

INSURANCE LAW REVISIONS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill modifies various provisions of the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ corrects citations;
- ▶ clarifies the monetary considerations for a surplus lines insurance policy that are subject to the surplus lines insurance tax;
- ▶ eliminates the requirement that providers of service contracts pay a fee when they file certain notices with the department;
- ▶ addresses coverages for motor vehicle insurance;
- ▶ addresses specific requirements for title insurance producers;
- ▶ addresses a title insurance producer performing the functions of escrow;
- ▶ addresses a title insurance producer business;
- ▶ addresses final closing documents; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-3-101, as last amended by Chapter 169, Laws of Utah 1997

31A-3-301, as last amended by Chapter 167, Laws of Utah 1987

31A-6a-103, as last amended by Chapter 298, Laws of Utah 2003

31A-22-302, as last amended by Chapters 76 and 218, Laws of Utah 2003

31A-23a-203, as last amended by Chapter 173, Laws of Utah 2004

31A-23a-204, as renumbered and amended by Chapter 298, Laws of Utah 2003

31A-23a-406, as last amended by Chapter 117, Laws of Utah 2004

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

Section 1. Section 31A-3-101 is amended to read:

31A-3-101. General finance provisions.

(1) The department's expenses shall be paid from the General Fund. Department expenditures shall conform to the Legislature's appropriation adopted under Title 63, Chapter 38, Budgetary Procedures Act.

(2) Except as provided in [~~Sections 31A-3-301 and~~] Section 31A-2-206, or as otherwise specifically provided in this title, all monies collected by the commissioner shall be deposited without deduction in the General Fund.

Section 2. Section 31A-3-301 is amended to read:

31A-3-301. Tax imposed on surplus lines insurance transactions.

~~[Insurance transactions]~~ (1) (a) An insurance transaction under Section 31A-15-103 ~~[are]~~ is subject to a tax of 4-1/4% of gross premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions. ~~[This]~~

(b) The gross premium for a surplus lines insurance transaction means the monetary consideration for an insurance policy including all fees charged to the insured, however designated.

(2) The tax imposed by this section does not apply to:

(a) ocean marine insurance[-];

(b) insurance premiums paid by institutions within the state system of higher education as specified in Section 53B-1-102[-]; or

(c) annuities.

(3) This tax shall be deposited in the General Fund.

Section 3. Section 31A-6a-103 is amended to read:

31A-6a-103. Requirements for doing business.

(1) [~~Service contracts~~] A service contract may not be issued, sold, or offered for sale in this state unless the service contract is insured under a service contract reimbursement insurance policy issued by:

(a) an insurer authorized to do business in this state~~[-];~~ or

(b) a recognized surplus lines carrier.

(2) (a) [~~Service contracts~~] A service contract may not be issued, sold, or offered for sale unless a true and correct copy of the service contract and the provider's reimbursement insurance policy have been filed with the commissioner. [~~Copies of contracts and policies~~] A copy of a contract and policy must be filed no less than 30 days prior to the issuance, sale offering for sale, or use of the service contract or reimbursement insurance policy in this state.

(b) Each modification of the terms of any service contract or reimbursement insurance policy must also be filed 30 days prior to its use in this state. [~~Each filing must be accompanied by a filing fee as required under Subsection 31A-3-103, or the filing shall be rejected.~~]

(c) Persons complying with this chapter are not required to comply with:

(i) Subsections 31A-21-201(1) and 31A-23a-402(3); or

(ii) Chapter 19a, Utah Rate Regulation Act.

(3) (a) Premiums collected on service contracts are not subject to premium taxes.

(b) Premiums collected by issuers of reimbursement insurance policies are subject to premium taxes.

(4) [~~Persons~~] A person marketing, selling, or offering to sell service contracts for service contract providers that [~~comply~~] complies with this chapter [~~are~~] is exempt from the licensing requirements of this title.

(5) Service contract providers complying with this chapter are not required to comply with:

- (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- (b) Chapter 7, Nonprofit Health Service Insurance Corporations;
- (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- (d) Chapter 9, Insurance Fraternal;
- (e) Chapter 10, Annuities;
- (f) Chapter 11, Motor Clubs;
- (g) Chapter 12, State Risk Management Fund;
- (h) Chapter 13, Employee Welfare Funds and Plans;
- (i) Chapter 14, Foreign Insurers;
- (j) Chapter 19a, Utah Rate Regulation Act;
- (k) Chapter 25, Third Party Administrators; and
- (l) Chapter 28, Guaranty Associations.

Section 4. Section **31A-22-302** is amended to read:

31A-22-302. Required components of motor vehicle insurance policies --

Exceptions.

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:

- (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;
- (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(4); ~~and~~

(c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(9)~~[-]; and~~

(d) except as provided in Subsection (2) and subject to Subsection (3), personal injury protection under Sections 31A-22-306 through 31A-22-309.

(2) ~~[Every]~~ A policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301~~[-except]~~ for ~~[motorcycles, trailers, and semitrailers, shall also include]~~ a motorcycle, trailer, or semitrailer is not required to have personal injury protection under Sections 31A-22-306 through 31A-22-309.

(3) (a) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators.

(b) Owners and operators of motorcycles, trailers, and semitrailers are not covered by personal injury protection coverages in connection with injuries incurred while operating any of these vehicles.

(4) First party medical coverage expenses shall be governed by the relative value study provisions under Subsections 31A-22-307(2) and (3).

Section 5. Section **31A-23a-203** is amended to read:

31A-23a-203. Training period requirements.

(1) A producer is eligible to add the surplus lines of authority to the person's producer's license if the producer:

(a) has passed the applicable examination;

(b) has been a producer with property and casualty lines of authority for at least three years during the four years immediately preceding the date of application; and

(c) has paid the applicable fee under Section 31A-3-103.

(2) A person is eligible to become a consultant only if the person has acted in a capacity that would provide the person with preparation to act as an insurance consultant for a period aggregating not less than three years during the four years immediately preceding the date of application.

~~[(3) A title producer is eligible to become a title agency only if the title producer has been licensed as a title producer in the search and escrow categories for at least three years during the four years immediately preceding the date of application.]~~

~~[(4)]~~ (3) The training periods required under this section apply only to natural persons applying for licenses under this chapter.

Section 6. Section **31A-23a-204** is amended to read:

31A-23a-204. Special requirements for title insurance producers.

Title insurance producers shall be licensed in accordance with this chapter, with the additional requirements listed in this section.

(1) (a) Every title insurance agency or producer appointed by an insurer shall maintain:

- (i) a fidelity bond;
- (ii) a professional liability insurance policy; or
- (iii) a financial protection:

(A) equivalent to that described in Subsection (1)(a)(i) or (ii); and

(B) that the commissioner considers adequate.

(b) The bond or insurance required by this Subsection (1):

(i) shall be supplied under a contract approved by the commissioner to provide protection against the improper performance of any service in conjunction with the issuance of a contract or policy of title insurance; and

(ii) be in a face amount no less than \$50,000.

(c) The commissioner may by rule exempt title insurance producers from the requirements of this Subsection (1) upon a finding that, and only so long as, the required policy or bond is generally unavailable at reasonable rates.

(2) (a) (i) Every title insurance agency or producer appointed by an insurer shall maintain a reserve fund.

(ii) The reserve fund required by this Subsection (2) shall be:

(A) (I) composed of assets approved by the commissioner;

(II) maintained as a separate trust account; and

(III) charged as a reserve liability of the title insurance producer in determining the producer's financial condition; and

(B) accumulated by segregating 1% of all gross income received from the title insurance business.

(iii) The reserve fund shall contain the accumulated assets for the immediately preceding ten years as defined in Subsection (2)(a)(ii).

(iv) That portion of the assets held in the reserve fund over ten years may be:

(A) withdrawn from the reserve fund; and

(B) restored to the income of the title insurance producer.

(v) The title insurance producer may withdraw interest from the reserve fund related to the principal amount as it accrues.

(b) (i) A disbursement may not be made from the reserve fund except as provided in Subsection (2)(a) unless the title insurance producer ceases doing business as a result of:

- (A) sale of assets;
- (B) merger of the producer with another producer;
- (C) termination of the producer's license;
- (D) insolvency; or
- (E) any cessation of business by the producer.

(ii) Any disbursements from the reserve fund may be made only to settle claims arising from the improper performance of the title insurance producer in providing services defined in Section 31A-23a-406.

(iii) The commissioner shall be notified ten days before any disbursements from the reserve fund.

(iv) The notice required by this Subsection (2)(b) shall contain:

- (A) the amount of claim;
- (B) the nature of the claim; and
- (C) the name of the payee.

(c) (i) The reserve fund shall be maintained by the title insurance producer or the title insurance producer's representative for a period of two years after the producer ceases doing business.

(ii) Any assets remaining in the reserve fund at the end of the two years specified in Subsection (2)(c)(i) may be withdrawn and restored to the former producer.

(3) Any examination for licensure shall include questions regarding the search and examination of title to real property.

(4) A title insurance producer may not perform the functions of escrow unless the producer has been examined on the fiduciary duties and procedures involved in those functions.

(5) The commissioner shall adopt rules outlining an examination that will satisfy this

section.

(6) A license may be issued to a title insurance producer who has qualified:

- (a) to perform only searches and examinations of title as specified in Subsection (3);
- (b) to handle only escrow arrangements as specified in Subsection (4); or
- (c) to act as a title marketing representative.

(7) A person licensed to practice law in Utah is exempt from the requirements of Subsections (1) and (2) if that person issues 12 or less policies in any 12-month period.

(8) A person licensed to practice law in Utah, whether exempt under Subsection (7) or not, shall maintain a trust account separate from a law firm trust account for all title and real estate escrow transactions.

Section 7. Section **31A-23a-406** is amended to read:

31A-23a-406. Title insurance producer's business.

(1) A title insurance producer may do escrow involving real property transactions if all of the following exist:

(a) the title insurance producer is licensed with:

- (i) the title line of authority; and
- (ii) the escrow subline of authority;

(b) the title insurance producer is appointed by a title insurer authorized to do business in the state;

(c) one or more of the following is to be issued as part of the transaction:

- (i) an owner's policy of title insurance; or
- (ii) a lender's policy of title insurance;

(d) (i) all funds deposited with the title insurance producer in connection with any escrow:

(A) are deposited:

(I) in a federally insured financial institution; and

(II) in a trust account that is separate from all other trust account funds that are not related to real estate transactions; and

(B) are the property of the persons entitled to them under the provisions of the escrow;
and

(ii) are segregated escrow by escrow in the records of the title insurance producer;

(e) earnings on funds held in escrow may be paid out of the escrow account to any person
in accordance with the conditions of the escrow; and

(f) the escrow does not require the title insurance producer to hold:

(i) construction funds; or

(ii) funds held for exchange under Section 1031, Internal Revenue Code.

(2) Notwithstanding Subsection (1), a title insurance producer may engage in the escrow
business if:

(a) the escrow involves:

(i) a mobile home;

(ii) a grazing right;

(iii) a water right; or

(iv) other personal property authorized by the commissioner; and

(b) the title insurance producer complies with all the requirements of this section except
for the requirement of Subsection (1)(c).

(3) Funds held in escrow:

(a) are not subject to any debts of the title insurance producer;

(b) may only be used to fulfill the terms of the individual escrow under which the funds
were accepted; and

(c) may not be used until all conditions of the escrow have been met.

(4) Assets or property other than escrow funds received by a title insurance producer in
accordance with an escrow shall be maintained in a manner that will:

(a) reasonably preserve and protect the asset or property from loss, theft, or damages; and

(b) otherwise comply with all general duties and responsibilities of a fiduciary or bailee.

(5) (a) A check from the trust account described in Subsection (1)(d) may not be drawn,
executed, or dated, or funds otherwise disbursed unless the segregated escrow account from

which funds are to be disbursed contains a sufficient credit balance consisting of collected or cleared funds at the time the check is drawn, executed, or dated, or funds are otherwise disbursed.

(b) As used in this Subsection (5), funds are considered to be "collected or cleared," and may be disbursed as follows:

- (i) cash may be disbursed on the same day the cash is deposited;
- (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;
- (iii) the following may be disbursed on the day following the date of deposit:
 - (A) a cashier's check;
 - (B) a certified check;
 - (C) a teller's check;
 - (D) a U.S. Postal Service money order; and
 - (E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and
- (iv) any other check or deposit may be disbursed:

(A) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(B) upon written notification from the financial institution to which the funds have been deposited, that final settlement has occurred on the deposited item.

(c) Subject to Subsections (5)(a) and (b), ~~[before the disbursement of funds, any changes to any settlement statement made after the final closing documents are executed shall be authorized or acknowledged by signature of the party or parties affected by the change]~~ any material change to a settlement statement made after the final closing documents are executed must be authorized or acknowledged by date and signature on each page of the settlement statement by the one or more persons affected by the change before disbursement of funds.

(6) The title insurance producer shall maintain records of all receipts and disbursements of escrow funds.

(7) The title insurance producer shall comply with:

(a) Section 31A-23a-409; [~~and~~]

(b) Title 46, Chapter 1, Notaries Public Reform Act; and

~~[(b)]~~ (c) any rules adopted by the commissioner in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that govern escrows.