

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment ___; Repeal ___; Repeal and Reenact _x_		
Title No. - Rule No. - Section No.		
Rule or Section Number:	R590-67	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
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R590-67. Proxy, Consent, and Authorization of a Domestic Stock Insurer
<b>3. Purpose of the new rule or reason for the change</b> (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.
<b>4. Summary of the new rule or change</b> (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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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, 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**

<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 the state budget. The changes are largely clerical in nature, and will not change how the department functions.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
<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 changes are largely clerical in nature, and will not affect small businesses.
<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 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			
Fiscal Cost	FY2023	FY2024	FY2025
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	FY2023	FY2024	FY2025
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	Ex 2: Subsection 63G-3-403(3)	

**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>	
<b>Issue Date</b>	

<b>Issue or Version</b>	
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**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:** **05/31/2023**

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

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

**9. This rule change MAY become effective on:** **06/07/2023**

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, 302, 303, and 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>	<b>04/14/2023</b>
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**R590. Insurance, Administration.**

~~**R590-67. Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers.**~~

~~**R590-67-1. Authority.**~~

~~\_\_\_\_\_ This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement the Insurance Code.~~

~~**R590-67-2. Application of Rule.**~~

~~\_\_\_\_\_ This rule is applicable to all domestic stock insurers having 100 or more stockholders: provided, however, that this rule may not apply to any insurer if 95% or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by fewer than 500 stockholders. A domestic stock insurer which files with the Securities and Exchange Commission forms of proxies, consents and authorizations complying with the requirements of the Securities and Exchange Act of 1934 and Rule X-14 of the Securities and Exchange Commission shall be exempt from the provisions of this rule.~~

~~**R590-67-3. Proxies, Consents and Authorizations.**~~

~~\_\_\_\_\_ No domestic stock insurer, or any director, office or employee of the insurer subject to Section 2, or any other person, may solicit, or permit the use of his name to solicit, by mail or otherwise, any proxy, consent or authorization of any stock of the insurer in contravention of this rule. The following documents are available from the Insurance Department:~~

~~\_\_\_\_\_ A. "Proxy Form A", entitled "Information Required in Proxy Statement,"~~

~~\_\_\_\_\_ B. "Proxy Form B", entitled "Information To Be Included in Statement Filed by or on Behalf of a Participant, Other Than the Insurer, in a Proxy Solicitation in an Election Contest."~~

~~**R590-67-4. Disclosure of Equivalent Information.**~~

~~\_\_\_\_\_ Unless proxies, consents or authorizations of a stock of a domestic insurer subject to Section 3 of this rule are solicited by or on behalf of the management of the insurer from the holders of record of stock of the insurer in accordance with this rule and its schedules prior to any annual or other meeting, the insurer shall, in accordance with this rule or other rule, or both, as the commissioner may adopt, file with the commissioner and transmit to all stockholders of record, information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.~~

~~**R590-67-5. Definitions.**~~

~~\_\_\_\_\_ A. The definitions and instructions set out in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, shall be applicable for purposes of this rule.~~

~~\_\_\_\_\_ B. The terms "solicit" and "solicitation" for purposes of this rule shall include:~~

~~\_\_\_\_\_ 1. any request for a proxy, whether or not accompanied by or included in a form of proxy; or~~

~~\_\_\_\_\_ 2. any request to execute or not to execute, or to revoke, a proxy; or~~

~~\_\_\_\_\_ 3. the furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.~~

~~\_\_\_\_\_ C. The terms "solicit" and "solicitation" may not include:~~

~~\_\_\_\_\_ 1. any solicitation by a person of a stock of which he is the beneficial owner;~~

~~\_\_\_\_\_ 2. action by a broker or other person in respect to stock carried in his name or in the name of his nominee in forwarding to the beneficial owner of the stock soliciting material received from the company, or impartially instructing the beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy, or impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date; and~~

~~\_\_\_\_\_ 3. the furnishing of a form of proxy to a stockholder upon the unsolicited request of the stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.~~

**~~R590-67-6. Information to be Furnished to Stockholders.~~**

~~\_\_\_\_\_ A. No solicitation subject to this rule may be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Proxy Form.~~

~~\_\_\_\_\_ B. If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to Subsection A of this section shall be accompanied or preceded by an annual report, in preliminary or final form, to the stockholders containing the financial statements for the last fiscal year as are referred to in Schedule SIS under the heading "Financial Reporting to Stockholders." Subject to the foregoing requirements with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.~~

~~\_\_\_\_\_ C. Two copies of each report sent to the stockholders pursuant to this section shall be mailed to the commissioner not later than the date on which the report is first sent or given to stockholder or the date on which preliminary copies of solicitation material are filed with the commissioner pursuant to Subsection A of Section 8, whichever date is later.~~

**~~R590-67-7. Requirements as to Proxy.~~**

~~\_\_\_\_\_ A. The form of proxy:~~

~~\_\_\_\_\_ 1. shall indicate in boldface type whether or not the proxy is solicited on behalf of the management;~~

~~\_\_\_\_\_ 2. shall provide a specifically designated blank space for dating the proxy; and~~

~~\_\_\_\_\_ 3. shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management, or stockholders.~~

~~\_\_\_\_\_ No reference need be made to proposals as to which discretionary authority is conferred pursuant to Subsection C of this section.~~

~~\_\_\_\_\_ B. Means shall be provided in the proxy for the person solicited to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to in the proxy, other than elections to office. A proxy may confer discretionary authority with respect to matters where a choice is not so specified if the form of proxy states in boldface type how it is intended to vote the shares or authorization represented by the proxy in each case.~~

~~\_\_\_\_\_ C. A proxy may confer discretionary authority with respect to other matters which may come before the meeting, provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting and provided further that a specific statement to that effect is made in the proxy statement or in the form of proxy.~~

~~\_\_\_\_\_ D. No proxy may confer authority:~~

~~\_\_\_\_\_ 1. to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement; or~~

~~\_\_\_\_\_ 2. to vote at any annual meeting other than the next annual meeting, or any adjournment of the annual meeting, to be held after the date on which the proxy statement and form of proxy are first sent or given to stockholders.~~

~~\_\_\_\_\_ E. The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the proxy will be voted and that where the person solicited specifies by means of ballot provided pursuant to Subsection B of this section, a choice with respect to any matter to be acted upon, the vote will be in accordance with the specifications so made.~~

~~\_\_\_\_\_ F. The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter with appropriate headings. All printed proxy statements shall be clearly and legibly presented.~~

**~~R590-67-8. Material Required to be Filed.~~**

~~\_\_\_\_\_ A. Two preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to stockholders concurrently shall be filed with the commissioner at least ten days prior to the date definitive copies of the material are first sent or given to stockholders, or the shorter period prior to that date as the commissioner may authorize upon a showing of good cause.~~

~~\_\_\_\_\_ B. Two preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to stockholders subsequent to the proxy statements shall be filed with the commissioner at least two days, exclusive of Saturdays, Sundays or holidays, prior to the date copies of this material are first sent or given to stockholders or a shorter period prior to the date the commissioner may authorize upon a showing of good cause.~~

~~\_\_\_\_\_ C. Two definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which this material is furnished to stockholders, shall be filed with, or mailed for filing to, the commissioner not later than the date the material is first sent or given to the stockholders.~~

~~\_\_\_\_\_ D. Where any proxy statement, form of proxy or other material filed pursuant to these rules is amended or revised, two of the~~

copies shall be marked to clearly show the changes.

~~\_\_\_\_\_ E. Copies of replies to inquiries from stockholders requesting further information and copies of communications, which do no more than request that forms of proxy solicited be signed and returned, need not be filed pursuant to this section.~~

~~\_\_\_\_\_ F. Notwithstanding the provisions of Subsections A and B of this section and of Subsection E of Section 11, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the commissioner prior to use or publication. Definitive copies shall be filed with or mailed for filing to the commissioner as required by Subsection C of this section, not later than the date the material issued or published. The provisions of Subsections A and B of this section and Subsection E of Section 11 shall apply to any reprints or reproductions of all or any part of the material.~~

#### **~~R590-67-9. False or Misleading Statements.~~**

~~\_\_\_\_\_ No solicitation subject to this rule shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements in the solicitation not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.~~

#### **~~R590-67-10. Prohibition of Certain Solicitations.~~**

~~\_\_\_\_\_ No person making a solicitation which is subject to this rule may solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the stockholder.~~

#### **~~R590-67-11. Special Provisions Applicable to Election Contests.~~**

~~\_\_\_\_\_ A. Applicability. This section shall apply to any solicitation to this rule by any person or group for the purpose of opposing a solicitation subject to this rule by any other person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.~~

~~\_\_\_\_\_ B. Participant or Participant in a Solicitation.~~

~~\_\_\_\_\_ 1. For purposes of this section the term "participant" and "participant in a solicitation" include:~~

~~\_\_\_\_\_ (a) the insurer;~~

~~\_\_\_\_\_ (b) any director of the insurer, and any nominee for whose election as a director proxies are solicited; and~~

~~\_\_\_\_\_ (c) any other person, acting alone or with one or more other persons, committees or groups, in organizing, directing or financing the solicitation.~~

~~\_\_\_\_\_ 2. For the purposes of this section the terms "participant" and "participant in a solicitation" do not include:~~

~~\_\_\_\_\_ (a) a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of stock and who is not otherwise a participant;~~

~~\_\_\_\_\_ (b) any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;~~

~~\_\_\_\_\_ (c) any person employed in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the performance of his duties in the course of employment;~~

~~\_\_\_\_\_ (d) any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates whose is not otherwise a participant; or~~

~~\_\_\_\_\_ (e) any officer or director of, or any person regularly employed by any other participant, if the officer, director, or employee is not otherwise a participant.~~

~~\_\_\_\_\_ C. Filing of Information Required by Proxy Form.~~

~~\_\_\_\_\_ 1. No solicitation subject to this section may be made by any person other than the management of an insurer unless at least five business days prior to, or a shorter period as the commissioner may authorize upon showing of good cause, there has been filed with the commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified by Proxy Form and a copy of any material proposed to be distributed to stockholders in furtherance of the solicitation. Where preliminary copies of any materials are filed, distribution to stockholders should be deferred until the commissioner's comments have been received and complied with.~~

~~\_\_\_\_\_ 2. Within five business days after a solicitation subject to this section is made by the management of an insurer, or longer period as the commissioner may authorize upon a showing of good cause, there shall be filed with the commissioner by or on behalf of each participant in the solicitation, other than the insurer, and by or on behalf of each management nominee for director, a statement in duplicate containing the information specified by Proxy Form.~~

~~\_\_\_\_\_ 3. If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this section in opposition to it, a statement in duplicate containing the information specified in Proxy Form shall be filed with the commissioner by or on behalf of each participant in the prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition to it.~~

~~\_\_\_\_\_ 4. If, subsequent to the filing of the statements required by Subsections A, B, and C of this section, additional persons become participants in a solicitation subject to this rule, there shall be filed with the commissioner, by or on behalf of each person, a statement in duplicate containing the information specified by Proxy Form, within three business days after the person becomes a participant, or the longer period as the Department may authorize upon a showing of good cause.~~

~~\_\_\_\_\_ 5. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the commissioner.~~

~~6. Each statement and amendment filed pursuant to this paragraph shall be part of the public files of the commissioner.~~

~~D. Solicitations Prior to Furnishing Required Written Proxy Statement.~~

~~Notwithstanding the provisions of Subsection A of Section 6, a solicitation subject to this section may be made prior to furnishing stockholders a written proxy statement containing the information specified in Proxy Form with respect to the solicitation, provided that:~~

~~1. the statements required by Subsection C of this section are filed by or on behalf of each participant in the solicitation;~~

~~2. no form of proxy is furnished to stockholders prior to the time the written proxy statement required by Subsection A of Section 6 is furnished to the persons provided that Subsection B of this section may not apply where a proxy statement then meeting the requirements of Proxy Form has been furnished to stockholders;~~

~~3. the information specified in Subsection 2 and 3 of C of this section, of the statements required by Subsection C of this section to be filed by each participant, or an appropriate summary of it, are included in each communication sent or given to stockholders in connection with the solicitation; and~~

~~4. a written proxy statement containing the information specified in Proxy Form with respect to a solicitation is sent or given to stockholders at the earliest practicable date.~~

~~E. Solicitations Prior to Furnishing Required Written Proxy Statement—Filing Requirements.~~

~~Two copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by Subsection A of Section 6 shall be filed with the commissioner in preliminary form at least five business days prior to the date definitive copies of the material are first sent or given to the persons, or shorter period as the commissioner may authorize upon a showing of good cause.~~

~~F. Application of This Section to Report.~~

~~Notwithstanding the provisions of Subsections B and C of Section 6, two copies of any portion of the report referred to in subsection two of section five which comments upon or refers to any solicitation subject to this section, or to any participant in any solicitation subject to this section, or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the report are first sent or given to stockholders.~~

#### **R590-67-12. Separability.**

~~If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.]~~

#### **R590-67. Proxy, Consent, and Authorization of a Domestic Stock Insurer.**

##### **R590-67-1. Authority.**

~~This rule is promulgated by the commissioner pursuant to Section 31A-2-201.~~

##### **R590-67-2. Purpose and Scope.**

~~(1) The purpose of this rule is to establish requirements for:~~

~~(a) a proxy;~~

~~(b) a filing;~~

~~(c) a securities solicitation;~~

~~(d) information provided to a securities holder;~~

~~(e) a consent and authorization;~~

~~(f) a proposal;~~

~~(g) a false and misleading statement provision; and~~

~~(h) a provision related to an election contest.~~

~~(2)(a) This rule applies to a domestic stock insurer that has a class of equity securities held of record by 300 or more persons, directors, officers, or employees.~~

~~(b) This rule does not apply to an insurer if 95% or more of its equity securities are owned or controlled by a parent or an affiliated insurer and the remaining securities are held of record by less than 500 persons.~~

~~(c) This rule does not apply to a domestic stock insurer that files with the Securities and Exchange Commission, with respect to a class of securities, forms of proxies, consents, and authorizations complying with the requirements of the Securities Exchange Act of 1934 and its applicable regulations, with respect to that class of securities.~~

~~(d) This rule applies to a proxy, consent, or authorization of a class of equity securities of a domestic insurer solicited by or on behalf of the management of the insurer from the holders of record of the securities and its schedules before any annual or other meeting of the security holders.~~

##### **R590-67-3. Definitions.**

~~Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

~~(1) "Associate" means a relationship with:~~

~~(a) a corporation or organization, other than the issuer or a majority owned subsidiary of the issuer, of which the person is:~~

~~(i) an officer or partner; or~~

~~(ii) directly or indirectly the beneficial owner of 10% or more of any class of equity securities;~~

~~(b) a trust or other estate in which the person:~~

~~(i) has a substantial beneficial interest; or~~

- (ii) serves as a trustee or in a similar fiduciary capacity; or
- (c) a relative or spouse of the person, or any relative of the spouse, who has the same home as the person or who is a director or officer of the issuer or any of its parents or subsidiaries.
- (2) "Beneficial owner" means a person who, directly or indirectly, through a contract, arrangement, understanding, relationship, or otherwise, has or shares:
  - (a) voting power, including the power to vote, or the power to direct voting of, a security; or
  - (b) investment power that includes the power to dispose of, or to direct the disposition of, a security.
- (3) "Issuer" means the issuer of the security for which a proxy is solicited.
- (4) "Last fiscal year" means the issuer's last fiscal year ending before the date of the meeting for which a proxy is solicited.
- (5) "Officer" means a:
  - (a) president;
  - (b) secretary;
  - (c) treasurer;
  - (d) vice president in charge of a principal business function; or
  - (e) person who performs a similar policy-making function for an insurer.
- (6) "Parent" means an affiliate controlling a person directly or indirectly through one or more intermediaries.
- (7) "Proxy statement" means a statement required by Section R590-67-7, whether or not contained in a single document.
- (8)(a) "Solicitation" or "solicit" means:
  - (i) a request for a proxy, whether or not accompanied by or included in a proxy form;
  - (ii) a request to execute, to not execute, or to revoke, a proxy; or
  - (iii) furnishing a proxy form or other communication to a security holder under a circumstance reasonably calculated to result in the procurement, withholding, or revocation of a proxy.
- (b) "Solicitation" or "solicit" does not mean:
  - (i) furnishing a proxy form to a security holder upon the unsolicited request of the security holder;
  - (ii) the performance by the issuer of an act required by Section R590-67-11; or
  - (iii) the performance by any person of a ministerial act on behalf of a person soliciting a proxy.

#### **R590-67-4. Required Schedules.**

- (1) The following schedules shall be used by an insurer complying with this rule:
  - (a) Schedule A, Required Proxy Form Information;
  - (b) Schedule B, Required Solicitation Information; and
  - (c) Schedule C, Information Statement Requirements.
- (2) The schedules listed in Subsection (1) are available on the department's website, <https://insurance.utah.gov>.
- (3) A solicitation may not be made unless each person solicited is furnished with a written proxy statement containing the information specified in Schedule A.
- (4) A solicitation may not be made by any person other than the issuer unless, at least five business days before, or a shorter period authorized by the commissioner, a statement, on behalf of each participant, is filed with the commissioner, in duplicate, containing the information specified by Schedule B.
- (5) For any solicitation, a domestic insurer shall file with the commissioner, and transmit to each security holder who is entitled to vote, a written information statement containing the information specified in Schedule C.

#### **R590-67-5. False or Misleading Statements.**

A proxy statement, proxy form, notice of meeting, information statement, or other communication, written or oral, may not contain a statement that, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits a material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the same meeting or subject matter that has become false or misleading.

#### **R590-67-6. Solicitation.**

- (1) Sections R590-67-6 through R590-67-13 apply to any solicitation, except for a solicitation:
  - (a) not made on behalf of an insurer where the total number of persons solicited is ten or fewer;
  - (b) by a person regarding a security carried in the person's name or in the name of the person's nominee, other than as a voting trustee, or held in the person's custody, if the person:
    - (i) does not receive commission or remuneration for the solicitation, directly or indirectly, other than reimbursement of reasonable expenses;
    - (ii) furnishes promptly to the solicited person a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who furnish copies thereof for that purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding the material; and
    - (iii) does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date;
  - (c) by a person regarding securities of which it is the beneficial owner;

(d) through a newspaper advertisement that informs security holders of a source where they may obtain copies of a proxy statement, proxy form, and other soliciting material, and only includes:

- (i) the name of the issuer;
- (ii) the reason for the advertisement; and
- (iii) the proposal to be acted upon by security holders; and
- (e) exempted from this rule by the commissioner.

#### **R590-67-7. Information to be Provided to Security Holders.**

(1) If a solicitation is made on behalf of the issuer and relates to an annual meeting of security holders where directors are elected, each proxy statement shall be accompanied or preceded by an annual report to security holders that meets the provisions of this subsection.

(a) The report shall contain, in comparative columnar form, financial statements for the last two fiscal years, prepared on a consistent basis, that in the opinion of the management, adequately reflect the financial position of the issuer at the end of each year and the results of its operations for each year.

(i) Consolidated financial statements of the issuer and its subsidiaries shall be included in the report if they are necessary to reflect the financial position and results of operations of the issuer and its subsidiaries, but in that case, the individual statements of the issuer may be omitted.

(ii) The commissioner may, upon the request of the issuer, permit the omission of financial statements for the earlier of the two fiscal years upon a showing of good cause.

(b) The financial statements for the last two fiscal years required by Subsection (1)(a) shall be prepared in a manner acceptable to the commissioner.

(c) The report shall include, in comparative columnar form, a summary of the issuer's operations, or the operations of the issuer and its subsidiaries consolidated, or both as appropriate, for each of the last five fiscal years of the issuer, or the life of the issuer and its predecessors, if less.

(d) The report shall contain a brief description of the business done by the issuer and its subsidiaries during the most recent fiscal year that will, in the opinion of management, indicate the general nature and scope of the business of the issuer and its subsidiaries.

(e) The report shall identify:

- (i) each of the issuer's directors and officers;
- (ii) the principal occupation or employment of each person; and
- (iii) the name and principal business of the organization where each person is employed.

(f) The report shall identify the principal market in which securities of any class entitled to vote at the meeting are traded, stating the range of bid and asked quotations for each quarterly period during the issuer's two most recent fiscal years, and shall set forth each dividend paid during the two-year period.

(g) The report may be in any form suitable to management and the information required by Subsections (1)(c) through (1)(f) may be presented in an appendix or other separate section of the report, if the attention of security holders is called to the presentation.

(2) Subsection (1) does not apply to a solicitation made on behalf of the management before the financial statements are available if:

(a) solicitation is being made at the time in opposition to the management; and

(b) the management's proxy statement includes an undertaking, in boldface type, to furnish the annual report to all persons being solicited at least 20 days before the date of the meeting.

(3) The report sent to security holders shall be filed with the commissioner, for the commissioner's information, no later than the later of:

(a) the date on which the report was first provided to security holders; or

(b) the date on which a preliminary copy of the solicitation material is filed pursuant to Section R590-67-10.

(4)(a) If securities of any class entitled to vote at a meeting where the issuer intends to solicit proxies, consents, or authorizations are held of record by a broker, dealer, bank, or voting trustee, or their nominees, the issuer shall inquire of the record holder at least 10 days before the record date for the meeting of security holders whether other persons are the beneficial owners of the securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply these materials to beneficial owners.

(b) The issuer shall supply the record holder in a timely manner with additional copies assembled in a form and at a place the record holder may reasonably request, in order to address and send one copy to each beneficial owner of securities so held and shall, upon the request of the record holder, pay its reasonable expenses for mailing the materials to the security holders to whom the material is sent.

#### **R590-67-8. Proxy Requirements.**

(1) A proxy form shall:

(a) indicate, in boldface type, whether a proxy is solicited on behalf of the insurer's board of directors and, if not, by whom it is solicited;

(b) provide a specifically designated blank space for dating the proxy; and

(c) clearly and impartially identify each matter or group of related matters to be acted upon, whether proposed by the insurer

or by a security holder.

(2) A process affording the solicited person an opportunity to specify by ballot a choice between approval, disapproval, or abstention with respect to each matter to be acted upon, other than officer elections, shall be provided in a proxy form.

(a) A proxy may confer discretionary authority regarding matters where a choice is not specified provided the proxy states, in boldface type, how it intends to vote the shares represented by the proxy in each case.

(b) A proxy that provides both for the election of directors and for action on other specified matters shall be prepared clearly to provide, by a box or otherwise, a process by which the security holder may withhold authority to vote for any nominee as a director.

(c) The executed proxy by the security holder to grant authority to vote for the election of all nominees grants authority for all nominees for which a vote is not withheld, provided the proxy so states in boldface type.

(3) A proxy may confer discretionary authority to vote with respect to the following:

(a) a matter that the person making the solicitation does not know, a reasonable time before the solicitation, will be presented at the meeting, if a specific statement to that effect is made in the proxy statement or proxy form;

(b) approval of the minutes of the prior meeting if the approval does not amount to ratification of the action taken at the meeting;

(c) the election of any person to any office for which a bona fide nominee is named in the proxy statement and the nominee is unable to serve or for good cause will not serve;

(d) a proposal omitted from the proxy statement and proxy form pursuant to Section R590-67-12; or

(e) a matter incident to the conduct of the meeting.

(4) A reference to a proposal where discretionary authority is given under Subsection (3) is not required.

(5)(a) A proxy may not confer authority to vote for the election of any person to an office for which a bona fide nominee is not named in the proxy statement, or to vote at an annual meeting, other than the next annual meeting, to be held after the date the proxy statement and proxy form are first sent or given to security holders.

(b) A person is not a bona fide nominee and may not be named as such unless the person consents to being named in the proxy statement and to serve if elected.

(6) A proxy statement or proxy form shall provide, subject to reasonable specified conditions, that the securities represented by the proxy will be voted and that where the person solicited specifies, by means of a ballot provided pursuant to Subsection (2), a choice with respect to any matter to be acted upon, the securities will be voted in accordance with the specifications made.

#### **R590-67-9. Presentation of Information in Proxy Statement.**

(1) The information included in a proxy statement shall:

(a) be clearly presented;

(b) be divided into groups according to subject matter; and

(c) for groups of statements, be preceded by appropriate headings.

(2)(a) A proxy statement shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting shall be received by the issuer for inclusion in the issuer's proxy statement and proxy form relating to that meeting.

(b) The date in Subsection (2)(a) shall be calculated under Subsection R590-67-12(2).

(c) If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the issuer shall, in a timely manner and by reasonable means, inform security holders of the change and the date by which proposals of security holders shall be received.

#### **R590-67-10. Material Required to be Filed.**

(1) A copy of the proxy statement, the proxy form, and any other soliciting material furnished to security holders with the proxy shall be filed with the commissioner at least 10 days before the date final copies of the material are first sent or given to security holders, or a shorter period authorized by the commissioner.

(2) A copy of any additional soliciting material relating to the same meeting or subject matter to be furnished to security holders after the proxy statement shall be filed with the commissioner at least two days before the date copies of the material are first sent or given to security holders, or a shorter period authorized by the commissioner.

(3) A copy of the proxy statement, the proxy form, and any other soliciting material in the form the material is furnished to security holders, shall be filed with the commissioner no later than the date the material is first sent or given to any security holder.

(4) A copy of soliciting material in the form of a speech, a press release, or a radio or television script may be filed with the commissioner before use or publication.

(a) A definitive copy shall be filed with the commissioner no later than the date the material is used or published.

(b) Subsections (1) and (2), and R590-67-14(1) apply to a reprint or reproduction of the soliciting material.

(5) An amended or revised copy of a proxy statement, proxy form, or other material shall be filed and clearly marked to indicate the changes.

#### **R590-67-11. Mailing Communications to Security Holders.**

(1) The issuer shall mail or otherwise furnish to a security holder, as promptly as practicable after the receipt of the request:

(a) a statement of the approximate number of record owners and, to the extent known to the issuer, the approximate number of beneficial owners of any class of securities, any of whom have been or are to be solicited on behalf of the management, or any group of whom the security holder shall designate; and

(b) an estimate of the cost of mailing a specified proxy statement, proxy form, or other communication to the owners.

(2)(a) Copies of a proxy statement, a proxy form, or other communication furnished by the security holder shall be provided by the issuer to all security holders specified in Subsection (1)(a) as the security holder shall designate.

(b) The issuer is not required to mail or otherwise provide any material before the first day the solicitation is made on behalf of the issuer.

(c) The issuer is not responsible for the proxy statement, the proxy form, or other communication.

(d) The issuer may furnish promptly to a security holder a reasonably current list of the names and addresses of the record owners and the beneficial owners the security holder designates.

#### **R590-67-12. Proposals of Security Holders.**

(1) "Proponent," for the purposes of this subsection, means a security holder.

(2)(a) If a proponent notifies an issuer, in writing and no less than 90 days before the issuer's annual meeting, of the security holder's intention to present a lawful proposal for action at an upcoming meeting of the issuer's security holders and the proponent is entitled to vote at least 1% of the votes entitled to be voted on the proposal, the issuer shall:

(i) set forth the proposal in its proxy statement;

(ii) identify the proposal in its proxy form; and

(iii) provide for the specification of approval or disapproval of the proposal.

(b) The proxy statement shall also include the name and address of the proponent.

(3) If an issuer opposes a proposal received from a proponent, it shall, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal.

(4) The issuer may omit a proposal and any statement in support thereof from its proxy statement and proxy form if:

(a) the proponent submitted more than one proposal in connection with a particular meeting;

(b) the proposal is more than 300 words long;

(c) the proposal or the supporting statement is contrary to this rule or Schedules A, B, or C, including Section R590-67-5, which prohibits false or misleading statements in proxy soliciting materials;

(d) the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person;

(e) the proposal deals with:

(i) a matter not significantly related to the issuer's business;

(ii) a matter beyond the issuer's power to effectuate;

(iii) a matter relating to the conduct of the issuer's ordinary business operations; or

(iv) an election to office;

(f) the proposal is counter to a proposal submitted by the issuer at the meeting, the proposal is moot, or the proposal relates to specific amounts of cash or stock dividends;

(g) the proposal is substantially duplicative of a proposal previously submitted to the issuer by another proponent, which proposal is included in the management's proxy material for the meeting; or

(h) substantially the same proposal was submitted to security holders in the issuer's proxy statement and proxy form relating to any annual or special meeting of security holders held within the preceding five calendar years and received less than 5% of the total number of votes cast at the time of its most recent submission.

(5) If the issuer intends to omit a proposal from its proxy statement or proxy forms, or both, it shall notify the proponent in writing of its intention at least 10 days before the issuer's preliminary proxy material is filed under Subsection R590-67-10(1).

#### **R590-67-13. Prohibition of Certain Solicitations.**

A person making a solicitation may not solicit an undated or postdated proxy or a proxy that is dated as of a date subsequent to the date it is signed by the security holder.

#### **R590-67-14. Special Provisions Applicable to Solicitations.**

(1) This section applies to a solicitation by a person opposing a solicitation by another person with respect to the election or removal of directors at an annual or special meeting of security holders.

(2)(a) "Participant" or "participant in a solicitation," for purposes of this section, means:

(i) the issuer;

(ii) a director of the issuer or any nominee for whose election as a director proxies are solicited; and

(iii) a person acting alone or with one or more other persons, committees, or groups, in organizing, directing, or financing the solicitation.

(b) "Participant" and "participant in a solicitation" does not mean:

(i) a bank, broker, or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant;

(ii) a person or organization retained or employed by a participant to solicit security holders or a person who merely transmits proxy soliciting material or performs ministerial or clerical duties;

(iii) a person employed in the capacity of attorney, accountant, advertising, public relations, or financial adviser, whose activities are limited to the performance of their duties in the course of employment;

(iv) a person regularly employed as an officer or employee of the issuer or any of its subsidiaries or affiliates who is not

otherwise a participant; or

(v) an officer or director of, or any person regularly employed by, any other participant, if the officer, director, or employee is not otherwise a participant.

(3)(a) Within five business days after a solicitation is made by the issuer, or a longer period authorized by the commissioner, a statement, on behalf of each participant other than the issuer, shall be filed with the commissioner, in duplicate, containing the information specified by Schedule B.

(b) If any solicitation on behalf of the issuer or any other person has been made, or if proxy material is ready for distribution, before a solicitation subject to this section in opposition, a statement in duplicate containing the information specified in Schedule B shall be filed with the commissioner, by or on behalf of each participant in the prior solicitation, other than the issuer, as soon as reasonably practicable after the commencement of the solicitation in opposition.

(c) After filing the statements under Subsections (1) through (3), if additional persons become participants in a solicitation, a statement shall be filed with the commissioner, by or on behalf of each such person, in duplicate, containing the information specified in Schedule B, within three business days after the person becomes a participant, or a longer period authorized by the commissioner.

(d) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the commissioner.

(4) Notwithstanding Subsection R590-67-7(1), a solicitation may be made before furnishing security holders a written proxy statement containing the information specified in Schedule A with respect to the solicitation, provided that:

(a) the statements required by Subsection R590-67-14(3) are filed by or on behalf of each participant in the solicitation;

(b) a proxy form is not furnished to security holders before the time the written proxy statement under Subsection R590-67-14(5) is furnished to security holders, however, this Subsection R590-67-14(4)(b) may not apply where a proxy statement meeting the requirements of Schedule A is furnished to security holders;

(c) the information, or an appropriate summary, under Subsection R590-67-14(3) is filed by each participant and included in each communication furnished to security holders in connection with the solicitation; and

(d) a written proxy statement containing the information specified in Schedule A regarding a solicitation is furnished to security holders at the earliest practicable date.

(5) Proposed soliciting material furnished to security holders before the furnishing of the written proxy statement required by Subsection R590-67-7(1) shall be filed with the commissioner in preliminary form at least five business days before the date definitive copies of the material are first furnished, or a shorter period the commissioner may authorize.

(6) Notwithstanding Subsection R590-67-7(2), any portion of the annual report that refers to any solicitation or to any participant in any solicitation, other than the solicitation by management, shall be filed with the commissioner as proxy material, in preliminary form, at least five days before the date copies of the report are first furnished to security holders.

#### **R590-67-15. Severability.**

If any provision of this rule, Rule R590-67, 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: insurance law**

**Date of Last Change: 2023[1989]**

**Notice of Continuation: August 20, 2019**

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

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