

Part 2

Licensing of Third Party Administrators

31A-25-201 License and authority from insurers required.

- (1) A person may not perform, offer to perform, or advertise any service as a third party administrator in Utah, without a valid license under Section 31A-25-203 and express authority from all insurers it represents. A person may not utilize the services of another as a third party administrator if he knows or should know that the other does not have a license or the insurer authority as required by law. The commissioner shall be notified of the commencement or termination of insurer authority in a form established by rules.
- (2) The commissioner may by rule exempt certain persons or classes of persons from the license requirement of Subsection (1) if the functions they perform do not require the special competence, trustworthiness, or regulatory surveillance made possible by licensing.
- (3) A contract is not invalid as a result of a violation of this section.

Amended by Chapter 261, 1989 General Session

31A-25-202 Application for license.

- (1)
 - (a) An application for a license as a third party administrator shall be:
 - (i) made to the commissioner on forms and in a manner the commissioner prescribes; and
 - (ii) accompanied by the applicable fee, which is not refundable if the application is denied.
 - (b) The application for a license as a third party administrator shall:
 - (i) state the applicant's:
 - (A) Social Security number; or
 - (B) federal employer identification number;
 - (ii) provide information about:
 - (A) the applicant's identity;
 - (B) the applicant's personal history, experience, education, and business record;
 - (C) if the applicant is a natural person, whether the applicant is 18 years of age or older; and
 - (D) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-25-208; and
 - (iii) any other information as the commissioner reasonably requires.
- (2) The commissioner may require documents reasonably necessary to verify the information contained in the application.
- (3) An applicant's Social Security number contained in an application filed under this section is a private record under Section 63G-2-302.

Amended by Chapter 382, 2008 General Session

31A-25-203 General requirements for license issuance.

- (1) The commissioner shall issue a license to act as a third party administrator to a person who:
 - (a) satisfies the character requirements under Section 31A-25-204;
 - (b) satisfies the financial responsibility requirement under Section 31A-25-205;
 - (c) has not committed an act that is a ground for denial, suspension, or revocation provided in Section 31A-25-208;
 - (d) if a nonresident, complies with Section 31A-25-206; and

(e) pays the applicable fees under Section 31A-3-103.

(2)

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

- (i) an applicant for a third party administrator's license; or
- (ii) a licensed third party administrator.

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

- (i) an administrative action taken against the person, including a denial of a new or renewal license application:
 - (A) in another jurisdiction; or
 - (B) by another regulatory agency in this state; and
- (ii) a criminal prosecution taken against the person in any jurisdiction.

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

- (i) be filed:
 - (A) at the time the person applies for a third party administrator's license; and
 - (B) if an action or prosecution occurs on or after the day on which the person applies for a third party administrator license:
 - (I) for an administrative action, within 30 days of the final disposition of the administrative action; or
 - (II) for a criminal prosecution, within 30 days of the initial appearance before a court; and
- (ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3)

(a) The department may require a person applying for a license or for consent to engage in the business of insurance to submit to a criminal background check as a condition of receiving a license or consent.

(b) A person, if required to submit to a criminal background check under Subsection (3)(a), shall:

- (i) submit a fingerprint card in a form acceptable to the department; and
- (ii) consent to a fingerprint background check by:
 - (A) the Utah Bureau of Criminal Identification; and
 - (B) the Federal Bureau of Investigation.

(c) For a person who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request concerning a person applying for a third party administrator's license:

- (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
- (ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

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

- (i) determining if a person satisfies the character requirements under Section 31A-25-204 for issuance or renewal of a license;
- (ii) determining if a person has failed to maintain the character requirements under Section 31A-25-204; and
- (iii) preventing a person who violates the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from engaging in the business of insurance in the state.

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

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

- (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(c)(ii); and
 - (iii) charge the person applying for a license or for consent to engage in the business of insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).
- (4) The commissioner may deny a license application to act as a third party administrator to a person who:
- (a) fails to satisfy the requirements of this section; or
 - (b) commits an act that is a ground for denial, suspension, or revocation provided in Section 31A-25-208.

Amended by Chapter 253, 2012 General Session

31A-25-204 Character requirements.

Each applicant for a license under this chapter shall show to the commissioner all of the following:

- (1) he or it has the good faith intent to engage in the type of business the license applied for would permit;
- (2) if a natural person, he is competent and trustworthy, or, if a partnership or corporation, all the partners, directors, principal officers, or persons having comparable powers are trustworthy; and
- (3) if a natural person, he is at least 18 years of age.

Enacted by Chapter 242, 1985 General Session

31A-25-205 Financial responsibility.

- (1) Every person licensed under this chapter shall maintain an insurance policy or surety bond:
 - (a)
 - (i) while licensed; and
 - (ii) for one year after the person is licensed; and
 - (b) issued:
 - (i) by an authorized insurer;
 - (ii) in an amount specified under Subsection (2); and
 - (iii) on a policy or contract form that is acceptable under Subsection (3).
- (2)
 - (a) Insurance policies or surety bonds satisfying the requirement of Subsection (1) shall be in a face amount equal to:
 - (i) at least the greater of:
 - (A) 10% of the total funds handled by the administrator; or
 - (B) \$5,000; and
 - (ii) may not exceed \$500,000.
 - (b) In fixing the policy or bond face amount under Subsection (2)(a), the total funds handled is:
 - (i) the greater of:
 - (A) the premiums received during the previous calendar year; or
 - (B) claims paid through the administrator during the previous calendar year; or
 - (ii) if no funds were handled during the preceding year, the total funds reasonably anticipated to be handled by the administrator during the current calendar year.

- (c) This section does not prohibit any person dealing with the administrator from requiring, by contract, insurance coverage in amounts greater than the insurance coverage required under this section.
- (3)
 - (a) Insurance policies or surety bonds issued to satisfy Subsection (1) shall:
 - (i) be on forms approved by the commissioner; and
 - (ii) require the insurer to pay, up to the policy or bond face amount, any judgment:
 - (A) obtained by participants in or beneficiaries of plans administered by the insured licensee; and
 - (B) that arises from the negligence or culpable acts of the licensee or any employee or agent of the licensee in connection with the activities of a third party administrator as defined in Section 31A-1-301.
 - (b) The commissioner may require that policies or bonds issued to satisfy the requirements of this section require the insurer to give the commissioner 20 day prior notice of policy cancellation.
- (4) The commissioner shall establish annual reporting requirements and forms to monitor compliance with this section.
- (5) This section may not be construed as limiting any cause of action an insured would otherwise have against the insurer.

Amended by Chapter 71, 2002 General Session
Amended by Chapter 308, 2002 General Session

31A-25-206 Nonresident jurisdictional agreement.

- (1)
 - (a) If a nonresident license applicant has a valid license from the nonresident license applicant's home state and the conditions of Subsection (1)(b) are met, the commissioner shall:
 - (i) waive any license requirement for a license under this chapter; and
 - (ii) issue the nonresident license applicant a nonresident third party administrator license.
 - (b) Subsection (1)(a) applies if:
 - (i) the nonresident license applicant:
 - (A) is licensed as a resident in the nonresident license applicant's home state at the time the nonresident license applicant applies for a nonresident third party administrator license;
 - (B) has submitted the proper request for licensure;
 - (C) has submitted to the commissioner:
 - (I) the application for licensure that the nonresident license applicant submitted to the applicant's home state; or
 - (II) a completed uniform application; and
 - (D) has paid the applicable fees under Section 31A-3-103;
 - (ii) the nonresident license applicant's license in the applicant's home state is in good standing; and
 - (iii) the nonresident license applicant's home state awards nonresident third party administrator licenses to residents of this state on the same basis as this state awards licenses to residents of that home state.
- (2) A nonresident applicant shall execute in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter related to the applicant's insurance activities in Utah, on the basis of:
 - (a) service of process under Sections 31A-2-309 and 31A-2-310; or

- (b) other service authorized in the Utah Rules of Civil Procedure.
- (3) The commissioner may verify the third party administrator's licensing status through the database maintained by:
 - (a) the National Association of Insurance Commissioners; or
 - (b) an affiliate or subsidiary of the National Association of Insurance Commissioners.
- (4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state based solely on the fact that the person does not reside in this state.

Amended by Chapter 116, 2001 General Session

31A-25-207 Form and contents of license.

- (1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:
 - (a) the name, address, and telephone number of the licensee;
 - (b) the date of license issuance; and
 - (c) any other information the commissioner considers advisable.
- (2) A third party administrator doing business under any other name than the administrator's legal name shall notify the commissioner prior to using the assumed name in this state.
- (3)
 - (a) An organization shall be licensed as an agency if the organization acts as a third party administrator.
 - (b) An agency license issued under Subsection (3)(a) shall set forth the names of all natural persons licensed under this chapter who are authorized to act in those capacities for the organization in this state.

Amended by Chapter 116, 2001 General Session

31A-25-208 Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal and reinstatement.

- (1) A license type issued under this chapter remains in force until:
 - (a) revoked or suspended under Subsection (4);
 - (b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;
 - (c) the licensee dies or is adjudicated incompetent as defined under:
 - (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
 - (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;
 - (d) lapsed under Section 31A-25-210; or
 - (e) voluntarily surrendered.
- (2) The following may be reinstated within one year after the day on which the license is no longer in force:
 - (a) a lapsed license; or
 - (b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.
- (3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:
 - (a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (4)
- (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:
- (i) revoke a license;
 - (ii) suspend a license for a specified period of 12 months or less;
 - (iii) limit a license in whole or in part; or
 - (iv) deny a license application.
- (b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:
- (i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;
 - (ii) has violated:
 - (A) an insurance statute;
 - (B) a rule that is valid under Subsection 31A-2-201(3); or
 - (C) an order that is valid under Subsection 31A-2-201(4);
 - (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;
 - (iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;
 - (v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;
 - (vi) is affiliated with and under the same general management or interlocking directorate or ownership as another third party administrator that transacts business in this state without a license;
 - (vii) refuses:
 - (A) to be examined; or
 - (B) to produce its accounts, records, and files for examination;
 - (viii) has an officer who refuses to:
 - (A) give information with respect to the third party administrator's affairs; or
 - (B) perform any other legal obligation as to an examination;
 - (ix) provides information in the license application that is:
 - (A) incorrect;
 - (B) misleading;
 - (C) incomplete; or
 - (D) materially untrue;
 - (x) has violated an insurance law, valid rule, or valid order of another regulatory agency in any jurisdiction;
 - (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
 - (xii) has improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;
 - (xiii) has intentionally misrepresented the terms of an actual or proposed:
 - (A) insurance contract; or
 - (B) application for insurance;
 - (xiv) has been convicted of a felony;
 - (xv) has admitted or been found to have committed an insurance unfair trade practice or fraud;
 - (xvi) in the conduct of business in this state or elsewhere has:

- (A) used fraudulent, coercive, or dishonest practices; or
- (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
- (xviii) has forged another's name to:
 - (A) an application for insurance; or
 - (B) a document related to an insurance transaction;
- (xix) has improperly used notes or any other reference material to complete an examination for an insurance license;
- (xx) has knowingly accepted insurance business from an individual who is not licensed;
- (xxi) has failed to comply with an administrative or court order imposing a child support obligation;
- (xxii) has failed to:
 - (A) pay state income tax; or
 - (B) comply with an administrative or court order directing payment of state income tax;
- (xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or
- (xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.
- (c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the agency license.
- (d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:
 - (i) the individual;
 - (ii) the agency if the agency:
 - (A) is reckless or negligent in its supervision of the individual; or
 - (B) knowingly participated in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or
 - (iii)
 - (A) the individual; and
 - (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
- (5) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:
 - (a) the licensee's license is:
 - (i) revoked;
 - (ii) suspended;
 - (iii) limited;
 - (iv) surrendered in lieu of administrative action;
 - (v) lapsed; or
 - (vi) voluntarily surrendered; and
 - (b) the licensee:
 - (i) continues to act as a licensee; or
 - (ii) violates the terms of the license limitation.
- (6) A licensee under this chapter shall immediately report to the commissioner:

- (a) a revocation, suspension, or limitation of the person's license in any other state, the District of Columbia, or a territory of the United States;
 - (b) the imposition of a disciplinary sanction imposed on that person by any other state, the District of Columbia, or a territory of the United States; or
 - (c) a judgment or injunction entered against the person on the basis of conduct involving:
 - (i) fraud;
 - (ii) deceit;
 - (iii) misrepresentation; or
 - (iv) a violation of an insurance law or rule.
- (7)
- (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.
 - (b) If no time is specified in the order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.
- (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by the court.
- (9) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 138, 2016 General Session

31A-25-209 Probation -- Grounds for revocation.

- (1) The commissioner may place a licensee on probation for a period not to exceed 24 months as follows:
- (a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, for any circumstances that would justify a suspension under Section 31A-25-208; or
 - (b) at the issuance of a new license:
 - (i) with an admitted violation under 18 U.S.C. Sec. 1033; or
 - (ii) with a response to a background information question on a new license application indicating that:
 - (A) the person has been convicted of a crime that is listed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for probation;
 - (B) the person is currently charged with a crime that is listed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for probation regardless of whether adjudication is withheld;
 - (C) the person has been involved in an administrative proceeding regarding any professional or occupational license; or
 - (D) any business in which the person is or was an owner, partner, officer, or director has been involved in an administrative proceeding regarding any professional or occupational license.
- (2) The commissioner may place a licensee on probation for a specified period no longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. Sec. 1033.
- (3) A probation order under this section shall state the conditions for retention of the license, which shall be reasonable.

- (4) A violation of the probation is grounds for revocation pursuant to any proceeding authorized under Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

31A-25-210 License lapse and voluntary surrender.

- (1)
- (a) A license issued under this chapter shall lapse if the licensee fails to:
- (i) pay when due a fee under Section 31A-3-103;
 - (ii) submit a completed renewal application as required by Section 31A-25-202;
 - (iii) produce, when due, evidence of compliance with the financial responsibility requirement under Section 31A-25-205; or
 - (iv) maintain an active license in a resident state if the licensee is a nonresident licensee.
- (b)
- (i) A licensee whose license lapses due to the following may request an action described in Subsection (1)(b)(ii):
- (A) military service;
 - (B) voluntary service for a period of time designated by the person for whom the licensee provides voluntary service; or
 - (C) some other extenuating circumstances, such as long-term medical disability.
- (ii) A licensee described in Subsection (1)(b)(i) may request:
- (A) reinstatement of the license no later than one year from the day on which the license lapses; and
 - (B) waiver of any of the following imposed for failure to comply with renewal procedures:
 - (I) an examination requirement;
 - (II) reinstatement fees set under Section 31A-3-103; or
 - (III) other sanction imposed for failure to comply with renewal procedures.
- (2) If a license issued under this chapter is voluntarily surrendered, the license may be reinstated:
- (a) during the license period in which the license is voluntarily surrendered; and
 - (b) no later than one year after the day on which the license is voluntarily surrendered.

Amended by Chapter 349, 2009 General Session