

**State of Utah**  
**Administrative Rule Analysis**  
Revised June 2022

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** New \_\_\_; Amendment \_x\_; Repeal \_\_\_; Repeal and Reenact \_\_\_

**Title No. - Rule No. - Section No.**

**Rule or Section Number:**

**R590-265**

**Filing ID: Office Use Only**

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room number:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S. 2700 W.	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<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

**Please address questions regarding information on this notice to the agency.**

**General Information**

**2. Rule or section catchline:**

R590-265. Hazardous Financial Condition

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove the Judicial Review and Enforcement Date sections, and update the Severability section to use the department's current language. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.

**B) Local governments:**

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

**C) Small businesses ("small business" means a business employing 1-49 persons):**

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

**D) Non-small businesses ("non-small business" means a business employing 50 or more persons):**

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

**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 changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**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**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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 Insurance, 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-27a-101	

**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, updates, or removes 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, updates, or removes 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>	

Issue Date	
Issue or Version	

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)		
<b>A) Comments will be accepted until:</b>	<b>01/03/2023</b>	
<b>B) A public hearing (optional) will be held:</b>		
<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>

<b>9. This rule change MAY become effective on:</b>	<b>01/10/2023</b>
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**

<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	<b>11/15/2022</b>

**R590. Insurance, Administration.**

**R590-265. Hazardous Financial Condition[~~Rule~~].**

**R590-265-1. Authority.**

This rule is promulgated by the [~~Insurance Commissioner~~] commissioner pursuant to [~~Utah Insurance Code Sections:~~  
 \_\_\_\_\_ (1) 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A; and  
 \_\_\_\_\_ (2) 31A-27-503(1)(a)(v) and 31A-27a-101(3)(c), which authorize the commissioner to make rules pertaining to an insurer deemed to be in hazardous financial condition or potentially hazardous financial condition] Sections 31A-2-201 and 31A-27a-101.

**R590-265-2. Purpose and Scope.**

[~~\_\_\_\_\_ (1) The purpose of this rule is to set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to:~~  
 \_\_\_\_\_ (a) their policyholders;  
 \_\_\_\_\_ (b) creditors; or  
 \_\_\_\_\_ (c) the general public.  
 \_\_\_\_\_ (2) This rule shall not be interpreted to:  
 \_\_\_\_\_ (a) limit the powers granted the commissioner by any laws or parts of laws of this state; or  
 \_\_\_\_\_ (b) supersede any laws or parts of laws of this state.]  
(1) The purpose of this rule is to set forth the standards the commissioner may use to identify an insurer in a hazardous financial condition.  
(2) This rule applies to:  
(a) an insurer; and  
(b) a reinsurer.

**R590-265-3. Definitions.**

Terms used in this rule are defined in Section 31A-1-301.

**R590-265-4. Standards Used by the Commissioner to Determine Hazardous Financial Condition.**

The commissioner may consider the following standards, either singly or a combination of two or more, [~~may be considered by the commissioner~~] to determine whether the continued operation of [~~any insurer transacting an insurance business in this state might be deemed to be~~] an insurer is hazardous to its policyholders, creditors, or the general public [~~The commissioner may consider~~]:  
 (1) adverse findings reported in:  
 (a) a financial condition examination report[s];

- (b) a market conduct examination report[s];
- (c) an audit report[s]; and; or
- (d) an actuarial opinion[s], report[s] or [summaries]summary;
- (2) the ~~[National Association of Insurance Commissioners' Insurance]~~ NAIC Regulatory Information System and its other financial analysis solvency tools and reports;
- ~~[(3) the insurer's provision]~~ (3) whether the insurer made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when ~~[considered in light of]~~ the assets held by the insurer ~~[with respect to such]~~ for the reserves and related actuarial items ~~[including, but not limited to]~~ include:
  - (a) the investment earnings on such assets; and
  - (b) the considerations anticipated to be received and retained under [such]the policies and contracts;
  - (4) an assuming reinsurer's ability to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after [taking into account]considering:
    - (a) the insurer's cash flow;
    - (b) the classes of business written; and
    - (c) the financial condition of the assuming reinsurer;
    - (5) whether the insurer's operating loss in the last 12[-]-month period or any shorter period of time, including [but not limited to]net capital gain or loss, change in non-admitted assets, and cash dividend paid to shareholders, [if-]is greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
    - (6) whether the insurer's operating loss in the last 12[-]-month period or any shorter period of time, excluding net capital gains, [if it-]is greater than 20% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
    - (7) whether an obligor or an entity within the insurer's holding company system is insolvent[-or-], nearly insolvent, or delinquent in payment of its monetary or other obligations, [obligor or any entity within the insurer's insurance holding company system, when -]and in the opinion of the commissioner it may [also affect]impact the solvency of the insurer;
    - (8) contingent liabilities, pledges, or guaranties [which-]that either individually or collectively involve a total amount [which-]that, in the opinion of the commissioner, may [affect]impact the solvency of the insurer;
    - ~~[(9) any "controlling person-"]~~ (9) whether a controlling person of an insurer [who-]is delinquent in transmitting [to, or payment of, or paying] net premiums to the insurer;
    - (10) the age and collectability of receivables;
    - (11) whether [management of an insurer, including -]an officer[s], a director[s], or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate competence, fitness, and reputation [deemed-]considered necessary to serve the insurer in such position;
    - ~~[(12) the insurer's failure-]~~ (12) whether the insurer failed to respond to [inquiries relative to -]an inquiry regarding the condition of the insurer or has furnished false and misleading information concerning an inquiry;
    - ~~[(13) the insurer's failure-]~~ (13) whether the insurer failed to meet financial and holding company filing requirements[-in the absence of], absent a reason satisfactory to the commissioner;
    - (14) whether [management of]an insurer[-has]:
      - (a) filed ~~[any-]~~ a false or misleading sworn financial statement;
      - (b) released ~~[any-]~~ a false or misleading financial statement to a lending institution[s] or to the general public; or
      - (c) made a false or misleading entry or omitted an entry of a material amount in the books of the insurer;
    - ~~[(15) a lack of]~~ (15) whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet obligations in a timely manner[-due to the insurer's rapid growth];
    - (16) whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems[-currently identified or expected in the foreseeable future];
    - (17) whether the insurer established reserves that do not comply with minimum standards established by [the state-]insurance laws[, regulations] and rules, statutory accounting standards, sound actuarial principles, and standards of practice;
    - ~~[(18) persistent-]~~ (18) whether the insurer persistently engages in under reserving, resulting in adverse development;
    - (19) whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains[-or both, if the transactions] do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or
    - (20) any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

**R590-265-[4]5. Commissioner's Authority.**

- ~~[(1) For the purposes of making a determination of-]~~ (1) To determine an insurer's financial condition under this rule, the commissioner may:
  - (a) disregard any credit or amount receivable resulting from a transaction[s] with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;
  - (b) make appropriate adjustments including disallowance to asset values attributable to an investment[s] in or transaction[s] with [parents, subsidiaries, or affiliates-]a parent, subsidiary, or affiliate consistent with the NAIC Accounting Practices and Procedures Manual[, state laws and regulations] and state laws and rules;

(c) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken with the next 12[-]-month period.

(2) If the commissioner determines that the continued operation of the insurer [~~licensed to transact business in this state~~] may be hazardous to its policyholders, creditors, or the general public, [~~then~~] the commissioner may [~~upon a determination~~] issue an order requiring the insurer to:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce, suspend, or limit the volume of business being accepted or renewed;

(c) reduce general insurance and commission expenses by specified methods;

(d) increase the insurer's capital and surplus;

(e) suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policy[-]holders;

(f) file reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(g) limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner [~~deems~~] considers necessary;

(h) document the adequacy of premium rates in relation to the risks insured;

(i) file, in addition to regular annual statements, interim financial reports on the form adopted by the [~~National Association of Insurance Commissioners~~] NAIC or in [~~such format as promulgated~~] a format adopted by the commissioner;

(j) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;

(k) provide a business plan to the commissioner [~~in order~~] to continue to transact business in the state; or

(l) notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

~~(3) If the insurer is~~ (3) The commissioner's order against a foreign insurer [~~the commissioner's order~~] may be limited to the extent provided by statute.

(4) An insurer subject to an order under Subsection (1) may request a hearing to review [~~that~~] the order. The notice of hearing shall:

(a) be served upon the insurer pursuant to Section 31A-27-503;

(b) state the time and place of the hearing [~~and the conduct, condition or ground upon which~~]; and

(c) state the ground the commissioner [~~based~~] relied upon in the order.

(5) Unless mutually agreed [~~between~~] upon by the commissioner and the insurer, [~~all hearings~~] a hearing under Subsection (4) shall:

(a) occur not less than 10 days [~~nor~~] or more than 30 days after notice is served; and

(b) be [~~either~~] conducted in Salt Lake County or in [~~some other place~~] another location convenient to the parties designated by the commissioner.

~~(6) The commissioner shall hold all hearings under Subsection (4) privately, unless the insurer requests a public hearing, in which case the hearing shall be public.~~

#### **~~R590-265-5. Judicial Review.~~**

~~Any order or decision of the commissioner shall be subject to review in accordance with 31A-27-503(4)(b) at the instance of any party to the proceedings whose interests are substantially affected.~~

#### **~~R590-265-6. Enforcement Date.~~**

~~The commissioner will begin enforcing the provisions of this rule 30 days from the rule's effective date.~~

#### **~~R590-265-7]6. Severability.~~**

[If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall 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.] If any provision of this rule, Rule R590-265, 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: insurers, hazardous financial conditions**

**Date of Enactment or Last Substantive Amendment: November 9, 2012**

**Notice of Continuation: November 2, 2017**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-27-503(1)(a)(v); 31A-27a-101(3)(c)**