

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Net Fiscal Benefits:	\$0	\$0	\$0

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

This repeal is not expected to have any fiscal impacts on large businesses revenues or expenditures, because repeal of the rule requires no action or compliance by any persons. During the 2018 General Session, the Legislature passed SB135, Insurance Contracts Amendments, which prohibits discretionary clauses in certain insurance contracts as set forth in 31A-21-314. The revision makes this regulation obsolete.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.

~~[R590. Insurance, Administration.~~

~~R590-218. Permitted Language for Reservation of Discretion Clauses.~~

~~R590-218-1. Authority.~~

~~— This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to regulate the use of reservation of discretion clauses in forms filed by insurers with the department is found in Subsections 31A-21-201(3) and 31A-21-314(2).~~

**~~R590-218-2. Purpose.~~**

~~— This rule prohibits the use of reservation of discretion clauses in forms that are not associated with ERISA employee benefit plans. It creates a safe harbor for insurance companies that provide insurance to ERISA employee benefit plans sponsored by employers, allowing insurers to know what language in insurance forms is acceptable to the department.~~

**~~R590-218-3. Applicability.~~**

~~— This rule applies to all forms filed with the department, regardless of the insurance line or type of form.~~

**~~R590-218-4. Definitions.~~**

~~— For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301 and the following:~~

~~— (1) "Employee benefit plan" means an employee welfare benefit plan as defined in 29 U.S.C. 1002(1) or an employee pension benefit plan as defined in 29 U.S.C. 1002(2) or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.~~

~~— (2) "ERISA" means the Employee Retirement Income Security Act of 1974.~~

~~— (3) "ERISA employee benefit plan" means an employee benefit plan subject to ERISA.~~

~~— (4) "Form" is used as defined in Section 31A-1-301.~~

~~— (5) "Reservation of discretion clause" means language in a form that purports to reserve discretion to interpret the terms of the contract, to determine eligibility for benefits under the plan, or to establish a scope of judicial review or standards of interpretation, to the plan administrator, the insurance company acting in the capacity of a plan administrator in an employee benefit plan, or the insurance company acting as the insurer.~~

**~~R590-218-5. Reservation of Discretion Clauses Prohibited - Exception - Safe Harbor Language.~~**

~~— (1) The commissioner finds reservation of discretion clauses in forms to be in violation of Subsections 31A-21-201(3) and 31A-21-314(2). Accordingly, such clauses are not permitted in a form unless provided otherwise by this rule. Any reservation of discretion language previously accepted or approved by the department is hereby prohibited. Any use of reservation of discretion clause in a form required to be filed with the department is a violation of Subsections 31A-21-201(3) and 31A-21-314(2) and is prohibited, regardless of whether the form has been filed with or prohibited by the department.~~

~~— (2) Notwithstanding Subsection (1), a reservation of discretion clause may be included in a form if the form is used only in ERISA employee benefit plans and the reservation of discretion clause has language that is the same as, or substantially similar to, the language in Subsection (3).~~

~~— (3) The following language may be used in a reservation of discretion clause in forms filed for use in ERISA employee benefit plans (Parenthesis indicate that the company filing the form may use a name or pronouns as applicable):~~

~~— "Benefits under this plan will be paid only if (the plan~~

~~administrator) decides in its discretion that (the claimant) is entitled to them. (The plan administrator) also has discretion to determine eligibility for benefits and to interpret the terms and conditions of the benefit plan. Determinations made by (the plan administrator) pursuant to this reservation of discretion do not prohibit or prevent a claimant from seeking judicial review in federal court of (the plan administrator's) determinations.~~

~~— The reservation of discretion made under this provision only establishes the scope of review that a federal court will apply when (a claimant) seeks judicial review of (the plan administrator's) determination of eligibility for benefits, the payment of benefits, or interpretation of the terms and conditions applicable to the benefit plan.~~

~~— (The plan administrator) is an insurance company that provides insurance to this benefit plan and the federal court will determine the level of discretion that it will accord (the plan administrator's) determinations."~~

~~— (4) A reservation of discretion clause in a form that is used in an ERISA employee benefit plan must be highlighted in the form by use of a bold font that is not less than 12 point type.~~

#### **~~R590-218-6. Filing Procedures.~~**

~~— Rather than filing multiple forms for ERISA employee benefit plans and benefit plans not subject to ERISA, an insurer may elect to file one form with the department that has the reservation of discretion language included as a variable element, between brackets, with an accompanying notation stating that the reservation of discretion language will only be included in forms used for ERISA employee benefit plans.~~

#### **~~R590-218-7. Severability.~~**

~~— If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable~~

**~~KEY: insurance, discretion clauses~~**

**~~Date of Enactment or Last Substantive Amendment: March 21, 2003~~**

**~~Notice of Continuation: January 4, 2018~~**

**~~Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-21-201; 31A-21-314]~~**