

### **Part 3 Procedures and Enforcement**

#### **31A-2-301 Special hearing officers -- Witness and mileage fees.**

- (1) If the commissioner considers it necessary because of the technicality or complexity of the subject, the commissioner may appoint a special hearing officer from outside the department staff and may contract for a reasonable professional fee for the services.
- (2)
  - (a) In hearings before the commissioner, witness fees and reimbursement for mileage traveled, if claimed, shall be allowed at the same rate as in district courts.
  - (b) Witness fees and reimbursement for mileage, together with the actual expense necessarily incurred in securing attendance of witnesses and their testimony, and the hearing officer's fee and reasonable actual expenses, shall be paid by the Insurance Department.
  - (c) The commissioner shall be reimbursed for these costs as provided in Section 31A-2-205 if:
    - (i) the hearing is incident to an examination for which costs are payable under Section 31A-2-205; or
    - (ii) the commissioner orders the persons involved in the hearing to reimburse the department for hearing costs, which the commissioner may do if the commissioner had reasonable cause to believe that the order which issued or might have issued was necessary.
- (3) Whenever the commissioner is reimbursed for costs under this section, the expenditures may not be charged against the department budget.

Amended by Chapter 297, 2011 General Session

#### **31A-2-302 Commissioner's disapproval.**

- (1) When the law requires the commissioner's approval for a certain action without a deemer clause, that approval shall be express. The commissioner's disapproval of an action is assumed if the commissioner does not act within 60 days after receiving the application for approval or give notice of the commissioner's reasonable extension of that time period with the commissioner's reasons for the extension. Assumed disapproval under this subsection entitles the aggrieved person to request agency action under Section 63G-4-201.
- (2) When the law provides that a certain action is not effective if disapproved by the commissioner within a certain period, the affirmative approval by the commissioner may make the action effective at a designated earlier date, but not earlier than the date of the commissioner's affirmative approval.
- (3) Subsections (1) and (2) do not apply to the extent that the law specifically provides otherwise.

Amended by Chapter 297, 2011 General Session

#### **31A-2-303 Notice.**

- (1) If the commissioner determines that the number of persons affected by a proposed action is so great as to render it impracticable to serve each person affected with a copy of an order, notice of hearing, or other notice, the commissioner shall:
  - (a) provide a copy of the order, notice of hearing, or other notice to all persons who have filed with the department a general request to be informed of this type of action, or if fewer than 10 persons have requested this type of notice, provide a copy to those who have and also to others affected by the notice or order so that at least 10 persons receive the notice or order

- who are collectively representative of the class of persons whose legal status, pecuniary interests, or other substantial interests will be affected by the proposed action; and
- (b) publish a copy of the order, notice of hearing, or other notice under Subsection (2).
- (2) When this title requires the commissioner to publish an order, notice of hearing, or other document, the commissioner shall cause the notice or order to be published:
- (a) at least once during each of the four weeks preceding the hearing, effective date, or other critical event, in at least two newspapers with sufficient circulation and appropriate location to best provide actual notice; and
- (b) in accordance with Section 45-1-101 for four weeks preceding the hearing, effective date, or other critical event.

Amended by Chapter 388, 2009 General Session

**31A-2-304 Auxiliary procedural powers.**

The commissioner, or his delegate authorized for a particular matter over his handwritten signature, may administer oaths, take testimony, issue subpoenas, and take depositions in connection with any hearing, meeting, examination, investigation, or other proceeding that the commissioner may conduct. The subpoena shall have the same effect and shall be served in the same manner as if issued from a court of record. Sections 78B-1-131 and 78B-6-313 apply to the enforcement of the process issued by the commissioner or his delegate.

Amended by Chapter 3, 2008 General Session

**31A-2-305 Immunity from prosecution.**

- (1) If a natural person declines to appear, testify, or produce any record or document in any proceeding instituted by the commissioner or in obedience to the subpoena of the commissioner, the commissioner may apply to a judge of the district court where the proceeding is held for an order to the person to attend, testify, or produce records or documents as requested by the commissioner. In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.
- (2) If a person claims the privilege against self-incrimination and refuses to appear, testify, or produce documents in response to probative evidence against him in a proceeding to revoke or suspend his license, and if the testimony or documents would have been admissible as evidence in a court of law except for the Fifth Amendment privilege, the refusal to appear, testify, or produce documents is, for noncriminal proceedings only, rebuttable evidence of the facts on which the proceeding is based.

Amended by Chapter 296, 1997 General Session

**31A-2-306 Judicial review -- Costs.**

- (1) A person aggrieved by a rule or order of the commissioner, or aggrieved by the commissioner's failure to act when he has a duty to act, may obtain judicial review.
- (2) The court reviewing agency actions governed by this title shall give priority to those actions and shall hear and determine them promptly.
- (3) Costs shall be awarded as in civil cases. If the court finds that the appeal from action or inaction stemmed from the bad faith or malice of the commissioner, the court may award

reasonable attorney's fees to the prevailing petitioner. Section 63G-7-701 applies to the extent the attorney's fees awarded under this subsection exceed \$10,000 for any one appeal.

Amended by Chapter 267, 2004 General Session

**31A-2-306.5 Stay of commissioner's decision pending administrative review or judicial appeal.**

- (1) An order of the commissioner or a designee of the commissioner is not stayed by a petition for:
  - (a) administrative review;
  - (b) rehearing; or
  - (c) judicial review.
- (2) A person seeking to stay an order of the commissioner or a designee of the commissioner shall seek a stay in accordance with:
  - (a) rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, pending a petition for:
    - (i) administrative review; or
    - (ii) rehearing; or
  - (b) Section 63G-4-405, pending judicial review.

Amended by Chapter 382, 2008 General Session

**31A-2-307 Declaratory interpretation of statutes -- Procedure.**

- (1) The commissioner or any other person with a substantial interest in the result may petition the Third District Court for Salt Lake County for a declaratory judgment interpreting any provision of this title as applied to stipulated facts.
- (2) The court may require that notice be given to persons that may be affected by the judgment. These persons may participate in the proceeding.
- (3) The court in its discretion may require the commissioner and any other participating parties to provide testimony and documentary evidence necessary for a fair disposition of the case.
- (4) The court may decline to proceed on the petition if it believes the petition is frivolous, or the declaratory relief is unnecessary or has the possibility of prejudicing persons who cannot practicably be made parties to the proceeding.
- (5) The court may declare the meaning of the statute. The declaration has the effect of a final judgment or decree.
- (6) Any participating party may obtain judicial review of the decision.
- (7) The costs of the proceeding shall be paid by the petitioner unless the commissioner is the petitioner, in which case all parties shall bear their own costs. "Costs" means:
  - (a) fees of the clerk and marshal;
  - (b) fees of the court reporter or the transcriber of a tape of the proceedings for all or any part of the transcript necessarily obtained for use in the case;
  - (c) fees and disbursements for printing and witnesses;
  - (d) fees for exemplification and copies of papers necessarily obtained for use in the case; and
  - (e) compensation of court-appointed experts or interpreters. Reimbursements shall be made to the General Fund, and shall be added back to the department's budget, except to the extent the department forwards a reimbursement to the attorney general's office, in which case the attorney general's budget shall be credited with the reimbursement.

Amended by Chapter 101, 1988 General Session

**31A-2-308 Enforcement penalties and procedures.**

- (1)
  - (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.
  - (b)
    - (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, or insurance consultant who violates an insurance statute or rule to forfeit to the state not more than \$2,500 for each violation.
    - (ii) The commissioner may order any other person who violates an insurance statute or rule to forfeit to the state not more than \$5,000 for each violation.
  - (c)
    - (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues is a separate violation.
    - (ii) The commissioner may order any other person who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each day the violation continues is a separate violation.
  - (d) The commissioner may accept or compromise any forfeiture under this Subsection (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only the attorney general may compromise the forfeiture.
- (2) When a person fails to comply with an order issued under Subsection 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of competent jurisdiction or obtain a court order or judgment:
  - (a) enforcing the commissioner's order;
  - (b)
    - (i) directing compliance with the commissioner's order and restraining further violation of the order; and
    - (ii) subjecting the person ordered to the procedures and sanctions available to the court for punishing contempt if the failure to comply continues; or
  - (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each day the failure to comply continues after the filing of the complaint until judgment is rendered.
- (3)
  - (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's intention to proceed under Subsection (2)(c).
  - (b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.
- (4) If, after a court order is issued under Subsection (2), the person fails to comply with the commissioner's order or judgment:
  - (a) the commissioner may certify the fact of the failure to the court by affidavit; and

- (b) the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures, as prescribed in Subsection (2)(c), until the person complies.
- (5)
  - (a) The proceeds of the forfeitures under this section, including collection expenses, shall be paid into the General Fund.
  - (b) The expenses of collection shall be credited to the department's budget.
  - (c) The attorney general's budget shall be credited to the extent the department reimburses the attorney general's office for its collection expenses under this section.
- (6)
  - (a) Forfeitures and judgments under this section bear interest at the rate charged by the United States Internal Revenue Service for past due taxes on the:
    - (i) date of entry of the commissioner's order under Subsection (1); or
    - (ii) date of judgment under Subsection (2).
  - (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the forfeiture and accrued interest are fully paid.
- (7) A forfeiture may not be imposed under Subsection (2)(c) if:
  - (a) at the time the forfeiture action is commenced, the person was in compliance with the commissioner's order; or
  - (b) the violation of the order occurred during the order's suspension.
- (8) The commissioner may seek an injunction as an alternative to issuing an order under Subsection 31A-2-201(4).
- (9)
  - (a) A person is guilty of a class B misdemeanor if that person:
    - (i) intentionally violates:
      - (A) an insurance statute of this state; or
      - (B) an order issued under Subsection 31A-2-201(4);
    - (ii) intentionally permits a person over whom that person has authority to violate:
      - (A) an insurance statute of this state; or
      - (B) an order issued under Subsection 31A-2-201(4); or
    - (iii) intentionally aids any person in violating:
      - (A) an insurance statute of this state; or
      - (B) an order issued under Subsection 31A-2-201(4).
  - (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than:
    - (i) \$10,000 if a corporation; or
    - (ii) \$5,000 if a person other than a corporation.
  - (c) If the person is an individual, the person may, in addition, be imprisoned for up to one year.
  - (d) As used in this Subsection (9), "intentionally" has the same meaning as under Subsection 76-2-103(1).
- (10)
  - (a) A person who knowingly and intentionally violates Section 31A-4-102, 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this Subsection (10).
  - (b) When the value of the property, money, or other things obtained or sought to be obtained in violation of Subsection (10)(a):
    - (i) is less than \$5,000, a person is guilty of a third degree felony; or
    - (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

(11)

- (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority:
    - (i) when a licensee of the department, other than a domestic insurer:
      - (A) persistently or substantially violates the insurance law; or
      - (B) violates an order of the commissioner under Subsection 31A-2-201(4);
    - (ii) if there are grounds for delinquency proceedings against the licensee under Section 31A-27a-207; or
    - (iii) if the licensee's methods and practices in the conduct of the licensee's business endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate interests of the licensee's customers and the public.
  - (b) Additional license termination or probation provisions for licensees other than insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112, 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.
- (12) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

Amended by Chapter 253, 2012 General Session

**31A-2-309 Service of process through state officer.**

- (1) The commissioner, or the lieutenant governor when the subject proceeding is brought by the state, is the agent for receipt of service of a summons, notice, order, pleading, or other legal process relating to a Utah court or administrative agency upon the following:
  - (a) an insurer authorized to do business in this state, while authorized to do business in this state, and thereafter in a proceeding arising from or related to a transaction having a connection with this state;
  - (b) a surplus lines insurer for a proceeding arising out of a contract of insurance that is subject to the surplus lines law, or out of a certificate, cover note, or other confirmation of that type of insurance;
  - (c) an unauthorized insurer or other person assisting an unauthorized insurer under Subsection 31A-15-102(1) by doing an act specified in Subsection 31A-15-102(2), for a proceeding arising out of a transaction that is subject to the unauthorized insurance law;
  - (d) a nonresident producer, consultant, adjuster, or third party administrator, while authorized to do business in this state, and thereafter in a proceeding arising from or related to a transaction having a connection with this state; and
  - (e) a reinsurer submitting to the commissioner's jurisdiction under Subsection 31A-17-404(9).
- (2) The following is considered to have irrevocably appointed the commissioner and lieutenant governor as that person's agents in accordance with Subsection (1):
  - (a) a licensed insurer by applying for and receiving a certificate of authority;
  - (b) a surplus lines insurer by entering into a contract subject to the surplus lines law;
  - (c) an unauthorized insurer by doing in this state an act prohibited by Section 31A-15-103; and
  - (d) a nonresident producer, consultant, adjuster, and third party administrator.
- (3) The commissioner and lieutenant governor are also agents for an executor, administrator, personal representative, receiver, trustee, or other successor in interest of a person specified under Subsection (1).
- (4) A litigant serving process on the commissioner or lieutenant governor under this section shall pay the fee applicable under Section 31A-3-103.

- (5) The right to substituted service under this section does not limit the right to serve a summons, notice, order, pleading, demand, or other process upon a person in another manner provided by law.

Amended by Chapter 138, 2016 General Session

**31A-2-310 Procedure for service of process through state officer.**

- (1) Service upon the commissioner or lieutenant governor under Section 31A-2-309 is service on the principal, if:
  - (a) two copies of the process are delivered personally or to the office of the official designated in Section 31A-2-309, and
  - (b) that official mails a copy of the process to the person to be served according to Subsection (2)(b).
- (2)
  - (a) The commissioner and the lieutenant governor shall give receipts for and keep records of all process served through them.
  - (b) The commissioner or the lieutenant governor shall immediately send by certified mail one copy of the process received to the person to be served at that person's last known principal place of business, residence, or post-office address. The commissioner or the lieutenant governor shall retain the other copy for his files.
  - (c) No plaintiff or complainant may take a judgment by default in any proceeding in which process is served under this section and Section 31A-2-309 until the expiration of 40 days from the date of service of process under Subsection (2)(b).
- (3) Proof of service shall be evidenced by a certificate by the official designated in Section 31A-2-309, showing service made upon him and mailing by him, and attached to a copy of the process presented to him for that purpose.
- (4) When process is served under this section, the words "twenty days" in the first sentence of Rule 12(a) of the Utah Rules of Civil Procedure shall be changed to read "forty days."

Amended by Chapter 20, 1995 General Session

**31A-2-311 Reciprocal enforcement of foreign decrees.**

- (1) As used in this section:
  - (a) "Reciprocal state" means a state whose laws contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders issued by courts located in other states against an insurer authorized to do business in the reciprocal state, and which recognizes Utah as a reciprocal state under its law.
  - (b) "Foreign decree" means a decree or order of a court located in a reciprocal state, including a United States court located in a reciprocal state against an insurer authorized to do business in Utah.
- (2) The commissioner shall determine which states qualify as reciprocal states and shall maintain a list of them.
- (3) The attorney general, upon request of the commissioner, may proceed in the courts of Utah or any other state to enforce an order or decision issued in Utah in any court proceeding or in any administrative proceeding before the insurance commissioner.
- (4)
  - (a) A copy of any foreign court decree authenticated under Utah statutes or court rules may be filed in the office of the clerk of the Third District Court for Salt Lake County. The clerk, upon

verifying with the commissioner that the decree or order qualifies as a foreign court decree, shall treat it in the same manner and give it the same effect as a decree of a district court of Utah.

(b)

- (i) When filing the foreign decree, the filer shall deposit with the clerk of the court an affidavit setting forth the name and last-known post-office address of the defendant in Utah.
- (ii) When the foreign decree and the affidavit are filed, the clerk shall immediately mail notice of the filing of the foreign decree to the defendant at the address given by the filer and to the commissioner, and shall note the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the commissioner. Alternatively, the commissioner may mail a notice of the filing of the foreign decree to the defendant, and either the attorney general or the commissioner may file proof of this mailing with the clerk. The clerk's failure to mail notice of the filing does not affect the enforcement proceedings if the attorney general or the commissioner has filed a proof of mailing.
- (iii) No execution or other process for enforcement of a foreign decree may issue until 30 days after the foreign decree is filed.

(c)

- (i) If the defendant shows the court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof by the defendant that he has furnished the security for the satisfaction of the decree required by the state in which it was rendered.
- (ii) If the defendant shows the court any ground upon which enforcement of a similar decree of any district court of Utah would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon proof by the defendant that he has furnished the same security for satisfaction of the decree as is required in Utah.
- (d) A person filing a foreign decree shall pay to the clerk of the court the same fee for an enforcement proceeding as is required for enforcing a decree of the district court.

Enacted by Chapter 242, 1985 General Session