

INSURANCE FINANCIAL REQUIREMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. VanTassell

House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill modifies the Insurance Code to address financial requirements related to insurers or insurance products.

Highlighted Provisions:

This bill:

- ▶ modifies the requirements for when a domestic ceding insurer is allowed credit for reinsurance;
- ▶ modifies the requirements for when a foreign ceding insurer is allowed credit for reinsurance or reduction from liability;
- ▶ grants rulemaking authority related to credits and reinsurance;
- ▶ provides a transition for the modified requirements on credit or reductions from liability;
- ▶ modifies what are permitted investments;
- ▶ modifies limitations on investments;
- ▶ addresses requirements for assumption agreements and reinsurance contracts; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2008.



28 This bill provides revisor instructions.

29 **Utah Code Sections Affected:**

30 AMENDS:

- 31 **31A-2-309**, as last amended by Laws of Utah 2004, Chapter 2
- 32 **31A-15-103**, as last amended by Laws of Utah 2004, Chapter 90
- 33 **31A-17-404**, as last amended by Laws of Utah 1992, Chapter 230
- 34 **31A-18-101**, as enacted by Laws of Utah 1985, Chapter 242
- 35 **31A-18-105**, as last amended by Laws of Utah 2006, Chapter 176
- 36 **31A-18-106**, as last amended by Laws of Utah 2007, Chapter 309
- 37 **31A-20-107**, as last amended by Laws of Utah 1992, Chapter 30
- 38 **31A-20-108**, as last amended by Laws of Utah 2002, Chapter 71
- 39 **31A-22-1201**, as enacted by Laws of Utah 1985, Chapter 242
- 40 **31A-22-1202**, as enacted by Laws of Utah 1985, Chapter 242

41 ENACTS:

- 42 **31A-17-404.1**, Utah Code Annotated 1953
- 43 **31A-17-404.2**, Utah Code Annotated 1953
- 44 **31A-17-404.3**, Utah Code Annotated 1953
- 45 **31A-17-404.4**, Utah Code Annotated 1953

47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **31A-2-309** is amended to read:

49 **31A-2-309. Service of process through state officer.**

50 (1) The commissioner, or the lieutenant governor when the subject proceeding is
51 brought by the state, is the agent for receipt of service of [any] a summons, notice, order,
52 pleading, or [any] other legal process relating to a Utah court or administrative agency upon the
53 following:

54 (a) [~~all insurers~~] an insurer authorized to do business in this state, while authorized to
55 do business in this state, and thereafter in [any] a proceeding arising from or related to [any] a
56 transaction having a connection with this state;

57 (b) [~~all~~] a surplus lines [~~insurers~~] insurer for [any] a proceeding arising out of a
58 contract of insurance that is subject to the surplus lines law, or out of a certificate, cover note,

59 or other confirmation of that type of insurance;

60 (c) ~~[all]~~ an unauthorized ~~[insurers]~~ insurer or other ~~[persons]~~ person assisting an
 61 unauthorized ~~[insurers]~~ insurer under Subsection 31A-15-102(1) by doing an act specified in
 62 Subsection 31A-15-102(2), for a proceeding arising out of ~~[the]~~ a transaction that is subject to
 63 the unauthorized insurance law;

64 (d) ~~[any]~~ a nonresident producer, consultant, adjuster, ~~[and]~~ or third party
 65 administrator, while authorized to do business in this state, and thereafter in ~~[any]~~ a proceeding
 66 arising from or related to ~~[any]~~ a transaction having a connection with this state; and

67 (e) ~~[any]~~ a reinsurer submitting to the commissioner's jurisdiction under Subsection
 68 31A-17-404~~[(7)]~~(8).

69 (2) The following is considered to have irrevocably appointed the commissioner and
 70 lieutenant governor as that person's agents in accordance with Subsection (1):

71 (a) ~~[each]~~ a licensed insurer by applying for and receiving a certificate of authority;

72 (b) ~~[each]~~ a surplus lines insurer by entering into a contract subject to the surplus lines
 73 law;

74 (c) ~~[each]~~ an unauthorized insurer by doing in this state ~~[any of the acts]~~ an act
 75 prohibited by Section 31A-15-103; and

76 (d) ~~[each]~~ a nonresident producer, consultant, adjuster, and third party administrator.

77 (3) The commissioner and lieutenant governor are also agents for ~~[the executors,
 78 administrators or personal representatives, receivers, trustees, or other successors]~~ an executor,
 79 administrator, personal representative, receiver, trustee, or other successor in interest of ~~[the
 80 persons]~~ a person specified under Subsection (1).

81 (4) ~~[Litigants]~~ A litigant serving process on the commissioner or lieutenant governor
 82 under this section shall pay the fee applicable under Section 31A-3-103.

83 (5) The right to substituted service under this section does not limit the right to serve a
 84 summons, notice, order, pleading, demand, or other process upon a person in ~~[any other]~~
 85 another manner provided by law.

86 Section 2. Section **31A-15-103** is amended to read:

87 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

88 (1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a
 89 certificate of authority to do business in this state under Section 31A-14-202 may negotiate for

90 and make an insurance [~~contracts~~] contract with [~~persons~~] a person in this state and on [~~risks~~] a
91 risk located in this state, subject to the limitations and requirements of this section.

92 (2) (a) For [~~contracts~~] a contract made under this section, the insurer may, in this
93 state~~;~~:

94 (i) inspect the risks to be insured~~;~~ ~~collect premiums and adjust losses, and do all other~~
95 ~~acts~~];

96 (ii) collect premiums;

97 (iii) adjust losses; and

98 (iv) do another act reasonably incidental to the contract~~;~~ ~~through employees or through~~
99 ~~independent contractors~~].

100 (b) An act described in Subsection (2)(a) may be done through:

101 (i) an employee; or

102 (ii) an independent contractor.

103 (3) (a) Subsections (1) and (2) do not permit [~~any~~] a person to solicit business in this
104 state on behalf of an insurer that has no certificate of authority.

105 (b) [~~Any insurance~~] Insurance placed with a nonadmitted insurer shall be placed with a
106 surplus lines producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers,
107 Consultants, and Reinsurance Intermediaries.

108 (c) The commissioner may by rule prescribe how a surplus lines producer may:

109 (i) pay or permit the payment, commission, or other remuneration on insurance placed
110 by the surplus lines producer under authority of the surplus lines producer's license to one
111 holding a license to act as an insurance producer; and

112 (ii) advertise the availability of the surplus lines producer's services in procuring, on
113 behalf of [~~persons~~] a person seeking insurance, [~~contracts~~] a contract with a nonadmitted
114 [~~insurers~~] insurer.

115 (4) For [~~contracts~~] a contract made under this section, a nonadmitted [~~insurers are~~]
116 insurer is subject to Sections 31A-23a-402 and 31A-23a-403 and the rules adopted under those
117 sections.

118 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to
119 [~~employers~~] an employer located in this state, except for stop loss [~~coverages~~] coverage issued
120 to [~~employers~~] an employer securing workers' compensation under Subsection 34A-2-201(3).

121 (6) (a) The commissioner may by rule prohibit making [~~contracts~~] a contract under
 122 Subsection (1) for a specified class of insurance if authorized insurers provide an established
 123 market for the class in this state that is adequate and reasonably competitive.

124 (b) The commissioner may by rule place [~~restrictions and limitations~~] a restriction or a
 125 limitation on and create special procedures for making [~~contracts~~] a contract under Subsection
 126 (1) for a specified class of insurance if:

127 (i) there have been abuses of placements in the class; or [~~if~~]

128 (ii) the policyholders in the class, because of limited financial resources, business
 129 experience, or knowledge, cannot protect their own interests adequately.

130 (c) The commissioner may prohibit an individual insurer from making [~~any~~] a contract
 131 under Subsection (1) and all insurance producers from dealing with the insurer if:

132 (i) the insurer [~~has~~] willfully [~~violated~~] violates:

133 (A) this section[;];

134 (B) Section 31A-4-102, 31A-23a-402, or 31A-26-303[;]; or [~~any~~]

135 (C) a rule adopted under [~~any of these sections~~] a section listed in Subsection
 136 (6)(c)(i)(A) or (B);

137 (ii) the insurer [~~has failed~~] fails to pay the fees and taxes specified under Section
 138 31A-3-301; or

139 (iii) the commissioner has reason to believe that the insurer is:

140 (A) in an unsound condition [~~or is~~];

141 (B) operated in a fraudulent, dishonest, or incompetent manner; or

142 (C) in violation of the law of its domicile.

143 (d) (i) The commissioner may issue one or more lists of unauthorized foreign insurers
 144 whose:

145 (A) solidity the commissioner doubts[;]; or [~~whose~~]

146 (B) practices the commissioner considers objectionable.

147 (ii) The commissioner shall issue one or more lists of unauthorized foreign insurers the
 148 commissioner considers to be reliable and solid.

149 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner
 150 may issue other relevant evaluations of unauthorized insurers.

151 (iv) An action may not lie against the commissioner or [~~any~~] an employee of the

152 department for ~~[any]~~ a written or oral communication made in, or in connection with the
153 issuance of, ~~[the lists or evaluations]~~ a list or evaluation described in this Subsection (6)(d).

154 (e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list
155 only if the unauthorized insurer:

156 (i) ~~[has delivered]~~ delivers a request to the commissioner to be on the list;

157 (ii) ~~[has established]~~ establishes satisfactory evidence of good reputation and financial
158 integrity;

159 (iii) (A) ~~[has delivered]~~ delivers to the commissioner a copy of ~~[its]~~ the unauthorized
160 insurer's current annual statement certified by the insurer; and

161 (B) continues each subsequent year to file its annual statements with the commissioner
162 within 60 days of ~~[its filing]~~ the day on which it is filed with the insurance regulatory authority
163 where ~~[it]~~ the insurer is domiciled;

164 (iv) (A) (I) is in substantial compliance with the solvency standards in Chapter 17, Part
165 6, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is
166 greater~~[-]~~; and

167 (II) maintains in the United States an irrevocable trust fund in either a national bank or
168 a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit
169 requirements for insurers in the state where it is made, which trust fund or deposit:

170 ~~[(F)]~~ (Aa) shall be in an amount not less than \$2,500,000 for the protection of all of the
171 insurer's policyholders in the United States;

172 ~~[(H)]~~ (Bb) may consist of cash, securities, or investments of substantially the same
173 character and quality as those which are "qualified assets" under Section 31A-17-201; and

174 ~~[(H)]~~ (Cc) may include as part of the trust arrangement a letter of credit that qualifies
175 as acceptable security under ~~[Subsection 31A-17-404(3)(c)(iii)]~~ Section 31A-17-404.1; or

176 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group
177 of alien individual insurers, maintains a trust fund that:

178 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all
179 policyholders and creditors in the United States of each member of the group;

180 (II) may consist of cash, securities, or investments of substantially the same character
181 and quality as those which are "qualified assets" under Section 31A-17-201; and

182 (III) may include as part of this trust arrangement a letter of credit that qualifies as

183 acceptable security under [~~Subsection 31A-17-404(3)(c)(iii)~~] Section 31A-17-404.1; and

184 (v) for an alien insurer not domiciled in the United States or a territory of the United
185 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National
186 Association of Insurance Commissioners International Insurers Department.

187 (7) [~~A~~] (a) Subject to Subsection (7)(b), a surplus lines producer may not, either
188 knowingly or without reasonable investigation of the financial condition and general reputation
189 of the insurer, place insurance under this section with:

190 (i) a financially unsound [~~insurers or with insurers~~] insurer;

191 (ii) an insurer engaging in unfair practices[;]; or [~~with~~]

192 (iii) an otherwise substandard [~~insurers, unless the producer~~] insurer.

193 (b) A surplus line producer may place insurance under this section with an insurer
194 described in Subsection (7)(a) if the surplus line producer:

195 (i) gives the applicant notice in writing of the known deficiencies of the insurer or the
196 limitations on [~~his~~] the surplus line producer's investigation[;]; and

197 (ii) explains the need to place the business with that insurer.

198 (c) A copy of [~~this~~] the notice described in Subsection (7)(b) shall be kept in the office
199 of the surplus line producer for at least five years.

200 (d) To be financially sound, an insurer shall satisfy standards that are comparable to
201 those applied under the laws of this state to an authorized [~~insurers~~] insurer. [~~Insurers~~]

202 (e) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) [~~and~~
203 ~~insurers~~] or an insurer not on the commissioner's "reliable" list under Subsection (6)(e) [~~are~~] is
204 presumed substandard.

205 (8) (a) A policy issued under this section shall:

206 (i) include a description of the subject of the insurance; and

207 (ii) indicate:

208 (A) the coverage, conditions, and term of the insurance[;];

209 (B) the premium charged [~~and~~] the policyholder;

210 (C) the premium taxes to be collected from the policyholder[;]; and

211 (D) the name and address of the policyholder and insurer.

212 (b) If the direct risk is assumed by more than one insurer, the policy shall state:

213 (i) the names and addresses of all insurers; and

214 (ii) the portion of the entire direct risk each [~~has assumed~~] assumes. [~~All policies~~]

215 (c) A policy issued under [~~the authority of~~] this section shall have attached or affixed to
216 the policy the following statement: "The insurer issuing this policy does not hold a certificate
217 of authority to do business in this state and thus is not fully subject to regulation by the Utah
218 insurance commissioner. This policy receives no protection from any of the guaranty
219 associations created under Title 31A, Chapter 28."

220 (9) Upon placing a new or renewal coverage under this section, [~~the~~] a surplus lines
221 producer shall promptly deliver to the policyholder or [~~his~~] the policyholder's agent evidence of
222 the insurance consisting either of:

223 (a) the policy as issued by the insurer; or[;]

224 (b) if the policy is not [~~then~~] available upon placing the coverage, a certificate, cover
225 note, or other confirmation of insurance complying with Subsection (8).

226 (10) If the commissioner finds it necessary to protect the interests of insureds and the
227 public in this state, the commissioner may by rule subject [~~policies~~] a policy issued under this
228 section to as much of the regulation provided by this title as is required for a comparable
229 [~~policies~~] policy written by an authorized foreign [~~insurers~~] insurer.

230 (11) (a) [~~Each~~] A surplus lines transaction in this state shall be examined to determine
231 whether it complies with:

232 (i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;

233 (ii) the solicitation limitations of Subsection (3);

234 (iii) the requirement of Subsection (3) that placement be through a surplus lines
235 producer;

236 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

237 (v) the policy form requirements of Subsections (8) and (10).

238 (b) The examination described in Subsection (11)(a) shall take place as soon as
239 practicable after the transaction. The surplus lines producer shall submit to the examiner
240 information necessary to conduct the examination within a period specified by rule.

241 (c) (i) The examination described in Subsection (11)(a) may be conducted by the
242 commissioner or by an advisory organization created under Section 31A-15-111 and authorized
243 by the commissioner to conduct these examinations. The commissioner is not required to
244 authorize [~~any~~] an additional advisory [~~organizations~~] organization to conduct [~~examinations~~]

245 an examination under this Subsection (11)(c).

246 (ii) The commissioner's authorization of one or more advisory organizations to act as
247 examiners under this Subsection (11)(c) shall be:

248 (A) by rule[. ~~In addition, the authorization shall be~~]; and

249 (B) evidenced by a contract, on a form provided by the commissioner, between the
250 authorized advisory organization and the department.

251 (d) ~~[The]~~ (i) (A) A person conducting the examination described in Subsection (11)(a)
252 shall collect a stamping fee of an amount not to exceed 1% of the policy premium payable in
253 connection with the transaction. ~~[Stamping fees]~~

254 (B) A stamping fee collected by the commissioner shall be deposited in the General
255 Fund.

256 (C) The commissioner shall establish ~~[this fee]~~ a stamping fee by rule. ~~[Stamping fees]~~

257 (ii) A stamping fee collected by an advisory organization ~~[are]~~ is the property of the
258 advisory organization to be used in paying the expenses of the advisory organization.

259 (iii) Liability for paying ~~[the]~~ a stamping fee is as required under Subsection
260 31A-3-303(1) for taxes imposed under Section 31A-3-301.

261 (iv) The commissioner shall adopt a rule dealing with the payment of stamping fees. If
262 ~~[stamping fees are]~~ a stamping fee is not paid when due, the commissioner or advisory
263 organization may impose a penalty of 25% of the stamping fee due, plus 1-1/2% per month
264 from the time of default until full payment of the stamping fee. ~~[Fees]~~

265 (v) A stamping fee relative to ~~[policies]~~ a policy covering ~~[risks]~~ a risk located partially
266 in this state shall be allocated in the same manner as under Subsection 31A-3-303(4).

267 (e) The commissioner, representatives of the department, advisory organizations,
268 representatives and members of advisory organizations, authorized insurers, and surplus lines
269 insurers are not liable for damages on account of statements, comments, or recommendations
270 made in good faith in connection with their duties under this Subsection (11)(e) or under
271 Section 31A-15-111.

272 (f) ~~[Examinations]~~ An examination conducted under this Subsection (11) and ~~[the~~
273 ~~documents and]~~ a document or materials related to the ~~[examinations]~~ examination are
274 confidential.

275 Section 3. Section **31A-17-404** is amended to read:

276 **31A-17-404. Credit allowed a domestic ceding insurer against reserves for**
 277 **reinsurance.**

278 (1) [~~Credit~~] A domestic ceding insurer is allowed credit for reinsurance [is allowed a
 279 ceding insurer] as either an asset or a [~~deduction~~] reduction from liability for reinsurance ceded
 280 only if the reinsurer meets the requirements of Subsection (3), (4), (5), (6), or (7), subject to the
 281 following:

282 [~~(a) the reinsurance contract and the accounting for the reinsurance transaction conform~~
 283 ~~to the requirements of Subsection (2);]~~

284 [~~(b) one or more of the security factors under Subsection (3) is present, or the~~
 285 ~~transaction is of the type described in Subsection (6); and]~~

286 [~~(c) the assuming insurer has submitted to the jurisdiction of courts in this state in a~~
 287 ~~manner consistent with Subsection (7).]~~

288 (a) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a
 289 kind or class of business that the assuming insurer is licensed or otherwise permitted to write or
 290 assume:

291 (i) in its state or domicile; or

292 (ii) in the case of a United States branch of an alien assuming insurer, in the state
 293 through which it is entered and licensed to transact insurance or reinsurance.

294 (b) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of
 295 Subsection (8) are met.

296 (2) [~~Credit~~] A domestic ceding insurer is allowed credit for reinsurance ceded [may be
 297 granted the ceding insurer]:

298 (a) only if the reinsurance is payable in a manner consistent with Section 31A-22-1201;

299 (b) only to the extent that the accounting:

300 (i) is consistent with the terms of the reinsurance [~~treaty~~] contract; and

301 (ii) clearly reflects;

302 (A) the amount and nature of risk transferred; and [~~any~~]

303 (B) liability, including contingent liability, of the ceding insurer;

304 (c) only to the extent the reinsurance contract shifts insurance policy risk from the
 305 ceding insurer to the assuming reinsurer in fact and not merely in form; and

306 (d) only if the reinsurance contract contains a provision placing on the reinsurer the

307 credit risk of all dealings with intermediaries regarding the reinsurance contract.

308 ~~[(3) Except as modified for reinsurance pools under Subsection (5), the requirement~~
309 ~~under Subsection (1)(b) that a security factor be present is satisfied if:]~~

310 ~~[(a) the reinsurer is authorized to do business in this state;]~~

311 ~~[(b) the reinsurer has deposited in trust under Section 31A-2-206, or a comparable~~
312 ~~provision of the law of another state of the United States, for the benefit of Utah insureds or a~~
313 ~~broader class of insureds that includes Utah insureds, an amount the Utah commissioner~~
314 ~~considers sufficient to provide for the reinsurer's total liabilities under the trust, with complete~~
315 ~~protection to Utah insureds;]~~

316 ~~[(c) the ceding insurer retains, as security for the payment of obligations under the~~
317 ~~reinsurance contract, funds belonging to the reinsurer, subject to withdrawal solely by the~~
318 ~~ceding insurer and under its exclusive control; but credit may be taken only to the extent the~~
319 ~~funds are:]~~

320 ~~[(i) cash or cash equivalents;]~~

321 ~~[(ii) securities approved by the commissioner, valued at market price;]~~

322 ~~[(iii) irrevocable and unconditional letters of credit which comply with rules adopted~~
323 ~~by the commissioner and are issued by a bank or trust company which is a member of the~~
324 ~~Federal Reserve system;]~~

325 ~~[(iv) additional forms of security approved by rule, or]~~

326 ~~[(v) a combination of Subsections (3)(c)(i) through (iv);]~~

327 ~~[(d) the reinsurer maintains a trust fund in a United States bank or trust company for~~
328 ~~the payment of the valid claims of its United States policyholders and ceding insurers, their~~
329 ~~assigns, and successors in interest in an amount and subject to the conditions provided in~~
330 ~~Subsection (4); or]~~

331 ~~[(e) the reinsurer is an authorized insurer in at least one state which the Utah~~
332 ~~commissioner designates by rule or order as having been found to enforce standards regarding~~
333 ~~credit for reinsurance substantially similar to those applicable under this section and which~~
334 ~~reinsurer conforms to the same standards of solvency which would be required of the reinsurer~~
335 ~~if it were authorized to do business in this state.]~~

336 ~~[(4) (a) Trusts satisfying the security factor described in Subsection (3)(d) shall:]~~

337 ~~[(i) consist of a trust account in which is deposited amounts equal to the assuming~~

338 insurer's liabilities attributable to business written in the United States and, in addition, surplus
339 of not less than \$20,000,000;]

340 [(ii) if deposited by a group of individual unincorporated underwriters or a group of
341 individual incorporated insurers, consist of a trust account in which is deposited amounts equal
342 to the group's liabilities attributable to business written in the United States and, in addition,
343 surplus of not less than \$100,000,000, with the group making available to the commissioner an
344 annual solvency certification by the group's domiciliary regulator and its independent public
345 accountant;]

346 [(iii) be established in a United States bank or trust company which is a member of the
347 Federal Reserve system; and]

348 [(iv) be in a form approved by the commissioner, with trust documents which:]

349 [(A) provide that contested claims are valid and enforceable upon the final order of any
350 court of competent jurisdiction in the United States;]

351 [(B) vest legal title to its assets in the trustees of the trust for its United States
352 policyholders and ceding insurers, their assigns, and successors in interest;]

353 [(C) subject the trust and the reinsurer to examination by the commissioner; and]

354 [(D) provide that the trust remains in effect for as long as the reinsurer has outstanding
355 obligations due under the reinsurance agreements subject to the trust.]

356 [(b) To determine the sufficiency of the trust funds, reinsurers maintaining a trust under
357 Subsection (3)(d) shall annually report to the commissioner information substantially the same
358 as that required to be reported by authorized insurers on the National Association of Insurance
359 Commissioner's Annual Statement form described in Section 31A-4-113. This report shall be
360 submitted to the commissioner no later than March 1 of each year and shall be accompanied by
361 written statements disclosing the preceding year-end trust balance, summarizing the trust's
362 investments at the preceding year-end, and certifying the termination date of the trust, if trust
363 termination is planned, or that the trust shall not expire prior to the next following December
364 31.]

365 [(5) If a ceding insurer has entered into a reinsurance agreement satisfying the
366 requirements of Subsection (2) and if the reinsurer under the agreement is a pool of reinsurers,
367 and if any of the members of the reinsurance pool do not satisfy one of the alternate security
368 factors specified in Subsection (3), then the reserve credit for reinsurance is allowed only to the

369 extent that the reinsurance risk is borne by members of the reinsurance pool that have satisfied
370 one or more of the alternate security factors specified in Subsection (3).]

371 [~~(6) The security factor requirement of Subsections (1)(b) and (3) need not be satisfied~~
372 ~~as a condition to receiving a reserve credit to the extent that:]~~

373 [~~(a) the risks reinsured are located in jurisdictions other than the United States; and]~~

374 [~~(b) the reinsurance is required by applicable law or regulation of that jurisdiction.]~~

375 [~~(7) No reinsurance credit may be allowed the]~~

376 (3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
377 assuming insurer that is licensed to transact insurance or reinsurance in this state.

378 (4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
379 assuming insurer that is accredited as a reinsurer in this state.

380 (b) An insurer is accredited as a reinsurer if the insurer:

381 (i) files with the commissioner evidence of the insurer's submission to this state's
382 jurisdiction;

383 (ii) submits to the commissioner's authority to examine the insurer's books and records;

384 (iii) (A) is licensed to transact insurance or reinsurance in at least one state; or

385 (B) in the case of a United States branch of an alien assuming insurer, is entered
386 through and licensed to transact insurance or reinsurance in at least one state;

387 (iv) files annually with the commissioner a copy of the insurer's:

388 (A) annual statement filed with the insurance department of its state of domicile; and

389 (B) most recent audited financial statement; and

390 (v) (A) (I) has not had its accreditation denied by the commissioner within 90 days of
391 the day on which the insurer submits the information required by this Subsection (4); and

392 (II) maintains a surplus with regard to policyholders in an amount not less than
393 \$20,000,000; or

394 (B) (I) has its accreditation approved by the commissioner; and

395 (II) maintains a surplus with regard to policyholders in an amount less than
396 \$20,000,000.

397 (c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's
398 accreditation is revoked by the commissioner after a notice and hearing.

399 (5) (a) A domestic ceding insurer is allowed a credit if:

400 (i) the reinsurance is ceded to an assuming insurer that is:
401 (A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or
402 (B) in the case of a United States branch of an alien assuming insurer, is entered
403 through a state meeting the requirements of Subsection (5)(a)(ii);
404 (ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for
405 reinsurance substantially similar to those applicable under this section; and
406 (iii) the assuming insurer or United States branch of an alien assuming insurer:
407 (A) maintains a surplus with regard to policyholders in an amount not less than
408 \$20,000,000; and
409 (B) submits to the authority of the commissioner to examine its books and records.
410 (b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded
411 and assumed pursuant to a pooling arrangement among insurers in the same holding company
412 system.
413 (6) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an
414 assuming insurer that maintains a trust fund:
415 (i) created in accordance with rules made by the commissioner; and
416 (ii) in a qualified United States financial institution for the payment of a valid claim of:
417 (A) a United States ceding insurer of the assuming insurer;
418 (B) an assign of the United States ceding insurer; and
419 (C) a successor in interest to the United States ceding insurer.
420 (b) To enable the commissioner to determine the sufficiency of the trust fund described
421 in Subsection (6)(a), the assuming insurer shall:
422 (i) report annually to the commissioner information substantially the same as that
423 required to be reported on the National Association of Insurance Commissioners Annual
424 Statement form by a licensed insurer; and
425 (ii) (A) submit to examination of its books and records by the commissioner; and
426 (B) pay the cost of an examination.
427 (c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the
428 form of the trust and any amendment to the trust is approved by:
429 (A) the commissioner of the state where the trust is domiciled; or
430 (B) the commissioner of another state who, pursuant to the terms of the trust

431 instrument, accepts principal regulatory oversight of the trust.

432 (ii) The form of the trust and an amendment to the trust shall be filed with the
433 commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.

434 (iii) The trust instrument shall provide that a contested claim is valid and enforceable
435 upon the final order of a court of competent jurisdiction in the United States.

436 (iv) The trust shall vest legal title to its assets in its one or more trustees for the benefit
437 of:

438 (A) a United States ceding insurer of the assuming insurer;

439 (B) an assign of the United States ceding insurer; or

440 (C) a successor in interest to the United States ceding insurer.

441 (v) The trust and the assuming insurer are subject to examination as determined by the
442 commissioner.

443 (vi) The trust shall remain in effect for as long as the assuming insurer has an
444 outstanding obligation due under a reinsurance agreement subject to the trust.

445 (vii) No later than February 28 of each year, the trustee of the trust shall:

446 (A) report to the commissioner in writing the balance of the trust;

447 (B) list the trust's investments at the end of the preceding calendar year; and

448 (C) (I) certify the date of termination of the trust, if so planned; or

449 (II) certify that the trust will not expire prior to the following December 31.

450 (d) The following requirements apply to the following categories of assuming insurer:

451 (i) For a single assuming insurer:

452 (A) the trust fund shall consist of funds in trust in an amount not less than the assuming
453 insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and

454 (B) the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000.

455 (ii) For a group acting as assuming insurer, including incorporated and individual
456 unincorporated underwriters:

457 (A) for reinsurance ceded under a reinsurance agreement with an inception,
458 amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed
459 account in an amount not less than the group's several liabilities attributable to business ceded
460 by the one or more United States domiciled ceding insurers to a member of the group;

461 (B) for reinsurance ceded under a reinsurance agreement with an inception date on or

462 before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the
463 other provisions of this chapter, the trust shall consist of a trustee account in an amount not
464 less than the group's several insurance and reinsurance liabilities attributable to business
465 written in the United States;

466 (C) in addition to a trust described in Subsection (6)(d)(ii)(A) or (B), the group shall
467 maintain in trust a trustee surplus of which \$100,000,000 is held jointly for the benefit of the
468 one or more United States domiciled ceding insurers of a member of the group for all years of
469 account;

470 (D) the incorporated members of the group:

471 (I) may not be engaged in a business other than underwriting as a member of the group;
472 and

473 (II) are subject to the same level of regulation and solvency control by the group's
474 domiciliary regulator as are the unincorporated members; and

475 (E) within 90 days after the day on which the group's financial statements are due to be
476 filed with the group's domiciliary regulator, the group shall provide to the commissioner:

477 (I) an annual certification by the group's domiciliary regulator of the solvency of each
478 underwriter member; or

479 (II) if a certification is unavailable, a financial statement, prepared by an independent
480 public accountant, of each underwriter member of the group.

481 (iii) For a group of incorporated underwriters under common administration, the group
482 shall:

483 (A) have continuously transacted an insurance business outside the United States for at
484 least three years immediately preceding the day on which the group makes application for
485 accreditation;

486 (B) maintain aggregate policyholders' surplus of at least \$10,000,000,000;

487 (C) maintain a trust fund in an amount not less than the group's several liabilities
488 attributable to business ceded by the one or more United States domiciled ceding insurers to a
489 member of the group pursuant to a reinsurance contract issued in the name of the group;

490 (D) in addition to complying with the other provisions of this Subsection (6)(d)(iii),
491 maintain a joint trustee surplus of which \$100,000,000 is held jointly for the benefit of the one
492 or more United States domiciled ceding insurers of a member of the group as additional

493 security for these liabilities; and

494 (E) within 90 days after the day on which the group's financial statements are due to be
495 filed with the group's domiciliary regulator, make available to the commissioner:

496 (I) an annual certification of each underwriter member's solvency by the member's
497 domiciliary regulator; and

498 (II) a financial statement of each underwriter member of the group prepared by an
499 independent public accountant.

500 (7) If reinsurance is ceded to an assuming insurer not meeting the requirements of
501 Subsection (3), (4), (5), or (6), a domestic ceding insurer is allowed credit only as to the
502 insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law
503 or regulation of that jurisdiction.

504 (8) Reinsurance credit may not be allowed a domestic ceding insurer unless the
505 assuming insurer under the reinsurance contract [has submitted] submits to the jurisdiction of
506 Utah courts by [either]:

507 (a) (i) being an admitted insurer[;]; and

508 (ii) submitting to jurisdiction under Section 31A-2-309;

509 (b) having irrevocably appointed the commissioner as [his] the domestic ceding
510 insurer's agent for service of process in [any] an action arising out of or in connection with the
511 reinsurance, which appointment is made under Section 31A-2-309; or

512 (c) agreeing in the reinsurance contract:

513 (i) that [in the event of the failure of] if the assuming insurer fails to perform its
514 obligations under the terms of the reinsurance [agreement] contract, the assuming insurer, at
515 the request of the ceding insurer, shall:

516 (A) submit to the jurisdiction of [any] a court of competent jurisdiction in [any] a state
517 of the United States[; shall];

518 (B) comply with all requirements necessary to give the court jurisdiction[;]; and [shall]

519 (C) abide by the final decision of the court or of [any] an appellate court in the event of
520 an appeal; and

521 (ii) to designate the commissioner or a [designated] specific attorney [with offices]
522 licensed to practice law in this state as its [true and lawful] attorney upon whom may be served
523 [any] lawful process in [any] an action, suit, or proceeding instituted by or on behalf of the

524 ceding company.

525 ~~[(8)]~~ (9) Submitting to the jurisdiction of Utah courts under Subsection ~~[(7)]~~ (8) does
526 not override ~~[the duties or rights of the parties under a provision in]~~ a duty or right of a party
527 under the reinsurance [agreement] contract, including ~~[any]~~ a requirement that the parties
528 arbitrate their disputes.

529 (10) If an assuming insurer does not meet the requirements of Subsection (3), (4), or
530 (5), the credit permitted by Subsection (6) may not be allowed unless the assuming insurer
531 agrees in the trust instrument to the following conditions:

532 (a) (i) Notwithstanding any other provision in the trust instrument, if an event
533 described in Subsection (10)(a)(ii) occurs the trustee shall comply with:

534 (A) an order of the commissioner with regulatory oversight over the trust; or

535 (B) an order of a court of competent jurisdiction directing the trustee to transfer to the
536 commissioner with regulatory oversight all of the assets of the trust fund.

537 (ii) This Subsection (10)(a) applies if:

538 (A) the trust fund is inadequate because the trust contains an amount less than the
539 amount required by Subsection (6)(d); or

540 (B) the grantor of the trust is:

541 (I) declared insolvent; or

542 (II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the
543 laws of its state or country of domicile.

544 (b) The assets of a trust fund described in Subsection (10)(a) shall be distributed by and
545 a claim shall be filed with and valued by the commissioner with regulatory oversight in
546 accordance with the laws of the state in which the trust is domiciled that are applicable to the
547 liquidation of a domestic insurance company.

548 (c) If the commissioner with regulatory oversight determines that the assets of the trust
549 fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United
550 States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be
551 returned by the commissioner with regulatory oversight to the trustee for distribution in
552 accordance with the trust instrument.

553 (d) A grantor shall waive any right otherwise available to it under United States law
554 that is inconsistent with this Subsection (10).

555 Section 4. Section 31A-17-404.1 is enacted to read:

556 **31A-17-404.1. Asset or reduction from liability for reinsurance ceded by a**
557 **domestic insurer to other assuming insurers.**

558 (1) (a) An asset or a reduction from liability for reinsurance ceded by a domestic
559 insurer to an assuming insurer that does not meet the requirements of Section 31A-17-404 is
560 allowed in an amount not exceeding the liabilities carried by the ceding insurer.

561 (b) A reduction described in Subsection (1)(a) shall be in the amount of funds held by
562 or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

563 (i) that are held:

564 (A) under a reinsurance contract with the assuming insurer; and

565 (B) as security for the payment of obligations under the reinsurance contract; and

566 (ii) if the security is held:

567 (A) in the United States subject to withdrawal solely by, and under the exclusive
568 control of, the ceding insurer; or

569 (B) in the case of a trust, in a qualified United States financial institution.

570 (2) Security described in Subsection (1) may be in the form of:

571 (a) cash;

572 (b) a security:

573 (i) listed by the Securities Valuation Office of the National Association of Insurance
574 Commissioners; and

575 (ii) qualifying as an admitted asset;

576 (c) subject to Subsection (3), a clean, irrevocable, unconditional letter of credit, issued
577 or confirmed by a qualified United States financial institution:

578 (i) effective no later than December 31 of the year for which the filing is being made;

579 and

580 (ii) in the possession of, or in trust for, the ceding company on or before the filing date
581 of its annual statement; or

582 (d) another form of security acceptable to the commissioner.

583 (3) Notwithstanding an issuing or confirming institution's subsequent failure to meet an
584 applicable standard of acceptability, a letter of credit described in Subsection (2) that meets the
585 applicable standards of issuer acceptability as of the day on which it is issued or confirmed

586 shall continue to be acceptable as security until the sooner of the day on which the letter of
587 credit expires, is extended, is renewed, is modified, or is amended.

588 Section 5. Section **31A-17-404.2** is enacted to read:

589 **31A-17-404.2. Credit allowed a foreign ceding insurer.**

590 (1) A foreign ceding insurer is allowed a credit for reinsurance or reduction from
591 liability to the extent that credit is allowed by the ceding insurer's state of domicile if:

592 (a) the state of domicile is accredited by the National Association of Insurance
593 Commissioners; or

594 (b) credit or reduction from liability would be allowed under this section if the foreign
595 ceding insurer were domiciled in this state.

596 (2) Credit for reinsurance or reduction from liability may be disallowed a foreign
597 ceding insurer upon a finding by the commissioner that one or more of the following do not
598 satisfy the credit for reinsurance requirements of this chapter applicable to a ceding insurer
599 domiciled in this state:

600 (a) the condition of the reinsurer; or

601 (b) the collateral or other security provided by the reinsurer.

602 Section 6. Section **31A-17-404.3** is enacted to read:

603 **31A-17-404.3. Rules.**

604 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and
605 this chapter, the commissioner may make rules prescribing:

606 (1) the form of a letter of credit required under this chapter;

607 (2) the requirements for a trust or trust instrument required by this chapter;

608 (3) the procedures for licensing and accrediting; and

609 (4) minimum capital and surplus requirements.

610 Section 7. Section **31A-17-404.4** is enacted to read:

611 **31A-17-404.4. Transition -- Application to reinsurance agreement.**

612 The amendments to this part made in this bill apply to a cession made on or after July 1,
613 2008 under a reinsurance contract that has an inception, anniversary, or renewal date no sooner
614 than January 1, 2009.

615 Section 8. Section **31A-18-101** is amended to read:

616 **31A-18-101. Scope -- Definitions.**

617 (1) Except as otherwise provided in this ~~code~~ title, this chapter and the rules adopted
 618 to implement it apply to all insurers authorized to do business in this state, including
 619 ~~reinsurers~~ a reinsurer.

620 (2) As used in this chapter, "cash" means a medium of exchange that a depository
 621 institution, as defined in Section 7-1-103, accepts for deposit and allows an immediate credit to
 622 an account in the depository institution, including the following in a depository institution:

623 (a) a savings account; or

624 (b) a certificate of deposit with a maturity date within one year or less from the day on
 625 which the certificate of deposit is acquired.

626 Section 9. Section **31A-18-105** is amended to read:

627 **31A-18-105. Permitted classes of investments.**

628 The following classes of investment may be counted for the purposes specified under
 629 Chapter 17, Part 6, Risk-Based Capital:

630 (1) ~~bonds~~ a bond or other ~~evidences~~ evidence of indebtedness of:

631 (a) ~~(i)~~ a governmental ~~units~~ unit in the United States or Canada;

632 ~~(ii) instrumentalities of the~~ (b) an instrumentality of a governmental ~~units~~ unit
 633 described in Subsection (1)(a)~~(i)~~; or

634 ~~(iii)~~ (c) a private ~~corporations~~ corporation domiciled in the United States; ~~and~~

635 ~~(b) including demand deposits and certificates of deposits in solvent banks and~~
 636 ~~savings and loan institutions;]~~

637 (2) an equipment trust ~~obligations or certificates that are~~ obligation or certificate that
 638 is an adequately secured ~~instruments~~ instrument:

639 (a) evidencing an interest in transportation equipment that is located wholly or in part
 640 within the United States~~;~~; and

641 (b) with a right to receive determined portions of the rental, or to purchase other fixed
 642 obligatory payments for the use or purchase of the transportation equipment;

643 (3) ~~loans~~ a loan secured by:

644 (a) one or more mortgages;

645 (b) one or more trust deeds; or

646 (c) ~~other~~ another statutorily authorized ~~types~~ type of security ~~interests~~ interest in
 647 real estate located in the United States;

648 (4) ~~[loans]~~ a loan secured by a pledged ~~[securities or evidences]~~ security or evidence of
649 debt eligible for investment under this section;

650 (5) a preferred ~~[stocks]~~ stock of a United States ~~[corporations]~~ corporation;

651 (6) (a) a common ~~[stocks]~~ stock of a United States ~~[corporations]~~ corporation; or

652 (b) an American depository ~~[receipts]~~ receipt if traded on one of the following
653 exchanges:

654 (i) New York;

655 (ii) American; or

656 (iii) NASDAQ;

657 (7) real estate ~~[which]~~ that is used as the home office or branch office of the insurer;

658 (8) real estate in the United States ~~[which]~~ that produces substantial income;

659 (9) ~~[loans]~~ a loan upon the security of the insurer's own policies in ~~[amounts that are]~~
660 an amount that:

661 (a) is adequately secured by the policies; and ~~[that do]~~

662 (b) does not exceed the surrender value of the policies;

663 (10) a financial futures ~~[contracts]~~ contract used for hedging and not for speculation, as
664 approved under rules adopted by the commissioner;

665 (11) ~~[investments in foreign securities of the classes]~~ an investment in a foreign
666 security of a class permitted under this section as required for compliance with Section
667 31A-18-103;

668 (12) ~~[investments]~~ an investment permitted under Subsection 31A-18-102(2);

669 (13) an American depository ~~[receipts]~~ receipt not traded on one of the following
670 exchanges:

671 (a) New York;

672 (b) American; or

673 (c) NASDAQ;

674 (14) ~~[investments]~~ an investment other than those listed in Subsections (1) through
675 (13) that ~~[are]~~ is determined to be admitted in the Accounting Practices and Procedures

676 Manual, published by the National Association of Insurance Commissioners; ~~[and]~~

677 (15) cash; and

678 ~~[(15) other investments as]~~ (16) another investment the commissioner authorizes by

679 rule.

680 Section 10. Section **31A-18-106** is amended to read:

681 **31A-18-106. Investment limitations generally applicable.**

682 (1) The investment limitations listed in Subsections (1)(a) through (m) apply to ~~[each]~~
683 an insurer.

684 (a) ~~[(i) Except as provided in Subsection (1)(a)(ii), for investments]~~ For an investment
685 authorized under Subsection 31A-18-105(1) that ~~[are]~~ is not amortizable under applicable
686 valuation rules, the limitation is 5% of assets.

687 ~~[(ii) The limitation of Subsection (1)(a)(i) and the limitation of Subsection (2) do not~~
688 ~~apply to demand deposits and certificates of deposit in solvent banks and savings and loan~~
689 ~~institutions to the extent they are insured by a federal deposit insurance agency.]~~

690 (b) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(2), the
691 limitation is 10% of assets.

692 (c) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(3), the
693 limitation is 50% of assets.

694 (d) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(4)~~;~~ that
695 ~~[are]~~ is considered to be ~~[investments in kinds of securities or evidences]~~ an investment in a
696 kind of security or evidence of debt pledged, ~~[those investments are]~~ the investment is subject
697 to the class limitations applicable to the pledged ~~[securities or evidences]~~ security or evidence
698 of debt.

699 (e) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(5), the
700 limitation is 35% of assets.

701 (f) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(6), the
702 limitation is:

703 (i) 20% of assets for a life [insurers] insurer; and

704 (ii) 50% of assets for a nonlife [insurers] insurer.

705 (g) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(7), the
706 limitation is:

707 (i) 5% of assets; or

708 (ii) for ~~[insurers]~~ an insurer organized and operating under Chapter 7, Nonprofit Health
709 Service Insurance Corporations, 25% of assets.

710 (h) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(8), the
711 limitation is:

- 712 (i) 20% of assets, inclusive of home office and branch office properties; or
- 713 (ii) for ~~[insurers]~~ an insurer organized and operating under Chapter 7, Nonprofit Health
714 Service Insurance Corporations, 35% of assets, inclusive of home office and branch office
715 properties.

716 (i) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(10), the
717 limitation is 1% of assets.

718 (j) For ~~[investments]~~ an investment authorized under Subsection 31A-18-105(11), the
719 limitation is the greater of that permitted or required for compliance with Section 31A-18-103.

720 (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is
721 limited to 50% of the insurer's total adjusted capital. ~~[Investments]~~ An investment by an
722 insurer in ~~[its subsidiaries]~~ a subsidiary includes:

- 723 ~~[(i) the insurer's loans, advances, and contributions to its subsidiaries; and]~~
- 724 ~~[(ii) the insurer's holding of bonds, notes, and stocks of its subsidiaries are included.]~~
- 725 (i) a loan, advance, or contribution to a subsidiary by an insurer; and
- 726 (ii) an insurer holding a bond, note, or stock of a subsidiary.

727 (l) Under a plan of merger approved by the commissioner, the commissioner may
728 allow an insurer any portion of its assets invested in an insurance subsidiary. The approved
729 plan of merger shall require the acquiring insurer to conform its accounting for investments in
730 subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.

731 (m) For ~~[investments]~~ an investment authorized under Subsections 31A-18-105(13)
732 and (14), the aggregate limitation is 10% of assets.

733 (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each
734 insurer.

735 (a) (i) For all investments in a single entity, its affiliates, and subsidiaries, the
736 limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not
737 apply to:

738 ~~[(i) investments]~~ (A) an investment in the government of the United States or its
739 agencies;

740 ~~[(ii) investments]~~ (B) an investment guaranteed by the government of the United

741 States; ~~or~~

742 ~~[(iii) investments]~~ (C) an investment in the insurer's insurance subsidiaries[-]; or

743 (D) a cash deposit that:

744 (I) is cash;

745 (II) is held by a depository institution, as defined in Section 7-1-103, that:

746 (Aa) is solvent;

747 (Bb) is federally insured; and

748 (Cc) subject to Subsection (2)(a)(ii), has a Tier 1 leverage ratio of at least 5%, if the

749 depository institution is a bank as defined in Section 7-1-103, or a ratio of Tier 1 capital to total

750 assets of at least 5%, if the depository institution is not a bank; and

751 (III) does not exceed the greater of:

752 (Aa) .4 times the Tier 1 capital of the depository institution; or

753 (Bb) the amount insured by a federal deposit insurance agency.

754 (ii) The commissioner by rule made in accordance with Title 63, Chapter 46a, Utah

755 Administrative Rulemaking Act, shall:

756 (A) define "Tier 1 leverage ratio";

757 (B) define "Tier 1 capital"; and

758 (C) proscribe the method to calculate Tier 1 capital.

759 (b) ~~[Investments]~~ An investment authorized by Subsection 31A-18-105(3) shall

760 comply with the requirements listed in this Subsection (2)(b).

761 (i) (A) Except as provided in this Subsection (2)(b)(i), the amount of ~~[any]~~ a loan

762 secured by a mortgage or deed of trust may not exceed 80% of the value of the real estate

763 interest mortgaged, unless the excess over 80%:

764 (I) is insured or guaranteed by:

765 (Aa) the United States[-, any];

766 (Bb) a state of the United States[-, any];

767 (Cc) an instrumentality, agency, or political subdivision of the United States[-, any of its

768 states,] or a state; or

769 (Dd) a combination of [any of these] entities described in this Subsection

770 (2)(b)(i)(A)(I); or

771 (II) is insured by an insurer approved by the commissioner and qualified to insure that

772 type of risk in this state.

773 (B) [~~Mortgage loans~~] A mortgage loan representing a purchase money [~~mortgages~~]
774 mortgage acquired from the sale of real estate [~~are~~] is not subject to the limitation of
775 Subsection (2)(b)(i)(A).

776 (ii) Subject to Subsection (2)(b)(v), [~~loans or evidences~~] a loan or evidence of debt
777 secured by real estate may only be secured by:

778 (A) unencumbered real property that is located in the United States; or

779 (B) an unencumbered interest in real property that is located in the United States.

780 (iii) Evidence of debt secured by a first [~~mortgages or deeds~~] mortgage or deed of trust
781 upon a leasehold [~~estates~~] estate shall require that:

782 (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the
783 lease term;

784 (B) the real estate not be otherwise encumbered; and

785 (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

786 (iv) Subject to Subsection (2)(b)(v):

787 (A) participation in [~~any~~] a mortgage loan must:

788 (I) be senior to other participants; and

789 (II) give the holder substantially the rights of a first mortgagee; or

790 (B) the interest of the insurer in the evidence of indebtedness must be of equal priority,
791 to the extent of the interest, with other interests in the real property.

792 (v) A fee simple or leasehold real estate or [~~any~~] an interest in [~~either of them~~] a fee
793 simple or leasehold is not considered to be encumbered within the meaning of this chapter by
794 reason of [~~any~~] a prior mortgage or trust deed held or assumed by the insurer as a lien on the
795 property, if:

796 (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of
797 the property; and

798 (B) the security created by the prior mortgage or trust deed is a first lien.

799 (c) [~~Loans~~] A loan permitted under Subsection 31A-18-105(4) may not exceed 75% of
800 the market value of the collateral pledged, except that [~~loans~~] a loan upon the pledge of a
801 United States government [~~bonds~~] bond may be equal to the market [~~values~~] value of the
802 pledge.

803 (d) For an equity interest in a single real estate property authorized under Subsection
804 31A-18-105(8), the limitation is 5% of assets.

805 (e) [~~Investments~~] An investment authorized under Subsection 31A-18-105(10) shall be
806 in connection with a potential [~~changes~~] change in the value of specifically identified:

807 (i) [~~assets which~~] asset that the insurer owns; or

808 (ii) [~~liabilities which~~] liability that the insurer has incurred.

809 (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each
810 insurer.

811 (a) Except for a financial futures [~~contracts~~] contract and real property acquired and
812 occupied by the insurer for home and branch office purposes, a security or other investment is
813 not eligible for purchase or acquisition under this chapter unless it is:

814 (i) interest bearing or income paying; and

815 (ii) not then in default.

816 (b) A security is not eligible for purchase at a price above its market value.

817 (4) Computation of percentage limitations under this section:

818 (a) is based only upon the insurer's total qualified invested assets described in Section
819 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and

820 (b) excludes investments permitted under Section 31A-18-108 and Subsections
821 31A-17-203(2) and (3).

822 (5) An insurer may not make an investment that, because the investment does not
823 conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under
824 Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27a, Insurer
825 Receivership Act.

826 (6) A pattern of persistent deviation from the investment diversification standards set
827 forth in Section 31A-18-105 and this section may be grounds for a finding that the [~~person or~~]
828 one or more persons with authority to make the insurer's investment decisions are
829 "incompetent" as used in Subsection 31A-5-410(3).

830 (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does
831 not apply to the purchase, holding, investment, or valuation limitations of assets of insurance
832 companies subject to this chapter.

833 Section 11. Section **31A-20-107** is amended to read:

834 **31A-20-107. Reinsurance.**

835 (1) (a) An authorized insurer writing a nonassessable [~~policies~~] policy may assume as a
 836 reinsurer [~~any risks~~] a risk it may write directly.

837 (b) Subject to Chapters 5 through 14, Chapter 17, and to any limitation imposed on a
 838 foreign insurer by the law of its domicile, the commissioner may also authorize an insurer to
 839 assume, as a reinsurer, one or more designated classes of risks it is not authorized to write
 840 directly.

841 (2) (a) Subject to Section 31A-5-508, [~~any~~] an authorized insurer may cede or
 842 retrocede to [~~any~~]:

843 (i) an insurer authorized to assume it under Subsection (1) [~~any~~] a liability it has
 844 undertaken on [~~risks~~] a risk lawfully written under its certificate of authority[~~. It may also cede~~
 845 ~~or retrocede reinsurance to any~~]; and

846 (ii) an authorized agency of the federal government or of this state. [~~Subject to Section~~
 847 ~~31A-17-404, the rules adopted by the commissioner under that section, and to Subsection (3),~~
 848 ~~an~~]

849 (b) An authorized insurer may [~~also~~] cede or retrocede reinsurance to an unauthorized
 850 insurer[~~;~~] subject to:

851 (i) Sections 31A-17-404 and 31A-17-404.1;

852 (ii) a rule made by the commissioner under a section listed in Subsection (2)(b)(i); and

853 (iii) Subsection (3).

854 (3) [~~No~~] A person may not knowingly cede reinsurance or permit or assist it to be
 855 ceded to [~~any~~] a reinsurer not in sound financial condition. If [~~the~~] a reinsurer satisfies one or
 856 more of the security factors under [~~Subsection 31A-17-404 (3)]~~ Section 31A-17-404.1, there is
 857 a rebuttable presumption that the reinsurer is in sound financial condition.

858 (4) [~~Any~~] (a) An authorized reinsurer who knowingly assumes from an unauthorized
 859 insurer, [~~risks~~] a risk that may lawfully be written only by an authorized insurer, shall
 860 immediately report the facts of the transaction to the commissioner. [~~The~~]

861 (b) (i) Subject to Subsection (4)(b)(ii), an assuming reinsurer described in Subsection
 862 (4)(a):

863 (A) is liable for all taxes and penalties applicable under Sections 31A-3-301,
 864 31A-3-302, and 31A-3-303[~~, but~~]; and

865 (B) may take credit for ~~[their]~~ the payment of a tax or penalty lapse under Subsection
866 (4)(b)(i) in its settlement of accounts with the unauthorized ceding insurer~~[, unless]~~.

867 (ii) This Subsection (4)(b) does not apply if the assuming reinsurer's agreement with
868 the ceding insurer ~~[already took those]~~ takes the taxes described in Subsection (4)(b)(i) into
869 account.

870 (5) (a) Except as provided under Subsection (5)(b), ~~[any]~~ an authorized reinsurer
871 proposing to withdraw from writing a class of its business in Utah, except by nonrenewal of an
872 existing ~~[contracts at their]~~ contract at its expiration, shall give the commissioner 60 days~~[²]~~
873 written notice of its intention. The authorized reinsurer may not withdraw until after those 60
874 days ~~[have lapsed]~~ lapse.

875 (b) This Subsection (5) does not apply if the withdrawing reinsurer writes an
876 insignificant market share of that class of business in Utah. The commissioner shall define
877 "insignificant market share" by rule.

878 Section 12. Section **31A-20-108** is amended to read:

879 **31A-20-108. Single risk limitation.**

880 (1) This section applies to all lines of insurance, including ocean marine and
881 reinsurance, except:

- 882 (a) title insurance;
- 883 (b) workers' compensation insurance;
- 884 (c) occupational disease insurance; and
- 885 (d) employers' liability insurance.

886 (2) (a) Except as provided under Subsections (3) and (4) and under Section
887 31A-20-109, an ~~[insurance company]~~ insurer authorized to do an insurance business in Utah
888 may not expose itself to loss on ~~[any]~~ a single risk in an amount exceeding 10% of its capital
889 and surplus.

890 (b) The commissioner may adopt rules to calculate surplus under this section.

891 (c) ~~[The]~~ An insurer may deduct the portion of ~~[any]~~ a risk reinsured by a reinsurance
892 contract worthy of a reserve credit under ~~[Section]~~ Sections 31A-17-404 ~~[may not be included]~~
893 through 31A-17-404.4 in determining the limitation of risk under this section.

894 (3) (a) The commissioner may adopt rules, after hearings held with notice provided
895 under Section 31A-2-303, to specify the maximum exposure to which an assessable mutual

896 may subject itself.

897 (b) The rules described in Subsection (3)(a) may provide for classifications of
898 insurance and insurers to preserve the solidity of insurers.

899 (4) As used in this section, a "single risk" includes all losses reasonably expected as a
900 result of the same event.

901 (5) A company transacting fidelity or surety insurance may expose itself to a risk or
902 hazard in excess of the amount prescribed in Subsection (2), if the commissioner, after
903 considering all the facts and circumstances, approves the risk.

904 Section 13. Section **31A-22-1201** is amended to read:

905 **31A-22-1201. Assumption agreement.**

906 ~~[There is no]~~ (1) Subject to Subsection (2), a credit for reinsurance ceded under Section
907 31A-17-404, 31A-17-404.1, or 31A-17-404.2, is not allowed unless, in addition to meeting the
908 [other] requirements [stated under] of Section 31A-17-404, 31A-17-404.1, or 31A-17-404.2,
909 the reinsurance agreement provides [that] in substance that if the ceding insurer is insolvent,
910 the reinsurance [shall be] is payable by the assuming insurer;

911 (a) on the basis of the liability of the ceding insurer under the contract or contracts
912 reinsured;

913 (b) without diminution because of the insolvency of the ceding insurer; and

914 (c) directly to the ceding insurer or to its domiciliary liquidator or receiver ~~[except~~
915 ~~where:]~~.

916 (2) Subsection (1) applies except if:

917 ~~[(1) the contract]~~ (a) a contract specifically provides another payee of [such] the
918 insurance in the event of the insolvency of the ceding insurer; or

919 ~~[(2)]~~ (b) the assuming insurer, with the consent of the one or more direct [insured or]
920 insureds [has assumed such], assumes the policy obligations of the ceding insurer;

921 (i) as direct obligations of the assuming insurer to the payees under [such] the policies;

922 and

923 (ii) in substitution for the obligations of the ceding insurer to [such] the payees.

924 Section 14. Section **31A-22-1202** is amended to read:

925 **31A-22-1202. Other reinsurance contracts.**

926 (1) If there is no assumption agreement under Subsection 31A-22-1201(2), the

927 reinsurer's sole obligation is to the ceding insurer.

928 (2) No guaranty [~~or~~] fund, security fund, or any other person, except the estate of the
929 ceding insurer, has [~~any~~] a claim against [~~the~~] a reinsurer.

930 (3) Subject to contractual rights of offset, if [~~the~~] a ceding insurer is put into
931 receivership, the reinsurer shall pay any amount due under the contract in full, without
932 reduction because of the receivership[;];

933 (a) to the domiciliary receiver if there is one[;]; or[, if not, then to any]

934 (b) if there is not domiciliary receiver, to a Utah receiver.

935 Section 15. **Effective date.**

936 This bill takes effect on July 1, 2008.

937 Section 16. **Revisor instructions.**

938 It is the intent of the Legislature that in preparing the Utah Code database for
939 publication, the Office of Legislative Research and General Counsel shall replace the reference
940 in Section 31A-17-404.4 from "this bill" to the bill's designated chapter number in the Laws of
941 Utah.

Legislative Review Note
as of 1-16-08 12:23 PM

Office of Legislative Research and General Counsel

S.B. 143 - Insurance Financial Requirements

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
