

Part 2 Producers and Consultants

31A-23a-201 Exceptions to producer licensing.

- (1) The commissioner may not require a license as an insurance producer of:
- (a) an officer, director, or employee of an insurer or of an insurance producer if:
 - (i) the officer, director, or employee does not receive any commission on a policy written or sold to insure risks residing, located, or to be performed in this state; and
 - (ii)
 - (A) the officer's, director's, or employee's activities are:
 - (I) executive, administrative, managerial, clerical, or a combination of these activities; and
 - (II) only indirectly related to the sale, solicitation, or negotiation of insurance;
 - (B) the officer's, director's, or employee's function relates to:
 - (I) underwriting;
 - (II) loss control;
 - (III) inspection; or
 - (IV) the processing, adjusting, investigating or settling of a claim on a contract of insurance;or
 - (C)
 - (I) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting an insurance producer;
 - (II) the officer's, director's, or employee's activities are limited to providing technical advice and assistance to a licensed insurance producer; and
 - (III) the officer's, director's, or employee's activities do not include the sale, solicitation, or negotiation of insurance;
 - (b) a person who:
 - (i) is paid no commission for the services described in Subsection (1)(b)(ii); and
 - (ii) secures and furnishes information for the purpose of:
 - (A) group life insurance;
 - (B) group property and casualty insurance;
 - (C) group annuities;
 - (D) group or blanket accident and health insurance;
 - (E) enrolling individuals under plans;
 - (F) issuing certificates under plans; or
 - (G) otherwise assisting in administering plans;
 - (c) a person who:
 - (i) is paid no commission for the services described in Subsection (1)(c)(ii); and
 - (ii) performs administrative services related to mass marketed property and casualty insurance;
 - (d)
 - (i) any of the following if the conditions of Subsection (1)(d)(ii) are met:
 - (A) an employer or association; or
 - (B) an officer, director, employee, or trustee of an employee trust plan;
 - (ii) a person listed in Subsection (1)(d)(i):
 - (A) to the extent that the employer, officer, employee, director, or trustee is engaged in the administration or operation of a program of employee benefits for:
 - (I) the employer's or association's own employees; or
 - (II) the employees of a subsidiary or affiliate of an employer or association;

- (B) the program involves the use of insurance issued by an insurer; and
 - (C) the employer, association, officer, director, employee, or trustee is not in any manner compensated, directly or indirectly, by the company issuing the contract;
 - (e) an employee of an insurer or organization employed by an insurer who:
 - (i) is engaging in:
 - (A) the inspection, rating, or classification of risks; or
 - (B) the supervision of the training of insurance producers; and
 - (ii) is not individually engaged in the sale, solicitation, or negotiation of insurance;
 - (f) a person whose activities in this state are limited to advertising:
 - (i) without the intent to solicit insurance in this state;
 - (ii) through communications in mass media including:
 - (A) a printed publication; or
 - (B) a form of electronic mass media;
 - (iii) that is distributed to residents outside of the state; and
 - (iv) if the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;
 - (g) a person who:
 - (i) is not a resident of this state;
 - (ii) sells, solicits, or negotiates a contract of insurance:
 - (A) for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract; and
 - (B) insures risks located in a state in which the person is licensed as provided in Subsection (1)(g)(iii); and
 - (iii) is licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business; or
 - (h) if the employee does not sell, solicit, or receive a commission for a contract of insurance, a salaried full-time employee who counsels or advises the employee's employer relating to the insurance interests of:
 - (i) the employer; or
 - (ii) a subsidiary or business affiliate of the employer.
- (2) The commissioner may by rule exempt a class of persons from the license requirement of Subsection 31A-23a-103(1) if:
- (a) the functions performed by the class of persons does not require:
 - (i) special competence;
 - (ii) special trustworthiness; or
 - (iii) regulatory surveillance made possible by licensing; or
 - (b) other existing safeguards make regulation unnecessary.

Renumbered and Amended by Chapter 298, 2003 General Session

31A-23a-202 Continuing education requirements.

- (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing education requirements for a producer and a consultant.
- (2)
 - (a) The commissioner may not state a continuing education requirement in terms of formal education.
 - (b) The commissioner may state a continuing education requirement in terms of hours of insurance-related instruction received.

- (c) Insurance-related formal education may be a substitute, in whole or in part, for the hours required under Subsection (2)(b).
- (3)
 - (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (3).
 - (b)
 - (i) Except as provided in this section, the continuing education requirements shall require:
 - (A) that a licensee complete 24 credit hours of continuing education for every two-year licensing period;
 - (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses; and
 - (C) that the licensee complete at least half of the required hours through classroom hours of insurance-related instruction.
 - (ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be obtained through:
 - (A) classroom attendance;
 - (B) home study;
 - (C) watching a video recording;
 - (D) experience credit; or
 - (E) another method provided by rule.
 - (iii)
 - (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), an individual title insurance producer is required to complete 12 credit hours of continuing education for every two-year licensing period, with 3 of the credit hours being ethics courses unless the individual title insurance producer is licensed in this state as an individual title insurance producer for 20 or more consecutive years.
 - (B) If an individual title insurance producer is licensed in this state as an individual title insurance producer for 20 or more consecutive years, the individual title insurance producer is required to complete 6 credit hours of continuing education for every two-year licensing period, with 3 of the credit hours being ethics courses.
 - (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance producer is considered to have met the continuing education requirements imposed under Subsection (3)(b)(iii)(A) or (B) if at the time of license renewal the individual title insurance producer:
 - (I) provides the department evidence that the individual title insurance producer is an active member in good standing with the Utah State Bar;
 - (II) is in compliance with the continuing education requirements of the Utah State Bar; and
 - (III) if requested by the department, provides the department evidence that the individual title insurance producer complied with the continuing education requirements of the Utah State Bar.
 - (c) A licensee may obtain continuing education hours at any time during the two-year licensing period.
 - (d)
 - (i) A licensee is exempt from continuing education requirements under this section if:
 - (A) the licensee was first licensed before December 31, 1982;
 - (B) the license does not have a continuous lapse for a period of more than one year, except for a license for which the licensee has had an exemption approved before May 11, 2011;
 - (C) the licensee requests an exemption from the department; and
 - (D) the department approves the exemption.

- (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is not required to apply again for the exemption.
- (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall, by rule:
 - (i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (3)(b);
 - (ii) authorize a continuing education provider or a state or national professional producer or consultant association to:
 - (A) offer a qualified program for a license type or line of authority on a geographically accessible basis; and
 - (B) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner; and
 - (iii) provide that membership by a producer or consultant in a state or national professional producer or consultant association is considered a substitute for the equivalent of two hours for each year during which the producer or consultant is a member of the professional association, except that the commissioner may not give more than two hours of continuing education credit in a year regardless of the number of professional associations of which the producer or consultant is a member.
- (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a professional producer or consultant association program may be less for an association member, on the basis of the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.
- (4) The commissioner shall approve a continuing education provider or continuing education course that satisfies the requirements of this section.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall by rule set the processes and procedures for continuing education provider registration and course approval.
- (6) The requirements of this section apply only to a producer or consultant who is an individual.
- (7) A nonresident producer or consultant is considered to have satisfied this state's continuing education requirements if the nonresident producer or consultant satisfies the nonresident producer's or consultant's home state's continuing education requirements for a licensed insurance producer or consultant.
- (8) A producer or consultant subject to this section shall keep documentation of completing the continuing education requirements of this section for two years after the end of the two-year licensing period to which the continuing education applies.

Amended by Chapter 138, 2016 General Session

31A-23a-203 Training period requirements.

- (1) A producer is eligible to become a surplus lines producer only if the producer:
 - (a) has passed the applicable surplus lines producer examination;
 - (b) has been a producer with property or casualty or both lines of authority for at least three years during the four years immediately preceding the date of application; and
 - (c) has paid the applicable fee under Section 31A-3-103.
- (2) A person is eligible to become a consultant only if the person has acted in a capacity that would provide the person with preparation to act as an insurance consultant for a period aggregating not less than three years during the four years immediately preceding the date of application.

- (3)
 - (a) A resident producer with an accident and health line of authority may only sell long-term care insurance if the producer:
 - (i) initially completes a minimum of three hours of long-term care training before selling long-term care coverage; and
 - (ii) after completing the training required by Subsection (3)(a)(i), completes a minimum of three hours of long-term care training during each subsequent two-year licensing period.
 - (b) A course taken to satisfy a long-term care training requirement may be used toward satisfying a producer continuing education requirement.
 - (c) Long-term care training is not a continuing education requirement to renew a producer license.
 - (d) An insurer that issues long-term care insurance shall demonstrate to the commissioner, upon request, that a producer who is appointed by the insurer and who sells long-term care insurance coverage is in compliance with this Subsection (3).
- (4) The training periods required under this section apply only to an individual applying for a license under this chapter.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

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

- (1) In accordance with this section, a resident individual producer shall ensure that the resident individual producer is covered:
 - (a) for the legal liability of the resident individual producer as the result of an erroneous act or failure to act in the resident individual producer's capacity as a producer; and
 - (b) at all times during the term of the resident individual producer's license.
- (2) The coverage required by Subsection (1) shall consist of:
 - (a) a policy naming the resident individual producer;
 - (b) a policy naming the agency that designates the resident individual producer in accordance with this chapter; or
 - (c) a written agreement by an insurer or group of affiliated insurers, on behalf of a resident individual producer who is or will become an exclusive agent of the insurer or group of affiliated insurers, under which the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of an aggrieved person, for legal liability of the resident individual producer as the result of an erroneous act or failure to act in the resident individual producer's capacity as a producer for the insurer or group of affiliated insurers.
- (3) The commissioner may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for:
 - (a) the terms and conditions of the coverage required under Subsection (1); and
 - (b) if the coverage required by Subsection (1) is terminated during a resident individual producer's license term, requirements to:
 - (i) provide notice; and
 - (ii) replace the coverage.
- (4) An individual title insurance producer is considered to be in compliance with this section when:
 - (a) the individual title insurance producer who is not designated by an agency title producer maintains the individual title insurance producer's own bond, policy, or other financial protection in accordance with Subsection 31A-23a-204(2);

- (b) the individual title insurance producer is designated by an agency title insurance producer that maintains a bond, policy, or other financial protection in accordance with Subsection 31A-23a-204(2); or
 - (c) the individual title insurance producer is an employee of and is appointed by a title insurer.
- (5) Notwithstanding the other provisions of this section, a resident individual producer is exempt from the requirement to maintain coverage as provided in this section during a period in which the resident individual producer is not either:
- (a) appointed by an insurer under this title; or
 - (b) designated by an agency under this title.
- (6) A limited lines producer is exempt from this section.

Amended by Chapter 312, 2015 General Session

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

An individual title insurance producer or agency title insurance producer shall be licensed in accordance with this chapter, with the additional requirements listed in this section.

- (1)
- (a) A person that receives a new license under this title as an agency title insurance producer shall at the time of licensure be owned or managed by at least one individual who is licensed for at least three of the five years immediately preceding the date on which the agency title insurance producer applies for a license with both:
 - (i) a title examination line of authority; and
 - (ii) an escrow line of authority.
 - (b) An agency title insurance producer subject to Subsection (1)(a) may comply with Subsection (1)(a) by having the agency title insurance producer owned or managed by:
 - (i) one or more individuals who are licensed with the title examination line of authority for the time period provided in Subsection (1)(a); and
 - (ii) one or more individuals who are licensed with the escrow line of authority for the time period provided in Subsection (1)(a).
 - (c) A person licensed as an agency title insurance producer shall at all times during the term of licensure be owned or managed by at least one individual who is licensed for at least three years within the preceding five-year period with both:
 - (i) a title examination line of authority; and
 - (ii) an escrow line of authority.
 - (d) The Title and Escrow Commission may by rule, subject to Section 31A-2-404, exempt an attorney with real estate experience from the experience requirements in Subsection (1)(a).
 - (e) An individual who satisfies the requirements of this Subsection (1) is known as a "qualifying licensee." At any given time, an individual may be a qualifying licensee for not more than two agency title insurance producers.
- (2)
- (a) An individual title insurance producer or agency title insurance 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 (2)(a)(i) or (ii); and
 - (B) that the commissioner considers adequate.
 - (b) The bond, insurance, or financial protection required by this Subsection (2):

- (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 \$250,000.
- (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404, exempt individual title insurance producer or agency title insurance producers from the requirements of this Subsection (2) upon a finding that, and only so long as, the required policy or bond is generally unavailable at reasonable rates.
- (3) An individual title insurance producer or agency title insurance producer appointed by an insurer may maintain a reserve fund to the extent money was deposited before July 1, 2008, and not withdrawn to the income of the individual title insurance producer or agency title insurance producer.
- (4) An examination for licensure shall include questions regarding the examination of title to real property.
- (5) An individual title insurance producer may not perform the functions of escrow unless the individual title insurance producer has been examined on the fiduciary duties and procedures involved in those functions.
- (6) The Title and Escrow Commission may adopt rules, establishing an examination for a license that will satisfy this section, subject to Section 31A-2-404, and after consulting with the commissioner's test administrator.
- (7) A license may be issued to an individual title insurance producer or agency title insurance producer who has qualified:
 - (a) to perform only examinations of title as specified in Subsection (4);
 - (b) to handle only escrow arrangements as specified in Subsection (5); or
 - (c) to act as a title marketing representative.
- (8)
 - (a) A person licensed to practice law in Utah is exempt from the requirements of Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.
 - (b) In determining the number of policies issued by a person licensed to practice law in Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a policy to more than one party to the same closing, the person is considered to have issued only one policy.
- (9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or not, shall maintain a trust account separate from a law firm trust account for all title and real estate escrow transactions.

Amended by Chapter 330, 2015 General Session

31A-23a-205 Special requirements for bail bond producers and bail bond enforcement agents.

- (1) As used in this section, "bail bond producer" and "bail enforcement agent" have the same definitions as in Section 31A-35-102.
- (2) A bail bond producer may not operate in this state without an appointment from one or more authorized bail bond surety insurers or licensed bail bond surety companies.
- (3) A bail bond enforcement agent may not operate in this state without an appointment from one or more licensed bail bond producers.

Renumbered and Amended by Chapter 298, 2003 General Session

31A-23a-206 Special requirements for variable contracts line of authority.

- (1) Before applying for a variable contracts line of authority:
 - (a) a producer shall be licensed under Section 61-1-3 as a:
 - (i) broker-dealer; or
 - (ii) broker-dealer agent; and
 - (b) a consultant shall be licensed under Section 61-1-3 as an:
 - (i) investment adviser; or
 - (ii) investment adviser representative.
- (2) A producer's or consultant's variable contracts line of authority is canceled on the day the producer's or consultant's securities related license under Section 61-1-3 is no longer active.

Amended by Chapter 138, 2016 General Session

31A-23a-207 Registration of motor club agents.

- (1) Subsection 31A-23a-103(1) does not apply to persons who sell no insurance products other than motor club service contracts, if those contracts provide only for those services described in Subsections 31A-11-102(1)(b) through (1)(f), and personal accident insurance provided automatically with the purchase of the motor club contract.
- (2) Section 31A-11-110 applies to those persons in Subsection (1).
- (3) Subsection 31A-23a-103(1) applies to persons selling motor club contracts providing services in addition to those described under Subsections 31A-11-102(1)(b) through (1)(f).

Renumbered and Amended by Chapter 298, 2003 General Session

31A-23a-208 Producer and agency authority in health insurance exchange.

A producer or agency licensed under this chapter, with a line of authority that permits the producer or agency to sell, negotiate, or solicit accident and health insurance, is authorized to sell, negotiate, or solicit qualified health plans offered on an exchange that is:

- (1) operated in the state; or
- (2) operated in the state and certified by the United States Department of Health and Human Services as a:
 - (a) state-based exchange under PPACA;
 - (b) a federally facilitated exchange under PPACA; or
 - (c) a partnership exchange under PPACA.

Enacted by Chapter 341, 2013 General Session