

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)

Representative Jim Dunnigan – Chief Sponsor

Senate Sponsor – Senator Bramble

	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
	Note: The bill contains a number of non-substantive changes in various health benefit related sections that amend the term “health benefit [product] plan” those changes are not specifically highlighted in this summary.	
	31A-2-308. Enforcement penalties and procedures.	
154-162	<p>(1) (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.</p> <p>(b) (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, <u>third party administrator, navigator,</u> or insurance consultant who violates an insurance statute or rule to forfeit to the state not more than \$2,500 for each violation.</p> <p>(ii) The commissioner may order any other person who violates an insurance statute or rule to forfeit to the state not more than \$5,000 for each violation.</p> <p>(c) (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, <u>third party administrator, navigator,</u> or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues is a separate violation.</p>	Codifying existing practice: clarifies that persons licensed as TPAs and navigators are subject to the penalty provisions of the Insurance Code.
	31A-3-102. Exclusive fees and taxes.	
253-280	<p>(1) <u>The following are in place of any other license fee or license assessment that might otherwise be levied against a licensee by the state or a political subdivision of the state:</u></p> <p><u>(a) taxes and fees under this chapter;</u></p> <p><u>(b) the premium taxes under [Sections 59-9-101 through 59-9-104,] Title 59, Chapter 9, Taxation of Admitted Insurers;</u></p> <p><u>(c) the fees under Section 31A-31-108;</u> and</p> <p><u>(d) the examination costs under Section 31A-2-205 [are in place of all other license fees or assessments that might otherwise be levied by the state or any other taxing body within the state].</u></p> <p>[(2) An] (2) <u>The following are not subject to Title 59, Chapter 7, Corporate Franchise and Income Taxes:</u></p> <p><u>(a) an insurer that is subject to premium taxes under [Sections 59-9-101 through 59-9-104 is not subject to corporate franchise taxes.] Title 59, Chapter 9, Taxation of Admitted Insurers, regardless of whether the insurance company has a tax liability under that chapter;</u></p> <p><u>(b) an insurance company that is subject to taxes under Section 31A-3-301 or 262 31A-3-302, regardless of whether the insurance company has a tax liability under that section; and</u></p> <p><u>(c) a captive insurance company as provided in Section 31A-3-304 that pays a fee imposed under Section 31A-3-304.</u></p> <p>(3) Unless otherwise exempt, a licensee under this title is subject to real and personal property taxes.</p>	Codifying existing practice: Clarifies existing law exempting admitted insurers and captive insurers from paying taxes, fees or assessments to the State or local governments outside of the premium taxes and fees enumerated in the Insurance Code and the Tax Code (Title 59, Chapter 9) by consolidating the exemptions in the Tax Code. Also codifies understanding that non-admitted insurers (surplus lines) have the same exemption as admitted insurers.
	31A-3-205. Taxation of insurance companies.	
277-280	<p>(1) An admitted insurer shall pay to the State Tax Commission taxes imposed on the admitted insurer by Title 59, Revenue and Taxation.</p> <p>(2) A surplus lines insurer shall pay the taxes due under Section 31A-3-301 or 273 31A-3-302 in accordance with</p>	Codifying existing practice: codifies understanding/practice that non-admitted insurers

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	Section 31A-3-303.	(surplus lines) have the same exemption from taxes, fees or assessments by the State or local governments, outside of the premium taxes and fees in the Insurance Code and Tax Code as admitted insurers.
31A-3-304. Annual fees -- Other taxes or fees prohibited -- Captive Insurance Restricted Account.		
292-307	<p>[(3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under the laws of this state that may be levied or assessed on a captive insurance company:]</p> <p><u>(3) (a) A captive insurance company that pays one of the following fees is exempt from Title 59, Chapter 7, Franchise and Corporate Income Taxes, and Title 59, Chapter 9, Taxation of Admitted Insurers:</u></p> <p>...</p> <p>[(d) A captive insurance company is subject to real and personal property taxes.]</p>	Codifying existing practice: Clarifies existing law that domestic captive insurers that pay the annual renewal fee in the Insurance Code are exempt from paying any other taxes, fees or assessments by the State or local governments.
31A-14-205.5. Place of business address information -- Record retention.		
492-536	<p><u>(1) (a) A licensee under this chapter shall register and maintain with the commissioner: (i) the address and the one or more telephone numbers of the licensee's principal place of business; and (ii) a valid business email address at which the commissioner may contact the licensee.</u></p> <p><u>(b) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:</u></p> <p><u>(i) an address;</u></p> <p><u>(ii) a telephone number; or</u></p> <p><u>(iii) a business email address.</u></p> <p><u>(2) (a) Except as provided under Subsection (3), a licensee under this chapter shall keep at the address of the principal place of business registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.</u></p> <p><u>(b) The books and records described in Subsection (2)(a) shall:</u></p> <p><u>(i) be in an organized form; and</u></p> <p><u>(ii) be available to the commissioner for inspection upon reasonable notice.</u></p> <p><u>(c) The books and records described in Subsection (2)(a) shall include the following:</u></p> <p><u>(i) if the licensee is a foreign insurer, alien insurer, commercially domiciled insurer, foreign title insurer, or foreign fraternal:</u></p> <p><u>(A) a record of each insurance contract procured by or issued through the licensee, with the names of the one or more insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;</u></p> <p><u>(B) the name of any other producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary from whom business is accepted, and of a person to whom commissions or allowances of any kind are promised or paid; and</u></p>	Codifying existing practice: This language requires foreign, alien, commercially domiciled, foreign title and foreign fraternal insurers to maintain and keep records for a minimum of three years, plus current.

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p>(C) a record of the consumer complaints forwarded to the licensee by an insurance regulator; and (ii) any additional information that: (A) is customary for a similar business; or (B) may reasonably be required by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. (3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by online computer terminals located at the registered address. (4) A licensee who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5). (5) (a) The books and records maintained under Subsection (2) shall be available for the inspection of the commissioner during the business hours for a period of time after the date of the transaction as specified by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, but in no case for less than three calendar years in addition to the current calendar year. (b) Discarding a book or record after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.</p>	
31A-16-105. Registration of insurers.		
549	<p>(1)(b) An insurer that is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by May 1 June 30 of each year for the previous calendar year, unless the commissioner for good cause extends the time for registration and then at the end of the extended time period.</p>	Policy change: Updates insurer registration deadline consistent with national standards.
31A-16a-101. Title -- Scope.		
642-646	<p>(1) This chapter is known as the "Risk Management and Own Risk and Solvency Assessment Act." (2) This chapter applies to an insurer domiciled in this state unless exempt pursuant to Section 31A-16a-106.</p>	Policy change: New Chapter to implement ORSA. See below.
31A-16a-102. Definitions.		
648-666	<p><u>As used in this chapter:</u> (1) "Insurance group," for the purpose of conducting an own risk and solvency assessment, means those insurers and affiliates included within an insurance holding company system as defined in Section 31A-1-301. (2) "Insurer" means the same as that term is defined in Section 31A-1-301, except that it does not include 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. (3) "ORSA guidance manual" means the version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners and as amended from time to time. (4) "ORSA summary report" means a confidential high-level summary of an insurer or insurance group's own risk and solvency assessment. (5) "Own risk and solvency assessment" means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks.</p>	Policy change: One of the primary areas of 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 (\$500 million in annual premium for a single insurer or \$1 billion for an insurer group) to produce annually a written assessment of the insurer's significant enterprise and solvency risks. In order for states to maintain their NAIC accreditation they must

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

		implement legislation substantially similar to the NAIC ORSA model act not later than 1/1/18. 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 that may be critical of or seek to replace state-based regulation.
31A-16a-103. Risk management framework.		
668-672	<u>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. This requirement may be satisfied 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: Sets out general requirement of maintaining risk management framework.
31A-16a-104. Own risk and solvency assessment requirement.		
674-680	<u>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 ORSA guidance manual. The insurer or insurance group shall conduct the own risk and solvency assessment no less than annually but also 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>	Policy change: Requires an insurer's solvency risk assessment process to: <ul style="list-style-type: none"> • 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.
31A-16a-105. ORSA summary report.		
682-706	<u>(1) (a) Upon the commissioner's request, and no more than once each year, an insurer shall submit to the commissioner an ORSA summary report or any combination of reports that together contain the information described in the ORSA guidance manual, applicable to the insurer, the insurance group of which it is a member, or both. (b) 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 Subsection (1) 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. (2) The one or more reports required under Subsection (1) shall include a signature of the insurer's 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 executive's belief and knowledge that: (a) the insurer applies the enterprise risk management process described in the ORSA summary report; and</u>	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.

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p><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></p> <p><u>(3) An insurer may comply with Subsection (1) by providing the most recent and substantially similar one or more reports 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 that report provides information that is comparable to the information described in the ORSA guidance manual. A report that is in a language other than English must be accompanied by a translation of that report into the English language.</u></p>	
31A-16a-106. Exemption.		
708-752	<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 ORSA summary report that is required pursuant to Section 31A-16a-105 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA summary report for any combination of insurers provided any combination of reports includes 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), the only ORSA summary report that may be required pursuant Section 31A-16a-105 shall be 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 based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. 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 and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.</u></p> <p><u>(5) Notwithstanding the exemptions stated in this section:</u></p> <p><u>(a) the commissioner may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an ORSA summary report based on unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; or</u></p> <p><u>(b) the commissioner may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment and file an ORSA summary report if the insurer has risk-based capital for company action level event as set forth in Sections 31A-17-601 through 31A-17-613, meets one or more of the standards of an insurer considered to be in hazardous financial condition as defined in Section 31A-27a-101, or otherwise exhibits qualities of</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.

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)

Representative Jim Dunnigan – Chief Sponsor

Senate Sponsor – Senator Bramble

	<p>a troubled insurer as determined by the commissioner.</p> <p>(6) 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 has one calendar year following the calendar year the threshold is exceeded to comply with the requirements of this chapter.</p>	
	31A-16a-107. Contents of ORSA summary report.	
754-761	<p>(1) The ORSA summary report shall be prepared consistent with the ORSA guidance manual, subject to the requirements of Subsection (2). Documentation supporting information shall be maintained and made available upon examination or upon request of the commissioner.</p> <p>(2) The review of the ORSA summary report, and any additional requests for information, shall be made using similar procedures as used in the analysis and examination of multi-state or global insurers and insurance groups.</p>	Policy change: Requires the ORSA summary report to be prepared consistent with the NAIC ORSA guidance manual.
	31A-16a-108. Confidentiality.	
763-845	<p>(1) (a) A document, material, or other information, including the ORSA summary report, in the possession of or control of the department that is obtained by, created by, or disclosed to the commissioner or any other person under this chapter, is recognized by this state as being proprietary and to contain trade secrets. The document, material, or other information is confidential by law and may not be subject to Title 63G, Chapter 2, Government Records Access and Management Act, and may not be made public by the commissioner or any other person without the permission of the insurer.</p> <p>(b) Notwithstanding Subsection (1)(a), the commissioner may use a document, material, or other information in furtherance of any regulatory or legal action brought as a part of the official duties. The commissioner may not otherwise make the document, material, or other information public without the prior written consent of the insurer.</p> <p>(2) The commissioner and any person who receives a document, material, or other information related to an own risk and solvency assessment, through examination or otherwise, while acting under the authority of the commissioner or with whom the document, material, or other information is shared pursuant to this chapter shall keep the document, material, or other information confidential.</p> <p>(3) To assist in the performance of the commissioner's regulatory duties, the commissioner:</p> <p>(a) may, upon request, share a document, material, or other information related to an own risk solvency assessment, including a confidential and privileged document, material, or information subject to Subsection (1), including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in the Section 31A-16-108.5, with the National Association of Insurance Commissioners and with any third-party consultants designated by the commissioner, provided that the recipient agrees in writing to maintain the confidentiality of documents, materials, or other information related to an own risk and solvency assessment and has verified in writing the legal authority to maintain confidentiality;</p> <p>(b) may receive a document, material, or other information related to an own risk and solvency assessment, including an otherwise confidential and privileged document, material, or information, including proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as described in Section 31A-16-108.5 and from the National Association of Insurance Commissioners, and shall maintain as confidential a document, material, or information received with notice or the</p>	<p>Policy change: Recognizes that information obtained under the ORSA chapter is 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>Note: This section was changed in the 1st Substitute to remove the Constitutional Note previously on the bill, which was related to the Constitutional separation of powers issue on evidentiary matters. The language in the 1st Substitute is consistent with the confidentiality provisions passed pursuant to the Model Company Holding Act in 2015 (31A-16-109). Commissioner Kiser worked with the Utah Supreme Court's Committee on Evidence to telegraph the need to amend Utah Rule of Evidence 511 to include the ORSA records in the</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

<p><u>understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material, or information; and</u></p> <p><u>(c) 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 (3) 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 with the agreement providing that the recipient agrees in writing to maintain the confidentiality of a document, material, or other information related to an own risk and solvency assessment and verifies in writing the legal authority to maintain confidentiality;</u></p> <p><u>(ii) 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 that 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>(iii) prohibit the National Association of Insurance Commissioners or third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;</u></p> <p><u>(iv) 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></p> <p><u>(v) 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></p> <p><u>(vi) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.</u></p> <p><u>(4) The sharing of information or a document 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 an applicable claim of confidentiality in a document, proprietary and trade-secret material, or other information related to an own risk and solvency assessment may not occur as a result of disclosure of the own risk and solvency assessment related information or a document to the commissioner under this section or as a result of sharing as authorized in this chapter.</u></p> <p><u>(6) A document, material, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter is:</u></p> <p><u>(a) confidential, not public record, 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>privilege that the rule recognizes for confidential information under the Model Company Holding Act. Both existing law in 31A-16-109 and this Section (31A-16a-108) cover information that is similar. Both cover forward looking projections, potential risks and will generally include proprietary trade secret information related to the management of risk. The primary difference between the two is in their application.</p> <p>The existing law in 31A-16-109 and related privilege in URE 511, applies to an insurer that is a member of a holding company system and faces systemic or contagion risk through a related entity within the holding company system of which the insurer is a member. The new law applies to large insurers with high premium volume (\$500 million for a single insurer or \$1 billion for an insurer group) whose continued financial viability is market critical. Based on our analysis there are only two insurers domiciled in Utah that will be subject to ORSA, Fidelity and Select Health.</p>
--	---

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

31A-16a-109. Sanctions.		
847-854	An insurer failing, without just cause, to timely file the ORSA summary report as required in this chapter is required, after notice and hearing, is subject to a penalty under Section 31A-2-308 for each day's delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Fund. The maximum penalty under this section is a penalty permitted under 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.	Policy change: Establishes fines and penalties for non-compliance with this chapter, which may be reduced by the commissioner. <ul style="list-style-type: none"> \$10,000 for each day the ORSA report is late with a maximum fine of \$250,000.
31A-16a-110. Severability Clause.		
856-860	If a provision of this chapter, or the application of this chapter to any person or circumstance, is held invalid, the invalidation does not affect the provisions or applications of this chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.	Technical change: States if any provision in the holding company chapter is invalid the other provisions remain valid.
31A-17-404. Credit allowed a domestic ceding insurer against reserves for reinsurance.		
1123-1125	(8)...(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. ... (iii) It shall be a condition to the grant of certification under this Subsection (8) that the certified reinsurer shall have bound itself[;]: (A) by the language of the trust and agreement with the commissioner with principal regulatory oversight of the trust account[;]; and (B) upon termination 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.	Technical change: Drafter's change that clarifies a certified reinsurer meets two discrete requirements: 1) binding itself in its trust agreement and to the authority of the jurisdiction with primary regulatory responsibility; and 2) to fund the deficiency of any trust account out of surplus in any other trust account.
31A-17-603. Company action level event.		
1252-1257	(1) "Company action level event" means any of the following events: (a) the filing of an RBC report by an insurer or health organization that indicates that: (i) the insurer's or health organization's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; (ii) if a life [or] insurer, accident and health insurer, or health organization, the insurer [has] or health organization: (A) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0; and (B) triggers the trend test determined in accordance with the trend test calculation included in the life [or], fraternal, or health RBC instructions;	Technical change: Clarifies the definition of "company action level event" applies to life insurers and the various types of health companies.
31A-22-505. Association groups.		
1334-1342	(1) A policy is subject to the requirements of this section if the policy is issued as policyholder to an association or to the trustees of a fund established, created, or maintained for the benefit of members of one or more associations: (a) with a minimum membership of 100 persons[;];	Codifying Existing Practice: Clarifies the requirements for an association to be considered an

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p><u>(b) with a constitution and bylaws[, and which];</u> <u>(c) having a shared or common purpose that is not primarily a business or customer relationship; and</u> <u>(d) that has been in active existence for at least two years[, is subject to the following requirements:].</u></p>	<p>eligible group. As currently written the law does not reference a commonality or purpose of the membership to distinguish and aide in eligibility. Regulatory issues, regarding an association, prompted additional research and this clarification to identify whether the membership is for purposes other than obtaining insurance, as generally required.</p>
	31A-22-605. Accident and health insurance standards.	
1446	<p>(9) <u>(a) Notwithstanding Subsection 31A-22-606(1), limited accident and health policies or certificates issued to persons eligible for Medicare shall contain a notice prominently printed on or attached to the cover or front page which states that the policyholder or certificate holder has the right to return the policy for any reason within 30 days after its delivery and to have the premium refunded.</u> <u>(b) This Subsection (9) does not apply to a policy issued to an employer group.</u></p>	<p>Codify existing practice: Clarifies that a certificate holder under an employer policy does not have a right to return a policy.</p>
	31A-22-610.5. Dependent coverage.	
1549-1559	<p>[(13) The commissioner shall adopt rules interpreting and implementing this section with regard to out-of-area court ordered dependent coverage.] <u>(13) (a) A policy that provides coverage to a child of a group member may not deny eligibility for coverage to a child solely because:</u> <u>(i) the child does not reside with the insured; or</u> <u>(ii) the child is solely dependent on a former spouse of the insured rather than on the insured.</u> <u>(b) A child who does not reside with the insured may be excluded on the same basis as a child who resides with the insured.</u></p>	<p>Codifying existing practice. Moves language from 31A-22-718, and expands it from being applicable only to group policies, to individual policies as well. The Department has required insurers to comply with this provision in all markets. There has not been a need to adopt a rule under the current language, and proposes deletion of the rule-making requirement.</p>
	31A-22-614.5. Uniform claims processing -- Electronic exchange of health	
1620-1621	<p><u>(4) This section does not require a person to provide information concerning an employer self-insured employee welfare benefit plan as defined in 29 U.S.C. Sec. 1002(1).</u></p>	<p>Policy Change: Due to the Supreme Court ruling in <u>Gobeille v Liberty Mutual Ins. Co.</u>, a state's law requiring reporting of data for an employer self-funded employee welfare benefit plan is preempted by ERISA.</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

31A-22-645. Alcohol and drug dependency treatment.		
1762-1772	<p>(1) An insurer offering a health benefit plan providing coverage for alcohol or drug dependency treatment may require an inpatient facility to be licensed by:</p> <p>(a) (i) <u>the Department of Human Services, under Title 62A, Chapter 2, Licensure of Programs and Facilities; or</u></p> <p>(ii) <u>the Department of Health; or</u></p> <p>(b) <u>for an inpatient facility located outside the state, a state agency similar to one described in Subsection (1)(a).</u></p> <p>(2) For inpatient coverage provided pursuant to Subsection (1), an insurer may require an inpatient facility to be accredited by the following:</p> <p>(a) <u>the Joint Commission; and</u></p> <p>(b) <u>one other nationally recognized accrediting agency.</u></p>	<p>Codifying existing practice: The current provision in 31A-22-715 is being inserted here too. The current requirements of this provision apply to both individual and group policies. However, Section 7 of Chapter 22 applies specifically to group policies and inclusion here will ease insurers' access to this requirement.</p>
31A-22-701. Groups eligible for group or blanket insurance.		
1788-1789	<p>(2) A group accident and health insurance policy may be issued to:</p> <p>(a) a group:</p> <p>(i) to which a group life insurance policy may be issued under Sections 31A-22-502, 31A-22-503, 31A-22-504, 31A-22-506, 31A-22-507, and 31A-22-509; and</p> <p>(ii) that is formed and maintained in good faith for a purpose other than obtaining insurance;</p> <p>(b) an association group that:</p> <p>(i) has been actively in existence for at least five years;</p> <p>(ii) has a constitution and bylaws;</p> <p>(iii) <u>has a shared or common purpose that is not primarily a business or customer relationship;</u></p> <p>[(iii)] (iv) is formed and maintained in good faith for purposes other than obtaining insurance;</p>	<p>Codifying Existing Practice: Clarifies the requirements for an association to be considered an eligible group. As currently written the law does not reference a commonality or purpose of membership to distinguish and aide in eligibility. Regulatory issues regarding an association prompted additional research and this clarification, which is based on an NAIC model, to identify whether the membership is for purposes other than obtaining insurance, as generally required.</p>
31A-22-716. Required provision for notice of termination.		
1864-1865	<p>[(3) For the purpose of compliance with federal law and the Health Insurance Portability and Accountability Act, all health benefit plans, health insurers, and student health plans shall provide a certificate of creditable coverage to each covered person upon the person's termination from the plan as soon as reasonably possible.]</p>	<p>Policy change: Removes requirement for health plans to provide a certificate of creditable coverage to each covered person upon the person's termination from the plan. Generally, requirements to provide certificates of creditable coverage are preempted by the ACA's prohibition on pre-existing</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

		condition exclusions.
	31A-22-801. Scope of part.	
1992-1997	(1) Except as provided under Subsection (2), all life insurance and accident and health insurance in connection with loans or other credit transactions are subject to this part. (2) (a) Insurance written in connection with a loan or other credit transaction [of more than 10 years duration] is not subject to this part, but is subject to other provisions of this title [-] , <u>if the credit transaction is:</u> (i) <u>secured by a first mortgage or deed of trust; and</u> (ii) <u>made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose.</u>	Policy change: Conforms Utah laws with the NAIC model language creating a regulatory structure for all credit insurance transactions, not just those 10 years or less. The change also provides an exemption for mortgage credit insurance.
	31A-22-1902. Definitions.	
2021-2023	As used in this part: . . . [(6) "Knowledge of death" means:] [(a) receipt of an original or valid copy of a certified death certificate; or] [(b) a death master file match validated by the insurer in accordance with Subsection 31A-22-1903(1)(a).]	Technical cleanup: The definition, "knowledge of death," is not used in Title 31A.
	31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.	
2103-2105	(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: (i) revoke: (A) a license; or (B) a line of authority; (ii) suspend for a specified period of 12 months or less: (A) a license; or (B) a line of authority; (iii) limit in whole or in part: (A) a license; or (B) a line of authority; [or] (iv) deny a license application [-] ; (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i) ; or (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and Subsection (5)(a)(v) .	Codifies existing practice: Clarifies the enforcement options the commissioner can take against producers, consultants, reinsurance intermediaries and references existing general enforcement penalty provisions in 31A-2-308(1)(c)(i) .
	31A-23a-115. Appointment of individual and agency insurance producer, limited line producer, or managing general agent -- Reports and lists.	
2223-2226	<u>(2) An insurer shall notify a producer that the producer's appointment is terminated by the insurer and of the reason for termination at an interval and in the form the commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.</u>	Policy change: New Sub 2 requires insurers to notify a producer when terminating an appointment. This change is

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p><u>308(1)(b)(i) or (1)(c)(i)</u>, the commissioner may <u>assess a forfeiture</u>, suspend, revoke, or limit the license of, <u>or take a combination of these actions against</u>:</p> <p>(i) the individual; (ii) the agency, if the agency: (A) is reckless or negligent in its supervision of the individual; or (B) knowingly participates in the act or failure to act that is the ground for <u>assessing a forfeiture</u>, or suspending, revoking, or limiting the license; or (iii) (A) the individual; and (B) the agency if the agency meets the requirements of Subsection [7] <u>(8)(b)(ii)</u>.</p>	<p>licensee with whom the agency has authorized by contract to act on behalf of the agency, even if the agency may have not yet submitted the designation to the Department; and</p> <ul style="list-style-type: none"> Changes in (8) clarify the enforcement options the commissioner can take against agencies and references existing general enforcement penalty provisions in 31A-2-308(1)(c)(i).
31A-23a-407. Liability for acts of title insurance producers.		
2353	<p>(1) Subject to the other provisions in this section, a title insurer that <u>contracts with or</u> appoints an individual title insurance producer or an agency title insurance producer is liable to a buyer, seller, borrower, lender, or third party that deposits money with the individual title insurance producer or agency title insurance producer for the receipt and disbursement of money deposited with the individual title insurance producer or agency title insurance producer for a transaction when a commitment for a policy of title insurance of that title insurer is ordered, issued, or distributed or a title insurance policy of that title insurer is issued, except that once a title insurer is named in an issued commitment only that title insurer is liable as a title insurer under this section.</p>	<p>Codifying existing practice: Clarifies existing practice of holding a title insurer liable for the acts of a title licensee whom it has authorized by contract to act on its behalf, even if the title insurer has not submitted the appointment to the Department.</p>
31A-23a-412. Place of business and residence address -- Records.		
2378	<p>(1) (a) A licensee under this chapter shall register and maintain with the commissioner: (i) the address and <u>the one or more</u> telephone numbers of the licensee's principal place of business; and</p> <p>...</p>	<p>Technical change: Drafter change requiring producer type licensees maintain their business telephone numbers with the Department.</p>
2389-2390	<p>(2) (a) Except as provided under Subsection (3), a licensee under this chapter <u>or an insurer under Chapter 14, Foreign Insurers</u>, shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.</p> <p>...</p>	<p>Codifies existing practice: Clarifies all insurers licensed under Chapter 14, Foreign Insurers (insurers domiciled in another U.S. jurisdiction), retain records for a minimum of three years plus the current year. Domestic insurers' records retention requirements are addressed elsewhere.</p>
2420-2482	<p>(5) (a) The books and records maintained under Subsection (2) or Section <u>31A-23a-413</u> shall be available for the inspection of the commissioner during the business hours for a period of time after the date of the transaction as specified by the commissioner by rule <u>made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act</u>, but in no case for less than <u>three calendar years in addition to the current calendar year</u> [plus three years].</p> <p>(b) Discarding [books and records] <u>a book or record</u> after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.</p>	<p>Codifies existing practice: Clarifies all insurers licensed under Chapter 14, Foreign Insurers (insurers domiciled in another U.S. jurisdiction), retain records for a minimum of three years plus the current year. Domestic insurers' records retention requirements are addressed elsewhere.</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

31A-23a-501. Licensee compensation.		
2585	(7) A licensee may not receive noncommission compensation from an <u>insurer</u> , insured, or enrollee for providing a service or engaging in an act that is required to be provided or performed in order to receive commission compensation, except for the surplus lines transactions that do not receive commissions.	Codifying existing practice/policy change: Adds “insurer” to list of persons that producers may not receive noncommission compensation from for performing services that are required to be performed to be paid commission. This is a consumer protection measure to ensure noncommission compensation is disclosed and agreed to in writing by the insured.
31A-23b-102. Definitions.		
2592- 2594	[(1) "Compensation" is as defined in:] [(a) Subsections 31A-23a-501 (1)(a), (b), and (d); and] [(b) PPACA.]	Technical change: Removes definition of “compensation” from the Navigator Chapter as it is unnecessary and not used in the Chapter.
31A-23b-202.5. License types.		
2633	(3) (a) A navigator line of authority includes the enrollment process as described in Subsection 31A-23b-102 [(4)](3)(a).	Technical change: Renumbers statutory reference due to deletion of the definition of “compensation” in section 102 of the Navigator Chapter, see above.
31A-23b-209. Agency designations.		
2651- 2654	(4) A navigator agency shall notify an individual designee that the individual's designation is terminated by the agency and of the reason for termination at an interval and in the form the commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. ...	Policy change: Requires a navigator agency to notify a licensee when terminating its designation with the agency. This is consistent with the proposed requirement in 31A-23a-115 for an insurer to notify a producer and is consistent with national licensing standards.
2682- 2700	[(7)] (8) If a navigator agency <u>contracts with or</u> designates a licensee in reports submitted under Subsection (3) or [(6)] (7), there is a rebuttable presumption that the <u>contracted or</u> designated licensee acts on behalf of the navigator agency.	Codifying existing practice: The changes in Subsections 8 and 9

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p>(8) (9) (a) When a license is held by a navigator agency, both the navigator agency itself and any individual contracted or designated under the navigator agency license are considered the holders of the navigator agency license for purposes of this section.</p> <p>(b) If an individual <u>contracted or designated</u> under the navigator agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the navigator agency license, <u>or assessing a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i)</u>, the commissioner may <u>assess a forfeiture</u>, suspend, revoke, or limit the license of, <u>or take a combination of these actions against</u>:</p> <p>(i) the individual;</p> <p>(ii) the navigator agency, if the navigator agency:</p> <p>(A) is reckless or negligent in its supervision of the individual; or</p> <p>(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license, <u>or assessing a forfeiture</u>; or</p> <p>(iii) (A) the individual; and</p> <p>(B) the navigator agency, if the agency meets the requirements of Subsection (8) (9)(b)(ii).</p>	<p>clarify the existing practice of holding a navigator agency liable for the acts of an individual licensee with whom the agency has authorized by contract to act on its behalf, even if the agency may have not yet submitted the designation to the Department notifying the Department of the authorization.</p>
31A-23b-210. Place of business and residence address -- Records.		
2704	<p>(1) (a) A licensee under this chapter shall register and maintain with the commissioner:</p> <p>(i) the address and <u>the one or more</u> telephone numbers of the licensee's principal place of business; and</p> <p>(ii) a valid business email address at which the commissioner may contact the licensee.</p>	<p>Technical change: Drafter change requiring producer type licensees maintain their business telephone numbers with the Department.</p>
31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.		
2759-2761	<p>(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of a adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:</p> <p>(i) revoke a license;</p> <p>(ii) suspend a license for a specified period of 12 months or less;</p> <p>(iii) limit a license in whole or in part; or</p> <p>(iv) deny a license application[-];</p> <p>(v) <u>assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i)</u>; or</p> <p>(vi) take a combination of actions under Subsections (4)(a)(i) through (iv) and Subsection (4)(a)(v).</p>	<p>Codifying existing practice: Clarifies the enforcement options the commissioner can take against navigators and references existing general enforcement penalty provisions in 31A-2-308(1)(c)(i).</p>
31A-26-209. Form and contents of license.		
2869	<p>(1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:</p> <p>(a) the name, address, and <u>the one or more</u> telephone number <u>numbers</u> of the licensee;</p>	<p>Technical change: Drafter change requiring producer type licensees maintain their business telephone numbers with the Department.</p>
31A-26-210. Reports from organizations licensed as adjusters.		
2892-2895	<p>(3) <u>An organization licensed under this chapter shall notify an individual licensee that the individual's designation has been terminated by the organization and of the reason for the termination at an interval and in the form the</u></p>	<p>Policy change: New Subsection 3 requires a claims agency to notify a</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

2921-2938	<p>commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.</p> <p>...</p> <p>[(6)] (7) If an agency <u>contracts with or</u> designates a licensee in a report submitted under Subsection (2) or [(5)] (6), there is a rebuttable presumption that the <u>contracted or</u> designated licensee acts on behalf of the agency.</p> <p>[(7)] (8) (a) When a license is held by an organization, both the organization itself and an individual <u>contracted or</u> designated under the license shall, for purposes of this section, be considered to be the holders of the organization license.</p>	<p>licensee when it terminates a designation. This change is consistent with proposed changes in 31A-23a-115 for an insurer to notify a producer of a terminated appointment, consistent with national standards.</p> <p>Codifying existing practice: Clarifies existing practice of holding a claims agency liable for the acts of an individual licensee with whom it contracts to act on its behalf.</p>
31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.		
2983-2985	<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 license classification;</p> <p>(ii) suspend for a specified period of 12 months or less:</p> <p>(A) a license; or</p> <p>(B) a license classification;</p> <p>(iii) limit in whole or in part:</p> <p>(A) a license; or</p> <p>(B) a license classification; [or]</p> <p>(iv) deny a license application[-];</p> <p>(v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or</p> <p>(vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and Subsection (5)(a)(v).</p>	<p>Codifying existing practice: Clarifies enforcement options the commissioner can take against adjusters and references existing general enforcement penalty provisions in 31A-2-308(1)(c)(i).</p>
31A-26-312. Prohibited conduct.		
3094-3117	<p>(1) An independent adjuster or public adjuster may not:</p> <p><u>(a) participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the independent adjuster or public adjuster;</u></p> <p><u>(b) engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting remuneration from, or having a financial interest in, or deriving any direct or indirect financial benefit from, a salvage firm, repair firm, construction firm, or other firm that obtains business in connection with a claim that the independent adjuster or public adjuster has a contract or agreement to adjust;</u></p> <p><u>(c) subject to Subsection (2), directly or indirectly solicit employment for an attorney or enter into a contract with an insured for the primary purpose of referring an insured to an attorney and without actually performing the services</u></p>	<p>Policy change: Consumer protection that prohibits both public and independent adjusters from engaging in activities in which a conflict of interest arises and subjects public and independent adjusters to existing penalties in the Insurance Code.</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p>customarily provided by an independent adjuster or public adjuster; <u>(d) act on behalf of an attorney in having an insured sign an attorney representation agreement; or</u> <u>(e) accept a fee, commission, or other valuable consideration of any nature, regardless of form or amount, in exchange for the referral by an independent adjuster or public adjuster of an insured to a third-party person, including an attorney, appraiser, umpire, construction company, contractor, repair firm, or salvage company.</u> <u>(2) Subsection (1)(c) may not be construed to prohibit an independent adjuster or public adjuster from recommending a specific attorney to an insured.</u> <u>(3) An independent adjuster or public adjuster who violates this section is subject to Section 31A-2-308.</u></p>	
31A-26-401. Required contracts.		
3120-3139	<p><u>(1) A public adjuster may not, directly or indirectly, act within this state as a public adjuster without having first entered into a contract, in writing, on a form filed with the department in accordance with Section 31A-21-201, executed in duplicate by the public adjuster and the insured or the insured's duly authorized representative. A public adjuster may not use a form of contract that is not filed with the department.</u> <u>(2) A contract described in Subsection (1) is subject to rescission in accordance with Section 31A-26-311.</u> <u>(3) (a) A contract described in Subsection (1) shall include a prominently displayed notice in 12-point boldface type that states "WE REPRESENT THE INSURED ONLY."</u> <u>(b) The commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may require additional prominently displayed notice requirements in the contract as the commissioner considers necessary.</u> <u>(4) A public adjuster shall keep at the public adjuster's principal place of business in this state a copy of each contract entered into in this state for this current year plus three years, and each contract shall be available at all times for inspection, without notice, by the commissioner or the commissioner's authorized representative.</u> <u>(5) A public adjuster may not enter into a contract with an insured and collect compensation as provided in the contract without actually performing the services customarily provided by a licensed public adjuster for the insured.</u></p>	<p>Policy change: Consumer protection that:</p> <ul style="list-style-type: none"> • Requires public adjusters to enter into a written contract, on a form filed with the Department, with their clients and keep a copy of each executed contract for 3 years. • References current law that gives the client a right to rescind such a contract (w/in 10 days) and gives the commissioner permissive authority to promulgate rules to require additional contract notice requirements. • Prohibits a public adjuster from entering into a contract and collecting compensation if they do no work.
31A-26-402. Compensation.		
3141-3163	<p><u>(1) Except as provided by Subsection (2), a public adjuster may receive compensation for service provided under this chapter consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation. The total compensation received may not exceed 10% of the amount of the insurance settlement on the claim.</u> <u>(2) (a) A public adjuster may not receive a compensation consisting of a percentage of the total amount paid by an insurer to resolve a claim on a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy.</u> <u>(b) A public adjuster is entitled to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim that is subject to this Subsection (2) and expenses incurred</u></p>	<p>Policy change: Consumer protection provisions that, with regard to public adjusters:</p> <ul style="list-style-type: none"> • Cap compensation at 10% of insurance settlement • Prohibits collection of a percentage of settlement if insurer pays or commits to pay policy limits within 72 hours,

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p>by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer. (3) Except for the payment of compensation by the insured, a person paying proceeds of a policy of insurance or making a payment affecting an insured's rights under a policy of insurance shall: (a) include the insured as a payee on the payment draft or check; and (b) require the written signature and endorsement of the insured on the payment draft or check. (4) A public adjuster may not accept any payment that violates this section notwithstanding whether the insured gives authorization to the public adjuster. A public adjuster may not sign and endorse any payment draft or check on behalf of an insured.</p>	<p>but allows for expenses and reasonable compensation for time worked in that case.</p> <ul style="list-style-type: none"> Requires insured be a payee of settlement payments.
	31A-26-403. Rulemaking.	
3165-3171	<p>The commissioner may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act: (1) addressing the forms required by this part; (2) providing for notice requirements in contracts; and (3) establishing the scope of a contract a public adjuster enters into with an insured that the public adjuster represents.</p>	<p>Policy change: Gives permissive rule making authority to the commissioner to promulgate rules outlining requirements for contract forms, notice and scope of work requirements.</p>
	31A-37-102. Definitions.	
3586-3587	<p>(1) (a) "Affiliated company" means a business entity that because of common ownership, control, operation, or management is in the same corporate or limited liability company system as: (a) (i) a parent; (b) (ii) an industrial insured; or (c) (iii) a member organization. (b) Notwithstanding Subsection (1)(a), the commissioner may issue an order finding that a business entity is not an affiliated company.</p>	<p>Policy change: Amends definition of "affiliated company" allowing the Commissioner greater discretion to formally determine via an order whether an entity is not "affiliated".</p>
3675-3682	<p>... (13) "Controlled unaffiliated business" means a business entity: ... (ii) in the case of an industrial insured captive insurance company, that has a contractual relationship with an industrial insured or an affiliated company of the industrial insured; and (c) whose risks that are or will be insured by a pure captive insurance company, an industrial insured captive insurance company, or both are managed by one of the following in accordance with Subsection 31A-37-106(1)(j) by: (i) (A) a pure captive insurance company; or (ii) (B) an industrial insured captive insurance company[-]; or (ii) a parent or affiliate of: (A) a pure captive insurance company; or (B) an industrial insured captive insurance company.</p>	<p>Policy change: Updates definition of "controlled unaffiliated business" to recognize practice that parents or affiliates of a captive insurer may manage the captive insurer.</p>
	31A-37-106. Authority to make rules -- Authority to issue orders.	
3762	<p>(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules to: ...</p>	<p>Technical change: Updates reference to conform to changes in 31A-37-202.</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	(c) determine a factor a captive insurance company shall provide evidence of under Subsection 31A-37-202(4) (c) (b);	
	31A-37-202. Permissive areas of insurance.	
3810	(1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation, certificate of organization, 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. (b) Notwithstanding Subsection (1)(a): (i) a pure captive insurance company may not insure a risk other than a risk of: (A) [its] the pure captive insurance company's parent or affiliate;	<p>Technical change: drafter change for clarity.</p> <p>Technical changes: Clean-up that deletes various references to reciprocal captive insurance companies that was missed in prior years when reciprocals were removed from the Insurance Code.</p>
3841	... (2) To conduct insurance business in this state a captive insurance company shall: (a) obtain from the commissioner a certificate of authority authorizing it to conduct insurance business in this state; (b) hold at least once each year in this state: (i) a board of directors meeting; <u>or</u> [(ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting; or (iii)] (ii)	
3850	... (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company formed as a corporation for a reciprocal insurer , if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner is the agent of the captive insurance company upon whom process, notice, or demand may be served	
3862-3877	(4) (a) Before receiving a certificate of authority, a captive insurance company: (i) formed as a corporation shall file with the commissioner: ... [(ii) formed as a reciprocal shall;] [(A) file with the commissioner;] [(I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;] [(II) a certified copy of the subscribers' agreement of the reciprocal;] [(III) a statement under oath of the attorney-in-fact of the reciprocal showing the financial condition of the reciprocal; and] [(IV) any other statement or document required by the commissioner under Section 31A-37-106; and] [(B) submit to the commissioner for approval a description of the:] [(I) coverages;] [(II) deductibles;] [(III) coverage limits;] [(IV) rates; and] [(V) any other information the commissioner requires under Section 31A-37-106; and]	
3885-3893	... [(b) (i) If there is a subsequent material change in an item in the description require under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision to the description required under Subsection (4)(a)(ii)(B).]	

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

3911-3912	<p>[(ii) A reciprocal captive insurance company that is required to submit a revision under Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner approves a revision of the description.] [(iii) A reciprocal captive insurance company shall inform the commissioner of a material change in a rate within 30 days of the adoption of the change.] . . . [(d)] (c) In addition to the information required by Subsections (4)(a)], and (b)], and (c)], an applicant sponsored captive insurance company shall file with the commissioner:</p>	<p>Technical change: Conforms reference to renumbered subsections.</p>
31A-37-204. Paid-in capital -- Other capital.		
3965-3966	<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: . . . (ii) in the case of an association captive insurance company [incorporated as a stock insurer], not less than \$750,000; . . .</p>	<p>Technical change: Removes unnecessary language that restricts application of capital and surplus requirements for association captives. Association captives may incorporate in forms other than just stock insurers.</p>
3983-3988	<p>(b) The paid-in capital and surplus required under this Subsection (1) may be in the form of: . . . (iii) marketable securities as determined by [Subsections 31A-18-105(1) and (6)]. <u>Subsection (5); or</u> <u>(iv) some other thing of value approved by the commissioner, for a period not to exceed 45 days, to facilitate the formation of a captive insurance company in this state pursuant to an approved plan of liquidation and reorganization of another captive insurance company or alien captive insurance company in another jurisdiction.</u></p>	<p>Policy change: Tightens what marketable securities may be counted to satisfy minimum capital and surplus requirements for all types of captive insurers. Additionally, grants authority for the commissioner to approve assets in some other form than the normally required form for a limited time (45 days) to facilitate the dissolution of a captive in another domicile while simultaneously establishing a captive insurer in Utah.</p>
3993-3994	<p>(c) This Subsection (1) applies to: . . . (iv) an association captive insurance company [incorporated as a stock insurer]; or (v) an industrial insured captive insurance company [incorporated as a stock insurer].</p>	<p>Technical change: Removes unnecessary language that restricts application of capital and surplus requirements for association captives and industrial insured captives, which may incorporate in forms other</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

<p>4003-4004</p> <p>4026-4028</p> <p>4041-4066</p>	<p>...</p> <p>(2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.</p> <p>(b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:</p> <p>...</p> <p>(iii) marketable securities as determined by [Subsections 31A-18-105(1) and (6)]Subsection (5).</p> <p>...</p> <p>(3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, shall, through its branch operations, establish and maintain a trust fund:</p> <p>...</p> <p>(c) Notwithstanding the other provisions of this Subsection (3)[];:</p> <p><u>(i) the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount as the security posted if the security remains posted with the reinsurer[]; and</u></p> <p><u>(ii) a branch captive insurance company that is the result of the licensure of an alien captive insurance company that is not formed in an alien jurisdiction is not subject to the requirements of this Subsection (3).</u></p> <p>...</p> <p>[(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.]</p> <p>[(6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based upon the type, volume, and nature of the insurance business transacted.]</p> <p>[(b) The unimpaired paid-in surplus required under this Subsection (6) may be in the form of an irrevocable letter of credit issued by:]</p> <p>[(i) a bank chartered by this state; or]</p> <p>[(iii) a member bank of the Federal Reserve System.]</p> <p><u>(5) For purposes of this section, marketable securities means:</u></p> <p><u>(a) a bond or other evidence of indebtedness of a governmental unit in the United States or Canada or any instrumentality of the United States or Canada; or</u></p> <p><u>(b) securities:</u></p> <p><u>(i) traded on one or more of the following exchanges in the United States:</u></p> <p><u>(A) New York;</u></p> <p><u>(B) American; or</u></p> <p><u>(C) NASDAQ;</u></p>	<p>than just stock insurers.</p> <p>Policy change: Tightens what marketable securities may be counted to satisfy minimum capital and surplus requirements for all types of captive insurers.</p> <p>Codifying existing practice: Clarifies that a branch captive insurer's reinsurer that is NOT domiciled in an alien jurisdiction (off shore) does not have to maintain a trust fund in which it posts loss reserves.</p> <p>Technical change: removes references to reciprocal insurers that were inadvertently missed when reciprocal insurers were previously deleted from the Code.</p> <p>Policy change: Tightens what marketable securities may be counted to satisfy minimum capital and surplus requirements for all types of captive insurers.</p>
--	--	---

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p>(ii) when no particular security, or a substantially related security, applied toward the required minimum capital and surplus requirement of Subsection (1) represents more than 50% of the minimum capital and surplus requirement; and</p> <p>(iii) when no group of up to four particular securities, consolidating substantially related securities, applied toward the required minimum capital and surplus requirement of Subsection (1) represents more than 90% of the minimum capital and surplus requirement.</p> <p>(6) Notwithstanding Subsection (5), to protect the solvency and liquidity of a captive insurance company, the commissioner may reject the application of specific assets or amounts of specific assets to satisfying the requirement of Subsection (1).</p>	
	31A-37-301. Formation.	
4070	(1) A pure captive insurance company or a sponsored captive insurance company <u>formed as a stock insurer</u> shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:	Technical change: Drafter edits, clarifying applicability to stock companies.
4091-4096	<p>...</p> <p>(3) An association captive insurance company or an industrial insured captive insurance company may be:</p> <p>...</p> <p>[(c) organized as a reciprocal,]</p> <p><u>(c) organized as a limited liability company with the capital of the association captive insurance company or industrial insured captive insurance company:</u></p> <p><u>(i) divided into interests; and</u></p> <p><u>(ii) held by the members of the association captive insurance company or industrial insured captive insurance company.</u></p> <p>...</p>	Policy change/technical change: Allows for the formation of an association captive as an LLC, consistent with Utah corporations law. Removes reference to reciprocals, inadvertently missed when previously deleted from the Code.
4174-4175	<p>[(14) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.]</p> <p>...</p>	Technical change: Removes reference to reciprocal captive insurers that was inadvertently missed when reciprocals were previously removed from the Code.
4190-4193	<p>[(16)] (15) (a) A captive insurance company formed as a limited liability company under this chapter has the privileges and is subject to [Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or] Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405], as well as the applicable provisions in this chapter.</p> <p>...</p>	Technical change: Drafter's change to update corporate code references.
4206-4217	<p>[(17) (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.]</p> <p>[(b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.]</p> <p>[(c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208,</p>	Technical change: Removes reference to reciprocal captive insurers that was inadvertently missed when reciprocals were previously removed from the

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p>the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.] [(d) In addition to the provisions of this Subsection (17), a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.]</p>	Code.
	31A-37-303. Reinsurance.	
4227-4228	<p>(1) A captive insurance company may cede risks to any insurance company approved by the commissioner. A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.</p>	<p>Policy change: Establishes that a captive insurer can cede risk to another insurer if approved by the commissioner. This is necessary due to reference to this Section in 31A-37-202(1)(b)(viii), which states that a captive can cede risk as allowed here, 31A-37-303. Prior to this change the Code was silent with regard to whom a captive can cede risk.</p>
	31A-37-305. Contributions to guaranty or insolvency fund prohibited.	
4242-4243	<p>(1) A captive insurance company[-, including a captive insurance company organized as a reciprocal insurer under this chapter,] may not join or contribute financially to any of the following in this state: (a) a plan; (b) a pool; (c) an association; (d) a guaranty fund; or (e) an insolvency fund.</p>	<p>Technical change: Removes reference to reciprocal captive insurers that was inadvertently missed when reciprocals were previously removed from the Code.</p>
4252-4254	<p>(2) A captive insurance company, the insured of a captive insurance company, the parent of a captive insurance company, an affiliate of a captive insurance company, <u>or</u> a member organization of an association captive insurance company[-, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the captive insurance company,] may not receive a benefit from: (a) a plan; (b) a pool; (c) an association; (d) a guaranty fund for claims arising out of the operations of the captive insurance company; or (e) an insolvency fund for claims arising out of the operations of the captive insurance company.</p>	
	31A-42-201. Creation of risk adjuster mechanism -- Board of directors -- Appointment -- Terms -- Quorum -- Plan preparation.	
4271-4275	<p>(1) There is created the "Utah Defined Contribution Risk Adjuster," a nonprofit entity within the department. (2) (a) The risk adjuster is under the direction of a board of directors composed of up to nine members described in</p>	<p>Codify existing practice: Reduces the number of directors</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	<p>Subsection (2)(b). (b) The board of directors shall consist of: (i) the following directors appointed by the governor with the consent of the Senate: (A) at least three <u>one</u>, but up to five, directors with actuarial experience who represent insurers[-(4)] that are participating or have committed to participate in the defined contribution arrangement market in the state; and [(H) including at least one and up to two directors who represent an insurer that has a small percentage of lives in the defined contribution market;]</p>	<p>on the Board of Avenue H. Insurer participation on Avenue H reduced to only two carriers. Of those two carriers, only one carrier has business on Avenue H that is affected by the provisions of this Chapter. As a result of the ACA, provisions of this Chapter are limited to a very narrow scope that applies only to business that was effective prior to January 1, 2014. This Chapter is scheduled to repeal effective 12-31-2018.</p>
31A-44-603. Examinations.		
4314-4315	<p><u>(3) Books and records shall be kept for not less than three calendar years in addition to the current calendar year.</u></p>	<p>Policy Change: Requires continuous care providers maintain books and records for a minimum of 3 years. This Chapter was added in 16' and including a record retention requirement was overlooked.</p>
53-2a-1102. Search and Rescue Financial Assistance Program -- Uses -- Rulemaking -- Distribution.		
4424-4425	<p>(13) Pursuant to Subsection 31A-1-103(7), the Utah Search and Rescue Assistance Card Program under this section is exempt from being considered an insurance [program under Subsection] as defined in Section 31A-1-301[(86)].</p>	<p>Technical change: Corrects reference to definition of "insurance" in reference to exemption of the Utah Search and Rescue Assistance Card Program from the Insurance Code.</p>
59-7-102. Exemptions.		
4433-4444	<p>(1) Except as provided in this section, the following are exempt from a tax under this chapter: . . . (c) <u>an insurance company that is subject to taxation on the insurance company's premiums under Chapter 9, Taxation of Admitted Insurers , regardless of whether the insurance company has a tax liability under that chapter;</u> . . . <u>(g) a person subject to taxation under Section 31A-3-301 or 31A-3-302, regardless of 4217 whether the person has a tax liability under that section; or</u></p>	<p>Codifying existing practice: Clarifies existing law exempting admitted insurers and captive insurers from paying taxes, fees or assessments to the State or local governments outside of the premium taxes and fees</p>

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

	(h) a captive insurance company that pays a fee under Section 31A-3-304.	enumerated in the Insurance Code and the Tax Code (Title 59, Chapter 9). Consolidates the exemptions in the Tax Code. Also codifies understanding that non-admitted insurers (surplus lines) have the same exemption as admitted insurers.
59-9-101. Tax basis -- Rates -- Exemptions -- Rate reductions.		
4382-4383	(6) A captive insurer, as provided in Section 31A-3-304 that pays a fee imposed under this chapter, is not subject to the premium tax under Section 31A-3-304.	Codifying existing practice: Clarifies existing law that a Utah domiciled captive insurer that pays the annual renewal fee under 31A-3-304 is exempt from paying premium tax.
63G-2-302. Private records.		
4666-4668	(1) The following records are private: ... (m) information provided to the Commissioner of Insurance under: (i) Subsection 31A-23a-115 (2) (3)(a); (ii) Subsection 31A-23a-302 (3) (4); or (iii) Subsection 31A-26-210 (3) (4);	Technical change: Updates reference to private records under GRAMA based on renumbering in this Bill.
Section 61. Repealer.		
4739	This bill repeals: Section 31A-22-715 , Alcohol and drug dependency treatment. ...	Codifying existing practice: 31A-22-715 is being moved to 31A-22-645. The language is identical, but has been reformatted for clarity. The movement is due to Part 7 of 31A-22 applies only to group health insurance, where Part 6 applies to individual and group. The Department has been applying the standard to both group and individual.

Summary of HB 42 1st Substitute, Insurance Related Modifications (2-8-17)
Representative Jim Dunnigan – Chief Sponsor
Senate Sponsor – Senator Bramble

<p>Section 31A-22-718, Dependent coverage.</p> <p>...</p> <p>Section 31A-37-306, Conversion or merger.</p>	<p>Technical change: 31A-22-718 is being moved, without change, to 31A-22-610.5.</p> <p>Technical change: 31A-37-306 outlines how an association captive or industrial insured group converts or merges into a reciprocal captive insurer. However, reciprocal captive insurers were previously removed from the Code; this Section was inadvertently overlooked and needs to be deleted.</p>
<p>Section 69. Retrospective operation.</p>	
<p><u>(1) The amendments in this bill to Section 31A-3-102 and Section 59-7-102 have retrospective operation for a taxable year beginning on or after January 1, 2017, except that the amendments to Subsections 31A-3-102(2)(b) and 59-7-102(1)(g) have retrospective operation for a taxable year beginning on or after January 1, 2011.</u></p> <p><u>(2) The amendments in this bill to Section 59-9-101 have retrospective operation to January 1, 2017.</u></p>	<p>Codifying existing practice: makes the premium tax changes for non-admitted insurers (surplus lines) retrospective to 2011 and the other tax changes to 2017 tax years.</p>