

REGULATION OF TITLE INSURANCE

INDUSTRY

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill enacts the Title and Escrow Commission Act and makes conforming amendments.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts the Title and Escrow Commission Act which creates the commission and sets out the duties of the commission and the commissioner;
- ▶ addresses special provisions related to rate standards and rating methods for title insurance insurers, agencies, and producers;
- ▶ requires the concurrence of the commission for licensing in the title insurance line of authority including adjusters;
- ▶ authorizes the commission to make rules creating different categories of the title insurance lines of authority with the concurrence of the commissioner;
- ▶ addresses special requirements for title insurance producers including examination requirements;
- ▶ authorizes the commission to make rules related to unfair practices;
- ▶ provides that a title insurance producer shall comply with rules adopted by the commission that govern escrows;
- ▶ authorizes the commission, after consulting with the commissioner, to set the assessment on title insurance agencies or insurers;
- ▶ addresses provisions related to controlled business;

- ▶ authorizes the commission by rule to recognize other independent adjuster or public adjuster license classifications related to title insurance and to create license classifications that grant only part of the authority arising under a license class; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

31A-19a-209, as last amended by Chapters 252 and 298, Laws of Utah 2003

31A-23a-105, as last amended by Chapter 173, Laws of Utah 2004

31A-23a-106, as last amended by Chapter 81 and renumbered and amended by Chapter 298, Laws of Utah 2003

31A-23a-108, as renumbered and amended by Chapter 298, Laws of Utah 2003

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

31A-23a-402, as renumbered and amended by Chapter 298, Laws of Utah 2003

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

31A-23a-415, as renumbered and amended by Chapter 298, Laws of Utah 2003

31A-23a-503, as renumbered and amended by Chapter 298, Laws of Utah 2003

31A-26-203, as last amended by Chapter 116, Laws of Utah 2001

31A-26-204, as last amended by Chapter 116, Laws of Utah 2001

ENACTS:

31A-2-401, Utah Code Annotated 1953

31A-2-402, Utah Code Annotated 1953

31A-2-403, Utah Code Annotated 1953

31A-2-404, Utah Code Annotated 1953

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

Section 1. Section **31A-2-401** is enacted to read:

Part 4. Title and Escrow Commission Act

31A-2-401. Title.

This part is known as the "Title and Escrow Commission Act."

Section 2. Section **31A-2-402** is enacted to read:

31A-2-402. Definitions.

As used in this part:

(1) "Commission" means the Title and Escrow Commission created in Section 31A-2-403.

(2) "Concurrence" means the entities given a concurring role must jointly agree for the action to be taken.

(3) "Title licensee" means a person licensed under this title as:

(a) an agency with a title insurance line of authority;

(b) a producer with:

(i) a general title insurance line of authority; or

(ii) a specific category of authority for title insurance; or

(c) a title insurance adjuster.

Section 3. Section **31A-2-403** is enacted to read:

31A-2-403. Title and Escrow Commission created.

(1) (a) There is created within the department the Title and Escrow Commission that is comprised of five members appointed by the governor with the consent of the Senate as follows:

(i) four members shall:

(A) be or have been licensed under the title insurance line of authority; and

(B) as of the day on which the member is appointed, be or have been licensed with the search or escrow subline of authority for at least five years; and

(ii) one member shall be a member of the general public.

(b) No more than one commission member may be appointed from:

(i) any given county in the state; or

(ii) any single company.

(2) (a) Except as required by Subsection (2)(b), as terms of current commission members expire, the governor shall appoint each new member to a four-year term ending on June 30.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment, adjust the length of terms to ensure that the terms of the commission members are staggered so that approximately half of the commission is appointed every two years.

(c) A commission member may not serve more than one consecutive term.

(d) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the unexpired term.

(3) (a) A member of the commission shall receive no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A member may decline to receive per diem and expenses for the member's service.

(4) Members of the commission shall annually select one member to serve as chair.

(5) (a) The commission shall meet at least monthly.

(b) The commissioner may call additional meetings:

(i) at the commissioner's discretion;

(ii) upon the request of the chair of the commission; or

(iii) upon the written request of three or more commission members.

(c) (i) Three members of the commission constitute a quorum for the transaction of business.

(ii) The action of a majority of the members when a quorum is present is the action of the commission.

(6) The department shall staff the commission.

Section 4. Section **31A-2-404** is enacted to read:

31A-2-404. Duties of the commissioner and Title and Escrow Commission.

(1) Notwithstanding the other provisions of this chapter, to the extent provided in this part, the commissioner shall administer and enforce the provisions in this title related to:

(a) title insurance; and

(b) escrow conducted by a title licensee or title insurer.

(2) The commission shall:

(a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules for the administration of the provisions in this title related to title insurance including rules related to:

(i) rating standards and rating methods for title agencies and producers as provided in Section 31A-19a-209;

(ii) the licensing for a title licensee including the licensing requirements of Sections 31A-23a-203 and 31A-23a-204;

(iii) continuing education requirements of Section 31A-23a-202;

(iv) examination procedures, after consultation with the department and the department's test administrator when required by Section 31A-23a-204; and

(v) standards of conduct for a title licensee;

(b) concur in the issuance and renewal of licenses in accordance with Section 31A-23a-105 or 31A-26-203;

(c) in accordance with Section 31A-3-103, establish, with the concurrence of the department, all fees imposed by this title on a title licensee;

(d) in accordance with Section 31A-23a-415 determine, after consulting with the commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

(e) conduct all administrative hearings not delegated by it to an administrative law judge related to the:

(i) licensing of any applicant;

(ii) conduct of any title licensee; or

(iii) approval of continuing education programs required by Section 31A-23a-202;

(f) with the concurrence of the commissioner, approve assets that can be included in a

reserve fund required by Section 31A-23a-204;

(g) with the concurrence of the commissioner, approve continuing education programs required by Section 31A-23a-202;

(h) with the concurrence of the commissioner, impose penalties:

(i) under this title related to:

(A) title insurance; or

(B) escrow conducted by a title licensee;

(ii) after investigation by the department in accordance with Part 3, Procedures and Enforcement; and

(iii) that are enforced by the commissioner;

(i) advise the commissioner on the administration and enforcement of any matters affecting the title insurance industry;

(j) advise the commissioner on matters affecting the department's budget related to title insurance; and

(k) perform other duties as provided in this title.

Section 5. Section **31A-19a-209** is amended to read:

31A-19a-209. Special provisions for title insurance.

(1) (a) (i) The Title and Escrow Commission shall adopt rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing rate standards and rating methods for title agencies and producers.

(ii) The commissioner shall determine compliance with rate standards and rating methods for title insurance insurers, agencies, and producers.

~~[(+)]~~ (b) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title insurers, the commissioner and the Title and Escrow Commission shall consider the costs and expenses incurred by title insurance ~~[companies]~~ insurers, agencies, and producers peculiar to the business of title insurance including:

~~[(+)]~~ (i) the maintenance of title plants; and

~~[(b)]~~ (ii) the searching and examining of public records to determine insurability of title to real redevelopment property.

(2) (a) Every title insurance [company] insurer, agency, and title insurance producer shall file with the commissioner:

(i) a schedule of the escrow charges that the title insurance [company] insurer, agency, or title insurance producer proposes to use in this state for services performed in connection with the issuance of policies of title insurance; and

(ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).

(b) Except for a schedule filed by a title insurance insurer under this Subsection (2), a schedule filed under this Subsection (2) is subject to review by the Title and Escrow Commission.

~~[(b)]~~ (c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes effect on the day on which the schedule of escrow charges is filed.

(ii) Any changes to the schedule of the escrow charges required to be filed by Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow charges except that the effective date may not be less than 30 calendar days after the day on which the change to the schedule of escrow charges is filed.

(3) A title insurance [company] insurer, agency, or producer may not file or use any rate or other charge relating to the business of title insurance, including rates or charges filed for escrow that would cause the title insurance company, agency, or producer to:

(a) operate at less than the cost of doing:

(i) the insurance business; or

(ii) the escrow business; or

(b) fail to adequately underwrite a title insurance policy.

(4) (a) All or any of the schedule of rates or schedule of charges, including the schedule of escrow charges, may be changed or amended at any time, subject to the limitations in this Subsection (4).

(b) Each change or amendment shall:

- (i) be filed with the commissioner, subject to review by the Title and Escrow Commission; and
- (ii) state the effective date of the change or amendment, which may not be less than 30 calendar days after the day on which the change or amendment is filed.
- (c) Any change or amendment remains in force for a period of at least 90 calendar days from the change or amendment's effective date.
- (5) While the schedule of rates and schedule of charges are effective, a copy of each shall be:
 - (a) retained in each of the offices of:
 - (i) the title insurance [~~company~~] insurer in this state;
 - (ii) the title insurance [~~company's~~] insurer's producers in this state; and
 - (b) upon request, furnished to the public.
- (6) Except in accordance with the schedules of rates and charges filed with the commissioner, a title insurance [~~company~~] insurer, agency, or producer may not make or impose any premium or other charge:
 - (a) in connection with the issuance of a policy of title insurance; or
 - (b) for escrow services performed in connection with the issuance of a policy of title insurance.

Section 6. Section **31A-23a-105** is amended to read:

31A-23a-105. General requirements for individual and agency license issuance and renewal.

- (1) The commissioner shall issue or renew a license to act as a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary to any person who, as to the license type and line of authority classification applied for under Section 31A-23a-106:
 - (a) has satisfied the application requirements under Section 31A-23a-104;
 - (b) has satisfied the character requirements under Section 31A-23a-107;
 - (c) has satisfied any applicable continuing education requirements under Section

31A-23a-202;

- (d) has satisfied any applicable examination requirements under Section 31A-23a-108;
- (e) has satisfied any applicable training period requirements under Section 31A-23a-203;
- (f) if a nonresident:
 - (i) has complied with Section 31A-23a-109; and
 - (ii) holds an active similar license in that person's state of residence;
- (g) if an applicant for a title insurance producer license, has satisfied the requirements of

Sections 31A-23a-203 and 31A-23a-204;

(h) if an applicant for a license to act as a provider or producer of viatical settlements, has satisfied the requirements of Section 31A-23a-117; and

- (i) has paid the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for a pending individual or agency producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary license; or

(ii) a licensed individual or agency producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) any administrative action taken against the person:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) any criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person files the application for an individual or agency license; or

(B) within 30 days of the initiation of an action or prosecution described in Subsection

(2)(b); and

(ii) include a copy of the complaint or other relevant legal documents related to the

action or prosecution described in Subsection (2)(b).

(3) (a) The department may request:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (3)(a) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-23a-107 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-23a-107; and

(iii) preventing persons who violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(a)(ii); and

(iii) charge the person applying for a license or for renewal of a license a fee equal to the aggregate of Subsections (3)(c)(i) and (ii).

(4) To become a resident licensee in accordance with Section 31A-23a-104 and this section, a person licensed as an insurance producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary in another state who moves to this state shall apply within 90 days of establishing legal residence in this state.

(5) Notwithstanding the other provisions of this section, the commissioner may:

(a) issue a license to an applicant for a license for a title insurance line of authority only with the concurrence of the Title and Escrow Commission; and

(b) renew a license for a title insurance line of authority only with the concurrence of the Title and Escrow Commission.

Section 7. Section **31A-23a-106** is amended to read:

31A-23a-106. License types.

(1) (a) A resident or nonresident license issued under this chapter shall be issued under the license types described under [~~Subsections (1) through (7)~~] Subsection (2).

(b) License types and lines of authority pertaining to each license type describe the type of licensee and the lines of business that licensee may sell, solicit, or negotiate. License types are intended to describe the matters to be considered under any education, examination, and training required of license applicants under Sections 31A-23a-108, 31A-23a-202, and 31A-23a-203.

~~[(1)]~~ (2) (a) A producer license type includes the following lines of authority:

~~[(a)]~~ (i) life insurance, including nonvariable contracts;

~~[(b)]~~ (ii) variable contracts, including variable life and annuity, if the producer has the life insurance line of authority;

~~[(c)]~~ (iii) accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;

~~[(d)]~~ (iv) property insurance;

~~[(e)]~~ (v) casualty insurance, including surety and other bonds;

~~[(f)]~~ (vi) title insurance under one or more of the following categories:

~~[(1)]~~ (A) search, including authority to act as a title marketing representative;

~~[(2)]~~ (B) escrow, including authority to act as a title marketing representative;

~~[(3)]~~ (C) search and escrow, including authority to act as a title marketing representative; and

~~[(4)]~~ (D) title marketing representative only;

~~[(g)]~~ (vii) workers' compensation insurance;

~~[(h)]~~ (viii) personal lines insurance; and

~~[(t)]~~ (ix) surplus lines, if the producer has the property or casualty or both lines of authority.

~~[(z)]~~ (b) A limited line producer license type includes the following limited lines of authority:

~~[(a)]~~ (i) limited line credit insurance;

~~[(b)]~~ (ii) travel insurance;

~~[(c)]~~ (iii) motor club insurance;

~~[(d)]~~ (iv) car rental related insurance;

~~[(e)]~~ (v) legal expense insurance;

~~[(f)]~~ (vi) bail bond producer; and

~~[(g)]~~ (vii) viatical settlements.

~~[(z)]~~ (c) A customer service representative license type includes the following lines of authority, if held by the customer service representative's employer producer:

~~[(a)]~~ (i) life insurance, including nonvariable contracts;

~~[(b)]~~ (ii) accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;

~~[(c)]~~ (iii) property insurance;

~~[(d)]~~ (iv) casualty insurance, including surety and other bonds;

~~[(e)]~~ (v) workers' compensation insurance;

~~[(f)]~~ (vi) personal lines insurance; and

~~[(g)]~~ (vii) surplus lines, if the employer producer has the property or casualty or both lines of authority.

~~[(4)]~~ (d) A consultant license type includes the following lines of authority:

~~[(a)]~~ (i) life insurance, including nonvariable contracts;

~~[(b)]~~ (ii) variable contracts, including variable life and annuity, if the consultant has the life insurance line of authority;

~~[(c)]~~ (iii) accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;

~~[(d)]~~ (iv) property insurance;

~~[(e)]~~ (v) casualty insurance, including surety and other bonds;

~~[(f)]~~ (vi) workers' compensation insurance; and

~~[(g)]~~ (vii) personal lines insurance.

~~[(5)]~~ (e) A managing general agent license type includes the following lines of authority:

~~[(a)]~~ (i) life insurance, including nonvariable contracts;

~~[(b)]~~ (ii) variable contracts, including variable life and annuity, if the managing general agent has the life insurance line of authority;

~~[(e)]~~ (iii) accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;

~~[(d)]~~ (iv) property insurance;

~~[(e)]~~ (v) casualty insurance, including surety and other bonds;

~~[(f)]~~ (vi) workers' compensation insurance; and

~~[(g)]~~ (vii) personal lines insurance.

~~[(6)]~~ (f) A reinsurance intermediary license type includes the following lines of authority:

~~[(a)]~~ (i) life insurance, including nonvariable contracts;

~~[(b)]~~ (ii) variable contracts, including variable life and annuity, if the reinsurance intermediary has the life insurance line of authority;

~~[(e)]~~ (iii) accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;

~~[(d)]~~ (iv) property insurance;

~~[(e)]~~ (v) casualty insurance, including surety and other bonds;

~~[(f)]~~ (vi) workers' compensation insurance; and

~~[(g)]~~ (vii) personal lines insurance.

~~[(7)]~~ (g) A holder of licenses under Subsections ~~[(1), (4), (5), and (6)]~~ (2)(a), (d), (e), and (f) has all qualifications necessary to act as a holder of a license under Subsections ~~[(2) and (3)]~~ (2)(b) and (c).

~~[(8)]~~ (3)(a) The commissioner may by rule recognize other producer, limited line

producer, customer service representative, consultant, managing general agent, or reinsurance intermediary lines of authority as to kinds of insurance not listed under Subsections ~~[(1) through (6)]~~ (2)(a) through (f).

(b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and Escrow Commission may by rule, with the concurrence of the commissioner, recognize other categories for a title insurance producer line of authority not listed under Subsection (2)(a)(vi).

~~[(9)]~~ (4) The variable contracts, including variable life and annuity line of authority requires:

(a) licensure as a registered agent or broker by the National Association of Securities Dealers ~~[(NASD)]~~; and

(b) current registration with a securities broker/dealer.

~~[(10)]~~ (5) A surplus lines producer is a producer who has a surplus lines line of authority.

Section 8. Section **31A-23a-108** is amended to read:

31A-23a-108. Examination requirements.

(1) (a) The commissioner may require applicants for any particular license type under Section 31A-23a-106 to pass a line of authority examination as a requirement for a license, except that an examination may not be required of applicants for:

(i) licenses under Subsections 31A-23a-106(2)~~[and (3)]~~ (b) and (c); or

(ii) other limited line license lines of authority recognized by the commissioner or the Title and Escrow Commission by rule as provided in Subsection 31A-23a-106~~[(8)]~~(3).

(b) The examination described in Subsection (1)(a):

(i) shall reasonably relate to the line of authority for which it is prescribed; and

(ii) may be administered by the commissioner or as otherwise specified by rule.

(2) The commissioner shall waive the requirement of an examination for a nonresident applicant who:

(a) applies for an insurance producer license in this state;

(b) has been licensed for the same line of authority in another state; and

(c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant

applies for an insurance producer license in this state; or

(ii) if the application is received within 90 days of the cancellation of the applicant's previous license:

(A) the prior state certifies that at the time of cancellation, the applicant was in good standing in that state; or

(B) the state's producer database records maintained by the National Association of Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or subsidiaries, indicates that the producer is or was licensed in good standing for the line of authority requested.

(3) A nonresident producer licensee who moves to this state and applies for a resident license within 90 days of establishing legal residence in this state shall be exempt from any line of authority examination that the producer was authorized on the producer's nonresident producer license, except where the commissioner determines otherwise by rule.

(4) This section's requirement may only be applied to applicants who are natural persons.

Section 9. 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~~] Title and Escrow Commission may by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, 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 and the Title and Escrow Commission;

(II) maintained as a separate 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 title insurance 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 title insurance 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 title insurance producer has been examined on the fiduciary duties and procedures involved in those functions.

(5) The [~~commissioner~~] Title and Escrow Commission shall adopt rules [~~outlining~~], in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, after consulting with the department and the department's test administrator, establishing an examination for a license 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 10. Section **31A-23a-402** is amended to read:

31A-23a-402. Unfair marketing practices -- Communication -- Inducement -- Unfair discrimination -- Coercion or intimidation -- Restriction on choice.

(1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance contract, any insurer, or other licensee under this title, including information that is false or misleading because it is incomplete:

- (A) a person who is or should be licensed under this title;
- (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);
- (C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and

(B) with intent to deceive a person examining it, filing a report, making a false entry in a record, or wilfully refraining from making a proper entry in a record.

(iii) A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any advertisement or other insurance promotional material that would cause a

reasonable person to mistakenly believe that a state or federal government agency:

- (I) is responsible for the insurance sales activities of the person;
- (II) stands behind the credit of the person;
- (III) guarantees any returns on insurance products of or sold by the person; or
- (IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that [it] person is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) If a licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer that the licensee represents, or for whom the licensee processes claims, and if the cards, documents, signs, or advertisements are supplied or approved by that insurer, the licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer.

(2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not induce any person to enter into or continue an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy to be issued or continued, including premium or commission rebates.

(ii) An insurer may not make or knowingly allow any agreement of insurance that is not clearly expressed in the policy to be issued or renewed.

(iii) This Subsection (2)(a) does not preclude:

- (A) insurers from reducing premiums because of expense savings;
- (B) the usual kinds of social courtesies not related to particular transactions; or
- (C) an insurer from receiving premiums under an installment payment plan.

(b) A licensee under this title may not absorb the tax under Section 31A-3-301.

(c) (i) A title insurer or producer or any officer or employee of either may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title

insurance business[;]:

(A) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance[;]:

(B) any special favor or advantage not generally available to others[;]; or

(C) any money or other consideration or material inducement.

(ii) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the [~~commissioner~~] Title and Escrow Commission after consultation with the commissioner.

(iii) An insured or any other person connected, directly or indirectly, with the transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer, employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(c)(i).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) A person who is or should be licensed under this title, an employee of that licensee or person who should be licensed, a person whose primary interest is as a competitor of a person licensed under this title, and one acting on behalf of any of these persons, may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(a) tends to produce:

(i) an unreasonable restraint of the business of insurance; or

(ii) a monopoly in that business; or

(b) results in an applicant purchasing or replacing an insurance contract.

(5) (a) A person may not restrict in the choice of an insurer or licensee under this chapter,

another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract. The person requiring the coverage may, however, reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) (a) A person may not engage in any other unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that they:

- (i) are misleading[;];
- (ii) are deceptive[;];
- (iii) are unfairly discriminatory[;];
- (iv) provide an unfair inducement[;]; or
- (v) unreasonably restrain competition.

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that define any other unfair method of competition or any other

unfair or deceptive act or practice after a finding that they:

- (i) are misleading;
- (ii) are deceptive;
- (iii) are unfairly discriminatory;
- (iv) provide an unfair inducement; or
- (v) unreasonably restrain competition.

Section 11. 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 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 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 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 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 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 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.

(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) any rules adopted by the ~~commissioner~~ Title and Escrow Commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that govern escrows.

Section 12. Section **31A-23a-415** is amended to read:

31A-23a-415. Assessment on title insurance agencies or title insurers.

(1) For purposes of this section:

(a) "Premium" is as defined in Subsection 59-9-101(3).

(b) "Title insurer" means a person:

(i) making any contract or policy of title insurance as:

(A) insurer;

(B) guarantor; or

(C) surety;

(ii) proposing to make any contract or policy of title insurance as:

(A) insurer;

(B) guarantor; or

(C) surety; or

(iii) transacting or proposing to transact any phase of title insurance, including:

(A) soliciting;

(B) negotiating preliminary to execution;

(C) executing of a contract of title insurance;

(D) insuring; and

(E) transacting matters subsequent to the execution of the contract and arising out of the contract.

(c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or personal property located in Utah, an owner of real or personal property, the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of:

(i) liens or encumbrances upon, defects in, or the unmarketability of the title to the property; or

(ii) invalidity or unenforceability of any liens or encumbrances on the property.

(2) (a) Beginning on July 1, 1998, the [insurance] commissioner may assess each title insurer and each title insurance agency an annual assessment;

(i) determined by the Title and Escrow Commission:

(A) after consultation with the commissioner; and

(B) in accordance with this Subsection (2); and

(ii) to be used for the purposes described in Subsection (3).

(b) A title insurance agency shall be assessed up to:

(i) \$200 for the first office in each county in which the title insurance agency maintains an office; and

(ii) \$100 for each additional office the title insurance agency maintains in the county described in Subsection (2)(b)(i).

(c) A title insurer shall be assessed up to:

(i) \$200 for the first office in each county in which the title insurer maintains an office;

(ii) \$100 for each additional office the title insurer maintains in the county described in Subsection (2)(c)(i); and

(iii) an amount calculated by:

(A) aggregating the assessments imposed on:

(I) title insurance agencies under Subsection (2)(b); and

(II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

(B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total costs and expenses determined under Subsection (2)(d); and

(C) multiplying:

(I) the amount calculated under Subsection (2)(c)(iii)(B); and

(II) the percentage of total premiums for title insurance on Utah risk that are premiums of the title insurer.

(d) Notwithstanding Section 31A-3-103 and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the ~~[department]~~ Title and Escrow Commission by rule shall establish the amount of costs and expenses described under Subsection (3) that will be covered by the assessment, except the costs or expenses to be covered by the assessment may not exceed \$75,000 annually.

(3) All money received by the state under this section:

(a) shall be deposited in the General Fund as a dedicated credit of the department; and

(b) may be expended by the department only to pay for any cost or expense incurred by the department in the administration, investigation, and enforcement of Chapter 23a, Parts 4 and

5, related to:

- (i) the marketing of title insurance; and
- (ii) audits of agencies.

(4) The assessment imposed by this section shall be in addition to any premium assessment imposed under Subsection 59-9-101(3).

Section 13. Section **31A-23a-503** is amended to read:

31A-23a-503. Controlled business in title insurance.

(1) As used in this section:

(a) "Associate" means any:

(i) business organized for profit in which a person who refers title business is a director, officer, partner, or employee;

(ii) spouse or relative within the second degree by blood or marriage of a person who refers title business, who is a natural person;

(iii) employee of a person who refers title business; or

(iv) person with whom a person who refers title business or any associate of that producer has any agreement, arrangement, or understanding, or pursues any course of conduct, designed to avoid the provisions of this chapter.

(b) "Controlled business" means that portion of the title insurance business of a title insurer or producer in this state that is referred to it by all those producers of title business who have a financial interest in the title insurer or producer and by all associates of those producers. Business is referred if there is influence over the selection of the person with whom the business is placed.

(c) "A person who refers title business" includes any person engaged in this state in a business of:

(i) buying or selling interests in real property;

(ii) making loans secured by interests in real property; or

(iii) acting as a representative or employee of a person who buys or sells any interest in real property or who lends or borrows money with interest as security, other than acting as a

licensed title insurer or producer doing the business of title insurance.

(d) "Financial interest" means any legal or beneficial interest that together with other interests entitles the holder to more than 1% of the net profits or net worth of the business in which the interest is held.

(2) A title insurer or producer or person having a financial interest in a title insurer or producer may not knowingly be a party to or knowingly permit to continue in any arrangement in which the title insurer, producer, or person knows or has reason to believe that any person who refers title business has or will have, directly or indirectly, a financial interest in the title insurer or producer, if it reasonably appears that a substantial factor in the person who refers title business owning or acquiring the financial interest is the expected realization of financial profit or gain derived in whole or in part from controlled business.

(3) A title insurer may not appoint or knowingly continue its authorization of any title insurance producer in which the company knows or has reason to believe that any person who refers title business has or will have, directly or indirectly, a financial interest, if it reasonably appears that a substantial factor in the person who refers title business owning or acquiring the financial interest is the person's expected realization of financial profit or gain derived in whole or part from controlled business.

(4) (a) If for any calendar quarter, the gross operating revenues of a title insurer or producer derived from all sources of controlled business in this state amount to more than 1/3 of its gross operating revenues from all other sources of its business of title insurance in this state, it is presumed that the expected realization of financial profit or gain derived in whole or in part from controlled business was a substantial factor in the ownership of financial interest in the title insurer or producer.

(b) The title insurer or producer has the burden of overcoming ~~[this]~~ the presumption described in Subsection (4)(a).

(c) This Subsection (4) does not authorize any controlled business if a violation of the standards set forth in Subsection (2) or (3) exists.

(5) ~~[No]~~ A title ~~[insurance company]~~ insurer or producer may not accept any order for

the business of title insurance that it knows or has reason to believe constitutes controlled business, unless it records and maintains in its permanent records on forms prescribed by the commissioner the facts relating to the transactions.

(6) An applicant for qualification as a title [~~insurance company~~] insurer or producer may not be granted a license if it reasonably appears that the expected realization of financial profit or gain to be derived in whole or in part from controlled business is or will be a substantial factor in the applicant's plan of operation or in the ownership or acquisition of financial interests in the applicant by any person who refers title business.

(7) Each title insurer and producer shall maintain permanent records relating to its controlled business on forms prescribed by the commissioner.

(8) (a) Each title insurer and producer shall file annually with the commissioner, on forms prescribed by the commissioner, reports setting forth:

(i) the names and addresses of any persons owning a financial interest in the title insurer or producer as of the last day of the calendar year, who are known or reasonably believed by the title [~~insurance company~~] insurer or producer to be a person who refers title business; and

(ii) a summary compiled from the title insurer's or producer's records of the controlled business, sufficient to inform the commissioner and the Title and Escrow Commission as to the proportion of the title insurer's or producer's gross operating revenues attributable to controlled business during the preceding calendar year.

(b) The reports shall be filed with the reports required under Section 31A-23a-413 and shall contain the certification of an officer of the title insurer or producer that the information contained in them is true to the best of the officer's knowledge, information, and belief. Upon filing, the reports are public records.

(c) A report filed pursuant to Subsection (8)(a) is subject to review by the Title and Escrow Commission.

(9) An attorney who is also a licensed title insurance producer and who issues as producer a policy of title insurance to a client on behalf of whom the attorney is also acting as an attorney and who, in so doing, acts consistently with the applicable ethical standards of the Utah

State Bar pertaining to the billing and receipt of legal fees and the receipt of a commission on a policy of title insurance is not, without more, considered to be engaged in controlled business.

Section 14. Section **31A-26-203** is amended to read:

31A-26-203. Adjuster's license required.

(1) The commissioner shall issue a license to act as an independent adjuster or public adjuster to any person who, as to the license classification applied for under Section 31A-26-204, has:

- (a) satisfied the character requirements under Section 31A-26-205;
- (b) satisfied the applicable continuing education requirements under Section 31A-26-206;
- (c) satisfied the applicable examination requirements under Section 31A-26-207;
- (d) if a nonresident, complied with Section 31A-26-208; and
- (e) paid the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for:

(A) an independent adjuster's license; or

(B) a public adjuster's license;

(ii) a licensed independent adjuster; or

(iii) a licensed public adjuster.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) any administrative action taken against the person:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) any criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person applies for a third party administrator's license; or

(B) within 30 days of the initiation of an action or prosecution described in Subsection

(2)(b); and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3) (a) The department may request concerning a person applying for an independent or public adjuster's license:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (3)(a) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-26-205 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-25-204; and

(iii) preventing persons who violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(a)(ii); and

(iii) charge the person applying for a license or for renewal of a license a fee equal to the aggregate of Subsections (3)(c)(i) and (ii).

(4) Notwithstanding the other provisions of this section, the commissioner may:

(a) issue a license to an applicant for a license for a title insurance classification only

with the concurrence of the Title and Escrow Commission; or

(b) renew a license for a title insurance classification only with the concurrence of the Title and Escrow Commission.

Section 15. Section **31A-26-204** is amended to read:

31A-26-204. License classifications.

A resident or nonresident license issued under this chapter shall be issued under the classifications described under Subsections (1), (2), and (3). These classifications are intended to describe the matters to be considered under any prerequisite education and examination required of license applicants under Sections 31A-26-206 and 31A-26-207.

(1) Independent adjuster license classifications include:

(a) accident and health insurance, including related service insurance under Chapter 7 or 8;

(b) property and liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety bonds; and

(iv) policies containing combinations or variations of these coverages;

(c) service insurance;

(d) title insurance;

(e) credit insurance; and

(f) workers' compensation insurance.

(2) Public adjuster license classifications include:

(a) accident and health insurance, including related service insurance under Chapter 7 or 8;

(b) property and liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety bonds; and

- (iv) policies containing combinations or variations of these coverages;
- (c) service insurance;
- (d) title insurance;
- (e) credit insurance; and
- (f) workers' compensation insurance.

(3) (a) The commissioner may by rule:

(i) recognize other independent adjuster or public adjuster license classifications as to other kinds of insurance not listed under Subsection (1)[~~—The commissioner may also by rule~~];
and

(ii) create license classifications [~~which~~] that grant only part of the authority arising under another license class.

(b) Notwithstanding Subsection (3)(a), for purpose of title insurance, the Title and Escrow Commission may make the rules provided for in Subsection (3)(a).

Section 16. **Effective date.**

This bill takes effect on July 1, 2005, except that Section 31A-2-403 takes effect on May 2, 2005.