 - 713 (B) receives no compensation directly or indirectly from an insurer for selling,
 - 714 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
 - 715 insured.
- 716 (ii) "Producer for the insured" may be referred to as a "broker."
- 717 ~~[(92)]~~ (93) (a) "Insured" means a person to whom or for whose benefit an insurer
- 718 makes a promise in an insurance policy and includes:
 - 719 (i) a policyholder;
 - 720 (ii) a subscriber;
 - 721 (iii) a member; and
 - 722 (iv) a beneficiary.
- 723 (b) The definition in Subsection ~~[(92)]~~ (93)(a):
 - 724 (i) applies only to this title; and
 - 725 (ii) does not define the meaning of this word as used in an insurance policy or
 - 726 certificate.
- 727 ~~[(93)]~~ (94) (a) "Insurer" means a person doing an insurance business as a principal
- 728 including:
 - 729 (i) a fraternal benefit society;
 - 730 (ii) an issuer of a gift annuity other than an annuity specified in Subsections
 - 731 [31A-22-1305](#)(2) and (3);
 - 732 (iii) a motor club;
 - 733 (iv) an employee welfare plan; and
 - 734 (v) a person purporting or intending to do an insurance business as a principal on that
 - 735 person's own account.
- 736 (b) "Insurer" does not include a governmental entity to the extent the governmental
- 737 entity is engaged in an activity described in Section [31A-12-107](#).
- 738 ~~[(94)]~~ (95) "Interinsurance exchange" is defined in Subsection ~~[(147)]~~ (148).
- 739 ~~[(95)]~~ (96) "Involuntary unemployment insurance" means insurance:
 - 740 (a) offered in connection with an extension of credit; and

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

743 (i) specific loan; or

744 (ii) credit transaction.

745 [~~96~~] (97) "Large employer," in connection with a health benefit plan, means an
746 employer who, with respect to a calendar year and to a plan year:

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

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

750 [~~97~~] (98) "Late enrollee," with respect to an employer health benefit plan, means an
751 individual whose enrollment is a late enrollment.

752 [~~98~~] (99) "Late enrollment," with respect to an employer health benefit plan, means
753 enrollment of an individual other than:

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

756 (b) through special enrollment.

757 [~~99~~] (100) (a) Except for a retainer contract or legal assistance described in Section
758 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
759 specified legal expense.

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

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

764 [~~100~~] (101) (a) "Liability insurance" means insurance against liability:

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

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

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

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

770 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
771 insured who is injured, irrespective of legal liability of the insured, when issued with or

772 supplemental to insurance against legal liability for the death, injury, or disability of a human
773 being, exclusive of the coverages under:

- 774 (A) Subsection [~~(110)~~] (111) for medical malpractice insurance;
- 775 (B) Subsection [~~(138)~~] (139) for professional liability insurance; and
- 776 (C) Subsection [~~(173)~~] (175) for workers' compensation insurance;
- 777 (iii) for loss or damage to property resulting from an accident to or explosion of a
778 boiler, pipe, pressure container, machinery, or apparatus;
- 779 (iv) for loss or damage to property caused by:
 - 780 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
 - 781 (B) water entering through a leak or opening in a building; or
 - 782 (v) for other loss or damage properly the subject of insurance not within another kind
783 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

- 784 (b) "Liability insurance" includes:
 - 785 (i) vehicle liability insurance;
 - 786 (ii) residential dwelling liability insurance; and
 - 787 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
788 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
789 elevator, boiler, machinery, or apparatus.

790 [~~(101)~~] (102) (a) "License" means authorization issued by the commissioner to engage
791 in an activity that is part of or related to the insurance business.

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

793 [~~(102)~~] (103) (a) "Life insurance" means:

- 794 (i) insurance on a human life; and
- 795 (ii) insurance pertaining to or connected with human life.

796 (b) The business of life insurance includes:

- 797 (i) granting a death benefit;
- 798 (ii) granting an annuity benefit;
- 799 (iii) granting an endowment benefit;
- 800 (iv) granting an additional benefit in the event of death by accident;
- 801 (v) granting an additional benefit to safeguard the policy against lapse; and
- 802 (vi) providing an optional method of settlement of proceeds.

803 [~~(103)~~] (104) "Limited license" means a license that:

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

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

806 [~~(104)~~] (105) "Limited line credit insurance" includes the following forms of

807 insurance:

808 (a) credit life;

809 (b) credit accident and health;

810 (c) credit property;

811 (d) credit unemployment;

812 (e) involuntary unemployment;

813 (f) mortgage life;

814 (g) mortgage guaranty;

815 (h) mortgage accident and health;

816 (i) guaranteed automobile protection; and

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

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

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

821 [~~(105)~~] (106) "Limited line credit insurance producer" means a person who sells,

822 solicits, or negotiates one or more forms of limited line credit insurance coverage to an

823 individual through a master, corporate, group, or individual policy.

824 [~~(106)~~] (107) "Limited line insurance" includes:

825 (a) bail bond;

826 (b) limited line credit insurance;

827 (c) legal expense insurance;

828 (d) motor club insurance;

829 (e) car rental related insurance;

830 (f) travel insurance;

831 (g) crop insurance;

832 (h) self-service storage insurance;

833 (i) guaranteed asset protection waiver;

834 (j) portable electronics insurance; and
835 (k) another form of limited insurance that the commissioner determines by rule should
836 be designated a form of limited line insurance.

837 [~~(107)~~] (108) "Limited lines authority" includes the lines of insurance listed in
838 Subsection [~~(106)~~] (107).

839 [~~(108)~~] (109) "Limited lines producer" means a person who sells, solicits, or negotiates
840 limited lines insurance.

841 [~~(109)~~] (110) (a) "Long-term care insurance" means an insurance policy or rider
842 advertised, marketed, offered, or designated to provide coverage:

- 843 (i) in a setting other than an acute care unit of a hospital;
- 844 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 845 (A) expenses incurred;
 - 846 (B) indemnity;
 - 847 (C) prepayment; or
 - 848 (D) another method;
- 849 (iii) for one or more necessary or medically necessary services that are:
 - 850 (A) diagnostic;
 - 851 (B) preventative;
 - 852 (C) therapeutic;
 - 853 (D) rehabilitative;
 - 854 (E) maintenance; or
 - 855 (F) personal care; and
- 856 (iv) that may be issued by:
 - 857 (A) an insurer;
 - 858 (B) a fraternal benefit society;
 - 859 (C) (I) a nonprofit health hospital; and
 - 860 (II) a medical service corporation;
 - 861 (D) a prepaid health plan;
 - 862 (E) a health maintenance organization; or
 - 863 (F) an entity similar to the entities described in Subsections [~~(109)~~] (110)(a)(iv)(A)
 - 864 through (E) to the extent that the entity is otherwise authorized to issue life or health care

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

896 incident to the practice and provision of a medical service other than the practice and provision
897 of a dental service.

898 [~~(111)~~] (112) "Member" means a person having membership rights in an insurance
899 corporation.

900 [~~(112)~~] (113) "Minimum capital" or "minimum required capital" means the capital that
901 must be constantly maintained by a stock insurance corporation as required by statute.

902 [~~(113)~~] (114) "Mortgage accident and health insurance" means insurance offered in
903 connection with an extension of credit that provides indemnity for payments coming due on a
904 mortgage while the debtor has a disability.

905 [~~(114)~~] (115) "Mortgage guaranty insurance" means surety insurance under which a
906 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

907 [~~(115)~~] (116) "Mortgage life insurance" means insurance on the life of a debtor in
908 connection with an extension of credit that pays if the debtor dies.

909 [~~(116)~~] (117) "Motor club" means a person:

910 (a) licensed under:

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

912 (ii) Chapter 11, Motor Clubs; or

913 (iii) Chapter 14, Foreign Insurers; and

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

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

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

918 (iii) (A) trip reimbursement;

919 (B) towing services;

920 (C) emergency road services;

921 (D) stolen automobile services;

922 (E) a combination of the services listed in Subsections [~~(116)~~] (117)(b)(iii)(A) through
923 (D); or

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

925 [~~(117)~~] (118) "Mutual" means a mutual insurance corporation.

926 [~~(118)~~] (119) "Network plan" means health care insurance:

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

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

931 [~~(119)~~] (120) "Nonparticipating" means a plan of insurance under which the insured is
932 not entitled to receive a dividend representing a share of the surplus of the insurer.

933 [~~(120)~~] (121) "Ocean marine insurance" means insurance against loss of or damage to:

934 (a) ships or hulls of ships;

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

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

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

943 [~~(121)~~] (122) "Order" means an order of the commissioner.

944 [~~(122)~~] (123) "Outline of coverage" means a summary that explains an accident and
945 health insurance policy.

946 [~~(123)~~] (124) "Participating" means a plan of insurance under which the insured is
947 entitled to receive a dividend representing a share of the surplus of the insurer.

948 [~~(124)~~] (125) "Participation," as used in a health benefit plan, means a requirement
949 relating to the minimum percentage of eligible employees that must be enrolled in relation to
950 the total number of eligible employees of an employer reduced by each eligible employee who
951 voluntarily declines coverage under the plan because the employee:

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

953 (b) receives:

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

956 (ii) another government health benefit.

957 [~~(125)~~] (126) "Person" includes:

- 958 (a) an individual;
- 959 (b) a partnership;
- 960 (c) a corporation;
- 961 (d) an incorporated or unincorporated association;
- 962 (e) a joint stock company;
- 963 (f) a trust;
- 964 (g) a limited liability company;
- 965 (h) a reciprocal;
- 966 (i) a syndicate; or
- 967 (j) another similar entity or combination of entities acting in concert.
- 968 [~~(126)~~] (127) "Personal lines insurance" means property and casualty insurance
- 969 coverage sold for primarily noncommercial purposes to:
 - 970 (a) an individual; or
 - 971 (b) a family.
- 972 [~~(127)~~] (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 973 [~~(128)~~] (129) "Plan year" means:
 - 974 (a) the year that is designated as the plan year in:
 - 975 (i) the plan document of a group health plan; or
 - 976 (ii) a summary plan description of a group health plan;
 - 977 (b) if the plan document or summary plan description does not designate a plan year or
 - 978 there is no plan document or summary plan description:
 - 979 (i) the year used to determine deductibles or limits;
 - 980 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 981 or
 - 982 (iii) the employer's taxable year if:
 - 983 (A) the plan does not impose deductibles or limits on a yearly basis; and
 - 984 (B) (I) the plan is not insured; or
 - 985 (II) the insurance policy is not renewed on an annual basis; or
 - 986 (c) in a case not described in Subsection [~~(128)~~] (129)(a) or (b), the calendar year.
- 987 [~~(129)~~] (130) (a) "Policy" means a document, including an attached endorsement or
- 988 application that:

- 989 (i) purports to be an enforceable contract; and
990 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 991 (b) "Policy" includes a service contract issued by:
992 (i) a motor club under Chapter 11, Motor Clubs;
993 (ii) a service contract provided under Chapter 6a, Service Contracts; and
994 (iii) a corporation licensed under:
995 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
996 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
- 997 (c) "Policy" does not include:
998 (i) a certificate under a group insurance contract; or
999 (ii) a document that does not purport to have legal effect.
- 1000 ~~[(130)]~~ (131) "Policyholder" means a person who controls a policy, binder, or oral
1001 contract by ownership, premium payment, or otherwise.
- 1002 ~~[(131)]~~ (132) "Policy illustration" means a presentation or depiction that includes
1003 nonguaranteed elements of a policy of life insurance over a period of years.
- 1004 ~~[(132)]~~ (133) "Policy summary" means a synopsis describing the elements of a life
1005 insurance policy.
- 1006 ~~[(133)]~~ (134) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L.
1007 No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152,
1008 and related federal regulations and guidance.
- 1009 ~~[(134)]~~ (135) "Preexisting condition," with respect to a health benefit plan:
1010 (a) means a condition that was present before the effective date of coverage, whether or
1011 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
1012 and
1013 (b) does not include a condition indicated by genetic information unless an actual
1014 diagnosis of the condition by a physician has been made.
- 1015 ~~[(135)]~~ (136) (a) "Premium" means the monetary consideration for an insurance policy.
1016 (b) "Premium" includes, however designated:
1017 (i) an assessment;
1018 (ii) a membership fee;
1019 (iii) a required contribution; or

1020 (iv) monetary consideration.

1021 (c) (i) "Premium" does not include consideration paid to a third party administrator for
1022 the third party administrator's services.

1023 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1024 insurance on the risks administered by the third party administrator.

1025 [~~(136)~~] (137) "Principal officers" for a corporation means the officers designated under
1026 Subsection 31A-5-203(3).

1027 [~~(137)~~] (138) "Proceeding" includes an action or special statutory proceeding.

1028 [~~(138)~~] (139) "Professional liability insurance" means insurance against legal liability
1029 incident to the practice of a profession and provision of a professional service.

1030 [~~(139)~~] (140) (a) Except as provided in Subsection [~~(139)~~] (140)(b), "property
1031 insurance" means insurance against loss or damage to real or personal property of every kind
1032 and any interest in that property:

1033 (i) from all hazards or causes; and

1034 (ii) against loss consequential upon the loss or damage including vehicle
1035 comprehensive and vehicle physical damage coverages.

1036 (b) "Property insurance" does not include:

1037 (i) inland marine insurance; and

1038 (ii) ocean marine insurance.

1039 [~~(140)~~] (141) "Qualified long-term care insurance contract" or "federally tax qualified
1040 long-term care insurance contract" means:

1041 (a) an individual or group insurance contract that meets the requirements of Section
1042 7702B(b), Internal Revenue Code; or

1043 (b) the portion of a life insurance contract that provides long-term care insurance:

1044 (i) (A) by rider; or

1045 (B) as a part of the contract; and

1046 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1047 Code.

1048 [~~(141)~~] (142) "Qualified United States financial institution" means an institution that:

1049 (a) is:

1050 (i) organized under the laws of the United States or any state; or

- 1051 (ii) in the case of a United States office of a foreign banking organization, licensed
1052 under the laws of the United States or any state;
- 1053 (b) is regulated, supervised, and examined by a United States federal or state authority
1054 having regulatory authority over a bank or trust company; and
- 1055 (c) meets the standards of financial condition and standing that are considered
1056 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1057 will be acceptable to the commissioner as determined by:
- 1058 (i) the commissioner by rule; or
1059 (ii) the Securities Valuation Office of the National Association of Insurance
1060 Commissioners.
- 1061 [~~(142)~~] (143) (a) "Rate" means:
- 1062 (i) the cost of a given unit of insurance; or
1063 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
1064 expressed as:
- 1065 (A) a single number; or
1066 (B) a pure premium rate, adjusted before the application of individual risk variations
1067 based on loss or expense considerations to account for the treatment of:
- 1068 (I) expenses;
1069 (II) profit; and
1070 (III) individual insurer variation in loss experience.
- 1071 (b) "Rate" does not include a minimum premium.
- 1072 [~~(143)~~] (144) (a) Except as provided in Subsection [~~(143)~~] (144)(b), "rate service
1073 organization" means a person who assists an insurer in rate making or filing by:
- 1074 (i) collecting, compiling, and furnishing loss or expense statistics;
1075 (ii) recommending, making, or filing rates or supplementary rate information; or
1076 (iii) advising about rate questions, except as an attorney giving legal advice.
- 1077 (b) "Rate service organization" does not mean:
- 1078 (i) an employee of an insurer;
1079 (ii) a single insurer or group of insurers under common control;
1080 (iii) a joint underwriting group; or
1081 (iv) an individual serving as an actuarial or legal consultant.

1082 [~~(144)~~] (145) "Rating manual" means any of the following used to determine initial and
1083 renewal policy premiums:

- 1084 (a) a manual of rates;
- 1085 (b) a classification;
- 1086 (c) a rate-related underwriting rule; and
- 1087 (d) a rating formula that describes steps, policies, and procedures for determining
1088 initial and renewal policy premiums.

1089 [~~(145)~~] (146) (a) "Rebate" means a licensee paying, allowing, giving, or offering to
1090 pay, allow, or give, directly or indirectly:

- 1091 (i) a refund of premium or portion of premium;
- 1092 (ii) a refund of commission or portion of commission;
- 1093 (iii) a refund of all or a portion of a consultant fee; or
- 1094 (iv) providing services or other benefits not specified in an insurance or annuity
1095 contract.

1096 (b) "Rebate" does not include:

- 1097 (i) a refund due to termination or changes in coverage;
- 1098 (ii) a refund due to overcharges made in error by the licensee; or
- 1099 (iii) savings or wellness benefits as provided in the contract by the licensee.

1100 [~~(146)~~] (147) "Received by the department" means:

- 1101 (a) the date delivered to and stamped received by the department, if delivered in
1102 person;
- 1103 (b) the post mark date, if delivered by mail;
- 1104 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1105 (d) the received date recorded on an item delivered, if delivered by:
 - 1106 (i) facsimile;
 - 1107 (ii) email; or
 - 1108 (iii) another electronic method; or
- 1109 (e) a date specified in:
 - 1110 (i) a statute;
 - 1111 (ii) a rule; or
 - 1112 (iii) an order.

1113 [~~(147)~~] (148) "Reciprocal" or "interinsurance exchange" means an unincorporated
1114 association of persons:

- 1115 (a) operating through an attorney-in-fact common to all of the persons; and
1116 (b) exchanging insurance contracts with one another that provide insurance coverage
1117 on each other.

1118 [~~(148)~~] (149) "Reinsurance" means an insurance transaction where an insurer, for
1119 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1120 reinsurance transactions, this title sometimes refers to:

- 1121 (a) the insurer transferring the risk as the "ceding insurer"; and
1122 (b) the insurer assuming the risk as the:
1123 (i) "assuming insurer"; or
1124 (ii) "assuming reinsurer."

1125 [~~(149)~~] (150) "Reinsurer" means a person licensed in this state as an insurer with the
1126 authority to assume reinsurance.

1127 [~~(150)~~] (151) "Residential dwelling liability insurance" means insurance against
1128 liability resulting from or incident to the ownership, maintenance, or use of a residential
1129 dwelling that is a detached single family residence or multifamily residence up to four units.

1130 [~~(151)~~] (152) (a) "Retrocession" means reinsurance with another insurer of a liability
1131 assumed under a reinsurance contract.

1132 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1133 liability assumed under a reinsurance contract.

1134 [~~(152)~~] (153) "Rider" means an endorsement to:

- 1135 (a) an insurance policy; or
1136 (b) an insurance certificate.

1137 [~~(153)~~] (154) (a) "Security" means a:

- 1138 (i) note;
1139 (ii) stock;
1140 (iii) bond;
1141 (iv) debenture;
1142 (v) evidence of indebtedness;
1143 (vi) certificate of interest or participation in a profit-sharing agreement;

1144 (vii) collateral-trust certificate;
1145 (viii) preorganization certificate or subscription;
1146 (ix) transferable share;
1147 (x) investment contract;
1148 (xi) voting trust certificate;
1149 (xii) certificate of deposit for a security;
1150 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
1151 payments out of production under such a title or lease;
1152 (xiv) commodity contract or commodity option;
1153 (xv) certificate of interest or participation in, temporary or interim certificate for,
1154 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
1155 in Subsections [~~(153)~~] (154)(a)(i) through (xiv); or
1156 (xvi) another interest or instrument commonly known as a security.
1157 (b) "Security" does not include:
1158 (i) any of the following under which an insurance company promises to pay money in a
1159 specific lump sum or periodically for life or some other specified period:
1160 (A) insurance;
1161 (B) an endowment policy; or
1162 (C) an annuity contract; or
1163 (ii) a burial certificate or burial contract.
1164 (155) "Securityholder" means a specified person who owns a security of a person,
1165 including:
1166 (a) common stock;
1167 (b) preferred stock;
1168 (c) debt obligations; and
1169 (d) any other security convertible into or evidencing the right of any of the items listed
1170 in this Subsection (155).
1171 [~~(154)~~] (156) "Secondary medical condition" means a complication related to an
1172 exclusion from coverage in accident and health insurance.
1173 [~~(155)~~] (157) (a) "Self-insurance" means an arrangement under which a person
1174 provides for spreading its own risks by a systematic plan.

1175 (b) Except as provided in this Subsection [~~(155)~~ (157), "self-insurance" does not
1176 include an arrangement under which a number of persons spread their risks among themselves.

1177 (c) "Self-insurance" includes:

1178 (i) an arrangement by which a governmental entity undertakes to indemnify an
1179 employee for liability arising out of the employee's employment; and

1180 (ii) an arrangement by which a person with a managed program of self-insurance and
1181 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
1182 employees for liability or risk that is related to the relationship or employment.

1183 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1184 [~~(156)~~ (158) "Sell" means to exchange a contract of insurance:

1185 (a) by any means;

1186 (b) for money or its equivalent; and

1187 (c) on behalf of an insurance company.

1188 [~~(157)~~ (159) "Short-term care insurance" means an insurance policy or rider
1189 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care
1190 insurance, but that provides coverage for less than 12 consecutive months for each covered
1191 person.

1192 [~~(158)~~ (160) "Significant break in coverage" means a period of 63 consecutive days
1193 during each of which an individual does not have creditable coverage.

1194 [~~(159)~~ (161) "Small employer" means, in connection with a health benefit plan and
1195 with respect to a calendar year and to a plan year, an employer who:

1196 (a) employed at least one employee but not more than an average of 50 eligible
1197 employees on business days during the preceding calendar year; and

1198 (b) employs at least one employee on the first day of the plan year.

1199 [~~(160)~~ (162) "Special enrollment period," in connection with a health benefit plan, has
1200 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1201 Portability and Accountability Act.

1202 [~~(161)~~ (163) (a) "Subsidiary" of a person means an affiliate controlled by that person
1203 either directly or indirectly through one or more affiliates or intermediaries.

1204 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1205 shares are owned by that person either alone or with its affiliates, except for the minimum

1206 number of shares the law of the subsidiary's domicile requires to be owned by directors or
1207 others.

1208 ~~[(162)]~~ (164) Subject to Subsection ~~[(86)]~~ (87)(b), "surety insurance" includes:

1209 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1210 perform the principal's obligations to a creditor or other obligee;

1211 (b) bail bond insurance; and

1212 (c) fidelity insurance.

1213 ~~[(163)]~~ (165) (a) "Surplus" means the excess of assets over the sum of paid-in capital
1214 and liabilities.

1215 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1216 designated by the insurer or organization as permanent.

1217 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require
1218 that insurers or organizations doing business in this state maintain specified minimum levels of
1219 permanent surplus.

1220 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1221 same as the minimum required capital requirement that applies to stock insurers.

1222 (c) "Excess surplus" means:

1223 (i) for a life insurer, accident and health insurer, health organization, or property and
1224 casualty insurer as defined in Section 31A-17-601, the lesser of:

1225 (A) that amount of an insurer's or health organization's total adjusted capital that
1226 exceeds the product of:

1227 (I) 2.5; and

1228 (II) the sum of the insurer's or health organization's minimum capital or permanent
1229 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1230 (B) that amount of an insurer's or health organization's total adjusted capital that
1231 exceeds the product of:

1232 (I) 3.0; and

1233 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1234 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
1235 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1236 (A) 1.5; and

- 1237 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
1238 [(164)] (166) "Third party administrator" or "administrator" means a person who
1239 collects charges or premiums from, or who, for consideration, adjusts or settles claims of
1240 residents of the state in connection with insurance coverage, annuities, or service insurance
1241 coverage, except:
- 1242 (a) a union on behalf of its members;
 - 1243 (b) a person administering a:
 - 1244 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1245 1974;
 - 1246 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
 - 1247 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
 - 1248 (c) an employer on behalf of the employer's employees or the employees of one or
1249 more of the subsidiary or affiliated corporations of the employer;
 - 1250 (d) an insurer licensed under the following, but only for a line of insurance for which
1251 the insurer holds a license in this state:
 - 1252 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
 - 1253 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
 - 1254 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
 - 1255 (iv) Chapter 9, Insurance Fraternal; or
 - 1256 (v) Chapter 14, Foreign Insurers;
 - 1257 (e) a person:
 - 1258 (i) licensed or exempt from licensing under:
 - 1259 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
1260 Reinsurance Intermediaries; or
 - 1261 (B) Chapter 26, Insurance Adjusters; and
 - 1262 (ii) whose activities are limited to those authorized under the license the person holds
1263 or for which the person is exempt; or
 - 1264 (f) an institution, bank, or financial institution:
 - 1265 (i) that is:
 - 1266 (A) an institution whose deposits and accounts are to any extent insured by a federal
1267 deposit insurance agency, including the Federal Deposit Insurance Corporation or National

1268 Credit Union Administration; or

1269 (B) a bank or other financial institution that is subject to supervision or examination by
1270 a federal or state banking authority; and

1271 (ii) that does not adjust claims without a third party administrator license.

1272 [~~(165)~~] (167) "Title insurance" means the insuring, guaranteeing, or indemnifying of an
1273 owner of real or personal property or the holder of liens or encumbrances on that property, or
1274 others interested in the property against loss or damage suffered by reason of liens or
1275 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
1276 or unenforceability of any liens or encumbrances on the property.

1277 [~~(166)~~] (168) "Total adjusted capital" means the sum of an insurer's or health
1278 organization's statutory capital and surplus as determined in accordance with:

1279 (a) the statutory accounting applicable to the annual financial statements required to be
1280 filed under Section 31A-4-113; and

1281 (b) another item provided by the RBC instructions, as RBC instructions is defined in
1282 Section 31A-17-601.

1283 [~~(167)~~] (169) (a) "Trustee" means "director" when referring to the board of directors of
1284 a corporation.

1285 (b) "Trustee," when used in reference to an employee welfare fund, means an
1286 individual, firm, association, organization, joint stock company, or corporation, whether acting
1287 individually or jointly and whether designated by that name or any other, that is charged with
1288 or has the overall management of an employee welfare fund.

1289 [~~(168)~~] (170) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted
1290 insurer" means an insurer:

1291 (i) not holding a valid certificate of authority to do an insurance business in this state;

1292 or

1293 (ii) transacting business not authorized by a valid certificate.

1294 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1295 (i) holding a valid certificate of authority to do an insurance business in this state; and

1296 (ii) transacting business as authorized by a valid certificate.

1297 [~~(169)~~] (171) "Underwrite" means the authority to accept or reject risk on behalf of the
1298 insurer.

1299 [~~(170)~~] (172) "Vehicle liability insurance" means insurance against liability resulting
1300 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a
1301 vehicle comprehensive or vehicle physical damage coverage under Subsection [~~(139)~~] (140).

1302 [~~(171)~~] (173) "Voting security" means a security with voting rights, and includes a
1303 security convertible into a security with a voting right associated with the security.

1304 [~~(172)~~] (174) "Waiting period" for a health benefit plan means the period that must
1305 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of
1306 the health benefit plan, can become effective.

1307 [~~(173)~~] (175) "Workers' compensation insurance" means:

1308 (a) insurance for indemnification of an employer against liability for compensation
1309 based on:

1310 (i) a compensable accidental injury; and

1311 (ii) occupational disease disability;

1312 (b) employer's liability insurance incidental to workers' compensation insurance and
1313 written in connection with workers' compensation insurance; and

1314 (c) insurance assuring to a person entitled to workers' compensation benefits the
1315 compensation provided by law.

1316 Section 2. Section **31A-3-304 (Effective 07/01/15)** is amended to read:

1317 **31A-3-304 (Effective 07/01/15). Annual fees -- Other taxes or fees prohibited --**
1318 **Captive Insurance Restricted Account.**

1319 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
1320 to obtain or renew a certificate of authority.

1321 (b) The commissioner shall:

1322 (i) determine the annual fee pursuant to Section [31A-3-103](#); and

1323 (ii) consider whether the annual fee is competitive with fees imposed by other states on
1324 captive insurance companies.

1325 (2) A captive insurance company that fails to pay the fee required by this section is
1326 subject to the relevant sanctions of this title.

1327 (3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter
1328 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under
1329 the laws of this state that may be levied or assessed on a captive insurance company:

1330 (i) a fee under this section;
1331 (ii) a fee under Chapter 37, Captive Insurance Companies Act; and
1332 (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company
1333 Act.

1334 (b) The state or a county, city, or town within the state may not levy or collect an
1335 occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii)
1336 against a captive insurance company.

1337 (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115
1338 against a captive insurance company.

1339 (d) A captive insurance company is subject to real and personal property taxes.
1340 (4) A captive insurance company shall pay the fee imposed by this section to the
1341 commissioner by June 1 of each year.

1342 (5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be
1343 deposited into the Captive Insurance Restricted Account.

1344 (b) There is created in the General Fund a restricted account known as the "Captive
1345 Insurance Restricted Account."

1346 (c) The Captive Insurance Restricted Account shall consist of the fees described in
1347 Subsection (3)(a).

1348 (d) The commissioner shall administer the Captive Insurance Restricted Account.
1349 Subject to appropriations by the Legislature, the commissioner shall use the money deposited
1350 into the Captive Insurance Restricted Account to:

1351 (i) administer and enforce:

1352 (A) Chapter 37, Captive Insurance Companies Act; and

1353 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

1354 (ii) promote the captive insurance industry in Utah.

1355 (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing,
1356 except that at the end of each fiscal year, money received by the commissioner in excess of
1357 [~~\$1,250,000~~] the following shall be treated as free revenue in the General Fund[-:]:

1358 (i) for fiscal year 2015-2016, in excess of \$1,250,000;

1359 (ii) for fiscal year 2016-2017, in excess of \$1,250,000; and

1360 (iii) for fiscal year 2017-2018 and subsequent fiscal years, in excess of \$1,850,000.

1361 Section 3. Section **31A-16-102.5** is enacted to read:

1362 **31A-16-102.5. Subsidiaries of insurers.**

1363 (1) (a) A domestic insurer may organize or acquire one or more subsidiaries either:

1364 (i) by itself; or

1365 (ii) in cooperation with one or more persons.

1366 (b) A subsidiary of a domestic insurer may conduct any kind of business or businesses
1367 and its authority to do so may not be limited by reason of the fact that it is a subsidiary of a
1368 domestic insurer.

1369 (2) (a) In addition to investments in common stock, preferred stock, debt obligations,
1370 and other securities permitted under all other sections of this chapter, a domestic insurer may
1371 also invest in the following securities of one or more subsidiaries:

1372 (i) common stock;

1373 (ii) preferred stock;

1374 (iii) debt obligations; or

1375 (iv) other securities.

1376 (b) Amounts under Subsection (2)(a) that do not exceed the lesser of 10% of the
1377 insurer's assets or 50% of the insurer's surplus as regards policyholders are permitted, if after
1378 the investments, the insurer's surplus as regards policyholders will be reasonable in relation to
1379 the insurer's outstanding liabilities and adequate to meet its financial needs.

1380 (c) In calculating the amount of the investments described in Subsection (2)(b),
1381 investments in domestic or foreign insurance subsidiaries and health organizations shall be
1382 excluded, and there shall be included:

1383 (i) total net money or other consideration expended and obligations assumed in the
1384 acquisition or formation of a subsidiary, including all organizational expenses and
1385 contributions to capital and surplus of the subsidiary whether or not represented by the
1386 purchase of capital stock or issuance of other securities; and

1387 (ii) the amounts expended in acquiring additional common stock, preferred stock, debt
1388 obligations, and other securities, and all contributions to the capital or surplus of a subsidiary
1389 subsequent to its acquisition or formation.

1390 (d) (i) A domestic insurer may invest any amount in securities described in Subsection
1391 (2)(a) of one or more subsidiaries engaged or organized to engage exclusively in the ownership

1392 and management of assets authorized as investments for the insurer if each subsidiary agrees to
1393 limit its investments in any asset so that the investments will not cause the amount of the total
1394 investment of the insurer to exceed any of the investment limitations specified in Subsection
1395 (2)(b) applicable to the insurer.

1396 (ii) For purposes of this Subsection (2)(d), "the total investment of the insurer" shall
1397 include:

1398 (A) a direct investment by the insurer in an asset; and

1399 (B) the insurer's proportionate share of an investment in an asset by a subsidiary of the
1400 insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by
1401 the percentage of the ownership of the subsidiary.

1402 (e) With the approval of the commissioner, a domestic insurer may invest any greater
1403 amount in securities described in Subsection (2)(a) provided that after the investment the
1404 insurer's surplus as regards policyholders will be reasonable in relation to the insurer's
1405 outstanding liabilities and adequate to its financial needs.

1406 (3) Investments in securities described in Subsection (2)(a) may not be subject to any
1407 of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to
1408 the investments of insurers.

1409 (4) Whether any investment made pursuant to Subsection (2) meets the applicable
1410 requirements of Subsection (2) shall be determined before the investment is made, by
1411 calculating the applicable investment limitations as though the investment had already been
1412 made, taking into account:

1413 (a) the then outstanding principal balance on all previous investments in debt
1414 obligations; and

1415 (b) the value of all previous investments in equity securities as of the day they were
1416 made net of any return of capital invested not including dividends.

1417 (5) (a) Subject to Subsection (5)(b), if an insurer ceases to control a subsidiary, it shall
1418 dispose of any investment in the subsidiary made pursuant to this section:

1419 (i) within three years from the time of the cessation of control; or

1420 (ii) within such further time as the commissioner may prescribe.

1421 (b) Subsection (5)(a) does not apply if at any time after the investment is made, the
1422 investment meets the requirements for investment under any other section of this chapter, and

1423 the insurer has so notified the commissioner.

1424 Section 4. Section **31A-16-103** is amended to read:

1425 **31A-16-103. Acquisition of control of, divestiture of control of, or merger with**
1426 **domestic insurer.**

1427 (1) (a) A person may not take the actions described in Subsections (1)(b) or (c) unless,
1428 at the time any offer, request, or invitation is made or any such agreement is entered into, or
1429 prior to the acquisition of securities if no offer or agreement is involved:

1430 (i) the person files with the commissioner a statement containing the information
1431 required by this section;

1432 (ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the
1433 insurer; and

1434 (iii) the commissioner approves the offer, request, invitation, agreement, or acquisition.

1435 (b) Unless the person complies with Subsection (1)(a), a person other than the issuer
1436 may not make a tender offer for, a request or invitation for tenders of, or enter into any
1437 agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise,
1438 any voting security of a domestic insurer if after the acquisition, the person would directly,
1439 indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

1440 (c) Unless the person complies with Subsection (1)(a), a person may not enter into an
1441 agreement to merge with or otherwise to acquire control of:

1442 (i) a domestic insurer; or

1443 (ii) any person controlling a domestic insurer.

1444 (d) For purposes of this section, a controlling person of a domestic insurer seeking to
1445 divest its controlling interest in the domestic insurer, in any manner, shall file with the
1446 commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least
1447 30 days before the cessation of control. The commissioner shall determine those instances in
1448 which the one or more persons seeking to divest or to acquire a controlling interest in an
1449 insurer, will be required to file for and obtain approval of the transaction. The information
1450 shall remain confidential until the conclusion of the transaction unless the commissioner, in the
1451 commissioner's discretion, determines that confidential treatment will interfere with
1452 enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed,
1453 this Subsection (1)(d) does not apply.

1454 (e) With respect to a transaction subject to this section, the acquiring person shall also
1455 file a pre-acquisition notification with the commissioner, which shall contain the information
1456 set forth in Section 31A-16-104.5. A failure to file the notification may be subject to penalties
1457 specified in Section 31A-16-104.5.

1458 ~~(f)~~ (f) (i) For purposes of this section, a domestic insurer includes any person
1459 controlling a domestic insurer unless the person as determined by the commissioner is either
1460 directly or through its affiliates primarily engaged in business other than the business of
1461 insurance.

1462 (ii) The controlling person described in Subsection (1)~~(f)~~(f)(i) shall file with the
1463 commissioner a preacquisition notification containing the information required in Subsection
1464 (2) 30 calendar days before the proposed effective date of the acquisition.

1465 (iii) For the purposes of this section, "person" does not include any securities broker
1466 that in the usual and customary brokers function holds less than 20% of:

1467 (A) the voting securities of an insurance company; or

1468 (B) any person that controls an insurance company.

1469 (iv) This section applies to all domestic insurers and other entities licensed under
1470 ~~[Chapters 5, 7, 8, 9, and 11.]:~~

1471 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1472 (B) Chapter 7, Nonprofit Health Service Insurance Corporations;

1473 (C) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1474 (D) Chapter 9, Insurance Fraternal; and

1475 (E) Chapter 11, Motor Clubs.

1476 ~~(g)~~ (g) (i) An agreement for acquisition of control or merger as contemplated by this
1477 Subsection (1) is not valid or enforceable unless the agreement:

1478 (A) is in writing; and

1479 (B) includes a provision that the agreement is subject to the approval of the
1480 commissioner upon the filing of any applicable statement required under this chapter.

1481 (ii) A written agreement for acquisition or control that includes the provision described
1482 in Subsection (1)~~(g)~~(g)(i) satisfies the requirements of this Subsection (1).

1483 (2) The statement to be filed with the commissioner under Subsection (1) shall be
1484 made under oath or affirmation and shall contain the following information:

1485 (a) the name and address of the "acquiring party," which means each person by whom
1486 or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to
1487 be effected; and

1488 (i) if the person is an individual:

1489 (A) the person's principal occupation;

1490 (B) a listing of all offices and positions held by the person during the past five years;

1491 and

1492 (C) any conviction of crimes other than minor traffic violations during the past 10

1493 years; and

1494 (ii) if the person is not an individual:

1495 (A) a report of the nature of its business operations during:

1496 (I) the past five years; or

1497 (II) for any lesser period as the person and any of its predecessors has been in
1498 existence;

1499 (B) an informative description of the business intended to be done by the person and
1500 the person's subsidiaries;

1501 (C) a list of all individuals who are or who have been selected to become directors or
1502 executive officers of the person, or individuals who perform, or who will perform functions
1503 appropriate to such positions; and

1504 (D) for each individual described in Subsection (2)(a)(ii)(C), the information required
1505 by Subsection (2)(a)(i) for each individual;

1506 (b) (i) the source, nature, and amount of the consideration used or to be used in
1507 effecting the merger or acquisition of control;

1508 (ii) a description of any transaction in which funds were or are to be obtained for the
1509 purpose of effecting the merger or acquisition of control, including any pledge of:

1510 (A) the insurer's stock; or

1511 (B) the stock of any of the insurer's subsidiaries or controlling affiliates; and

1512 (iii) the identity of persons furnishing the consideration;

1513 (c) (i) fully audited financial information, or other financial information considered
1514 acceptable by the commissioner, of the earnings and financial condition of each acquiring party
1515 for:

- 1516 (A) the preceding five fiscal years of each acquiring party; or
- 1517 (B) any lesser period the acquiring party and any of its predecessors shall have been in
- 1518 existence; and
- 1519 (ii) unaudited information:
- 1520 (A) similar to the information described in Subsection (2)(c)(i); and
- 1521 (B) prepared within the 90 days prior to the filing of the statement;
- 1522 (d) any plans or proposals which each acquiring party may have to:
- 1523 (i) liquidate the insurer;
- 1524 (ii) sell its assets;
- 1525 (iii) merge or consolidate the insurer with any person; or
- 1526 (iv) make any other material change in the insurer's:
- 1527 (A) business;
- 1528 (B) corporate structure; or
- 1529 (C) management;
- 1530 (e) (i) the number of shares of any security referred to in Subsection (1) that each
- 1531 acquiring party proposes to acquire;
- 1532 (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in
- 1533 Subsection (1); and
- 1534 (iii) a statement as to the method by which the fairness of the proposal was arrived at;
- 1535 (f) the amount of each class of any security referred to in Subsection (1) that:
- 1536 (i) is beneficially owned; or
- 1537 (ii) concerning which there is a right to acquire beneficial ownership by each acquiring
- 1538 party;
- 1539 (g) a full description of any contract, arrangement, or understanding with respect to any
- 1540 security referred to in Subsection (1) in which any acquiring party is involved, including:
- 1541 (i) the transfer of any of the securities;
- 1542 (ii) joint ventures;
- 1543 (iii) loan or option arrangements;
- 1544 (iv) puts or calls;
- 1545 (v) guarantees of loans;
- 1546 (vi) guarantees against loss or guarantees of profits;

- 1547 (vii) division of losses or profits; or
1548 (viii) the giving or withholding of proxies;
1549 (h) a description of the purchase by any acquiring party of any security referred to in
1550 Subsection (1) during the 12 calendar months preceding the filing of the statement including:
1551 (i) the dates of purchase;
1552 (ii) the names of the purchasers; and
1553 (iii) the consideration paid or agreed to be paid for the purchase;
1554 (i) a description of:
1555 (i) any recommendations to purchase by any acquiring party any security referred to in
1556 Subsection (1) made during the 12 calendar months preceding the filing of the statement; or
1557 (ii) any recommendations made by anyone based upon interviews or at the suggestion
1558 of the acquiring party;
1559 (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange
1560 offers for, and agreements to acquire or exchange any securities referred to in Subsection (1);
1561 and
1562 (ii) if distributed, copies of additional soliciting material relating to the transactions
1563 described in Subsection (2)(j)(i);
1564 (k) (i) the term of any agreement, contract, or understanding made with, or proposed to
1565 be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for
1566 tender; and
1567 (ii) the amount of any fees, commissions, or other compensation to be paid to
1568 broker-dealers with regard to any agreement, contract, or understanding described in
1569 Subsection (2)(k)(i); [~~and~~]
1570 (l) an agreement by the person required to file the statement referred to in Subsection
1571 (1) that it will provide the annual report, specified in Section 31A-16-105, for so long as
1572 control exists;
1573 (m) an acknowledgment by the person required to file the statement referred to in
1574 Subsection (1) that the person and all subsidiaries within its control in the insurance holding
1575 company system will provide information to the commissioner upon request as necessary to
1576 evaluate enterprise risk to the insurer; and
1577 [~~(n)~~] (n) any additional information the commissioner requires by rule, which the

1578 commissioner determines to be:

1579 (i) necessary or appropriate for the protection of policyholders of the insurer; or

1580 (ii) in the public interest.

1581 (3) The department may request:

1582 (a) (i) criminal background information maintained pursuant to Title 53, Chapter 10,
1583 Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

1584 (ii) complete Federal Bureau of Investigation criminal background checks through the
1585 national criminal history system.

1586 (b) Information obtained by the department from the review of criminal history records
1587 received under Subsection (3)(a) shall be used by the department for the purpose of:

1588 (i) verifying the information in Subsection (2)(a)(i);

1589 (ii) determining the integrity of persons who would control the operation of an insurer;

1590 and

1591 (iii) preventing persons who violate 18 U.S.C. Sec. 1033 from engaging in the business
1592 of insurance in the state.

1593 (c) If the department requests the criminal background information, the department
1594 shall:

1595 (i) pay to the Department of Public Safety the costs incurred by the Department of
1596 Public Safety in providing the department criminal background information under Subsection
1597 (3)(a)(i);

1598 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
1599 of Investigation in providing the department criminal background information under
1600 Subsection (3)(a)(ii); and

1601 (iii) charge the person required to file the statement referred to in Subsection (1) a fee
1602 equal to the aggregate of Subsections (3)(c)(i) and (ii).

1603 (4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in
1604 the lender's ordinary course of business, the identity of the lender shall remain confidential, if
1605 the person filing the statement so requests.

1606 (b) (i) Under Subsection (2)(e), the commissioner may require a statement of the
1607 adjusted book value assigned by the acquiring party to each security in arriving at the terms of
1608 the offer.

1609 (ii) For purposes of this Subsection (4)(b), "adjusted book value" means each security's
1610 proportional interest in the capital and surplus of the insurer with adjustments that reflect:

1611 (A) market conditions;

1612 (B) business in force; and

1613 (C) other intangible assets or liabilities of the insurer.

1614 (c) The description required by Subsection (2)(g) shall identify the persons with whom
1615 the contracts, arrangements, or understandings have been entered into.

1616 (5) (a) If the person required to file the statement referred to in Subsection (1) is a
1617 partnership, limited partnership, syndicate, or other group, the commissioner may require that
1618 all the information called for by Subsections (2), (3), or (4) shall be given with respect to each:

1619 (i) partner of the partnership or limited partnership;

1620 (ii) member of the syndicate or group; and

1621 (iii) person who controls the partner or member.

1622 (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation,
1623 or if the person required to file the statement referred to in Subsection (1) is a corporation, the
1624 commissioner may require that the information called for by Subsection (2) shall be given with
1625 respect to:

1626 (i) the corporation;

1627 (ii) each officer and director of the corporation; and

1628 (iii) each person who is directly or indirectly the beneficial owner of more than 10% of
1629 the outstanding voting securities of the corporation.

1630 (6) If any material change occurs in the facts set forth in the statement filed with the
1631 commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth
1632 the change, together with copies of all documents and other material relevant to the change,
1633 shall be filed with the commissioner and sent to the insurer within two business days after the
1634 filing person learns of such change.

1635 (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection
1636 (1) is proposed to be made by means of a registration statement under the Securities Act of
1637 1933, or under circumstances requiring the disclosure of similar information under the
1638 Securities Exchange Act of 1934, or under a state law requiring similar registration or
1639 disclosure, a person required to file the statement referred to in Subsection (1) may use copies

1640 of any registration or disclosure documents in furnishing the information called for by the
1641 statement.

1642 (8) (a) The commissioner shall approve any merger or other acquisition of control
1643 referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, the
1644 commissioner finds that:

1645 (i) after the change of control, the domestic insurer referred to in Subsection (1) would
1646 not be able to satisfy the requirements for the issuance of a license to write the line or lines of
1647 insurance for which it is presently licensed;

1648 (ii) the effect of the merger or other acquisition of control would:

1649 (A) substantially lessen competition in insurance in this state; or

1650 (B) tend to create a monopoly in insurance;

1651 (iii) the financial condition of any acquiring party might:

1652 (A) jeopardize the financial stability of the insurer; or

1653 (B) prejudice the interest of:

1654 (I) its policyholders; or

1655 (II) any remaining securityholders who are unaffiliated with the acquiring party;

1656 (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in
1657 Subsection (1) are unfair and unreasonable to the securityholders of the insurer;

1658 (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its
1659 assets, or consolidate or merge it with any person, or to make any other material change in its
1660 business or corporate structure or management, are:

1661 (A) unfair and unreasonable to policyholders of the insurer; and

1662 (B) not in the public interest; or

1663 (vi) the competence, experience, and integrity of those persons who would control the
1664 operation of the insurer are such that it would not be in the interest of the policyholders of the
1665 insurer and the public to permit the merger or other acquisition of control.

1666 (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not
1667 be considered unfair if the adjusted book values under Subsection (2)(e):

1668 (i) are disclosed to the securityholders; and

1669 (ii) determined by the commissioner to be reasonable.

1670 (9) (a) The public hearing referred to in Subsection (8) shall be held within 30 days

1671 after the statement required by Subsection (1) is filed.

1672 (b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the
1673 person filing the statement.

1674 (ii) Affected parties may waive the notice required by this Subsection (9)(b).

1675 (iii) Not less than seven days notice of the public hearing shall be given by the person
1676 filing the statement to:

1677 (A) the insurer; and

1678 (B) any person designated by the commissioner.

1679 (c) The commissioner shall make a determination within 30 days after the conclusion
1680 of the hearing.

1681 (d) At the hearing, the person filing the statement, the insurer, any person to whom
1682 notice of hearing was sent, and any other person whose interest may be affected by the hearing
1683 may:

1684 (i) present evidence;

1685 (ii) examine and cross-examine witnesses; and

1686 (iii) offer oral and written arguments.

1687 (e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery
1688 proceedings in the same manner as is presently allowed in the district courts of this state.

1689 (ii) All discovery proceedings shall be concluded not later than three days before the
1690 commencement of the public hearing.

1691 (10) If the proposed acquisition of control will require the approval of more than one
1692 commissioner, the public hearing referred to in Subsection (9)(a) may be held on a
1693 consolidated basis upon request of the person filing the statement referred to in Subsection (1).
1694 The person shall file the statement referred to in Subsection (1) with the National Association
1695 of Insurance Commissioners within five days of making the request for a public hearing. A
1696 commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of
1697 the opt-out within 10 days of the receipt of the statement referred to in Subsection (1). A
1698 hearing conducted on a consolidated basis shall be public and shall be held within the United
1699 States before the commissioners of the states in which the insurers are domiciled. The
1700 commissioners shall hear and receive evidence. A commissioner may attend a hearing under
1701 this Subsection (10) in person or by telecommunication.

1702 (11) In connection with a change of control of a domestic insurer, any determination by
1703 the commissioner that the person acquiring control of the insurer shall be required to maintain
1704 or restore the capital of the insurer to the level required by the laws and regulations of this state
1705 shall be made not later than 60 days after the date of notification of the change in control
1706 submitted pursuant to Subsection (1).

1707 ~~[(10)]~~ (12) (a) The commissioner may retain technical experts to assist in reviewing all,
1708 or a portion of, information filed in connection with a proposed merger or other acquisition of
1709 control referred to in Subsection (1).

1710 (b) In determining whether any of the conditions in Subsection (8) exist, the
1711 commissioner may consider the findings of technical experts employed to review applicable
1712 filings.

1713 (c) (i) A technical expert employed under Subsection ~~[(10)]~~ (12)(a) shall present to the
1714 commissioner a statement of all expenses incurred by the technical expert in conjunction with
1715 the technical expert's review of a proposed merger or other acquisition of control.

1716 (ii) At the commissioner's direction the acquiring person shall compensate the technical
1717 expert at customary rates for time and expenses:

1718 (A) necessarily incurred; and

1719 (B) approved by the commissioner.

1720 (iii) The acquiring person shall:

1721 (A) certify the consolidated account of all charges and expenses incurred for the review
1722 by technical experts;

1723 (B) retain a copy of the consolidated account described in Subsection ~~[(10)]~~

1724 (12)(c)(iii)(A); and

1725 (C) file with the department as a public record a copy of the consolidated account
1726 described in Subsection ~~[(10)]~~ (12)(c)(iii)(A).

1727 ~~[(11)]~~ (13) (a) (i) If a domestic insurer proposes to merge into another insurer, any
1728 securityholder electing to exercise a right of dissent may file with the insurer a written request
1729 for payment of the adjusted book value given in the statement required by Subsection (1) and
1730 approved under Subsection (8), in return for the surrender of the security holder's securities.

1731 (ii) The request described in Subsection ~~[(11)]~~ (13)(a)(i) shall be filed not later than 10
1732 days after the day of the securityholders' meeting where the corporate action is approved.

1733 (b) The dissenting securityholder is entitled to and the insurer is required to pay to the
1734 dissenting securityholder the specified value within 60 days of receipt of the dissenting security
1735 holder's security.

1736 (c) Persons electing under this Subsection [~~(11)~~] (13) to receive cash for their securities
1737 waive the dissenting shareholder and appraisal rights otherwise applicable under Title 16,
1738 Chapter 10a, Part 13, Dissenters' Rights.

1739 (d) (i) This Subsection [~~(11)~~] (13) provides an elective procedure for dissenting
1740 securityholders to resolve their objections to the plan of merger.

1741 (ii) This section does not restrict the rights of dissenting securityholders under Title 16,
1742 Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this
1743 Subsection [~~(11)~~] (13).

1744 [~~(12)~~] (14) (a) All statements, amendments, or other material filed under Subsection
1745 (1), and all notices of public hearings held under Subsection (8), shall be mailed by the insurer
1746 to its securityholders within five business days after the insurer has received the statements,
1747 amendments, other material, or notices.

1748 (b) (i) Mailing expenses shall be paid by the person making the filing.

1749 (ii) As security for the payment of mailing expenses, that person shall file with the
1750 commissioner an acceptable bond or other deposit in an amount determined by the
1751 commissioner.

1752 [~~(13)~~] (15) This section does not apply to any offer, request, invitation, agreement, or
1753 acquisition that the commissioner by order exempts from the requirements of this section as:

1754 (a) not having been made or entered into for the purpose of, and not having the effect
1755 of, changing or influencing the control of a domestic insurer; or

1756 (b) otherwise not comprehended within the purposes of this section.

1757 [~~(14)~~] (16) The following are violations of this section:

1758 (a) the failure to file any statement, amendment, or other material required to be filed
1759 pursuant to Subsections (1), (2), and (5); or

1760 (b) the effectuation, or any attempt to effectuate, an acquisition of control of,
1761 divestiture of, or merger with a domestic insurer unless the commissioner has given the
1762 commissioner's approval to the acquisition or merger.

1763 [~~(15)~~] (17) (a) The courts of this state are vested with jurisdiction over:

1764 (i) a person who:
1765 (A) files a statement with the commissioner under this section; and
1766 (B) is not resident, domiciled, or authorized to do business in this state; and
1767 (ii) overall actions involving persons described in Subsection [~~(15)~~] (17)(a)(i) arising
1768 out of a violation of this section.

1769 (b) A person described in Subsection [~~(15)~~] (17)(a) is considered to have performed
1770 acts equivalent to and constituting an appointment of the commissioner by that person, to be
1771 that person's lawful agent upon whom may be served all lawful process in any action, suit, or
1772 proceeding arising out of a violation of this section.

1773 (c) A copy of a lawful process described in Subsection [~~(15)~~] (17)(b) shall be:
1774 (i) served on the commissioner; and
1775 (ii) transmitted by registered or certified mail by the commissioner to the person at that
1776 person's last-known address.

1777 Section 5. Section 31A-16-104.5 is enacted to read:

1778 **31A-16-104.5. Acquisitions involving insurers not otherwise covered.**

1779 (1) The following definitions apply for the purposes of this section only:

1780 (a) "Acquisition" means an agreement, arrangement, or activity the consummation of
1781 which results in a person acquiring directly or indirectly the control of another person and
1782 includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and
1783 mergers.

1784 (b) "Insurer" includes any company or group of companies under common
1785 management, ownership, or control.

1786 (c) "Involved insurer" includes an insurer that either acquires or is acquired, is
1787 affiliated with an acquirer or acquired, or is the result of a merger.

1788 (d) (i) "Market" means the relevant product and geographical markets. In determining
1789 the relevant product and geographical markets, the commissioner shall give due consideration
1790 to, among other things, the definitions or guidelines, if any, promulgated by the National
1791 Association of Insurance Commissioners and to information, if any, submitted by parties to the
1792 acquisition. In the absence of sufficient information to the contrary, the relevant product
1793 market is assumed to be the direct written insurance premium for a line of business, such line
1794 being that used in the annual statement required to be filed by insurers doing business in this

1795 state, and the relevant geographical market is assumed to be this state.

1796 (ii) Notwithstanding Subsection (1)(d)(i), for purposes of Subsection (2)(b), "market"
1797 means direct written insurance premium in this state for a line of business as contained in the
1798 annual statement required to be filed by insurers licensed to do business in this state.

1799 (2) (a) This section applies to any acquisition in which there is a change in control of
1800 an insurer authorized to do business in Utah.

1801 (b) This section does not apply to the following:

1802 (i) securities purchased solely for investment purposes so long as the securities are not
1803 used by voting or otherwise to cause or attempt to cause the substantial lessening of
1804 competition in any insurance market in this state;

1805 (ii) if a purchase of securities results in a presumption of control under Subsection
1806 31A-1-301(29)(d), it is not solely for investment purposes unless the commissioner of the
1807 insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control
1808 does not exist and the disclaimer action or affirmative finding is communicated by the
1809 domiciliary commissioner to the commissioner of this state;

1810 (iii) the acquisition of a person by another person when both persons are neither
1811 directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition
1812 notification is filed with the commissioner in accordance with Subsection (3)(a) 30 days before
1813 the proposed effective date of the acquisition;

1814 (iv) the acquisition of an already affiliated person;

1815 (v) an acquisition if, as an immediate result of the acquisition:

1816 (A) in no market would the combined market share of the involved insurers exceed 5%
1817 of the total market;

1818 (B) there would be no increase in any market share; or

1819 (C) in no market would the combined market share of the involved insurers exceeds
1820 12% of the total market, and the market share increase by more than 2% of the total market;

1821 (vi) an acquisition for which a pre-acquisition notification would be required pursuant
1822 to this section due solely to the resulting effect on the ocean marine insurance line of business;
1823 or

1824 (vii) an acquisition of an insurer whose domiciliary commissioner affirmatively finds
1825 that the insurer is in failing condition, and:

- 1826 (A) there is a lack of feasible alternative to improving such condition;
1827 (B) the public benefits of improving the insurer's condition through the acquisition
1828 exceed the public benefits that would arise from not lessening competition; and
1829 (C) the findings are communicated by the domiciliary commissioner to the
1830 commissioner of this state.
- 1831 (3) An acquisition covered by Subsection (2) may be subject to an order pursuant to
1832 Subsection (5) unless the acquiring person files a pre-acquisition notification and the waiting
1833 period has expired. The acquired person may file a pre-acquisition notification. The
1834 commissioner shall give confidential treatment to information submitted under this Subsection
1835 (3) in the same manner as provided in Section [31A-16-109](#).
- 1836 (a) The pre-acquisition notification shall be in the form and contain such information
1837 as prescribed by the National Association of Insurance Commissioners relating to those
1838 markets that, under Subsection (2)(b)(v), cause the acquisition not to be exempted from this
1839 section. The commissioner may require additional material and information as considered
1840 necessary to determine whether the proposed acquisition, if consummated, would violate the
1841 competitive standard of Subsection (4). The required information may include an opinion of an
1842 economist as to the competitive impact of the acquisition in this state accompanied by a
1843 summary of the education and experience of the economist indicating the economist's ability to
1844 render an informed opinion.
- 1845 (b) The waiting period required shall begin on the date of receipt of the commissioner
1846 of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of
1847 receipt, or termination of the waiting period by the commissioner. Before the end of the
1848 waiting period, the commissioner on a one-time basis may require the submission of additional
1849 needed information relevant to the proposed acquisition, in which event the waiting period
1850 shall end on the earlier of the 30th day after receipt of the additional information by the
1851 commissioner or termination of the waiting period by the commissioner.
- 1852 (4) (a) The commissioner may enter an order under Subsection (5)(a) with respect to an
1853 acquisition if there is substantial evidence that the effect of the acquisition may be substantially
1854 to lessen competition in any line of insurance in this state, tend to create a monopoly, or if the
1855 insurer fails to file adequate information in compliance with this section.
- 1856 (b) In determining whether a proposed acquisition would violate the competitive

1857 standard of Subsection (4)(a), the commissioner shall consider the following:

1858 (i) Any acquisition covered under this Subsection (4) involving two or more insurers
 1859 competing in the same market is prima facie evidence of violation of the competitive standards
 1860 if:

1861 (A) the market is highly concentrated and the involved insurers possess the following
 1862 shares of the market:

1863	<u>Insurer A</u>	<u>Insurer B</u>
1864	<u>4%</u>	<u>4% or more</u>
1865	<u>10%</u>	<u>2% or more</u>
1866	<u>15%</u>	<u>1% or more; or</u>

1867 (B) the market is not highly concentrated and the involved insurers possess the
 1868 following shares of the market:

1869	<u>Insurer A</u>	<u>Insurer B</u>
1870	<u>5%</u>	<u>5% or more</u>
1871	<u>10%</u>	<u>4% or more</u>
1872	<u>15%</u>	<u>3% or more</u>
1873	<u>19%</u>	<u>1% or more.</u>

1874 (ii) For purposes of this section, a highly concentrated market is one in which the share
 1875 of the four largest insurers is 75% or more of the market. Percentages not shown in the tables
 1876 are interpolated proportionately to the percentages that are shown. If more than two insurers
 1877 are involved, exceeding the total of the two columns in the table is prima facie evidence of
 1878 violation of the competitive standard in Subsection (4)(a).

1879 (iii) For purposes of this section, the insurer with the largest share of the market shall
 1880 be considered to be Insurer A.

1881 (c) There is a significant trend toward increased concentration when the aggregate
 1882 market share of any grouping of the largest insurers in the market, from the two largest to the
 1883 eight largest, has increased by 7% or more of the market over a period of time extending from
 1884 any base year 5 to 10 years before the acquisition up to the time of the acquisition. Any
 1885 acquisition or merger covered under Subsection (1) involving two or more insurers competing
 1886 in the same market is prima facie evidence of violation of the competitive standard in

1887 Subsection (4)(a) if:

1888 (i) there is a significant trend toward increased concentration in the market;

1889 (ii) one of the insurers involved is one of the insurers in a grouping of large insurers
1890 showing the requisite increase in the market share; and

1891 (iii) another involved insurer's market is 2% or more.

1892 (d) The burden of showing prima facie evidence of violation of the competitive
1893 standard rests upon the commissioner.

1894 (e) Even though an acquisition is not prima facie violative of the competitive standard
1895 under Subsections (4)(b) and (4)(c), the commissioner may establish the requisite
1896 anticompetitive effect based upon other substantial evidence.

1897 (f) Even though an acquisition is prima facie violative of the competitive standard
1898 under Subsections (4)(b) and (4)(c), a party may establish the absence of the requisite
1899 anticompetitive effect based upon other substantial evidence. Relevant factors in making a
1900 determination under this Subsection (4)(f) include the following:

1901 (i) market shares;

1902 (ii) volatility of ranking of market leaders;

1903 (iii) number of competitors;

1904 (iv) concentration or trend of concentration in the industry; and

1905 (v) ease of entry and exit into the market.

1906 (g) An order may not be entered under Subsection (5) if:

1907 (i) the acquisition will yield substantial economies of scale or economies in resource
1908 use that cannot be feasibly achieved in any other way, and the public benefits that would arise
1909 from the economies exceed the public benefits that would arise from not lessening competition;
1910 or

1911 (ii) the acquisition will substantially increase the availability of insurance, and the
1912 public benefits of the increase exceed the public benefits that would arise from not lessening
1913 competition.

1914 (5) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if an
1915 acquisition violates the standards of this section, the commissioner may enter an order:

1916 (i) requiring an involved insurer to cease and desist from doing business in this state
1917 with respect to the line or lines of insurance involved in the violation; or

1918 (ii) denying the application of an acquired or acquiring insurer for a license to do
 1919 business in this state.

1920 (b) The commissioner shall accompany an order issued under this Subsection (5) with
 1921 a written decision of the commissioner setting forth findings of fact and conclusions of law.

1922 (c) An order pursuant to this section may not apply if the acquisition is not
 1923 consummated.

1924 (d) A person who violates a cease and desist order of the commissioner under
 1925 Subsection (5)(a)(i) and while the order is in effect may after notice and hearing and upon order
 1926 of the commissioner be subject at the discretion of the commissioner to one or more of the
 1927 following:

1928 (i) notwithstanding Section [31A-2-308](#), a monetary penalty of not more than \$10,000
 1929 for every day of violation; or

1930 (ii) suspension or revocation of the person's license.

1931 (e) An insurer or other person who fails to make any filing required by this section, and
 1932 who fails to demonstrate a good faith effort to comply with a filing requirement, is subject to a
 1933 fine of not more than \$50,000 notwithstanding Section [31A-2-308](#).

1934 Section 6. Section **31A-16-105** is amended to read:

1935 **31A-16-105. Registration of insurers.**

1936 (1) (a) [~~Every~~] An insurer [~~which~~] that is authorized to do business in this state and
 1937 [~~which~~] that is a member of an insurance holding company system shall register with the
 1938 commissioner, except a foreign insurer subject to registration requirements and standards
 1939 adopted by statute or regulation in the jurisdiction of its domicile, if the requirements and
 1940 standards are substantially similar to those contained in this section, Subsections
 1941 [31A-16-106](#)(1)(a) and (2) and either Subsection [31A-16-106](#)(1)(b) or a statutory provision
 1942 similar to the following: "Each registered insurer shall keep current the information required to
 1943 be disclosed in its registration statement by reporting all material changes or additions within
 1944 15 days after the end of the month in which it learns of each change or addition."

1945 (b) [~~Any~~] An insurer [~~which~~] that is subject to registration under this section shall
 1946 register within 15 days after it becomes subject to registration, and annually thereafter by May
 1947 1 of each year for the previous calendar year, unless the commissioner for good cause extends
 1948 the time for registration and then at the end of the extended time period. The commissioner

1949 may require any insurer authorized to do business in the state, which is a member of a holding
1950 company system, and which is not subject to registration under this section, to furnish a copy of
1951 the registration statement, the summary specified in Subsection (3), or any other information
1952 filed by the insurer with the insurance regulatory authority of domiciliary jurisdiction.

1953 (2) ~~Every~~ An insurer subject to registration shall file the registration statement with
1954 the commissioner on a form and in a format prescribed by the National Association of
1955 Insurance Commissioners, which shall contain the following current information:

1956 (a) the capital structure, general financial condition, and ownership and management of
1957 the insurer and any person controlling the insurer;

1958 (b) the identity and relationship of every member of the insurance holding company
1959 system;

1960 (c) any of the following agreements in force, and transactions currently outstanding or
1961 which have occurred during the last calendar year between the insurer and its affiliates:

1962 (i) loans, other investments, or purchases, sales or exchanges of securities of the
1963 affiliates by the insurer or of securities of the insurer by its affiliates;

1964 (ii) purchases, sales, or exchanges of assets;

1965 (iii) transactions not in the ordinary course of business;

1966 (iv) guarantees or undertakings for the benefit of an affiliate which result in an actual
1967 contingent exposure of the insurer's assets to liability, other than insurance contracts entered
1968 into in the ordinary course of the insurer's business;

1969 (v) all management agreements, service contracts, and all cost-sharing arrangements;

1970 (vi) reinsurance agreements;

1971 (vii) dividends and other distributions to shareholders; and

1972 (viii) consolidated tax allocation agreements;

1973 (d) any pledge of the insurer's stock, including stock of any subsidiary or controlling
1974 affiliate, for a loan made to any member of the insurance holding company system; ~~and~~

1975 (e) if requested by the commissioner, financial statements of or within an insurance
1976 holding company system, including all affiliates:

1977 (i) which may include annual audited financial statements filed with the United States
1978 Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or
1979 the Securities Exchange Act of 1934, as amended; and

1980 (ii) which request is satisfied by providing the commissioner with the most recently
1981 filed parent corporation financial statements that have been filed with the United States
1982 Securities and Exchange Commission;

1983 [~~(e)~~] (f) any other matters concerning transactions between registered insurers and any
1984 affiliates as may be included in any subsequent registration forms adopted or approved by the
1985 commissioner[-];

1986 (g) statements that the insurer's board of directors oversees corporate governance and
1987 internal controls and that the insurer's officers or senior management have approved,
1988 implemented, and continue to maintain and monitor corporate governance and internal control
1989 procedures; and

1990 (h) any other information required by rule made by the commissioner in accordance
1991 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1992 (3) All registration statements shall contain a summary outlining all items in the
1993 current registration statement representing changes from the prior registration statement.

1994 (4) No information need be disclosed on the registration statement filed pursuant to
1995 Subsection (2) if the information is not material for the purposes of this section. Unless the
1996 commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or
1997 extensions of credit, investments, or guarantees involving one-half of 1%, or less, of an
1998 insurer's admitted assets as of the next preceding December 31 may not be considered material
1999 for purposes of this section.

2000 (5) Subject to Section [31A-16-106](#), each registered insurer shall report to the
2001 commissioner a dividend or other distribution to shareholders within 15 business days
2002 following the declaration of the dividend or distribution.

2003 [~~(5)~~] (6) Any person within an insurance holding company system subject to
2004 registration shall provide complete and accurate information to an insurer if the information is
2005 reasonably necessary to enable the insurer to comply with the provisions of this chapter.

2006 [~~(6)~~] (7) The commissioner shall terminate the registration of any insurer which
2007 demonstrates that it no longer is a member of an insurance holding company system.

2008 [~~(7)~~] (8) The commissioner may require or allow two or more affiliated insurers subject
2009 to registration under this section to file a consolidated registration statement.

2010 [~~(8)~~] (9) The commissioner may allow an insurer which is authorized to do business in

2011 this state, and which is part of an insurance holding company system, to register on behalf of
2012 any affiliated insurer which is required to register under Subsection (1) and to file all
2013 information and material required to be filed under this section.

2014 ~~[(9) The provisions of this]~~ (10) This section ~~[do]~~ does not apply to any insurer,
2015 information, or transaction if, and to the extent that, the commissioner by rule or order exempts
2016 the insurer from ~~[the provisions of]~~ this section.

2017 ~~[(10)]~~ (11) Any person may file with the commissioner a disclaimer of affiliation with
2018 any authorized insurer, or a disclaimer of affiliation may be filed by any insurer or any member
2019 of an insurance holding company system. The disclaimer shall fully disclose all material
2020 relationships and bases for affiliation between the person and the insurer as well as the basis for
2021 disclaiming the affiliation. ~~[After a disclaimer has been filed, the insurer shall be relieved of~~
2022 ~~any duty to register or report under this section which may arise out of the insurer's relationship~~
2023 ~~with the person unless and until the commissioner disallows the disclaimer. The commissioner~~
2024 ~~shall disallow a disclaimer only after furnishing all parties in interest with notice and~~
2025 ~~opportunity to be heard, and after making specific findings of fact to support the disallowance.]~~

2026 A disclaimer of affiliation is considered to have been granted unless the commissioner, within
2027 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is
2028 disallowed. If disallowed, the disclaiming party may request an administrative hearing, which
2029 shall be granted. The disclaiming party shall be relieved of its duty to register under this
2030 section if approval of the disclaimer is granted by the commissioner, or if the disclaimer is
2031 considered to have been approved.

2032 (12) The ultimate controlling person of an insurer subject to registration shall also file
2033 an annual enterprise risk report. The annual enterprise risk report shall, to the best of the
2034 ultimate controlling person's knowledge and belief, identify the material risks within the
2035 insurance holding company that could pose enterprise risk to the insurer. The annual enterprise
2036 risk report shall be filed with the lead state commissioner of the insurance holding company
2037 system as determined by the procedures within the Financial Analysis Handbook adopted by
2038 the National Association of Insurance Commissioners.

2039 ~~[(11)]~~ (13) The failure to file a registration statement or any summary of the
2040 registration statement or enterprise risk filing required by this section within the time specified
2041 for the filing is a violation of this section.

2042 Section 7. Section 31A-16-106 is amended to read:

2043 **31A-16-106. Standards and management of an insurer within a holding company**
2044 **system.**

2045 (1) (a) Transactions within ~~[a]~~ an insurance holding company system to which an
2046 insurer subject to registration is a party are subject to the following standards:

2047 (i) the terms shall be fair and reasonable;

2048 (ii) agreements for cost sharing services and management shall include the provisions

2049 required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah

2050 Administrative Rulemaking Act;

2051 ~~[(ii)]~~ (iii) charges or fees for services performed shall be reasonable;

2052 ~~[(iii)]~~ (iv) expenses incurred and payment received shall be allocated to the insurer in
2053 conformity with customary insurance accounting practices consistently applied;

2054 ~~[(iv)]~~ (v) the books, accounts, and records of each party to all transactions shall be so
2055 maintained as to clearly and accurately disclose the nature and details of the transactions,
2056 including the accounting information necessary to support the reasonableness of the charges or
2057 fees to the respective parties; and

2058 ~~[(v)]~~ (vi) the insurer's surplus held for policyholders, following any dividends or
2059 distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding
2060 liabilities and shall be adequate to its financial needs.

2061 (b) The following transactions involving a domestic insurer and any person in its
2062 insurance holding company system, including amendments or modifications of affiliate
2063 agreements previously filed pursuant to this section, which are subject to any materiality
2064 standards contained in Subsections (1)(a)(i) through (vi), may not be entered into unless the
2065 insurer has notified the commissioner in writing of its intention to enter into the transaction at
2066 least 30 days ~~[prior to]~~ before entering into the transaction, or within any shorter period the
2067 commissioner may permit, if the commissioner has not disapproved the transaction within the
2068 period[:]. The notice for an amendment or modification shall include the reasons for the change
2069 and financial impact on the domestic insurer. Informal notice shall be reported, within 30 days
2070 after a termination of a previously filed agreement, to the commissioner for determination of
2071 the type of filing required, if any:

2072 (i) sales, purchases, exchanges, loans or extensions of credit, guarantees, or

2073 investments if the transactions are equal to, or exceed as of the next preceding December 31:

2074 (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of
2075 surplus held for policyholders;

2076 (B) for life insurers, 3% of the insurer's admitted assets;

2077 (ii) loans or extensions of credit made to any person who is not an affiliate, if the
2078 insurer makes the loans or extensions of credit with the agreement or understanding that the
2079 proceeds of the transactions, in whole or in substantial part, are to be used to make loans or
2080 extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the
2081 insurer making the loans or extensions of credit if the transactions are equal to, or exceed as of
2082 the next preceding December 31:

2083 (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of
2084 surplus held for policyholders;

2085 (B) for life insurers, 3% of the insurer's admitted assets;

2086 (iii) reinsurance agreements or modifications to reinsurance agreements [~~in which the~~
2087 ~~reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the~~
2088 ~~insurer's surplus held for policyholders, as of the next preceding December 31, including those~~
2089 ~~agreements which may require as consideration the transfer of assets from an insurer to a~~
2090 ~~nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate~~
2091 ~~that any portion of the assets will be transferred to one or more affiliates of the insurer;],
2092 including an agreement in which the reinsurance premium, a change in the insurer's liabilities,
2093 or the projected reinsurance premium or a change in the insurer's liabilities in any of the current
2094 and succeeding three years, equals or exceeds 5% of the insurer's surplus held for
2095 policyholders, as of the next preceding December 31, including those agreements that may
2096 require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement
2097 or understanding exists between the insurer and the non-affiliate that any portion of the assets
2098 will be transferred to one or more affiliates of the reinsurer;~~

2099 (iv) all management agreements, service contracts, tax allocation agreements, and all
2100 cost-sharing arrangements;

2101 (v) guarantees when made by a domestic insurer, except that:

2102 (A) a guarantee that is quantifiable as to amount is not subject to the notice
2103 requirements of this Subsection (1) unless it exceeds the lesser of .5% of the insurer's admitted

2104 assets or 10% of surplus held for policyholders, as of the next preceding December 31; and

2105 (B) a guarantee that is not quantifiable as to amount is subject to the notice

2106 requirements of this Subsection (1);

2107 (vi) direct or indirect acquisitions or investments in a person that controls the insurer or

2108 in an affiliate of the insurer in an amount that, together with its present holdings in the

2109 investments, exceeds 2.5% of the insurer's surplus to policyholders, except that a direct or

2110 indirect acquisition or investment in a subsidiary acquired pursuant to Section [31A-16-102.5](#),

2111 or in a non-subsiary insurance affiliate that is subject to this chapter, is exempt from this

2112 Subsection (1)(b)(vi);

2113 ~~[(v)]~~ (vii) any material transactions, specified by rule, which the commissioner

2114 determines may adversely affect the interests of the insurer's policyholders; and

2115 ~~[(vi) this subsection]~~ (viii) this Subsection (1) may not be interpreted to authorize or

2116 permit any transactions which would be otherwise contrary to law in the case of an insurer not

2117 a member of the same holding company system.

2118 (c) A domestic insurer may not enter into transactions which are part of a plan or series

2119 of like transactions with persons within the holding company system if the purpose of the

2120 separate transactions is to avoid the statutory threshold amount and thus to avoid the review by

2121 the commissioner that would occur otherwise. If the commissioner determines that the

2122 separate transactions were entered into over any 12 month period for such a purpose, ~~[(he)]~~ the

2123 commissioner may exercise ~~[(his)]~~ the commissioner's authority under Section [31A-16-110](#).

2124 (d) The commissioner, in reviewing transactions pursuant to Subsection (1)(b), shall

2125 consider whether the transactions comply with the standards set forth in Subsection (1)(a) and

2126 whether they may adversely affect the interests of policyholders.

2127 (e) The commissioner shall be notified within 30 days of any investment of the

2128 domestic insurer in any one corporation, if the total investment in the corporation by the

2129 insurance holding company system exceeds 10% of the corporation's voting securities.

2130 (2) (a) A domestic insurer may not pay any extraordinary dividend or make any other
2131 extraordinary distribution to its shareholders until:

2132 (i) 30 days after the commissioner has received notice of the declaration of the

2133 dividend and has not within the 30-day period disapproved the payment; or

2134 (ii) the commissioner has approved the payment within the 30-day period.

2135 (b) For purposes of this ~~subsection~~ Subsection (2), an extraordinary dividend or
2136 distribution includes any dividend or distribution of cash or other property, fair market value of
2137 which, together with that of other dividends or distributions made within the preceding 12
2138 months, exceeds the lesser of:

2139 (i) 10% of the insurer's surplus held for policyholders as of the next preceding
2140 December 31; ~~or~~

2141 (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net
2142 income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month
2143 period ending the next preceding December 31; or

2144 (iii) an extraordinary dividend does not include pro rata distributions of any class of the
2145 insurer's own securities.

2146 (c) In determining whether a dividend or distribution is extraordinary, an insurer other
2147 than a life insurer may carry forward net income from the previous two calendar years that has
2148 not already been paid out as dividends. This carry-forward shall be computed by taking the net
2149 income from the second and third preceding calendar years, not including realized capital
2150 gains, less dividends paid in the second and immediate preceding calendar years.

2151 (d) Notwithstanding any other provision of law, an insurer may declare an
2152 extraordinary dividend or distribution, which is conditioned upon the commissioner's approval
2153 of the dividend or distribution, and the declaration shall confer no rights upon shareholders
2154 until:

2155 (i) the commissioner has approved the payment of the dividend or distribution; or

2156 (ii) the commissioner has not disapproved the payment within the 30-day period
2157 referred to in Subsection (2)(a).

2158 (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers
2159 and directors of the insurer may not be relieved of any obligation or liability to which they
2160 would otherwise be subject by law, and the insurer shall be managed so as to assure its separate
2161 operating identity consistent with this chapter.

2162 (b) Nothing in this section precludes a domestic insurer from having or sharing a
2163 common management or cooperative or joint use of personnel, property, or services with one or
2164 more other persons under arrangements meeting the standards of Subsection (1)(a).

2165 (c) (i) Not less than one-third of the directors of a domestic insurer, and not less than

2166 one-third of the members of each committee of the board of directors of a domestic insurer,
2167 shall be persons who are not officers or employees of the insurer or of any entity controlling,
2168 controlled by, or under common control with the insurer and who are not beneficial owners of a
2169 controlling interest in the voting stock of the insurer or entity.

2170 (ii) At least one person described in Subsection (3)(c)(i) shall be included in a quorum
2171 for the transaction of business at a meeting of the board of directors or a committee of the
2172 board of directors.

2173 (d) The board of directors of a domestic insurer shall establish one or more committees
2174 composed solely of directors who are not officers or employees of the insurer or of any entity
2175 controlling, controlled by, or under common control with the insurer and who are not beneficial
2176 owners of a controlling interest in the voting stock of the insurer or any such entity. The one or
2177 more committees shall have responsibility for nominating candidates for director for election
2178 by shareholders or policyholders, evaluating the performance of officers considered to be
2179 principal officers of the insurer and recommending to the board of directors the selection and
2180 compensation of the principal officers.

2181 (e) Subsections (3)(c) and (d) do not apply to a domestic insurer if the person
2182 controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly
2183 held corporation, has a board of directors and committees of the board of directors that meet
2184 the requirements of Subsections (3)(c) and (d) with respect to the controlling entity.

2185 (f) An insurer may make application to the commissioner for a waiver from the
2186 requirements of this Subsection (3) if the insurer's annual direct written and assumed premium,
2187 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood
2188 Program, is less than \$300,000,000. An insurer may also make application to the
2189 commissioner for a waiver from the requirements of this Subsection (3) based upon unique
2190 circumstances. The commissioner may consider various factors, including:

2191 (i) the type of business entity;

2192 (ii) the volume of business written;

2193 (iii) the availability of qualified board members; or

2194 (iv) the ownership or organizational structure of the entity.

2195 (4) (a) For purposes of this chapter, in determining whether an insurer's surplus as
2196 regards policyholders is reasonable in relation to the insurer's outstanding liabilities and

2197 adequate to meet its financial needs, the following factors, among others, shall be considered:

2198 (i) the size of the insurer as measured by its assets, capital and surplus, reserves,

2199 premium writings, insurance in force, and other appropriate criteria;

2200 (ii) the extent to which the insurer's business is diversified among several lines of

2201 insurance;

2202 (iii) the number and size of risks insured in each line of business;

2203 (iv) the extent of the geographical dispersion of the insurer's insured risks;

2204 (v) the nature and extent of the insurer's reinsurance program;

2205 (vi) the quality, diversification, and liquidity of the insurer's investment portfolio;

2206 (vii) the recent past and projected future trend in the size of the insurer's investment

2207 portfolio;

2208 (viii) the surplus as regards policyholders maintained by other comparable insurers;

2209 (ix) the adequacy of the insurer's reserves; and

2210 (x) the quality and liquidity of investments in affiliates.

2211 (b) The commissioner may treat an investment described in Subsection (4)(a)(x) as a

2212 disallowed asset for purposes of determining the adequacy of surplus as regards policyholders

2213 whenever in the judgment of the commissioner the investment so warrants.

2214 Section 8. Section **31A-16-107.5**, which is renumbered from Section 31A-16-108 is

2215 renumbered and amended to read:

2216 **[31A-16-108]. 31A-16-107.5. Examination of registered insurers.**

2217 (1) Subject to the limitation contained in this section and the powers which the

2218 commissioner has under Chapter 2, Administration of the Insurance Laws, relating to the

2219 examination of insurers, the commissioner has the power to ~~[order any]~~ examine an insurer

2220 registered under Section **31A-16-105** ~~[to produce the records, books, or other informational~~

2221 ~~papers in the possession of the insurer or its affiliates which the commissioner considers~~

2222 necessary] and its affiliates to ascertain the financial condition ~~[or legality of conduct]~~ of the

2223 insurer~~[. If an insurer fails to comply with this order, the commissioner may examine the~~

2224 ~~affiliates to obtain the information.],~~ including the enterprise risk to the insurer by the ultimate

2225 controlling party, or by the insurance holding company system on a consolidated basis.

2226 ~~[(2) The commissioner shall exercise his power under Subsection (1) only if the~~

2227 ~~examination of the insurer under Chapter 2 is inadequate, or the interests of the policyholders~~

2228 of the insurer may be adversely affected if the commissioner fails to exercise his power.]

2229 (2) (a) The commissioner may order an insurer registered under Section 31A-16-105 to
2230 produce the records, books, or other information papers in the possession of the insurer or its
2231 affiliates as are reasonably necessary to determine compliance with this chapter.

2232 (b) To determine compliance with this chapter, the commissioner may order an insurer
2233 registered under Section 31A-16-105 to produce information not in the possession of the
2234 insurer if the insurer can obtain access to the information pursuant to contractual relationships,
2235 statutory obligations, or other methods.

2236 (c) If an insurer cannot obtain the information requested by the commissioner, the
2237 insurer shall provide the commissioner a detailed explanation of the reason that the insurer
2238 cannot obtain the information and the identity of the holder of the information.

2239 (d) Whenever it appears to the commissioner that the detailed explanation is without
2240 merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of
2241 \$5,000 for each day's delay, or may suspend or revoke the insurer's license.

2242 (3) The commissioner may retain, at the registered insurer's expense, attorneys,
2243 actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, if
2244 they are necessary to assist in the conduct of the examination under Subsection (1). Any
2245 persons so retained are under the direction and control of the commissioner and shall act in a
2246 purely advisory capacity.

2247 (4) ~~Each~~ A registered insurer who produces records, books, and papers under
2248 Subsection (1) for examination is liable for and shall pay the expense of the examination under
2249 Section 31A-2-205.

2250 (5) If an insurer fails to comply with an order issued under this section, the
2251 commissioner may:

2252 (a) examine the affiliates to obtain the information; or

2253 (b) issue subpoenas, administer oaths, and examine under oath any person for purposes
2254 of determining compliance with this section.

2255 (6) Upon the failure or refusal of any person to obey a subpoena under Subsection (5),
2256 the commissioner may petition the Third District Court of Salt Lake County to enter an order
2257 compelling the witness to appear and testify or produce documentary evidence. A person shall
2258 be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed,

2259 anywhere within the state. A person subpoenaed is entitled to the same fees and mileage, if
2260 claimed, as a witness in the Third District Court of Salt Lake County, which fees, mileage, and
2261 actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their
2262 testimony, shall be itemized and charged against, and be paid by, the company being examined.

2263 Section 9. Section **31A-16-108.5** is enacted to read:

2264 **31A-16-108.5. Supervisory colleges.**

2265 (1) (a) For an insurer registered under Section 31A-16-105 and in accordance with
2266 Subsection (3), the commissioner may participate in a supervisory college for a domestic
2267 insurer that is part of an insurance holding company system with international operations to
2268 determine compliance by the insurer with this chapter. The powers of the commissioner with
2269 respect to supervisory colleges include the following:

2270 (i) initiating the establishment of a supervisory college;

2271 (ii) clarifying the membership and participation of other supervisors in the supervisory
2272 college;

2273 (iii) clarifying the functions of the supervisory college and the role of other regulators,
2274 including the establishment of a group-wide supervisor;

2275 (iv) coordinating the ongoing activities of the supervisory college, including:

2276 (A) planning meetings;

2277 (B) supervisory activities; and

2278 (C) processes for information sharing; and

2279 (v) establishing a crisis management plan.

2280 (2) (a) A registered insurer subject to this section is liable for and shall pay the
2281 reasonable expenses of the commissioner's participation in a supervisory college in accordance
2282 with Subsection (3), including reasonable travel expenses.

2283 (b) For purposes of this section, a supervisory college may be convened as either a
2284 temporary or permanent forum for communication and cooperation between the regulators
2285 charged with supervision of the insurer or its affiliates and the commissioner may establish a
2286 regular assessment to the insurer for the payment of these expenses.

2287 (3) (a) The commissioner may participate in a supervisory college with other regulators
2288 charged with supervision of the insurer or its affiliates, including:

2289 (i) other state regulatory agencies;

2290 (ii) federal regulatory agencies; or
2291 (iii) international regulatory agencies.

2292 (b) The commissioner may enter into agreements in accordance with Section
2293 31A-16-107.5 providing the basis for cooperation between the commissioner and other
2294 regulatory agencies, and the activities of the supervisory college, in order to assess:

2295 (i) the business strategy;
2296 (ii) financial position;
2297 (iii) legal and regulatory position;
2298 (iv) risk exposure; and
2299 (v) management and governance processes.

2300 (c) Nothing in this section shall delegate to the supervisory college the authority of the
2301 commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

2302 Section 10. Section **31A-16-109** is amended to read:

2303 **31A-16-109. Confidentiality of information obtained by commissioner.**

2304 ~~[All information]~~ (1) Information, documents, and copies of these ~~[which]~~ that are
2305 obtained by or disclosed to the commissioner or any other person in the course of an
2306 examination or investigation made under Section ~~[31A-16-108]~~ 31A-16-107.5, and all
2307 information reported under Section 31A-16-105, is confidential. It is not subject to subpoena
2308 and may not be made public by the commissioner or any other person, except it may be
2309 provided to the insurance departments of other states, without the prior written consent of the
2310 insurer to which it pertains. The confidentiality of this section does not apply if the
2311 commissioner, after giving the insurer and its affiliates who would be affected by the
2312 disclosure, proper notice and an opportunity to be heard, and determines that the interests of
2313 policyholders, shareholders, or the public will be served by the publication of the information.
2314 In this situation, the commissioner may publish all or any part of the information in any manner
2315 ~~[he]~~ the commissioner considers appropriate.

2316 (2) Neither the commissioner nor any person who received documents, materials, or
2317 other information while acting under the authority of the commissioner or with whom the
2318 documents, materials, or other information are shared pursuant to this chapter shall be
2319 permitted or required to testify in any private civil action concerning any confidential
2320 documents, materials, or information subject to Subsection (1).

2321 (3) (a) To assist in the performance of the commissioner's duties, the commissioner:
2322 (i) may share documents, materials, or other information, including the confidential
2323 documents, materials, or information subject to Subsection (1), with the following if the
2324 recipient agrees in writing to maintain the confidentiality status of the document, material, or
2325 other information, and has verified in writing the legal authority to maintain confidentiality:
2326 (A) other state, federal, and international regulatory agencies;
2327 (B) the National Association of Insurance Commissioners and its affiliates and
2328 subsidiaries; and
2329 (C) state, federal, and international law enforcement authorities, including members of
2330 a supervisory college described in Section [31A-16-108.5](#);
2331 (ii) notwithstanding Subsection (1), may only share confidential documents, material,
2332 or information reported pursuant to Section [31A-16-105](#) with commissioners of states having
2333 statutes or regulations substantially similar to Subsection (1) and who have agreed in writing
2334 not to disclose the documents, material, or information;
2335 (iii) may receive documents, materials, or information, including otherwise
2336 confidential documents, materials, or information from the National Association of Insurance
2337 Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement
2338 officials of other foreign or domestic jurisdictions, and shall maintain as confidential any
2339 document, material, or information received with notice or the understanding that it is
2340 confidential under the laws of the jurisdiction that is the source of the document, material, or
2341 information; and
2342 (iv) shall enter into written agreements with the National Association of Insurance
2343 Commissioners governing sharing and use of information provided pursuant to this chapter
2344 consistent with this Subsection (3) that shall:
2345 (A) specify procedures and protocols regarding the confidentiality and security of
2346 information shared with the National Association of Insurance Commissioners and its affiliates
2347 and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the
2348 National Association of Insurance Commissioners with other state, federal, or international
2349 regulators;
2350 (B) specify that ownership of information shared with the National Association of
2351 Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter remains

2352 with the commissioner and the National Association of Insurance Commissioner's use of the
2353 information is subject to the direction of the commissioner;

2354 (C) require prompt notice to be given to an insurer whose confidential information in
2355 the possession of the National Association of Insurance Commissioners pursuant to this chapter
2356 is subject to a request or subpoena to the National Association of Insurance Commissioners for
2357 disclosure or production; and

2358 (D) require the National Association of Insurance Commissioners and its affiliates and
2359 subsidiaries to consent to intervention by an insurer in any judicial or administrative action in
2360 which the National Association of Insurance Commissioners and its affiliates and subsidiaries
2361 may be required to disclose confidential information about the insurer shared with the National
2362 Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this
2363 chapter.

2364 (4) The sharing of information by the commissioner pursuant to this chapter does not
2365 constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely
2366 responsible for the administration, execution, and enforcement of this chapter.

2367 (5) A waiver of any applicable claim of confidentiality in the documents, materials, or
2368 information does not occur as a result of disclosure to the commissioner under this section or
2369 as a result of sharing as authorized in Subsection (3).

2370 (6) Documents, materials, or other information in the possession or control of the
2371 National Association of Insurance Commissioners pursuant to this chapter are:

2372 (a) confidential, not public records, and not open to public inspection; and

2373 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
2374 Act.

2375 Section 11. Section **31A-16-112** is enacted to read:

2376 **31A-16-112. Sanctions.**

2377 (1) (a) Notwithstanding Section [31A-2-308](#), the following sanctions apply:

2378 (i) An insurer failing, without just cause, to file a registration statement required by this
2379 chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to
2380 be recovered by the commissioner and the penalty so recovered shall be paid into the General
2381 Fund.

2382 (ii) The maximum penalty under this section is \$250,000.

2383 (b) The commissioner may reduce the penalty if the insurer demonstrates to the
2384 commissioner that the imposition of the penalty would constitute a financial hardship to the
2385 insurer.

2386 (2) A director or officer of an insurance holding company system who knowingly
2387 violates, participates in, or assents to, or who knowingly shall permit any of the officers or
2388 agents of the insurer to engage in transactions or make investments that have not been properly
2389 reported or submitted pursuant to Subsection [31A-16-105\(1\)](#), [31A-16-106\(1\)\(b\)](#), or
2390 [31A-16-106\(2\)](#), or that violates this chapter, shall pay, in the director's or officer's individual
2391 capacity, a civil forfeiture of not more than \$10,000 per violation, notwithstanding Section
2392 [31A-2-308](#), after notice and hearing before the commissioner. In determining the amount of
2393 the civil forfeiture, the commissioner shall take into account the appropriateness of the
2394 forfeiture with respect to the gravity of the violation, the history of previous violations, and
2395 such other matters as justice may require.

2396 (3) Whenever it appears to the commissioner that any insurer subject to this chapter or
2397 a director, officer, employee, or agent of the insurer has engaged in any transaction or entered
2398 into a contract that is subject to Section [31A-16-106](#) and that would not have been approved
2399 had the approval been requested, the commissioner may order the insurer to cease and desist
2400 immediately any further activity under that transaction or contract. After notice and hearing,
2401 the commissioner may also order the insurer to void any contract and restore the status quo if
2402 the action is in the best interest of the policyholders, creditors, or the public.

2403 (4) Whenever it appears to the commissioner that an insurer or any director, officer,
2404 employee, or agent of the insurer has committed a willful violation of this chapter, the
2405 commissioner may cause criminal proceedings to be instituted by the Third District Court of
2406 Salt Lake County, against the insurer or the responsible director, officer, employee, or agent of
2407 the insurer. An insurer that willfully violates this chapter may be fined not more than \$250,000
2408 notwithstanding Section [31A-2-308](#). An individual who willfully violates this chapter may be
2409 fined in the individual's individual capacity not more than \$100,000 notwithstanding Section
2410 [31A-2-308](#) and is guilty of a third-degree felony.

2411 (5) An officer, director, or employee of an insurance holding company system who
2412 willfully and knowingly subscribes to or makes or causes to be made any false statements, false
2413 reports, or false filings with the intent to deceive the commissioner in the performances of the

2414 commissioner's duties under this chapter, is guilty of a third-degree felony. Any fines imposed
2415 shall be paid by the officer, director, or employee in the officer's, director's, or employee's
2416 individual capacity.

2417 (6) Whenever it appears to the commissioner that a person has committed a violation
2418 of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the
2419 insurer by affiliates or by the insurance holding company system, the violation may serve as an
2420 independent basis for disapproving dividends or distributions and for placing the insurer under
2421 an order of supervision in accordance with Section 31A-27-503.

2422 Section 12. Section 31A-16-113 is enacted to read:

2423 **31A-16-113. Receivership.**

2424 Whenever it appears to the commissioner that a person has committed a violation of
2425 this chapter that so impairs the financial condition of a domestic insurer as to threaten
2426 insolvency or make the further transaction of business by it hazardous to its policyholders,
2427 creditors, shareholders, or the public, then the commissioner may proceed as provided in
2428 Section 31A-16-114 to take possession of the property of the domestic insurer and to conduct
2429 its business.

2430 Section 13. Section 31A-16-114 is enacted to read:

2431 **31A-16-114. Recovery.**

2432 (1) If an order for liquidation or rehabilitation of a domestic insurer is entered, the
2433 receiver appointed under the order shall have a right to recover on behalf of the insurer:

2434 (a) from any parent corporation, holding company, or person or affiliate who otherwise
2435 controlled the insurer, the amount of distributions other than distributions of shares of the same
2436 class of stock paid by the insurer on its capital stock; or

2437 (b) any payment in the form of a bonus, termination settlement, or extraordinary lump
2438 sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee,
2439 when the distribution or payment pursuant to Subsection (1)(a) or this Subsection (1)(b) is
2440 made at any time during the one year preceding the petition for liquidation, conservation, or
2441 rehabilitation, as the case may be, subject to the limitations of Subsections (2), (3), and (4).

2442 (2) A distribution may not be recovered if the parent or affiliate shows that when paid
2443 the distribution was lawful and reasonable and that the insurer did not know and could not
2444 reasonably have known that the distribution might adversely affect the ability of the insurer to

2445 fulfill its contractual obligations.

2446 (3) A person who was a parent corporation or holding company or a person who
2447 otherwise controlled the insurer or affiliate at the time the distributions were paid shall be
2448 liable up to the amount of distributions or payments under Subsection (1) that the person
2449 received. A person who otherwise controlled the insurer at the time the distributions were
2450 declared is liable up to the amount of distributions that would have been received if they had
2451 been paid immediately. If two or more persons are liable with respect to the same
2452 distributions, they shall be jointly and severally liable.

2453 (4) The maximum amount recoverable under this section shall be the amount needed in
2454 excess of all other available assets of the impaired or insolvent insurer to pay the contractual
2455 obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

2456 (5) To the extent that any person liable under Subsection (3) is insolvent or otherwise
2457 fails to pay claims due from the person, its parent corporation, holding company, or person who
2458 otherwise controlled it at the time the distribution was paid, are jointly and severally liable for
2459 any resulting deficiency in the amount recovered from the parent corporation or holding
2460 company or person who otherwise controlled it.

2461 Section 14. Section **31A-16-115** is enacted to read:

2462 **31A-16-115. Revocation, suspension, or nonrenewal of insurer's license.**

2463 Whenever it appears to the commissioner that a person has committed a violation of
2464 this chapter that makes the continued operation of an insurer contrary to the interests of
2465 policyholders or the public, the commissioner may, after giving notice and an opportunity to be
2466 heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in
2467 this state for such period as the commissioner finds is required for the protection of
2468 policyholders or the public. Any such determination shall be accompanied by specific findings
2469 of fact and conclusions of law.

2470 Section 15. Section **31A-16-116** is enacted to read:

2471 **31A-16-116. Rules and orders.**

2472 The commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
2473 Rulemaking Act, may make rules necessary to carry out this chapter. The commissioner may
2474 issue orders as is necessary to carry out this chapter.

2475 Section 16. Section **31A-16-117** is enacted to read:

2476 **31A-16-117. Judicial review -- Mandamus.**

2477 (1) A person aggrieved by an act, determination, rule, or order or any other action of
2478 the commissioner pursuant to this chapter may seek judicial review in accordance with Title
2479 63G, Chapter 4, Administrative Procedures Act.

2480 (2) The filing of an appeal pursuant to this section shall stay the application of any rule,
2481 order, or other action of the commissioner to the appealing party unless the court, after giving
2482 party notice and an opportunity to be heard, determines that a stay would be detrimental to the
2483 interest of policyholders, shareholders, creditors, or the public.

2484 (3) A person aggrieved by a failure of the commissioner to act or make a determination
2485 required by this chapter may petition the Third District Court of Salt Lake County for writ in
2486 the nature of a mandamus or a peremptory mandamus directing the commissioner to act or
2487 make a determination.

2488 Section 17. Section **31A-16-118** is enacted to read:

2489 **31A-16-118. Conflict with other laws.**

2490 If any law or part of a law of this state is inconsistent with this chapter, this chapter
2491 governs.

2492 Section 18. Section **31A-16-119** is enacted to read:

2493 **31A-16-119. Severability.**

2494 If any chapter, section, or subsection of this chapter or the application of any chapter,
2495 section, or subsection to any person or circumstance is held invalid, the remainder of the
2496 provisions of this chapter shall be given effect without the invalid provision or application.
2497 The provisions of this chapter are severable.

2498 Section 19. Section **31A-16a-101** is enacted to read:

2499 **CHAPTER 16a. OWN RISK AND SOLVENCY ASSESSMENT ACT**

2500 **31A-16a-101. Title -- Scope.**

2501 (1) This chapter is known as the "Own Risk and Solvency Assessment Act."

2502 (2) This chapter applies to an insurer domiciled in this state unless exempt pursuant to
2503 Section [31A-16a-106](#).

2504 (3) An own risk and solvency assessment summary report is confidential pursuant to
2505 Section [31A-16a-108](#).

2506 Section 20. Section **31A-16a-102** is enacted to read:

2507 **31A-16a-102. Definitions.**

2508 (1) "Insurance group" means the insurers and affiliates included within an insurance
2509 holding company system as defined in Section 31A-1-301.

2510 (2) "Insurer" has the same meaning as defined in Section 31A-1-301, except that it
2511 does not include an agency, authority, or instrumentality of the United States, its possessions
2512 and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or
2513 political subdivision of a state.

2514 (3) "Own risk and solvency assessment" means a confidential internal assessment:

2515 (a) appropriate to the nature, scale, and complexity of an insurer or insurance group;

2516 (b) conducted by that insurer or insurance group; and

2517 (c) including the material and relevant risks associated with the insurer's or insurance
2518 group's current business plan, and the sufficiency of capital resources to support those risks.

2519 (4) "Own risk and solvency assessment guidance manual" means the current version of
2520 the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the
2521 National Association of Insurance Commissioners.

2522 (5) "Own risk and solvency assessment summary report" means a confidential
2523 high-level summary of an insurer's or insurance group's own risk and solvency assessment.

2524 Section 21. Section **31A-16a-103** is enacted to read:

2525 **31A-16a-103. Risk management framework.**

2526 (1) An insurer shall maintain a risk management framework to assist the insurer with
2527 identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.

2528 (2) An insurer may satisfy Subsection (1) if the insurance group of which the insurer is
2529 a member maintains a risk management framework applicable to the operations of the insurer.

2530 Section 22. Section **31A-16a-104** is enacted to read:

2531 **31A-16a-104. Own risk and solvency assessment requirement.**

2532 (1) (a) Subject to Section 31A-16a-106, an insurer, or the insurance group of which the
2533 insurer is a member, shall regularly conduct an own risk and solvency assessment consistent
2534 with a process comparable to the own risk and solvency assessment guidance manual.

2535 (b) A change in the own risk and solvency assessment guidance manual shall be
2536 effective on the January 1 following the calendar year in which the changes have been adopted
2537 by the National Association of Insurance Commissioners.

2538 (2) The own risk and solvency assessment shall be conducted:
2539 (a) no less than annually; and
2540 (b) at any time when there are significant changes to the risk profile of the insurer or
2541 the insurance group of which the insurer is a member.

2542 Section 23. Section **31A-16a-105** is enacted to read:

2543 **31A-16a-105. Own risk and solvency assessment summary report.**

2544 (1) Upon the commissioner's request, an insurer shall submit to the commissioner:

2545 (a) an own risk and solvency assessment summary report; or

2546 (b) any combination of reports that together contain the information described in the
2547 own risk and solvency assessment guidance manual, applicable to the insurer, the insurance
2548 group of which it is a member, or both the insurer and insurance group.

2549 (2) Notwithstanding a request from the commissioner, if the insurer is a member of an
2550 insurance group, the insurer shall submit the one or more reports required by this section if the
2551 commissioner is the lead state commissioner of the insurance group as determined by the
2552 procedures within the Financial Analysis Handbook adopted by the National Association of
2553 Insurance Commissioners.

2554 (3) The commissioner may not request the one or more reports required by this section
2555 more than once each year.

2556 (4) The one or more reports shall include a signature of the insurer's or insurance
2557 group's chief risk officer or other executive having responsibility for the oversight of the
2558 insurer's enterprise risk management process attesting to the best of the person's belief and
2559 knowledge that:

2560 (a) the insurer applies the enterprise risk management process described in the own risk
2561 and solvency assessment summary report; and

2562 (b) a copy of the report has been provided to the insurer's board of directors or the
2563 appropriate committee of the board of directors.

2564 (5) An insurer may comply with Subsection (1) by providing the most recent and
2565 substantially similar report provided by the insurer or another member of an insurance group of
2566 which the insurer is a member, to the commissioner of another state, or to a supervisor or
2567 regulator of a foreign jurisdiction if:

2568 (a) the report provides information that is comparable to the information described in

2569 the own risk and solvency assessment guidance manual; and

2570 (b) the report is written in a language other than English, it is accompanied by a
2571 translation of that report into the English language.

2572 Section 24. Section **31A-16a-106** is enacted to read:

2573 **31A-16a-106. Exemption.**

2574 (1) An insurer shall be exempt from the requirements of this chapter, if:

2575 (a) the insurer has annual direct written and unaffiliated assumed premium, including
2576 international direct and assumed premium, but excluding premiums reinsured with the Federal
2577 Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

2578 (b) the insurance group of which the insurer is a member has annual direct written and
2579 unaffiliated assumed premium, including international direct and assumed premium, but
2580 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood
2581 Program, less than \$1,000,000,000.

2582 (2) If an insurer qualifies for exemption pursuant to Subsection (1)(a), but the
2583 insurance group of which the insurer is a member does not qualify for exemption pursuant to
2584 Subsection (1)(b), the own risk and solvency assessment summary report that may be required
2585 pursuant to Section [31A-16a-105](#):

2586 (a) shall include every insurer within the insurance group; or

2587 (b) if more than one own risk and solvency assessment summary report is submitted for
2588 any combination of insurers, the reports shall include every insurer within the insurance group.

2589 (3) If an insurer does not qualify for exemption pursuant to Subsection (1)(a), but the
2590 insurance group of which it is a member qualifies for exemption pursuant to Subsection (1)(b),
2591 then the only own risk and solvency assessment summary report that may be required pursuant
2592 to Section [31A-16a-105](#) is the report applicable to that insurer.

2593 (4) An insurer that does not qualify for exemption pursuant to Subsection (1) may
2594 apply to the commissioner for a waiver from the requirements of this chapter.

2595 (5) In deciding whether to grant the insurer's request for waiver, the commissioner will
2596 consider unique circumstances that may include factors such as:

2597 (a) the type and volume of business written;

2598 (b) ownership and organizational structure; and

2599 (c) any other factor the commissioner considers relevant to the insurer or insurance

2600 group of which the insurer is a member.

2601 (6) If the insurer is part of an insurance group with insurers domiciled in more than one
2602 state, the commissioner shall coordinate with the lead state commissioner, as determined by
2603 procedures outlined in the Financial Analysis Handbook of the National Association of
2604 Insurance Commissioners, and with the other domiciliary commissioners in considering
2605 whether to grant the insurer's request for a waiver.

2606 (7) Notwithstanding the exemptions stated in this section, the commissioner may
2607 require that an insurer maintain a risk management framework, conduct an own risk and
2608 solvency assessment, and file an own risk and solvency assessment summary report based on
2609 unique circumstances, including:

2610 (a) the insurer has a risk-based capital for company action level event as set forth in
2611 Section [31A-17-603](#);

2612 (b) the insurer meets one or more of the standards of an insurer considered to be in
2613 hazardous financial condition or potentially hazardous financial condition, as defined by rule
2614 made under Subsection [31A-27a-101](#)(3)(c);

2615 (c) the insurer otherwise exhibits qualities of a troubled insurer as determined by the
2616 commissioner;

2617 (d) the type and volume of business written;

2618 (e) ownership and organizational structure; or

2619 (f) federal agency requests and international supervisor requests.

2620 (8) If an insurer that qualifies for an exemption pursuant to Subsection (1)
2621 subsequently no longer qualifies for that exemption due to changes in premium as reflected in
2622 the insurer's most recent annual statement or in the most recent annual statements of the
2623 insurers within the insurance group of which the insurer is a member, the insurer shall have one
2624 year following the year the threshold is exceeded to comply with the requirements of this
2625 chapter.

2626 Section 25. Section **31A-16a-107** is enacted to read:

2627 **31A-16a-107. Contents of the own risk and solvency assessment summary report.**

2628 (1) The own risk and solvency assessment summary report shall be prepared consistent
2629 with the own risk and solvency assessment guidance manual, subject to Subsection (3).

2630 (2) Documentation supporting information shall be maintained and made available

2631 upon examination or upon request of the commissioner.

2632 (3) The review of the own risk and solvency assessment summary report, and any
2633 additional requests for information, shall be made using similar procedures currently used in
2634 the analysis and examination of multi-state or global insurers and insurance groups.

2635 Section 26. Section **31A-16a-108** is enacted to read:

2636 **31A-16a-108. Confidentiality of information obtained by commissioner.**

2637 (1) Documents, materials, or other information, including the own risk and solvency
2638 assessment summary report, in the possession of or control of the department that are obtained
2639 by, created by, or disclosed to the commissioner or any other person under this chapter, are
2640 proprietary and contain trade secrets. These documents, materials, or other information are:

2641 (a) confidential, not public records, and not open to public inspection; and

2642 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
2643 Act.

2644 (2) The commissioner is authorized to use the documents, materials, or other
2645 information in the furtherance of any regulatory or legal action brought as a part of the
2646 commissioner's official duties.

2647 (3) Other than under Subsection (2), the commissioner may not otherwise make the
2648 documents, materials, or other information public without the prior written consent of the
2649 insurer.

2650 (4) Neither the commissioner nor any person who received documents, materials, or
2651 other own risk and solvency assessment related information, through examination or otherwise,
2652 while acting under the authority of the commissioner or with whom such documents, materials,
2653 or other information are shared pursuant to this chapter shall be permitted or required to testify
2654 in any private civil action concerning any confidential documents, materials, or information
2655 subject to Subsection (1).

2656 (5) To assist in the performance of the commissioner's regulatory duties, the
2657 commissioner:

2658 (a) may, upon request, share documents, materials, or other own risk and solvency
2659 assessment related information, including the confidential documents, materials, or information
2660 subject to Subsection (1), including proprietary and trade secret documents and materials with:

2661 (i) other state, federal, and international financial regulatory agencies, including

2662 members of any supervisory college as described in Chapter 16, Insurance Holding Companies;
2663 (ii) the National Association of Insurance Commissioners; and
2664 (iii) any third-party consultants designated by the commissioner;
2665 (b) may not share the information described in Subsection (5)(a) unless the recipient of
2666 the information agrees in writing to:
2667 (i) maintain the confidentiality status of the own risk and solvency assessment related
2668 documents, materials, or other information; and
2669 (ii) state that it has the legal authority to maintain confidentiality;
2670 (c) may receive documents from regulatory officials of other foreign or domestic
2671 jurisdictions, including members of any supervisory college described in Chapter 16, Insurance
2672 Holding Companies, and from the National Association of Insurance Commissioners, materials
2673 or other own risk and solvency assessment related information, including:
2674 (i) otherwise confidential documents, materials, or information; or
2675 (ii) proprietary and trade-secret information or documents;
2676 (d) shall maintain as confidential any documents, materials, or information received
2677 under Subsection (5)(c) with notice or the understanding that it is confidential under the laws
2678 of the jurisdiction that is the source of the document, material, or information;
2679 (e) shall enter into a written agreement with the National Association of Insurance
2680 Commissioners or a third-party consultant governing sharing and use of information provided
2681 pursuant to this chapter consistent with this Subsection (5) that shall:
2682 (i) specify procedures and protocols regarding the confidentiality and security of
2683 information shared with the National Association of Insurance Commissioners or a third-party
2684 consultant pursuant to this chapter, including procedures and protocols for sharing by the
2685 National Association of Insurance Commissioners with other state regulators from states in
2686 which the insurance group has domiciled insurers;
2687 (ii) provide that the recipient agrees in writing:
2688 (A) to maintain the confidentiality status of the own risk and solvency assessment
2689 related documents, materials, or other information; and
2690 (B) to verify the legal authority to maintain confidentiality;
2691 (iii) specify that ownership of information shared with the National Association of
2692 Insurance Commissioners or a third-party consultant pursuant to this chapter remains with the

2693 commissioner and the National Association of Insurance Commissioners' or a third-party
2694 consultant's use of the information is subject to the direction of the commissioner;

2695 (iv) prohibit the National Association of Insurance Commissioners or third-party
2696 consultant from storing the information shared pursuant to this chapter in a permanent database
2697 after the underlying analysis is completed;

2698 (v) require prompt notice to be given to an insurer whose confidential information in
2699 the possession of the National Association of Insurance Commissioners or a third-party
2700 consultant pursuant to this chapter is subject to a request or subpoena to the National
2701 Association of Insurance Commissioners or a third-party consultant for disclosure or
2702 production;

2703 (vi) require the National Association of Insurance Commissioners or a third-party
2704 consultant to consent to intervention by an insurer in any judicial or administrative action in
2705 which the National Association of Insurance Commissioners or a third-party consultant may be
2706 required to disclose confidential information about the insurer shared with the National
2707 Association of Insurance Commissioners or a third-party consultant pursuant to this chapter;
2708 and

2709 (vii) in the case of an agreement involving a third-party consultant, provide for the
2710 insurer's written consent.

2711 (6) The sharing of information and documents by the commissioner pursuant to this
2712 chapter may not constitute a delegation of regulatory authority or rulemaking, and the
2713 commissioner is solely responsible for the administration, execution, and enforcement of this
2714 chapter.

2715 (7) No waiver of any applicable claim of confidentiality in the documents, proprietary
2716 and trade-secret materials, or other own risk and solvency assessment related information shall
2717 occur as a result of disclosure of such own risk and solvency assessment related information or
2718 documents to the commissioner under this section or as a result of sharing as authorized in this
2719 chapter.

2720 (8) Documents, materials, or other information in the possession or control of the
2721 National Association of Insurance Commissioners or a third-party consultant pursuant to this
2722 chapter are:

2723 (a) confidential, not public records, and not open to public inspection; and

2724 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
2725 Act.

2726 Section 27. Section **31A-16a-109** is enacted to read:

2727 **31A-16a-109. Sanctions.**

2728 (1) An insurer failing, without just cause, to timely file the own risk and solvency
2729 assessment summary report as required in this chapter is required, after notice and hearing, to
2730 pay a penalty of \$10,000 for each working day the own risk and solvency assessment summary
2731 report is late notwithstanding Section [31A-2-308](#).

2732 (2) The penalty recovered under Subsection (1) shall be paid into the General Fund.
2733 The maximum penalty under this section is \$250,000 notwithstanding Section [31A-2-308](#). The
2734 commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the
2735 imposition of the penalty would constitute a financial hardship to the insurer.

2736 Section 28. Section **31A-16a-110** is enacted to read:

2737 **31A-16a-110. Severability.**

2738 If any chapter, section, or subsection of this chapter or the application of any chapter,
2739 section, or subsection to any person or circumstance is held invalid, the remainder of the
2740 provisions of this chapter shall be given effect without the invalid provision or application.

2741 The provisions of this chapter are severable.

2742 Section 29. Section **31A-22-612** is amended to read:

2743 **31A-22-612. Conversion privileges for insured former spouse.**

2744 (1) An accident and health insurance policy, which in addition to covering the insured
2745 also provides coverage to the spouse of the insured, may not contain a provision for
2746 termination of coverage of a spouse covered under the policy, except by entry of a valid decree
2747 of divorce or annulment between the parties.

2748 (2) Every policy which contains this type of provision shall provide that upon the entry
2749 of the divorce decree the spouse is entitled to have issued an individual policy of accident and
2750 health insurance without evidence of insurability, upon application to the company and
2751 payment of the appropriate premium. The policy shall provide the coverage being issued
2752 which is most nearly similar to the terminated coverage. Probationary or waiting periods in the
2753 policy are considered satisfied to the extent the coverage was in force under the prior policy.

2754 (3) When the insurer receives actual notice that the coverage of a spouse is to be

2755 terminated because of a divorce or annulment, the insurer shall promptly provide the spouse
2756 written notification of the right to obtain individual coverage as provided in Subsection (2), the
2757 premium amounts required, and the manner, place, and time in which premiums may be paid.
2758 The premium is determined in accordance with the insurer's table of premium rates applicable
2759 to the age and class of risk of the persons to be covered and to the type and amount of coverage
2760 provided. If the spouse applies and tenders the first monthly premium to the insurer within 30
2761 days after receiving the notice provided by this Subsection (3), the spouse shall receive
2762 individual coverage that commences immediately upon termination of coverage under the
2763 insured's policy.

2764 (4) This section does not apply to accident and health insurance policies offered on a
2765 group blanket basis or a health benefit plan.

2766 Section 30. Section **31A-22-620** is amended to read:

2767 **31A-22-620. Medicare Supplement Insurance Minimum Standards Act.**

2768 (1) As used in this section:

2769 (a) "Applicant" means:

2770 (i) in the case of an individual Medicare supplement policy, the person who seeks to
2771 contract for insurance benefits; and

2772 (ii) in the case of a group Medicare supplement policy, the proposed certificate holder.

2773 (b) "Certificate" means any certificate delivered or issued for delivery in this state
2774 under a group Medicare supplement policy.

2775 (c) "Certificate form" means the form on which the certificate is delivered or issued for
2776 delivery by the issuer.

2777 (d) "Issuer" includes insurance companies, fraternal benefit societies, health care
2778 service plans, health maintenance organizations, and any other entity delivering, or issuing for
2779 delivery in this state, Medicare supplement policies or certificates.

2780 (e) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the
2781 Social Security Amendments of 1965, as then constituted or later amended.

2782 (f) "Medicare Supplement Policy":

2783 (i) means a group or individual policy of [~~disability~~] health insurance, other than a
2784 policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42
2785 U.S.C. [~~Section~~] Sec. 1395 et seq., or an issued policy under a demonstration project specified

2786 in 42 U.S.C. [Section] Sec. 1395ss(g)(1), that is advertised, marketed, or designed primarily as
2787 a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses
2788 of persons eligible for Medicare; and

2789 (ii) does not include Medicare Advantage plans established under Medicare Part C,
2790 outpatient prescription drug plans established under Medicare Part D, or any health care
2791 prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A)
2792 of the Social Security Act.

2793 (g) "Policy form" means the form on which the policy is delivered or issued for
2794 delivery by the issuer.

2795 (2) (a) Except as otherwise specifically provided, this section applies to:

2796 (i) all Medicare supplement policies delivered or issued for delivery in this state on or
2797 after the effective date of this section;

2798 (ii) all certificates issued under group Medicare supplement policies, that have been
2799 delivered or issued for delivery in this state on or after the effective date of this section; and

2800 (iii) policies or certificates that were in force prior to the effective date of this section,
2801 with respect to requirements for benefits, claims payment, and policy reporting practice under
2802 Subsection (3)(d), and loss ratios under Subsection (4).

2803 (b) This section does not apply to a policy of one or more employers or labor
2804 organizations, or of the trustees of a fund established by one or more employers or labor
2805 organizations, or a combination of employers and labor unions, for employees or former
2806 employees or a combination of employees and former employees, or for members or former
2807 members of the labor organizations, or a combination of members and former members of
2808 labor organizations.

2809 (c) This section does not prohibit, nor does it apply to insurance policies or health care
2810 benefit plans, including group conversion policies, provided to Medicare eligible persons that
2811 are not marketed or held out to be Medicare supplement policies or benefit plans.

2812 (3) (a) A Medicare supplement policy or certificate in force in the state may not contain
2813 benefits that duplicate benefits provided by Medicare.

2814 (b) Notwithstanding any other provision of law of this state, a Medicare supplement
2815 policy or certificate may not exclude or limit benefits for loss incurred more than six months
2816 from the effective date of coverage because it involved a preexisting condition. The policy or

2817 certificate may not define a preexisting condition more restrictively than: "A condition for
2818 which medical advice was given or treatment was recommended by or received from a
2819 physician within six months before the effective date of coverage."

2820 (c) The commissioner shall adopt rules to establish specific standards for policy
2821 provisions of Medicare supplement policies and certificates. The standards adopted shall be in
2822 addition to and in accordance with applicable laws of this state. A requirement of this title
2823 relating to minimum required policy benefits, other than the minimum standards contained in
2824 this section, may not apply to Medicare supplement policies and certificates. The standards
2825 may include:

- 2826 (i) terms of renewability;
- 2827 (ii) initial and subsequent conditions of eligibility;
- 2828 (iii) nonduplication of coverage;
- 2829 (iv) probationary periods;
- 2830 (v) benefit limitations, exceptions, and reductions;
- 2831 (vi) elimination periods;
- 2832 (vii) requirements for replacement;
- 2833 (viii) recurrent conditions; and
- 2834 (ix) definitions of terms.

2835 (d) The commissioner shall adopt rules establishing minimum standards for benefits,
2836 claims payment, marketing practices, compensation arrangements, and reporting practices for
2837 Medicare supplement policies and certificates.

2838 (e) The commissioner may adopt rules to conform Medicare supplement policies and
2839 certificates to the requirements of federal law and regulations, including:

- 2840 (i) requiring refunds or credits if the policies do not meet loss ratio requirements;
- 2841 (ii) establishing a uniform methodology for calculating and reporting loss ratios;
- 2842 (iii) assuring public access to policies, premiums, and loss ratio information of issuers
2843 of Medicare supplement insurance;
- 2844 (iv) establishing a process for approving or disapproving policy forms and certificate
2845 forms and proposed premium increases;
- 2846 (v) establishing a policy for holding public hearings prior to approval of premium
2847 increases;

2848 (vi) establishing standards for Medicare select policies and certificates; and

2849 (vii) nondiscrimination for genetic testing or genetic information.

2850 (f) The commissioner may adopt rules that prohibit policy provisions not otherwise
2851 specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or
2852 unfairly discriminatory to any person insured or proposed to be insured under a Medicare
2853 supplement policy or certificate.

2854 (4) Medicare supplement policies shall return to policyholders benefits that are
2855 reasonable in relation to the premium charged. The commissioner shall make rules to establish
2856 minimum standards for loss ratios of Medicare supplement policies on the basis of incurred
2857 claims experience, or incurred health care expenses where coverage is provided by a health
2858 maintenance organization on a service basis rather than on a reimbursement basis, and earned
2859 premiums in accordance with accepted actuarial principles and practices.

2860 (5) (a) To provide for full and fair disclosure in the sale of Medicare supplement
2861 policies, a Medicare supplement policy or certificate may not be delivered in this state unless
2862 an outline of coverage is delivered to the applicant at the time application is made.

2863 (b) The commissioner shall prescribe the format and content of the outline of coverage
2864 required by Subsection (5)(a).

2865 (c) For purposes of this section, "format" means style arrangements and overall
2866 appearance, including such items as the size, color, and prominence of type and arrangement of
2867 text and captions. The outline of coverage shall include:

2868 (i) a description of the principal benefits and coverage provided in the policy;

2869 (ii) a statement of the renewal provisions, including any reservation by the issuer of a
2870 right to change premiums; and disclosure of the existence of any automatic renewal premium
2871 increases based on the policyholder's age; and

2872 (iii) a statement that the outline of coverage is a summary of the policy issued or
2873 applied for and that the policy should be consulted to determine governing contractual
2874 provisions.

2875 (d) The commissioner may make rules for captions or notice if the commissioner finds
2876 that the rules are:

2877 (i) in the public interest; and

2878 (ii) designed to inform prospective insureds that particular insurance coverages are not

2879 Medicare supplement coverages, for all accident and health insurance policies sold to persons
2880 eligible for Medicare, other than:

2881 (A) a medicare supplement policy; or

2882 (B) a disability income policy.

2883 (e) The commissioner may prescribe by rule a standard form and the contents of an
2884 informational brochure for persons eligible for Medicare, that is intended to improve the
2885 buyer's ability to select the most appropriate coverage and improve the buyer's understanding of
2886 Medicare. Except in the case of direct response insurance policies, the commissioner may
2887 require by rule that the informational brochure be provided concurrently with delivery of the
2888 outline of coverage to any prospective insureds eligible for Medicare. With respect to direct
2889 response insurance policies, the commissioner may require by rule that the prescribed brochure
2890 be provided upon request to any prospective insureds eligible for Medicare, but in no event
2891 later than the time of policy delivery.

2892 (f) The commissioner may adopt reasonable rules to govern the full and fair disclosure
2893 of the information in connection with the replacement of accident and health policies,
2894 subscriber contracts, or certificates by persons eligible for Medicare.

2895 (6) Notwithstanding Subsection (1), Medicare supplement policies and certificates
2896 shall have a notice prominently printed on the first page of the policy or certificate, or attached
2897 to the front page, stating in substance that the applicant has the right to return the policy or
2898 certificate within 30 days of its delivery and to have the premium refunded if, after examination
2899 of the policy or certificate, the applicant is not satisfied for any reason. Any refund made
2900 pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

2901 (7) Every issuer of Medicare supplement insurance policies or certificates in this state
2902 shall provide a copy of any Medicare supplement advertisement intended for use in this state,
2903 whether through written or broadcast medium, to the commissioner for review.

2904 (8) The commissioner may adopt rules to conform Medicare and Medicare supplement
2905 policies and certificates to the marketing requirements of federal law and regulation.

2906 Section 31. Section **31A-23a-102** is amended to read:

2907 **31A-23a-102. Definitions.**

2908 As used in this chapter:

2909 (1) "Bail bond producer" is as defined in Section [31A-35-102](#).

2910 (2) "Designated home state" means the state or territory of the United States or the
 2911 District of Columbia:

2912 (a) in which an insurance producer, limited lines producer, consultant, managing
 2913 general agent, or reinsurance intermediary licensee does not maintain the licensee's principal:

2914 (i) place of residence; or
 2915 (ii) place of business;

2916 (b) if the resident state, territory, or District of Columbia of the licensee does not
 2917 license for the line of authority sought, the licensee has qualified for the license as if the person
 2918 were a resident in the state, territory, or District of Columbia described in Subsection (2)(a),
 2919 including an applicable:

2920 (i) examination requirement;
 2921 (ii) fingerprint background check requirement; and
 2922 (iii) continuing education requirement; and

2923 (c) if the licensee has designated the state, territory, or District of Columbia as the
 2924 designated home state.

2925 ~~[(2)]~~ (3) "Home state" means:

2926 (a) a state or territory of the United States or the District of Columbia in which an
 2927 insurance producer, limited lines producer, consultant, managing general agent, or reinsurance
 2928 intermediary licensee:

2929 ~~[(a)]~~ (i) maintains the ~~[insurance producer's]~~ licensee's principal:

2930 ~~[(i)]~~ (A) place of residence; or
 2931 ~~[(ii)]~~ (B) place of business; and

2932 ~~[(b)]~~ (ii) is licensed to act as ~~[an insurance producer]~~ a resident licensee; or

2933 (b) if the resident state, territory, or the District of Columbia described in Subsection
 2934 (3)(a) does not license for the line of authority sought, a state, territory, or the District of
 2935 Columbia:

2936 (i) in which the licensee is licensed;
 2937 (ii) in which the licensee is in good standing; and
 2938 (iii) that the licensee has designated as the licensee's designated home state.

2939 ~~[(3)]~~ (4) "Insurer" is as defined in Section 31A-1-301, except that the following
 2940 persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

- 2941 (a) a risk retention group as defined in:
- 2942 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
- 2943 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
- 2944 (iii) Chapter 15, Part 2, Risk Retention Groups Act;
- 2945 (b) a residual market pool;
- 2946 (c) a joint underwriting authority or association; and
- 2947 (d) a captive insurer.
- 2948 [~~4~~] (5) "License" is defined in Section 31A-1-301.
- 2949 [~~5~~] (6) (a) "Managing general agent" means a person that:
- 2950 (i) manages all or part of the insurance business of an insurer, including the
- 2951 management of a separate division, department, or underwriting office;
- 2952 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
- 2953 manager, or other similar term;
- 2954 (iii) produces and underwrites an amount of gross direct written premium equal to, or
- 2955 more than, 5% of the policyholder surplus as reported in the last annual statement of the insurer
- 2956 in any one quarter or year:
- 2957 (A) with or without the authority;
- 2958 (B) separately or together with an affiliate; and
- 2959 (C) directly or indirectly; and
- 2960 (iv) (A) adjusts or pays claims in excess of an amount determined by the
- 2961 commissioner; or
- 2962 (B) negotiates reinsurance on behalf of the insurer.
- 2963 (b) Notwithstanding Subsection [~~5~~] (6)(a), the following persons may not be
- 2964 considered as managing general agent for the purposes of this chapter:
- 2965 (i) an employee of the insurer;
- 2966 (ii) a United States manager of the United States branch of an alien insurer;
- 2967 (iii) an underwriting manager that, pursuant to contract:
- 2968 (A) manages all the insurance operations of the insurer;
- 2969 (B) is under common control with the insurer;
- 2970 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 2971 (D) is not compensated based on the volume of premiums written; and

2972 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
2973 insurer or inter-insurance exchange under powers of attorney.

2974 ~~[(6)]~~ (7) "Negotiate" means the act of conferring directly with or offering advice
2975 directly to a purchaser or prospective purchaser of a particular contract of insurance concerning
2976 a substantive benefit, term, or condition of the contract if the person engaged in that act:

2977 (a) sells insurance; or

2978 (b) obtains insurance from insurers for purchasers.

2979 ~~[(7)]~~ (8) "Reinsurance intermediary" means:

2980 (a) a reinsurance intermediary-broker; or

2981 (b) a reinsurance intermediary-manager.

2982 ~~[(8)]~~ (9) "Reinsurance intermediary-broker" means a person other than an officer or
2983 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or
2984 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
2985 or power to bind reinsurance on behalf of the insurer.

2986 ~~[(9)]~~ (10) (a) "Reinsurance intermediary-manager" means a person who:

2987 (i) has authority to bind or who manages all or part of the assumed reinsurance
2988 business of a reinsurer, including the management of a separate division, department, or
2989 underwriting office; and

2990 (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance
2991 intermediary-manager, manager, or other similar term.

2992 (b) Notwithstanding Subsection ~~[(9)]~~ (10)(a), the following persons may not be
2993 considered reinsurance intermediary-managers for the purpose of this chapter with respect to
2994 the reinsurer:

2995 (i) an employee of the reinsurer;

2996 (ii) a United States manager of the United States branch of an alien reinsurer;

2997 (iii) an underwriting manager that, pursuant to contract:

2998 (A) manages all the reinsurance operations of the reinsurer;

2999 (B) is under common control with the reinsurer;

3000 (C) is subject to Chapter 16, Insurance Holding Companies; and

3001 (D) is not compensated based on the volume of premiums written; and

3002 (iv) the manager of a group, association, pool, or organization of insurers that:

3003 (A) engage in joint underwriting or joint reinsurance; and
3004 (B) are subject to examination by the insurance commissioner of the state in which the
3005 manager's principal business office is located.

3006 ~~[(10)]~~ (11) "Resident" is as defined by rule made by the commissioner in accordance
3007 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3008 ~~[(11)]~~ (12) "Search" means a license subline of authority in conjunction with the title
3009 insurance line of authority that allows a person to issue title insurance commitments or policies
3010 on behalf of a title insurer.

3011 ~~[(12)]~~ (13) "Sell" means to exchange a contract of insurance:

- 3012 (a) by any means;
- 3013 (b) for money or its equivalent; and
- 3014 (c) on behalf of an insurance company.

3015 ~~[(13)]~~ (14) "Solicit" means:

- 3016 (a) attempting to sell insurance;
- 3017 (b) asking or urging a person to apply for:
 - 3018 (i) a particular kind of insurance; and
 - 3019 (ii) insurance from a particular insurance company;
- 3020 (c) advertising insurance, including advertising for the purpose of obtaining leads for
3021 the sale of insurance; or
- 3022 (d) holding oneself out as being in the insurance business.

3023 ~~[(14)]~~ (15) "Terminate" means:

- 3024 (a) the cancellation of the relationship between:
 - 3025 (i) an individual licensee or agency licensee and a particular insurer; or
 - 3026 (ii) an individual licensee and a particular agency licensee; or
- 3027 (b) the termination of:
 - 3028 (i) an individual licensee's or agency licensee's authority to transact insurance on behalf
3029 of a particular insurance company; or
 - 3030 (ii) an individual licensee's authority to transact insurance on behalf of a particular
3031 agency licensee.

3032 ~~[(15)]~~ (16) "Title marketing representative" means a person who:

- 3033 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

3034 (i) title insurance; or
 3035 (ii) escrow services; and
 3036 (b) does not have a search or escrow license as provided in Section 31A-23a-106.
 3037 ~~[(16)]~~ (17) "Uniform application" means the version of the National Association of
 3038 Insurance Commissioners' uniform application for resident and nonresident producer licensing
 3039 at the time the application is filed.

3040 ~~[(17)]~~ (18) "Uniform business entity application" means the version of the National
 3041 Association of Insurance Commissioners' uniform business entity application for resident and
 3042 nonresident business entities at the time the application is filed.

3043 Section 32. Section 31A-23a-113 is amended to read:

3044 **31A-23a-113. License lapse and voluntary surrender.**

3045 (1) (a) A license issued under this chapter, including a line of authority, shall lapse if
 3046 the licensee fails to:

- 3047 (i) pay when due a fee under Section 31A-3-103;
- 3048 (ii) complete continuing education requirements under Section 31A-23a-202 before
 3049 submitting the license renewal application;
- 3050 (iii) submit a completed renewal application as required by Section 31A-23a-104;
- 3051 (iv) submit additional documentation required to complete the licensing process as
 3052 related to a specific license type or line of authority; or
- 3053 (v) maintain an active license in a licensee's home state if the licensee is a nonresident
 3054 licensee.

3055 (b) (i) A licensee whose license lapses may request reinstatement of the license and
 3056 line of authority no more than one year after the day on which the license lapses.

3057 (ii) A licensee whose license lapses due to the following may request an action
 3058 described in Subsection (1)(b)~~[(ii)]~~(iii):

- 3059 (A) military service;
- 3060 (B) voluntary service for a period of time designated by the person for whom the
 3061 licensee provides voluntary service; or
- 3062 (C) some other extenuating circumstances, such as long-term medical disability.

3063 ~~[(ii)]~~ (iii) A licensee described in Subsection (1)(b)~~[(ii)]~~(ii) may request:

- 3064 (A) reinstatement of the license and line of authority no later than one year after the

3065 day on which the license lapses; and

3066 (B) waiver of any of the following imposed for failure to comply with renewal
3067 procedures:

3068 (I) an examination requirement;

3069 (II) reinstatement fees set under Section 31A-3-103;

3070 (III) continuing education requirements; or

3071 (IV) other sanction imposed for failure to comply with renewal procedures.

3072 (2) If a license or line of authority issued under this chapter is voluntarily surrendered,
3073 the license or line of authority may be reinstated:

3074 (a) during the license period in which the license or line of authority is voluntarily
3075 surrendered; and

3076 (b) no later than one year after the day on which the license or line of authority is
3077 voluntarily surrendered.

3078 Section 33. Section 31A-23a-402 is amended to read:

3079 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**
3080 **discrimination -- Coercion or intimidation -- Restriction on choice.**

3081 (1) (a) (i) Any of the following may not make or cause to be made any communication
3082 that contains false or misleading information, relating to an insurance product or contract, any
3083 insurer, or any licensee under this title, including information that is false or misleading
3084 because it is incomplete:

3085 (A) a person who is or should be licensed under this title;

3086 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

3087 (C) a person whose primary interest is as a competitor of a person licensed under this
3088 title; and

3089 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

3090 (ii) As used in this Subsection (1), "false or misleading information" includes:

3091 (A) assuring the nonobligatory payment of future dividends or refunds of unused
3092 premiums in any specific or approximate amounts, but reporting fully and accurately past
3093 experience is not false or misleading information; and

3094 (B) with intent to deceive a person examining it:

3095 (I) filing a report;

- 3096 (II) making a false entry in a record; or
3097 (III) wilfully refraining from making a proper entry in a record.
3098 (iii) A licensee under this title may not:
3099 (A) use any business name, slogan, emblem, or related device that is misleading or
3100 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
3101 already in business; or
3102 (B) use any name, advertisement or other insurance promotional material that would
3103 cause a reasonable person to mistakenly believe that a state or federal government agency,
3104 including the Health Insurance Exchange, also called the "Utah Health Exchange[;]" or
3105 "Avenue H," created in Section [63M-1-2504](#), the Comprehensive Health Insurance Pool
3106 created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health
3107 Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act:
3108 (I) is responsible for the insurance sales activities of the person;
3109 (II) stands behind the credit of the person;
3110 (III) guarantees any returns on insurance products of or sold by the person; or
3111 (IV) is a source of payment of any insurance obligation of or sold by the person.
3112 (iv) A person who is not an insurer may not assume or use any name that deceptively
3113 implies or suggests that person is an insurer.
3114 (v) A person other than persons licensed as health maintenance organizations under
3115 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
3116 itself.
3117 (b) A licensee's violation creates a rebuttable presumption that the violation was also
3118 committed by the insurer if:
3119 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
3120 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
3121 insurer:
3122 (A) that the licensee represents; or
3123 (B) for whom the licensee processes claims; and
3124 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
3125 insurer.
3126 (2) (a) A title insurer, individual title insurance producer, or agency title insurance

3127 producer or any officer or employee of the title insurer, individual title insurance producer, or
3128 agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give,
3129 directly or indirectly, as an inducement to obtaining any title insurance business:

3130 (i) any rebate, reduction, or abatement of any rate or charge made incident to the
3131 issuance of the title insurance;

3132 (ii) any special favor or advantage not generally available to others;

3133 (iii) any money or other consideration, except if approved under Section [31A-2-405](#); or

3134 (iv) material inducement.

3135 (b) "Charge made incident to the issuance of the title insurance" includes escrow
3136 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
3137 after consultation with the commissioner and subject to Section [31A-2-404](#).

3138 (c) An insured or any other person connected, directly or indirectly, with the
3139 transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to
3140 in Subsection (2)(a), including:

3141 (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices
3142 and Licensing Act;

3143 (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices
3144 Act;

3145 (iii) a builder;

3146 (iv) an attorney; or

3147 (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

3148 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
3149 different premiums or by offering different terms of coverage, except on the basis of
3150 classifications related to the nature and the degree of the risk covered or the expenses involved.

3151 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
3152 insured under a group, blanket, or franchise policy, and the terms of those policies are not
3153 unfairly discriminatory merely because they are more favorable than in similar individual
3154 policies.

3155 (4) (a) This Subsection (4) applies to:

3156 (i) a person who is or should be licensed under this title;

3157 (ii) an employee of that licensee or person who should be licensed;

3158 (iii) a person whose primary interest is as a competitor of a person licensed under this
3159 title; and

3160 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

3161 (b) A person described in Subsection (4)(a) may not commit or enter into any
3162 agreement to participate in any act of boycott, coercion, or intimidation that:

3163 (i) tends to produce:

3164 (A) an unreasonable restraint of the business of insurance; or

3165 (B) a monopoly in that business; or

3166 (ii) results in an applicant purchasing or replacing an insurance contract.

3167 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
3168 insurer or licensee under this chapter, another person who is required to pay for insurance as a
3169 condition for the conclusion of a contract or other transaction or for the exercise of any right
3170 under a contract.

3171 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
3172 coverage selected on reasonable grounds.

3173 (b) The form of corporate organization of an insurer authorized to do business in this
3174 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
3175 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
3176 declining an application for insurance.

3177 (6) A person may not make any charge other than insurance premiums and premium
3178 financing charges for the protection of property or of a security interest in property, as a
3179 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
3180 the lending of money on the security of an interest in the property.

3181 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
3182 agency to the principal on demand.

3183 (b) A licensee whose license is suspended, limited, or revoked under Section
3184 [31A-2-308](#), [31A-23a-111](#), or [31A-23a-112](#) may not refuse or fail to return the license to the
3185 commissioner on demand.

3186 (8) (a) A person may not engage in an unfair method of competition or any other unfair
3187 or deceptive act or practice in the business of insurance, as defined by the commissioner by
3188 rule, after a finding that the method of competition, the act, or the practice:

- 3189 (i) is misleading;
- 3190 (ii) is deceptive;
- 3191 (iii) is unfairly discriminatory;
- 3192 (iv) provides an unfair inducement; or
- 3193 (v) unreasonably restrains competition.

3194 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
3195 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an
3196 unfair method of competition or unfair or deceptive act or practice after a finding that the
3197 method of competition, the act, or the practice:

- 3198 (i) is misleading;
- 3199 (ii) is deceptive;
- 3200 (iii) is unfairly discriminatory;
- 3201 (iv) provides an unfair inducement; or
- 3202 (v) unreasonably restrains competition.

3203 Section 34. Section 31A-23b-206 is amended to read:

3204 **31A-23b-206. Continuing education requirements.**

3205 (1) The commissioner shall, by rule, prescribe continuing education requirements for a
3206 navigator.

3207 (2) (a) The commissioner may not require a degree from an institution of higher
3208 education as part of continuing education.

3209 (b) The commissioner may state a continuing education requirement in terms of hours
3210 of instruction received in:

- 3211 (i) accident and health insurance;
- 3212 (ii) qualification for and enrollment in public programs;
- 3213 (iii) qualification for and enrollment in premium subsidies;
- 3214 (iv) cultural competency;
- 3215 (v) conflict of interest standards; and
- 3216 (vi) other exchange functions.

3217 (3) (a) For a navigator line of authority, continuing education requirements shall
3218 require:

- 3219 (i) that a licensee complete 12 credit hours of continuing education for every one-year

3220 licensing period;

3221 (ii) that at least two of the 12 credit hours described in Subsection (3)(a)(i) be ethics
3222 courses;

3223 (iii) that at least one of the 12 credit hours described in Subsection (3)(a)(i) be training
3224 on defined contribution arrangements and the use of the small employer health insurance
3225 exchange; and

3226 (iv) that a licensee complete the annual navigator training and certification program
3227 developed by the Centers for Medicare and Medicaid Services.

3228 (b) For a certified application counselor, the continuing education requirements shall
3229 require:

3230 (i) that a licensee complete six credit hours of continuing education for every one-year
3231 licensing period;

3232 (ii) that at least two of the six credit hours described in Subsection (3)(b)(i) be on
3233 ethics courses;

3234 (iii) that at least one of the six credit hours described in Subsection (3)(b)(i) be training
3235 on defined contribution arrangements and the use of the small employer health insurance
3236 exchange; and

3237 (iv) that a licensee complete the annual certified application counselor training and
3238 certification program developed by the Centers for Medicare and Medicaid Services.

3239 (c) An hour of continuing education in accordance with Subsections (3)(a)(i) and (b)(i)
3240 may be obtained through:

3241 (i) classroom attendance;

3242 (ii) home study;

3243 (iii) watching a video recording; or

3244 (iv) another method approved by rule.

3245 (d) A licensee may obtain continuing education hours at any time during the one-year
3246 license period.

3247 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3248 commissioner shall, by rule, authorize one or more continuing education providers, including a
3249 state or national professional producer or consultant associations, to:

3250 (i) offer a qualified program on a geographically accessible basis; and

3251 (ii) collect a reasonable fee for funding and administration of a continuing education
3252 program, subject to the review and approval of the commissioner.

3253 (4) The commissioner shall approve a continuing education provider or a continuing
3254 education course that satisfies the requirements of this section.

3255 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3256 commissioner shall by rule establish the procedures for continuing education provider
3257 registration and course approval.

3258 (6) This section applies only to a navigator who is a natural person.

3259 (7) A navigator shall keep documentation of completing the continuing education
3260 requirements of this section for [~~two years~~] one year after the end of the [~~two-year~~] one-year
3261 licensing period to which the continuing education applies.

3262 Section 35. Section **31A-25-302.5** is enacted to read:

3263 **31A-25-302.5. Place of business and residence address.**

3264 (1) A third-party administrator licensed under this chapter shall register and maintain
3265 with the commissioner:

3266 (a) the address and one or more telephone numbers of the licensee's principal place of
3267 business;

3268 (b) a valid business email address at which the commissioner may contact the licensee;
3269 and

3270 (c) if the licensee is an individual, the licensee's residence address and telephone
3271 number.

3272 (2) A licensee shall notify the commissioner within 30 days of a change of any of the
3273 following required to be registered with the commissioner under this section:

3274 (a) an address;

3275 (b) a telephone number; or

3276 (c) a business email address.

3277 Section 36. Section **31A-27a-116** is amended to read:

3278 **31A-27a-116. Financial reporting.**

3279 (1) (a) The receiver shall comply with all requirements for receivership financial
3280 reporting in this section and as may be specified by the commissioner by rule or ordered by the
3281 court within:

- 3282 (i) 180 days after the day on which the receivership court enters an order of
3283 receivership; and
- 3284 (ii) 45 days following each calendar quarter after the period specified in Subsection
3285 (1)(a)(i).
- 3286 (b) The rule described in this Subsection (1) shall:
- 3287 (i) comply with this section;
- 3288 (ii) be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
3289 Act; and
- 3290 (iii) require the receiver to file any financial report with the receivership court in
3291 addition to any other person specified in the rule.
- 3292 (c) A financial report shall include, at a minimum, a statement of:
- 3293 (i) the assets and liabilities of the insurer;
- 3294 (ii) the changes in those assets and liabilities; and
- 3295 (iii) all funds received or disbursed by the receiver during that reporting period.
- 3296 (d) The receiver may qualify a financial report or provide notes to the financial
3297 statement for further explanation.
- 3298 (e) The receivership court may order the receiver to provide any additional information
3299 as the receivership court considers appropriate.
- 3300 (2) Each affected guaranty association shall file one or more reports with the liquidator:
- 3301 (a) (i) within 180 days after the day on which the receivership court enters an order of
3302 liquidation; and
- 3303 (ii) (A) within 45 days following each calendar quarter after the period described in
3304 Subsection (2)(a)(i); or
- 3305 (B) at an interval:
- 3306 (I) agreed to between the liquidator and the affected guaranty association; or
- 3307 (II) required by the receivership court; and
- 3308 (b) in no event less than annually.
- 3309 (3) For good cause shown, the receivership court may grant:
- 3310 (a) relief for an extension or modification of time to comply with Subsection (1) or (2);
3311 or
- 3312 (b) such other relief as may be appropriate.

3313 Section 37. Section 31A-28-213 is amended to read:

3314 **31A-28-213. Miscellaneous provisions.**

3315 (1) (a) Any person who has a claim against an insurer, whether or not the insurer is a
3316 member insurer, under any provision in an insurance policy, other than a policy of an insolvent
3317 insurer that is also a covered claim, is required to first exhaust that person's right under that
3318 person's policy.

3319 (b) Any amount payable on a covered claim under this part under an insurance policy is
3320 reduced by the amount of any recovery under the insurance policy described in Subsection
3321 (1)(a).

3322 (c) (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be
3323 recovered under more than one insurance guaranty association or its equivalent shall first seek
3324 recovery from the association of the place of residence of the insured.

3325 (ii) If the person's claim is:

3326 (A) a first-party claim for damage to property with a permanent location, the person
3327 shall seek recovery first from the association of the location of the property; and

3328 (B) a workers' compensation claim, the person shall seek recovery first from the
3329 association of the residence of the claimant.

3330 (iii) Any recovery under this part shall be reduced by the amount of recovery from any
3331 other insurance guaranty association or its equivalent.

3332 (2) An insurer may not exercise any right of subrogation against an insolvent insurer's
3333 insured if exercise of the right would require the insured, or a guaranty fund under Chapter 28,
3334 Guaranty Associations, to pay an amount the insolvent insurer is obligated to pay under an
3335 insurance policy issued to the insured.

3336 [~~2~~] (3) This part may not be construed to reduce the liability for unpaid assessments of
3337 the insureds of an impaired or insolvent insurer operating under a plan with assessment
3338 liability.

3339 [~~3~~] (4) (a) Records shall be kept of all negotiations and meetings in which the
3340 association or its representatives are involved to discuss the activities of the association in
3341 carrying out the association's powers and duties under Section 31A-28-207. Records of these
3342 negotiations or meetings shall be made public only:

3343 (i) upon the termination of a liquidation, rehabilitation, or conservation proceeding

3344 involving the insolvent insurer;

3345 (ii) the termination of the insolvency of the insurer; or

3346 (iii) the order of a court of competent jurisdiction.

3347 (b) This Subsection [~~(3)~~] (4) does not limit the duty of the association to render a report
3348 of its activities under Section 31A-28-214.

3349 [~~(4)~~] (5) For the purpose of carrying out its obligations under this part, the association
3350 is considered to be a creditor of the insolvent insurer, except to the extent of any amounts the
3351 association is entitled as subrogee under Section 31A-28-207.

3352 [~~(5)~~] (6) (a) Before the termination of any liquidation, rehabilitation, or conservation
3353 proceeding, the court may take into consideration the contributions of the respective parties,
3354 including:

3355 (i) the association;

3356 (ii) the shareholders;

3357 (iii) the policyowners of the insolvent insurer; and

3358 (iv) any other party with a bona fide interest, in making an equitable distribution of the
3359 ownership rights of the insolvent insurer.

3360 (b) In making the determination described in Subsection [~~(5)~~] (6)(a), the court shall
3361 consider the welfare of the policyholders of the continuing or successor insurer.

3362 (c) A distribution to stockholders, if any, of an insolvent insurer may not be made until
3363 the total amount of valid claims of the association with interest on those claims for funds
3364 expended in carrying out its powers and duties under Section 31A-28-207 regarding this
3365 insurer have been fully recovered by the association.

3366 [~~(6)~~] (7) A rehabilitator, liquidator, or conservator appointed under any section of this
3367 part may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant
3368 to Section 31A-27a-502.

3369 Section 38. Section 31A-37-102 is amended to read:

3370 **31A-37-102. Definitions.**

3371 As used in this chapter:

3372 (1) "Affiliated company" means a business entity that because of common ownership,
3373 control, operation, or management is in the same corporate or limited liability company system
3374 as:

- 3375 (a) a parent;
- 3376 (b) an industrial insured; or
- 3377 (c) a member organization.
- 3378 (2) "Alien captive insurance company" means an insurer:
- 3379 (a) formed to write insurance business for a parent or affiliate of the insurer; and
- 3380 (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or
- 3381 regulatory standards:
- 3382 (i) on a business entity transacting the business of insurance in the alien jurisdiction;
- 3383 and
- 3384 (ii) in a form acceptable to the commissioner.
- 3385 (3) "Association" means a legal association of two or more persons that has been in
- 3386 continuous existence for at least one year if:
- 3387 (a) the association or its member organizations:
- 3388 (i) own, control, or hold with power to vote all of the outstanding voting securities of
- 3389 an association captive insurance company incorporated as a stock insurer; or
- 3390 (ii) have complete voting control over an association captive insurance company
- 3391 incorporated as a mutual insurer;
- 3392 (b) the association's member organizations collectively constitute all of the subscribers
- 3393 of an association captive insurance company formed as a reciprocal insurer; or
- 3394 (c) the association or its member organizations have complete voting control over an
- 3395 association captive insurance company formed as a limited liability company.
- 3396 (4) "Association captive insurance company" means a business entity that insures risks
- 3397 of:
- 3398 (a) a member organization of the association;
- 3399 (b) an affiliate of a member organization of the association; and
- 3400 (c) the association.
- 3401 (5) "Branch business" means an insurance business transacted by a branch captive
- 3402 insurance company in this state.
- 3403 (6) "Branch captive insurance company" means an alien captive insurance company
- 3404 that has a certificate of authority from the commissioner to transact the business of insurance in
- 3405 this state through a business unit with a principal place of business in this state.

3406 (7) "Branch operation" means a business operation of a branch captive insurance
3407 company in this state.

3408 (8) "Captive insurance company" means any of the following formed or holding a
3409 certificate of authority under this chapter:

3410 (a) a branch captive insurance company;

3411 (b) a pure captive insurance company;

3412 (c) an association captive insurance company;

3413 (d) a sponsored captive insurance company;

3414 (e) an industrial insured captive insurance company;

3415 [~~(f) a captive reinsurance company;~~]

3416 [~~(g)~~] (f) a special purpose captive insurance company; or

3417 [~~(h)~~] (g) a special purpose financial captive insurance company.

3418 [~~(9) "Captive reinsurance company" means a reinsurer that is:~~]

3419 [~~(a) formed or has a certificate of authority pursuant to this chapter;~~]

3420 [~~(b) wholly owned by a qualifying reinsurer parent company; and~~]

3421 [~~(c) a stock corporation.~~]

3422 [~~(H)~~] (9) "Commissioner" means [~~the~~] Utah's Insurance Commissioner or the
3423 commissioner's designee.

3424 (10) "Common ownership and control" means that two or more captive insurance
3425 companies are owned or controlled by the same person or group of persons as follows:

3426 (a) in the case of a captive insurance company that is a stock corporation, the direct or
3427 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

3428 (b) in the case of a captive insurance company that is a mutual corporation, the direct
3429 or indirect ownership of 80% or more of the surplus and the voting power of the mutual
3430 corporation;

3431 (c) in the case of a captive insurance company that is a limited liability company, the
3432 direct or indirect ownership by the same member or members of 80% or more of the
3433 membership interests in the limited liability company; or

3434 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
3435 captive insurance company owned and controlled by the protected cell's participant, only if:

3436 (i) the participant is the only participant with respect to the protected cell; and

3437 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
3438 captive insurance company through common ownership and control.

3439 ~~[(12)]~~ (11) "Consolidated debt to total capital ratio" means the ratio of Subsection
3440 ~~[(12)]~~ (11)(a) to (b).

3441 (a) This Subsection ~~[(12)]~~ (11)(a) is an amount equal to the sum of all debts and hybrid
3442 capital instruments including:

3443 (i) all borrowings from depository institutions;

3444 (ii) all senior debt;

3445 (iii) all subordinated debts;

3446 (iv) all trust preferred shares; and

3447 (v) all other hybrid capital instruments that are not included in the determination of
3448 consolidated GAAP net worth issued and outstanding.

3449 (b) This Subsection ~~[(12)]~~ (11)(b) is an amount equal to the sum of:

3450 (i) total capital consisting of all debts and hybrid capital instruments as described in
3451 Subsection ~~[(12)]~~ (11)(a); and

3452 (ii) shareholders' equity determined in accordance with generally accepted accounting
3453 principles for reporting to the United States Securities and Exchange Commission.

3454 ~~[(13)]~~ (12) "Consolidated GAAP net worth" means the consolidated shareholders' or
3455 members' equity determined in accordance with generally accepted accounting principles for
3456 reporting to the United States Securities and Exchange Commission.

3457 ~~[(14)]~~ (13) "Controlled unaffiliated business" means a business entity:

3458 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or
3459 limited liability company system of a parent or the parent's affiliate; or

3460 (ii) in the case of an industrial insured captive insurance company, that is not in the
3461 corporate or limited liability company system of an industrial insured or an affiliated company
3462 of the industrial insured;

3463 (b) (i) in the case of a pure captive insurance company, that has a contractual
3464 relationship with a parent or affiliate; or

3465 (ii) in the case of an industrial insured captive insurance company, that has a
3466 contractual relationship with an industrial insured or an affiliated company of the industrial
3467 insured; and

- 3468 (c) whose risks are managed by one of the following in accordance with Subsection
3469 31A-37-106(1)~~(k)~~(j):
- 3470 (i) a pure captive insurance company; or
3471 (ii) an industrial insured captive insurance company.
- 3472 ~~(15)~~ (14) "Department" means the Insurance Department.
3473 ~~(16)~~ (15) "Industrial insured" means an insured:
3474 (a) that produces insurance:
3475 (i) by the services of a full-time employee acting as a risk manager or insurance
3476 manager; or
3477 (ii) using the services of a regularly and continuously qualified insurance consultant;
3478 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
3479 and
3480 (c) that has at least 25 full-time employees.
- 3481 ~~(17)~~ (16) "Industrial insured captive insurance company" means a business entity
3482 that:
3483 (a) insures risks of the industrial insureds that comprise the industrial insured group;
3484 and
3485 (b) may insure the risks of:
3486 (i) an affiliated company of an industrial insured; or
3487 (ii) a controlled unaffiliated business of:
3488 (A) an industrial insured; or
3489 (B) an affiliated company of an industrial insured.
- 3490 ~~(18)~~ (17) "Industrial insured group" means:
3491 (a) a group of industrial insureds that collectively:
3492 (i) own, control, or hold with power to vote all of the outstanding voting securities of
3493 an industrial insured captive insurance company incorporated or organized as a limited liability
3494 company as a stock insurer; or
3495 (ii) have complete voting control over an industrial insured captive insurance company
3496 incorporated or organized as a limited liability company as a mutual insurer;
3497 (b) a group that is:
3498 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. [Section]

3499 Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and

3500 (ii) taxable under this title as a:

3501 (A) stock corporation; or

3502 (B) mutual insurer; or

3503 (c) a group that has complete voting control over an industrial captive insurance
3504 company formed as a limited liability company.

3505 [~~(19)~~] (18) "Member organization" means a person that belongs to an association.

3506 [~~(20)~~] (19) "Parent" means a person that directly or indirectly owns, controls, or holds
3507 with power to vote more than 50% of:

3508 (a) the outstanding voting securities of a pure captive insurance company; or

3509 (b) the pure captive insurance company, if the pure captive insurance company is
3510 formed as a limited liability company.

3511 [~~(21)~~] (20) "Participant" means an entity that is insured by a sponsored captive
3512 insurance company:

3513 (a) if the losses of the participant are limited through a participant contract to the assets
3514 of a protected cell; and

3515 (b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

3516 (ii) the entity is an affiliate of an entity permitted to be a participant under Section
3517 31A-37-403.

3518 [~~(22)~~] (21) "Participant contract" means a contract by which a sponsored captive
3519 insurance company:

3520 (a) insures the risks of a participant; and

3521 (b) limits the losses of the participant to the assets of a protected cell.

3522 [~~(23)~~] (22) "Protected cell" means a separate account established and maintained by a
3523 sponsored captive insurance company for one participant.

3524 [~~(24)~~] (23) "Pure captive insurance company" means a business entity that insures risks
3525 of a parent or affiliate of the business entity.

3526 [~~(25)~~] "~~Qualifying reinsurer parent company~~" means ~~a reinsurer:~~]

3527 [~~(a)~~ authorized to write reinsurance by this state; and]

3528 [~~(b)~~ that has:]

3529 [~~(i)~~ a consolidated GAAP net worth of not less than \$500,000,000; and]

- 3530 [~~(ii)~~] a consolidated debt to total capital ratio not greater than .50:]
- 3531 [~~(26)~~] (24) "Special purpose financial captive insurance company" is as defined in
- 3532 Section 31A-37a-102.
- 3533 [~~(27)~~] (25) "Sponsor" means an entity that:
- 3534 (a) meets the requirements of Section 31A-37-402; and
- 3535 (b) is approved by the commissioner to:
- 3536 (i) provide all or part of the capital and surplus required by applicable law in an amount
- 3537 of not less than \$350,000, which amount the commissioner may increase by order if the
- 3538 commissioner considers it necessary; and
- 3539 (ii) organize and operate a sponsored captive insurance company.
- 3540 [~~(28)~~] (26) "Sponsored captive insurance company" means a captive insurance
- 3541 company:
- 3542 (a) in which the minimum capital and surplus required by applicable law is provided by
- 3543 one or more sponsors;
- 3544 (b) that is formed or holding a certificate of authority under this chapter;
- 3545 (c) that insures the risks of a separate participant through the contract; and
- 3546 (d) that segregates each participant's liability through one or more protected cells.
- 3547 [~~(29)~~] (27) "Treasury rates" means the United States Treasury strip asked yield as
- 3548 published in the Wall Street Journal as of a balance sheet date.
- 3549 Section 39. Section 31A-37-106 is amended to read:
- 3550 **31A-37-106. Authority to make rules -- Authority to issue orders.**
- 3551 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 3552 commissioner may adopt rules to:
- 3553 (a) determine circumstances under which a branch captive insurance company is not
- 3554 required to be a pure captive insurance company;
- 3555 (b) require a statement, document, or information that a captive insurance company
- 3556 shall provide to the commissioner to obtain a certificate of authority;
- 3557 (c) determine a factor a captive insurance company shall provide evidence of under
- 3558 Subsection 31A-37-202(4)(c);
- 3559 (d) prescribe one or more capital requirements for a captive insurance company in
- 3560 addition to those required under Section 31A-37-204 based on the type, volume, and nature of

3561 insurance business transacted by the captive insurance company;

3562 ~~[(e) establish:]~~

3563 ~~[(i) the amount of capital or surplus required to be retained under Subsection~~

3564 ~~31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance~~

3565 ~~company; or]~~

3566 ~~[(ii) a formula to determine the amount described in Subsection 31A-37-205(4);]~~

3567 ~~[(f)] (e) waive or modify a requirement for public notice and hearing for the following~~

3568 by a captive insurance company:

3569 (i) merger;

3570 (ii) consolidation;

3571 (iii) conversion;

3572 (iv) mutualization; ~~[or]~~

3573 (v) redomestication; or

3574 (vi) acquisition;

3575 ~~[(g)] (f) approve the use of one or more reliable methods of valuation and rating for:~~

3576 (i) an association captive insurance company;

3577 (ii) a sponsored captive insurance company; or

3578 (iii) an industrial insured group;

3579 ~~[(h)] (g) prohibit or limit an investment that threatens the solvency or liquidity of:~~

3580 (i) a pure captive insurance company; or

3581 (ii) an industrial insured captive insurance company;

3582 ~~[(i)] (h) determine the financial reports a sponsored captive insurance company shall~~

3583 annually file with the commissioner;

3584 ~~[(j)] (i) prescribe the required forms and reports under Section 31A-37-501; and~~

3585 ~~[(k)] (j) establish one or more standards to ensure that:~~

3586 (i) one of the following is able to exercise control of the risk management function of a

3587 controlled unaffiliated business to be insured by a pure captive insurance company:

3588 (A) a parent; or

3589 (B) an affiliated company of a parent; or

3590 (ii) one of the following is able to exercise control of the risk management function of

3591 a controlled unaffiliated business to be insured by an industrial insured captive insurance

3592 company:

3593 (A) an industrial insured; or

3594 (B) an affiliated company of the industrial insured.

3595 (2) Notwithstanding Subsection (1)~~(k)~~(j), until the commissioner adopts the rules

3596 authorized under Subsection (1)~~(k)~~(j), the commissioner may by temporary order grant

3597 authority to insure risks to:

3598 (a) a pure captive insurance company; or

3599 (b) an industrial insured captive insurance company.

3600 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a

3601 captive insurance company as necessary to enable the commissioner to secure compliance with

3602 this chapter.

3603 Section 40. Section **31A-37-202** is amended to read:

3604 **31A-37-202. Permissive areas of insurance.**

3605 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of

3606 incorporation, certificate of organization, or charter, a captive insurance company may apply to

3607 the commissioner for a certificate of authority to do all insurance authorized by this title except

3608 workers' compensation insurance.

3609 (b) Notwithstanding Subsection (1)(a):

3610 (i) a pure captive insurance company may not insure a risk other than a risk of:

3611 (A) its parent or affiliate;

3612 (B) a controlled unaffiliated business; or

3613 (C) a combination of Subsections (1)(b)(i)(A) and (B);

3614 (ii) an association captive insurance company may not insure a risk other than a risk of:

3615 (A) an affiliate;

3616 (B) a member organization of its association; and

3617 (C) an affiliate of a member organization of its association;

3618 (iii) an industrial insured captive insurance company may not insure a risk other than a

3619 risk of:

3620 (A) an industrial insured that is part of the industrial insured group;

3621 (B) an affiliate of an industrial insured that is part of the industrial insured group; and

3622 (C) a controlled unaffiliated business of:

- 3623 (I) an industrial insured that is part of the industrial insured group; or
3624 (II) an affiliate of an industrial insured that is part of the industrial insured group;
3625 (iv) a special purpose captive insurance company may only insure a risk of its parent;
3626 (v) a captive insurance company may not provide:
3627 (A) personal motor vehicle insurance coverage;
3628 (B) homeowner's insurance coverage; or
3629 (C) a component of a coverage described in this Subsection (1)(b)(v); and
3630 (vi) a captive insurance company may not accept or cede reinsurance except as
3631 provided in Section [31A-37-303](#).
- 3632 (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a
3633 special purpose captive insurance company may provide:
3634 (i) insurance;
3635 (ii) reinsurance; or
3636 (iii) both insurance and reinsurance.
- 3637 (2) To conduct insurance business in this state a captive insurance company shall:
3638 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
3639 insurance business in this state;
3640 (b) hold at least once each year in this state:
3641 (i) a board of directors meeting; [or]
3642 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting; or
3643 (iii) in the case of a limited liability company, a meeting of the managers;
3644 (c) maintain in this state:
3645 (i) the principal place of business of the captive insurance company; or
3646 (ii) in the case of a branch captive insurance company, the principal place of business
3647 for the branch operations of the branch captive insurance company; and
3648 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
3649 service of process and to otherwise act on behalf of the captive insurance company in this state.
- 3650 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company
3651 formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable
3652 diligence be found at the registered office of the captive insurance company, the commissioner
3653 is the agent of the captive insurance company upon whom process, notice, or demand may be

3654 served.

3655 (4) (a) Before receiving a certificate of authority, a captive insurance company:

3656 (i) formed as a corporation shall file with the commissioner:

3657 (A) a certified copy of:

3658 (I) articles of incorporation or the charter of the corporation; and

3659 (II) bylaws of the corporation;

3660 (B) a statement under oath of the president and secretary of the corporation showing

3661 the financial condition of the corporation; and

3662 (C) any other statement or document required by the commissioner under Section

3663 [31A-37-106](#);

3664 (ii) formed as a reciprocal shall:

3665 (A) file with the commissioner:

3666 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;

3667 (II) a certified copy of the subscribers' agreement of the reciprocal;

3668 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the

3669 financial condition of the reciprocal; and

3670 (IV) any other statement or document required by the commissioner under Section

3671 [31A-37-106](#); and

3672 (B) submit to the commissioner for approval a description of the:

3673 (I) coverages;

3674 (II) deductibles;

3675 (III) coverage limits;

3676 (IV) rates; and

3677 (V) any other information the commissioner requires under Section [31A-37-106](#)~~[-]~~; and

3678 (iii) formed as a limited liability company shall file with the commissioner:

3679 (A) a certified copy of the certificate of organization and the operating agreement of

3680 the organization;

3681 (B) a statement under oath of the president and secretary of the organization showing

3682 the financial condition of the organization;

3683 (C) evidence that the limited liability company is manager-managed; and

3684 (D) any other statement or document required by the commissioner under Section

3685 [31A-37-106.](#)

3686 (b) (i) If there is a subsequent material change in an item in the description required
3687 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal
3688 captive insurance company shall submit to the commissioner for approval an appropriate
3689 revision to the description required under Subsection (4)(a)(ii)(B).

3690 (ii) A reciprocal captive insurance company that is required to submit a revision under
3691 Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner
3692 approves a revision of the description.

3693 (iii) A reciprocal captive insurance company shall inform the commissioner of a
3694 material change in a rate within 30 days of the adoption of the change.

3695 (c) In addition to the information required by Subsection (4)(a), an applicant captive
3696 insurance company shall file with the commissioner evidence of:

3697 (i) the amount and liquidity of the assets of the applicant captive insurance company
3698 relative to the risks to be assumed by the applicant captive insurance company;

3699 (ii) the adequacy of the expertise, experience, and character of the person who will
3700 manage the applicant captive insurance company;

3701 (iii) the overall soundness of the plan of operation of the applicant captive insurance
3702 company;

3703 (iv) the adequacy of the loss prevention programs for the following of the applicant
3704 captive insurance company:

3705 (A) a parent;

3706 (B) a member organization; or

3707 (C) an industrial insured; and

3708 (v) any other factor the commissioner:

3709 (A) adopts by rule under Section [31A-37-106](#); and

3710 (B) considers relevant in ascertaining whether the applicant captive insurance company
3711 will be able to meet the policy obligations of the applicant captive insurance company.

3712 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an
3713 applicant sponsored captive insurance company shall file with the commissioner:

3714 (i) a business plan at the level of detail required by the commissioner under Section
3715 [31A-37-106](#) demonstrating:

3716 (A) the manner in which the applicant sponsored captive insurance company will
3717 account for the losses and expenses of each protected cell; and

3718 (B) the manner in which the applicant sponsored captive insurance company will report
3719 to the commissioner the financial history, including losses and expenses, of each protected cell;

3720 (ii) a statement acknowledging that the applicant sponsored captive insurance company
3721 will make all financial records of the applicant sponsored captive insurance company,
3722 including records pertaining to a protected cell, available for inspection or examination by the
3723 commissioner;

3724 (iii) a contract or sample contract between the applicant sponsored captive insurance
3725 company and a participant; and

3726 (iv) evidence that expenses will be allocated to each protected cell in an equitable
3727 manner.

3728 (5) (a) Information submitted pursuant to Subsection (4) is classified as a protected
3729 record under Title 63G, Chapter 2, Government Records Access and Management Act.

3730 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and
3731 Management Act, the commissioner may disclose information submitted pursuant to
3732 Subsection (4) to a public official having jurisdiction over the regulation of insurance in
3733 another state if:

3734 (i) the public official receiving the information agrees in writing to maintain the
3735 confidentiality of the information; and

3736 (ii) the laws of the state in which the public official serves require the information to be
3737 confidential.

3738 (c) This Subsection (5) does not apply to information provided by an industrial insured
3739 captive insurance company insuring the risks of an industrial insured group.

3740 (6) (a) A captive insurance company shall pay to the department the following
3741 nonrefundable fees established by the department under Sections [31A-3-103](#), [31A-3-304](#), and
3742 [63J-1-504](#):

3743 (i) a fee for examining, investigating, and processing, by a department employee, of an
3744 application for a certificate of authority made by a captive insurance company;

3745 (ii) a fee for obtaining a certificate of authority for the year the captive insurance
3746 company is issued a certificate of authority by the department; and

- 3747 (iii) a certificate of authority renewal fee.
- 3748 (b) The commissioner may:
- 3749 (i) assign a department employee or retain legal, financial, and examination services
- 3750 from outside the department to perform the services described in:
- 3751 (A) Subsection (6)(a); and
- 3752 (B) Section 31A-37-502; and
- 3753 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the
- 3754 applicant captive insurance company.
- 3755 (7) If the commissioner is satisfied that the documents and statements filed by the
- 3756 applicant captive insurance company comply with this chapter, the commissioner may grant a
- 3757 certificate of authority authorizing the company to do insurance business in this state.
- 3758 (8) A certificate of authority granted under this section expires annually and shall be
- 3759 renewed by July 1 of each year.
- 3760 Section 41. Section 31A-37-204 is amended to read:
- 3761 **31A-37-204. Paid-in capital -- Other capital.**
- 3762 (1) (a) The commissioner may not issue a certificate of authority to a company
- 3763 described in Subsection (1)(c) unless the company possesses and thereafter maintains
- 3764 unimpaired paid-in capital and unimpaired paid-in surplus of:
- 3765 (i) in the case of a pure captive insurance company, not less than [~~\$100,000~~] \$250,000;
- 3766 (ii) in the case of an association captive insurance company incorporated as a stock
- 3767 insurer, not less than [~~\$400,000~~] \$750,000;
- 3768 (iii) in the case of an industrial insured captive insurance company incorporated as a
- 3769 stock insurer, not less than [~~\$200,000~~] \$700,000;
- 3770 (iv) in the case of a sponsored captive insurance company, not less than [~~\$500,000~~]
- 3771 \$1,000,000 of which a minimum of \$350,000 is provided by the sponsor; or
- 3772 (v) in the case of a special purpose captive insurance company, an amount determined
- 3773 by the commissioner after giving due consideration to the company's business plan, feasibility
- 3774 study, and pro-formas, including the nature of the risks to be insured.
- 3775 (b) The paid-in capital and surplus required under this Subsection (1) may be in the
- 3776 form of:
- 3777 (i) (A) cash; or

- 3778 (B) cash equivalent; or
- 3779 (ii) an irrevocable letter of credit:
- 3780 (A) issued by:
- 3781 (I) a bank chartered by this state; or
- 3782 (II) a member bank of the Federal Reserve System; and
- 3783 (B) approved by the commissioner.
- 3784 (c) This Subsection (1) applies to:
- 3785 (i) a pure captive insurance company;
- 3786 (ii) a sponsored captive insurance company;
- 3787 (iii) a special purpose captive insurance company;
- 3788 (iv) an association captive insurance company incorporated as a stock insurer; or
- 3789 (v) an industrial insured captive insurance company incorporated as a stock insurer.
- 3790 (2) (a) The commissioner may, under Section [31A-37-106](#), prescribe additional capital
- 3791 based on the type, volume, and nature of insurance business transacted.
- 3792 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the
- 3793 form of:
- 3794 (i) cash; or
- 3795 (ii) an irrevocable letter of credit issued by:
- 3796 (A) a bank chartered by this state; or
- 3797 (B) a member bank of the Federal Reserve System.
- 3798 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as
- 3799 security for the payment of liabilities attributable to branch operations, shall, through its branch
- 3800 operations, establish and maintain a trust fund:
- 3801 (i) funded by an irrevocable letter of credit or other acceptable asset; and
- 3802 (ii) in the United States for the benefit of:
- 3803 (A) United States policyholders; and
- 3804 (B) United States ceding insurers under:
- 3805 (I) insurance policies issued; or
- 3806 (II) reinsurance contracts issued or assumed.
- 3807 (b) The amount of the security required under this Subsection (3) shall be no less than:
- 3808 (i) the capital and surplus required by this chapter; and

3809 (ii) the reserves on the insurance policies or reinsurance contracts, including:
3810 (A) reserves for losses;
3811 (B) allocated loss adjustment expenses;
3812 (C) incurred but not reported losses; and
3813 (D) unearned premiums with regard to business written through branch operations.
3814 (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may
3815 permit a branch captive insurance company that is required to post security for loss reserves on
3816 branch business by its reinsurer to reduce the funds in the trust account required by this section
3817 by the same amount as the security posted if the security remains posted with the reinsurer.
3818 (4) (a) A captive insurance company may not pay the following without the prior
3819 approval of the commissioner:
3820 (i) a dividend out of capital or surplus in excess of the limits under Section
3821 16-10a-640; or
3822 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
3823 16-10a-640.
3824 (b) The commissioner shall condition approval of an ongoing plan for the payment of
3825 dividends or other distributions on the retention, at the time of each payment, of capital or
3826 surplus in excess of:
3827 (i) amounts specified by the commissioner under Section 31A-37-106; or
3828 (ii) determined in accordance with formulas approved by the commissioner under
3829 Section 31A-37-106.
3830 (5) Notwithstanding Subsection (1), a captive insurance company organized as a
3831 reciprocal insurer under this chapter may not be issued a certificate of authority unless the
3832 captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.
3833 (6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based
3834 upon the type, volume, and nature of the insurance business transacted.
3835 (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the
3836 form of an irrevocable letter of credit issued by:
3837 (i) a bank chartered by this state; or
3838 (ii) a member bank of the Federal Reserve System.
3839 Section 42. Section 31A-37-301 is amended to read:

3840 **31A-37-301. Incorporation -- Organization.**

3841 (1) A pure captive insurance company or a sponsored captive insurance company shall
3842 be incorporated as a stock insurer with the capital of the pure captive insurance company or
3843 sponsored captive insurance company:

3844 (a) divided into shares; and

3845 (b) held by the stockholders of the pure captive insurance company or sponsored
3846 captive insurance company.

3847 (2) A pure captive insurance company or a sponsored captive insurance company
3848 formed as a limited liability company shall be organized as a members interest insurer with the
3849 capital of the pure captive insurance company or sponsored captive insurance company:

3850 (a) divided into interests; and

3851 (b) held by the members of the pure captive insurance company or sponsored captive
3852 insurance company.

3853 ~~[(2)]~~ (3) An association captive insurance company or an industrial insured captive
3854 insurance company may be:

3855 (a) incorporated as a stock insurer with the capital of the association captive insurance
3856 company or industrial insured captive insurance company:

3857 (i) divided into shares; and

3858 (ii) held by the stockholders of the association captive insurance company or industrial
3859 insured captive insurance company;

3860 (b) incorporated as a mutual insurer without capital stock, with a governing body
3861 elected by the member organizations of the association captive insurance company or industrial
3862 insured captive insurance company; or

3863 (c) organized as a reciprocal.

3864 ~~[(3)]~~ (4) A captive insurance company formed as a corporation may not have fewer
3865 than three incorporators of whom ~~[not fewer than two shall be residents]~~ one shall be a resident
3866 of this state.

3867 (5) A captive insurance company formed as a limited liability company may not have
3868 fewer than three organizers of whom one shall be a resident of this state.

3869 ~~[(4)]~~ (6) (a) Before a captive insurance company formed as a corporation files the
3870 corporation's articles of incorporation with the Division of Corporations and Commercial

3871 Code, the incorporators shall obtain from the commissioner a certificate finding that the
3872 establishment and maintenance of the proposed corporation will promote the general good of
3873 the state.

3874 (b) In considering a request for a certificate under Subsection [~~(4)~~] (6)(a), the
3875 commissioner shall consider:

3876 (i) the character, reputation, financial standing, and purposes of the incorporators;

3877 (ii) the character, reputation, financial responsibility, insurance experience, and
3878 business qualifications of the officers and directors;

3879 (iii) any information in:

3880 (A) the application for a certificate of authority; or

3881 (B) the department's files; and

3882 (iv) other aspects that the commissioner considers advisable.

3883 (7) (a) Before a captive insurance company formed as a limited liability company files
3884 the limited liability company's articles of organization with the Division of Corporations and
3885 Commercial Code, the limited liability company shall obtain from the commissioner a
3886 certificate finding that the establishment and maintenance of the proposed limited liability
3887 company will promote the general good of the state.

3888 (b) In considering a request for a certificate under Subsection (7)(a) the commissioner
3889 shall consider:

3890 (i) the character, reputation, financial standing, and purposes of the organizers;

3891 (ii) the character, reputation, financial responsibility, insurance experience, and
3892 business qualifications of the managers;

3893 (iii) any information in:

3894 (A) the application for a certificate of authority; or

3895 (B) the department's files; and

3896 (iv) other aspects that the commissioner considers advisable.

3897 [~~(5)~~] (8) (a) A captive insurance company formed as a corporation shall file with the
3898 Division of Corporations and Commercial Code:

3899 (i) the captive insurance company's articles of incorporation;

3900 (ii) the certificate issued pursuant to Subsection [~~(4)~~] (6); and

3901 (iii) the fees required by the Division of Corporations and Commercial Code.

3902 (b) The Division of Corporations and Commercial Code shall file both the articles of
3903 incorporation and the certificate described in Subsection [~~(4)~~] (6) for a captive insurance
3904 company that complies with this section.

3905 (9) (a) A captive insurance company formed as a limited liability company shall file
3906 with the Division of Corporations and Commercial Code:

3907 (i) the captive insurance company's certificate of organization;

3908 (ii) the certificate issued pursuant to Subsection (7); and

3909 (iii) the fees required by the Division of Corporations and Commercial Code.

3910 (b) The Division of Corporations and Commercial Code shall file both the certificate
3911 of organization and the certificate described in Subsection (7) for a captive insurance company
3912 that complies with this section.

3913 [~~(6)~~] (10) (a) The organizers of a captive insurance company formed as a reciprocal
3914 insurer shall obtain from the commissioner a certificate finding that the establishment and
3915 maintenance of the proposed association will promote the general good of the state.

3916 (b) In considering a request for a certificate under Subsection [~~(6)~~] (10)(a), the
3917 commissioner shall consider:

3918 (i) the character, reputation, financial standing, and purposes of the incorporators;

3919 (ii) the character, reputation, financial responsibility, insurance experience, and
3920 business qualifications of the officers and directors;

3921 (iii) any information in:

3922 (A) the application for a certificate of authority; or

3923 (B) the department's files; and

3924 (iv) other aspects that the commissioner considers advisable.

3925 [~~(7)~~] (11) (a) An alien captive insurance company that has received a certificate of
3926 authority to act as a branch captive insurance company shall obtain from the commissioner a
3927 certificate finding that:

3928 (i) the home state of the alien captive insurance company imposes statutory or
3929 regulatory standards in a form acceptable to the commissioner on companies transacting the
3930 business of insurance in that state; and

3931 (ii) after considering the character, reputation, financial responsibility, insurance
3932 experience, and business qualifications of the officers and directors of the alien captive

3933 insurance company, and other relevant information, the establishment and maintenance of the
3934 branch operations will promote the general good of the state.

3935 (b) After the commissioner issues a certificate under Subsection ~~[(7)]~~ (11)(a) to an
3936 alien captive insurance company, the alien captive insurance company may register to do
3937 business in this state.

3938 ~~[(8) The capital stock of a captive insurance company incorporated as a stock insurer
3939 may not be issued at less than par value.]~~

3940 ~~[(9)]~~ (12) At least one of the members of the board of directors of a captive insurance
3941 company formed as a corporation shall be a resident of this state.

3942 (13) At least one of the managers of a limited liability company shall be a resident of
3943 this state.

3944 ~~[(10)]~~ (14) At least one of the members of the subscribers' advisory committee of a
3945 captive insurance company formed as a reciprocal insurer shall be a resident of this state.

3946 ~~[(11)]~~ (15) (a) A captive insurance company formed as a corporation under this chapter
3947 has the privileges and is subject to the provisions of the general corporation law as well as the
3948 applicable provisions contained in this chapter.

3949 (b) If a conflict exists between a provision of the general corporation law and a
3950 provision of this chapter, this chapter shall control.

3951 (c) Except as provided in Subsection ~~[(11)]~~ (15)(d), the provisions of this title
3952 pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in
3953 determining the procedures to be followed by a captive insurance company in carrying out any
3954 of the transactions described in those provisions.

3955 (d) Notwithstanding Subsection ~~[(11)]~~ (15)(c), the commissioner may waive or modify
3956 the requirements for public notice and hearing in accordance with rules adopted under Section
3957 [31A-37-106](#).

3958 (e) If a notice of public hearing is required, but no one requests a hearing, the
3959 commissioner may cancel the public hearing.

3960 (16) (a) A captive insurance company formed as a limited liability company under this
3961 chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability
3962 Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act,
3963 as appropriate pursuant to Section [48-3a-1405](#), as well as the applicable provisions in this

3964 chapter.

3965 (b) If a conflict exists between a provision of the limited liability company law and a
3966 provision of this chapter, this chapter controls.

3967 (c) The provisions of this title pertaining to a merger, consolidation, conversion,
3968 mutualization, and redomestication apply in determining the procedures to be followed by a
3969 captive insurance company in carrying out any of the transactions described in those
3970 provisions.

3971 (d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the
3972 requirements for public notice and hearing in accordance with rules adopted under Section
3973 31A-37-106.

3974 (e) If a notice of public hearing is required, but no one requests a hearing, the
3975 commissioner may cancel the public hearing.

3976 [~~12~~] (17) (a) A captive insurance company formed as a reciprocal insurer under this
3977 chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions
3978 of this chapter.

3979 (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions
3980 of this chapter with respect to a captive insurance company, this chapter shall control.

3981 (c) To the extent a reciprocal insurer is made subject to other provisions of this title
3982 pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer
3983 formed under this chapter unless the provisions are expressly made applicable to a captive
3984 insurance company under this chapter.

3985 (d) In addition to the provisions of this Subsection [~~12~~] (17), a captive insurance
3986 company organized as a reciprocal insurer that is an industrial insured group has the privileges
3987 of Section 31A-4-114 in addition to applicable provisions of this title.

3988 [~~13~~] (18) (a) The articles of incorporation or bylaws of a captive insurance company
3989 formed as a corporation may not authorize a quorum of a board of directors to consist of fewer
3990 than one-third of the fixed or prescribed number of directors as provided in Section
3991 16-10a-824.

3992 (b) The certificate of organization of a captive insurance company formed as a limited
3993 liability company may not authorize a quorum of a board of managers to consist of fewer than
3994 one-third of the fixed or prescribed number of directors required in Section 16-10a-824.

3995 Section 43. Section 31A-37-302 is amended to read:

3996 **31A-37-302. Investment requirements.**

3997 (1) (a) Except as provided in Subsection (1)(b), an association captive insurance
3998 company, a sponsored captive insurance company, and an industrial insured group shall
3999 comply with the investment requirements contained in this title.

4000 (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the
4001 commissioner may approve the use of alternative reliable methods of valuation and rating
4002 under Section 31A-37-106 for:

- 4003 (i) an association captive insurance company;
- 4004 (ii) a sponsored captive insurance company; or
- 4005 (iii) an industrial insured group.

4006 (2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or
4007 industrial insured captive insurance company is not subject to any restrictions on allowable
4008 investments contained in this title.

4009 (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section
4010 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

- 4011 (i) a pure captive insurance company; or
- 4012 (ii) an industrial insured captive insurance company.

4013 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may
4014 not make loans to:

- 4015 (A) the parent company of the captive insurance company; or
- 4016 (B) an affiliate of the captive insurance company.

4017 (ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make
4018 loans to:

- 4019 (A) the parent company of the pure captive insurance company; or
- 4020 (B) an affiliate of the pure captive insurance company.

4021 (b) A loan under Subsection (3)(a):

- 4022 (i) may be made only on the prior written approval of the commissioner; and
- 4023 (ii) shall be evidenced by a note in a form approved by the commissioner.

4024 (c) A pure captive insurance company may not make a loan from[~~+~~(~~†~~)] the paid-in
4025 capital required under Subsection 31A-37-204(1)[~~+~~~~or~~].

4026 [~~(ii) the free surplus required under Subsection 31A-37-205(1):~~]

4027 Section 44. Section **31A-37-303** is amended to read:

4028 **31A-37-303. Reinsurance.**

4029 (1) A captive insurance company may provide reinsurance, as authorized in this title,
4030 on risks ceded [~~by any other insurer~~] for the benefit of a parent, affiliate, or controlled
4031 unaffiliated business.

4032 (2) (a) A captive insurance company may take credit for reserves on risks or portions of
4033 risks ceded to reinsurers if the captive insurance company complies with Section **31A-17-404**.

4034 (b) Unless the reinsurer is in compliance with Section **31A-17-404**, a captive insurance
4035 company may not take credit for:

4036 (i) reserves on risks ceded to a reinsurer; or

4037 (ii) portions of risks ceded to a reinsurer.

4038 Section 45. Section **31A-37-306** is amended to read:

4039 **31A-37-306. Conversion or merger.**

4040 (1) An association captive insurance company or industrial insured group formed as a
4041 stock or mutual corporation may be:

4042 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

4043 (b) merged with and into a reciprocal insurer in accordance with a plan and this
4044 section.

4045 (2) An association captive insurance company or industrial group formed as a limited
4046 liability company may be:

4047 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

4048 (b) merged with and into a reciprocal insurer in accordance with a plan and this
4049 section.

4050 [~~(2)~~] (3) A plan for a conversion or merger under this section:

4051 (a) shall be fair and equitable to:

4052 (i) the shareholders, in the case of a stock insurer; [~~or~~]

4053 (ii) the policyholders, in the case of a mutual insurer; and

4054 (iii) the members, in the case of a limited liability company insurer; and

4055 (b) shall provide for the purchase of:

4056 (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the

4057 same manner and subject to the same rights and conditions as are provided a dissenting
4058 shareholder; or

4059 (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in
4060 substantially the same manner and subject to the same rights and conditions as are provided a
4061 dissenting policyholder.

4062 ~~[(3)]~~ (4) In the case of a conversion authorized under Subsection (1) or (2):

4063 (a) the conversion shall be accomplished under a reasonable plan and procedure that
4064 are approved by the commissioner;

4065 (b) the commissioner may not approve the plan of conversion under this section unless
4066 the plan:

4067 (i) satisfies Subsections ~~[(2)]~~ (3) and ~~[(6)]~~ (7);

4068 (ii) provides for the conversion of existing stockholder ~~[or]~~₂ policyholder, or member
4069 interests into subscriber interests in the resulting reciprocal insurer, proportionate to
4070 stockholder ~~[or]~~₂ policyholder, or member interests in the stock or mutual insurer or limited
4071 liability company; and

4072 (iii) is approved:

4073 (A) in the case of a stock insurer, by a majority of the shares entitled to vote
4074 represented in person or by proxy at a duly called regular or special meeting at which a quorum
4075 is present; ~~[or]~~

4076 (B) in the case of a mutual insurer, by a majority of the voting interests of
4077 policyholders represented in person or by proxy at a duly called regular or special meeting at
4078 which a quorum is present; or

4079 (C) in the case of a limited liability company insurer, by a majority of the voting
4080 managers represented in person or by proxy at a duly called regular or special meeting at which
4081 a quorum is present;

4082 (c) the commissioner shall approve a plan of conversion if the commissioner finds that
4083 the conversion will promote the general good of the state in conformity with the standards
4084 under ~~[Subsection]~~ Section 31A-37-301~~[(4)]~~;

4085 (d) if the commissioner approves a plan of conversion, the commissioner shall amend
4086 the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and
4087 issue the amended certificate of authority to the company's attorney-in-fact;

4088 (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the
4089 commissioner, the conversion is effective; and

4090 (f) upon the effectiveness of the conversion:

4091 (i) the corporate existence of the converting insurer shall cease; and

4092 (ii) the resulting reciprocal insurer shall notify the Division of Corporations and
4093 Commercial Code of the conversion.

4094 [~~(4)~~] (5) A merger authorized under Subsection (1) or (2) shall be accomplished
4095 substantially in accordance with the procedures set forth in this title except that, solely for
4096 purposes of the merger:

4097 (a) the plan or merger shall satisfy Subsection [~~(2)~~] (3);

4098 (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the
4099 board of directors of a stock or mutual insurance company;

4100 (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of
4101 a mutual insurance company;

4102 (d) if a subscribers' advisory committee does not have a president or secretary, the
4103 officers of the committee having substantially equivalent duties are the president and secretary
4104 of the committee;

4105 (e) the commissioner shall approve the articles of merger if the commissioner finds that
4106 the merger will promote the general good of the state in conformity with the standards under
4107 [~~Subsection~~] Section 31A-37-301 [~~(4)~~];

4108 (f) notwithstanding [~~Sections~~] Section 31A-37-204 [~~and 31A-37-205~~], the
4109 commissioner may permit the formation, without capital and surplus, of a captive insurance
4110 company organized as a reciprocal insurer, into which an existing captive insurance company
4111 may be merged to facilitate a transaction under this section, if there is no more than one
4112 authorized insurance company surviving the merger; and

4113 (g) an alien insurer may be a party to a merger authorized under Subsection (1) or (2)
4114 if:

4115 (i) the requirements for the merger between a domestic and a foreign insurer under
4116 Chapter 16, Insurance Holding Companies, are applied to the merger; and

4117 (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding
4118 Companies.

4119 ~~[(5)]~~ (6) If the commissioner approves the articles of merger under this section:

4120 (a) the commissioner shall endorse the commissioner's approval on the articles; and

4121 (b) the surviving insurer shall present the name to the Division of Corporations and
4122 Commercial Code.

4123 ~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), a conversion authorized
4124 under Subsection (1) shall provide for a hearing, of which notice has been given to the insurer,
4125 its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the
4126 case of a mutual insurer, all of whom have the right to appear at the hearing.

4127 (b) Notwithstanding Subsection ~~[(6)]~~ (7)(a), the commissioner may waive or modify
4128 the requirements for the hearing.

4129 (c) If a notice of hearing is required, but no hearing is requested, after notice has been
4130 given under Subsection ~~[(6)]~~ (7)(a), the commissioner may cancel the hearing.

4131 Section 46. Section **31A-37-401** is amended to read:

4132 **31A-37-401. Sponsored captive insurance companies -- Formation.**

4133 (1) One or more sponsors may form a sponsored captive insurance company under this
4134 chapter.

4135 (2) A sponsored captive insurance company formed under this chapter may establish
4136 and maintain a protected cell to insure risks of a participant if:

4137 (a) the shareholders of a sponsored captive insurance company are limited to:

4138 (i) the participants of the sponsored captive insurance company; and

4139 (ii) the sponsors of the sponsored captive insurance company;

4140 (b) each protected cell is accounted for separately on the books and records of the
4141 sponsored cell captive insurance company to reflect:

4142 (i) the financial condition of the individual protected cell;

4143 (ii) the results of operations of ~~[the]~~ each individual protected cell;

4144 (iii) the net income or loss of ~~[the]~~ each individual protected cell;

4145 (iv) the dividends or other distributions to participants of ~~[the]~~ each individual
4146 protected cell; and

4147 (v) other factors that may be:

4148 (A) provided in the participant contract; or

4149 (B) required by the commissioner;

4150 (c) the assets of a protected cell are not chargeable with liabilities arising out of any
4151 other insurance business the sponsored captive insurance company may conduct;

4152 (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive
4153 insurance company between or among any of the protected cells of the sponsored captive
4154 insurance company without the consent of the protected cells;

4155 (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a
4156 protected cell to a sponsor or participant without the commissioner's approval, which may not
4157 be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or
4158 impairment with respect to a protected cell;

4159 (f) a sponsored captive insurance company annually files with the commissioner
4160 financial reports the commissioner requires under Section [31A-37-106](#), including accounting
4161 statements detailing the financial experience of each protected cell;

4162 (g) a sponsored captive insurance company notifies the commissioner in writing within
4163 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or
4164 expense obligations of the protected cell;

4165 (h) a participant contract does not take effect without the commissioner's prior written
4166 approval; ~~and~~

4167 (i) the addition of each new protected cell and withdrawal of a participant of any
4168 existing protected cell does not take effect without the commissioner's prior written
4169 approval~~[-]; and~~

4170 (j) (i) a protected cell captive insurance company shall pay to the department the
4171 following nonrefundable fees established by the department under Sections [31A-3-103](#),
4172 [31A-3-304](#), and [63J-1-504](#):

4173 (A) a fee for examining, investigating, and processing by a department employee of an
4174 application for a certificate of authority made by a protected cell captive insurance company;

4175 (B) a fee for obtaining a certificate of authority for the year the protected cell captive
4176 insurance company is issued a certificate of authority by the department; and

4177 (C) a certificate of authority renewal fee; and

4178 (ii) a protected cell may be created by the sponsor or the sponsor may create a pooling
4179 insurance arrangement to provide for pooling of risks to allow for risk distribution upon written
4180 approval from every protected cell under the sponsor and written approval of the

4181 commissioner.

4182 Section 47. Section **31A-37-402** is amended to read:

4183 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**
4184 **mandatory.**

4185 (1) A sponsor of a sponsored captive insurance company shall be:

4186 (a) an insurer authorized or approved under the laws of a state;

4187 (b) a reinsurer authorized or approved under the laws of a state;

4188 (c) a captive insurance company holding a certificate of authority under this chapter;

4189 (d) an insurance holding company that:

4190 (i) controls an insurer licensed pursuant to the laws of a state; and

4191 (ii) is subject to registration pursuant to the holding company system of laws of the
4192 state of domicile of the insurer described in Subsection (1)(d)(i); [~~or~~]

4193 (e) an approved captive management firm in Utah or its affiliates; or

4194 [~~(e)~~] (f) another person approved by the commissioner after finding that the approval of
4195 the person as a sponsor is not inconsistent with the purposes of this chapter.

4196 (2) (a) The business written by a sponsored captive insurance company with respect to
4197 a protected cell shall be fronted by the sponsor insurance company through a controlled
4198 unaffiliated contract or an insurer that is:

4199 (i) authorized or approved:

4200 (A) under the laws of a state; or

4201 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an
4202 insurance company licensed pursuant to the laws of a state;

4203 (ii) reinsured by a reinsurer authorized or approved by this state; or

4204 (iii) subject to Subsection (2)(b), secured by a trust fund:

4205 (A) in the United States;

4206 (B) for the benefit of policyholders and claimants; [~~and~~]

4207 (C) funded by an irrevocable letter of credit or other asset acceptable to the
4208 commissioner[~~;~~]; and

4209 (D) held by the sponsor as provided in Subsection [31A-17-404\(1\)](#).

4210 (b) (i) The amount of security provided by the trust fund described in Subsection
4211 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,

- 4212 including:
- 4213 (A) reserves for losses;
- 4214 (B) allocated loss adjustment expenses;
- 4215 (C) incurred but unreported losses; and
- 4216 (D) unearned premiums for business written through the participant's protected cell.
- 4217 (ii) The commissioner may require the sponsored captive insurance company to
- 4218 increase the funding of a trust established pursuant to this Subsection (2).
- 4219 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of
- 4220 credit, the letter of credit shall be established, issued, or confirmed by a bank that is:
- 4221 (A) chartered in this state;
- 4222 (B) a member of the federal reserve system; or
- 4223 (C) chartered by another state if that state-chartered bank is acceptable to the
- 4224 commissioner.
- 4225 (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a
- 4226 form and upon terms approved by the commissioner.
- 4227 (3) A risk retention group may not be either a sponsor or a participant of a sponsored
- 4228 captive insurance company.
- 4229 Section 48. Section **31A-37-403** is amended to read:
- 4230 **31A-37-403. Participants in sponsored captive insurance companies.**
- 4231 (1) Any of the following may be a participant in a sponsored captive insurance
- 4232 company holding a certificate of authority under this chapter:
- 4233 (a) an association;
- 4234 (b) a corporation that is for profit or nonprofit;
- 4235 (c) a limited liability company;
- 4236 (d) a partnership;
- 4237 (e) a trust; or
- 4238 (f) any other business entity.
- 4239 (2) A sponsor may be a participant in a sponsored captive insurance company.
- 4240 (3) A participant need not be:
- 4241 (a) a shareholder of the sponsored captive insurance company; or
- 4242 (b) an affiliate of the sponsored captive insurance company.

4243 (4) A participant shall insure only the participant's own risks through a sponsored
4244 captive insurance company unless otherwise approved by the commissioner.

4245 Section 49. Section **31A-37-404** is amended to read:

4246 **31A-37-404. Discounting of loss and loss adjustment expense reserves.**

4247 (1) [~~The following~~] A sponsored captive insurance company may discount its loss and
4248 loss adjustment expense reserves at treasury rates applied to the applicable payments projected
4249 through the use of the expected payment pattern associated with the reserves[?].

4250 [~~(a) a sponsored captive insurance company; and~~]

4251 [~~(b) a captive reinsurance company.~~]

4252 (2) (a) [~~The following~~] A sponsored captive insurance company shall annually file with
4253 the department an actuarial opinion provided by an independent actuary on loss and loss
4254 adjustment expense reserves[?].

4255 [~~(i) a sponsored captive insurance company; and~~]

4256 [~~(ii) a captive reinsurance company.~~]

4257 (b) The independent actuary described in Subsection (2)(a) may not be an employee of:

4258 (i) the company filing the actuarial opinion; or

4259 (ii) an affiliate of the company filing the actuarial opinion.

4260 (3) The commissioner may disallow the discounting of reserves by [~~the following~~] a
4261 sponsored captive insurance company if the sponsored captive insurance company violates this
4262 title[?].

4263 [~~(a) a sponsored captive insurance company; or~~]

4264 [~~(b) a captive reinsurance company.~~]

4265 Section 50. Section **31A-37-501** is amended to read:

4266 **31A-37-501. Reports to commissioner.**

4267 (1) A captive insurance company is not required to make a report except those
4268 provided in this chapter.

4269 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the
4270 commissioner a report of the financial condition of the captive insurance company, verified by
4271 oath of two of the executive officers of the captive insurance company.

4272 (b) Except as provided in [~~Sections~~] Section 31A-37-204 [~~and 31A-37-205~~], a captive
4273 insurance company shall report:

- 4274 (i) using generally accepted accounting principles, except to the extent that the
4275 commissioner requires, approves, or accepts the use of a statutory accounting principle;
- 4276 (ii) using a useful or necessary modification or adaptation to an accounting principle
4277 that is required, approved, or accepted by the commissioner for the type of insurance and kind
4278 of insurer to be reported upon; and
- 4279 (iii) supplemental or additional information required by the commissioner.
- 4280 (c) Except as otherwise provided:
- 4281 (i) a licensed captive insurance company shall file the report required by Section
4282 [31A-4-113](#); and
- 4283 (ii) an industrial insured group shall comply with Section [31A-4-113.5](#).
- 4284 (3) (a) A pure captive insurance company may make written application to file the
4285 required report on a fiscal year end that is consistent with the fiscal year of the parent company
4286 of the pure captive insurance company.
- 4287 (b) If the commissioner grants an alternative reporting date for a pure captive insurance
4288 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal
4289 year end.
- 4290 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall
4291 file with the commissioner a copy of the reports and statements required to be filed under the
4292 laws of the jurisdiction in which the alien captive insurance company is formed, verified by
4293 oath by two of the alien captive insurance company's executive officers.
- 4294 (b) If the commissioner is satisfied that the annual report filed by the alien captive
4295 insurance company in the jurisdiction in which the alien captive insurance company is formed
4296 provides adequate information concerning the financial condition of the alien captive insurance
4297 company, the commissioner may waive the requirement for completion of the annual statement
4298 required for a captive insurance company under this section with respect to business written in
4299 the alien jurisdiction.
- 4300 (c) A waiver by the commissioner under Subsection (4)(b):
- 4301 (i) shall be in writing; and
- 4302 (ii) is subject to public inspection.
- 4303 (5) Before March 1 of each year, a sponsored cell captive insurance company shall
4304 submit to the commissioner a consolidated report of the financial condition of each individual

4305 protected cell, including a financial statement for each protected cell.

4306 Section 51. Section **31A-37-502** is amended to read:

4307 **31A-37-502. Examination.**

4308 (1) (a) As provided in this section, the commissioner, or a person appointed by the
4309 commissioner, shall examine each captive insurance company in each [~~three-year~~] five-year
4310 period.

4311 (b) The [~~three-year~~] five-year period described in Subsection (1)(a) shall be determined
4312 on the basis of [~~three~~] five full annual accounting periods of operation.

4313 (c) The examination is to be made as of:

4314 (i) December 31 of the full three-year period; or

4315 (ii) the last day of the month of an annual accounting period authorized for a captive
4316 insurance company under this section.

4317 (d) In addition to an examination required under this Subsection (1), the commissioner,
4318 or a person appointed by the commissioner may examine a captive insurance company
4319 whenever the commissioner determines it to be prudent.

4320 (2) During an examination under this section the commissioner, or a person appointed
4321 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance
4322 company to ascertain:

4323 (a) the financial condition of the captive insurance company;

4324 (b) the ability of the captive insurance company to fulfill the obligations of the captive
4325 insurance company; and

4326 (c) whether the captive insurance company has complied with this chapter.

4327 [~~(3) The commissioner upon application may enlarge the three-year period described in~~
4328 ~~Subsection (1) to five years, if a captive insurance company is subject to a comprehensive~~
4329 ~~annual audit during that period:]~~

4330 [~~(a) of a scope satisfactory to the commissioner; and]~~

4331 [~~(b) performed by independent auditors approved by the commissioner:]~~

4332 [~~(4)~~] (3) The commissioner may accept a comprehensive annual independent audit in
4333 lieu of an examination:

4334 (a) of a scope satisfactory to the commissioner; and

4335 (b) performed by an independent auditor approved by the commissioner.

4336 ~~(5)~~ (4) A captive insurance company that is inspected and examined under this
4337 section shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an
4338 inspection and examination.

4339 Section 52. Section 31A-37-505 is amended to read:

4340 **31A-37-505. Suspension or revocation -- Grounds.**

4341 (1) The commissioner may suspend or revoke the certificate of authority of a captive
4342 insurance company to conduct an insurance business in this state for:

4343 (a) insolvency or impairment of capital or surplus;

4344 (b) failure to meet the requirements of Section 31A-37-204 ~~[or 31A-37-205]~~;

4345 (c) refusal or failure to submit:

4346 (i) an annual report required by Section 31A-37-501; or

4347 (ii) any other report or statement required by law or by lawful order of the

4348 commissioner;

4349 (d) failure to comply with the charter, bylaws, or other organizational document of the
4350 captive insurance company;

4351 (e) failure to submit to:

4352 (i) an examination under Section 31A-37-502; or

4353 (ii) any legal obligation relative to an examination under Section 31A-37-502;

4354 (f) refusal or failure to pay the cost of examination under Section 31A-37-502;

4355 (g) use of methods that, although not otherwise specifically prohibited by law, render:

4356 (i) the operation of the captive insurance company detrimental to the public or the
4357 policyholders of the captive insurance company; or

4358 (ii) the condition of the captive insurance company unsound with respect to the public
4359 or to the policyholders of the captive insurance company; or

4360 (h) failure otherwise to comply with laws of this state.

4361 (2) Notwithstanding any other provision of this title, if the commissioner finds, upon
4362 examination, hearing, or other evidence, that a captive insurance company has committed any
4363 of the acts specified in Subsection (1), the commissioner may suspend or revoke the certificate
4364 of authority of the captive insurance company if the commissioner considers it in the best
4365 interest of the public and the policyholders of the captive insurance company to revoke the
4366 certificate of authority.

4367 Section 53. Section **31A-43-301** is amended to read:

4368 **31A-43-301. Stop-loss insurance coverage standards.**

4369 (1) A small employer stop-loss insurance contract shall:

4370 (a) be issued to the small employer to provide insurance to the group health benefit
4371 plan, not the employees of the small employer;

4372 [~~(b)~~] ~~use a standard application form developed by the commissioner by administrative~~
4373 ~~rule;~~]

4374 [~~(c)~~] ~~(b)~~ have a contract term with guaranteed rates for at least 12 months, without
4375 adjustment, unless there is a change in the benefits provided under the small employer's health
4376 plan during the contract period;

4377 [~~(d)~~] ~~(c)~~ include both a specific attachment point and an aggregate attachment point in
4378 a contract;

4379 [~~(e)~~] ~~(d)~~ align stop-loss plan benefit limitations and exclusions with a small employer's
4380 health plan benefit limitations and exclusions, including any annual or lifetime limits in the
4381 employer's health plan;

4382 [~~(f)~~] ~~(e)~~ have an annual specific attachment point that is at least \$10,000;

4383 [~~(g)~~] ~~(f)~~ have an annual aggregate attachment point that may not be less than 85% of
4384 expected claims;

4385 [~~(h)~~] ~~(g)~~ pay stop-loss claims:

4386 (i) incurred during the contract period; and

4387 (ii) paid within 12 months after the expiration date of the contract; and

4388 [~~(i)~~] ~~(h)~~ include provisions to cover incurred and unpaid stop-loss claims [~~if a~~] when
4389 the small [employer] employer's stop-loss plan terminates.

4390 (2) A small employer stop-loss contract shall not:

4391 (a) include lasing; and

4392 (b) pay claims directly to an individual employee, member, or participant.

4393 Section 54. **Repealer.**

4394 This bill repeals:

4395 Section **31A-37-205, Free surplus.**

4396 Section **31A-37-601, Incorporation of a captive reinsurance company.**

4397 Section **31A-37-602, Requirements of a captive reinsurance company.**

4398 Section [31A-37-603](#), **Minimum capitalization or reserves for a captive reinsurance**
4399 **company.**

4400 Section [31A-37-604](#), **Management of assets of a captive reinsurance company.**

4401 Section 55. **Effective date.**

4402 This bill takes effect on May 12, 2015, except that the amendments in this bill to

4403 Section [31A-3-304](#) (Effective 07/01/15) take effect on July 1, 2015.

Legislative Review Note

as of 10-16-14 12:48 PM

Office of Legislative Research and General Counsel