

Part 4 Marketing Practices

31A-23a-401 Disclosure of conflicting interests.

- (1)
 - (a) Except as provided under Subsection (1)(b):
 - (i) a licensee under this chapter may not act in the same or any directly related transaction as:
 - (A) a producer for the insured or consultant; and
 - (B) producer for the insurer; and
 - (ii) a producer for the insured or consultant may not recommend or encourage the purchase of insurance from or through an insurer or other producer:
 - (A) of which the producer for the insured or consultant or producer for the insured's or consultant's spouse is an owner, executive, or employee; or
 - (B) to which the producer for the insured or consultant has the type of relation that a material benefit would accrue to the producer for the insured or consultant or spouse as a result of the purchase.
 - (b) Subsection (1)(a) does not apply if the following three conditions are met:
 - (i) Prior to performing the consulting services, the producer for the insured or consultant shall disclose to the client, prominently, in writing:
 - (A) the producer for the insured's or consultant's interest as a producer for the insurer, or the relationship to an insurer or other producer; and
 - (B) that as a result of those interests, the producer for the insured's or the consultant's recommendations should be given appropriate scrutiny.
 - (ii) The producer for the insured's or consultant's fee shall be agreed upon, in writing, after the disclosure required under Subsection (1)(b)(i), but before performing the requested services.
 - (iii) Any report resulting from requested services shall contain a copy of the disclosure made under Subsection (1)(b)(i).
- (2) A licensee under this chapter may not act as to the same client as both a producer for the insurer and a producer for the insured without the client's prior written consent based on full disclosure.
- (3) Whenever a person applies for insurance coverage through a producer for the insured, the producer for the insured shall disclose to the applicant, in writing, that the producer for the insured is not the producer for the insurer or the potential insurer. This disclosure shall also inform the applicant that the applicant likely does not have the benefit of an insurer being financially responsible for the conduct of the producer for the insured.
- (4) If a licensee is subject to both this section and Subsection 31A-23a-501(4), the licensee shall provide the disclosure required under each statute.

Amended by Chapter 12, 2009 General Session

31A-23a-402 Unfair marketing practices -- Communication -- 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 product or contract, any insurer, or

any 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:
 - (I) filing a report;
 - (II) making a false entry in a record; or
 - (III) 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 name, advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency, including the Health Insurance Exchange, also called the "Utah Health Exchange" or "Avenue H," created in Section 63N-11-104, the Comprehensive Health Insurance Pool created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act:
 - (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 person is an insurer.
- (v) A person other than persons licensed as health maintenance organizations under Chapter 8, Health Maintenance Organizations and Limited Health Plans, may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.
- (b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:
- (i) the 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:
 - (A) that the licensee represents; or
 - (B) for whom the licensee processes claims; and
 - (ii) the cards, documents, signs, or advertisements are supplied or approved by that insurer.
- (2)
- (a) A title insurer, individual title insurance producer, or agency title insurance producer or any officer or employee of the title insurer, individual title insurance producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

- (i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;
 - (ii) any special favor or advantage not generally available to others;
 - (iii) any money or other consideration, except if approved under Section 31A-2-405; or
 - (iv) material inducement.
- (b) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.
- (c) An insured or any other person connected, directly or indirectly, with the transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(a), including:
- (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;
 - (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
 - (iii) a builder;
 - (iv) an attorney; or
 - (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).
- (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) This Subsection (4) applies to:
- (i) a person who is or should be licensed under this title;
 - (ii) an employee of that licensee or person who should be licensed;
 - (iii) a person whose primary interest is as a competitor of a person licensed under this title; and
 - (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).
- (b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:
- (i) tends to produce:
 - (A) an unreasonable restraint of the business of insurance; or
 - (B) a monopoly in that business; or
 - (ii) results in an applicant purchasing or replacing an insurance contract.
- (5)
- (a)
- (i) Subject to Subsection (5)(a)(ii), 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.
 - (ii) A person requiring coverage may 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 an 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 the method of competition, the act, or the practice:
 - (i) is misleading;
 - (ii) is deceptive;
 - (iii) is unfairly discriminatory;
 - (iv) provides an unfair inducement; or
 - (v) unreasonably restrains competition.
 - (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an unfair method of competition or unfair or deceptive act or practice after a finding that the method of competition, the act, or the practice:
 - (i) is misleading;
 - (ii) is deceptive;
 - (iii) is unfairly discriminatory;
 - (iv) provides an unfair inducement; or
 - (v) unreasonably restrains competition.

Amended by Chapter 244, 2015 General Session
Amended by Chapter 283, 2015 General Session

31A-23a-402.5 Inducements.

- (1)
 - (a) Except as provided in Subsection (2), a producer, consultant, or other licensee under this title, or an officer or employee of a licensee, may not induce a person to enter into, continue, or terminate an insurance contract by offering a benefit that is not:
 - (i) specified in the insurance contract; or
 - (ii) directly related to the insurance contract.
 - (b) An insurer may not make or knowingly allow an agreement of insurance that is not clearly expressed in the insurance contract to be issued or renewed.
 - (c) A licensee under this title may not absorb the tax under Section 31A-3-301.
- (2) This section does not apply to a title insurer, an individual title insurance producer, or agency title insurance producer, or an officer or employee of a title insurer, an individual title insurance producer, or an agency title insurance producer.
- (3) Items not prohibited by Subsection (1) include an insurer:
 - (a) reducing premiums because of expense savings;

- (b) providing to a policyholder or insured one or more incentives, as defined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to participate in a program or activity designed to reduce claims or claim expenses, including:
 - (i) a premium discount offered to a small or large employer group based on a wellness program if:
 - (A) the premium discount for the employer group does not exceed 20% of the group premium; and
 - (B) the premium discount based on the wellness program is offered uniformly by the insurer to all employer groups in the large or small group market;
 - (ii) a premium discount offered to employees of a small or large employer group in an amount that does not exceed federal limits on wellness program incentives; or
 - (iii) a combination of premium discounts offered to the employer group and the employees of an employer group, based on a wellness program, if:
 - (A) the premium discounts for the employer group comply with Subsection (3)(b)(i); and
 - (B) the premium discounts for the employees of an employer group comply with Subsection (3)(b)(ii); or
 - (c) receiving premiums under an installment payment plan.
- (4) Items not prohibited by Subsection (1) include a producer, consultant, or other licensee, or an officer or employee of a licensee, either directly or through a third party:
- (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not conditioned on a quote or the purchase of a particular insurance product;
 - (b) extending credit on a premium to the insured:
 - (i) without interest, for no more than 90 days from the effective date of the insurance contract;
 - (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid balance after the time period described in Subsection (4)(b)(i); and
 - (iii) except that an installment or payroll deduction payment of premiums on an insurance contract issued under an insurer's mass marketing program is not considered an extension of credit for purposes of this Subsection (4)(b);
 - (c) preparing or conducting a survey that:
 - (i) is directly related to an accident and health insurance policy purchased from the licensee; or
 - (ii) is used by the licensee to assess the benefit needs and preferences of insureds, employers, or employees directly related to an insurance product sold by the licensee;
 - (d) providing limited human resource services that are directly related to an insurance product sold by the licensee, including:
 - (i) answering questions directly related to:
 - (A) an employee benefit offering or administration, if the insurance product purchased from the licensee is accident and health insurance or health insurance; and
 - (B) employment practices liability, if the insurance product offered by or purchased from the licensee is property or casualty insurance; and
 - (ii) providing limited human resource compliance training and education directly pertaining to an insurance product purchased from the licensee;
 - (e) providing the following types of information or guidance:
 - (i) providing guidance directly related to compliance with federal and state laws for an insurance product purchased from the licensee;
 - (ii) providing a workshop or seminar addressing an insurance issue that is directly related to an insurance product purchased from the licensee; or
 - (iii) providing information regarding:
 - (A) employee benefit issues;

- (B) directly related insurance regulatory and legislative updates; or
- (C) similar education about an insurance product sold by the licensee and how the insurance product interacts with tax law;
- (f) preparing or providing a form that is directly related to an insurance product purchased from, or offered by, the licensee;
- (g) preparing or providing documents directly related to a premium only cafeteria plan within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but not providing ongoing administration of a flexible spending account;
- (h) providing enrollment and billing assistance, including:
 - (i) providing benefit statements or new hire insurance benefits packages; and
 - (ii) providing technology services such as an electronic enrollment platform or application system;
- (i) communicating coverages in writing and in consultation with the insured and employees;
- (j) providing employee communication materials and notifications directly related to an insurance product purchased from a licensee;
- (k) providing claims management and resolution to the extent permitted under the licensee's license;
- (l) providing underwriting or actuarial analysis or services;
- (m) negotiating with an insurer regarding the placement and pricing of an insurance product;
- (n) recommending placement and coverage options;
- (o) providing a health fair or providing assistance or advice on establishing or operating a wellness program, but not providing any payment for or direct operation of the wellness program;
- (p) providing COBRA and Utah mini-COBRA administration, consultations, and other services directly related to an insurance product purchased from the licensee;
- (q) assisting with a summary plan description, including providing a summary plan description wraparound;
- (r) providing information necessary for the preparation of documents directly related to the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as amended;
- (s) providing information or services directly related to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services directly related to health care access, portability, and renewability when offered in connection with accident and health insurance sold by a licensee;
- (t) sending proof of coverage to a third party with a legitimate interest in coverage;
- (u) providing information in a form approved by the commissioner and directly related to determining whether an insurance product sold by the licensee meets the requirements of a third party contract that requires or references insurance coverage;
- (v) facilitating risk management services directly related to property and casualty insurance products sold or offered for sale by the licensee, including:
 - (i) risk management;
 - (ii) claims and loss control services;
 - (iii) risk assessment consulting, including analysis of:
 - (A) employer's job descriptions; or
 - (B) employer's safety procedures or manuals; and
 - (iv) providing information and training on best practices;
- (w) otherwise providing services that are legitimately part of servicing an insurance product purchased from a licensee; and

- (x) providing other directly related services approved by the department.
- (5) An inducement prohibited under Subsection (1) includes a producer, consultant, or other licensee, or an officer or employee of a licensee:
 - (a)
 - (i) providing a rebate;
 - (ii) paying the salary of an employee of a person who purchases an insurance product from the licensee; or
 - (iii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, paying the salary for an onsite staff member to perform an act prohibited under Subsection (5)(b)(xii); or
 - (b) except as provided in Subsection (10), engaging in one or more of the following, unless a fee is paid in accordance with Subsection (8):
 - (i) performing background checks of prospective employees;
 - (ii) providing legal services by a person licensed to practice law;
 - (iii) performing drug testing that is directly related to an insurance product purchased from the licensee;
 - (iv) preparing employer or employee handbooks, except that a licensee may:
 - (A) provide information for a medical benefit section of an employee handbook;
 - (B) provide information for the section of an employee handbook directly related to an employment practices liability insurance product purchased from the licensee; or
 - (C) prepare or print an employee benefit enrollment guide;
 - (v) providing job descriptions, postings, and applications for a person;
 - (vi) providing payroll services;
 - (vii) providing performance reviews or performance review training;
 - (viii) providing union advice;
 - (ix) providing accounting services;
 - (x) providing data analysis information technology programs, except as provided in Subsection (4)(h)(ii);
 - (xi) providing administration of health reimbursement accounts or health savings accounts; or
 - (xii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of the following prohibited benefits:
 - (A) performing background checks of prospective employees;
 - (B) providing legal services by a person licensed to practice law;
 - (C) performing drug testing that is directly related to an insurance product purchased from the insurer;
 - (D) preparing employer or employee handbooks;
 - (E) providing job descriptions postings, and applications;
 - (F) providing payroll services;
 - (G) providing performance reviews or performance review training;
 - (H) providing union advice;
 - (I) providing accounting services;
 - (J) providing discrimination testing; or
 - (K) providing data analysis information technology programs.
- (6) A producer, consultant, or other licensee or an officer or employee of a licensee shall itemize and bill separately from any other insurance product or service offered or provided under Subsection (5)(b).
- (7)

- (a) A de minimis gift or meal not to exceed a fair market value of \$100 for each individual receiving the gift or meal is presumed to be a social courtesy not conditioned on a quote or purchase of a particular insurance product for purposes of Subsection (4)(a).
- (b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10 may be conditioned on receipt of a quote of a particular insurance product.
- (8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee is paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal or exceed the fair market value of the item.
- (9) For purposes of this section, "fair market value" means what a knowledgeable, willing, and unpressured buyer would pay for a product or service to a knowledgeable, willing, and unpressured seller in the open market without any connection to other goods, services, including insurance services, or contracts, including insurance contracts, sold by the producer, consultant, or other licensee, or an officer or employee of the licensee.
- (10) Notwithstanding any other provision of this section, a producer, consultant, or other licensee, or an officer or employee of a licensee, may offer, make available, or provide goods or services, whether or not the goods or services are directly related to an insurance contract, for free or for less than fair market value if:
 - (a) the goods or services are available on the same terms to the general public;
 - (b) receipt of the goods or services is not contingent upon the immediate or future purchase, continuation, or termination of an insurance product or receipt of a quote for an insurance product; and
 - (c) the producer, consultant, or other licensee, or an officer or an employee of a licensee, does not retroactively charge for the goods or services based on an event subsequent to receipt of the goods or services.
- (11)
 - (a) A producer, consultant, or other licensee, or an officer or employee of a licensee, that provides or offers goods or services that are not described in Subsection (3) or (4) for free or less than fair market value shall conspicuously disclose to the recipient before the purchase of insurance, receipt of a quote for insurance, or designation of an agent of record, that receipt of the goods or services is not contingent on the purchase, continuation, or termination of an insurance product or receiving a quote for an insurance product.
 - (b) A producer, consultant, or other licensee, or an officer or employee of the licensee, may comply with this Subsection (11) by an oral or written disclosure.

Amended by Chapter 145, 2015 General Session

Amended by Chapter 244, 2015 General Session

31A-23a-403 Inherent unsuitability.

- (1) If the commissioner finds after a hearing that a certain type of accident and health insurance, life insurance, or annuity product is inherently unsuitable for persons of certain ages or in certain conditions of health, the commissioner shall make a rule declaring the accident and health insurance, life insurance, or annuity product as inherently unsuitable for persons of certain ages or in certain conditions of health.
- (2) An accident and health insurance, life insurance, or annuity product that is subject to the rule may not be sold to a person for whom the product has been determined as inherently unsuitable unless that person purchasing the product signs a receipt acknowledging having received a statement that expresses that the product has been determined by the

commissioner to be inherently unsuitable for persons of certain ages or in certain conditions of health.

- (3) Unless the insurer or its appointed licensee establishes that its sale of coverage is inconsistent with the rule made under Subsection (1) is due to excusable neglect, the purchaser may treat the sale as voidable, if acted upon by the insured within a two-year period from the date of sale.

Renumbered and Amended by Chapter 298, 2003 General Session

31A-23a-405 Insurer liability.

- (1) As used in this section, "insurer" includes bail bond surety companies as defined in Section 31A-35-102.
- (2) There is a rebuttable presumption that every insurer is bound by any act of its appointed licensee performed in this state that is within the scope of the appointed licensee's actual (express or implied) or apparent authority, until the insurer has canceled the appointed licensee's appointment and has made reasonable efforts to recover from the appointed licensee its policy forms and other indicia of agency. Reasonable efforts include a formal demand in writing for return of the indicia, and notice to the commissioner if the appointed licensee does not promptly comply with the demand. This Subsection (2) neither waives any common law defense available to insurers, nor precludes the insured from seeking redress against the appointed licensee individually or jointly against the insurer and licensee.
- (3) When a licensee under this chapter with authority to bind more than one insurer on a particular risk agrees to bind coverage on a particular risk, but fails to outwardly indicate the insurer with which the risk is placed, and before the risk is placed with a particular insurer a loss occurs, if there is no conclusive admissible evidence indicating the insurer with which the licensee exercised his binding authority, a court may equitably apportion the loss among all insurers with which the licensee had binding authority as to the particular type of risk.

Renumbered and Amended by Chapter 298, 2003 General Session

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

- (1) An individual title insurance producer or agency title insurance producer may do escrow involving real property transactions if all of the following exist:
 - (a) the individual title insurance producer or agency title insurance producer is licensed with:
 - (i) the title line of authority; and
 - (ii) the escrow subline of authority;
 - (b) the individual title insurance producer or agency title insurance producer is appointed by a title insurer authorized to do business in the state;
 - (c) the individual title insurance producer or agency title insurance producer issues one or more of the following as part of the transaction:
 - (i) an owner's policy of title insurance; or
 - (ii) a lender's policy of title insurance;
 - (d) money deposited with the individual title insurance producer or agency title insurance producer in connection with any escrow:
 - (i) is deposited:
 - (A) in a federally insured financial institution; and
 - (B) in a trust account that is separate from all other trust account money that is not related to real estate transactions;

- (ii) is the property of the one or more persons entitled to the money under the provisions of the escrow; and
 - (iii) is segregated escrow by escrow in the records of the individual title insurance producer or agency title insurance producer;
 - (e) earnings on money held in escrow may be paid out of the escrow account to any person in accordance with the conditions of the escrow;
 - (f) the escrow does not require the individual title insurance producer or agency title insurance producer to hold:
 - (i) construction money; or
 - (ii) money held for exchange under Section 1031, Internal Revenue Code; and
 - (g) the individual title insurance producer or agency title insurance producer shall maintain a physical office in Utah staffed by a person with an escrow subline of authority who processes the escrow.
- (2) Notwithstanding Subsection (1), an individual title insurance producer or agency 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 individual title insurance producer or agency title insurance producer complies with this section except for Subsection (1)(c).
- (3) Money held in escrow:
- (a) is not subject to any debts of the individual title insurance producer or agency title insurance producer;
 - (b) may only be used to fulfill the terms of the individual escrow under which the money is accepted; and
 - (c) may not be used until the conditions of the escrow are met.
- (4) Assets or property other than escrow money received by an individual title insurance producer or agency title insurance 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 the general duties and responsibilities of a fiduciary or bailee.
- (5)
- (a) A check from the trust account described in Subsection (1)(d) may not be drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account from which money is to be disbursed contains a sufficient credit balance consisting of collected and cleared money at the time the check is drawn, executed, or dated, or money is otherwise disbursed.
 - (b) As used in this Subsection (5), money is considered to be "collected and 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; and
 - (iii) the proceeds of one or more of the following financial instruments may be disbursed on the same day the financial instruments are deposited if received from a single party to the real estate transaction and if the aggregate of the financial instruments for the real estate transaction is less than \$10,000:

- (A) a cashier's check, certified check, or official check that is drawn on an existing account at a federally insured financial institution;
 - (B) a check drawn on the trust account of a principal broker or associate broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the individual title insurance producer or agency title insurance producer has reasonable and prudent grounds to believe sufficient money will be available from the trust account on which the check is drawn at the time of disbursement of proceeds from the individual title insurance producer or agency title insurance producer's escrow account;
 - (C) a personal check not to exceed \$500 per closing; or
 - (D) a check drawn on the escrow account of another individual title insurance producer or agency title insurance producer, if the individual title insurance producer or agency title insurance producer in the escrow transaction has reasonable and prudent grounds to believe that sufficient money will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of money from the escrow account of the individual title insurance producer or agency title insurance producer in the escrow transaction.
- (c) A check or deposit not described in Subsection (5)(b) may be disbursed:
- (i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or
 - (ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.
- (6) An individual title insurance producer or agency title insurance producer shall maintain a record of a receipt or disbursement of escrow money.
- (7) An individual title insurance producer or agency title insurance producer shall comply with:
- (a) Section 31A-23a-409;
 - (b) Title 46, Chapter 1, Notaries Public Reform Act; and
 - (c) any rules adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows.
- (8) If an individual title insurance producer or agency title insurance producer conducts a search for real estate located in the state, the individual title insurance producer or agency title insurance producer shall conduct a reasonable search of the public records.

Amended by Chapter 319, 2013 General Session

31A-23a-406.5 Conduct of escrow.

- (1) Only an escrow agent or a title insurer in compliance with Subsection 31A-4-107(1)(a) and Section 31A-14-211 shall conduct escrow.
- (2) Subsection (1) does not limit or expand the authority granted to:
 - (a) a person defined as an escrow agent in Section 7-22-101;
 - (b) a person licensed to practice law in Utah, if that person meets the requirements of Section 31A-23a-204;
 - (c) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or
 - (d) a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Enacted by Chapter 319, 2013 General Session

31A-23a-407 Liability for acts of title insurance producers.

- (1) Subject to the other provisions in this section, a title insurer that appoints an individual title insurance producer or an agency title insurance producer is liable to a buyer, seller, borrower, lender, or third party that deposits money with the individual title insurance producer or agency title insurance producer for the receipt and disbursement of money deposited with the individual title insurance producer or agency title insurance producer for a transaction when a commitment for a policy of title insurance of that title insurer is ordered, issued, or distributed or a title insurance policy of that title insurer is issued, except that once a title insurer is named in an issued commitment only that title insurer is liable as a title insurer under this section.
- (2) The liability of a title insurer under Subsection (1) and the liability of an individual title insurance producer or agency title insurance producer for the receipt and disbursement of money deposited with the individual title insurance producer or agency title insurance producer is limited to the amount of money received and disbursed, not to exceed the amount of proposed insurance set forth in the commitment or title insurance policy described in Subsection (1) plus 10% of the amount of the proposed insurance.
- (3) The liability described in Subsection (1) does not modify, mitigate, impair, or affect the contractual obligations between an individual title insurance producer or agency title insurance producer and the title insurer.
- (4) The liability of a title insurer with respect to the condition of title to the real property that is the subject of a title insurance policy or a title insurance commitment for a title insurance policy is limited to the terms, conditions, and stipulations contained in the title insurance policy or title commitment.

Amended by Chapter 314, 2016 General Session

31A-23a-408 Representations of agency.

A person may not represent that the person is acting in behalf of an insurer unless a written agency contract is in effect giving the person authority from the insurer and the insurer appoints that person to act in behalf of the insurer.

Amended by Chapter 284, 2011 General Session

31A-23a-409 Trust obligation for money collected.

- (1)
 - (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to, received by, or collected by a licensee for forwarding to insurers or to insureds.
 - (b)
 - (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust funds with:
 - (A) the licensee's own money; or
 - (B) money held in any other capacity.
 - (ii) This Subsection (1)(b) does not apply to:
 - (A) amounts necessary to pay bank charges; and
 - (B) money paid by insureds and belonging in part to the licensee as a fee or commission.
 - (c) Except as provided under Subsection (4), a licensee owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the licensee.
 - (d)
 - (i) Unless money is sent to the appropriate payee by the close of the next business day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2).

- (ii) Money deposited under this Subsection (1)(d) shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.
- (2) Money required to be deposited under Subsection (1) shall be deposited:
 - (a) in a federally insured trust account in a depository institution, as defined in Section 7-1-103, which:
 - (i) has an office in this state, if the licensee depositing the money is a resident licensee;
 - (ii) has federal deposit insurance; and
 - (iii) is authorized by its primary regulator to engage in the trust business, as defined by Section 7-5-1, in this state; or
 - (b) in some other account, approved by the commissioner by rule or order, providing safety comparable to federally insured trust accounts.
- (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the amount of the federal insurance on the accounts.
- (4) A trust account into which money is deposited may be interest bearing. The interest accrued on the account may be paid to the licensee, so long as the licensee otherwise complies with this section and with the contract with the insurer.
- (5) A depository institution or other organization holding trust funds under this section may not offset or impound trust account funds against debts and obligations incurred by the licensee.
- (6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4, Theft. Section 76-6-412 applies in determining the classification of the offense. Sanctions under Section 31A-2-308 also apply.
- (7) A nonresident licensee:
 - (a) shall comply with Subsection (1)(a) by complying with the trust account requirements of the nonresident licensee's home state; and
 - (b) is not required to comply with the other provisions of this section.

Amended by Chapter 253, 2012 General Session

31A-23a-410 Insurer's liability if insured pays premium to a licensee or group policyholder.

- (1) Subject to Subsections (2) and (5), as between the insurer and the insured, the insurer is considered to have received the premium and is liable to the insured for losses covered by the insurance and for any unearned premiums upon cancellation of the insurance if an insurer, including a surplus lines insurer:
 - (a) assumes a risk; and
 - (b) the premium for that insurance is received by:
 - (i) a licensee who placed the insurance;
 - (ii) a group policyholder;
 - (iii) an employer who deducts part or all of the premium from an employee's wages or salary; or
 - (iv) an employer who pays all or part of the premium for an employee.
- (2) Subsection (1) does not apply if:
 - (a) the insured pays a licensee, knowing the licensee does not intend to submit the premium to the insurer; or
 - (b) the insured has premium withheld from the insured's wages or salary knowing the employer does not intend to submit it to the insurer.
- (3)
 - (a) In the case of a group policyholder who has received the premium, the insurer may terminate its liability by giving notice of coverage termination to:

- (i) the certificate holders;
 - (ii) the policyholder; and
 - (iii) the producer, if any, for the policy.
- (b) The insurer may not send the notice required by Subsection (3)(a) to a certificate holder before 20 days after the day on which premium is due and unpaid.
- (c) The liability of the insurer for the losses covered by the insurance terminates at the later of:
- (i) the last day of the coverage period for which premium has been received by the group policyholder;
 - (ii) 10 days after the date the insurer mails notice to the certificate holder that coverage has terminated; or
 - (iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days from the last date for which premium is received.
- (4) Despite a group policyholder's collection of premium under Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the insurance to group policy certificate holders terminates upon the effective date of notice from the policyholder that:
- (a) coverage of a similar kind and quality has been obtained from another insurer; or
 - (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage and has given the certificate holder's notice of the termination.
- (5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or group policyholder who received the premium and failed to forward it is obligated to the insurer for the entire unpaid premium due under the policy together with reasonable expenses of suit and reasonable attorney fees.
- (6) If, under an employee health insurance plan, an employee builds up credit for future coverage because the employee has not used the policy protection, or in some other way, the insurer is obligated to the employee for that future coverage earned while the policy was in full effect.
- (7)
- (a) Notwithstanding that an insurer is liable for losses as provided in this section, this section applies only to apportion the liability for the losses described in this section.
 - (b) This section does not:
 - (i) extend a policy or coverage beyond its date of termination; or
 - (ii) alter or amend a provision of a policy.

Amended by Chapter 138, 2016 General Session

31A-23a-411.1 Person's liability if premium received is not forwarded to the insurer.

A person commits insurance fraud as described in Subsection 31A-31-103(1)(f) if that person knowingly fails to forward to the insurer a premium:

- (1) received from one of the following in partial or total payment of the premium due from:
 - (a) an applicant;
 - (b) a policyholder; or
 - (c) a certificate holder; or
- (2) collected from or on behalf of an insured employee under an insured employee benefit plan.

Enacted by Chapter 252, 2003 General Session

31A-23a-412 Place of business and residence address -- Records.

- (1)
 - (a) A licensee under this chapter shall register and maintain with the commissioner:

- (i) the address and telephone numbers of the licensee's principal place of business; and
 - (ii) a valid business email address at which the commissioner may contact the licensee.
 - (b) If a licensee is an individual, in addition to complying with Subsection (1)(a) the individual shall register and maintain with the commissioner the individual's residence address and telephone number.
 - (c) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:
 - (i) an address;
 - (ii) a telephone number; or
 - (iii) a business email address.
- (2)
- (a) Except as provided under Subsection (3), a licensee under this chapter shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.
 - (b) The books and records described in Subsection (2)(a) shall:
 - (i) be in an organized form;
 - (ii) be available to the commissioner for inspection upon reasonable notice; and
 - (iii) include all of the following:
 - (A) if the licensee is a producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary:
 - (I) a record of each insurance contract procured by or issued through the licensee, with the names of insurers and insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;
 - (II) the names of any other producers, surplus lines producers, limited line producers, consultants, managing general agents, or reinsurance intermediaries from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid; and
 - (III) a record of the consumer complaints forwarded to the licensee by an insurance regulator;
 - (B) if the licensee is a consultant, a record of each agreement outlining the work performed and the fee for the work; and
 - (C) any additional information which:
 - (I) is customary for a similar business; or
 - (II) may reasonably be required by the commissioner by rule.
- (3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by on-line computer terminals located at the registered address.
- (4) A licensee who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5).
- (5)
- (a) The books and records maintained under Subsection (2) or Section 31A-23a-413 shall be available for the inspection of the commissioner during the business hours for a period of time after the date of the transaction as specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.
 - (b) Discarding books and records after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

31A-23a-413 Title insurance producer's annual report.

An agency title insurance producer and an individual title insurance producer who is not an employee of a title insurer or who has not been designated by an agency title insurance producer shall annually file with the commissioner, by a date and in a form the commissioner specifies by rule, a verified statement of the agency title insurance producer's or individual title insurance producer's financial condition, transactions, and affairs as of the end of the preceding calendar year.

Amended by Chapter 312, 2015 General Session

31A-23a-414 Consultant's duty to report illegal insurance.

Section 31A-15-110 applies to a consultant's duty to report illegal insurance.

Renumbered and Amended by Chapter 298, 2003 General Session

31A-23a-415 Assessment on agency title insurance producers or title insurers -- Account created.

(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) The commissioner may assess each title insurer, each individual title insurance producer who is not an employee of a title insurer or who is not designated by an agency title insurance producer, and each agency title insurance producer 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) An agency title insurance producer and individual title insurance producer who is not an employee of a title insurer or who is not designated by an agency title insurance producer shall be assessed up to:
 - (i) \$250 for the first office in each county in which the agency title insurance producer or individual title insurance producer maintains an office; and
 - (ii) \$150 for each additional office the agency title insurance producer or individual title insurance producer maintains in the county described in Subsection (2)(b)(i).
- (c) A title insurer shall be assessed up to:
 - (i) \$250 for the first office in each county in which the title insurer maintains an office;
 - (ii) \$150 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) agency title insurance producers and individual title insurance producers 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 subject to Section 31A-2-404, the 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 \$100,000 annually.
- (e)
 - (i) An individual licensed to practice law in Utah is exempt from the requirements of this Subsection (2) if that person issues 12 or less policies during a 12-month period.
 - (ii) In determining the number of policies issued by an individual licensed to practice law in Utah for purposes of Subsection (2)(e)(i), if the individual issues a policy to more than one party to the same closing, the individual is considered to have issued only one policy.
- (3)
 - (a) Money received by the state under this section shall be deposited into the Title Licensee Enforcement Restricted Account.
 - (b) There is created in the General Fund a restricted account known as the "Title Licensee Enforcement Restricted Account."
 - (c) The Title Licensee Enforcement Restricted Account shall consist of the money received by the state under this section.
 - (d) The commissioner shall administer the Title Licensee Enforcement Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or expense incurred by the department in the administration, investigation, and enforcement of this part and Part 5, Compensation of Producers and Consultants, related to:
 - (i) the marketing of title insurance; and
 - (ii) audits of agency title insurance producers.

- (e) An appropriation from the Title Licensee Enforcement Restricted Account is nonlapsing.
- (4) The assessment imposed by this section shall be in addition to any premium assessment imposed under Subsection 59-9-101(3).

Amended by Chapter 312, 2015 General Session

Amended by Chapter 330, 2015 General Session

31A-23a-416 Solicitations to loan applicants.

- (1)
 - (a) A person authorized to engage in insurance activities in this state shall prominently disclose in writing the information described in Subsection (1)(b) to a person seeking an extension of credit if:
 - (i) the person authorized to engage in insurance activities also extends credit directly or through a subsidiary or an affiliate;
 - (ii) the person requires a customer to obtain insurance in connection with an extension of credit; and
 - (iii) the person offers to the person seeking an extension of credit the line of credit insurance required in connection with the extension of credit.
 - (b) The disclosure required by Subsection (1)(a) shall be in a form substantially similar to the following. "You may obtain insurance required in connection with your extension of credit from any insurance producer or approved insurer that sells such insurance. Your choice of insurance provider will not affect our credit decision or your credit terms."
 - (c) The person shall make the required disclosure under Subsection (1)(a):
 - (i) at the time of written application for an extension of credit; or
 - (ii) if there is no written application, before the closing of the extension of credit.
- (2) The disclosure required by Subsection (1)(c)(ii) may be in a verbal, electronic, or other unwritten form if a printed disclosure is included with the first printed statement of terms and conditions of the extension of credit sent to the person seeking the extension of credit.
- (3) This section does not apply when:
 - (a) a person is contacting a person in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the person's application for an extension of credit or credit decision; and
 - (b) an agreement for the extension of credit is changed or extended, if the person who originally sought the extension of credit is not required to purchase new or additional insurance.
- (4)
 - (a) For purposes of this section, "approved insurer" means an insurer that is approved to issue insurance related to the extension of credit by the person that extends the credit.
 - (b) The commissioner shall make rules establishing standards that govern the approval under Subsection (4)(a) of an insurer by a person that extends credit.

Renumbered and Amended by Chapter 298, 2003 General Session

31A-23a-417 Financial services insurance activities regulation.

- (1) It is the intent of the Legislature that the regulation of insurance activities of any person in this state be based on functional regulation principles established in the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

- (2) The insurance activities of any person in this state shall be functionally regulated by the commissioner subject to Sections 104, 301-308, 501-507, and 509 of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.
- (3) Under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules consistent with Section 104(d) of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, and the functional regulation of insurance activities of any person otherwise subject to the jurisdiction of the commissioner in this state described in Subsection (2).
- (4) The commissioner shall consult and coordinate with the commissioner of the Department of Financial Institutions and the director of the Division of Securities for the purpose of assuring, to the extent possible, that the rules prescribed by the department are consistent and comparable with federal regulations governing the insurance, banking, and securities industries.

Amended by Chapter 382, 2008 General Session