

**ERRORS AND OMISSIONS COVERAGE FOR  
INSURANCE PRODUCERS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jim Bird**

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

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code to require errors and omission coverage of a producer.

**Highlighted Provisions:**

This bill:

- ▶ requires errors and omissions coverage during the license term of an individual producer;
- ▶ requires related information to be included in an application;
- ▶ authorizes the commissioner to make related administrative rules; and
- ▶ makes technical and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-23a-104**, as last amended by Laws of Utah 2009, Chapter 349

**31A-23a-105**, as last amended by Laws of Utah 2009, Chapters 349 and 355

ENACTS:



28 31A-23a-203.5, Utah Code Annotated 1953



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

31 Section 1. Section 31A-23a-104 is amended to read:

32 **31A-23a-104. Application for individual license -- Application for agency license.**

33 (1) This section applies to an initial or renewal license as a:

- 34 (a) producer;
- 35 (b) limited line producer;
- 36 (c) customer service representative;
- 37 (d) consultant;
- 38 (e) managing general agent; or
- 39 (f) reinsurance intermediary.

40 (2) (a) Subject to Subsection (2)(b), to obtain or renew an individual license, an  
41 individual shall:

42 (i) file an application for an initial or renewal individual license [~~shall be: (i) made to~~]  
43 with the commissioner on forms and in a manner the commissioner prescribes; and

44 (ii) [~~accompanied by~~] pay a license fee that is not refunded if the application:

- 45 (A) is denied; or
- 46 (B) if incomplete, is never completed by the applicant.

47 (b) An application described in this Subsection (2) shall provide:

- 48 (i) information about the applicant's identity;
- 49 (ii) the applicant's Social Security number;
- 50 (iii) the applicant's personal history, experience, education, and business record;
- 51 (iv) whether the applicant is 18 years of age or older;
- 52 (v) whether the applicant has committed an act that is a ground for denial, suspension,

53 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; [~~and~~]

54 (vi) whether the applicant is covered for errors or omissions in accordance with Section  
55 31A-23a-203.5; and

56 [~~(vi)~~] (vii) any other information the commissioner reasonably requires.

57 (3) The commissioner may require a document reasonably necessary to verify the  
58 information contained in an application filed under this section.

59 (4) An applicant's Social Security number contained in an application filed under this  
60 section is a private record under Section 63G-2-302.

61 (5) (a) Subject to Subsection (5)(b), to obtain or renew an agency license, a person  
62 shall:

63 (i) file an application for an initial or renewal agency license [~~shall be: (i) made to~~]  
64 with the commissioner on forms and in a manner the commissioner prescribes; and

65 (ii) [~~accompanied by~~] pay a license fee that is not refunded if the application:

66 (A) is denied; or

67 (B) if incomplete, is never completed by the applicant.

68 (b) An application described in Subsection (5)(a) shall provide:

69 (i) information about the applicant's identity;

70 (ii) the applicant's federal employer identification number;

71 (iii) the designated responsible licensed producer;

72 (iv) the identity of all owners, partners, officers, and directors;

73 (v) whether the applicant has committed an act that is a ground for denial, suspension,  
74 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

75 (vi) any other information the commissioner reasonably requires.

76 Section 2. Section **31A-23a-105** is amended to read:

77 **31A-23a-105. General requirements for individual and agency license issuance**  
78 **and renewal.**

79 (1) (a) The commissioner shall issue or renew a license to a person described in  
80 Subsection (1)(b) to act as:

81 (i) a producer;

82 (ii) a limited line producer;

83 (iii) a customer service representative;

84 (iv) a consultant;

85 (v) a managing general agent; or

86 (vi) a reinsurance intermediary.

87 (b) The commissioner shall issue or renew a license under Subsection (1)(a) to a  
88 person who, as to the license type and line of authority classification applied for under Section  
89 31A-23a-106:

- 90 (i) satisfies the application requirements under Section 31A-23a-104;
- 91 (ii) satisfies the character requirements under Section 31A-23a-107;
- 92 (iii) satisfies any applicable continuing education requirements under Section
- 93 31A-23a-202;
- 94 (iv) satisfies any applicable examination requirements under Section 31A-23a-108;
- 95 (v) satisfies any applicable training period requirements under Section 31A-23a-203;
- 96 (vi) satisfies the errors or omissions coverage requirements under Section
- 97 31A-23a-203.5;
- 98 [~~(vi)~~] (vii) has not committed an act that is a ground for denial, suspension, or
- 99 revocation as provided in Section 31A-23a-111;
- 100 [~~(vii)~~] (viii) if a nonresident:
- 101 (A) complies with Section 31A-23a-109; and
- 102 (B) holds an active similar license in that person's state of residence;
- 103 [~~(viii)~~] (ix) if an applicant for a title insurance producer license, satisfies the
- 104 requirements of Sections 31A-23a-203 and 31A-23a-204;
- 105 [~~(ix)~~] (x) if an applicant for a license to act as a life settlement provider or life
- 106 settlement producer, satisfies the requirements of Section 31A-23a-117; and
- 107 [~~(x)~~] (xi) pays the applicable fees under Section 31A-3-103.
- 108 (2) (a) This Subsection (2) applies to the following persons:
- 109 (i) an applicant for a pending:
- 110 (A) individual or agency producer license;
- 111 (B) limited line producer license;
- 112 (C) customer service representative license;
- 113 (D) consultant license;
- 114 (E) managing general agent license; or
- 115 (F) reinsurance intermediary license; or
- 116 (ii) a licensed:
- 117 (A) individual or agency producer;
- 118 (B) limited line producer;
- 119 (C) customer service representative;
- 120 (D) consultant;

- 121 (E) managing general agent; or  
122 (F) reinsurance intermediary.
- 123 (b) A person described in Subsection (2)(a) shall report to the commissioner:  
124 (i) an administrative action taken against the person:  
125 (A) in another jurisdiction; or  
126 (B) by another regulatory agency in this state; and  
127 (ii) a criminal prosecution taken against the person in any jurisdiction.
- 128 (c) The report required by Subsection (2)(b) shall:  
129 (i) be filed:  
130 (A) at the time the person files the application for an individual or agency license; and  
131 (B) for an action or prosecution that occurs on or after the day on which the person  
132 files the application:  
133 (I) for an administrative action, within 30 days of the final disposition of the  
134 administrative action; or  
135 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;  
136 and  
137 (ii) include a copy of the complaint or other relevant legal documents related to the  
138 action or prosecution described in Subsection (2)(b).
- 139 (3) (a) The department may require a person applying for a license or for consent to  
140 engage in the business of insurance to submit to a criminal background check as a condition of  
141 receiving a license or consent.
- 142 (b) A person, if required to submit to a criminal background check under Subsection  
143 (3)(a), shall:  
144 (i) submit a fingerprint card in a form acceptable to the department; and  
145 (ii) consent to a fingerprint background check by:  
146 (A) the Utah Bureau of Criminal Identification; and  
147 (B) the Federal Bureau of Investigation.
- 148 (c) For a person who submits a fingerprint card and consents to a fingerprint  
149 background check under Subsection (3)(b), the department may request:  
150 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
151 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

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

154 (d) Information obtained by the department from the review of criminal history records  
155 received under this Subsection (3) shall be used by the department for the purposes of:

156 (i) determining if a person satisfies the character requirements under Section  
157 31A-23a-107 for issuance or renewal of a license;

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

160 (iii) preventing a person who violates the federal Violent Crime Control and Law  
161 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of  
162 insurance in the state.

163 (e) If the department requests the criminal background information, the department  
164 shall:

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

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

171 (iii) charge the person applying for a license or for consent to engage in the business of  
172 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

173 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this  
174 section, a person licensed as one of the following in another state who moves to this state shall  
175 apply within 90 days of establishing legal residence in this state:

176 (a) insurance producer;

177 (b) limited line producer;

178 (c) customer service representative;

179 (d) consultant;

180 (e) managing general agent; or

181 (f) reinsurance intermediary.

182 (5) (a) The commissioner may deny a license application for a license listed in

183 Subsection (5)(b) if the person applying for the license, as to the license type and line of  
184 authority classification applied for under Section 31A-23a-106:

- 185 (i) fails to satisfy the requirements as set forth in this section; or
- 186 (ii) commits an act that is grounds for denial, suspension, or revocation as set forth in  
187 Section 31A-23a-111.

188 (b) This Subsection (5) applies to the following licenses:

- 189 (i) producer;
- 190 (ii) limited line producer;
- 191 (iii) customer service representative;
- 192 (iv) consultant;
- 193 (v) managing general agent; or
- 194 (vi) reinsurance intermediary.

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

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

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

200 Section 3. Section **31A-23a-203.5** is enacted to read:

201 **31A-23a-203.5. Errors and omissions coverage requirements.**

202 (1) In accordance with this section, a producer, including a limited line producer, shall  
203 ensure that the producer is covered:

204 (a) for the legal liability of the producer as the result of an erroneous act or failure to  
205 act in the producer's capacity as a producer; and

206 (b) at all times during the term of the producer's license.

207 (2) The coverage required by Subsection (1) shall consist of:

208 (a) a policy filed with the commissioner by the producer;

209 (b) a policy filed by the agency that appoints the producer in accordance with this  
210 chapter; or

211 (c) an agreement filed with the commissioner by an insurer or group of affiliated  
212 insurers, on behalf of a producer who is or will become an exclusive agent of the insurer or  
213 group of affiliated insurers, under which the insurer or group of affiliated insurers agrees to

214 assume responsibility, to the benefit of an aggrieved person, for legal liability of the producer  
215 as the result of an erroneous act or failure to act in the producer's capacity as a producer for the  
216 insurer or group of affiliated insurers.

217 (3) The commissioner may, by rule made in accordance with Title 63G, Chapter 3,  
218 Utah Administrative Rulemaking Act, provide for:

219 (a) the terms and conditions of the coverage required under Subsection (1); and

220 (b) if the coverage required by Subsection (1) is terminated during a producer's license  
221 term, requirements to:

222 (i) provide notice; and

223 (ii) replace the coverage.

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**Legislative Review Note**  
**as of 11-12-09 2:43 PM**

**Office of Legislative Research and General Counsel**