

Summary of 2015FL-0279/009, Insurance Modifications (10/09/14)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator

	Technical change: Formatting, numbering, word order, or language changes; no change in intent or practice; Codifying existing practice: New or changed language, no change in practice; Policy Change: New language, new practice.	
Lines	Cite Change	Effect / Benefits
	31A-1-301 – Definitions	
454-59	<u>(58) "Enterprise risk" means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause:</u> <u>(a) the insurer's risk-based capital to fall into the company action level as set forth in Sections 31A-17-601 through 31A-17-613; or</u> <u>(b) the insurer to be in hazardous financial condition set forth in Section 31A-27a-101.</u>	Policy Change: One of the three primary areas of amendments in this bill is implementing a national model developed by the Nat'l Assoc. of Insurance Commissioners, the Own Risk Solvency Assessment or "ORSA". The legislation requires large insurers, annual premium of greater than \$500 million to produce at the commissioner's request a written assessment of the insurer's significant enterprise and solvency risks. In order for states to maintain NAIC accreditation they must implement legislation substantially similar to the NAIC ORSA model act not later than 1/1/16. Passage of this legislation is also important to the integrity of the U.S. system of state based insurance regulation helping to prevent further encroachments by federal and/or international regulatory bodies who may otherwise be critical of and anxious to replace state based regulation. This first change defines "enterprise risk".

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512-528	<p>[(65)] (66) "Filing," when used as a noun, means an item required to be filed with the department including:</p> <p>...</p> <p><u>(o) a binder; or</u></p>	<p>Codifying existing practice: Adds the term “binder”, which are groups of filings for different products to the definition of “filing”</p>
1160-1166	<p><u>(155) "Securityholder" means a specified person who owns a security of that person, including:</u></p> <p><u>(a) common stock;</u></p> <p><u>(b) preferred stock;</u></p> <p><u>(c) debt obligations; and</u></p> <p><u>(d) any other security convertible into or evidencing the right of any of the items listed in this Subsection (155).</u></p>	<p>Policy Change: Adds new definition “securityholder” for use in Chapter 16, regulation of insurance companies within a holding company system. This is related to the second primary areas of this bill. The primary purpose of the Chapter 16 holding company amendments is to reduce the risk of insurer insolvencies due to contagion from related entities within the insurer's holding company structure. These risks were highlighted during the financial crisis where the investment activities of a "non-insurance" entity of AIG put in jeopardy the reputation and solvency of insurance units within the AIG holding company structure. In response to these concerns shared by federal and international regulators, the NAIC drafted and made <u>mandatory for accreditation</u> these holding company model act amendments, which are highlighted later.</p>

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31A-3-304 (Effective 07/01/15) Annual Fees – Other taxes or fees prohibited – Captive Restricted Account.		
1353	<p>(e) An appropriation from the Captive Insurance Restricted Account is nonlapsing, except that at the end of each fiscal year, money received by the commissioner in excess of [\$1,250,000] <u>\$1,850,000</u> shall be treated as free revenue in the General Fund.</p>	<p>Policy change: Increases non-lapsing authority from \$1,250,000 in FY 2015 to \$1,850,000 in FY 17 to maintain Captive Division resources commensurate with robust growth of captive insurers domiciled in Utah. The number of new captive insurers domiciled in Utah increases on average 30%/year (98 new captives last year). The increase in resources is critical to maintain Utah's competitive advantage of being a thorough, responsive and consistent regulator.</p>
31A-16-102.5. Subsidiaries of insurers.		
1355-1416	<p><u>(1) (a) A domestic insurer may organize or acquire one or more subsidiaries either:</u></p> <p><u>(i) by itself; or</u></p> <p><u>(ii) in cooperation with one or more persons.</u></p> <p><u>(b) A subsidiary of a domestic insurer may conduct any kind of business or businesses and its authority to do so may not be limited by reason of the fact that it is a subsidiary of a domestic insurer.</u></p> <p><u>(2) (a) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of this chapter, a domestic insurer may also invest in the following securities of one or more subsidiaries:</u></p> <p><u>(i) common stock;</u></p> <p><u>(ii) preferred stock;</u></p> <p><u>(iii) debt obligations; or</u></p> <p><u>(iv) other securities.</u></p> <p><u>(b) Amounts under Subsection (2)(a) that do not exceed the lesser of 10% of the Insurer's assets or 50% of the insurer's surplus as regards policyholders are permitted, if after the investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs.</u></p> <p><u>(c) In calculating the amount of the investments described in Subsection (2)(b), investments in domestic or foreign insurance subsidiaries and health organizations shall be excluded, and there shall be included: (i) total net money or</u></p>	<p>Policy change: New subsection that establishes requirements an insurer must follow in order to count its investment in a subsidiary as a permitted asset.</p>

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other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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31A-16-103. Acquisition of control of, divestiture of control of, or merger with domestic insurer.		
1437-50	<p><u>(d) For purposes of this section, a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days before the cessation of control. The commissioner shall determine those instances in which the one or more persons seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed, this Subsection (1)(d) does not apply.</u></p> <p><u>(e) With respect to a transaction subject to this section, the acquiring person shall also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 31A-16-104.5. A failure to file the notification may be subject to penalties specified in Section 31A-16-104.5.</u></p> <p>...</p>	<p>Policy change: This section is amended to clearly define an insurer's duty to formally notify the commissioner prior to a change in control.</p> <ul style="list-style-type: none"> -The commissioner will determine if a divestiture requires formal approval. -The insurer's failure to file "pre-notification" pay result in a penalty being assessed. -The information provided by the insurer to the commissioner under this section is confidential.
1464-8	<p>(iv) This section applies to all domestic insurers and other entities licensed under {Chapters 5, 7, 8, 9, and 11.}</p> <p><u>(A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;</u> <u>(B) Chapter 7, Nonprofit Health Service Insurance Corporations;</u> <u>(C) Chapter 8, Health Maintenance Organizations and Limited Health Plans;</u> <u>(D) Chapter 9, Insurance Fraternal; and</u> <u>(E) Chapter 11, Motor Clubs</u></p> <p>...</p>	<p>Technical change: spelling out chapter titles</p>
1563-9	<p><u>(l) an agreement by the person required to file the statement referred to in Subsection (1) that it will provide the annual report, specified in Section 31A-16-105, for so long as control exists;</u></p> <p><u>(m) an acknowledgment by the person required to file the statement referred to in Subsection (1) that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and</u></p>	<p>Policy change: All subsidiaries in the holding company must provide information for the commissioner to assess the "enterprise risk" of the change in control.</p>
1684-1699	<p><u>(10) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Subsection (9)(a) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection (1). The person shall file the statement referred to in Subsection (1) with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A</u></p>	<p>Policy change: Allows and provides procedure for consolidated public hearing required with another state</p>

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1754	<p><u>commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in Subsection (1). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend a hearing under this Subsection (10), in person or by telecommunication.</u></p> <p><u>(11) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to Subsection (1)</u></p> <p>...</p> <p><u>(16) The following are violations of this section:</u></p> <p>...</p> <p><u>(b) the effectuation, or any attempt to effectuate, an acquisition of control of, divestiture of, or merger with a domestic insurer unless the commissioner has given the commissioner's approval to the acquisition or merger.</u></p>	<p>commissioner, if needed.</p> <p>Policy change: adds divesture of domestic insurer a violation if not done with commissioner's approval.</p>
31A-16-104.5. Acquisitions involving insurers not otherwise covered		
1771-1925	<p><u>(1) The following definitions apply for the purposes of this section only:</u></p> <p><u>(a) "Acquisition" means an agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.</u></p> <p><u>(b) "Insurer" includes any company or group of companies under common management, ownership or control.</u></p> <p><u>(c) "Involved insurer" includes an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.</u></p> <p><u>(d) (i) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.</u></p> <p><u>(ii) Notwithstanding Subsection (1)(d)(i), for purposes of Subsection (2)(b), "market" means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.</u></p> <p><u>(2) (a) This section applies to any acquisition in which there is a change in control of an insurer authorized to do business in Utah.</u></p> <p><u>(b) This section shall not apply to the following:</u></p> <p><u>(i) securities purchased solely for investment purposes so long as the securities are not used by voting or otherwise</u></p>	<p>Policy change: New section establishes “pre-notification” requirements for a change in control of all insurers licensed in Utah, including non-domestic insurers if the transaction may materially and adversely impact competition in this State.</p>

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1811	<p><u>to cause or attempt to cause the substantial lessening of competition in any insurance market in this state;</u></p> <p><u>(ii) if a purchase of securities results in a presumption of control under Subsection 31A-1-301(29)(d), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;</u></p> <p><u>(iii) the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Subsection (3)(a) 30 days before the proposed effective date of the acquisition;</u></p> <p><u>(iv) the acquisition of an already affiliated person;</u></p> <p><u>(v) an acquisition if, as an immediate result of the acquisition:</u></p> <p><u>(A) in no market would the combined market share of the involved insurers exceed 5% of the total market;</u></p> <p><u>(B) there would be no increase in any market share; or</u></p> <p><u>(C) in no market would the combined market share of the involved insurers exceeds 12% of the total market, and the market share increase by more than 2% of the total market;</u></p> <p><u>(vi) an acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; or</u></p> <p><u>(vii) an acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition:</u></p> <p><u>(A) there is a lack of feasible alternative to improving such condition;</u></p> <p><u>(B) the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and</u></p> <p><u>(C) the findings are communicated by the domiciliary commissioner to the commissioner of this state.</u></p> <p><u>(3) An acquisition covered by Subsection (2) may be subject to an order pursuant to Subsection (5) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this Subsection (3) in the same manner as provided in Section 31A-16-109.</u></p>	<p>Establishes market concentration standards that may result from a change in control.</p>
1829	<p><u>(a) The pre-acquisition notification shall be in the form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets that, under Subsection (2)(b)(iii), cause the acquisition not to be exempted from this section. The commissioner may require additional material and information as considered necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Subsection (4). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the economist indicating the economist's ability to render an informed opinion.</u></p> <p><u>(b) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of receipt, or termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner on a one-time basis may require the</u></p>	<p>Establishes deadlines for required filings.</p>

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<p><u>submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.</u></p> <p><u>(4) (a) The commissioner may enter an order under Subsection (5)(a) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state, tend to create a monopoly, or if the insurer fails to file adequate information in compliance with this section.</u></p> <p><u>(b) In determining whether a proposed acquisition would violate the competitive standard of Subsection (4)(a), the commissioner shall consider the following: (i) Any acquisition covered under this Subsection (4) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards if:</u></p> <p><u>(A) the market is highly concentrated and the involved insurers possess the following shares of the market:</u></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Insurer A</th> <th style="text-align: left; border-bottom: 1px solid black;">Insurer B</th> </tr> </thead> <tbody> <tr> <td>4%</td> <td>4% or more</td> </tr> <tr> <td>10%</td> <td>2% or more</td> </tr> <tr> <td>15%</td> <td>1% or more; or</td> </tr> </tbody> </table> <p><u>(B) the market is not highly concentrated and the involved insurers possess the following shares of the market:</u></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Insurer A</th> <th style="text-align: left; border-bottom: 1px solid black;">Insurer B</th> </tr> </thead> <tbody> <tr> <td>5%</td> <td>5% or more</td> </tr> <tr> <td>10%</td> <td>4% or more</td> </tr> <tr> <td>15%</td> <td>3% or more</td> </tr> <tr> <td>19%</td> <td>1% or more</td> </tr> </tbody> </table> <p><u>(ii) For purposes of this section, a highly concentrated market is one in which the share of the 4 largest insurers is 75% or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in Subsection (4)(a).</u></p> <p><u>(iii) For purposes of this section, the insurer with the largest share of the market shall be considered to be Insurer A.</u></p> <p><u>(c) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the 2 largest to the 8 largest, has increased by 7% or more of the market over a period of time extending from any base year 5 to 10 years before the acquisition up to the time of the acquisition. Any acquisition or merger covered under Subsection (1) involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in Subsection (4)(a) if:</u></p> <p><u>(i) there is a significant trend toward increased concentration in the market;</u></p> <p><u>(ii) 1 of the insurers involved is 1 of the insurers in a grouping of large insurers showing the requisite increase in the market share; and</u></p> <p><u>(iii) another involved insurer's market is 2% or more.</u></p> <p><u>(d) The burden of showing prima facie evidence of violation of the competitive standard rests upon the</u></p>	Insurer A	Insurer B	4%	4% or more	10%	2% or more	15%	1% or more; or	Insurer A	Insurer B	5%	5% or more	10%	4% or more	15%	3% or more	19%	1% or more	
Insurer A	Insurer B																		
4%	4% or more																		
10%	2% or more																		
15%	1% or more; or																		
Insurer A	Insurer B																		
5%	5% or more																		
10%	4% or more																		
15%	3% or more																		
19%	1% or more																		

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1906	<p><u>commissioner.</u></p> <p><u>(e) Even though an acquisition is not prima facie violative of the competitive standard under Subsections (4)(b) and (4)(c), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence.</u></p> <p><u>(f) Even though an acquisition is prima facie violative of the competitive standard under Subsections (4)(b) and (4)(c), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this Subsection (4)(f) include the following:</u></p> <ul style="list-style-type: none"> <u>(i) market shares;</u> <u>(ii) volatility of ranking of market leaders;</u> <u>(iii) number of competitors;</u> <u>(iv) concentration or trend of concentration in the industry; and</u> <u>(v) ease of entry and exit into the market.</u> <p><u>(g) An order may not be entered under Subsection (5) if:</u></p> <ul style="list-style-type: none"> <u>(i) the acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or</u> <u>(ii) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.</u> <p><u>(5) (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if an acquisition violates the standards of this section, the commissioner may enter an order:</u></p> <ul style="list-style-type: none"> <u>(i) requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or</u> <u>(ii) denying the application of an acquired or acquiring insurer for a license to do business in this state.</u> <p><u>(b) The commissioner shall accompany an order issued under this Subsection (5) with a written decision of the commissioner setting forth findings of fact and conclusions of law.</u></p> <p><u>(c) An order pursuant to this section may not apply if the acquisition is not consummated.</u></p> <p><u>(d) A person who violates a cease and desist order of the commissioner under Subsection (5)(a)(i) and while the order is in effect may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to one or more of the following:</u></p> <ul style="list-style-type: none"> <u>(i) notwithstanding Section 31A-2-308, a monetary penalty of not more than \$10,000 for every day of violation; or</u> <u>(ii) suspension or revocation of the person's license.</u> <p><u>(f) An insurer or other person who fails to make any filing required by this section, and who fails to demonstrate a good faith effort to comply with a filing requirement, is subject to a fine of not more than \$50,000 notwithstanding Section 31A-2-308.</u></p>	<p>Allows the commissioner to enter an order to cease and desist from doing business in Utah or deny the application, subject to the Utah Administrative Procedures Act.</p> <p><i>(Note: the Model requires a hearing before the commissioner can enter an order – here we default to the Utah APA.)</i></p>
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31A-16-105. Registration of insurers.		
1967-1983	<p>(2) [Every] <u>An insurer subject to registration shall file the registration statement with the commissioner on a form and in format prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:...</u></p> <p><u>(e) if requested by the commissioner, financial statements of or within an insurance holding company system, including all affiliates:</u></p> <p><u>(i) which may include annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended; and</u></p> <p><u>(ii) which request is satisfied by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission;</u></p> <p>...</p> <p><u>(g) statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and</u></p> <p><u>(h) any other information required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.</u></p>	<p>Policy change: This section is amended to clearly define the commissioner's authority to obtain financial reports and other information from all affiliates within an insurer's holding company system. This authority extends to all affiliates including non-insurer entities.</p>
1992-1994	<p><u>(5) Subject to Section 31A-16-106, each registered insurer shall report to the commissioner a dividend or other distribution to shareholders within 15 business days following the declaration of the dividend or distribution</u></p> <p>...</p>	<p>Policy change: Requires notification to the commissioner within 15 days of declaring a dividend or distribution to shareholders.</p>
2009-2023	<p>[(10)] <u>(11) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or a disclaimer of affiliation may be filed by any insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. [After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard, and after making specific findings of fact to support the disallowance.] A disclaimer of affiliation is considered to have been granted unless the commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. If disallowed, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer is granted by the commissioner, or if the disclaimer is considered to have been approved.</u></p> <p><u>(12) The ultimate controlling person of an insurer subject to registration shall also file an annual enterprise risk report. The annual enterprise report shall, to the best of the ultimate controlling person's knowledge and belief,</u></p>	<p>Technical change: Amends procedure for disclaiming affiliation within a holding company, by implanting a deemed date and hearing opportunity.</p>

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2024-2033	<p><u>identify the material risks within the insurance holding company that could pose enterprise risk to the insurer. The annual enterprise risk report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.</u></p> <p>{(11)} (13) The failure to file a registration statement or any summary of the registration statement <u>or enterprise risk filing</u> required by this section within the time specified for the filing is a violation of this section</p>	<p>Policy Change: Requires an “enterprise risk report” identifying material risks to the holding company that could pose “enterprise risk” to the insurer.</p>
31A-16-106. Standards and management of an insurer within a holding company system.		
2040-2063	<p>(1) (a) Transactions within [a] <u>an insurance holding company system</u> to which an insurer subject to registration is a party are subject to the following standards:</p> <p>(i) the terms shall be fair and reasonable;</p> <p><u>(ii) agreements for cost sharing services and management shall include the provisions required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;</u></p> <p>(b) The following transactions involving a domestic insurer and any person in its <u>insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in Subsections (1)(a)(i) through (vi), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days [prior to] before entering into the transaction, or within any shorter period the commissioner may permit, if the commissioner has not disapproved the transaction within the period[:]. The notice for an amendment or modification shall include the reasons for the change and financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:</u></p>	<p>Policy change: This section is amended to add various notification and corporate governance requirements for insurers and affiliates within an insurer’s holding company system and requires the commissioner to promulgate rules related thereto.</p>
2078-2090	<p>(iii) reinsurance agreements or modifications to reinsurance agreements [in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus held for policyholders, as of the next preceding December 31, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliated that any portion of the assets will be transferred to one or more affiliates of the insurer;] including an agreement in which the reinsurance premium, a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the current and succeeding three years, equals or exceeds 5% of the insurer's surplus held for policyholders, as of the next preceding December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and the non-affiliate that any portion of the assets will be transferred to one or more affiliates of the reinsurer;</p>	
2093-2109	<p>(iv) all management agreements, service contracts, <u>tax allocation agreements</u>, and all cost-sharing arrangements;</p> <p>(v) <u>guarantees when made by a domestic insurer, except that:</u></p> <p><u>(A) a guarantee that is quantifiable as to amount is not subject to the notice requirements of this Subsection (1) unless it exceeds the lesser of .5% of the insurer's admitted assets or 10% of surplus held for policyholders, as of the</u></p>	<p>Sets materiality thresholds for reporting changes in affiliate agreements to the commissioner.</p>

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2157-2202	<p><u>next preceding December 31; and</u></p> <p><u>(B) a guarantee that is not quantifiable as to amount is subject to the notice requirements of this Subsection (1);</u></p> <p><u>(vi) direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in the investments, exceeds 2.5% of the insurer's surplus to policyholders, except that a direct or indirect acquisition or investment in a subsidiary acquired pursuant to Section 31A-16-102.5, or in non-subsiary insurance affiliate that is subject to this chapter, is exempt from this Subsection (1)(b)(vi);</u></p> <p>...</p> <p><u>(c) (i) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of a domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity.</u></p> <p><u>(ii) At least one person described in Subsection (3)(c)(i) shall be included in a quorum for the transaction of business at a meeting of the board of directors or a committee of the board of directors.</u></p> <p><u>(d) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The one or more committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers considered to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.</u></p> <p><u>(e) Subsections (3)(c) and (d) do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees of the board of directors that meet the requirements of Subsections (3)(c) and (d) with respect to the controlling entity.</u></p> <p><u>(f) An insurer may make application to the commissioner for a waiver from the requirements of this Subsection (3), if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this Subsection (3) based upon unique circumstances. The commissioner may consider various factors including:</u></p> <p><u>(i) the type of business entity;</u></p> <p><u>(ii) volume of business written;</u></p> <p><u>(iii) availability of qualified board members; or</u></p> <p><u>(iv) the ownership or organizational structure of the entity.</u></p> <p><u>(4) (a) For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following</u></p>	<p>Sets minimum requirements for independent board members and committees. Provides criteria for the commissioner to waive the independent board member requirements.</p>
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	<p>factors, among others, shall be considered:</p> <ul style="list-style-type: none"> (i) <u>the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;</u> (ii) <u>the extent to which the insurer's business is diversified among several lines of insurance;</u> (iii) <u>the number and size of risks insured in each line of business;</u> (iv) <u>the extent of the geographical dispersion of the insurer's insured risks;</u> (v) <u>the nature and extent of the insurer's reinsurance program;</u> (vi) <u>the quality, diversification and liquidity of the insurer's investment portfolio;</u> (vii) <u>the recent past and projected future trend in the size of the insurer's investment portfolio;</u> (viii) <u>the surplus as regards policyholders maintained by other comparable insurers;</u> (ix) <u>the adequacy of the insurer's reserves; and</u> (x) <u>the quality and liquidity of investments in affiliates.</u> <p>(b) <u>The commissioner may treat an investment described in Subsection (4)(a)(x) as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.</u></p>	
<u>[31A-16-108]. 31A-16-107.5. Examination of registered insurers.</u>		
2209-2254	<p>(1) <u>Subject to the limitation contained in this section and the powers which the commissioner has under Chapter 2, Administration of Insurance Laws, relating to the examination of insurers, the commissioner has the power to order any examine an insurer registered under Section 31A-16-105 [to produce the records, books, or other informational papers in the possession of the insurer or its affiliates which the commissioner considers necessary] and its affiliates to ascertain the financial condition [or legality of conduct] of the insurer]. If an insurer fails to comply with this order, the commissioner may examine the affiliates to obtain the information., including the enterprise risk to the insurer by the ultimate controlling party, or by the insurance holding company system on a consolidated basis.</u></p> <p>[(2) The commissioner shall exercise his power under Subsection (1) only if the examination of the insurer under Chapter 2 is inadequate, or the interests of the policyholders of the insurer may be adversely affected if the commissioner fails to exercise his power.]</p> <p><u>(2) (a) The commissioner may order an insurer registered under Section 31A-16-105 to produce the records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this chapter.</u></p> <p><u>(b) To determine compliance with this chapter, the commissioner may order an insurer registered under Section 31A-16-105 to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual relationships, statutory obligations, or other method.</u></p> <p><u>(c) If an insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information.</u></p> <p><u>(d) Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may</u></p>	<p>Policy change: This section amends and replaces 31A-16-108 to clarify and strengthen the commissioner's authority to examine affiliates within and insurer's holding company system. This authority is necessary in order for the commissioner to adequately assess the "enterprise risk" to the insurer from its affiliates. Sets fines and penalties, including revocation of the insurer's certificate authority for the failure of the insurer and/or its affiliate to either provide the required information or provide a reasonable explanation for why it cannot be provided.</p>

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	<p><u>require, after notice and hearing, the insurer to pay a penalty of \$5,000 for each day's delay, or may suspend or revoke the insurer's license</u></p> <p><u>(5) If an insurer fails to comply with an order issued under this section, the commissioner may:</u></p> <p><u>(a) examine the affiliates to obtain the information; or</u></p> <p><u>(b) issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section.</u></p> <p><u>(6) Upon the failure or refusal of any person to obey a subpoena under Subsection (5), the commissioner may petition the Third District Court of Salt Lake County to enter an order compelling the witness to appear and testify or produce documentary evidence. A person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. A person subpoenaed is entitled to the same fees and mileage, if claimed, as a witness in the Third District Court of Salt Lake County, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.</u></p>	
31A-16-108.5. Supervisory colleges.		
2257-2293	<p><u>(1) (a) For an insurer registered under Section 31A-16-105 and in accordance with Subsection (3), the commissioner may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include the following:</u></p> <p><u>(i) initiating the establishment of a supervisory college;</u></p> <p><u>(ii) clarifying the membership and participation of other supervisors in the supervisory college; (iii) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;</u></p> <p><u>(iv) coordinating the ongoing activities of the supervisory college, including:</u></p> <p><u>(A) planning meetings;</u></p> <p><u>(B) supervisory activities; and</u></p> <p><u>(C) processes for information sharing; and</u></p> <p><u>(v) establishing a crisis management plan.</u></p> <p><u>(2) (a) A registered insurer subject to this section is liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with Subsection (3) including reasonable travel expenses.</u></p> <p><u>(b) For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with supervision of the insurer or its affiliates and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.</u></p> <p><u>(3) (a) The commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including:</u></p> <p><u>(i) other state regulatory agencies;</u></p>	<p>Policy change: This new section expressly allows the commissioner to participate in “supervisory colleges” with international regulators for a domestic insurer who is a part of an international holding company system. The commissioner may:</p>

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	<p>(ii) federal regulatory agencies; or (iii) international regulatory agencies. (b) The commissioner may enter into agreements in accordance with Section 31A-16-107.5 providing the basis for cooperation between the commissioner and other regulatory agencies, and the activities of the supervisory college, in order to assess: (i) the business strategy; (ii) financial position; (iii) legal and regulatory position; (iv) risk exposure; and (v) management and governance processes. (c) Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.</p>	
31A-16-109. Confidentiality of information obtained by commissioner.		
2308-2366	<p>(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom the documents, materials, or other information are shared pursuant to this chapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection (1). (3) (a) To assist in the performance of the commissioner's duties, the commissioner: (i) may share documents, materials, or other information, including the confidential documents, materials, or information subject to Subsection (1), with the following if the recipient agrees in writing to maintain the confidentiality status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality: (A) other state, federal, and international regulatory agencies; (B) the National Association of Insurance Commissioners and its affiliates and subsidiaries; and (C) state, federal, and international law enforcement authorities, including members of a supervisory college described in Section 31A-16-108.5. (ii) notwithstanding Subsection (1), may only share confidential documents, material, or information reported pursuant to Section 31A-16-105 with commissioners of states having statutes or regulations substantially similar to Subsection (1) and who have agreed in writing not to disclose the documents, material, or information; (iii) may receive documents, materials, or information, including otherwise confidential documents, materials, or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential any document, material, or information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material, or information; and (iv) shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this chapter consistent with this Subsection (2) that shall:</p>	<p>Policy change: This section is amended, in accordance with the Model Act, to provide for strengthened confidentiality protections for information obtained by the commissioner from an insurer, its affiliates and other regulatory jurisdictions under this chapter. The information obtained under this chapter is: Confidential; not public records open to public inspection; and not subject to GRAMA.</p>

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	<p><u>(A) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;</u></p> <p><u>(B) specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter remains with the commissioner and the National Association of Insurance Commissioner's use of the information is subject to the direction of the commissioner;</u></p> <p><u>(C) require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and</u></p> <p><u>(D) require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter.</u></p> <p><u>(4) The sharing of information by the commissioner pursuant to this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.</u></p> <p><u>(5) A waiver of any applicable claim of confidentiality in the documents, materials, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection (3).</u></p> <p><u>(6) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this chapter are:</u></p> <p><u>(a) confidential, not public records, and not open to public inspection; and;</u></p> <p><u>(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.</u></p>	
31A-16-112. Sanctions.		
2396-2413	<p><u>(1) (a) Notwithstanding Section 31A-2-308, the following sanctions apply:</u></p> <p><u>(i) An insurer failing, without just cause, to file a registration statement required by this chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Fund.</u></p> <p><u>(ii) The maximum penalty under this section is \$250,000.</u></p> <p><u>(b) The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.</u></p> <p><u>(2) A director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments that have not been properly reported or submitted pursuant to Subsection 31A-16-105(1), 31A-16-106(1)(b), or 31A-16-106(2) or that violates this chapter, shall pay, in their individual capacity, a civil forfeiture of</u></p>	<p>Policy change: Section establishes fines and penalties for a failure to comply with provisions of the holding company chapter and for persons who willfully provide false information.</p> <p>-Penalty of \$10,000 for every day a required filing is late up to the maximum of \$250,000.</p>

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	<p>not more than \$10,000 per violation, notwithstanding Section 31-A-2-308, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.</p> <p>(3) Whenever it appears to the commissioner that any insurer subject to this chapter or a director, officer, employee, or agent of the insurer has engaged in any transaction or entered into a contract that is subject to Section 31A-16-106 and that would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contract and restore the status quo if the action if the action is in the best interest of the policyholders, creditors, or the public.</p> <p>(4) Whenever it appears to the commissioner that an insurer or any director, officer, employee or agent of the insurer has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted by the Third District Court of Salt Lake County, against the insurer or the responsible director, officer, employee, or agent of the insurer. An insurer that willfully violates this chapter may be fined not more than \$250,000 notwithstanding Section 31A-2-308. An individual who willfully violates this chapter may be fined in the individual's individual capacity not more than \$100,000 notwithstanding Section</p> <p>(5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the commissioner in the performances of the commissioner's duties under this chapter, is guilty of a third-degree felony. Any fines imposed shall be paid by the officer, director, or employee in the officer's, director's, or employee's individual capacity.</p> <p>(6) Whenever it appears to the commissioner that a person has committed a violation of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing insurer under an order of supervision in accordance with Section 31A-27-503.</p>	<p>-Maximum \$250,000 fine for an insurer who willfully violates this chapter.</p> <p>-Maximum \$100,000 fine and a class 3 felony for an individual who willfully violates this chapter.</p>
31A-16-113. Receivership.		
2416-2421	<p>Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in Section 31A-16-114 to take possession of the property of the domestic insurer and to conduct its business.</p>	<p>Policy change: Allows the commissioner to take control of a domestic insurer whose violation of the holding company chapter makes it financially hazardous to policyholders, creditors or the public.</p>

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<p>2424- 2452</p>	<p>31A-16-114. Recovery.</p> <p><u>(1) If an order for liquidation or rehabilitation of a domestic insurer is entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer:</u> <u>(a) from any parent corporation, holding company, or person or affiliate who otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock; or</u> <u>(b) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to Subsection (1)(a) or this Subsection (1)(b) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections (2), (3), and (4).</u></p> <p><u>(2) A distribution may not be recovered if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.</u></p> <p><u>(3) A person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to amount of distributions or payment under Subsection (1) that the person received. A person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.</u></p> <p><u>(4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.</u></p> <p><u>(5) To the extent that any person liable under Subsection (3) is insolvent or otherwise fails to pay claims due from the person, its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.</u></p>	<p>Policy change: Consistent with the model, makes all affiliates within an insurer’s holding company system jointly and severally liable for the insurer’s obligations in the event of the insurer’s insolvency under an order of liquidation or rehabilitation.</p>
<p>2455- 2461</p>	<p>31A-16-115. Revocation, suspension, or nonrenewal of insurers license.</p> <p><u>Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.</u></p>	<p>Policy change: Clarifies the commissioner’s authority, when a violation of the holding company chapter occurs, after notice to the insurer, to revoke, suspend or non-renew an insurer’s certificate of authority if the continued operation of the</p>

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		insurer is contrary to the interests of policyholders, creditors or the public.
	31A-16-116. Rules and orders.	
2464-2466	<u>The Commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules necessary to carry out this chapter. The commissioner may issue orders as is necessary to carry out this chapter.</u>	Policy change: Gives the commissioner specific rulemaking authority to promulgate rule to carry out the provisions of the insurance holding company laws.
	31A-16-117. Judicial review -- Mandamus.	
2469-2479	<u>(1) A person aggrieved by an act, determination, rule, or order or any other action of the commissioner pursuant to this chapter may seek judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.</u> <u>(2) The filing of an appeal pursuant to this section shall stay the application of any rule, order, or other action of the commissioner to the appealing party unless the court, after giving party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.</u> <u>(3) A person aggrieved by a failure of the commissioner to act or make a determination required by this chapter may petition the Third District Court of Salt Lake County for writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.</u>	Policy change: Grants specific right of judicial review to an insurer aggrieved by an act of the commissioner enforcing the insurance holding company chapter.
	31A-16-118. Conflict with other laws.	
2482-3	<u>If any law or part of a law of this state is inconsistent with this chapter, this chapter governs.</u>	Technical change: Clarifies provisions of other laws conflict with the insurance holding company chapter, this chapter control.
	31A-16-119. Severability.	
2486-89	<u>If any chapter, section, or subsection of this chapter or the application of any chapter, section, or subsection to any person or circumstance is held invalid, the remainder of the provisions of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.</u>	Technical change: States that if any provision in the insurance holding company chapter is invalid the other provisions remain valid.
	CHAPTER 16A. OWN RISK AND SOLVENCY ASSESSMENT (ORSA) ACT 31A-16a-101. Title -- Scope.	THIS IS A NEW CHAPTER - ORSA
2493-2497	<u>(1) This chapter is known as the "Own Risk and Solvency Assessment Act."</u> <u>(2) This chapter applies to an insurer domiciled in this state unless exempt pursuant to Section 31A-16a-106.</u>	Technical change: defines scope.

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	<u>(3) An own risk and solvency assessment summary report is confidential pursuant to Section 31A-16a-108.</u>	This is an NAIC model act required for accreditation. The model act applies only to large insurers with annual premiums of more than \$500 million. It requires qualifying insurers to regularly assess their own significant solvency risks, and provide a report to the commissioner upon his request.
	31A-16a-102. Definitions.	
2500-2515	<u>(1) "Insurance group" means the insurers and affiliates included within an insurance holding company system as defined in Section 31A-1-301.</u> <u>(2) "Insurer" is as defined in Section 31A-1-301, except that it does not include an agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.</u> <u>(3) "Own risk and solvency assessment" means a confidential internal assessment:</u> <u>(a) appropriate to the nature, scale, and complexity of an insurer or insurance group;</u> <u>(b) conducted by that insurer or insurance group; and</u> <u>(c) including the material and relevant risks associated with the insurer's or insurance group's current business plan, and the sufficiency of capital resources to support those risks.</u> <u>(4) "Own risk and solvency assessment guidance manual" means the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners.</u> <u>(5) "Own risk and solvency assessment summary report" means a confidential high-level summary of an insurer's or insurance group's own risk and solvency assessment.</u>	Policy change: defines terms, consistent with model language, used in new chapter.
	31A-16a-103. Risk management framework.	
2518-2521	<u>(1) An insurer shall maintain a risk management framework, to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.</u> <u>(2) An insurer may satisfy Subsection (1) if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.</u>	Policy change: Requires a qualifying insurer to maintain adequate resources and procedures in order to identify, assess, monitor, manage and report on its material risks.
	31A-16a-104. Own risk and solvency assessment requirement.	
2524-2533	<u>(1) (a) Subject to Section 31A-16a-106, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and</u>	Policy change: Requires an insurer's solvency risk

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	<p><u>solvency assessment guidance manual.</u> <u>(b) A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the National Association of Insurance Commissioners.</u> <u>(2) The own risk and solvency assessment shall be conducted:</u> <u>(a) no less than annually; and</u> <u>(b) at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.</u></p>	<p>assessment process to: -Be comparable to process described in the NAIC’s ORSA Solvency Guidance Manual -Be conducted no less than annually or whenever there are significant changes in the insurer’s risk profile.</p>
31A-16a-105. Own risk and solvency assessment summary report.		
2536-2563	<p><u>(1) Upon the commissioner's request, an insurer shall submit to the commissioner:</u> <u>(a) an own risk and solvency assessment summary report; or</u> <u>(b) any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual, applicable to the insurer, the insurance group of which it is a member, or both the insurer and insurance group.</u> <u>(2) Notwithstanding a request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the one or more reports required by this section if the commissioner is the lead state commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.</u> <u>(3) The commissioner may not request the one or more reports required by this section more than once each year.</u> <u>(4) The one or more reports shall include a signature of the insurer or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of the person's belief and knowledge that:</u> <u>(a) the insurer applies the enterprise risk management process described in the own risk and solvency assessment summary report; and</u> <u>(b) a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board of directors.</u> <u>(5) An insurer may comply with Subsection (1) by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member, to the commissioner of another state, or to a supervisor or regulator of a foreign jurisdiction if:</u> <u>(a) the report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual; and</u> <u>(b) the report is written in a language other than English it is accompanied by a translation of that report into the English language.</u></p>	<p>Policy change: Requires the summary report to be provided to the commissioner upon his request. The commissioner may not request more than one ORSA report annually.</p>

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	31A-16a-106. Exemption.	
2566-2616	<p><u>(1) An insurer shall be exempt from the requirements of this chapter, if:</u></p> <p><u>(a) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and</u></p> <p><u>(b) the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.</u></p> <p><u>(2) If an insurer qualifies for exemption pursuant to Subsection (1)(a), but the insurance group of which the insurer is a member does not qualify for exemption pursuant to Subsection (1)(b), the own risk and solvency assessment summary report that may be required pursuant to Section 31A-16a-105 shall:</u></p> <p><u>(a) include every insurer within the insurance group; or</u></p> <p><u>(b) if more than one own risk and solvency assessment summary report is submitted for any combination of insurers, the reports shall include every insurer within the insurance group.</u></p> <p><u>(3) If an insurer does not qualify for exemption pursuant to Subsection (1)(a), but the insurance group of which it is a member qualifies for exemption pursuant to Subsection (1)(b), then the only own risk and solvency assessment summary report that may be required pursuant to Section 31A-16a-105 is the report applicable to that insurer.</u></p> <p><u>(4) An insurer that does not qualify for exemption pursuant to Subsection (1) may apply to the commissioner for a waiver from the requirements of this chapter.</u></p> <p><u>(5) In deciding whether to grant the insurer's request for waiver, the commissioner will consider unique circumstances that may include factors such as:</u></p> <p><u>(a) the type and volume of business written;</u></p> <p><u>(b) ownership and organizational structure; and</u></p> <p><u>(c) any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member.</u></p> <p><u>(6) If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner, as determined by procedures outlined in the Financial Analysis Handbook of the National Association of Insurance Commissioners, and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.</u></p> <p><u>(7) Notwithstanding the exemptions stated in this section, the commissioner may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment and file an own risk and solvency assessment summary report based on unique circumstances including:</u></p> <p><u>(a) the insurer has a risk-based capital for company action level event as set forth in Section 31A-17-603;</u></p> <p><u>(b) the insurer meets one or more of the standards of an insurer considered to be in hazardous financial condition or potentially hazardous financial condition, as defined by rule made under Subsection 31A-27a-101(3)(c);</u></p>	<p>Policy change: Establishes the criteria for exemption from the requirements of the ORSA chapter:</p> <ul style="list-style-type: none"> -A <i>single</i> insurer with direct written and assumed premium of less than \$500 million. -An insurance <i>group</i> with direct written and assumed premium of less than \$1 billion. -An insurer that otherwise does not qualify for a waiver may apply for one. -The commissioner may require an ORSA report for an insurer who does not trigger the premium threshold if it is in hazardous financial condition.

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	<p>(c) the insurer otherwise exhibits qualities of a troubled insurer as determined by the commissioner;</p> <p>(d) the type and volume of business written;</p> <p>(e) ownership and organizational structure; or</p> <p>(f) federal agency requests and international supervisor requests.</p> <p><u>(8) If an insurer that qualifies for an exemption pursuant to Subsection (1) subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this chapter.</u></p>	
31A-16a-107. Contents of the own risk and solvency assessment summary report.		
2620-2626	<p><u>(1) The own risk and solvency assessment summary report shall be prepared consistent with the own risk and solvency assessment guidance manual, subject to Subsection (3).</u></p> <p><u>(2) Documentation supporting information shall be maintained and made available upon examination or upon request of the commissioner.</u></p> <p><u>(3) The review of the own risk and solvency assessment summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multi-state or global insurers and insurance groups.</u></p>	<p>Policy change: Requires the ORSA summary report to be prepared consistent with the NAIC ORSA guidance manual.</p>
31A-16a-108. Confidentiality of information obtained by commissioner.		
2629-2717	<p><u>(1) Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person under this chapter, is proprietary and contains trade secrets. These documents, materials, or other information are:</u></p> <p><u>(a) confidential, not public records, and not open to public inspection; and</u></p> <p><u>(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.</u></p> <p><u>(2) The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.</u></p> <p><u>(3) Other than under Subsection (2), the commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.</u></p> <p><u>(4) Neither the commissioner nor any person who received documents, materials, or other own risk and solvency assessment related information, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection (1).</u></p> <p><u>(5) To assist in the performance of the commissioner's regulatory duties, the commissioner:</u></p> <p><u>(a) may upon request, share documents, materials, or other own risk and solvency assessment related information, including the confidential documents, materials, or information subject to Subsection (1), including proprietary and trade secret documents and materials with:</u></p>	<p>Policy change: Establishes information obtained under the ORSA chapter is: proprietary, confidential, not a public record, not subject to GRAMA but may be shared with other regulatory jurisdictions, the NAIC and 3rd party consultants designated by the commissioner.</p> <p><i>(Note: this section differs from the Model Act, which holds that the information is not subject to subpoena and not discoverable. The drafter noted that evidentiary rules are, pursuant to the Utah Constitution, are under the authority of the Supreme Court of Utah.)</i></p>

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<p><u>(i) other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in Chapter 16, Insurance Holding Companies;</u></p> <p><u>(ii) the National Association of Insurance Commissioners; and</u></p> <p><u>(iii) any third-party consultants designated by the commissioner;</u></p> <p><u>(b) may not share the information described in Subsection (5)(a) unless the recipient of the information agrees in writing to:</u></p> <p><u>(i) maintain the confidentiality status of the own risk and solvency assessment related documents, materials, or other information; and</u></p> <p><u>(ii) has the legal authority to maintain confidentiality;</u></p> <p><u>(c) may receive documents from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college described in Chapter 16, Insurance Holding Companies, and from the National Association of Insurance Commissioner, materials or other own risk and solvency assessment related information, including:</u></p> <p><u>(i) otherwise confidential documents, materials, or information; or</u></p> <p><u>(ii) proprietary and trade-secret information or documents;</u></p> <p><u>d) shall maintain as confidential any documents, materials, or information received under Subsection (5)(c) with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material, or information;</u></p> <p><u>(e) shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to this chapter consistent with this Subsection</u></p> <p><u>(1) that shall:</u></p> <p><u>(i) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers; and</u></p> <p><u>(ii) provide that the recipient agrees in writing:</u></p> <p><u>(A) to maintain the confidentiality status of the own risk and solvency assessment related documents, materials, or other information; and</u></p> <p><u>(B) to verify the legal authority to maintain confidentiality;</u></p> <p><u>(iii) specify that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter remains with the commissioner and the National Association of Insurance Commissioners' or a third-party consultant's use of the information is subject to the direction of the commissioner;</u></p> <p><u>(iv) prohibit the National Association of Insurance Commissioners or third-party consultant from storing the</u></p>	
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	<p><u>information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;</u> <u>(v) require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;</u> <u>(vi) require the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter; and</u> <u>(vii) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.</u> <u>(6) The sharing of information and documents by the commissioner pursuant to this chapter may not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.</u> <u>(7) No waiver of any applicable claim of confidentiality in the documents, proprietary and trade-secret materials or other own risk and solvency assessment related information shall occur as a result of disclosure of such own risk and solvency assessment related information or documents to the commissioner under this section or as a result of sharing as authorized in this chapter.</u> <u>(8) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter are:</u> <u>(a) confidential, not public records, and not open to public inspection; and</u> <u>(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.</u></p>	
	<p>31A-16a-109. Sanctions.</p>	
<p>2720- 2727</p>	<p><u>(1) An insurer failing, without just cause, to timely file the own risk and solvency assessment summary report as required in this chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each working day the own risk and solvency assessment summary report is late notwithstanding Section 31A-2-308.</u> <u>(2) The penalty recovered under Subsection (1) shall be paid into the General Fund.</u> <u>The maximum penalty under this section is \$250,000 notwithstanding Section 31A-2-308. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.</u></p>	<p>Policy change: Establishes fines and penalties for non-compliance with this chapter, which may be reduced by the commissioner. -\$10,000 for each day the ORSA report is late with a maximum fine of \$250,000.</p>
	<p>31A-16a-110. Severability.</p>	
<p>2730- 2733</p>	<p><u>If any chapter, section, or subsection of this chapter or the application of any chapter, section, or subsection to any person or circumstance is held invalid, the remainder of the provisions of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.</u></p>	<p>Technical change: States if any provision in the holding company chapter is invalid the other provisions remain valid.</p>

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	31A-22-612. Conversion privileges for insured former spouse.	
2757	(4) This section does not apply to accident and health insurance policies offered on a group blanket basis <u>or a health benefit plan.</u>	Codifying existing practice: Clarifies that conversion privileges do not apply to a health benefit plan.
	31A-22-620. Medicare Supplement Insurance Minimum Standards Act.	
2775-2780	(f) “Medicare supplement Policy”: (i) means a group or individual policy of [disability] <u>health</u> insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. [Section] <u>Sec. 1395</u> et seq., or an issued policy under a demonstration project specified in 42 U.S.C. [Section] <u>Sec. 1395ss(g)(1)</u> , that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare; and ...	Technical change: (1)(f)(i) references disability insurance. In 2001, disability was renamed to accident and health. In this case, the subsection is referring to health insurance. The change in language was missed in this subsection.
	31A-23a-102. Definitions.	
2902-2930	1) “Bail bond producer” is as defined in Section 31A-35-102. (2) “Designated home state” means the state or territory of the United States or the District of Columbia: (a) <u>in which an insurance producer, limited lines producer, consultant, managing general agent, or reinsurance intermediary licensee does not maintain the licensee's principal:</u> (i) <u>place of residence; or</u> (ii) <u>place of business;</u> (b) <u>if the resident state, territory, or District of Columbia of the licensee does not license for the line of authority sought, the licensee has qualified for the license as if the person were a resident in the state, territory, or District of Columbia described in Subsection (2)(a), including an applicable:</u> (i) <u>examination requirement;</u> (ii) <u>fingerprint background check requirement; and</u> (iii) <u>continuing education requirement; and</u> (c) <u>the licensee has designated the state, territory, or District of Columbia as the designated home state.</u> {(2)} (3) "Home state" means: (a) a state or territory of the United States or the District of Columbia in which an insurance producer, limited lines producer, consultant, managing general agent, or reinsurance intermediary licensee: [(a)] (i) maintains the [insurance producer's] <u>licensee's</u> principal: [(i)]-(A) place of residence; or [(ii)]-(B) place of business; and [(b)] (ii) is licensed to act as [an insurance producer] <u>a resident licensee; or</u>	Policy change: Allows for Utah to be a “designated home state” for use when the resident state or territory does not offer a license for the line of authority sought (such as for a title producer or life consultant). The proposed change is patterned after similar language currently used for adjusters (31A-26-102).

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	<p>(b) if the resident state, territory, or the District of Columbia described in Subsection (3)(a) does not license for the line of authority sought, a state, territory, or the District of Columbia:</p> <p>(i) in which the licensee is licensed;</p> <p>(ii) in which the licensee is in good standing; and</p> <p>(iii) that the licensee has designated as the licensee's designated home state.</p>	
	31A-23a-113. License lapse and voluntary surrender.	
3047-3069	<p>(b) (i) A licensee whose license lapses <u>may request reinstatement of the license and line of authority no more than one year after the day on which the license lapses.</u></p> <p>(ii) A licensee whose license lapses due to the following may request an action described in Subsection (1)(b)((i))(iii):</p> <p>...</p> <p>(A) reinstatement of the license <u>and line of authority</u> no later than one year after the day on which the license lapses; and</p> <p>(2) If a license or <u>line of authority</u> issued under this chapter is voluntarily surrendered, the license or <u>line of authority</u> may be reinstated:</p> <p>(a) during the license period in which the license or <u>line of authority</u> is voluntarily surrendered; and</p>	<p>Codifying existing practice: Clarifies that a producer license and/or line of authority may be reinstated within one year of a license lapse.</p>
	31A-23a-402. Unfair marketing practices -- Communication – Unfair discrimination -- Coercion or intimidation -- Restriction on choice.	
3094-3097	<p>(B) use any <u>name</u>, advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency, including the Health Insurance Exchange, also called the "Utah Health Exchange[,] or "Avenue H," created in Section 63M-1-2504, the Comprehensive Health Insurance Pool created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance</p>	<p>Codifying existing practice: Adds "Avenue H" to the terms prohibited from use in marketing material if doing so could confuse people.</p>
	31A-23b-206. Continuing education requirements.	
3252	<p>(7) A navigator shall keep documentation of completing the continuing education requirements of this section for [two years] <u>one year</u> after the end of the [two year] <u>one-year</u> licensing period to which the continuing education applies.</p>	<p>Codifying existing practice: Corrects reference from a two to a one year license for navigators, consistent with 2014 legislation.</p>
	31A-25-302.5. Place of business and residence address.	
3256-3268	<p>(1) A third party administrator licensed under this chapter shall register and maintain with the commissioner:</p> <p>(a) the address and one or more telephone numbers of the licensee's principal place of business;</p> <p>(b) a valid business email address at which the commissioner may contact the licensee; and</p> <p>(c) if the licensee is an individual, the licensee's residence address and telephone number.</p> <p>(2) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be</p>	<p>Codifying existing practice: Clarifies requirement that a TPA licensee register and maintain with the commissioner its address and phone number,</p>

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	<p>registered with the commissioner under this section:</p> <p>(a) an address;</p> <p>(b) a telephone number; or</p> <p>(c) a business email address.</p>	consistent with requirements for other licensees.
	31A-27a-116 Financial Reporting	
3272-3273	<p><u>(1) (a) The receiver shall comply with all requirements for receivership financial reporting in this section and as may be specified by the commissioner by rule or ordered by the court within:</u></p>	Codifying existing practice: Changes rule-making requirement by the commissioner for financial reporting by a receiver permissive instead of mandatory.
	31A-28-213. Miscellaneous provisions	
3324-3327	<p><u>(2) An insurer may not exercise any right of subrogation against an insolvent insurer's insured if exercise of the right would require the insured, or a guaranty fund under Chapter 28, Guaranty Associations, to pay an amount the insolvent insurer is obligated to pay under an insurance policy issued to the insured.</u></p>	Codification of existing practice: Prohibits an insurer from pursuing subrogation against an insolvent insurer's insureds and the Utah P&C Guarantee Association. A similar provision existed prior to the 2007 re-write of the receivership laws. This change was requested by the Utah P&G GA.
	31A-37-102. Definitions.	
3410-3413	<p>[(f) a captive reinsurance company;]</p> <p>[(g)] (f) a special purpose captive insurance company; or</p> <p>[(h)] (g) a special purpose financial captive insurance company.</p> <p>[(9) "Captive reinsurance company" means a reinsurer that is:]</p> <p>[(a) formed or has a certificate of authority pursuant to this chapter;]</p> <p>[(b) wholly owned by a qualifying reinsurer parent company; and]</p> <p>[(c) a stock corporation.]</p> <p>...</p> <p>[(14)] (13) "Controlled unaffiliated business" means a business entity:</p> <p>(a) (i) in the case of a pure captive insurance company, that is not in the corporate <u>or limited liability company</u> system of a parent or the parent's affiliate; or</p>	Policy change: 1) Deletes definition for "captive reinsurance company" to alleviate confusion and recognizes that with a \$500,000,000 minimum capital requirement it is unlikely one will be formed. 2) references LLCs, which it is proposed be allowed to form a captive insurer.

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<p>3518- 3522</p>	<p>... (i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated or organized as a limited liability company as a stock insurer; or (ii) have complete voting control over an industrial insured captive insurance company incorporated or organized as a limited liability company as a mutual insurer; ... [(25) "Qualifying reinsurer parent company" means a reinsurer: [(a) authorized to write reinsurance by this state; and [(b) that has: [(i) a consolidated GAAP net worth of not less than \$500,000,000; and [(ii) a consolidated debt to total capital ratio not greater than .50. (25) "Sponsor" means an entity that: ... (i) provide all or part of the capital and surplus required by applicable law <u>in an amount of not less than \$350,000, which amount the commissioner may increase by order if the commissioner considers it necessary;</u> and</p>	<p>Defines a "sponsor" of having minimum capital and surplus of \$350,000, which the commissioner may require to be increased.</p>
31A-37-106. Authority to make rules -- Authority to issue orders.		
<p>3543- 3566</p>	<p>(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules to: ... [(e) establish; [(i) the amount of capital or surplus required to be retained under Subsection 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance company; or [(ii) a formula to determine the amount described in Subsection 31A-37-205(4); [(f)] <u>(e)</u> waive or modify a requirement for public notice and hearing for the following by a captive insurance company: (i) merger; (ii) consolidation; (iii) conversion; (iv) mutualization; [or] (v) redomestication; <u>or</u> <u>(vi) acquisition;</u></p>	<p>Policy change: To maintain competitiveness with other states' captive program we are combining the required capital and surplus requirements into a single amount. The total amount of the now combined capital and surplus requirements is exactly the same as the existing separate capital and surplus requirements. This amendment deletes reference to the surplus requirement. This change also adds an acquisition to the existing authority of the commissioner to waive a hearing for certain captive transactions.</p>

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31A-37-202. Permissive areas of insurance.		
3597-3751	<p>(1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation, <u>certificate of organization</u>, or charter, a captive insurance company may apply to the commissioner for a certificate of authority to do all insurance authorized by this title except workers' compensation insurance.</p> <p>...</p> <p><u>(iii) in the case of a limited liability company, a meeting of the managers:</u></p> <p>...</p> <p><u>(iii) formed as a limited liability company shall file with the commissioner:</u> <u>(A) a certified copy of the certificate of organization and the operating agreement of the organization; (B) a statement under oath of the president and secretary of the organization showing the financial condition of the organization;</u></p>	Policy change: Amends existing law to allow an LLC to form a captive insurer and makes technical changes consistent with Utah law governing LLCs.
31A-37-204. Paid-in capital -- Other capital		
3754-3768	<p>(1) (a) The commissioner may not issue a certificate of authority to a company described in Subsection (1)(c) unless the company possesses and thereafter maintains unimpaired paid-in capital <u>and unimpaired paid-in surplus</u> of:</p> <p>(i) in the case of a pure captive insurance company, not less than [\$100,000] <u>\$250,000</u>;</p> <p>(ii) in the case of an association captive insurance company incorporated as a stock insurer, not less than [\$400,000] <u>\$750,000</u>;</p> <p>(iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than [\$200,000] <u>\$700,000</u>;</p> <p>(iv) in the case of a sponsored captive insurance company, not less than [\$500,000] <u>\$1,000,000 of which a minimum of \$350,000 is provided by the sponsor</u>; or</p> <p>(v) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured.</p> <p>(b) The paid-in capital <u>and surplus</u> required under this Subsection (1) may be in the form of:</p> <p>...</p>	Policy change: Combines minimum capital and surplus requirements into a single amount. The total amount of the now combined capital and surplus requirements is exactly the same as the existing separate capital and surplus requirements.
3822-3830	<p><u>(5) Notwithstanding Subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a certificate of authority unless the captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.</u></p> <p><u>(6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based upon the type, volume, and nature of the insurance business transacted.</u></p> <p><u>(b) The unimpaired paid-in surplus required under this Subsection (6) may be in the form of an irrevocable letter of credit issued by:</u></p> <p><u>(i) a bank chartered by this state; or</u></p> <p><u>(ii) a member bank of the Federal Reserve System.</u></p>	

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31A-37-301. Incorporation -- Organization		
3839-3844	<p><u>(2) A pure captive insurance company or a sponsored captive insurance company formed as a limited liability company shall be organized as a members interest insurer with the capital of the pure captive insurance company or sponsored captive insurance company: (a) divided into interests; and (b) held by the members of the pure captive insurance company or sponsored captive insurance company.</u></p> <p>...</p>	<p>Policy change: Amends existing law to allow an LLC to form a captive insurer and makes technical changes consistent with Utah law governing LLC formation and operation.</p>
3859-3860	<p><u>(5) A captive insurance company formed as a limited liability company may not have fewer than three organizers of whom one shall be a resident of this state.</u></p> <p>...</p>	
3875-3888	<p><u>(7) (a) Before a captive insurance company formed as a limited liability company files the limited liability company's articles of organization with the Division of Corporations and Commercial Code, the limited liability company shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed limited liability company will promote the general good of the state.</u></p> <p><u>(b) In considering a request for a certificate under Subsection (7)(a) the commissioner shall consider:</u></p> <p><u>(i) the character, reputation, financial standing, and purposes of the organizers;</u></p> <p><u>(ii) the character, reputation, financial responsibility, insurance experience, business qualifications of the managers;</u></p> <p><u>(iii) any information in:</u></p> <p><u>(A) the application for a certificate of authority; or</u></p> <p><u>(B) the department's files; and</u></p> <p><u>(iv) other aspects that the commissioner considers advisable.</u></p> <p>...</p>	
3897-3904	<p><u>(9) (a) A captive insurance company formed as a limited liability company shall file with the Division of Corporations and Commercial Code:</u></p> <p><u>(i) the captive insurance company's certificate of organization;</u></p> <p><u>(ii) the certificate issued pursuant to Subsection (7); and</u></p> <p><u>(iii) the fees required by the Division of Corporations and Commercial Code.</u></p> <p><u>(b) The Division of Corporations and Commercial Code shall file both the certificate of organization and the certificate described in Subsection (7) for a captive insurance company that complies with this section.</u></p> <p>...</p>	
3930-34	<p>[(8) The capital stock of a captive insurance company incorporated as a stock insurer may not be issued at less than par value.]</p> <p>[(9)] <u>(12) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.</u></p> <p><u>(13) At least one of the managers of a limited liability company shall be a resident of this state.</u></p> <p>...</p>	
3952-	<p><u>(16) (a) A captive insurance company formed as a limited liability company under this chapter has the privileges</u></p>	

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	<p>(ii) the policyholders, in the case of a mutual insurer; and (iii) the members, in the case of a limited liability company insurer; and (b) shall provide for the purchase of: (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting shareholder; or (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting policyholder. (b) the commissioner may not approve the plan of conversion under this section unless the plan: (i) satisfies Subsections [(2)] (3) and [(6)] (7); (ii) provides for the conversion of existing stockholder [or], policyholder, or member interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder [or], policyholder, or member interests in the stock or mutual insurer or limited liability company; and (iii) is approved: . . . <u>(C) in the case of a limited liability company insurer, by a majority of the voting managers represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;</u></p>	<p>other technical changes consistent with LLC law</p>
31A-37-401. Sponsored captive insurance companies -- Formation.		
<p>4161-4172</p>	<p><u>(j)(i) a protected cell captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and 63J-1-504:</u> <u>(A) a fee for examining, investigating, and processing by a department employee of an application for a certificate of authority made by a cell captive insurance company;</u> <u>(B) a fee for obtaining a certificate of authority for the year the cell captive insurance company is issued a certificate of authority by the department; and</u> <u>(C) a certificate of authority renewal fee; and</u> <u>(ii) a protected cell may be created by the sponsor or the sponsor may create a pooling insurance arrangement to provide for pooling of risks to allow for risk distribution upon written approval from every protected cell under the sponsor and the commissioner.</u></p>	<p>Policy change: 1) Allows the commissioner to collect a fee, as established by rule (consistent with all department fees) for each protected cell captive insurer to cover regulatory costs and 2) allows a protected cell to act as a risk pool to achieve risk distribution for the protected cells of the sponsor.</p>
31A-37-402. Sponsored captive insurance companies -- Certificate of authority		
<p>4176-4200</p>	<p>(1) A sponsor of a sponsored captive insurance company shall be: . . . <u>(e) approved captive management firm in Utah or its affiliates; or</u> [(e)] <u>(f) another person approved by the commissioner after finding that the approval of the person as a sponsor is not inconsistent with the purposes of this chapter.</u> (2) (a) The business written by a sponsored captive insurance company with respect to a protected cell shall be</p>	<p>Technical change: 1) Adds to allowable list of sponsors for sponsored captive insurance companies, captive management firms in Utah and their affiliates. 2) Allows a sponsored captive</p>

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	<p>fronted by the sponsor insurance company through a controlled <u>unaffiliated contract</u> or an insurer that is:</p> <p>(i) authorized or approved:</p> <p>(A) under the laws of a state; or</p> <p>(B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of a state;</p> <p>(ii) reinsured by a reinsurer authorized or approved by this state; or</p> <p>(iii) subject to Subsection (2)(b), secured by a trust fund:</p> <p>(A) in the United States;</p> <p>(B) for the benefit of policyholders and claimants; [and]</p> <p>(C) funded by an irrevocable letter of credit or other asset acceptable to the commissioner[.]; <u>and</u></p> <p>(D) <u>a fund held by the sponsor as provided in Subsection 31A-17-404(1).</u></p>	<p>insurance company to function as a fronting insurer for its cell captive insurance companies.</p> <p>3) Allows an insurer that meets the traditional statutory requirements of a ceding insurer to be a fronting insurer for a protected cell captive insurer.</p>
31A-37-404. Discounting of loss and loss adjustment expense reserves		
<p>4238- 4255</p>	<p>1) [The following] <u>A sponsored captive insurance company</u> may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves[:].</p> <p>[(a) a sponsored captive insurance company; and]</p> <p>[(b) a captive reinsurance company.]</p> <p>(2) (a) [The following] <u>A sponsored captive insurance company</u> shall annually file with the department an actuarial opinion provided by an independent actuary on loss and loss adjustment expense reserves[:].</p> <p>[(i) a sponsored captive insurance company; and]</p> <p>[(ii) a captive reinsurance company.]</p> <p>(b) The independent actuary described in Subsection (2)(a) may not be an employee of:</p> <p>(i) the company filing the actuarial opinion; or</p> <p>(ii) an affiliate of the company filing the actuarial opinion.</p> <p>(3) The commissioner may disallow the discounting of reserves by [the following] <u>a sponsored captive insurance company</u> if the <u>sponsored captive insurance company</u> violates this title[:].</p> <p>[(a) a sponsored captive insurance company; or]</p> <p>[(b) a captive reinsurance company.]</p>	<p>Technical change: Drafting changes due to repeal of reference to captive reinsurance company.</p>
31A-37-501. Reports to commissioner.		
<p>4294- 4296</p>	<p><u>(5) Before March 1, of each year, a sponsored cell captive insurance company shall submit to the commissioner a consolidated report of the financial condition of each individual protected cell, including a financial statement for each protected cell.</u></p>	<p>Technical change: Establishes deadline and requirement that protected cells' financials be included in the annual filing for sponsored cell captive insurance companies, consistent with requirements for other captive</p>

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		insurers.
	31A-37-502. Examination.	
4299-4322	<p>(1)(a) As provided in this section, the commissioner or a person appointed by the commissioner, shall examine each captive insurance company in each [three-year] <u>five year</u> period.</p> <p>(b) The [three-year] <u>five-year</u> period described in Subsection (1)(a) shall be determined on the basis of [three] <u>five</u> full annual accounting periods of operation.</p> <p>. . .</p> <p>[(3) The commissioner upon application may enlarge the three-year period described in Subsection (1) to five years, if a captive insurance company is subject to a comprehensive annual audit during that period:]</p> <p>[(a) of a scope satisfactory to the commissioner; and]</p> <p>[(b) performed by independent auditors approved by the commissioner.]</p>	<p>Policy change: Expands from 3 to 5 years the time period in which each captive insurance company must be examined by the commissioner; retains authority to conduct an examination of a captive insurer “whenever the commissioner determines it to be prudent”. Reduces expense of more frequent examinations but allows for examination where needed.</p>
	31A-37-505. Suspension or revocation -- Grounds.	
4355	(b) failure to meet the requirements of Section 31A-37-204 [or 31A-37-205];	<p>Technical change: By combining capital and surplus requirements in 31A-37-204, section 205 and reference thereto is unnecessary.</p>
	31A-43-301. Stop-loss insurance coverage standards	
4363-4364	<p>(1) A small employer stop-loss insurance contract shall:</p> <p>. . .</p> <p>[(b) use a standard application form developed by the commissioner by administrative rule;]</p> <p>[(4)] <u>(h)</u> include provisions to cover incurred and unpaid <u>stop-loss</u> claims [if a] <u>when the small [employer]</u> <u>employer's stop-loss</u> plan terminates.</p> <p>(2) A small employer stop-loss contract shall not:</p> <p>(a) include lasering; and</p> <p>(b) pay claims directly to an individual employee, member, or participant.</p>	<p>Policy change: 1) Repeals the requirement that employer applications for stop-loss contracts be on a standard form, which is administratively burdensome and somewhat ineffective for the insurers. Insurers are still required to file their application for review, and the department may take appropriate action, if necessary. 2) The other change in this section clarifies a stop-</p>

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		<p>loss carrier is not required to pay medical claims, acting as a healthcare insurer, rather than a stop-loss insurer. Current language is being interpreted by some stop-loss insurers to mean the stop-loss carrier must reimburse medical claims, inconsistent with ACA and ERISA requirements.</p>
Effective date.		
	<p><u>This bill takes effect on May 12, 2015, except that the amendments in this bill to Section 31A-3-304 (Effective 07/01/15) take effect on July 1, 2017.</u></p>	<p>The bill has the default effective date, except for the provision that raises the captive cap from \$1,250,000 to \$1,850,000, which is 7/15.</p>