

1                   **PROPERTY AND CASUALTY INSURANCE LAW**

2                                   **AMENDMENTS**

3   2005 GENERAL SESSION

4   STATE OF UTAH

5                                   **Sponsor: James A. Dunnigan**

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7   **LONG TITLE**

8   **General Description:**

9           This bill modifies various provisions of the Insurance Code related to property and  
10 casualty insurance.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ corrects citations;
- 14           ▶ clarifies the monetary considerations for a surplus lines insurance policy that are  
15 subject to the surplus lines insurance tax;
- 16           ▶ eliminates the requirement that providers of service contracts pay a fee when they  
17 file certain notices with the department;
- 18           ▶ addresses first party medical coverages for motor vehicle insurance unless the  
19 policies are to cover motorcycle, trailer, and semitrailer owners or operators;
- 20           ▶ addresses specific requirements for title insurance producers;
- 21           ▶ increases the amount of bond or insurance that a title insurance agency or producer  
22 must obtain from \$50,000 to \$150,000;
- 23           ▶ prohibits a title agent or agency from physically transferring or releasing control of a  
24 real estate settlement or documents to an unlicensed person;
- 25           ▶ addresses a title insurance producer performing the functions of escrow;
- 26           ▶ requires title insurers to comply with the Notaries Public Reform act; and
- 27           ▶ makes technical changes.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **31A-3-101**, as last amended by Chapter 169, Laws of Utah 1997

35 **31A-3-301**, as last amended by Chapter 167, Laws of Utah 1987

36 **31A-6a-103**, as last amended by Chapter 298, Laws of Utah 2003

37 **31A-22-302**, as last amended by Chapters 76 and 218, Laws of Utah 2003

38 **31A-23a-203**, as last amended by Chapter 173, Laws of Utah 2004

39 **31A-23a-204**, as renumbered and amended by Chapter 298, Laws of Utah 2003

40 **31A-23a-406**, as last amended by Chapter 117, Laws of Utah 2004



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

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

44 **31A-3-101. General finance provisions.**

45 (1) The department's expenses shall be paid from the General Fund. Department  
46 expenditures shall conform to the Legislature's appropriation adopted under Title 63, Chapter  
47 38, Budgetary Procedures Act.

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

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

52 **31A-3-301. Tax imposed on surplus lines insurance transactions.**

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

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

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

60           (a) ocean marine insurance[;];

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

63           (c) annuities.

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

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

66           **31A-6a-103. Requirements for doing business.**

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

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

71           (b) a recognized surplus lines carrier.

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

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

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

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

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

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

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

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

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

92 (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

93 (b) Chapter 7, Nonprofit Health Service Insurance Corporations;

94 (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

95 (d) Chapter 9, Insurance Fraternal;

96 (e) Chapter 10, Annuities;

97 (f) Chapter 11, Motor Clubs;

98 (g) Chapter 12, State Risk Management Fund;

99 (h) Chapter 13, Employee Welfare Funds and Plans;

100 (i) Chapter 14, Foreign Insurers;

101 (j) Chapter 19a, Utah Rate Regulation Act;

102 (k) Chapter 25, Third Party Administrators; and

103 (l) Chapter 28, Guaranty Associations.

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

105 **31A-22-302. Required components of motor vehicle insurance policies --**

106 **Exceptions.**

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

109 (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

110 (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively  
111 waived under Subsection 31A-22-305(4); ~~and~~

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

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

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

120 (3) (a) First party medical coverages may only be offered or included in policies issued

121 to motorcycle, trailer, and semitrailer owners or operators.

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

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

126 **31A-23a-203. Training period requirements.**

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

129 (a) has passed the applicable examination;

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

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

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

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

140 ~~[(4)]~~ (3) The training periods required under this section apply only to natural persons  
141 applying for licenses under this chapter.

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

143 **31A-23a-204. Special requirements for title insurance producers.**

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

146 (1) Every title insurance agency newly licensed, merged, or acquired after July 1, 2005,  
147 shall be owned or managed by a full-time title producer licensed with search and escrow lines  
148 of authority for at least three of the four years immediately preceding the date of application.

149 ~~[(1)]~~ (2) (a) Every title insurance agency or producer appointed by an insurer shall  
150 maintain:

151 (i) a fidelity bond;

- 152 (ii) a professional liability insurance policy; or
- 153 (iii) a financial protection:
- 154 (A) equivalent to that described in Subsection [~~(1)~~] (2)(a)(i) or (ii); and
- 155 (B) that the commissioner considers adequate.
- 156 (b) The bond or insurance required by this Subsection [~~(1)~~] (2):
- 157 (i) shall be supplied under a contract approved by the commissioner to provide
- 158 protection against the improper performance of any service in conjunction with the issuance of
- 159 a contract or policy of title insurance; and
- 160 (ii) be in a face amount no less than [~~\$50,000~~] \$150,000.
- 161 (c) The commissioner may by rule exempt title insurance producers from the
- 162 requirements of this Subsection [~~(1)~~] (2) upon a finding that, and only so long as, the required
- 163 policy or bond is generally unavailable at reasonable rates.
- 164 [~~(2)~~] (3) (a) (i) Every title insurance agency or producer appointed by an insurer shall
- 165 maintain a reserve fund.
- 166 (ii) The reserve fund required by this Subsection [~~(2)~~] (3) shall be:
- 167 (A) (I) composed of assets approved by the commissioner;
- 168 (II) maintained as a separate trust account; and
- 169 (III) charged as a reserve liability of the title insurance producer in determining the
- 170 producer's financial condition; and
- 171 (B) accumulated by segregating 1% of all gross income received from the title
- 172 insurance business.
- 173 (iii) The reserve fund shall contain the accumulated assets for the immediately
- 174 preceding ten years as defined in Subsection [~~(2)~~] (3)(a)(ii).
- 175 (iv) That portion of the assets held in the reserve fund over ten years may be:
- 176 (A) withdrawn from the reserve fund; and
- 177 (B) restored to the income of the title insurance producer.
- 178 (v) The title insurance producer may withdraw interest from the reserve fund related to
- 179 the principal amount as it accrues.
- 180 (b) (i) A disbursement may not be made from the reserve fund except as provided in
- 181 Subsection [~~(2)~~] (3)(a) unless the title insurance producer ceases doing business as a result of:
- 182 (A) sale of assets;

- 183 (B) merger of the producer with another producer;
- 184 (C) termination of the producer's license;
- 185 (D) insolvency; or
- 186 (E) any cessation of business by the producer.
- 187 (ii) Any disbursements from the reserve fund may be made only to settle claims arising
- 188 from the improper performance of the title insurance producer in providing services defined in
- 189 Section 31A-23a-406.
- 190 (iii) The commissioner shall be notified ten days before any disbursements from the
- 191 reserve fund.
- 192 (iv) The notice required by this Subsection [~~(2)~~] (3)(b) shall contain:
- 193 (A) the amount of claim;
- 194 (B) the nature of the claim; and
- 195 (C) the name of the payee.
- 196 (c) (i) The reserve fund shall be maintained by the title insurance producer or the title
- 197 insurance producer's representative for a period of two years after the producer ceases doing
- 198 business.
- 199 (ii) Any assets remaining in the reserve fund at the end of the two years specified in
- 200 Subsection [~~(2)~~] (3)(c)(i) may be withdrawn and restored to the former producer.
- 201 [~~(3)~~] (4) Any examination for licensure shall include questions regarding the search
- 202 and examination of title to real property.
- 203 [~~(4)~~] (5) A title insurance producer may not perform the functions of escrow unless the
- 204 producer has been examined on the fiduciary duties and procedures involved in those
- 205 functions.
- 206 (6) A title insurance producer or agency may not physically transfer or release care and
- 207 control of real estate settlement or real estate closing documents to any unlicensed person.
- 208 [~~(5)~~] (7) The commissioner shall adopt rules outlining an examination that will satisfy
- 209 this section.
- 210 [~~(6)~~] (8) A license may be issued to a title insurance producer who has qualified:
- 211 (a) to perform only searches and examinations of title as specified in Subsection [~~(3)~~]
- 212 (4);
- 213 (b) to handle only escrow arrangements as specified in Subsection [~~(4)~~] (5); or

214 (c) to act as a title marketing representative.

215 [~~(7)~~] (9) A person licensed to practice law in Utah is exempt from the requirements of  
216 Subsections [~~(1)~~] (2) and [~~(2)~~] (3) if that person issues 12 or less policies in any 12-month  
217 period.

218 [~~(8)~~] (10) A person licensed to practice law in Utah, whether exempt under Subsection  
219 [~~(7)~~] (9) or not, shall maintain a trust account separate from a law firm trust account for all title  
220 and real estate escrow transactions.

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

222 **31A-23a-406. Title insurance producer's business.**

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

225 [~~(a)~~] (i) the title insurance producer is licensed with:

226 [~~(i)~~] (A) the title line of authority; and

227 [~~(ii)~~] (B) the escrow subline of authority;

228 [~~(b)~~] (ii) the title insurance producer is appointed by a title insurer authorized to do  
229 business in the state;

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

231 [~~(i) an owner's policy of title insurance; or~~

232 [~~(ii) a lender's policy of title insurance;]~~

233 (iii) the title insurance producer complies with Subsection (1)(b);

234 [~~(d)-(i)~~] (iv) (A) all funds deposited with the title insurance producer in connection  
235 with any escrow:

236 [~~(A)~~] (I) are deposited:

237 [~~(i)~~] (Aa) in a federally insured financial institution; and

238 [~~(ii)~~] (Bb) in a trust account that is separate from all other trust account funds that are  
239 not related to real estate transactions; and

240 [~~(B)~~] (II) are the property of the persons entitled to them under the provisions of the  
241 escrow; and

242 [~~(ii)~~] (B) are segregated escrow by escrow in the records of the title insurance producer;

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

245           ~~[(f)]~~ (vi) the escrow does not require the title insurance producer to hold:  
246           ~~[(†)]~~ (A) construction funds; or  
247           ~~[(††)]~~ (B) funds held for exchange under Section 1031, Internal Revenue Code.  
248           (b) A title insurance producer may not perform the functions of escrow unless the  
249 producer issues one or more of the following:  
250           (i) an owner's policy of title insurance; or  
251           (ii) a lender's policy of title insurance.  
252           (2) Notwithstanding Subsection (1), a title insurance producer may engage in the  
253 escrow business if:  
254           (a) the escrow involves:  
255           (i) a mobile home;  
256           (ii) a grazing right;  
257           (iii) a water right; or  
258           (iv) other personal property authorized by the commissioner; and  
259           (b) the title insurance producer complies with all the requirements of this section  
260 except for the requirement of Subsection (1)~~[(e)]~~(b).  
261           (3) Funds held in escrow:  
262           (a) are not subject to any debts of the title insurance producer;  
263           (b) may only be used to fulfill the terms of the individual escrow under which the funds  
264 were accepted; and  
265           (c) may not be used until all conditions of the escrow have been met.  
266           (4) Assets or property other than escrow funds received by a title insurance producer in  
267 accordance with an escrow shall be maintained in a manner that will:  
268           (a) reasonably preserve and protect the asset or property from loss, theft, or damages;  
269 and  
270           (b) otherwise comply with all general duties and responsibilities of a fiduciary or  
271 bailee.  
272           (5) (a) A check from the trust account described in Subsection (1)(a)(v) may not be  
273 drawn, executed, or dated, or funds otherwise disbursed unless the segregated escrow account  
274 from which funds are to be disbursed contains a sufficient credit balance consisting of collected  
275 or cleared funds at the time the check is drawn, executed, or dated, or funds are otherwise

276 disbursed.

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

279 (i) cash may be disbursed on the same day the cash is deposited;

280 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;

281 (iii) the following may be disbursed on the day following the date of deposit:

282 (A) a cashier's check;

283 (B) a certified check;

284 (C) a teller's check;

285 (D) a U.S. Postal Service money order; and

286 (E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and

287 (iv) any other check or deposit may be disbursed:

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

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

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

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

301 (7) The title insurance producer shall comply with:

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

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

304 ~~[(b)]~~ (c) any rules adopted by the commissioner in accordance with Title 63, Chapter  
305 46a, Utah Administrative Rulemaking Act, that govern escrows.

**Legislative Review Note**

as of 1-7-05 9:10 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0200**

Property and Casualty Insurance Law Amendments

19-Jan-05

11:30 AM

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Impacts to business should be slight. No fiscal impact on individuals.

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**Office of the Legislative Fiscal Analyst**