

Chapter 3
Department Funding, Fees, and Taxes

Part 1
Funding the Insurance Department

31A-3-101 General finance provisions.

Department expenditures shall conform to the Legislature's appropriation adopted under Title 63J, Chapter 1, Budgetary Procedures Act.

Amended by Chapter 284, 2011 General Session

31A-3-102 Exclusive fees and taxes.

- (1) The taxes and fees under this chapter, the premium taxes under Sections 59-9-101 through 59-9-104, the fees under Section 31A-31-108, and the examination costs under Section 31A-2-205 are in place of all other license fees or assessments that might otherwise be levied by the state or any other taxing body within the state.
- (2) An insurer that is subject to premium taxes under Sections 59-9-101 through 59-9-104 is not subject to corporate franchise taxes.
- (3) Unless otherwise exempt, a licensee under this title is subject to real and personal property taxes.

Amended by Chapter 435, 2014 General Session

31A-3-103 Fees.

- (1) For purposes of this section, "services" means functions that are reasonable and necessary to enable the commissioner to perform the duties imposed by this title including:
 - (a) issuing or renewing a license or certificate of authority;
 - (b) filing a policy form;
 - (c) reporting a producer appointment or termination; and
 - (d) filing an annual statement.
- (2) Except as otherwise provided by this title:
 - (a) the commissioner may set and collect a fee for services provided by the commissioner;
 - (b) a fee related to the renewal of a license may be imposed no more frequently than once each year; and
 - (c) a fee charged by the commissioner shall be set in accordance with Section 63J-1-504.
- (3)
 - (a) The commissioner shall publish a schedule of fees established pursuant to this section.
 - (b) The commissioner shall, by rule, establish the deadlines for payment of a fee established pursuant to this section.
- (4)
 - (a) Beginning July 1, 2011, there is created in the General Fund a restricted account known as the "Insurance Department Restricted Account."
 - (b) Except as provided in Subsection (4)(c), the Insurance Department Restricted Account shall consist of:
 - (i) fees authorized by this section; and
 - (ii) other money received by the department, including:

- (A) reimbursements for examination costs incurred by the department; and
- (B) forfeitures collected under this title.
- (c) The department shall deposit money it receives that is subject to a restricted account or enterprise fund created by this title into the restricted account or enterprise fund in accordance with the statute creating the restricted account or enterprise fund, and the department may not deposit the money into the Insurance Department Restricted Account.
- (d) Subject to appropriation by the Legislature, the department may expend money in the Insurance Department Restricted Account to fund the operations of the department.
- (e) At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any money deposited into the Insurance Department Restricted Account under Subsection (4)(b) that exceeds the legislative appropriations from the Insurance Department Restricted Account for that year.

Amended by Chapter 284, 2011 General Session

31A-3-104 Technology fees -- Restricted account.

- (1) The commissioner may impose a fee for requests for information:
 - (a) that is obtained from an electronic database of the commissioner; or
 - (b) derived from data that is generated by electronic means.
- (2) In addition to any fee authorized in this title, the commissioner shall impose a supplemental fee on the issuance or renewal of any of the following issued by the department:
 - (a) a license;
 - (b) a registration; or
 - (c) a certificate of authority.
- (3) A fee imposed under this section shall be:
 - (a) established in accordance with Section 31A-3-103; and
 - (b) deposited into the Technology Development Restricted Account.
- (4)
 - (a) There is created in the General Fund a restricted account known as the "Technology Development Restricted Account."
 - (b) The Technology Development Restricted Account shall consist of the fees imposed by the commissioner in accordance with this section.
 - (c) The commissioner shall administer the Technology Development Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Technology Development Restricted Account to provide services through use of electronic commerce or other similar technology.
 - (d) An appropriation from the Technology Development Restricted Account is nonlapsing.

Amended by Chapter 10, 2010 General Session

Amended by Chapter 265, 2010 General Session, (Coordination Clause)

31A-3-105 Criminal Background Check Restricted Account.

- (1) There is created in the General Fund a restricted account known as the "Criminal Background Check Restricted Account."
- (2) The Criminal Background Check Restricted Account shall consist of the fees imposed by the commissioner in accordance with:
 - (a) Subsection 31A-16-103(3);
 - (b) Subsection 31A-23a-105(3);

- (c) Subsection 31A-25-203(3); and
- (d) Subsection 31A-26-203(3).
- (3) The commissioner shall administer the Criminal Background Check Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Criminal Background Check Restricted Account to pay the costs the department is required to pay related to obtaining criminal background information in accordance with the provisions listed in Subsection (2)(a).
- (4) An appropriation from the Criminal Background Check Restricted Account is nonlapsing.

Enacted by Chapter 10, 2010 General Session

Amended by Chapter 265, 2010 General Session, (Coordination Clause)

31A-3-205 Taxation of insurance companies.

An admitted insurer shall pay to the State Tax Commission taxes imposed on the admitted insurer by Title 59, Revenue and Taxation.

Enacted by Chapter 123, 2005 General Session

Part 3

Taxation of Surplus Lines, Illegal Transactions, and Captive Insurance Companies

31A-3-301 Tax imposed on surplus lines insurance transactions.

- (1)
 - (a) An insurance transaction under Section 31A-15-103 is subject to a tax of 4-1/4% of gross premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.
 - (b) "Gross premium," for a surplus lines insurance transaction, means the monetary consideration for an insurance policy including the fees charged to the insured, however designated.
- (2) The tax imposed by this section does not apply to:
 - (a) ocean marine insurance;
 - (b) insurance premiums paid by institutions within the state system of higher education as specified in Section 53B-1-102; or
 - (c) annuities.
- (3) The department shall deposit a tax imposed by this section in the General Fund.
- (4)
 - (a) A county, city, or municipality within the state may not impose an occupation tax or other tax or fee on a surplus lines insurance transaction.
 - (b) Notwithstanding Subsection (4)(a), an insurer, producer, or policyholder may be subject to other taxes not described in Subsection (4)(a).

Amended by Chapter 275, 2011 General Session

31A-3-302 Tax on illegal transactions.

An insurance transaction under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups, which violates the restrictions placed on transactions by that chapter shall be taxed at a rate four percentage points higher than the applicable rate under Section 59-9-101.

Amended by Chapter 2, 1987 General Session

31A-3-303 Payment of tax.

- (1)
 - (a) An insurer, the producers involved in the transaction, and the policyholder are jointly and severally liable for the payment of the taxes required under Section 31A-3-301.
 - (b) The policyholder's liability for payment of the premium tax under Section 31A-3-301 ends when the policyholder pays the tax to a producer or an insurer.
 - (c) The insurer and the producers involved in the transaction are jointly and severally liable for the payment of the additional tax required under Section 31A-3-302.
 - (d) Except for the tax under Section 31A-3-302, the policyholder shall pay a tax under this part and shall be billed specifically for the tax when billed for the premium.
 - (e) Except for the tax imposed under Section 31A-3-302, absorption of the tax by the producer or insurer is an unfair method of competition under Sections 31A-23a-402 and 31A-23a-402.5.
- (2)
 - (a) The commissioner shall by rule prescribe accounting and reporting forms and procedures for insurers, producers, and policyholders to use in determining the amount of taxes owed under this part, and the manner and time of payment.
 - (b) If a tax is not paid within the time prescribed under the commissioner's rule, a penalty shall be imposed of 25% of the tax due, plus 1-1/2% per month from the time of default until full payment of the tax.
- (3) Upon making a record of its actions, and upon reasonable cause shown, the commissioner may waive, reduce, or compromise any of the penalties or interest imposed under this part.
- (4) Subject to Section 31A-3-305, if a policy covers risks that are only partially located in this state, for computation of tax under this part the premium shall be reasonably allocated among the states on the basis of risk locations. However, the premiums with respect to surplus lines insurance received in this state by a surplus lines producer or charged on policies written or negotiated in or from this state are taxable in full under this part, subject to a credit for any tax actually paid in another state to the extent of a reasonable allocation on the basis of risk locations.
- (5) Subject to Section 31A-3-305, the premium taxes collected under this part by a producer or by an insurer are the property of this state.
- (6) If the property of a producer is seized under any process in a court in this state, or if a producer's business is suspended by the action of creditors or put into the hands of an assignee, receiver, or trustee, the taxes and penalties due this state under this part are preferred claims and the state is to that extent a preferred creditor.

Amended by Chapter 62, 2011 General Session

Amended by Chapter 275, 2011 General Session

31A-3-304 Annual fees -- Other taxes or fees prohibited -- Captive Insurance Restricted Account.

- (1)

- (a) A captive insurance company shall pay an annual fee imposed under this section to obtain or renew a certificate of authority.
- (b) The commissioner shall:
 - (i) determine the annual fee pursuant to Section 31A-3-103; and
 - (ii) consider whether the annual fee is competitive with fees imposed by other states on captive insurance companies.
- (2) A captive insurance company that fails to pay the fee required by this section is subject to the relevant sanctions of this title.
- (3)
 - (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under the laws of this state that may be levied or assessed on a captive insurance company:
 - (i) a fee under this section;
 - (ii) a fee under Chapter 37, Captive Insurance Companies Act; and
 - (iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company Act.
 - (b) The state or a county, city, or town within the state may not levy or collect an occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii) against a captive insurance company.
 - (c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115 against a captive insurance company.
 - (d) A captive insurance company is subject to real and personal property taxes.
- (4) A captive insurance company shall pay the fee imposed by this section to the commissioner by June 1 of each year.
- (5)
 - (a) Money received pursuant to a fee described in Subsection (3)(a) shall be deposited into the Captive Insurance Restricted Account.
 - (b) There is created in the General Fund a restricted account known as the "Captive Insurance Restricted Account."
 - (c) The Captive Insurance Restricted Account shall consist of the fees described in Subsection (3)(a).
 - (d) The commissioner shall administer the Captive Insurance Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Captive Insurance Restricted Account to:
 - (i) administer and enforce:
 - (A) Chapter 37, Captive Insurance Companies Act; and
 - (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and
 - (ii) promote the captive insurance industry in Utah.
 - (e) An appropriation from the Captive Insurance Restricted Account is nonlapsing, except that at the end of each fiscal year, money received by the commissioner in excess of the following shall be treated as free revenue in the General Fund:
 - (i) for fiscal year 2015-2016, in excess of \$1,250,000;
 - (ii) for fiscal year 2016-2017, in excess of \$1,250,000; and
 - (iii) for fiscal year 2017-2018 and subsequent fiscal years, in excess of \$1,850,000.

Amended by Chapter 244, 2015 General Session

31A-3-305 Agreement related to nonadmitted insurance taxes.

- (1) As used in this section:

- (a) "Agreement" means a cooperative agreement, reciprocal agreement, or compact with one or more other states.
- (b)
 - (i) "Home state," except as provided in Subsections (1)(b)(ii) and (iii), with respect to an insured, means:
 - (A) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
 - (B) if 100% of the insured risk is located out of the state described in Subsection (1)(b)(i) (A), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
 - (ii) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state determined under Subsection (1)(b)(i) of the member of the affiliated group that has the largest percentage of premium attributed to it under the nonadmitted insurance contract.
 - (iii)
 - (A) When a group policyholder pays 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group policy holder.
 - (B) When a group policyholder does not pay 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group member.
- (c) "Principal place of business," for purposes of determining the home state of an insured, means:
 - (i) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities;
 - (ii) if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or
 - (iii) if the insured maintains its headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- (d) "Principal residence," with respect to determining the home state of an insured, means:
 - (i) the state where the insured resides for the greatest number of days during a calendar year; or
 - (ii) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- (2) The commissioner may enter into an agreement to:
 - (a) facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance;
 - (b) provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications; and
 - (c) share information among states relating to nonadmitted insurance premium taxes.
- (3) If the commissioner enters into an agreement under Subsection (2), the following apply:
 - (a) In addition to the full amount of gross premiums charged by the insurer for the insurance, a surplus lines producer shall collect and pay to the commissioner a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines producer.

- (b) When surplus lines insurance covers property, risks, or exposures located or to be performed in and out of this state, the sum payable is calculated as follows:
 - (i) calculate an amount equal to the applicable tax rates under this part on that portion of the gross premiums allocated to this state pursuant to the agreement;
 - (ii) add to the amount under Subsection (3)(b)(i) an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks, or exposures located or to be performed outside of this state pursuant to the agreement; and
 - (iii) subtract from the amount under Subsection (3)(b)(ii) the amount of gross premiums allocated to this state and returned to the insured.
- (c) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines producer. A surplus lines producer may not absorb or rebate, for any reason, any part of the tax.
- (4) The commissioner may participate in a clearinghouse established through an agreement described in Subsection (2) for the purpose of collecting or disbursing to reciprocal states any money collected pursuant to Subsection (3) applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into an agreement with this state, the state shall retain the net premium tax collected.
- (5) The commissioner may adopt an allocation schedule included in an agreement described in Subsection (2) for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures reside.
- (6) The commissioner may apply the definition of "home state" in Subsection (1) when implementing an agreement described in Subsection (2).
- (7) The commissioner shall report to the Business and Labor Interim Committee regarding the nature and status of any agreement into which the commissioner enters under Subsection (2).

Enacted by Chapter 275, 2011 General Session

Part 4 Retaliation

31A-3-401 Retaliation against insurers of foreign state or country.

- (1) Except as provided in Section 31A-3-402, when, under the laws of another state or foreign country any taxes, licenses, other fees, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed on Utah insurers, or on the agents or representatives of Utah insurers, that are in excess of the taxes, licenses, other fees, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of those insurers, of that other state or country under the statutes of this state, as long as the laws of that other state or country continue in force or are so applied, the same taxes, licenses, other fees, deposit requirements, or other material obligations, prohibitions, or restrictions of any kind shall be imposed, collected, and enforced by the State Tax Commission, with the assistance of the commissioner, upon the

insurers, or upon the agents or representatives of those insurers, of that other state or country doing business or seeking to do business in this state.

- (2) Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of another state or country on Utah insurers, their agents, or representatives is considered as being imposed by that state or country within the meaning of this section.
- (3) The commissioner may by rule waive the retaliatory requirements for a person that is:
 - (a) doing business in this state; or
 - (b) seeking to do business in this state.

Amended by Chapter 308, 2002 General Session

31A-3-402 Obligations to which retaliation inapplicable.

Section 31A-3-401 does not apply to personal income taxes, ad valorem taxes on real or personal property, nor special purpose obligations or assessments in connection with particular kinds of insurance, except that deductions from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid, are taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this part.

Enacted by Chapter 242, 1985 General Session

31A-3-403 Domicile of alien insurers.

- (1) The domicile of an insurer formed under the laws of Canada, or a province of Canada, is considered to be that province in which its head office is situated.
- (2) For the purposes of this part, the domicile of an alien insurer, other than insurers formed under the laws of Canada or a province thereof, is the state where the insurer's principal place of business is located in the United States, except that alien insurers may designate in a writing filed with the commissioner at time of admission to Utah or by January 1, 1987, whichever date is later, any one of the following states as the alien insurer's state of domicile:
 - (a) the state where the insurer was first authorized to transact insurance;
 - (b) the state which is the insurer's principal place of business in the United States; or
 - (c) the state where the largest deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States is held.

Enacted by Chapter 242, 1985 General Session