

**Summary of HB 36, Insurance Revisions (12/16/15)**  
**Representative Jim Dunnigan – Chief Sponsor**  
**Senate Sponsor – Senator Bramble**

<b>Technical change:</b> Formatting, numbering, word order, or language changes; no change in intent or practice; <b>Codifying existing practice:</b> New or changed language, no change in practice; <b>Policy Change:</b> New language, new practice.		
Lines	Cite Change	Effect / Benefits
<b>15-51-108. Insurance (TNCs)</b>		
190	(8) An insurance policy that a transportation network company or a transportation network driver maintains under Subsection (1) or (2): (a) satisfies the security requirements of Section <u>41-12a-301</u> ; and (b) may, along with insurance maintained under Subsection (3), be placed with: (i) an insurer that is certified under Section <u>31A-4-103</u> ; or (ii) a surplus lines insurer licensed under Section <del>[31A-23a-104]</del> <u>31A-15-103</u> .	<b>Technical change:</b> replaces incorrect citation to surplus lines insurers eligible to provide insurance coverage for TNCs.
<b>31A-1-301. Definitions.</b>		
1260-1261	(161) (a) "Small employer" means, in connection with a health benefit plan and with respect to a calendar year and to a plan year, an employer who: <del>[(a)]</del> (i) employed at least one employee but not more than <del>[an average of]</del> 50 <del>[eligible]</del> employees on business days during the preceding calendar year; and <del>[(b)]</del> (ii) employs at least one employee on the first day of the plan year. <u>(b) The number of employees shall be determined using the method set forth in 26 U.S.C. Sec. 4980H(c)(2).</u>	<b>Policy change:</b> revises definition of a large and a small employer due to pre-emption by the ACA and PACE Act, passed by Congress in October 2015.
<b>31A-2-208.5. Comparison Tables.</b>		
1386-1390	(2) In conjunction with the rate comparison described in Subsection (1), the commissioner shall publish: (a) a table listing, for each insurer compared, the ratio of <del>[justified and questionable]</del> <u>confirmed</u> complaints received by the department to the premium dollar amount written by the insurer; and	<b>Technical change:</b> Change the phrase "justified and questionable" to "confirmed" to comport with national standards adopted by all states.
<b>31A-2-212. Miscellaneous duties.</b>		
1452-1453	(b) The commissioner shall require an insurer that issues, sells, renews, or offers health insurance coverage in this state to comply with <del>[the provisions of]</del> PPACA and administrative rules adopted by the commissioner related to regulation of health benefit plans, including: . . . <u>(xv) network adequacy standards.</u>	<b>Policy change:</b> Adds to existing rulemaking authority, requirements for health insurers to have adequate level of providers. Starting with 2014 plans, the Department is required by federal standards to determine if insurers' networks meet adequacy standards of the ACA.

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<b>31A-6a-101. Definitions. (service contracts)</b>		
1537-1540	<p>(7) "Service contract reimbursement policy" or "reimbursement insurance policy" means a policy of insurance providing coverage for all obligations and liabilities incurred by the service contract provider <u>or warrantor</u> under the terms of the service contract <u>or vehicle protection product warranty</u> issued by the provider <u>or warrantor</u>.</p>	<p><b>Codifying existing practice:</b>            Further clarifies existing requirements of 31A-6a-104(7) for vehicle protection product warranty products to aid in compliance.</p>
<b>31A-6a-104. Required disclosures. (service contracts)</b>		
1564-1633	<p>(1) A service contract reimbursement insurance policy insuring a service contract <u>or a vehicle protection product warranty</u> that is issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the service contract provider <u>or warrantor</u> to perform under the contract, the issuer of the policy shall:</p> <p>(a) pay on behalf of the service contract provider <u>or warrantor</u> any sums the service contract provider <u>or warrantor</u> is legally obligated to pay according to the service contract provider's <u>or warrantor's</u> contractual obligations under the service contract <u>or a vehicle protection product warranty</u> issued or sold by the service contract provider <u>or warrantor</u>;</p> <p>or</p> <p>(b) provide the service which the service contract provider is legally obligated to perform, according to the service contract provider's contractual obligations under the service contract issued or sold by the service contract provider.</p> <p>(2) (a) A service contract may not be issued, sold, or offered for sale in this state unless the service contract contains the following statements in substantially the following form:</p> <p>(i) "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. Should the provider fail to pay or provide service on any claim within 60 days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the Insurance Company."; and</p> <p>(ii) "This service contract or warranty is subject to limited regulation by the Utah Insurance Department. To file a complaint, contact the Utah Insurance Department.</p> <p><u>"(iii) A service contract or reimbursement insurance policy may not be issued, sold, or offered for sale in this state unless the contract contains a statement in substantially the following form, "Coverage afforded under this contract is not guaranteed by the Property and Casualty Guaranty Association."</u></p> <p><u>(b) A vehicle protection product warranty may not be issued, sold, or offered for sale in this state unless the vehicle protection product warranty contains the following statements in substantially the following form:</u></p> <p><u>(i) "Obligations of the warrantor under this vehicle protection product warranty are guaranteed under a reimbursement insurance policy. Should the warrantor fail to pay on any claim within 60 days after proof of loss has been filed, the warranty holder is entitled to make claim directly against the Insurance Company."; and</u></p> <p><u>(ii) "This vehicle protection product warranty is subject to limited regulation by the Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."</u></p> <p><del>[(b) A service contract or reimbursement insurance policy may not be issued, sold, or offered for sale in this state unless the contract contains a statement in substantially the following form, "Coverage afforded under this contract is</del></p>	<p><b>Codifying existing practice:</b>            Further clarifies existing requirements of 31A-6a-104(7) for vehicle protection product warranty products and service contracts to aid in compliance with required disclosures.</p>

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	<p>not guaranteed by the Property and Casualty Guaranty Association."]</p> <p><u>(iii) A vehicle protection product warranty, or reimbursement insurance policy, may not be issued, sold, or offered for sale in this state unless the warranty contains a statement in substantially the following form, "Coverage afforded under this warranty is not guaranteed by the Property and Casualty Guaranty Association."</u></p> <p>(3) A service contract <u>and a vehicle protection product warranty</u> shall:</p> <p>(a) conspicuously state the name, address, and a toll free claims service telephone number of the reimbursement insurer;</p> <p>(b) <u>(i) identify the service contract provider, the seller, and the service contract holder; or</u>  <u>(ii) identify the warrantor, the seller, and the warranty holder;</u></p> <p>(c) conspicuously state the total purchase price and the terms under which the service contract <u>or warranty</u> is to be paid;</p> <p>(d) conspicuously state the existence of any deductible amount;</p> <p>(e) specify the merchandise, service to be provided, and any limitation, exception, or exclusion;</p> <p>(f) state a term, restriction, or condition governing the transferability of the service contract <u>or warranty</u>; and</p> <p>(g) state a term, restriction, or condition that governs cancellation of the service contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder or service contract provider.</p> <p>(4) If prior approval of repair work is required, a service contract shall conspicuously state the procedure for obtaining prior approval and for making a claim, including:</p> <p>(a) a toll free telephone number for claim service; and</p> <p>(b) a procedure for obtaining reimbursement for emergency repairs performed outside of normal business hours.</p> <p>(5) A preexisting condition clause in a service contract shall specifically state which preexisting condition is excluded from coverage.</p> <p>(6) (a) Except as provided in Subsection (6)(c), a service contract shall state the conditions upon which the use of a non-manufacturers' part is allowed.</p> <p>(b) A condition described in Subsection (6)(a) shall comply with applicable state and federal laws.</p> <p>(c) This Subsection (6) does not apply to a home warranty contract.</p> <p>(7) This section applies to a vehicle protection product warranty, except for the requirements of <del>[Subsection]</del>  <u>Subsections (3)(d) and (g), (4), (5), and (6).</u> The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the application of this section to a vehicle protection product warranty.</p>	
<b>31A-15-202. Definitions.</b>		
1642-1652	<p>(1) <del>["Completed]</del> <u>Notwithstanding Section 31A-1-301, "commissioner" means the insurance commissioner of Utah or the commissioner, director, or superintendent of insurance in another state.</u></p> <p>(2) (a) Subject to Subsection (2)(b), "completed operations liability" means liability<del>[, including liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability,]</del> arising out of the installation, maintenance, or repair of any product at a site <del>[which]</del> <u>that</u> is not owned or controlled by:</p>	<p><b>Policy/technical change:</b> update definition of commissioner and add definition of "completed operations liability" and "state" with regard to Risk Retention</p>

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1758-1760	<p><del>[(a)]</del> (i) any person who performs that work; or  <del>[(b)]</del> (ii) any person who hires an independent contractor to perform that work.          (b) "Completed operations liability" includes liability for an activity that is completed or abandoned before the date of the occurrence giving rise to the liability.</p> <p>(12) "State" means:          (a) a state of the United States; or          (b) the District of Columbia.</p>	<p>Groups ("RRGs"), to conform to the NAIC's Model Risk Retention Act updates. That model is an NAIC accreditation standard.</p>
<b>31A-15-203. Risk retention groups chartered in this state.</b>		
1763-1769  1801-1940	<p>(1) As used in this section:          (a) "Board of directors" or "board" means the governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions.          (b) "Director" means a natural person designated in the articles of the risk retention group, or designated, elected, or appointed by any other manner, name, or title to act as a director.</p> <p>(5) The governance standards for risk retention groups are as follows:          (a) A risk retention group that exists as of May 10, 2016, shall be in compliance with the governance standards described in this Subsection (5) by no later than May 10, 2017. A risk retention group licensed on or after May 10, 2016, shall be in compliance with the governance standards described in this Subsection (5) at the time of licensure.          (b) The board of directors of a risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal:              (i) the attorney-in-fact is required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors and subscribers advisory committee under these standards; and              (ii) to the extent permissible under state law, service providers of a reciprocal risk retention group shall contract with the risk retention group and not the attorney-in-fact.          (c) A director does not qualify as independent unless the board of directors affirmatively determines that the director has no material relationship with the risk retention group. Each risk retention group shall disclose these determinations to its domestic regulator, at least annually. For this purpose, any person who is a direct or indirect owner of, or subscriber in, the risk retention group or is an officer, director, or employee of the owner and insured, is considered to be independent, unless some other position of the officer, director, or employee constitutes a material relationship, as contemplated by Section 3901(a)(4)(E)(ii) of the Liability Risk Retention Act.          (d) Material relationship of a person with the risk retention group includes the following:              (i) A material relationship exists if the person receives in any one 12-month period compensation or payment of any other item of value by the person, a member of the person's immediate family, or a business with which the person is</p>	<p><b>Policy change:</b> adds definition of "board of directors" and "director" with regard to Risk Retention Groups ("RRGs"), to conform to the NAIC's Model Risk Retention Act updates.</p> <p><b>Policy change:</b> enhances governance standards for RRGs to conform to the NAIC's Model Risk Retention Act updates. That Model is an NAIC accreditation standard. Specifically the changes include:</p> <ul style="list-style-type: none"> <li>• The board needs a majority of independent directors;</li> <li>• The term "independent director" or "provider" is defined;</li> <li>• Service provider must show material independence;</li> <li>• The board needs an audit committee and directions are given for serving on the committee;</li> <li>• Boards are to review</li> </ul>

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<p><u>affiliated, from the risk retention group or a consultant or service provider to the risk retention group is greater than the greater of the following as measured at the end of any fiscal quarter falling in the 12-month period:</u></p> <p><u>(A) 5% of the risk retention group's gross written premium for the 12-month period; or</u></p> <p><u>(B) 2% of the risk retention group's surplus.</u></p> <p><u>(ii) The person or immediate family member of the person is not independent until one year after the person's compensation from the risk retention group falls below the threshold outlined in Subsection (5)(d)(i).</u></p> <p><u>(iii) A material relationship exists if a director or an immediate family member of a director is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group.</u></p> <p><u>(iv) The director or immediate family member of a director described in Subsection(5)(d)(iii) is not independent until one year after the end of the affiliation, employment, or auditing relationship.</u></p> <p><u>(v) A material relationship exists if the director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one year after the end of the service or the employment relationship.</u></p> <p><u>(e) (i) The term of any material service provider contract with the risk retention group may not exceed five years. A material service provider contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The service provider contract is considered material if the amount to be paid for the contract is greater than or equal to the greater of:</u></p> <p><u>(A) 5% of the risk retention group's annual gross written premium; or</u></p> <p><u>(B) 2% of the risk retention group's surplus.</u></p> <p><u>(ii) For purposes of Subsection (5)(e)(i), "service provider" includes a captive manager, auditor, accountant, actuary, investment advisor, lawyer, managing general underwriter, or other party responsible for underwriting, determining rates, collecting premiums, adjusting and settling claims, or preparing financial statements. A reference to "lawyer" in this Subsection (5)(e)(ii) does not include defense counsel retained by the risk retention group to defend claims, unless the amount of fees paid to the lawyer is "material" as referenced in Section (5)(e)(i).</u></p> <p><u>(iii) A service provider contract meeting the definition of material relationship contained in Section (5)(d) may not be entered into unless the risk retention group has, at least 30 days before entering into the service provider contract, notified the commissioner in writing of its intention to enter into the transaction and the commissioner has not disapproved it within the 30-day period.</u></p> <p><u>(iv) The risk retention group's board of directors shall have the right to terminate any service provider, audit contract, or actuarial contract at any time for cause after providing adequate notice as defined in the contract.</u></p> <p><u>(f) The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to:</u></p> <p><u>(i) assure that an owner of the risk retention group receive evidence of ownership interest;</u></p> <p><u>(ii) develop a set of governance standards applicable to the risk retention group;</u></p> <p><u>(iii) oversee the evaluation of the risk retention group's management including the performance of the captive</u></p>	<p>financials, hiring practices, and risk assessments;</p> <ul style="list-style-type: none"> <li>• Boards will provide governance standards and code of ethics; and</li> <li>• Requires the board to give guidance to the captive manager or administrator, and various other issues relating to governance.</li> </ul>
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manager, managing general underwriter, or one or more other parties responsible for underwriting, determining rates, collecting premiums, adjusting or settling claims, or preparing financial statements;

(iv) review and approve the amount to be paid for all material service providers; and

(v) review and approve at least annually:

(A) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(B) the officers' and service providers' performance in light of those goals and objectives; and

(C) the continued engagement of the officers and material service providers.

(g) (i) A risk retention group shall have an audit committee composed of at least three independent board members as defined in Subsection (5)(c). A non-independent board member may participate in the activities of the audit committee, if invited by the members of the audit committee, but cannot be a member of the audit committee.

(ii) The audit committee shall have a written charter that defines the audit committee's purpose, which, at a minimum, shall be to:

(A) assist the board's oversight of the integrity of the financial statements, the compliance with legal and regulatory requirements, and the qualifications, independence, and performance of the independent auditor and actuary;

(B) discuss the annual audited financial statements and quarterly financial statements with management;

(C) discuss the annual audited financial statements with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(D) discuss policies with respect to risk assessment and risk management;

(E) meet separately and periodically, either directly or through a designated representative of the committee, with management and the independent auditor;

(F) review with the independent auditor any audit problems or difficulties and management's response;

(G) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(H) require the external auditor to rotate the lead or coordinating audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for more than five consecutive fiscal years; and

(I) report regularly to the board of directors.

(iii) The domestic regulator may waive the requirement to establish an audit committee composed of independent board members if the risk retention group is able to demonstrate to the domestic regulator that it is impracticable to do so and the risk retention group's board of directors itself is otherwise able to accomplish the purposes of an audit committee, as described in this Section (5)(g).

(h) The board of directors shall adopt and disclose governance standards, where "disclose" means making such information available through election, including posting the information on the risk retention group's website or other means, and providing such information to owners upon request, which shall include:

(i) a process by which the directors are elected by the owners;

(ii) director qualification standards;

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	<p>(iii) <u>director responsibilities;</u>          (iv) <u>director access to management and, as necessary and appropriate, independent advisors;</u>          (v) <u>director compensation;</u>          (vi) <u>director orientation and continuing education;</u>          (vii) <u>the policies and procedures that are followed for management succession; and</u>          (viii) <u>the policies and procedures that are followed for annual performance evaluation of the board.</u>  <u>(i) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers, which shall include the following topics:</u>  <u>(i) conflicts of interest;</u>  <u>(ii) matters covered under the corporate opportunities doctrine under the state of domicile;</u>  <u>(iii) confidentiality;</u>  <u>(iv) fair dealing;</u>  <u>(v) protection and proper use of risk retention group assets;</u>  <u>(vi) compliance with all applicable laws, rules, and regulations; and</u>  <u>(vii) requiring the reporting of any illegal or unethical behavior that affects the cooperation of the risk retention group.</u>  <u>(j) A captive manager, president, or chief executive officer of a risk retention group shall promptly notify the domestic regulator in writing if the captive manager, president, or chief executive officer becomes aware of any material non-compliance with any of the governance standards in this Subsection (5).</u></p>	
<b>31A-15-206.5. Countersignatures not required.</b>		
2051-2052	<p><u>A policy of insurance issued to a risk retention group or any member of the risk retention group may not be required to be countersigned.</u></p>	<p><b>Codifying existing practice:</b> new provision that, consistent with Gramm-Leach-Bliley, the Equal Protection Clause, and industry practice, states an insurance policy issued by an RRG to a member is not required to be countersigned.</p>
<b>31A-15-209. Restrictions on purchasing groups.</b>		
2098-2116	<p><del>(1) [A purchasing group which obtains liability insurance from an insurer not admitted in this state or from a risk retention group shall inform each of the group members which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and regulations of this state.]</del> <u>A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed producer acting pursuant to the surplus lines laws and regulations of such state.</u></p>	<p><b>Policy change:</b> updates Utah law governing purchasing groups consistent with NAIC’s Model Risk Retention Act. Requires a risk purchasing group (“RPG”) to be admitted in the state it is located unless</p>

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	<p><u>(2) A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and regulations of this state.</u></p>	<p>operating in the surplus lines market and require disclosures be made that the risk is not covered by a guarantee fund and may not be subject to Utah law.</p>
<p><b>31A-15-212. Duty of producers to obtain license – Risk retention groups – purchasing groups.</b></p>		
<p>2396-2413</p>	<p><del>(2) A person may solicit, negotiate, or procure liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state only if he is licensed as a surplus lines producer or is exempt from licensure under Title 31A, Chapter 23a, Insurance Marketing – Licensing Producers, Consultants, and Reinsurance Intermediaries.]</del>  <del>(3) The requirement of residence in this state does not apply for purposes of acting as a producer for a risk retention group or purchasing group under Subsections (1) and (2).]</del>  <del>(4) On business placed with a risk retention group or written through a purchasing group, each person licensed under this title shall provide to each prospective insured the notice required by Subsection 31A-15-204(7) in the case of a risk retention group, and by Subsection 31A-15-209(1) in the case of a purchasing group.]</del>  <del>(5) Solicitation for membership in a purchasing group is not of itself a solicitation for insurance.]</del>  <u>(2)(a) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person, firm, association or corporation is licensed as an insurance producer, or is exempt from licensure under Title 31A, Chapter 23a, Insurance Marketing – Licensing Producers, Consultants, and Reinsurance Intermediaries.</u>  <u>(b) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group’s policy unless such person, firm, association or corporation is licensed as an insurance producer, or is exempt from licensure under Title 31A, Chapter 23a, Insurance Marketing- Licensing Producers, Consultants, and Reinsurance Intermediaries.</u>  <u>(c) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless such person, firm, association or corporation is licensed as a surplus lines producer or excess line producer or is exempt from licensure under Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.</u>  <u>(3) For purposes of acting as a producer for a risk retention group or purchasing group pursuant to Sections (1) and (2) of this section, the requirement of residence in this state does not apply.</u>  <u>(4) A person licensed pursuant to Chapter 23a, Insurance Marketing – Licensing Producers, Consultants, and Reinsurance Intermediaries, on business placed with a risk retention group or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by Subsection 31A-15-204(7) in the case of a purchasing group.</u></p>	<p><b>Policy/technical change:</b>  updates and clarifies producer licensing requirements with regard to RRGs and RPGs, to conform to the NAIC’s Model Risk Retention Act.</p>



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	<b>31A-15-213.5. Rulemaking.</b>	
2168-2170	<u>In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make and from time to time amend rules relating to risk retention groups as may be necessary or desirable to carry out this part.</u>	<b>Policy change:</b> grant the commissioner explicit authority to make rules relating to RRGs.
	<b>31A-17-404. Credit allowed a domestic ceding insurer against reserves for reinsurance.</b>	
2176, 2184 and	<p>(1) A domestic ceding insurer is allowed credit for reinsurance as either an asset or a reduction from liability for reinsurance ceded only if the reinsurer meets the requirements of Subsection (3), (4), (5), (6), <del>[(7)]</del>, <u>or (8)</u>, subject to the following:</p> <p>(a) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a kind or class of business that the assuming insurer is licensed or otherwise permitted to write or assume:</p> <p>(i) in its state of domicile; or</p> <p>(ii) in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance.</p> <p>(b) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of Subsection <del>[(8)]</del> <u>(9)</u> are met.</p> <p>...</p> <p>(4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that is accredited <u>by the commissioner</u> as a reinsurer in this state.</p> <p>(b) An insurer is accredited as a reinsurer if the insurer:</p> <p>...</p> <p>(vii) No later than February 28 of each year, the trustee of the trust shall:</p> <p>(A) report to the commissioner in writing the balance of the trust;</p> <p>(B) list the trust's investments at the end of the preceding calendar year; and</p> <p>(C) (I) certify the date of termination of the trust, if so planned; or</p> <p>(II) certify that the trust will not expire prior to the following December 31.</p> <p>(d) The following requirements apply to the following categories of assuming insurer:</p> <p>(i) For a single assuming insurer:</p> <p>(A) the trust fund shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and</p> <p>(B) the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000<del>[-]</del>, <u>except as provided in Subsection (6)(d)(ii)</u>.</p> <p><u>(ii) (A) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.</u></p> <p><u>(B) The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash</u></p>	<p><b>Policy change:</b> This is one of the most important pieces of this bill. These amendments conform Utah law with the Credit for Reinsurance Model Law, an NAIC accreditation standard. On July 21, 2010, Congress passed the Nonadmitted and Reinsurance Reform Act (“NRRA”), which became law on July 21, 2011. That Act preempts extraterritorial application of state credit for reinsurance law. It also permits states of domicile to enact reinsurance collateral reforms.</p> <p>The amendments, adopted by 32 other states representing 66% of national premium, protect the interests of insureds, claimants, ceding insurers, assuming insurers and the public and allows for more efficient use of collateral. Credit for reinsurance is only allowed a domestic insurer when the reinsurer meets certain financial strength requirements in its state of domicile or in the case of a U.S. branch of an alien assuming</p>

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flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.

(C) The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

...

(8) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that secures its obligations in accordance with this Subsection (8):

(a) The insurer shall be certified by the commissioner as a reinsurer in this state.

(b) To be eligible for certification, the assuming insurer shall:

(i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to Subsection (8)(d);

(ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(iii) maintain financial strength ratings from two or more rating agencies considered acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(iv) agree to:

(A) submit to the jurisdiction of this state;

(B) appoint the commissioner as its agent for service of process in this state;

(C) provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(D) agree to meet applicable information filing requirements as determined by the commissioner including an application for certification, a renewal and on an ongoing basis; and

(E) any other requirements for certification considered relevant by the commissioner.

(c) An association, including incorporated and individual unincorporated underwriters may be a certified reinsurer. To be eligible for certification, in addition to satisfying requirements of Subsections (8)(a) and (b), the association:

(i) shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members in an amount determined by the commissioner to provide adequate protection;

(ii) may not have incorporated members of the association engaged in any business other than underwriting as a member of the association;

(iii) shall be subject to the same level of regulation and solvency control of the incorporated members of the association by the association's domiciliary regulator as are the unincorporated members; and

(iv) within 90 days after its financial statements are due to be filed with the association's domiciliary regulator provide:

(A) to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each

reinsurer, in the state through which it is licensed (a portal to the U.S. market) to transact insurance or reinsurance.

Specifically, the amendments:

- Authorize a reduction in the required trustee surplus after a risk assessment determines the new required surplus level is adequate.
- The minimum surplus may not be reduced to amount less than 30% of the assuming insurer's liabilities for reinsurance ceded.
- A domestic ceding insurer is allowed a credit if the reinsurance ceded if the assuming insurer is licensed and domiciled in a qualified jurisdiction and,
- Maintains minimum capital and surplus as the commissioner determines by rule.
- The assuming insurer must submit to the jurisdiction of this state and,
- Provide collateral for 100% of the assuming insurer's liabilities to reinsurance ceded by U.S. ceding insurers or,
- Meet various financial strength requirements enforced by an approved domiciliary regulator.
- Various levels of security may be required up to 100%

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<p><u>underwriter member; or</u></p> <p><u>(B) if a certification is unavailable, financial statements prepared by independent public accountants, of each underwriter member of the association.</u></p> <p><u>(d) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.</u></p> <p><u>(i) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:</u></p> <p><u>(A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisors system of the jurisdiction, both initially and on an ongoing basis;</u></p> <p><u>(B) shall consider the rights, the benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States;</u></p> <p><u>(C) shall require the qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and</u></p> <p><u>(D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.</u></p> <p><u>(ii) The commissioner may consider additional factors in determining a qualified jurisdiction.</u></p> <p><u>(iii) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners' Committee Process and the commissioner shall:</u></p> <p><u>(A) consider this list in determining qualified jurisdictions; and</u></p> <p><u>(B) if the commissioner approves a jurisdiction as qualified that does not appear on the National Association of Insurance Commissioner's list of qualified jurisdictions, provide thoroughly documented justification in accordance with criteria to be developed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.</u></p> <p><u>(iv) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.</u></p> <p><u>(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.</u></p> <p><u>(e) The commissioner shall:</u></p> <p><u>(i) assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies considered acceptable to the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and</u></p> <p><u>(ii) publish a list of all certified reinsurers and their ratings.</u></p> <p><u>(f) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this Subsection (8) at a level consistent with its rating, as specified in rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.</u></p>	<p>depending on the financial rating of the assuming insurer.</p> <ul style="list-style-type: none"> <li>• A ceding insurer shall take steps to diversify its reinsurance program and must,</li> <li>• Notify the commissioner within 30 days of ceding more than 20% of its gross written premium or 50% of its reported surplus to any single reinsurer.</li> </ul>
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- (i) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with Section 31A-17-404.1, or in a multibeneficiary trust in accordance with Subsections (5), (6), and (7), except as otherwise provided in this Subsection (8).
- (ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to Subsections (5), (6), and (7), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this Subsection (8) or comparable laws of other United States jurisdictions and for its obligations subject to Subsections (5), (6), and (7).
- (iii) It shall be a condition to the grant of certification under this Subsection (8) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of the trust account, to fund, upon termination of the trust account, out of the remaining surplus of the trust, any deficiency of any other the trust account.
- (iv) The minimum trustee surplus requirements provided in Subsections (5), (6), and (7) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this Subsection (8), except that the trust shall maintain a minimum trustee surplus of \$10,000,000.
- (v) With respect to obligations incurred by a certified reinsurer under this Subsection (8), if the security is insufficient, the commissioner:
- (A) shall reduce the allowable credit by an amount proportionate to the deficiency; and
- (B) may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.
- (vi) For purposes of this Subsection (8), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.
- (A) As used in this Subsection (8), the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.
- (B) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, the requirement under this Subsection (8)(f)(vi) does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.
- (g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:
- (i) defer to that jurisdiction's certification;
- (ii) defer to the rating assigned by that jurisdiction; and
- (iii) consider such reinsurer to be a certified reinsurer in this state.
- (h) (i) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business.
- (ii) An inactive certified reinsurer shall continue to comply with all applicable requirements of this Subsection (8).

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(iii) The commissioner shall assign a rating to a reinsurer that qualifies under this Subsection (8)(h), that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

...

(12) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

(a) The commissioner shall give the reinsurer notice and opportunity for hearing.

(b) The suspension or revocation may not take effect until after the commissioner's order after a hearing, unless:

(i) the reinsurer waives its right to hearing;

(ii) the commissioner's order is based on:

(A) regulatory action by the reinsurer's domiciliary jurisdiction; or

(B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state under Subsection (8)(g); or

(iii) the commissioner's finding that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 31A-17-404.1.

(d) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subsection (8)(f) or Section 31A-17-404.1.

(13) (a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business.

(b) (i) A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers:

(A) exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or

(B) after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding insurer's last reported surplus to policyholders.

(ii) The notification required by Subsection (13)(b)(i) shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(c) A ceding insurer shall take steps to diversify its reinsurance program.

(d) (i) A domestic ceding insurer shall notify the commissioner within 30 days after ceding or being likely to cede more than 20% of the ceding insurer's gross written premium in the prior calendar year to any:

(A) single assuming insurer; or

(B) group of affiliated assuming insurers.

(ii) The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

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	<b>31A-17-404.1. Asset or reduction from liability for reinsurance ceded by a domestic insurer to other assuming insurers.</b>	
2572-2573	(2) Security described in Subsection (1) may be in the form of: (a) cash; (b) a security: (i) listed by the Securities Valuation Office of the National Association of Insurance Commissioners, <u>including those considered exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office;</u> (ii) qualifying as an admitted asset;	<b>Codifying existing practice:</b> Clarifies assets exempt from filing with the NAIC’s Securities Valuation Office may be considered security, consistent with the Credit for Reinsurance Model Law.
	<b>31A-22-202. Rules and orders. (includes anticipated amendment on House Floor in (2) and (3))</b>	
2594-	(1) <del>No</del> <u>An</u> insurance contract insuring against loss or damage through legal liability for the bodily injury or death by accident of any person, or for damage to the property of any person may <u>not</u> be retroactively abrogated to the detriment of any third-party claimant by any agreement between the insurer and insured after the occurrence of any injury, death, or damage for which the insured may be liable. This attempted abrogation is void. (2) <u>A motor vehicle liability policy may be rescinded or cancelled as to an insured for fraud, material misrepresentation or any reason allowable under the law.</u> (3) <u>A motor vehicle liability policy may not be rescinded for fraud or material misrepresentation, as to minimum liability coverage limits under Section 31A-22-304, to the detriment of a third-party claimant for a loss otherwise covered by the policy.</u>	<b>Policy change:</b> consumer protection that codifies what is general practice for most auto insurers by requiring an insurer to pay a loss incurred by an innocent 3 <sup>rd</sup> party that is damaged by a permissive user, or other person that has access to an insured vehicle (1 <sup>st</sup> party), even if the insured fails to list other potential drivers in the application. The Commissioner worked closely with industry to strike a balance between protecting the innocent third party and limiting insurers’ liability. This amendment has industry consensus.
	<b>31A-22-603. Persons insured under an individual accident and health policy.</b>	
2602	A policy of individual accident and health insurance may insure only one person, except that originally or by subsequent amendment, upon the application of an adult policyholder, a policy may insure any two or more eligible members of the policyholder's family, including <del>husband, wife</del> <u>spouse</u> , dependent children, and any other person dependent upon the policyholder.	<b>Codifying existing policy:</b> updates terms consistent with same sex marriage decisions.

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<b>31A-22-715. Alcohol and drug dependency treatment.</b>		
2606-2619	<p><del>(1) [Each group accident and health insurance policy shall contain an optional rider allowing certificate holders to obtain]</del> <u>An insurer offering a health benefit plan providing coverage for alcohol or drug dependency treatment [in programs] may require an inpatient facility to be licensed by:</u></p> <p><u>(a) (i) the Department of Human Services, under Title 62A, Chapter 2, Licensure of Programs and Facilities[; inpatient hospitals accredited by the joint commission on the accreditation of hospitals, or facilities licensed by]; or</u></p> <p><u>(ii) the Department of Health[-]; or</u></p> <p><u>(b) for an inpatient facility located outside the state, a state agency similar to one described in Subsection (1)(a).</u></p> <p><u>(2) For inpatient coverage provided pursuant to Subsection (1), an insurer may require an inpatient facility to be accredited by the following:</u></p> <p><u>(a) the Joint Commission; and</u></p> <p><u>(b) one other nationally recognized accrediting agency.</u></p>	<b>Codifying existing policy and Policy change:</b> With the passage of the ACA and MHPEA, federal law requires all group health benefit plans to offer coverage for mental health and substance abuse treatment. This change codifies existing practice and allows an insurer to require an inpatient facility to be accredited by up to 2 accrediting entities to assure entities are providing appropriate levels of care.
<b>31A-22-1201. Assumption agreement</b>		
2622-2624	<p>(1) Subject to Subsection (2), a credit for reinsurance ceded under Section <del>31A-17-404[;]</del> <u>or 31A-17-404.1[; or 31A-17-404.2;]</u> is not allowed unless, in addition to meeting the requirements of Section <del>31A-17-404[;]</del> <u>or 31A-17-404.1[; or 31A-17-404.2]</u>, the reinsurance agreement provides in substance that if the ceding insurer is insolvent, the reinsurance is payable by the assuming insurer:</p>	<b>Technical change:</b> reference changes based on changes in 31A-17-404 and 404.1 pursuant to the Credit for Reinsurance Model Law.
<b>31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license – Rulemaking for renewal or reinstatement. (producers)</b>		
2616-2617	<p>(5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:</p> <p>(i) revoke:</p> <p>(A) a license; or</p> <p>(B) a line of authority;</p> <p>(ii) suspend for a specified period of 12 months or less:</p> <p>(A) a license; or</p> <p>(B) a line of authority;</p> <p>(iii) limit in whole or in part:</p> <p>(A) a license; or</p> <p>(B) a line of authority; or</p> <p>(iv) deny a license application.</p> <p>(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:</p>	<b>Policy change:</b> enables the commissioner to take administrative action against insurance producers who violate laws, rules or orders of other regulatory agencies in Utah and elsewhere.

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	... (x) violates an insurance law, valid rule, or valid order of another [state's insurance department] <u>regulatory agency in any jurisdiction;</u>	
	<b>31A-23a-202. Continuing education requirements.</b>	
2833-2835	(C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance producer is considered to have met the continuing education requirements imposed under Subsection (3)(b)(iii)(A) or (B) if <u>at the time of license renewal the individual title insurance producer:</u> (I) <u>provides the department evidence that the individual title insurance producer is an active member in good standing with the Utah State Bar;</u>	<b>Codifying Existing Practice:</b> clarifies that a title insurance producer licensee is responsible for providing evidence of good standing with the Utah State Bar at renewal in order to qualify for exemption from CE.
	<b>31A-23a-206. Special requirements for variable contracts line of authority.</b>	
2898-2899	(2) A producer's or consultant's variable contracts line of authority is [ <del>revoked</del> ] <u>canceled</u> on the day the producer's or consultant's securities related license under Section <u>61-1-3</u> is no longer [ <del>valid</del> ] <u>active</u> .	<b>Codifying Existing Practice:</b> Clarifies that the Variable Contracts (VC) Line of Authority (LOA) is “cancelled” when the Securities related license is no longer active. The Securities Division indicates use of the word “active” is a better descriptor than “valid”. The word “revoked” gives the appearance of an administrative disciplinary action. However, “canceling” a VC LOA for no longer holding an “active” Securities license is not considered an administrative action, and upon “reactivating” the Securities license, a producer or consultant may immediately reapply for the VC line of authority on the insurance license.



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<b>31A-23a-410. Insurer's liability if insured pays premium to a licensee or group policyholder.</b>		
2920-2944	<p>(3) (a) In the case of <del>[an employer]</del> <u>a group policyholder</u> who has received the premium <del>[by deducting all or part of it from the wages or salaries of the certificate holders]</del>, the insurer may terminate its liability by giving notice of coverage termination to:</p> <ul style="list-style-type: none"> <li>(i) the certificate holders;</li> <li>(ii) the policyholder; and</li> <li>(iii) the producer, if any, for the policy.</li> </ul> <p>(b) The insurer may not send the notice required by Subsection (3)(a) to a certificate holder before 20 days after the day on which premium is due and unpaid.</p> <p>(c) The liability of the insurer for the losses covered by the insurance terminates at the later of:</p> <ul style="list-style-type: none"> <li>(i) the last day of the coverage period for which premium has been <del>[withheld]</del> <u>received</u> by the <del>[employer]</del> <u>group policyholder</u>;</li> <li>(ii) 10 days after the date the insurer mails notice to the certificate holder that coverage has terminated; or</li> <li>(iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days from the last date for which premium is received.</li> </ul> <p>(4) Despite <del>[an employer's]</del> <u>a group policyholder's</u> collection of premium under Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the insurance to group policy certificate holders terminates upon the effective date of notice from the policyholder that:</p> <ul style="list-style-type: none"> <li>(a) coverage of a similar kind and quality has been obtained from another insurer; or</li> <li>(b) the policyholder is electing to voluntarily terminate the certificate holder's coverage and has given the <del>[employees]</del> <u>certificate holder's</u> notice of the termination.</li> </ul> <p>(5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or <del>[employer]</del> <u>group policyholder</u> who received the premium and failed to forward it is obligated to the insurer for the entire unpaid premium due under the policy together with reasonable expenses of suit and reasonable attorney fees.</p>	<p><b>Policy change:</b> Provides a method for insurers to terminate coverage when a group policyholder fails to forward premiums that it has collected. The current statute only applies to employer groups. This expands the current policy to other group policies such as associations, trusts, and discretionary groups.</p>
<b>31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license – Rulemaking for renewal or reinstatement. (navigators)</b>		
3010-3011	<p>(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:</p> <ul style="list-style-type: none"> <li>(i) revoke a license;</li> <li>(ii) suspend a license for a specified period of 12 months or less;</li> <li>(iii) limit a license in whole or in part; or</li> <li>(iv) deny a license application.</li> </ul> <p>(b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:</p> <p>...</p> <ul style="list-style-type: none"> <li>(viii) violated an insurance law, valid rule, or valid order of another <del>[state's insurance department]</del> <u>regulatory agency in any jurisdiction</u>;</li> </ul>	<p><b>Policy change:</b> enables the commissioner to take administrative action against navigators who violate laws, rules or orders of other regulatory agencies in Utah and elsewhere.</p>

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	<b>31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license – Rulemaking for renewal or reinstatement. (TPAs)</b>	
3148-3149	<p>(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:</p> <ul style="list-style-type: none"> <li>(i) revoke a license;</li> <li>(ii) suspend a license for a specified period of 12 months or less;</li> <li>(iii) limit a license in whole or in part; or</li> <li>(iv) deny a license application.</li> </ul> <p>(b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:</p> <p>...</p> <p>(viii) violated an insurance law, valid rule, or valid order of another [<del>state's insurance department</del>] <u>regulatory agency in any jurisdiction</u>;</p>	<b>Policy change: Policy change:</b> enables the commissioner to take administrative action against TPAs who violate laws, rules or orders of other regulatory agencies in Utah and elsewhere.
	<b>31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license – Rulemaking for renewal or reinstatement. (adjusters)</b>	
3300-3301	<p>(5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:</p> <ul style="list-style-type: none"> <li>(i) revoke: <ul style="list-style-type: none"> <li>(A) a license; or</li> <li>(B) a license classification;</li> </ul> </li> <li>(ii) suspend for a specified period of 12 months or less: <ul style="list-style-type: none"> <li>(A) a license; or</li> <li>(B) a license classification;</li> </ul> </li> <li>(iii) limit in whole or in part: <ul style="list-style-type: none"> <li>(A) a license; or</li> <li>(B) a license classification; or</li> </ul> </li> <li>(iv) deny a license application.</li> </ul> <p>(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:</p> <p>...</p> <p>(x) has violated an insurance law, valid rule, or valid order of another [<del>state's insurance department</del>] <u>regulatory agency in any jurisdiction</u>;</p>	<b>Policy change:</b> enables the commissioner to take administrative action against adjusters who violate laws, rules or orders of other regulatory agencies in Utah and elsewhere.
	<b>31A-27a-605. Allowance of contingent and unliquidated claims.</b>	
3390-3393	<p>(2) (a) A claim of an insured or third party may be allowed under Section 31A-27a-603, regardless of the fact that it is contingent or unliquidated if:</p> <ul style="list-style-type: none"> <li>(i) any contingency is removed in accordance with Subsection (3); and</li> <li>(ii) the value of the claim is determined in accordance with Subsection (4).</li> </ul> <p>(b) A claim is contingent if:</p>	<b>Technical change:</b> Replaces incorrect citation to statute governing date (issuance of order of liquidation) upon which the rights and responsibilities of

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	(i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or bonded against occurs on or before the date fixed under Section <del>[31A-27a-60]</del> <u>31A-27a-401</u> ; and (ii) the act or event triggering the insurer's obligation to pay has not occurred as of <del>[the]</del> <u>that</u> date <del>[fixed under Section 31A-27a-40]</del> .	the insolvent insurer and its creditors and interested parties' are fixed.
	<b>31A-28-119. Prohibited advertisement of the (guarantee) association – Notice to owners of policies and contracts.</b>	
3490-3497	(4) <del>[(a) An insurer or agent may not deliver a]</del> <u>A</u> policy or contract described in Subsection 31A-28-103(2)(a) and wholly excluded under Subsection <u>31A-28-103(2)(b)(i)</u> from coverage under this part <del>[unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice that]</del> <u>shall</u> clearly and conspicuously <del>[discloses]</del> <u>disclose on the cover or face page</u> that the policy or contract is not covered by the association. <del>[(b) The commissioner shall by rule specify the form and content of the notice required by Subsection (4)(a).]</del>	<b>Policy change:</b> Requires the disclosure for certain products not covered by the guarantee association be on the face of the policy, instead of a separate document.
	<b>31A-30-116. Essential health benefits.</b>	
3505-3530	(1) For purposes of this section, the <del>["Affordable Care Act" is as]</del> <u>PPACA</u> means the same as that term is defined in Section <del>[31A-2-212]</del> <u>31A-1-301</u> and includes federal rules related to the offering of essential health benefits.	<b>Technical change:</b> updates reference to definition of PPACA (ACA).
	<b>31A-30-209. Insurance producers and the Health Insurance Exchange.</b>	
3544-3545	(2) A producer whose license under this title authorizes the producer to sell accident and health insurance may be credentialed by the Health Insurance Exchange and may sell any product on the Health Insurance Exchange, if the producer: (a) is an appointed producer with: (i) all carriers that offer a plan in the defined contribution market on the Health Insurance Exchange; and (ii) at least one carrier that offers a dental plan on the Health Insurance Exchange; and (b) completes each year the Health Insurance Exchange training <del>[that includes training on premium assistance programs]</del> .	<b>Policy change:</b> removes requirement that the annual producer training, required to sell on the Exchange, include training on premium assistance programs.
	<b>31A-31-112. Insurance antifraud plan.</b>	<b>This is a new section</b>
3563-3587	(1) <u>An insurer, as defined in Section 31A-31-102, shall prepare, implement, and maintain an insurance antifraud plan for its operations in this state.</u> (2) <u>The insurance antifraud plan required by Subsection (1) shall outline specific procedures, actions, and safeguards that include how the authorized insurer or health maintenance organization will do each of the following:</u> (a) <u>detect, investigate, and prevent all forms of insurance fraud, including:</u> (i) <u>fraud involving its employees or agents;</u> (ii) <u>fraud resulting from misrepresentations in the application, renewal, or rating of insurance policies;</u> (iii) <u>fraudulent claims; and</u> (iv) <u>breach of security of its data processing systems;</u> (b) <u>educate employees of fraud detection and the insurance antifraud plan;</u>	<b>Policy change:</b> requires insurers to have an anti-fraud plan for its operations in this State. The requirement that insurers have anti-fraud plans is suggested in the NAIC Fraud Prevention Law Model Act and by the Coalition Against Insurance Fraud and complements the mandated reporting of fraud in 31A-31-

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	<p>(c) provide for fraud investigations, whether through the use of internal fraud investigators or third-party contractors;  (d) report a suspected fraudulent insurance act, as described in Section 31A-31-103, to the department as required by Section 31A-31-110; and  (e) pursue restitution for financial loss caused by insurance fraud.  (3) The commissioner may investigate and examine the records and operations of authorized insurers and health maintenance organizations to determine if they have implemented and complied with the insurance antifraud plan.  (4) The commissioner may:  (a) direct any modification to the insurance antifraud plan necessary to comply with the requirements of this section; and (b) require action to remedy substantial noncompliance with the insurance antifraud plan.</p>	<p>110.  Evidence shows that insurers that invest in an active fight against insurance fraud receive substantial return on their investment.</p>
<b>31A-35-404. Minimum financial requirements for bail bond surety company license. (surety backed)</b>		
<p>3601       3610 and 3615</p>	<p>(2) (a) A bail bond surety company that pledges personal or real property, or both, as security for a bail bond in connection with a judicial proceeding shall maintain:  (i) (A) a current <u>year</u> financial statement:  (I) reviewed by a certified public accountant; and  (II) showing a net worth of at least \$300,000, at least \$100,000 of which is in liquid assets; or  (B) notwithstanding Subsection (2)(a)(i), if the bail bond surety company is licensed under this chapter as of December 31, 1999, a current financial statement:  (I) reviewed by a certified public accountant; and  (II) showing a net worth of at least \$250,000, at least \$50,000 of which is in liquid assets;  (ii) a copy of the applicant's federal <u>and state</u> income tax return for the preceding two years; and  (iii) for each parcel of real property owned by the applicant and included in net worth calculations:  (A) a title letter; and  (B) an appraisal dated not more than <del>[two years prior to]</del> <u>six months before</u> the date of application.</p>	<p><b>Codifying existing practice:</b>  Clarifies reference to “current financial statement” is the current year.</p> <p><b>Policy change:</b> adds the state income tax return to help evaluate net worth. Requires a more accurate real property appraisal to ensure more accurate property valuation.</p>
<b>31A-37-102. Definitions.</b>		
<p>3641    3664- 3667</p>	<p>(2) "Alien captive insurance company" means an insurer:  (a) formed to write insurance business for a parent or affiliate of the insurer; and  (b) licensed pursuant to the laws of an alien <u>or foreign</u> jurisdiction that imposes statutory or regulatory standards:</p> <p>(6) "Branch captive insurance company" means an alien captive insurance company that has a certificate of authority from the commissioner to transact the business of insurance in this state through a <del>[business unit with a principal place of business in]</del> <u>captive insurance company that is domiciled outside of this state.</u></p>	<p><b>Policy change:</b> update the definition of an “alien captive insurance company” to include those that are traditionally defined as foreign.</p> <p><b>Policy change:</b> updates definition of “branch captive insurance company” to recognize the practice of a company using a captive insurer domiciled in another jurisdiction and allowing that captive insurer</p>

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<p>3676-3678</p> <p>3790</p>	<p>(8) "Captive insurance company" means any of the following formed or holding a certificate of authority under this chapter:</p> <p>...</p> <p>(e) an industrial insured captive insurance company, <u>including an industrial insured captive insurance company formed as a risk retention group captive in this state pursuant to the provisions of the Federal Liability Risk Retention Act of 1986;</u></p> <p>(25) "Sponsor" means an entity that:</p> <p>(a) meets the requirements of Section 31A-37-402; and</p> <p>(b) is approved by the commissioner to:</p> <p>(i) provide all or part of the capital and surplus required by applicable law in an amount of not less than <del>[\$350,000]</del> <u>\$250,000</u>, which amount the commissioner may increase by order if the commissioner considers it necessary; and</p>	<p>to form a branch captive in Utah.</p> <p><b>Codifying existing practice:</b> Clarifies an RRG may be an industrial insured captive, but not exclusively. An industrial captive does not have to be an RRG.</p> <p><b>Policy change:</b> Reduces by \$100,000 required capital and surplus to form a sponsored captive insurance company. This change will help Utah stay competitive with other domiciles. Utah's requirements will remain comparatively high and conservative.</p>
<p><b>31A-37-103. Chapter exclusivity.</b></p>		
<p>3824-3827</p>	<p>(4) <u>In addition to this chapter, an industrial group captive insurance company formed as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to the extent that this chapter is silent regarding regulation of risk retention groups conducting business in the state.</u></p>	<p><b>Policy change:</b> clarifies Chapter 15 requirements for RRGs apply equally to an RRG formed as a captive insurer.</p>
<p><b>31A-37-204. Paid-in capital – other capital.</b></p>		
<p>3839</p> <p>3852 and 3867</p>	<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 and unimpaired paid-in surplus of:</p> <p>...</p> <p>(iv) in the case of a sponsored captive insurance company, not less than \$1,000,000, of which a minimum of <del>[\$350,000]</del> <u>\$250,000</u> is provided by the sponsor;</p> <p>(b) The paid-in capital and surplus required under this Subsection (1) may be in the form of:</p> <p>(i) (A) cash; or</p> <p>(B) cash equivalent; <del>[ø]</del></p> <p>(ii) an irrevocable letter of credit:</p> <p>(A) issued by:</p> <p>(I) a bank chartered by this state; or</p> <p>(II) a member bank of the Federal Reserve System; and</p>	<p><b>Policy change:</b> Reduces by \$100,000 required capital and surplus to form a sponsored captive insurance company.</p> <p><b>Policy change:</b> adds "marketable securities" to the assets counted to meet the capital and surplus requirements for captive insurers consistent with what is allowed traditional insurers.</p>

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	<p>(B) approved by the commissioner[-]; or          (iii) marketable securities as determined by Subsections 31A-18-105(1) and (6).          (c) This Subsection (1) applies to:          (i) a pure captive insurance company;          (ii) a sponsored captive insurance company;          (iii) a special purpose captive insurance company;          (iv) an association captive insurance company incorporated as a stock insurer; or          (v) an industrial insured captive insurance company incorporated as a stock insurer.          (2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.          (b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:          (i) cash; [ø] <del>or</del>          (ii) an irrevocable letter of credit issued by:          (A) a bank chartered by this state; or          (B) a member bank of the Federal Reserve System[-]; or          (iii) marketable securities as determined by Subsections 31A-18-105(1) and (6).</p>	
<b>31A-37-303. Reinsurance. (captives)</b>		
3914-3919	<p>(2) (a) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or if the captive insurance company complies with other requirements as the commissioner may establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.          (b) Unless the reinsurer is in compliance with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or a rule adopted under Subsection (2)(a), a captive insurance company may not take credit for:</p>	<p><b>Policy change:</b> this change accommodates credit for reinsurance for a pooling captive, which is different than a traditional insurer. A small captive company may use a pooling entity to accommodate risk distribution and may cede coverage to a pooling entity and retrocede a proportionate share back from the pool in a quota share amount. The assuming pool will retain the funds to allow it to have credit for reinsurance and the ceding captive is left with ambiguous ability to take the credit for reinsurance. This amendment reduces that</p>

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		ambiguity.
	<b>31A-37-501. Reports to commissioner.</b>	
3927-3929	(2) (a) Before March 1 of each year, a captive insurance company shall submit to the commissioner a report of the financial condition of the captive insurance company, verified by oath of <del>two</del> <u>one</u> of the executive officers of the captive insurance company.	<b>Policy change:</b> reduces the number of executive officers of a captive insurer that must verify financials from two to one to ease compliance.
3971	(1) (a) As provided in this section, the commissioner, or a person appointed by the commissioner, shall examine each captive insurance company in each five-year period. (b) The five-year period described in Subsection (1)(a) shall be determined on the basis	<b>Technical change:</b> In 2015 the examination period was changed from a 3 to a 5 year cycle. This change corrects an oversight.
3969	of five full annual accounting periods of operation.	
3970	(c) The examination is to be made as of:	
3971	(i) December 31 of the full <del>three-year</del> <u>five-year</u> period; or	
	<b>31A-40-208. Benefit plans.</b>	
3999-4000	(2) (a) A fully insured welfare benefit plan offered to a covered employee of a single professional employer organization licensed under this chapter <del>[-(a)]</del> is to be treated as a single employer welfare benefit plan for purposes of this title and rules made under this title <del>[-(a)]</del> . <del>[(b) may not be considered an employer welfare fund or plan, as described in Section 31A-13-101; and]</del>	<b>Technical change:</b> with the repeal of Chapter 13 (see lines 4188-4197) this language is not needed.
	<b>31A-41-301.</b>	
4076-4157	<del>[(1) (a) To bring a claim against the fund a person shall notify the department within 30 business days of the day on which the person files an action against a title insurance licensee alleging the following related to a title insurance transaction:]</del> <del>[(i) fraud;]</del> <del>[(ii) misrepresentation; or]</del> <del>[(iii) deceit.]</del> <del>[(b) The notification required by Subsection (1)(a) shall be:]</del> <del>[(i) in writing; and]</del> <del>[(ii) signed by the person who provides the notice.]</del> <del>[(c) Within 30 days of the day on which the department receives a notice under Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).]</del> <del>[(2) (a) Subject to the other provisions in this section, a person who provides the notice required under Subsection (1) may maintain a claim against the fund if:]</del> <del>[(i) in an action described in Subsection (1), the person obtains a final judgment in a court of competent jurisdiction in this state against a title insurance licensee;]</del>	<b>Policy change:</b> Revises the process and required findings for a claimant against the Title Insurance recovery, Education, and Research Fund before a claim is paid from the Fund.

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~~[(ii) all proceedings including appeals related to the final judgment described in Subsection (2)(a)(i) are at an end; and]~~

~~[(iii) the person files a verified petition in the court where the judgment is entered for an order directing payment from the fund for the uncollected actual damages included in the judgment and unpaid.]~~

~~[(b) A court may not direct the payment from the fund of:]~~

~~[(i) punitive damages;]~~

~~[(ii) attorney fees;]~~

~~[(iii) interest; or]~~

~~[(iv) court costs.]~~

~~[(c) Regardless of the number of claimants or parcels of real estate involved in a single real estate transaction, the liability of the fund may not exceed:]~~

~~[(i) \$15,000 for a single real estate transaction; or]~~

~~[(ii) \$50,000 for all transactions of a title insurance license.]~~

~~[(d) A person shall:]~~

~~[(i) serve the verified petition required by Subsection (2)(a) on the department; and]~~

~~[(ii) file an affidavit of service with the court.]~~

~~[(3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days after the day on which the department is served.]~~

~~[(b) The person who files the petition may recover from the fund only if the person shows all of the following:]~~

~~(1) To recover from the fund, a person shall:~~

~~(a) obtain a final judgment against a title insurance licensee establishing that fraud, misrepresentation, or deceit by the licensee in a real estate transaction proximately caused economic harm to the person; and~~

~~(b) apply to the department to receive compensation for the economic harm from the fund.~~

~~(2) An application under Subsection (1)(b) shall establish all of the following:~~

~~[(i)] (a) the ~~[person]~~ applicant is not a spouse of the judgment debtor or the personal representative of the spouse;~~

~~[(ii) the person complied with this chapter;]~~

~~[(iii)] (b) the ~~[person]~~ applicant has obtained a final judgment in accordance with ~~[this section indicating the amount of the judgment awarded]~~ Subsections (1)(a) and (3);~~

~~[(iv)] (c) ~~[the]~~ an amount is still ~~[owing]~~ owed on the judgment at the date of the ~~[petition]~~ application;~~

~~[(v)] (d) the ~~[person]~~ applicant has had a writ of execution issued under the judgment, and the officer executing the writ has returned showing that:~~

~~[(A)] (i) no property subject to execution in satisfaction of the judgment could be found; or~~

~~[(B)] (ii) the amount realized upon the execution levied against the property of the judgment debtor is insufficient to satisfy the judgment;~~

~~[(vi)] (e) the ~~[person]~~ applicant has made reasonable searches and inquiries to ascertain whether the judgment debtor has any interest in property, real or personal, that may satisfy the judgment; and~~



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	<p><del>[(vii)] (f) the [person] applicant has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.</del></p> <p><del>[(4) If the person described in Subsection (3) satisfies the court that it is not practicable for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through (vii), the court may waive those requirements.]</del></p> <p><del>[(5) (a) A judgment that is the basis for a claim against the fund may not have been discharged in bankruptcy.]</del></p> <p><del>[(b) If a bankruptcy proceeding is still open or is commenced during the pendency of the claim, the person bringing a claim against the fund shall obtain an order from the bankruptcy court declaring the judgement and debt to be nondischargeable.]</del></p> <p><u>(3) (a) A final judgment under Subsection (1)(a) does not include a default judgment entered against a title insurance licensee. If grounds exist for a default judgment against a title insurance licensee, the requirement of a final judgment may be satisfied by complying with Section 31A-41-302.</u></p> <p><u>(b) A final judgment under Subsection (1)(a) does not include a judgment that is discharged in bankruptcy. If a bankruptcy proceeding is open or is commenced during the pendency of an application under Subsection (1)(b) before the department or the court, the applicant shall obtain an order from the bankruptcy court declaring the judgment and debt to be non-dischargeable.</u></p> <p><u>(4) The department may hold a hearing on the application filed pursuant to Subsection (2). The hearing shall be an informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, with rights of appeal as provided in Title 63G, Chapter 4, Administrative Procedures Act.</u></p>	
	<p><b>31A-41-302. Department may defend action in which title insurance licensee does not appear or defend.</b></p>	<p>New section</p>
<p>4158-4168</p>	<p><u>(1) In a lawsuit alleging that fraud, misrepresentation, or deceit by a title insurance licensee in a real estate transaction proximately caused economic harm, if grounds arise for the entry of a default judgment against the title insurance licensee, the plaintiff may petition the court to join the department as a defendant in the lawsuit.</u></p> <p><u>(2) After being served, the department may appear, conduct discovery, and otherwise defend against any claim asserted against the title insurance licensee for which the fund may be liable under this part. A judgment under this Subsection (2) may not be issued against the department.</u></p>	<p><b>Policy change:</b> Allows the State to be joined as a party to defend against a claim against the Title Insurance recovery, Education, and Research Fund to ensure the statutory requirements for payment on a claim are met and a default judgment is not entered unless proper and that any judgment is not issued against the Department.</p>
	<p><b>31A-41-303. Determination and amount of fund liability.</b></p>	
<p>4171-4180</p>	<p><u>(1) Subject to the requirements of this part, if the [court] department determines that a claim should be levied against the fund, the [court] department shall enter an order [directing the department to pay from the fund] that the fund pay that portion of the petitioner's judgment that is [payable] eligible for payment from the fund.</u></p> <p><u>(2) A payment from the fund may not compensate for punitive damages, attorney fees, interest, or court costs.</u></p>	<p><b>Policy change:</b> Gives the Department authority to enter an order for payment against the Title Insurance recovery,</p>

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	<p>(3) <u>Regardless of the number of claimants or parcels of real estate involved in a single transaction, the liability of the fund may not exceed:</u>  <u>(a) \$15,000 for a single real estate transaction; or</u>  <u>(b) \$50,000 for all transactions of a title insurance licensee.</u></p>	<p>Education, and Research Fund. The amounts recoverable from the Fund remain unchanged, moved from Section 31A-41-301.</p>
	<b>63I-2-231. Repeal dates, Title 31A.</b>	
4183	<p>(1) Section 31A-22-315.5 is repealed July 1, [<del>2016</del>] <u>2021</u>.  (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed July 1, 2016.</p>	<p><b>Policy change:</b> 31A-22-315.5 requires insurers to participate in the motor vehicle insurance verification system (real-time reporting). The Department is informed that other State agencies (Tax and Public Safety) utilize this system and want it to remain in effect. There is a similar requirement for insurers in 31A-22-315 (batch reporting) to report the same information as 315.5. Insurers prefer having only one system. In order to give the State agencies time to review their needs and the industry to respond. The interested parties agreed to extend the repeal date to work on the issues.  This is the subject of a proposed amendment that changes the repeal date to July 1, 2019 from July 1 2021.</p>
	<b>Chapter 13 repealed.</b>	
4188-4197	<p>Section 47. <b>Repealer.</b>  This bill repeals:  Section <b>31A-13-101, Scope.</b>  Section <b>31A-13-102, Regulation in general.</b>  Section <b>31A-13-103, Registration.</b></p>	<p><b>Policy change:</b> Repeals Chapter 13, Employee Welfare Funds and Plans. Only one entity has ever been registered under Chapter 13, and that entity</p>

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<p>Section <b>31A-13-104</b>, Commissioner to file information.  Section <b>31A-13-105</b>, Reports to employers and employees.  Section <b>31A-13-106</b>, Annual accounting by insurance companies, service plans, and corporate trustees and agents.  Section <b>31A-13-107</b>, Commissioner's remedies.  Section <b>31A-13-108</b>, Investments.  Section <b>31A-13-109</b>, Political activities.</p>	<p>voluntarily surrendered their license in 2012. Entities are able to be recognized by the U.S. Department of Labor as a Multiple Employee Welfare Arrangement (“MEWA”) in lieu of State registration.</p>
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