

## Chapter 4 Insurers in General

### **31A-4-101 Solicitation permit.**

- (1) No person may advertise for or solicit or receive any funds, subscriptions for securities, or membership fees, dues, or contributions in Utah or from any person present in Utah for the purpose of forming or financing the formation or enlargement of an insurer, holding company to form or acquire one or more insurers, or any corporation or unincorporated association to do or facilitate the doing of an insurance business in Utah or elsewhere, unless the person has obtained the appropriate organization or solicitation permit under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 6a, Service Contracts, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health Maintenance Organizations and Limited Health Plans, or Chapter 9, Insurance Fraternal, and filed any required statement under Chapter 16, Insurance Holding Companies.
- (2) Any person obtaining the appropriate organization or solicitation permit under this code is exempt from compliance with Title 61, Securities Division - Real Estate Division.

Amended by Chapter 340, 2011 General Session

### **31A-4-102 Qualified insurers.**

- (1) A person may not conduct an insurance business in Utah in person, through an agent, through a broker, through the mail, or through another method of communication, except:
  - (a) an insurer:
    - (i) authorized to do business in Utah under:
      - (A)Chapter 5, Domestic Stock and Mutual Insurance Corporations;
      - (B)Chapter 7, Nonprofit Health Service Insurance Corporations;
      - (C)Chapter 8, Health Maintenance Organizations and Limited Health Plans;
      - (D)Chapter 9, Insurance Fraternal;
      - (E)Chapter 10, Annuities;
      - (F)Chapter 11, Motor Clubs;
      - (G)Chapter 13, Employee Welfare Funds and Plans;
      - (H)Chapter 14, Foreign Insurers;
      - (I)Chapter 37, Captive Insurance Companies Act; or
      - (J)Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and
    - (ii) within the limits of its certificate of authority;
  - (b) a joint underwriting group under Section 31A-2-214 or 31A-20-102;
  - (c) an insurer doing business under Section 31A-15-103;
  - (d) a person who submits to the commissioner a certificate from the United States Department of Labor, or such other evidence as satisfies the commissioner, that the laws of Utah are preempted with respect to specified activities of that person by Section 514 of the Employee Retirement Income Security Act of 1974 or other federal law; or
  - (e) a person exempt from this title under Section 31A-1-103 or another applicable statute.
- (2) As used in this section, "insurer" includes a bail bond surety company, as defined in Section 31A-35-102.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

**31A-4-103 Certificate of authority.**

- (1) Each certificate of authority issued by the commissioner shall specify:
  - (a) the name of the insurer;
  - (b) the kinds of insurance the insurer is authorized to transact in Utah; and
  - (c) any other information the commissioner requires.
- (2) A certificate of authority issued under this chapter remains in force until:
  - (a) the certificate is not renewed; or
  - (b) under Subsection (3), the certificate of authority is:
    - (i) revoked; or
    - (ii) suspended.
- (3)
  - (a) After an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, if the commissioner makes a finding described in Subsection (3)(b), the commissioner may:
    - (i) revoke a certificate of authority;
    - (ii) suspend a certificate of authority for a period not to exceed 12 months; or
    - (iii) limit a certificate of authority.
  - (b) The commissioner may take any action described in Subsection (3)(a) if the commissioner finds the insurer has:
    - (i) failed to pay when due any fee due under Section 31A-3-103;
    - (ii) violated or failed to comply with:
      - (A) this title;
      - (B) a rule made under Subsection 31A-2-201(3); or
      - (C) an order issued under Subsection 31A-2-201(4); or
    - (iii) engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.
  - (c) An order suspending a certificate of authority shall specify:
    - (i) the conditions and terms imposed on the insurer during the suspension; and
    - (ii) the conditions and procedures for reinstatement from suspension.
  - (d) The commissioner may place limitations on a certificate of authority at the time the certificate of authority is issued based on information contained in the application for the certificate of authority.
  - (e) An order limiting a certificate of authority that is issued under Subsection (3)(a) or (3)(d) shall specify:
    - (i) the period of the limitation;
    - (ii) the conditions of the limitation; and
    - (iii) the procedures for removing the limitation.
- (4) Subject to the requirements of this section and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may by rule prescribe procedures to renew or reinstate a certificate of authority.
- (5) An insurer under this chapter whose certificate of authority is suspended or revoked, but that continues to act as an authorized insurer, is subject to the penalties for acting as an insurer without a certificate of authority.
- (6) Any insurer holding a certificate of authority in this state shall immediately report to the commissioner a suspension or revocation of that insurer's certificate of authority in any:
  - (a) state;
  - (b) the District of Columbia; or
  - (c) a territory of the United States.

- (7)
- (a) An order revoking a certificate of authority under Subsection (3) may specify a time within which the former authorized insurer may not apply for a new certificate of authority, except that the time may not exceed five years from the date on which the certificate of authority is revoked.
  - (b) If no time is specified in an order revoking a certificate of authority under Subsection (3), the former authorized insurer may not apply for a new certificate of authority for five years from the date on which the certificate of authority is revoked without express approval by the commissioner.
- (8)
- (a) Subject to Subsection (8)(b), the insurer shall pay all fees under Section 31A-3-103 that would have been payable if the certificate of authority had not been suspended or revoked, unless the commissioner, in accordance with rule, waives the payment of the fees by no later than the day on which:
    - (i) a suspension under Subsection (3) of an insurer's certificate of authority ends; or
    - (ii) a new certificate of authority is issued to an insurer whose certificate of authority is revoked under Subsection (3).
  - (b) If a new certificate of authority is issued more than three years after the day on which a similar certificate of authority was revoked, this Subsection (8) applies only to the fees that would have accrued during the three years immediately following the revocation.

Amended by Chapter 382, 2008 General Session

**31A-4-104 Bar on local activity by persons not authorized.**

A person not qualified under Section 31A-4-102 to do an insurance business may not, from offices or by personnel or facilities located in Utah, solicit insurance applications or transact insurance business in another jurisdiction.

Enacted by Chapter 242, 1985 General Session

**31A-4-105 Deposit required from domestic insurers.**

Domestic insurers organized or operating under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 9, Insurance Fraternal, shall maintain a deposit under Section 31A-2-206 in the amount of the insurer's required capital for stock insurers, or minimum permanent surplus for mutuals. The commissioner may not issue a certificate of authority to an insurer operating under one of these chapters until the insurer complies with this section.

Amended by Chapter 20, 1995 General Session

**31A-4-105.5 Deposit required from foreign insurers.**

- (1)
- (a) Foreign insurers operating under Chapter 14, Foreign Insurers, shall maintain a deposit in the amount of the insurer's minimum required capital for stock insurers, or minimum required permanent surplus for mutual insurers.
  - (b) The deposit shall be held for the benefit of all policyholders and may be maintained with an official of some other state designated by law to accept the deposit.

- (2) The commissioner may not issue or renew a certificate of authority to an insurer until the insurer complies with this section.

Enacted by Chapter 316, 1994 General Session

**31A-4-106 Provision of health care.**

(1) As used in this section, "health care provider" has the same definition as in Section 78B-3-403.

(2) Except under Subsection (3) or (4), unless authorized to do so or employed by someone authorized to do so under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health Maintenance Organizations and Limited Health Plans, Chapter 9, Insurance Fraternal, or Chapter 14, Foreign Insurers, a person may not:

- (a) directly or indirectly provide health care;
- (b) arrange for health care;
- (c) manage or administer the provision or arrangement of health care;
- (d) collect advance payments for health care; or
- (e) compensate a provider of health care.

(3) Subsection (2) does not apply to:

- (a) a natural person or professional corporation that alone or with others professionally associated with the natural person or professional corporation, and except as provided in Subsection (3)(f), without receiving consideration for services in advance of the need for a particular service, provides the service personally with the aid of nonprofessional assistants;
- (b) a health care facility as defined in Section 26-21-2 that:
  - (i) is licensed or exempt from licensing under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and
  - (ii) does not engage in health care insurance as defined under Section 31A-1-301;
- (c) a person who files with the commissioner a certificate from the United States Department of Labor, or other evidence satisfactory to the commissioner, showing that the laws of Utah are preempted under Section 514 of the Employee Retirement Income Security Act of 1974 or other federal law;
- (d) a person licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, who:
  - (i) arranges for the insurance of all services under:
    - (A) Subsection (2) by an insurer authorized to do business in Utah; or
    - (B) Section 31A-15-103; or
  - (ii) works for an uninsured employer that complies with Chapter 13, Employee Welfare Funds and Plans;
- (e) an employer that self-funds its obligations to provide health care services or indemnity for its employees if the employer complies with Chapter 13, Employee Welfare Funds and Plans; or
- (f) notwithstanding the provisions of Subsection (3)(a), a natural person or professional corporation that alone or with others professionally associated with the natural person or professional corporation enters into a medical retainer agreement in accordance with Section 31A-4-106.5.

(4) A person may not provide administrative or management services for another person subject to Subsection (2) and not exempt under Subsection (3) unless the person:

- (a) is an authorized insurer under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health

Maintenance Organizations and Limited Health Plans, Chapter 9, Insurance Fraternal, or Chapter 14, Foreign Insurers; or

(b) complies with Chapter 25, Third Party Administrators.

- (5) An insurer or person who provides, administers, or manages health care insurance under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health Maintenance Organizations and Limited Health Plans, Chapter 9, Insurance Fraternal, or Chapter 14, Foreign Insurers, may not enter into a contract that limits a health care provider's ability to advise the health care provider's patients or clients fully about treatment options or other issues that affect the health care of the health care provider's patients or clients.

Amended by Chapter 50, 2012 General Session

**31A-4-106.5 Medical retainer agreements.**

(1) For purposes of this section:

(a) "Medical retainer agreement" means a written contract:

(i) between:

(A) except as provided in Subsection (1)(b)(iii)(B), a natural person or a professional corporation, alone or with others professionally associated with the natural person or professional corporation; and

(B) an individual patient or a patient's representative; and

(ii) in which:

(A) the person described in Subsection (1)(a)(i)(A) agrees to provide routine health care services to the individual patient for an agreed upon fee and period of time; and

(B) either party to the contract may terminate the agreement upon written notice to the other party.

(b) "Routine health care services" include:

(i) screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury;

(ii) supplies and prescription drugs that are dispensed in a health care provider's office; and

(iii) laboratory work, such as routine blood screening or routine pathology screening performed by a laboratory that:

(A) is associated with the health care provider entering into the medical retainer agreement; or

(B) if not associated with the health care provider, has entered into an agreement with the health care provider to provide the laboratory work without charging a fee to the patient for the laboratory work.

(2) A medical retainer agreement exempt from the provisions of Subsection 31A-4-106(2) shall:

(a) describe the specific routine health care services that are included in the contract;

(b) prominently state in writing that the retainer agreement is not health insurance; and

(c) prohibit the health care provider, but not the patient, from billing an insurer for the services provided under the medical retainer agreement.

Enacted by Chapter 50, 2012 General Session

**31A-4-107 Other business.**

(1) As used in this section, "business reasonably incidental to insurance business" includes:

(a) in the case of an insurer authorized to transact title insurance:

- (i) preparing or selling abstracts of title and related documents; and
  - (ii) providing escrow services in connection with real estate transactions, or other services incidental to the sale or transfer of insurance related to the sale or transfer of real property, except the sale of other kinds of insurance related to the sale or transfer of real property; and
  - (b) the business that could be done through subsidiaries authorized under Subsection 31A-5-218(3) or, in the case of a nondomestic insurer, through corporations that would be authorized under Subsection 31A-5-218(3) if the insurer were a domestic insurer.
- (2) No domestic insurer may engage, directly or indirectly, in any business other than insurance and business reasonably incidental to its insurance business, except as specifically authorized by Section 31A-5-218 or other law in this state.
- (3) No nondomestic insurer may engage in this state in any business forbidden to a domestic insurer, nor may the insurer engage in that type of business elsewhere if the commissioner orders the nondomestic insurer to cease doing that type of business upon finding that doing that business is not consistent with the interests of its insureds, creditors, or the public in this state.

Amended by Chapter 308, 2002 General Session

**31A-4-107.5 Penalty for failure of a regulated health insurance entity to fulfill duties related to state claims for Medicaid payment or recovery.**

- (1) For purposes of this section, "regulated health insurance entity" means a health insurance entity, as defined in Section 26-19-2, that is subject to regulation by the department.
- (2) If a regulated health insurance entity fails to comply with the provisions of Section 26-19-4.7:
- (a) the commissioner may revoke or suspend, in whole or in part, a license, certificate of authority, registration, or other authority that is granted by the commissioner to the regulated health insurance entity; and
  - (b) the regulated health insurance entity is subject to the penalties and procedures provided for in Section 31A-2-308.

Enacted by Chapter 64, 2007 General Session

**31A-4-108 Power to hold property in other than own name.**

- (1) An insurer shall hold all investments and deposits of its funds in its own name except:
- (a) securities:
    - (i) kept under a custodial agreement or trust arrangement with one of the following approved by the commissioner:
      - (A) a bank;
      - (B) a securities firm's trust company;
      - (C) a trust company; or
      - (D) a brokerage firm; and
    - (ii) that may be issued in the name of a nominee of the:
      - (A) bank;
      - (B) securities firm's trust company;
      - (C) trust company; or
      - (D) brokerage firm; and
  - (b) securities that may be acquired and held in bearer form.
- (2) An insurer shall take steps which the commissioner reasonably prescribes by rule or order to:

- (a) safeguard the securities described in Subsection (1); and
  - (b) ensure that the securities are not loaned to other insurers, affiliated or not, to mislead the commissioner about the true financial condition of either the lending or the borrowing insurer.
- (3)
- (a) If the department finds that an insurer is in violation of this section, the insurer is subject to:
    - (i) a fine;
    - (ii) suspension of a license;
    - (iii) revocation of a license;
    - (iv) another penalty permitted by Section 31A-2-308; or
    - (v) any combination of Subsections (3)(a)(i) through (iv).
  - (b) An insurer may not provide for the custody of the insurer's securities except as granted by this section.
  - (c) Securities of an insurer kept under a custodial agreement or trust arrangement in violation of this section shall be disregarded in:
    - (i) determining the financial condition of the insurer; or
    - (ii) reporting the financial condition of the insurer.

Amended by Chapter 176, 2006 General Session

**31A-4-109 Insurers as fundholders.**

All of an insurer's assets shall be held, invested, and disbursed for the use and benefit of the insurer. No policyholder, member, or beneficiary may have or acquire individual rights in these assets or become entitled to an apportionment or the surrender of any part of these assets, except as provided in this title or by contract. An insurer may create, maintain, invest, disburse, and apply any special funds necessary to carry out any purpose permitted by the laws of this state and the articles and bylaws of the insurer.

Amended by Chapter 204, 1986 General Session

**31A-4-110 Duty of insurers to report abandoned property.**

All insurers doing business in Utah shall report under Section 67-4a-301 any property presumed abandoned under Title 67, Chapter 4a, Part 2, Standards for Determining When Property Is Abandoned or Unclaimed.

Amended by Chapter 198, 1995 General Session

**31A-4-111 Authority to insure with certain insurers.**

A person, government, governmental agency, state, political subdivision of the state, public or private corporation, board, association, estate, trustee, or fiduciary may purchase nonassessable policies of insurance issued by an insurer under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health Maintenance Organizations and Limited Health Plans, or Chapter 14, Foreign Insurers, which is authorized to write that type of insurance under this code. These authorized insurers may issue that type of insurance to any of the persons named above.

Amended by Chapter 20, 1995 General Session

**31A-4-112 Political activities.**

- (1) Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act, applies to the lobbying efforts of every person subject to regulation under this title.
- (2) Except insurers with excess surplus, an insurer doing business in Utah may not directly or indirectly pay or use, or offer or agree to pay or use any money or thing of value:
  - (a) for or in aid of any political office;
  - (b) for the nomination for the political office; or
  - (c) for reimbursement or indemnification of any person for money or property used to aid any political office.

Amended by Chapter 9, 1996 Special Session 2

Amended by Chapter 9, 1996 Special Session 2

**31A-4-113 Annual statements.**

- (1)
  - (a) Each authorized insurer shall annually, on or before March 1, file with the commissioner a true statement of the authorized insurer's financial condition, transactions, and affairs as of December 31 of the preceding year.
  - (b) The statement required by Subsection (1)(a) shall be:
    - (i) verified by the oaths of at least two of the insurer's principal officers; and
    - (ii) in the general form and provide the information as prescribed by the commissioner by rule.
  - (c) The commissioner may, for good cause shown, extend the date for filing the statement required by Subsection (1)(a).
- (2) The annual statement of an alien insurer shall:
  - (a) relate only to the alien insurer's transactions and affairs in the United States unless the commissioner requires otherwise; and
  - (b) be verified by:
    - (i) the insurer's United States manager; or
    - (ii) the insurer's authorized officers.

Amended by Chapter 2, 2004 General Session

**31A-4-113.5 Filing requirements -- National Association of Insurance Commissioners.**

- (1)
  - (a) Each domestic, foreign, and alien insurer who is authorized to transact insurance business in this state shall annually, on or before March 1, file with the National Association of Insurance Commissioners a copy of the insurer's:
    - (i) annual statement convention blank; and
    - (ii) any additional filings required by the commissioner for the preceding year.
  - (b) The information filed with the National Association of Insurance Commissioners under Subsection (1)(a) shall:
    - (i) be in the format and scope required by the commissioner; and
    - (ii) include:
      - (A) the signed jurat page; and
      - (B) the actuarial certification.
  - (c) Any amendments and addendums to an annual statement that are filed with the commissioner shall be filed by the insurer with the National Association of Insurance Commissioners.

- (d) At the time an insurer makes a filing under this Subsection (1), the insurer shall pay any filing fees assessed by the National Association of Insurance Commissioners.
- (e) A foreign insurer that is domiciled in a state that has a law substantially similar to this section shall be considered to be in compliance with this section.
- (2) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the Insurance Regulatory Information System are confidential and may not be disclosed by the department.
- (3) The commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to:
  - (a) file the annual statement as required by Subsection (1)(a) when due or within any extension of time granted for good cause by:
    - (i) the commissioner; or
    - (ii) the National Association of Insurance Commissioners; or
  - (b) pay by the time specified in Subsection (3)(a) a fee the insurer is required to pay under this section to:
    - (i) the commissioner; or
    - (ii) the National Association of Insurance Commissioners.

Amended by Chapter 252, 2003 General Session

**31A-4-114 Powers of a reciprocal insurer and interinsurance exchange.**

- (1) Every reciprocal insurer or interinsurance exchange may:
  - (a) purchase, receive, own, hold, and lease its property;
  - (b) mortgage, pledge, or encumber its property by deed of trust or otherwise; and
  - (c) manage and sell real property to fulfill its purposes, including:
    - (i) making investments for the production of income; or
    - (ii) transacting its business in a convenient manner.
- (2) The attorney-in-fact designated by the subscribers of the reciprocal or interinsurance exchange shall execute any contract, which includes deeds, leases, mortgages, deeds of trust, purchase or sale agreements, or any other contract, in the name of the reciprocal insurer or interinsurance exchange.

Enacted by Chapter 327, 1990 General Session

**31A-4-115 Plan of orderly withdrawal.**

- (1)
  - (a) When an insurer intends to withdraw from writing a line of insurance in this state or to reduce its total annual premium volume by 75% or more, the insurer shall file with the commissioner a plan of orderly withdrawal.
  - (b) For purposes of this section, a discontinuance of a health benefit plan pursuant to one of the following provisions is a withdrawal from a line of insurance:
    - (i) Subsection 31A-30-107(3)(e); or
    - (ii) Subsection 31A-30-107.1(3)(e).
- (2) An insurer's plan of orderly withdrawal shall:
  - (a) indicate the date the insurer intends to begin and complete its withdrawal plan; and
  - (b) include provisions for:
    - (i) meeting the insurer's contractual obligations;
    - (ii) providing services to its Utah policyholders and claimants;

- (iii) meeting applicable statutory obligations; and
  - (iv) the payment of a withdrawal fee of \$50,000 to the department if the insurer's line of business is not assumed or placed with another insurer approved by the commissioner.
- (3) The commissioner shall approve a plan of orderly withdrawal if the plan of orderly withdrawal adequately demonstrates that the insurer will:
- (a) protect the interests of the people of the state;
  - (b) meet the insurer's contractual obligations;
  - (c) provide service to the insurer's Utah policyholders and claimants; and
  - (d) meet applicable statutory obligations.
- (4) Section 31A-2-302 governs the commissioner's approval or disapproval of a plan for orderly withdrawal.
- (5) The commissioner may require an insurer to increase the deposit maintained in accordance with Section 31A-4-105 or Section 31A-4-105.5 and place the deposit in trust in the name of the commissioner upon finding, after an adjudicative proceeding that:
- (a) there is reasonable cause to conclude that the interests of the people of the state are best served by such action; and
  - (b) the insurer:
    - (i) has filed a plan of orderly withdrawal; or
    - (ii) intends to:
      - (A) withdraw from writing a line of insurance in this state; or
      - (B) reduce the insurer's total annual premium volume by 75% or more.
- (6) An insurer is subject to the civil penalties under Section 31A-2-308, if the insurer:
- (a) withdraws from writing insurance in this state without receiving the commissioner's approval of a plan of orderly withdrawal; or
  - (b) reduces its total annual premium volume by 75% or more in any year without receiving the commissioner's approval of a plan of orderly withdrawal.
- (7) An insurer that withdraws from writing all lines of insurance in this state may not resume writing insurance in this state for five years unless the commissioner finds that the prohibition should be waived because the waiver is:
- (a) in the public interest to promote competition; or
  - (b) to resolve inequity in the marketplace.
- (8) The commissioner shall adopt rules necessary to implement this section.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

Amended by Chapter 425, 2014 General Session

**31A-4-116 Adverse benefit determination procedures.**

- (1) If an insurer has established a complaint resolution body or grievance appeal board, the body or board shall include at least one consumer representative.
- (2) Adverse benefit determination procedures for health insurance policies and health maintenance organization contracts shall be established in accordance Section 31A-22-629.

Amended by Chapter 308, 2002 General Session

**31A-4-117 Closing or settlement protection.**

- (1) A title insurer may issue closing or settlement protection in the form of a closing protection letter filed with the department to a person who is a party to a transaction in which a title insurance policy is issued.
- (2) Closing or settlement protection may indemnify a person who is a party to a transaction referred to in Subsection (1) against loss that the title insurer approves for the closing or settlement protection, under the terms and conditions of the closing protection letter issued by the title insurer, because of one or more of the following acts of a title insurance policy issuing individual title insurance producer or agency title insurance producer or other settlement service provider:
  - (a) theft or misappropriation of settlement funds in connection with a transaction in which one or more title insurance policies are issued by or on behalf of the title insurer issuing the closing or settlement protection, but only to the extent that the theft or misappropriation relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land; or
  - (b) failure to comply with the written closing instructions when agreed to by the settlement agent, title agent, or employee of the title insurer, but only to the extent that the failure to follow the written closing instructions relates to the status of the title to that interest in land or the validity, enforceability, and priority of the lien of the mortgage on that interest in land.
- (3) A title insurer may not make the fee charged by a title insurer for each party receiving closing or settlement protection coverage subject to any agreement requiring a division of fees or premiums collected on behalf of the title insurer. The fee charged for a closing or settlement coverage protection letter will be filed by the title insurer with the department 30 days before use.
- (4) A title insurer may not provide any other protection that purports to contractually indemnify against improper acts or omissions of a person who is a party to a transaction referred to in Subsection (1) with regard to settlement or closing services.
- (5) Subject to Section 31A-23a-407, a title insurer that is represented by an individual title insurance producer or an agency title insurance producer is liable for the acts or omissions of the individual title insurance producer or agency title insurance producer for closing or settlement only to the extent of the liability undertaken in the closing protection letter according to terms and provisions in the closing protection letter issued pursuant to this section. The liability to the title insurer, if any, of the individual title insurance producer or agency title insurance producer that issues the title insurance policy for acts or omissions of the individual title insurance producer or agency title insurance producer may not be limited or modified because the title insurer has provided closing protection to one or more parties to a real property transaction, escrow, settlement, or closing.

Amended by Chapter 314, 2016 General Session