

**State of Utah**  
**Administrative Rule Analysis**  
Revised May 2024

**NOTICE OF SUBSTANTIVE CHANGE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R590-238**

**Filing ID: Office Use Only**

**Date of Previous Publication (Only for CPRs):**

Click or tap to enter a date.

**Agency Information**

<b>1. Title catchline:</b>	Insurance, Administration	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S. 2700 W.	
<b>City, state</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R590-238. Captive Insurance Companies
<b>3. Purpose of the new rule or reason for the change:</b>
This rule contains references to Rule R590-102, which was recently repealed. The change is necessary to notify captive insurance companies about how the Department sets its fees. It also removes a word that incorrectly describes a certain type of asset.
<b>4. Summary of the new rule or change:</b>
The rule filing updates references to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504. It also removes the word "admitted" from a description of assets described in a financial statement, because GAAP accounting does not account for admitted assets.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to state budget. The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There is no compliance cost for any affected persons. The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2025	FY2026	FY2027
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 31A-2-201	Section 31A-37-106	

**Incorporations by Reference Information**

**7. Incorporations by Reference** (if this rule incorporates more than two items by reference, please include additional tables):

**A) This rule adds or updates the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

**B) This rule adds or updates the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

<b>Official Title of Materials Incorporated (from title page)</b>	
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<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

**Public Notice Information**

**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 09/03/2024

**B) A public hearing (optional) will be held:**

<b>Date (mm/dd/yyyy):</b>	<b>Time (hh:mm AM/PM):</b>	<b>Place (physical address or URL):</b>

**To the agency:** If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

**9. This rule change MAY become effective on:** 09/10/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	07/15/2024
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**R590. Insurance, Administration.**

**R590-238. Captive Insurance Companies.**

**R590-238-1. Authority.**

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-37-106.

**R590-238-2. Purpose and Scope.**

(1) The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements for the regulation of captive insurance companies and special purpose financial captive insurance companies.

(2) This rule applies to:

(a) a captive insurance company licensed under Title 31A, Chapter 37, Captive Insurance companies Act; and

(b) a special purpose financial captive insurance company licensed under Title 31A, Chapter 37a, Special Purpose Financial Captive Insurance Company Act.

**R590-238-3. Definitions.**

Terms used in this rule are defined in Sections 31A-1-301, 31A-37-102, and 31A-37a-102. Additional terms are defined as follows:

(1) "AICPA" means the American Institute of Certified Public Accountants.

(2) "Captive insurance manager" means a person who:

(a) is on the Utah Approved Captive Management Firms list, available on the department's website, <https://insurance.utah.gov/captive>;

(b) pursuant to a written contract with a company, provides and coordinates services including:

(i) accounting;

(ii) statutory filings;

(iii) signed annual statements; and

(iv) coordination of related services; and

(c) acts as an intermediary that facilitates and assists the company in meeting its statutory requirements under Title 31A, Insurance Code.

(3) "Company" means:

(a) a captive insurance company as defined in Section 31A-1-301; and

(b) a special purpose financial captive insurance company as defined in Section 31A-37a-102.

(4) "GAAP" means generally accepted accounting procedures.

(5) "Work papers" or "working papers" include schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

**R590-238-4. Annual Reporting Requirements.**

(1) A company shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501.

(2) The report required in Subsection (1) shall be:

(a) verified by oath of at least two individuals who are executive officers of the company and by the captive manager or a appointed representative;

- (b) prepared using GAAP; and
- (c) filed electronically using the department's website, <https://insurance.utah.gov/captive>.
- (3)(a) A company, except for a company under Subsection (3)(b), shall use the Captive Insurance Company Annual Statement Form.
- (b) A risk retention group and a special purpose financial captive shall use the NAIC's Annual and Quarterly Statements.
- (4) An annual report shall include a Statement of Actuarial Opinion setting forth the qualified actuary's opinion relating to loss and loss adjustment expense reserves.

**R590-238-5. Annual Audit.**

- (1) A company shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file the annual audit report with the commissioner on or before June 30 for the preceding year.
- (2) The annual audit report is part of the company's annual report of financial condition except for the date by which it must be filed with the commissioner.
- (3) The annual audit report shall include:
  - (a) an opinion of an independent certified public accountant that:
    - (i) includes financial statements examined by the independent certified public accountant in accordance with GAAP, as determined by the AICPA;
    - (ii) covers all years presented; and
    - (iii) is on the accountant's stationery showing the address of issuance, date of issuance, and bearing original signatures;
  - (b) a report of evaluation of internal controls, including:
    - (i) an evaluation of the methods and procedures used in the securing of assets and the reliability of the financial records, including controls of the system of authorization and approval, and the separation of duties; and
    - (ii) a review conducted in accordance with GAAP and filed with the commissioner;
  - (c) an accountant's letter furnished to the company, for inclusion in the filing of the audited annual report, stating:
    - (i) that the accountant is independent from the company and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;
    - (ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;
    - (iii) that the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this rule;
    - (iv) that the accountant consents to the requirements of Section R590-238-9;
    - (v) that the accountant consents and agrees to make the work papers available for review by the commissioner, the commissioner's designee, or the commissioner's appointed agent; and
    - (vi) that the accountant is properly licensed by an appropriate state licensing authority;
  - (d) financial statements, including:
    - (i) a balance sheet;
    - (ii) a statement of gain or loss from operations;
    - (iii) a statement of changes in financial position;
    - (iv) a statement of cash flow;
    - (v) a statement of changes in capital paid up, gross paid in, and contributed surplus and unassigned funds; and
    - (vi) notes to financial statements required by GAAP, including:
      - (A) a reconciliation of any differences between the audited financial report and the statement or form filed with the commissioner;
      - (B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and
      - (C) a narrative explanation of each material transaction with the company that involves 3% or more of a company's ~~admitted~~ assets as of the December 31 next preceding; and
  - (e) a certification of loss reserves and loss expense reserves of the company's opining actuary, including:
    - (i) an actuarial opinion of the reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner; and
    - (ii) a certification by the individual who certifies the reasonableness of reserves.
- (4) The actuary who certifies the reasonableness of reserves under Subsection (3)(e) shall be:
  - (a) approved by the commissioner;
  - (b) a member in good standing of the American Academy of Actuaries; and
  - (c) a fellow or an associate of:
    - (i) the Casualty Actuarial Society, for property and casualty companies; or
    - (ii) the Society of Actuaries, for life and health companies.
- (5) A certification under Subsection (3)(e) shall be in a form prescribed by the commissioner.

**R590-238-6. Designation of Independent Certified Public Accountant.**

- (1) A company shall appoint an independent certified public accountant retained to conduct the independent annual audit from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.
- (2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall, within 90 days of termination, report to the commissioner in writing:
  - (a) the name and address of the certified public accountant that is terminated; and
  - (b) the name and address of the certified public accountant that is subsequently retained.

**R590-238-7. Notification of Adverse Financial Condition.**

- (1) A company shall require an independent certified public accountant to immediately notify an officer and the board of directors, in writing, of any determination that the company has materially misstated its financial condition in its report to the commissioner.
- (2) The company shall notify the commissioner of the adverse financial condition within five business days.

**R590-238-8. Additional Capital Requirement.**

- (1) If the commissioner determines that the financial condition of a company warrants additional capital, the commissioner may require the company to deposit, in trust for the company:
  - (a) cash;
  - (b) a security approved by the commissioner; or
  - (c) an irrevocable letter of credit issued by a bank, as defined in Section 7-1-103.
- (2) The commissioner shall return the deposit or letter of credit if the company ceases to do business, but only after being satisfied that the company has discharged all of its obligations.
- (3) A company may receive interest or dividends from the deposit or exchange of the deposits for another deposit of equal value, upon approval of the commissioner.

**R590-238-9. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**

- (1) A company's independent certified public accountant shall:
  - (a) make available for review by the commissioner, or the commissioner's appointed agent, all work papers prepared in the conduct of the audit or examination of the company;
  - (b) retain the work audit papers for a period of not less than seven years after the period reported upon; and
  - (c) provide photocopies of any working papers that the department considers relevant to its audit or examination.
- (2) The department may retain photocopies of any working papers.

**R590-238-10. Documentation Required to be Held in Utah by a Licensed Captive.**

- (1)(a) A company shall maintain and make available for inspection by the commissioner, or the commissioner's appointed agent, all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.
- (b) A company shall keep the original documents in the offices of the company's captive manager, the company's parent, or the company itself.
- (2) A company shall hold complete copies of the documents under Subsection (1)(a) in an office located in Utah that is designated by the company and approved by the commissioner.

**R590-238-11. Reinsurance.**

- (1) A company may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:
  - (a) credit may not be allowed for reinsurance when the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer; and
  - (b) credit may not be allowed, as an asset or a deduction from liability, to a ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer based on the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.
- (2) Reinsurance is effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing the reinsurance.
- (3) The commissioner may require that complete copies of all reinsurance treaties and contracts be filed and approved.

**R590-238-12. Service Providers.**

- (1) A person may not act, in or from this state, as a captive insurance manager, broker, agent, salesperson, or reinsurance intermediary for captive business without the commissioner's authorization.
- (2) An application for authorization shall be on a form prescribed by the commissioner.

**R590-238-13. Directors and Managers.**

- (1) A company shall report any change in any executive officer, director, or manager to the commissioner within 30 days and shall include in its report a biographical affidavit of any new executive officer, director, or manager.
- (2) An officer, director, manager, or employee of a company may not, except on behalf of the company, accept or be the beneficiary of any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the company.
- (3) An officer, director, manager, or employee may receive reasonable compensation for necessary services provided to the company in their usual private, professional, or business capacity.
- (4) Any profit or gain received by or on behalf of a person in violation of Subsection (2) shall inure to the company.

**R590-238-14. Conflict of Interest.**

- (1)(a) A company shall adopt a conflict of interest statement for its directors, managers, and key employees.
- (b) The conflict of interest statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from the individual's duty to further the interests of the company.
- (c) The conflict of interest statement does not preclude an individual from being an officer, director, or manager in more than one insurance company.
- (2) Each officer, director, manager, and key employee shall file a yearly disclosure with the board of directors.

**R590-238-15. Suspension or Revocation.**

- (1) In addition to the grounds in Section 31A-37-505, the commissioner may suspend or revoke the license of a company or place a company on probation for the following reasons:
  - (a) the company has not commenced business according to its plan of operation within two years of being licensed;
  - (b) the company ceased to carry on insurance business in or from Utah; or
  - (c) at the request of the company.
- (2) An action taken by the commissioner shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.

**R590-238-16. Change of Information in Initial Application.**

(1) A material change in a company's business plan, including changes to lines of coverage and limits filed with the commissioner at the time of initial application, requires prior approval of the commissioner.

(2) A change in any other information filed with the initial application shall be submitted to the commissioner within 60 days, but does not require prior approval.

**R590-238-17. Application.**

(1) An application to form a company shall be submitted to the commissioner on the Application to Form a Captive Insurance Company Form.

(2) A complete application including forms, attachments, exhibits, and all other papers and supporting documents shall be filed electronically with the commissioner through the department's website, <https://insurance.utah.gov/captive>.

(3)(a) The application shall be signed in the manner prescribed on the application form.

(b) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the application.

(4)(a) A company shall include with its application a feasibility study of the company's business plan.

(b) The department may test the feasibility of the study by examining the company's corporate records, including:

(i) the charter;

(ii) the bylaws and minute books;

(iii) verification of capital and surplus;

(iv) verification of principal place of business;

(v) determination of assets and liabilities; and

(vi) other factors the commissioner considers necessary.

**R590-238-18. Fee Schedule; Initial Application; Renewal.**

(1) An applicant for a certificate of authority under Title 31A, Chapter 37, Captive Insurance Companies Act, or Title 31A, Chapter 37a, Special Purpose Financial Captive Insurance Company Act, shall pay to the department, at the time the application is filed, a nonrefundable fee established ~~in Sections R590-102-8 and R590-102-9~~ by the Utah Legislature under Section 63J-1-504.

(2) An applicant may pay fees associated with the application:

(a) in person;

(b) online at <https://payment.uid.utah.gov/s/>;

(c) by mail, addressed to Office of the Commissioner, Utah Insurance Department, 4315 S. 2700 W., Suite 2300, Taylorsville, UT 84129, Attention: Captive Insurance Administrator; or

(d) by phone at 801-957-9200.

(3) A company shall pay an initial license fee for the initial year of registration and a renewal fee for each succeeding year in the amount annually established by ~~Sections R590-102-8 and R590-102-9~~ the Utah Legislature under Section 63J-1-504.

(4) A company, except for a captive cell company, shall pay the department ~~an annual~~ a nonrefundable electronic commerce fee in the amount annually established by ~~Section R590-102-23~~ the Utah Legislature under Section 63J-1-504.

(5) A company shall pay the department other fees annually established by ~~Section R590-102-24~~ the Utah Legislature under Section 63J-1-504.

**R590-238-19. Authorized Forms.**

(1) An applicant shall use the following forms, available on the department's website, <https://insurance.utah.gov/captive>, when applying for a certificate of authority for a new company:

(a) Application to Form a Captive Insurance Company;

(b) Appointment of the Insurance Commissioner for the State of Utah as Attorney to Accept Service of Process;

(c) Bank Capitalization Confirmation Form;

(d) Biographical Affidavit for Captive Insurance Company;

(e) Captive Insurance Company Annual Statement Form;

(f) Statement of Economic Benefit to the State of Utah; and

(g) Utah Approved Irrevocable Letter of Credit.

(2) An applicant shall use the following forms, available on the department's website, <https://insurance.utah.gov/captive>, when applying to become an approved captive insurance company service provider:

(a) Application for Placement on Approved Captive Insurer Management Firm List;

(b) Application to Certify Loss and Expense for Captive Insurance Companies Captive Actuary Application; and

(c) Application for Authorization as an Independent Certified Public Accountant for Captive Insurance Companies.

(3) A company, except as provided under Subsection R590-238-4(2)(b), shall use the Captive Insurance Company Annual Statement Form.

(4) A company shall file a Statement of Economic Benefit to the State of Utah form with its initial application and for each year.

**R590-238-20. Severability.**

If any provision of this rule, Rule R590-238, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: captive insurance**

**Date of Last Change: December 22, 2023**

**Notice of Continuation: May 2, 2022**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-37-106**