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**LICENSING - INSURANCE LAW**

**AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: James A. Dunnigan**

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code to address provisions related to licensing.

**Highlighted Provisions:**

This bill:

- ▶ modifies definitions;
- ▶ modifies provisions related to initial and renewal applications for licensure;
- ▶ modifies cross references;
- ▶ repeals certain reporting requirements for appointments in the state;
- ▶ requires a producer to have experience with property and casualty lines of authority to be eligible to add surplus lines of authority;
- ▶ modifies reporting requirements for agency designations;
- ▶ repeals the commissioner's authority to issue a single license to each licensed adjustor for a single fee;
- ▶ modifies time for retention of records;
- ▶ provides that certain records are private records; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **31A-23a-102**, as renumbered and amended by Chapter 298, Laws of Utah 2003

31 **31A-23a-104**, as last amended by Chapter 252 and renumbered and amended by  
32 Chapter 298, Laws of Utah 2003

33 **31A-23a-105**, as last amended by Chapter 81 and renumbered and amended by Chapter  
34 298, Laws of Utah 2003

35 **31A-23a-111**, as renumbered and amended by Chapter 298, Laws of Utah 2003

36 **31A-23a-113**, as enacted by Chapter 298, Laws of Utah 2003

37 **31A-23a-115**, as enacted by Chapter 298, Laws of Utah 2003

38 **31A-23a-203**, as renumbered and amended by Chapter 298, Laws of Utah 2003

39 **31A-23a-302**, as renumbered and amended by Chapter 298, Laws of Utah 2003

40 **31A-26-209**, as last amended by Chapter 116, Laws of Utah 2001

41 **31A-26-306**, as last amended by Chapter 230, Laws of Utah 1992

42 **31A-35-101**, as last amended by Chapter 259, Laws of Utah 2000

43 **63-2-302**, as last amended by Chapters 39, 252 and 298, Laws of Utah 2003

44 **77-20-10**, as last amended by Chapter 259, Laws of Utah 2000



46 *Be it enacted by the Legislature of the state of Utah:*

47 Section 1. Section **31A-23a-102** is amended to read:

48 **31A-23a-102. Definitions.**

49 As used in this chapter:

50 (1) "Bail bond producer" means a person who:

51 (a) is appointed by:

52 (i) a surety insurer that issues bail bonds; or

53 (ii) a bail bond surety company licensed under Chapter 35, Bail Bond Act;

54 (b) is designated to execute or countersign undertakings of bail in connection with  
55 judicial proceedings; and

56 (c) receives or is promised money or other things of value for engaging in an act  
57 described in Subsection (1)(b).

58 (2) "Escrow" means a license subline of authority in conjunction with the title

59 insurance line of authority that allows a person to conduct escrow as defined in Section  
60 31A-1-301.

61 (3) "Home state" means any state or territory of the United States or the District of  
62 Columbia in which an insurance producer:

63 (a) maintains the insurance producer's principal:

64 (i) place of residence; or

65 (ii) place of business; and

66 (b) is licensed to act as an insurance producer.

67 (4) "Insurer" is as defined in Section 31A-1-301, except the following persons or  
68 similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

69 (a) all risk retention groups as defined in:

70 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

71 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

72 (iii) Chapter 15, Part II, Risk Retention Groups Act;

73 (b) all residual market pools and joint underwriting authorities or associations; and

74 (c) all captive insurers.

75 (5) "License" is defined in Section 31A-1-301.

76 (6) (a) "Managing general agent" means any person~~[, firm, association, or corporation]~~

77 that:

78 (i) manages all or part of the insurance business of an insurer, including the  
79 management of a separate division, department, or underwriting office;

80 (ii) acts as an agent for the insurer whether it is known as a managing general agent,  
81 manager, or other similar term;

82 (iii) with or without the authority, either separately or together with affiliates, directly  
83 or indirectly produces and underwrites an amount of gross direct written premium equal to, or  
84 more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer  
85 in any one quarter or year; and

86 (iv) (A) adjusts or pays claims in excess of an amount determined by the  
87 commissioner; or

88 (B) negotiates reinsurance on behalf of the insurer.

89 (b) Notwithstanding Subsection (6)(a), the following persons may not be considered as

90 managing general agent for the purposes of this chapter:

- 91 (i) an employee of the insurer;
- 92 (ii) a United States manager of the United States branch of an alien insurer;
- 93 (iii) an underwriting manager that, pursuant to contract:
  - 94 (A) manages all the insurance operations of the insurer;
  - 95 (B) is under common control with the insurer;
  - 96 (C) is subject to Chapter 16, Insurance Holding Companies; and
  - 97 (D) is not compensated based on the volume of premiums written; and
- 98 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal
- 99 insurer or inter-insurance exchange under powers of attorney.

100 (7) "Negotiate" means the act of conferring directly with or offering advice directly to a

101 purchaser or prospective purchaser of a particular contract of insurance concerning any of the

102 substantive benefits, terms, or conditions of the contract if the person engaged in that act:

- 103 (a) sells insurance; or
- 104 (b) obtains insurance from insurers for purchasers.

105 (8) "Reinsurance intermediary" means:

- 106 (a) a reinsurance intermediary-broker; or
- 107 (b) a reinsurance intermediary-manager [~~as these terms are defined in Subsections (9)~~
- 108 ~~and (10)~~].

109 (9) "Reinsurance intermediary-broker" means a person other than an officer or

110 employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or

111 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority

112 or power to bind reinsurance on behalf of the insurer.

113 (10) (a) "Reinsurance intermediary-manager" means a person~~[, firm, association, or~~

114 ~~corporation]~~ who:

- 115 (i) has authority to bind or who manages all or part of the assumed reinsurance
- 116 business of a reinsurer, including the management of a separate division, department, or
- 117 underwriting office; and
- 118 (ii) acts as an agent for the reinsurer whether the person~~[, firm, association, or~~
- 119 ~~corporation]~~ is known as a reinsurance intermediary-manager, manager, or other similar term.

120 (b) Notwithstanding Subsection (10)(a), the following persons may not be considered

121 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

- 122 (i) an employee of the reinsurer;
- 123 (ii) a United States manager of the United States branch of an alien reinsurer;
- 124 (iii) an underwriting manager that, pursuant to contract:
- 125 (A) manages all the reinsurance operations of the reinsurer;
- 126 (B) is under common control with the reinsurer;
- 127 (C) is subject to Chapter 16, Insurance Holding Companies; and
- 128 (D) is not compensated based on the volume of premiums written; and
- 129 (iv) the manager of a group, association, pool, or organization of insurers that:
- 130 (A) engage in joint underwriting or joint reinsurance; and
- 131 (B) are subject to examination by the insurance commissioner of the state in which the
- 132 manager's principal business office is located.

133 (11) "Search" means a license subline of authority in conjunction with the title

134 insurance line of authority that allows a person to issue title insurance commitments or policies

135 on behalf of a title insurer.

136 (12) "Sell" means to exchange a contract of insurance:

- 137 (a) by any means;
- 138 (b) for money or its equivalent; and
- 139 (c) on behalf of an insurance company.

140 (13) "Solicit" means:

- 141 (a) attempting to sell[+] insurance;
- 142 (b) asking or urging a person to apply for:
- 143 [(a)] (i) a particular kind of insurance; and
- 144 [(b)] (ii) insurance from a particular insurance company[+];
- 145 (c) advertising insurance, including advertising for the purpose of obtaining leads for
- 146 the sale of insurance; or
- 147 (d) holding oneself out as being in the insurance business.

148 (14) "Terminate" means:

- 149 (a) the cancellation of the relationship between:
- 150 (i) an insurance producer; and
- 151 (ii) a particular insurer; or

152 (b) the termination of the producer's authority to transact insurance on behalf of a  
153 particular insurance company.

154 (15) "Title marketing representative" means a person who:

155 (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

156 (i) title insurance; or

157 (ii) escrow services; and

158 (b) does not have a search or escrow license as provided in Section 31A-23a-106.

159 (16) "Uniform application" means the version of the National Association of Insurance  
160 Commissioner's uniform application for resident and nonresident producer licensing at the time  
161 the application is filed.

162 (17) "Uniform business entity application" means the version of the National  
163 Association of Insurance Commissioner's uniform business entity application for resident and  
164 nonresident business entities at the time the application is filed.

165 Section 2. Section **31A-23a-104** is amended to read:

166 **31A-23a-104. Application for individual license -- Application for agency license.**

167 (1) ~~[(a)]~~ Subject to Subsection (2), an application for an initial or renewal individual  
168 license as a producer, limited line producer, customer service representative, consultant,  
169 managing general agent, or reinsurance intermediary shall be:

170 ~~[(i)]~~ (a) made to the commissioner on forms and in a manner the commissioner  
171 prescribes; and

172 ~~[(ii)]~~ (b) accompanied by a license fee that is not refunded if the application:

173 (i) is denied; or~~;~~

174 (ii) if incomplete, is never completed by the applicant.

175 ~~[(b) Nonresident individual producer applicants may use the National Association of  
176 Insurance Commissioners Uniform Application for Individual Nonresident License.]~~

177 (2) An application described in Subsection (1)~~[(a)]~~ shall provide:

178 (a) information about the applicant's identity;

179 (b) the applicant's Social Security number;

180 (c) the applicant's personal history, experience, education, and business record;

181 (d) whether the applicant is 18 years of age or older;

182 (e) whether the applicant has committed an act that is a ground for denial, suspension,

183 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

184 (f) any other information the commissioner reasonably requires.

185 (3) The commissioner may require any documents reasonably necessary to verify the  
186 information contained in an application filed under this section.

187 (4) The following information contained in an application filed under this section is a  
188 private record under Title 63, Chapter 2, Government Records Access and Management Act:

189 (a) an applicant's Social Security number; or

190 (b) an applicant's federal employer identification number.

191 (5) (a) Subject to Subsection (5)~~(c)~~(b), an application for an initial or renewal agency  
192 license as a producer, limited line producer, customer service representative, consultant,  
193 managing general agent, or reinsurance intermediary shall be:

194 (i) made to the commissioner on forms and in a manner the commissioner prescribes;

195 and

196 (ii) accompanied by a license fee that is not refunded if the application:

197 (A) is denied~~;~~; or~~;~~

198 (B) if incomplete, is never completed by the applicant.

199 ~~[(b) Nonresident producer agency applicants may use the National Association of  
200 Insurance Commissioners Uniform Application for Business Entity Nonresident  
201 License/Registration.]~~

202 ~~[(c)]~~ (b) An application described in Subsection (5)(a) shall provide:

203 (i) information about the applicant's identity;

204 (ii) the applicant's federal employer identification number;

205 (iii) the designated responsible licensed producer;

206 (iv) the identity of all owners, partners, officers, and directors;

207 (v) whether the applicant has committed an act that is a ground for denial, suspension,  
208 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

209 (vi) any other information the commissioner reasonably requires.

210 ~~[(d) The commissioner may require any documents reasonably necessary to verify the  
211 information contained in an application.]~~

212 ~~[(e) An applicant's federal employer identification number is a private record under  
213 Title 63, Chapter 2, Government Records Access and Management Act.]~~

214 Section 3. Section 31A-23a-105 is amended to read:

215 **31A-23a-105. General requirements for individual and agency license issuance**  
216 **and renewal.**

217 (1) The commissioner shall issue or renew a license to act as a producer, limited line  
218 producer, customer service representative, consultant, managing general agent, or reinsurance  
219 intermediary to any person who, as to the license type and line of authority classification  
220 applied for under Section 31A-23a-106:

221 (a) has satisfied the application requirements under Section 31A-23a-104;

222 ~~(a)~~ (b) has satisfied the character requirements under Section 31A-23a-107;

223 ~~(b)~~ (c) has satisfied any applicable continuing education requirements under Section  
224 31A-23a-202;

225 ~~(c)~~ (d) has satisfied any applicable examination requirements under Section  
226 31A-23a-108;

227 ~~(d)~~ (e) has satisfied any applicable training period requirements under Section  
228 31A-23a-203;

229 ~~(e)~~ (f) if a nonresident:

230 (i) has complied with Section 31A-23a-109; and

231 (ii) holds an active similar license in that person's state of residence;

232 ~~(f)~~ (g) if an applicant for a title insurance producer license, has satisfied the  
233 requirements of Sections 31A-23a-203 and 31A-23a-204;

234 ~~(g)~~ (h) if an applicant for a license to act as a provider or producer of viatical  
235 settlements, has satisfied the requirements of Section 31A-23a-117; and

236 ~~(h)~~ (i) has paid the applicable fees under Section 31A-3-103.

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

238 (i) an applicant for a pending individual or agency producer, limited line producer,  
239 customer service representative, consultant, managing general agent, or reinsurance  
240 intermediary license; or

241 (ii) a licensed individual or agency producer, limited line producer, customer service  
242 representative, consultant, managing general agent, or reinsurance intermediary.

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

244 (i) any administrative action taken against the person:



245 (A) in another jurisdiction; or  
246 (B) by another regulatory agency in this state; and  
247 (ii) any criminal prosecution taken against the person in any jurisdiction.  
248 (c) The report required by Subsection (2)(b) shall:  
249 (i) be filed:  
250 (A) at the time the person files the application for an individual or agency license; or  
251 (B) within 30 days of the initiation of an action or prosecution described in Subsection  
252 (2)(b); and  
253 (ii) include a copy of the complaint or other relevant legal documents related to the  
254 action or prosecution described in Subsection (2)(b).  
255 (3) (a) The department may request:  
256 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
257 2, from the Bureau of Criminal Identification; and  
258 (ii) complete Federal Bureau of Investigation criminal background checks through the  
259 national criminal history system.  
260 (b) Information obtained by the department from the review of criminal history records  
261 received under Subsection (3)(a) shall be used by the department for the purposes of:  
262 (i) determining if a person satisfies the character requirements under Section  
263 31A-23a-107 for issuance or renewal of a license;  
264 (ii) determining if a person has failed to maintain the character requirements under  
265 Section 31A-23a-107; and  
266 (iii) preventing persons who violate the federal Violent Crime Control and Law  
267 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of  
268 insurance in the state.  
269 (c) If the department requests the criminal background information, the department  
270 shall:  
271 (i) pay to the Department of Public Safety the costs incurred by the Department of  
272 Public Safety in providing the department criminal background information under Subsection  
273 (3)(a)(i);  
274 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau  
275 of Investigation in providing the department criminal background information under

276 Subsection (3)(a)(ii); and

277 (iii) charge the person applying for a license or for renewal of a license a fee equal to  
278 the aggregate of Subsections (3)(c)(i) and (ii).

279 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this  
280 section, a person licensed as an insurance producer, limited line producer, customer service  
281 representative, consultant, managing general agent, or reinsurance intermediary in another state  
282 who moves to this state shall apply within 90 days of establishing legal residence in this state.

283 Section 4. Section **31A-23a-111** is amended to read:

284 **31A-23a-111. Revocation, suspension, surrender, lapsing, or limiting of license.**

285 (1) A license type issued under this chapter remains in force until:

286 (a) revoked or suspended under Subsection (4);

287 (b) surrendered to and accepted by the commissioner in lieu of administrative action;

288 (c) the licensee dies or is adjudicated incompetent as defined under:

289 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

290 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

291 Minors;

292 (d) lapsed under Section 31A-23a-113; or

293 (e) voluntarily surrendered.

294 (2) Lapsed or voluntarily surrendered licenses may be reinstated during the current  
295 license period.

296 (3) A line of authority issued under this chapter remains in force until:

297 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

298 or

299 (b) the supporting license type is revoked or suspended under Subsection (4) or  
300 voluntarily surrendered.

301 (4) (a) If the commissioner makes a finding under Subsection (4)(b), after an  
302 adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the  
303 commissioner may:

304 (i) revoke;

305 (A) a license; or

306 (B) a line of authority;

- 307 (ii) suspend for a specified period of 12 months or less;
- 308 (A) a license; or
- 309 (B) a line of authority; or
- 310 (iii) limit in whole or in part:
- 311 (A) a license; or
- 312 (B) a line of authority.
- 313 (b) The commissioner may take an action described in Subsection (4)(a) if the
- 314 commissioner finds that the licensee:
- 315 (i) is unqualified for a license or line of authority under Sections 31A-23a-104 and
- 316 31A-23a-105;
- 317 (ii) has violated:
- 318 (A) an insurance statute;
- 319 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 320 (C) an order that is valid under Subsection 31A-2-201(4);
- 321 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 322 delinquency proceedings in any state;
- 323 (iv) fails to pay any final judgment rendered against the person in this state within 60
- 324 days after the day the judgment became final;
- 325 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 326 admitted insurers;
- 327 (vi) is affiliated with and under the same general management or interlocking
- 328 directorate or ownership as another insurance producer that transacts business in this state
- 329 without a license;
- 330 (vii) refuses;
- 331 (A) to be examined; or
- 332 (B) to produce its accounts, records, and files for examination;
- 333 (viii) has an officer who refuses to:
- 334 (A) give information with respect to the administrator's affairs; or
- 335 (B) perform any other legal obligation as to an examination;
- 336 (ix) provided information in the license application that is:
- 337 (A) incorrect;

- 338 (B) misleading;
- 339 (C) incomplete; or
- 340 (D) materially untrue;
- 341 (x) has violated any insurance law, valid rule, or valid order of another state's insurance
- 342 department;
- 343 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 344 (xii) has improperly withheld, misappropriated, or converted any monies or properties
- 345 received in the course of doing insurance business;
- 346 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 347 (A) insurance contract; or
- 348 (B) application for insurance;
- 349 (xiv) has been convicted of a felony;
- 350 (xv) has admitted or been found to have committed any insurance unfair trade practice
- 351 or fraud;
- 352 (xvi) in the conduct of business in this state or elsewhere has:
- 353 (A) used fraudulent, coercive, or dishonest practices; or
- 354 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 355 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
- 356 any other state, province, district, or territory;
- 357 (xviii) has forged another's name to:
- 358 (A) an application for insurance; or
- 359 (B) any document related to an insurance transaction;
- 360 (xix) has improperly used notes or any other reference material to complete an
- 361 examination for an insurance license;
- 362 (xx) has knowingly accepted insurance business from an individual who is not
- 363 licensed;
- 364 (xxi) has failed to comply with an administrative or court order imposing a child
- 365 support obligation;
- 366 (xxii) has failed to:
- 367 (A) pay state income tax; or
- 368 (B) comply with any administrative or court order directing payment of state income

369 tax;

370 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and  
371 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

372 (xxiv) has engaged in methods and practices in the conduct of business that endanger  
373 the legitimate interests of customers and the public.

374 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
375 and any natural person named on the license are considered to be the holders of the license.

376 (d) If a natural person named on the agency license commits any act or fails to perform  
377 any duty that is a ground for suspending, revoking, or limiting the natural person's license, the  
378 commissioner may suspend, revoke, or limit the license of:

379 (i) the natural person;

380 (ii) the agency, if the agency:

381 (A) is reckless or negligent in its supervision of the natural person; or

382 (B) knowingly participated in the act or failure to act that is the ground for suspending,  
383 revoking, or limiting the license; or

384 (iii) (A) the natural person; and

385 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

386 (5) A licensee under this chapter [~~whose license is revoked, suspended, limited,~~  
387 ~~surrendered in lieu of administrative action, lapsed, or voluntarily surrendered, who continues~~  
388 ~~to act as a licensee or violates the terms of the license limitation,] is subject to the penalties for  
389 acting as a licensee without a license[-] if:~~

390 (a) the licensee's license is:

391 (i) revoked;

392 (ii) suspended;

393 (iii) limited;

394 (iv) surrendered in lieu of administrative action;

395 (v) lapsed; or

396 (vi) voluntarily surrendered; and

397 (b) the licensee:

398 (i) continues to act as a licensee; or

399 (ii) violates the terms of the license limitation.

- 400 (6) A licensee under this chapter shall immediately report to the commissioner:  
401 (a) a revocation, suspension, or limitation of the person's license in any other state,  
402 District of Columbia, or territory of the United States;  
403 (b) the imposition of a disciplinary sanction imposed on that person by any other state,  
404 District of Columbia, or territory of the United States; and  
405 (c) a judgment or injunction entered against that person on the basis of conduct  
406 involving:  
407 (i) fraud[;];  
408 (ii) deceit[;];  
409 (iii) misrepresentation[;]; or  
410 (iv) a violation of an insurance law or rule.

411 (7) (a) An order revoking a license under Subsection (4) may specify a time, not to  
412 exceed five years, within which the former licensee may not apply for a new license.

413 (b) If no time is specified in an order revoking a license under Subsection (4), the  
414 former licensee may not apply for a new license for five years without express approval by the  
415 commissioner.

416 (8) The division shall promptly withhold, suspend, restrict, or reinstate the use of a  
417 license issued under this part if so ordered by a court.

418 Section 5. Section **31A-23a-113** is amended to read:

419 **31A-23a-113. License lapse and voluntary surrender.**

420 (1) (a) A license issued under this chapter shall lapse if the licensee fails:

- 421 (i) to pay when due a fee under Section 31A-3-103;  
422 (ii) to complete continuing education requirements under Section 31A-23a-202 before  
423 submitting the license renewal application;  
424 (iii) to submit a completed renewal application as required by Section 31A-23a-104 [~~or~~  
425 ~~31A-23a-302~~]; or  
426 (iv) to submit additional documentation required to complete the licensing process as  
427 related to a specific license type or line of authority.

428 (b) A licensee whose license lapses due to military service or some other extenuating  
429 circumstances such as long-term medical disability may request:

- 430 (i) reinstatement of the license; and

431 (ii) waiver of any of the following imposed for failure to comply with renewal  
432 procedures:

433 (A) an examination requirement;

434 (B) reinstatement fees; or

435 (C) other sanction imposed for failure to comply with renewal procedures.

436 (2) If a license type or line of authority issued under this chapter is voluntarily  
437 surrendered, the license or line of authority may be reinstated during the current license period.

438 (3) The commissioner shall by rule prescribe the license renewal and reinstatement  
439 procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

440 Section 6. Section **31A-23a-115** is amended to read:

441 **31A-23a-115. Appointment and listing of individual and agency insurance**  
442 **producer, limited line producer, or managing general agent.**

443 (1) (a) An insurer shall appoint a natural person or agency that has an insurance  
444 producer, limited line producer, or managing general agent license to act as an insurance  
445 producer, limited line producer, or managing general agent on its behalf prior to any producer,  
446 limited line producer, or managing general agent doing business for the insurer in this state.

447 (b) ~~[All insurers]~~ An insurer shall report to the commissioner, at intervals and in the  
448 form the commissioner establishes by rule[;]:

449 (i) all new appointments; and

450 (ii) all terminations of appointments.

451 ~~[(c) All insurers shall submit to the commissioner on or before July 1 of each~~  
452 ~~odd-numbered year a list of all appointments then in force in this state.]~~

453 (2) (a) (i) An insurer shall report to the commissioner the cause of termination of an  
454 appointment.

455 (ii) The information provided to the commissioner under this Subsection (2) is a  
456 private record under Title 63, Chapter 2, Government Records Access and Management Act.

457 (b) An insurer is immune from civil action, civil penalty, or damages if the insurer  
458 complies in good faith with this Subsection (2) in reporting to the commissioner the cause of  
459 termination of an appointment.

460 (c) Notwithstanding any other provision in this section, an insurer is not immune from  
461 any action or resulting penalty imposed on the reporting insurer as a result of proceedings

462 brought by or on behalf of the department if the action is based on evidence other than the  
463 report submitted in compliance with this Subsection (2).

464 (3) If an insurer appoints an agency, the insurer need not appoint, report, or pay  
465 appointment reporting fees for natural persons designated on the agency's license under Section  
466 31A-23a-302.

467 (4) (a) Each insurer shall maintain with the department a list of natural persons with  
468 authority to appoint and remove the company's producers, limited line producers, or managing  
469 general agents in this state on forms:

470 (i) supplied by the department; and

471 (ii) signed by any officer of the insurer.

472 (b) The insurer shall submit the list required under Subsection (4)(a) to the  
473 commissioner pursuant to Subsection (1).

474 (5) If an insurer lists a licensee in reports submitted under Subsection (2), there is a  
475 rebuttable presumption that in placing a risk with the insurer the appointed licensee or any of  
476 the licensee's licensed employees acted on behalf of the insurer.

477 Section 7. Section **31A-23a-203** is amended to read:

478 **31A-23a-203. Training period requirements.**

479 (1) A producer is eligible to add the surplus lines of authority to the person's producer's  
480 license if the producer:

481 (a) has passed the applicable examination;

482 (b) has been a producer with property and casualty lines of authority for at least three  
483 years during the four years immediately preceding the date of application; and

484 (c) has paid the applicable fee under Section [~~31A-3-303~~] 31A-3-103.

485 (2) A person is eligible to become a consultant only if the person has acted in a  
486 capacity that would provide the person with preparation to act as an insurance consultant for a  
487 period aggregating not less than three years during the four years immediately preceding the  
488 date of application.

489 (3) A title producer is eligible to become a title agency only if the title producer has  
490 been licensed as a title producer in the search and escrow categories for at least three years  
491 during the four years immediately preceding the date of application.

492 (4) The training periods required under this section apply only to natural persons



493 applying for licenses under this chapter.

494 Section 8. Section **31A-23a-302** is amended to read:

495 **31A-23a-302. Agency designations.**

496 (1) An agency shall designate a natural person that has a producer, limited line  
497 producer, customer service representative, consultant, managing general agent, or reinsurance  
498 intermediary license to act on its behalf prior to the licensee doing business for the agency.

499 (2) An agency shall report to the commissioner, at intervals and in the form the  
500 commissioner establishes by rule[;]:

501 (a) all new designations[~~all renewed designations~~]; and

502 (b) all terminated designations.

503 (3) (a) An agency licensed under this chapter shall report to the commissioner the  
504 cause of termination of a designation.

505 (b) The information provided the commissioner under Subsection (3)(a) [~~shall remain~~  
506 ~~confidential~~] is a private record under Title 63, Chapter 2, Government Records Access and  
507 Management Act.

508 (c) An agency is immune from civil action, civil penalty, or damages if the agency  
509 complies in good faith with this Subsection (3) in reporting to the commissioner the cause of  
510 termination of a designation.

511 (d) Notwithstanding any other provision in this section, an agency is not immune from  
512 any action or resulting penalty imposed on the reporting agency as a result of proceedings  
513 brought by or on behalf of the department if the action is based on evidence other than the  
514 report submitted in compliance with this Subsection (3).

515 (4) An agency licensed under this chapter may act in the capacities for which it is  
516 licensed only through natural persons who are licensed under this chapter to act in the same  
517 capacities.

518 (5) An agency licensed under this chapter shall report to the commissioner by rule the  
519 name of at least one natural person who has authority to act on behalf of the agency in all  
520 matters pertaining to compliance with this title and orders of the commissioner.

521 (6) If an agency designates a licensee in reports submitted under Subsection (2), there  
522 is a rebuttable presumption that the designated licensee acted on behalf of the agency.

523 Section 9. Section **31A-26-209** is amended to read:

524 **31A-26-209. Form and contents of license.**

525 (1) Licenses issued under this chapter shall be in the form the commissioner prescribes  
526 and shall set forth:

527 (a) the name, address, and telephone number of the licensee;

528 (b) the license classifications under Section 31A-26-204;

529 (c) the date of license issuance; and

530 (d) any other information the commissioner considers advisable.

531 (2) An adjuster doing business under any other name than the adjuster's legal name  
532 shall notify the commissioner prior to using the assumed name in this state.

533 (3) (a) An organization shall be licensed as an agency if the organization acts as:

534 (i) an independent adjuster; or

535 (ii) a public adjuster.

536 (b) The agency license issued under Subsection (3)(a) shall set forth the names of all  
537 natural persons licensed under this chapter who are authorized to act in those capacities for the  
538 organization in this state.

539 [~~(4) (a) So far as is practicable, the commissioner shall issue a single license to each  
540 licensed adjuster for a single fee.~~]

541 [~~(b) For fee purposes, the less expensive license is included within the most expensive  
542 license.~~]

543 Section 10. Section **31A-26-306** is amended to read:

544 **31A-26-306. Place of business -- Records.**

545 (1) (a) ~~[All licensees]~~ An insurance adjuster licensed under this chapter shall:

546 (i) register with the commissioner the address and telephone [numbers of their] number  
547 of the licensee's principal place of business[. - If]; and

548 (ii) if the licensee is an individual, [he shall also] provide [his] the licensee's residence  
549 address and telephone number. [Licensees]

550 (b) A licensee shall notify the commissioner[; in writing,] within 30 days of any change  
551 of address or telephone number.

552 (2) Except as provided under Subsection (3), every insurance adjuster shall keep at the  
553 address registered under Subsection (1), a record of all transactions consummated under [his]  
554 the insurance adjuster's license, including a record of:

555 (a) each investigation or adjustment undertaken or consummated[;]; and [~~a record of~~]

556 (b) any fee, commission, or other compensation received or to be received by the  
557 adjuster on account of the investigation or adjustment.

558 (3) Subsection (2) is satisfied if the records specified in that subsection can be obtained  
559 immediately from a central storage place elsewhere by on-line computer terminals located at  
560 the registered address.

561 (4) (a) The records maintained as to a transaction under Subsection (2) shall be kept  
562 available for the inspection of the commissioner during all business hours for a period of time  
563 after the date of the transaction specified by the commissioner by rule, but in no case for less  
564 than the current calendar year plus three years.

565 (b) Discarding records after the then applicable record retention period is passed does  
566 not place the licensee in violation of a later-adopted longer record retention period.

567 Section 11. Section **31A-35-101** is amended to read:

568 **31A-35-101. Title.**

569 This chapter is known as the "Bail Bond [~~Sureties and Agents~~] Act."

570 Section 12. Section **63-2-302** is amended to read:

571 **63-2-302. Private records.**

572 (1) The following records are private:

573 (a) records concerning an individual's eligibility for unemployment insurance benefits,  
574 social services, welfare benefits, or the determination of benefit levels;

575 (b) records containing data on individuals describing medical history, diagnosis,  
576 condition, treatment, evaluation, or similar medical data;

577 (c) records of publicly funded libraries that when examined alone or with other records  
578 identify a patron;

579 (d) records received or generated for a Senate or House Ethics Committee concerning  
580 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the  
581 meeting, if the ethics committee meeting was closed to the public;

582 (e) records received or generated for a Senate confirmation committee concerning  
583 character, professional competence, or physical or mental health of an individual:

584 (i) if prior to the meeting, the chair of the committee determines release of the records:

585 (A) reasonably could be expected to interfere with the investigation undertaken by the

586 committee; or  
587 (B) would create a danger of depriving a person of a right to a fair proceeding or  
588 impartial hearing; and  
589 (ii) after the meeting, if the meeting was closed to the public;  
590 (f) employment records concerning a current or former employee of, or applicant for  
591 employment with, a governmental entity that would disclose that individual's home address,  
592 home telephone number, Social Security number, insurance coverage, marital status, or payroll  
593 deductions;  
594 (g) records or parts of records under Section 63-2-302.5 that a current or former  
595 employee identifies as private according to the requirements of that section;  
596 (h) that part of a record indicating a person's Social Security number or federal  
597 employer identification number if provided under Section 31A-23a-104, 31A-26-202,  
598 58-1-301, 61-1-4, or 61-2-6;  
599 (i) that part of a voter registration record identifying a voter's driver license or  
600 identification card number, Social Security number, or last four digits of the Social Security  
601 number;  
602 (j) a record that:  
603 (i) contains information about an individual;  
604 (ii) is voluntarily provided by the individual; and  
605 (iii) goes into an electronic database that:  
606 (A) is designated by and administered under the authority of the Chief Information  
607 Officer; and  
608 (B) acts as a repository of information about the individual that can be electronically  
609 retrieved and used to facilitate the individual's online interaction with a state agency;  
610 (k) information provided to the Commissioner of Insurance under:  
611 (i) Subsection 31A-23a-115(2)(a); or  
612 (ii) Subsection 31A-23a-302(3); and  
613 (l) information obtained through a criminal background check under Title 11, Chapter  
614 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.  
615 (2) The following records are private if properly classified by a governmental entity:  
616 (a) records concerning a current or former employee of, or applicant for employment

617 with a governmental entity, including performance evaluations and personal status information  
618 such as race, religion, or disabilities, but not including records that are public under Subsection  
619 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection(1)(b);

620 (b) records describing an individual's finances, except that the following are public:

621 (i) records described in Subsection 63-2-301(1);

622 (ii) information provided to the governmental entity for the purpose of complying with  
623 a financial assurance requirement; or

624 (iii) records that must be disclosed in accordance with another statute;

625 (c) records of independent state agencies if the disclosure of those records would  
626 conflict with the fiduciary obligations of the agency;

627 (d) other records containing data on individuals the disclosure of which constitutes a  
628 clearly unwarranted invasion of personal privacy; and

629 (e) records provided by the United States or by a government entity outside the state  
630 that are given with the requirement that the records be managed as private records, if the  
631 providing entity states in writing that the record would not be subject to public disclosure if  
632 retained by it.

633 (3) (a) As used in this Subsection (3), "medical records" means medical reports,  
634 records, statements, history, diagnosis, condition, treatment, and evaluation.

635 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
636 doctors, or affiliated entities are not private records or controlled records under Section  
637 63-2-303 when the records are sought:

638 (i) in connection with any legal or administrative proceeding in which the patient's  
639 physical, mental, or emotional condition is an element of any claim or defense; or

640 (ii) after a patient's death, in any legal or administrative proceeding in which any party  
641 relies upon the condition as an element of the claim or defense.

642 (c) Medical records are subject to production in a legal or administrative proceeding  
643 according to state or federal statutes or rules of procedure and evidence as if the medical  
644 records were in the possession of a nongovernmental medical care provider.

645 Section 13. Section **77-20-10** is amended to read:

646 **77-20-10. Grounds for detaining defendant while appealing the defendant's**  
647 **conviction -- Conditions for release while on appeal.**

648 (1) The court shall order that a defendant who has been found guilty of an offense and  
649 sentenced to a term of imprisonment in jail or prison, and who has filed an appeal or a petition  
650 for a writ of certiorari, be detained, unless the court finds:

- 651 (a) the appeal raises a substantial question of law or fact likely to result in:  
652 (i) reversal;  
653 (ii) an order for a new trial; or  
654 (iii) a sentence that does not include a term of imprisonment in jail or prison;  
655 (b) the appeal is not for the purpose of delay; and  
656 (c) by clear and convincing evidence presented by the defendant that the defendant is  
657 not likely to flee the jurisdiction of the court, and will not pose a danger to the physical,  
658 psychological, or financial and economic safety or well-being of any other person or the  
659 community if released.

660 (2) If the court makes a finding under Subsection (1) that justifies not detaining the  
661 defendant, the court shall order the release of the defendant, subject to conditions that result in  
662 the least restrictive condition or combination of conditions that the court determines will  
663 reasonably assure the appearance of the person as required and the safety of any other person  
664 and the community. The conditions may include that the defendant:

- 665 (a) post appropriate bail;  
666 (b) execute a bail bond with a bail bond surety under Title 31A, Chapter 35, Bail Bond  
667 [~~Sureties and Agents~~] Act, in an amount necessary to assure the appearance of the defendant as  
668 required;  
669 (c) (i) execute a written agreement to forfeit, upon failing to appear as required,  
670 designated property, including money, as is reasonably necessary to assure the appearance of  
671 the defendant; and  
672 (ii) post with the court indicia of ownership of the property or a percentage of the  
673 money as the court may specify;  
674 (d) not commit a federal, state, or local crime during the period of release;  
675 (e) remain in the custody of a designated person who agrees to assume supervision of  
676 the defendant and who agrees to report any violation of a release condition to the court, if the  
677 designated person is reasonably able to assure the court that the defendant will appear as  
678 required and will not pose a danger to the safety of any other person or the community;

- 679 (f) maintain employment, or if unemployed, actively seek employment;
- 680 (g) maintain or commence an educational program;
- 681 (h) abide by specified restrictions on personal associations, place of abode, or travel;
- 682 (i) avoid all contact with the victims of the offense and with any witnesses who  
683 testified against the defendant or potential witnesses who may testify concerning the offense if  
684 the appeal results in a reversal or an order for a new trial;
- 685 (j) report on a regular basis to a designated law enforcement agency, pretrial services  
686 agency, or other designated agency;
- 687 (k) comply with a specified curfew;
- 688 (l) not possess a firearm, destructive device, or other dangerous weapon;
- 689 (m) not use alcohol, or any narcotic drug or other controlled substances except as  
690 prescribed by a licensed medical practitioner;
- 691 (n) undergo available medical, psychological, or psychiatric treatment, including  
692 treatment for drug or alcohol dependency, and remain under the supervision of or in a specified  
693 institution if required for that purpose;
- 694 (o) return to custody for specified hours following release for employment, schooling,  
695 or other limited purposes;
- 696 (p) satisfy any other condition that is reasonably necessary to assure the appearance of  
697 the defendant as required and to assure the safety of any other person and the community; and
- 698 (q) if convicted of committing a sexual offense or an assault or other offense involving  
699 violence against a child 17 years of age or younger, is limited or denied access to any location  
700 or occupation where children are, including but not limited to:
- 701 (i) any residence where children are on the premises;
- 702 (ii) activities, including organized activities, in which children are involved; and
- 703 (iii) locations where children congregate, or where a reasonable person should know  
704 that children congregate.
- 705 (3) The court may, in its discretion, amend an order granting release to impose  
706 additional or different conditions of release.

**Legislative Review Note**

**as of 11-19-03 4:12 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Interim Committee Note**

**as of 12-10-03 10:56 AM**

The Business and Labor Interim Committee recommended this bill.