

**TAXATION OF VARIABLE LIFE INSURANCE**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jim Bird**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the revenue and taxation provisions to address taxation of variable life insurance.

**Highlighted Provisions:**

This bill:

- ▶ removes provisions related to the State Tax Commission reporting information regarding taxes paid on certain variable life insurance premiums;
- ▶ imposes a flat tax rate on variable life insurance premiums;
- ▶ repeals a study by the Revenue and Taxation Interim Committee; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill has retrospective operation to January 1, 2012.

**Utah Code Sections Affected:**

AMENDS:

**59-1-403**, as last amended by Laws of Utah 2011, Chapters 46, 344, and 410

**59-9-101 (Subsec (2)(c)(iv) Repealed 07/01/13)**, as last amended by Laws of Utah 2011, Chapter 266



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

29 Section 1. Section **59-1-403** is amended to read:

30 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

31 (1) (a) Any of the following may not divulge or make known in any manner any  
32 information gained by that person from any return filed with the commission:

- 33 (i) a tax commissioner;
- 34 (ii) an agent, clerk, or other officer or employee of the commission; or
- 35 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or  
36 town.

37 (b) An official charged with the custody of a return filed with the commission is not  
38 required to produce the return or evidence of anything contained in the return in any action or  
39 proceeding in any court, except:

- 40 (i) in accordance with judicial order;
- 41 (ii) on behalf of the commission in any action or proceeding under:
  - 42 (A) this title; or
  - 43 (B) other law under which persons are required to file returns with the commission;
- 44 (iii) on behalf of the commission in any action or proceeding to which the commission  
45 is a party; or
- 46 (iv) on behalf of any party to any action or proceeding under this title if the report or  
47 facts shown by the return are directly involved in the action or proceeding.

48 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may  
49 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically  
50 pertinent to the action or proceeding.

51 (2) This section does not prohibit:

52 (a) a person or that person's duly authorized representative from receiving a copy of  
53 any return or report filed in connection with that person's own tax;

54 (b) the publication of statistics as long as the statistics are classified to prevent the  
55 identification of particular reports or returns; and

56 (c) the inspection by the attorney general or other legal representative of the state of the  
57 report or return of any taxpayer:

- 58 (i) who brings action to set aside or review a tax based on the report or return;

59 (ii) against whom an action or proceeding is contemplated or has been instituted under  
60 this title; or

61 (iii) against whom the state has an unsatisfied money judgment.

62 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the  
63 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative  
64 Rulemaking Act, provide for a reciprocal exchange of information with:

65 (i) the United States Internal Revenue Service; or

66 (ii) the revenue service of any other state.

67 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
68 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,  
69 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and  
70 other written statements with the federal government, any other state, any of the political  
71 subdivisions of another state, or any political subdivision of this state, except as limited by  
72 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal  
73 government grant substantially similar privileges to this state.

74 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
75 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,  
76 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the  
77 identity and other information of taxpayers who have failed to file tax returns or to pay any tax  
78 due.

79 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and  
80 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as  
81 requested by the executive secretary, any records, returns, or other information filed with the  
82 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5  
83 regarding the environmental assurance program participation fee.

84 (e) Notwithstanding Subsection (1), at the request of any person the commission shall  
85 provide that person sales and purchase volume data reported to the commission on a report,  
86 return, or other information filed with the commission under:

87 (i) Chapter 13, Part 2, Motor Fuel; or

88 (ii) Chapter 13, Part 4, Aviation Fuel.

89 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,

90 as defined in Section 59-22-202, the commission shall report to the manufacturer:

91 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
92 manufacturer and reported to the commission for the previous calendar year under Section  
93 59-14-407; and

94 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
95 manufacturer for which a tax refund was granted during the previous calendar year under  
96 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

97 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,  
98 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited  
99 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

100 (h) Notwithstanding Subsection (1), the commission may:

101 (i) provide to the Division of Consumer Protection within the Department of  
102 Commerce and the attorney general data:

103 (A) reported to the commission under Section 59-14-212; or

104 (B) related to a violation under Section 59-14-211; and

105 (ii) upon request, provide to any person data reported to the commission under  
106 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

107 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee  
108 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning  
109 and Budget, provide to the committee or office the total amount of revenues collected by the  
110 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period  
111 specified by the committee or office.

112 (j) Notwithstanding Subsection (1), the commission shall make the directory required  
113 by Section 59-14-603 available for public inspection.

114 (k) Notwithstanding Subsection (1), the commission may share information with  
115 federal, state, or local agencies as provided in Subsection 59-14-606(3).

116 (l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of  
117 Recovery Services within the Department of Human Services any relevant information  
118 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer  
119 who has become obligated to the Office of Recovery Services.

120 (ii) The information described in Subsection (3)(l)(i) may be provided by the Office of

121 Recovery Services to any other state's child support collection agency involved in enforcing  
122 that support obligation.

123 (m) (i) Notwithstanding Subsection (1), upon request from the state court  
124 administrator, the commission shall provide to the state court administrator, the name, address,  
125 telephone number, county of residence, and Social Security number on resident returns filed  
126 under Chapter 10, Individual Income Tax Act.

127 (ii) The state court administrator may use the information described in Subsection  
128 (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

129 ~~[(n) Notwithstanding Subsection (1), the commission shall at the request of a~~  
130 ~~committee, commission, or task force of the Legislature provide to the committee, commission,~~  
131 ~~or task force of the Legislature any information relating to a tax imposed under Chapter 9,~~  
132 ~~Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.]~~

133 ~~[(~~o~~)]~~ (n) (i) As used in this Subsection (3)~~[(~~o~~)]~~(n), "office" means the:

- 134 (A) Office of the Legislative Fiscal Analyst; or
- 135 (B) Office of Legislative Research and General Counsel.

136 (ii) Notwithstanding Subsection (1) and except as provided in Subsection  
137 (3)~~[(~~o~~)]~~(n)(iii), the commission shall at the request of an office provide to the office all  
138 information:

- 139 (A) gained by the commission; and
- 140 (B) required to be attached to or included in returns filed with the commission.

141 (iii) (A) An office may not request and the commission may not provide to an office a  
142 person's:

- 143 (I) address;
- 144 (II) name;
- 145 (III) Social Security number; or
- 146 (IV) taxpayer identification number.

147 (B) The commission shall in all instances protect the privacy of a person as required by  
148 Subsection (3)~~[(~~o~~)]~~(n)(iii)(A).

149 (iv) An office may provide information received from the commission in accordance  
150 with this Subsection (3)~~[(~~o~~)]~~(n) only:

151 (A) as:

- 152 (I) a fiscal estimate;
- 153 (II) fiscal note information; or
- 154 (III) statistical information; and
- 155 (B) if the information is classified to prevent the identification of a particular return.

156 (v) (A) A person may not request information from an office under Title 63G, Chapter  
 157 2, Government Records Access and Management Act, or this section, if that office received the  
 158 information from the commission in accordance with this Subsection (3)~~(t)~~(n).

159 (B) An office may not provide to a person that requests information in accordance with  
 160 Subsection (3)~~(t)~~(n)(v)(A) any information other than the information the office provides in  
 161 accordance with Subsection (3)~~(t)~~(n)(iv).

162 ~~(p)~~ (o) Notwithstanding Subsection (1), the commission may provide to the  
 163 governing board of the agreement or a taxing official of another state, the District of Columbia,  
 164 the United States, or a territory of the United States:

165 (i) the following relating to an agreement sales and use tax:

- 166 (A) information contained in a return filed with the commission;
- 167 (B) information contained in a report filed with the commission;
- 168 (C) a schedule related to Subsection (3)~~(p)~~(o)(i)(A) or (B); or
- 169 (D) a document filed with the commission; or

170 (ii) a report of an audit or investigation made with respect to an agreement sales and  
 171 use tax.

172 ~~(q)~~ (p) Notwithstanding Subsection (1), the commission may provide information  
 173 concerning a taxpayer's state income tax return or state income tax withholding information to  
 174 the Driver License Division if the Driver License Division:

- 175 (i) requests the information; and
- 176 (ii) provides the commission with a signed release form from the taxpayer allowing the  
 177 Driver License Division access to the information.

178 ~~(r)~~ (q) Notwithstanding Subsection (1), the commission shall provide to the Utah 911  
 179 Committee the information requested by the Utah 911 Committee under Subsection  
 180 53-10-602(3).

181 ~~(s)~~ (r) Notwithstanding Subsection (1), the commission shall provide to the Utah  
 182 Educational Savings Plan information related to a resident or nonresident individual's

183 contribution to a Utah Educational Savings Plan account as designated on the resident or  
 184 nonresident's individual income tax return as provided under Section 59-10-1313.

185 ~~[(t)]~~ (s) Notwithstanding Subsection (1), for the purpose of verifying eligibility under  
 186 Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the  
 187 Department of Health or its designee with the adjusted gross income of an individual if:

188 (i) an eligibility worker with the Department of Health or its designee requests the  
 189 information from the commission; and

190 (ii) the eligibility worker has complied with the identity verification and consent  
 191 provisions of Sections 26-18-2.5 and 26-40-105.

192 ~~[(t)]~~ (t) Notwithstanding Subsection (1), the commission may provide to a county, as  
 193 determined by the commission, information declared on an individual income tax return in  
 194 accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption  
 195 authorized under Section 59-2-103.

196 (4) (a) Each report and return shall be preserved for at least three years.

197 (b) After the three-year period provided in Subsection (4)(a) the commission may  
 198 destroy a report or return.

199 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

200 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,  
 201 the person shall be dismissed from office and be disqualified from holding public office in this  
 202 state for a period of five years thereafter.

203 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in  
 204 accordance with Subsection (3)~~[(t)]~~(n)(iii) or a person that requests information in accordance  
 205 with Subsection (3)~~[(t)]~~(n)(v):

206 (i) is not guilty of a class A misdemeanor; and

207 (ii) is not subject to:

208 (A) dismissal from office in accordance with Subsection (5)(b); or

209 (B) disqualification from holding public office in accordance with Subsection (5)(b).

210 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

211 Section 2. Section **59-9-101 (Subsec (2)(c)(iv) Repealed 07/01/13)** is amended to

212 read:

213 **59-9-101 (Subsec (2)(c)(iv) Repealed 07/01/13). Tax basis -- Rates -- Exemptions --**

214 **Rate reductions.**

215 (1) (a) Except as provided in Subsection (1)(b), (1)(d), or (5), an admitted insurer shall  
216 pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total  
217 premiums received by it during the preceding calendar year from insurance covering property  
218 or risks located in this state.

219 (b) This Subsection (1) does not apply to:

220 (i) workers' compensation insurance, assessed under Subsection (2);

221 (ii) title insurance premiums taxed under Subsection (3);

222 (iii) annuity considerations;

223 (iv) insurance premiums paid by an institution within the state system of higher

224 education as specified in Section 53B-1-102; and

225 (v) ocean marine insurance.

226 (c) The taxable premium under this Subsection (1) shall be reduced by:

227 (i) the premiums returned or credited to policyholders on direct business subject to tax  
228 in this state;

229 (ii) the premiums received for reinsurance of property or risks located in this state; and

230 (iii) the dividends, including premium reduction benefits maturing within the year:

231 (A) paid or credited to policyholders in this state; or

232 (B) applied in abatement or reduction of premiums due during the preceding calendar  
233 year.

234 (d) (i) For purposes of this Subsection (1)(d):

235 (A) "Utah variable life insurance premium" means an insurance premium paid:

236 (I) by:

237 (Aa) a corporation; or

238 (Bb) a trust established or funded by a corporation; and

239 (II) for variable life insurance covering risks located within the state.

240 (B) "Variable life insurance" means an insurance policy that provides for life

241 insurance, the amount or duration of which varies according to the investment experience of

242 one or more separate accounts that are established and maintained by the insurer pursuant to

243 Title 31A, Insurance Code.

244 (ii) Notwithstanding Subsection (1)(a), beginning on January 1, [~~2006~~] 2012, the tax on



245 that portion of the total premiums subject to a tax under Subsection (1)(a) that is a Utah  
246 variable life insurance premium shall be calculated as ~~[follows: (A) 2-1/4% of the first~~  
247 ~~\$100,000 of Utah variable life insurance premiums: (I) paid for each variable life insurance~~  
248 ~~policy, and (H) received by the admitted insurer in the preceding calendar year, and (B)]~~  
249 ~~0.08% of the Utah variable life insurance premiums [that exceed \$100,000]:~~

250 ~~[(F) (A) paid for [the] a variable life insurance policy [described in Subsection~~  
251 ~~(1)(d)(ii)(A)]; and~~

252 ~~[(H) (B) received by the admitted insurer in the preceding calendar year.~~

253 ~~[(iii) (A) On or before October 1, 2009, and every three years after October 1, 2009, the~~  
254 ~~Revenue and Taxation Interim Committee shall study the rate reduction contained in this~~  
255 ~~Subsection (1)(d):]~~

256 ~~[(B) As part of the study required by Subsection (1)(d)(iii)(A) the Revenue and~~  
257 ~~Taxation Interim Committee shall:]~~

258 ~~[(F) hear testimony from the commission and industry representatives;]~~

259 ~~[(H) make recommendations concerning whether the rate reduction should be~~  
260 ~~continued, modified, or repealed; and]~~

261 ~~[(H) make findings regarding:]~~

262 ~~[(Aa) the cost of the rate reduction;]~~

263 ~~[(Bb) the purpose and effectiveness of the rate reduction; and]~~

264 ~~[(Cc) any benefits of the rate reduction to the state.]~~

265 (2) (a) An admitted insurer writing workers' compensation insurance in this state,  
266 including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers'  
267 Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a  
268 premium assessment on the basis of the total workers' compensation premium income received  
269 by the insurer from workers' compensation insurance in this state during the preceding calendar  
270 year as follows:

271 (i) on or before December 31, 2010, an amount of equal to or greater than 1%, but  
272 equal to or less than 5.75% of the total workers' compensation premium income described in  
273 this Subsection (2);

274 (ii) on and after January 1, 2011, but on or before December 31, 2017, an amount of  
275 equal to or greater than 1%, but equal to or less than 4.25% of the total workers' compensation

276 premium income described in this Subsection (2); and

277 (iii) on and after January 1, 2018, an amount equal to 1.25% of the total workers'  
278 compensation premium income described in this Subsection (2).

279 (b) Total workers' compensation premium income means the net written premium as  
280 calculated before any premium reduction for any insured employer's deductible, retention, or  
281 reimbursement amounts and also those amounts equivalent to premiums as provided in Section  
282 34A-2-202.

283 (c) The percentage of premium assessment applicable for a calendar year shall be  
284 determined by the Labor Commission under Subsection (2)(d). The total premium income  
285 shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not  
286 as provided in Subsection (1)(c)(iii). The commission shall promptly remit from the premium  
287 assessment collected under this Subsection (2):

288 (i) income to the state treasurer for credit to the Employers' Reinsurance Fund created  
289 under Subsection 34A-2-702(1) as follows:

290 (A) on or before December 31, 2009, an amount of up to 5% of the total workers'  
291 compensation premium income;

292 (B) on and after January 1, 2010, but on or before December 31, 2010, an amount of up  
293 to 4.5% of the total workers' compensation premium income;

294 (C) on and after January 1, 2011, but on or before December 31, 2017, an amount of up  
295 to 3% of the total workers' compensation premium income; and

296 (D) on and after January 1, 2018, 0% of the total workers' compensation premium  
297 income;

298 (ii) an amount equal to 0.25% of the total workers' compensation premium income to  
299 the state treasurer for credit to the Workplace Safety Account created by Section 34A-2-701;

300 (iii) an amount of up to 0.5% and any remaining assessed percentage of the total  
301 workers' compensation premium income to the state treasurer for credit to the Uninsured  
302 Employers' Fund created under Section 34A-2-704; and

303 (iv) beginning on January 1, 2010, 0.5% of the total workers' compensation premium  
304 income to the state treasurer for credit to the Industrial Accident Restricted Account created in  
305 Section 34A-2-705.

306 (d) (i) The Labor Commission shall determine the amount of the premium assessment

307 for each year on or before each October 15 of the preceding year. The Labor Commission shall  
308 make this determination following a public hearing. The determination shall be based upon the  
309 recommendations of a qualified actuary.

310 (ii) The actuary shall recommend a premium assessment rate sufficient to provide  
311 payments of benefits and expenses from the Employers' Reinsurance Fund and to project a  
312 funded condition with assets greater than liabilities by no later than June 30, 2025.

313 (iii) The actuary shall recommend a premium assessment rate sufficient to provide  
314 payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a  
315 funded condition with assets equal to or greater than liabilities.

316 (iv) At the end of each fiscal year the minimum approximate assets in the Employers'  
317 Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in  
318 1990 by multiplying by the ratio that the total workers' compensation premium income for the  
319 preceding calendar year bears to the total workers' compensation premium income for the  
320 calendar year 1988.

321 (v) The requirements of Subsection (2)(d)(iv) cease when the future annual  
322 disbursements from the Employers' Reinsurance Fund are projected to be less than the  
323 calculations of the corresponding future minimum required assets. The Labor Commission  
324 shall, after a public hearing, determine if the future annual disbursements are less than the  
325 corresponding future minimum required assets from projections provided by the actuary.

326 (vi) At the end of each fiscal year the minimum approximate assets in the Uninsured  
327 Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in  
328 1990 by multiplying by the ratio that the total workers' compensation premium income for the  
329 preceding calendar year bears to the total workers' compensation premium income for the  
330 calendar year 1988.

331 (e) A premium assessment that is to be transferred into the General Fund may be  
332 collected on premiums received from Utah public agencies.

333 (3) An admitted insurer writing title insurance in this state shall pay to the commission,  
334 on or before March 31 in each year, a tax of .45% of the total premium received by either the  
335 insurer or by its agents during the preceding calendar year from title insurance concerning  
336 property located in this state. In calculating this tax, "premium" includes the charges made to  
337 an insured under or to an applicant for a policy or contract of title insurance for:

338 (a) the assumption by the title insurer of the risks assumed by the issuance of the policy  
339 or contract of title insurance; and

340 (b) abstracting title, title searching, examining title, or determining the insurability of  
341 title, and every other activity, exclusive of escrow, settlement, or closing charges, whether  
342 denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title  
343 insurance producer, or any of them.

344 (4) Beginning July 1, 1986, a former county mutual and a former mutual benefit  
345 association shall pay the premium tax or assessment due under this chapter. Premiums  
346 received after July 1, 1986, shall be considered in determining the tax or assessment.

347 (5) The following insurers are not subject to the premium tax on health care insurance  
348 that would otherwise be applicable under Subsection (1):

349 (a) an insurer licensed under Title 31A, Chapter 5, Domestic Stock and Mutual  
350 Insurance Corporations;

351 (b) an insurer licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance  
352 Corporations;

353 (c) an insurer licensed under Title 31A, Chapter 8, Health Maintenance Organizations  
354 and Limited Health Plans;

355 (d) an insurer licensed under Title 31A, Chapter 9, Insurance Fraternal;

356 (e) an insurer licensed under Title 31A, Chapter 11, Motor Clubs;

357 (f) an insurer licensed under Title 31A, Chapter 13, Employee Welfare Funds and  
358 Plans; and

359 (g) an insurer licensed under Title 31A, Chapter 14, Foreign Insurers.

360 (6) An insurer issuing multiple policies to an insured may not artificially allocate the  
361 premiums among the policies for purposes of reducing the aggregate premium tax or  
362 assessment applicable to the policies.

363 (7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and  
364 Taxes, apply to the tax or assessment imposed under this chapter.

365 **Section 3. Retrospective operation.**

366 This bill has retrospective operation to January 1, 2012.

**Legislative Review Note**  
as of 1-23-12 1:57 PM

**Office of Legislative Research and General Counsel**