

1 **REGULATION OF TITLE INSURANCE**

2 **INDUSTRY**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Thomas V. Hatch**

6

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Title and Escrow Commission Act and makes conforming
10 amendments.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ enacts the Title and Escrow Commission Act which creates the commission and sets
15 out the duties of the commission and the commissioner;
- 16 ▶ addresses special provisions related to rate standards and rating methods for title
17 insurance insurers, agencies, and producers;
- 18 ▶ requires the concurrence of the commission for licensing in the title insurance line
19 of authority including adjusters;
- 20 ▶ authorizes the commission to make rules creating different categories of the title
21 insurance lines of authority with the concurrence of the commissioner;
- 22 ▶ addresses special requirements for title insurance producers;
- 23 ▶ authorizes the commission to make rules related to unfair practices;
- 24 ▶ provides that a title insurance producer shall comply with rules adopted by the
25 commission that govern escrows;
- 26 ▶ authorizes the commission, after consulting with the commissioner, to set the
27 assessment on title insurance agencies or insurers;



- 28 ▶ addresses provisions related to controlled business;
- 29 ▶ authorizes the commission by rule to recognize other independent adjustor or public
- 30 adjuster license classifications related to title insurance and to create license
- 31 classifications that grant only part of the authority arising under a license class; and
- 32 ▶ makes technical changes.

33 Monies Appropriated in this Bill:

34 None

35 Other Special Clauses:

36 This bill provides an effective date.

37 Utah Code Sections Affected:

38 AMENDS:

- 39 **31A-19a-209**, as last amended by Chapters 252 and 298, Laws of Utah 2003
- 40 **31A-23a-105**, as last amended by Chapter 173, Laws of Utah 2004
- 41 **31A-23a-106**, as last amended by Chapter 81 and renumbered and amended by Chapter
- 42 298, Laws of Utah 2003
- 43 **31A-23a-108**, as renumbered and amended by Chapter 298, Laws of Utah 2003
- 44 **31A-23a-204**, as renumbered and amended by Chapter 298, Laws of Utah 2003
- 45 **31A-23a-402**, as renumbered and amended by Chapter 298, Laws of Utah 2003
- 46 **31A-23a-406**, as last amended by Chapter 117, Laws of Utah 2004
- 47 **31A-23a-415**, as renumbered and amended by Chapter 298, Laws of Utah 2003
- 48 **31A-23a-503**, as renumbered and amended by Chapter 298, Laws of Utah 2003
- 49 **31A-26-203**, as last amended by Chapter 116, Laws of Utah 2001
- 50 **31A-26-204**, as last amended by Chapter 116, Laws of Utah 2001

51 ENACTS:

- 52 **31A-2-401**, Utah Code Annotated 1953
- 53 **31A-2-402**, Utah Code Annotated 1953
- 54 **31A-2-403**, Utah Code Annotated 1953
- 55 **31A-2-404**, Utah Code Annotated 1953

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

58 Section 1. Section **31A-2-401** is enacted to read:

59 **Part 4. Title and Escrow Commission Act**

60 **31A-2-401. Title.**

61 This part is known as the "Title and Escrow Commission Act."

62 Section 2. Section **31A-2-402** is enacted to read:

63 **31A-2-402. Definitions.**

64 As used in this part:

65 (1) "Commission" means the Title and Escrow Commission created in Section
66 31A-2-403.

67 (2) "Concurrence" means the entities given a concurring role must jointly agree for the
68 action to be taken.

69 (3) "Title licensee" means a person licensed under this title as:

70 (a) an agency with a title insurance line of authority;

71 (b) a producer with:

72 (i) a general title insurance line of authority; or

73 (ii) a specific category of authority for title insurance; or

74 (c) a title insurance adjuster.

75 Section 3. Section **31A-2-403** is enacted to read:

76 **31A-2-403. Title and Escrow Commission created.**

77 (1) (a) There is created within the department the Title and Escrow Commission that is
78 comprised of five members appointed by the governor with the consent of the Senate as
79 follows:

80 (i) four members shall:

81 (A) be or have been licensed under the title insurance line of authority; and

82 (B) as of the day on which the member is appointed, be or have been licensed with the
83 search or escrow subline of authority for at least five years; and

84 (ii) one member shall be a member of the general public.

85 (b) No more than one commission member may be appointed from:

86 (i) any given county in the state; or

87 (ii) any single company.

88 (2) (a) Except as required by Subsection (2)(b), as terms of current commission
89 members expire, the governor shall appoint each new member to a four-year term ending on

90 June 30.

91 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
92 time of appointment, adjust the length of terms to ensure that the terms of the commission
93 members are staggered so that approximately half of the commission is appointed every two
94 years.

95 (c) A commission member may not serve more than one consecutive term.

96 (d) When a vacancy occurs in the membership for any reason, a replacement shall be
97 appointed for the unexpired term.

98 (3) (a) A member of the commission shall receive no compensation or benefits for the
99 member's services, but may receive per diem and expenses incurred in the performance of the
100 member's official duties at the rates established by the Division of Finance under Sections
101 63A-3-106 and 63A-3-107.

102 (b) A member may decline to receive per diem and expenses for the member's service.

103 (4) Members of the commission shall annually select one member to serve as chair.

104 (5) (a) The commission shall meet at least monthly.

105 (b) The commissioner may call additional meetings:

106 (i) at the commissioner's discretion;

107 (ii) upon the request of the chair of the commission; or

108 (iii) upon the written request of three or more commission members.

109 (c) (i) Three members of the commission constitute a quorum for the transaction of
110 business.

111 (ii) The action of a majority of the members when a quorum is present is the action of
112 the commission.

113 (6) The department shall staff the commission.

114 Section 4. Section **31A-2-404** is enacted to read:

115 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

116 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this
117 part, the commissioner shall administer and enforce the provisions in this title related to:

118 (a) title insurance; and

119 (b) escrow conducted by a title licensee or title insurer.

120 (2) The commission shall:

- 121 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
122 make rules for the administration of the provisions in this title related to title insurance
123 including rules related to:
- 124 (i) rating standards and rating methods for title agencies and producers as provided in
125 Section 31A-19a-209;
- 126 (ii) the licensing for a title licensee including the licensing requirements of Sections
127 31A-23a-203 and 31A-23a-204;
- 128 (iii) continuing education requirements of Section 31A-23a-202;
- 129 (iv) examination procedures, after consultation with the department and the
130 department's test administrator when required by Section 31A-23a-204; and
- 131 (v) standards of conduct for a title licensee;
- 132 (b) concur in the issuance and renewal of licenses in accordance with Section
133 31A-23a-105 or 31A-26-203;
- 134 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the
135 department, all fees imposed by this title on a title licensee;
- 136 (d) in accordance with Section 31A-23a-415 determine, after consulting with the
137 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;
- 138 (e) conduct all administrative hearings not delegated by it to an administrative law
139 judge related to the:
- 140 (i) licensing of any applicant;
- 141 (ii) conduct of any title licensee; or
- 142 (iii) approval of continuing education programs required by Section 31A-23a-202;
- 143 (f) with the concurrence of the commissioner, approve assets that can be included in a
144 reserve fund required by Section 31A-23a-204;
- 145 (g) with the concurrence of the commissioner, approve continuing education programs
146 required by Section 31A-23a-202;
- 147 (h) with the concurrence of the commissioner, impose penalties:
- 148 (i) under this title related to:
- 149 (A) title insurance; or
- 150 (B) escrow conducted by a title licensee;
- 151 (ii) after investigation by the department in accordance with Part 3, Procedures and

152 Enforcement; and

153 (iii) that are enforced by the commissioner;

154 (i) advise the commissioner on the administration and enforcement of any matters
155 affecting the title insurance industry;

156 (j) advise the commissioner on matters affecting the department's budget related to title
157 insurance; and

158 (k) perform other duties as provided in this title.

159 Section 5. Section **31A-19a-209** is amended to read:

160 **31A-19a-209. Special provisions for title insurance.**

161 (1) (a) (i) The Title and Escrow Commission shall adopt rules in accordance with Title
162 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing rate standards and rating
163 methods for title agencies and producers.

164 (ii) The commissioner shall determine compliance with rate standards and rating
165 methods for title insurance insurers, agencies, and producers.

166 [~~(+)~~] (b) In addition to the considerations in determining compliance with rate
167 standards and rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including
168 for title insurers, the commissioner and the Title and Escrow Commission shall consider the
169 costs and expenses incurred by title insurance [companies] insurers, agencies, and producers
170 peculiar to the business of title insurance including:

171 [~~(a)~~] (i) the maintenance of title plants; and

172 [~~(b)~~] (ii) the searching and examining of public records to determine insurability of title
173 to real redevelopment property.

174 (2) (a) Every title insurance [company] insurer, agency, and title insurance producer
175 shall file with the commissioner:

176 (i) a schedule of the escrow charges that the title insurance [company] insurer, agency,
177 or title insurance producer proposes to use in this state for services performed in connection
178 with the issuance of policies of title insurance; and

179 (ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).

180 (b) A schedule filed under this Subsection (2) is subject to review by the Title and
181 Escrow Commission.

182 [~~(b)~~] (c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i)

183 takes effect on the day on which the schedule of escrow charges is filed.

184 (ii) Any changes to the schedule of the escrow charges required to be filed by
185 Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow
186 charges except that the effective date may not be less than 30 calendar days after the day on
187 which the change to the schedule of escrow charges is filed.

188 (3) A title insurance [company] insurer, agency, or producer may not file or use any
189 rate or other charge relating to the business of title insurance, including rates or charges filed
190 for escrow that would cause the title insurance company, agency, or producer to:

191 (a) operate at less than the cost of doing:

192 (i) the insurance business; or

193 (ii) the escrow business; or

194 (b) fail to adequately underwrite a title insurance policy.

195 (4) (a) All or any of the schedule of rates or schedule of charges, including the schedule
196 of escrow charges, may be changed or amended at any time, subject to the limitations in this
197 Subsection (4).

198 (b) Each change or amendment shall:

199 (i) be filed with the commissioner, subject to review by the Title and Escrow
200 Commission; and

201 (ii) state the effective date of the change or amendment, which may not be less than 30
202 calendar days after the day on which the change or amendment is filed.

203 (c) Any change or amendment remains in force for a period of at least 90 calendar days
204 from the change or amendment's effective date.

205 (5) While the schedule of rates and schedule of charges are effective, a copy of each
206 shall be:

207 (a) retained in each of the offices of:

208 (i) the title insurance [company] insurer in this state;

209 (ii) the title insurance [company's] insurer's producers in this state; and

210 (b) upon request, furnished to the public.

211 (6) Except in accordance with the schedules of rates and charges filed with the
212 commissioner, a title insurance [company] insurer, agency, or producer may not make or
213 impose any premium or other charge:

- 214 (a) in connection with the issuance of a policy of title insurance; or
- 215 (b) for escrow services performed in connection with the issuance of a policy of title
- 216 insurance.

217 Section 6. Section **31A-23a-105** is amended to read:

218 **31A-23a-105. General requirements for individual and agency license issuance**
219 **and renewal.**

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

- 224 (a) has satisfied the application requirements under Section 31A-23a-104;
- 225 (b) has satisfied the character requirements under Section 31A-23a-107;
- 226 (c) has satisfied any applicable continuing education requirements under Section
- 227 31A-23a-202;
- 228 (d) has satisfied any applicable examination requirements under Section 31A-23a-108;
- 229 (e) has satisfied any applicable training period requirements under Section
- 230 31A-23a-203;
- 231 (f) if a nonresident:
 - 232 (i) has complied with Section 31A-23a-109; and
 - 233 (ii) holds an active similar license in that person's state of residence;
- 234 (g) if an applicant for a title insurance producer license, has satisfied the requirements
- 235 of Sections 31A-23a-203 and 31A-23a-204;
- 236 (h) if an applicant for a license to act as a provider or producer of viatical settlements,
- 237 has satisfied the requirements of Section 31A-23a-117; and
 - 238 (i) has paid the applicable fees under Section 31A-3-103.
- 239 (2) (a) This Subsection (2) applies to the following persons:
 - 240 (i) an applicant for a pending individual or agency producer, limited line producer,
 - 241 customer service representative, consultant, managing general agent, or reinsurance
 - 242 intermediary license; or
 - 243 (ii) a licensed individual or agency producer, limited line producer, customer service
 - 244 representative, consultant, managing general agent, or reinsurance intermediary.

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

276 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
 277 of Investigation in providing the department criminal background information under
 278 Subsection (3)(a)(ii); and

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

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

285 (5) Notwithstanding the other provisions of this section, the commissioner may:

286 (a) issue a license to an applicant for a license for a title insurance line of authority only
 287 with the concurrence of the Title and Escrow Commission; and

288 (b) renew a license for a title insurance line of authority only with the concurrence of
 289 the Title and Escrow Commission.

290 Section 7. Section **31A-23a-106** is amended to read:

291 **31A-23a-106. License types.**

292 (1) (a) A resident or nonresident license issued under this chapter shall be issued under
 293 the license types described under [~~Subsections (1) through (7)~~] Subsection (2).

294 (b) License types and lines of authority pertaining to each license type describe the type
 295 of licensee and the lines of business that licensee may sell, solicit, or negotiate. License types
 296 are intended to describe the matters to be considered under any education, examination, and
 297 training required of license applicants under Sections 31A-23a-108, 31A-23a-202, and
 298 31A-23a-203.

299 [~~(1)~~] (2) (a) A producer license type includes the following lines of authority:

300 [~~(a)~~] (i) life insurance, including nonvariable contracts;

301 [~~(b)~~] (ii) variable contracts, including variable life and annuity, if the producer has the
 302 life insurance line of authority;

303 [~~(c)~~] (iii) accident and health insurance, including contracts issued to policyholders
 304 under Chapter 7 or 8;

305 [~~(d)~~] (iv) property insurance;

306 [~~(e)~~] (v) casualty insurance, including surety and other bonds;

- 307 ~~[(f)]~~ (vi) title insurance under one or more of the following categories:
- 308 ~~[(t)]~~ (A) search, including authority to act as a title marketing representative;
- 309 ~~[(ti)]~~ (B) escrow, including authority to act as a title marketing representative;
- 310 ~~[(tiii)]~~ (C) search and escrow, including authority to act as a title marketing
- 311 representative; and
- 312 ~~[(iv)]~~ (D) title marketing representative only;
- 313 ~~[(g)]~~ (vii) workers' compensation insurance;
- 314 ~~[(h)]~~ (viii) personal lines insurance; and
- 315 ~~[(i)]~~ (ix) surplus lines, if the producer has the property or casualty or both lines of
- 316 authority.
- 317 ~~[(z)]~~ (b) A limited line producer license type includes the following limited lines of
- 318 authority:
- 319 ~~[(a)]~~ (i) limited line credit insurance;
- 320 ~~[(b)]~~ (ii) travel insurance;
- 321 ~~[(c)]~~ (iii) motor club insurance;
- 322 ~~[(d)]~~ (iv) car rental related insurance;
- 323 ~~[(e)]~~ (v) legal expense insurance;
- 324 ~~[(f)]~~ (vi) bail bond producer; and
- 325 ~~[(g)]~~ (vii) viatical settlements.
- 326 ~~[(z)]~~ (c) A customer service representative license type includes the following lines of
- 327 authority, if held by the customer service representative's employer producer:
- 328 ~~[(a)]~~ (i) life insurance, including nonvariable contracts;
- 329 ~~[(b)]~~ (ii) accident and health insurance, including contracts issued to policyholders
- 330 under Chapter 7 or 8;
- 331 ~~[(c)]~~ (iii) property insurance;
- 332 ~~[(d)]~~ (iv) casualty insurance, including surety and other bonds;
- 333 ~~[(e)]~~ (v) workers' compensation insurance;
- 334 ~~[(f)]~~ (vi) personal lines insurance; and
- 335 ~~[(g)]~~ (vii) surplus lines, if the employer producer has the property or casualty or both
- 336 lines of authority.
- 337 ~~[(4)]~~ (d) A consultant license type includes the following lines of authority:

- 338 [~~(a)~~] (i) life insurance, including nonvariable contracts;
- 339 [~~(b)~~] (ii) variable contracts, including variable life and annuity, if the consultant has the
- 340 life insurance line of authority;
- 341 [~~(c)~~] (iii) accident and health insurance, including contracts issued to policyholders
- 342 under Chapter 7 or 8;
- 343 [~~(d)~~] (iv) property insurance;
- 344 [~~(e)~~] (v) casualty insurance, including surety and other bonds;
- 345 [~~(f)~~] (vi) workers' compensation insurance; and
- 346 [~~(g)~~] (vii) personal lines insurance.
- 347 [~~(5)~~] (e) A managing general agent license type includes the following lines of
- 348 authority:
- 349 [~~(a)~~] (i) life insurance, including nonvariable contracts;
- 350 [~~(b)~~] (ii) variable contracts, including variable life and annuity, if the managing general
- 351 agent has the life insurance line of authority;
- 352 [~~(c)~~] (iii) accident and health insurance, including contracts issued to policyholders
- 353 under Chapter 7 or 8;
- 354 [~~(d)~~] (iv) property insurance;
- 355 [~~(e)~~] (v) casualty insurance, including surety and other bonds;
- 356 [~~(f)~~] (vi) workers' compensation insurance; and
- 357 [~~(g)~~] (vii) personal lines insurance.
- 358 [~~(6)~~] (f) A reinsurance intermediary license type includes the following lines of
- 359 authority:
- 360 [~~(a)~~] (i) life insurance, including nonvariable contracts;
- 361 [~~(b)~~] (ii) variable contracts, including variable life and annuity, if the reinsurance
- 362 intermediary has the life insurance line of authority;
- 363 [~~(c)~~] (iii) accident and health insurance, including contracts issued to policyholders
- 364 under Chapter 7 or 8;
- 365 [~~(d)~~] (iv) property insurance;
- 366 [~~(e)~~] (v) casualty insurance, including surety and other bonds;
- 367 [~~(f)~~] (vi) workers' compensation insurance; and
- 368 [~~(g)~~] (vii) personal lines insurance.

369 ~~[(7)]~~ (g) A holder of licenses under Subsections ~~[(1), (4), (5), and (6)]~~ (2)(a), (d), (e),
 370 and (f) has all qualifications necessary to act as a holder of a license under Subsections ~~[(2) and~~
 371 ~~(3)]~~ (2)(b) and (c).

372 ~~[(8)]~~ (3)(a) The commissioner may by rule recognize other producer, limited line
 373 producer, customer service representative, consultant, managing general agent, or reinsurance
 374 intermediary lines of authority as to kinds of insurance not listed under Subsections ~~[(1)~~
 375 ~~through (6)]~~ (2)(a) through (f).

376 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and
 377 Escrow Commission may by rule, with the concurrence of the commissioner, recognize other
 378 categories for a title insurance producer line of authority not listed under Subsection (2)(a)(vi).

379 ~~[(9)]~~ (4) The variable contracts, including variable life and annuity line of authority
 380 requires:

381 (a) licensure as a registered agent or broker by the National Association of Securities
 382 Dealers ~~[(NASD)]~~; and

383 (b) current registration with a securities broker/dealer.

384 ~~[(10)]~~ (5) A surplus lines producer is a producer who has a surplus lines line of
 385 authority.

386 Section 8. Section **31A-23a-108** is amended to read:

387 **31A-23a-108. Examination requirements.**

388 (1) (a) The commissioner may require applicants for any particular license type under
 389 Section 31A-23a-106 to pass a line of authority examination as a requirement for a license,
 390 except that an examination may not be required of applicants for:

391 (i) licenses under Subsections 31A-23a-106(2)~~[and (3)]~~ (b) and (c); or

392 (ii) other limited line license lines of authority recognized by the commissioner or the
 393 Title and Escrow Commission by rule as provided in Subsection 31A-23a-106~~[(8)]~~(3).

394 (b) The examination described in Subsection (1)(a):

395 (i) shall reasonably relate to the line of authority for which it is prescribed; and

396 (ii) may be administered by the commissioner or as otherwise specified by rule.

397 (2) The commissioner shall waive the requirement of an examination for a nonresident
 398 applicant who:

399 (a) applies for an insurance producer license in this state;

400 (b) has been licensed for the same line of authority in another state; and

401 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant
402 applies for an insurance producer license in this state; or

403 (ii) if the application is received within 90 days of the cancellation of the applicant's
404 previous license:

405 (A) the prior state certifies that at the time of cancellation, the applicant was in good
406 standing in that state; or

407 (B) the state's producer database records maintained by the National Association of
408 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or
409 subsidiaries, indicates that the producer is or was licensed in good standing for the line of
410 authority requested.

411 (3) A nonresident producer licensee who moves to this state and applies for a resident
412 license within 90 days of establishing legal residence in this state shall be exempt from any line
413 of authority examination that the producer was authorized on the producer's nonresident
414 producer license, except where the commissioner determines otherwise by rule.

415 (4) This section's requirement may only be applied to applicants who are natural
416 persons.

417 Section 9. Section **31A-23a-204** is amended to read:

418 **31A-23a-204. Special requirements for title insurance producers.**

419 Title insurance producers shall be licensed in accordance with this chapter, with the
420 additional requirements listed in this section.

421 (1) (a) Every title insurance agency or producer appointed by an insurer shall maintain:

422 (i) a fidelity bond;

423 (ii) a professional liability insurance policy; or

424 (iii) a financial protection:

425 (A) equivalent to that described in Subsection (1)(a)(i) or (ii); and

426 (B) that the commissioner considers adequate.

427 (b) The bond or insurance required by this Subsection (1):

428 (i) shall be supplied under a contract approved by the commissioner to provide
429 protection against the improper performance of any service in conjunction with the issuance of
430 a contract or policy of title insurance; and

- 431 (ii) be in a face amount no less than \$50,000.
- 432 (c) The [commissioner] Title and Escrow Commission may by rule made in accordance
433 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, exempt title insurance
434 producers from the requirements of this Subsection (1) upon a finding that, and only so long as,
435 the required policy or bond is generally unavailable at reasonable rates.
- 436 (2) (a) (i) Every title insurance agency or producer appointed by an insurer shall
437 maintain a reserve fund.
- 438 (ii) The reserve fund required by this Subsection (2) shall be:
- 439 (A) (I) composed of assets approved by the commissioner and the Title and Escrow
440 Commission;
- 441 (II) maintained as a separate account; and
- 442 (III) charged as a reserve liability of the title insurance producer in determining the
443 producer's financial condition; and
- 444 (B) accumulated by segregating 1% of all gross income received from the title
445 insurance business.
- 446 (iii) The reserve fund shall contain the accumulated assets for the immediately
447 preceding ten years as defined in Subsection (2)(a)(ii).
- 448 (iv) That portion of the assets held in the reserve fund over ten years may be:
- 449 (A) withdrawn from the reserve fund; and
- 450 (B) restored to the income of the title insurance producer.
- 451 (v) The title insurance producer may withdraw interest from the reserve fund related to
452 the principal amount as it accrues.
- 453 (b) (i) A disbursement may not be made from the reserve fund except as provided in
454 Subsection (2)(a) unless the title insurance producer ceases doing business as a result of:
- 455 (A) sale of assets;
- 456 (B) merger of the producer with another producer;
- 457 (C) termination of the producer's license;
- 458 (D) insolvency; or
- 459 (E) any cessation of business by the producer.
- 460 (ii) Any disbursements from the reserve fund may be made only to settle claims arising
461 from the improper performance of the title insurance producer in providing services defined in

462 Section 31A-23a-406.

463 (iii) The commissioner shall be notified ten days before any disbursements from the
464 reserve fund.

465 (iv) The notice required by this Subsection (2)(b) shall contain:

466 (A) the amount of claim;

467 (B) the nature of the claim; and

468 (C) the name of the payee.

469 (c) (i) The reserve fund shall be maintained by the title insurance producer or the title
470 insurance producer's representative for a period of two years after the title insurance producer
471 ceases doing business.

472 (ii) Any assets remaining in the reserve fund at the end of the two years specified in
473 Subsection (2)(c)(i) may be withdrawn and restored to the former title insurance producer.

474 (3) Any examination for licensure shall include questions regarding the search and
475 examination of title to real property.

476 (4) A title insurance producer may not perform the functions of escrow unless the title
477 insurance producer has been examined on the fiduciary duties and procedures involved in those
478 functions.

479 (5) The [~~commissioner~~] Title and Escrow Commission shall adopt rules [~~outlining~~], in
480 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, after consulting
481 with the department and the department's test administrator, establishing an examination for a
482 license that will satisfy this section.

483 (6) A license may be issued to a title insurance producer who has qualified:

484 (a) to perform only searches and examinations of title as specified in Subsection (3);

485 (b) to handle only escrow arrangements as specified in Subsection (4); or

486 (c) to act as a title marketing representative.

487 (7) A person licensed to practice law in Utah is exempt from the requirements of
488 Subsections (1) and (2) if that person issues 12 or less policies in any 12-month period.

489 (8) A person licensed to practice law in Utah, whether exempt under Subsection (7) or
490 not, shall maintain a trust account separate from a law firm trust account for all title and real
491 estate escrow transactions.

492 Section 10. Section **31A-23a-402** is amended to read:

493 **31A-23a-402. Unfair marketing practices -- Communication -- Inducement --**
494 **Unfair discrimination -- Coercion or intimidation -- Restriction on choice.**

495 (1) (a) (i) Any of the following may not make or cause to be made any communication
496 that contains false or misleading information, relating to an insurance contract, any insurer, or
497 other licensee under this title, including information that is false or misleading because it is
498 incomplete:

499 (A) a person who is or should be licensed under this title;

500 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

501 (C) a person whose primary interest is as a competitor of a person licensed under this
502 title; and

503 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

504 (ii) As used in this Subsection (1), "false or misleading information" includes:

505 (A) assuring the nonobligatory payment of future dividends or refunds of unused
506 premiums in any specific or approximate amounts, but reporting fully and accurately past
507 experience is not false or misleading information; and

508 (B) with intent to deceive a person examining it, filing a report, making a false entry in
509 a record, or wilfully refraining from making a proper entry in a record.

510 (iii) A licensee under this title may not:

511 (A) use any business name, slogan, emblem, or related device that is misleading or
512 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
513 already in business; or

514 (B) use any advertisement or other insurance promotional material that would cause a
515 reasonable person to mistakenly believe that a state or federal government agency:

516 (I) is responsible for the insurance sales activities of the person;

517 (II) stands behind the credit of the person;

518 (III) guarantees any returns on insurance products of or sold by the person; or

519 (IV) is a source of payment of any insurance obligation of or sold by the person.

520 (iv) A person who is not an insurer may not assume or use any name that deceptively
521 implies or suggests that [it] person is an insurer.

522 (v) A person other than persons licensed as health maintenance organizations under
523 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to

524 itself.

525 (b) If a licensee under this title distributes cards or documents, exhibits a sign, or
526 publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer
527 that the licensee represents, or for whom the licensee processes claims, and if the cards,
528 documents, signs, or advertisements are supplied or approved by that insurer, the licensee's
529 violation creates a rebuttable presumption that the violation was also committed by the insurer.

530 (2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not
531 induce any person to enter into or continue an insurance contract or to terminate an existing
532 insurance contract by offering benefits not specified in the policy to be issued or continued,
533 including premium or commission rebates.

534 (ii) An insurer may not make or knowingly allow any agreement of insurance that is
535 not clearly expressed in the policy to be issued or renewed.

536 (iii) This Subsection (2)(a) does not preclude:

537 (A) insurers from reducing premiums because of expense savings;

538 (B) the usual kinds of social courtesies not related to particular transactions; or

539 (C) an insurer from receiving premiums under an installment payment plan.

540 (b) A licensee under this title may not absorb the tax under Section 31A-3-301.

541 (c) (i) A title insurer or producer or any officer or employee of either may not pay,
542 allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining
543 any title insurance business[;];

544 (A) any rebate, reduction, or abatement of any rate or charge made incident to the
545 issuance of the title insurance[;];

546 (B) any special favor or advantage not generally available to others[;]; or

547 (C) any money or other consideration or material inducement.

548 (ii) "Charge made incident to the issuance of the title insurance" includes escrow
549 charges, and any other services that are prescribed in rule by the [~~commissioner~~] Title and
550 Escrow Commission after consultation with the commissioner.

551 (iii) An insured or any other person connected, directly or indirectly, with the
552 transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer,
553 employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly,
554 any benefit referred to in Subsection (2)(c)(i).

555 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
556 different premiums or by offering different terms of coverage, except on the basis of
557 classifications related to the nature and the degree of the risk covered or the expenses involved.

558 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
559 insured under a group, blanket, or franchise policy, and the terms of those policies are not
560 unfairly discriminatory merely because they are more favorable than in similar individual
561 policies.

562 (4) A person who is or should be licensed under this title, an employee of that licensee
563 or person who should be licensed, a person whose primary interest is as a competitor of a
564 person licensed under this title, and one acting on behalf of any of these persons, may not
565 commit or enter into any agreement to participate in any act of boycott, coercion, or
566 intimidation that:

567 (a) tends to produce:

568 (i) an unreasonable restraint of the business of insurance; or

569 (ii) a monopoly in that business; or

570 (b) results in an applicant purchasing or replacing an insurance contract.

571 (5) (a) A person may not restrict in the choice of an insurer or licensee under this
572 chapter, another person who is required to pay for insurance as a condition for the conclusion
573 of a contract or other transaction or for the exercise of any right under a contract. The person
574 requiring the coverage may, however, reserve the right to disapprove the insurer or the
575 coverage selected on reasonable grounds.

576 (b) The form of corporate organization of an insurer authorized to do business in this
577 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
578 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
579 declining an application for insurance.

580 (6) A person may not make any charge other than insurance premiums and premium
581 financing charges for the protection of property or of a security interest in property, as a
582 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
583 the lending of money on the security of an interest in the property.

584 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
585 agency to the principal on demand.

586 (b) A licensee whose license is suspended, limited, or revoked under Section
587 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
588 commissioner on demand.

589 (8) (a) A person may not engage in any other unfair method of competition or any other
590 unfair or deceptive act or practice in the business of insurance, as defined by the commissioner
591 by rule, after a finding that they:

- 592 (i) are misleading[;];
- 593 (ii) are deceptive[;];
- 594 (iii) are unfairly discriminatory[;];
- 595 (iv) provide an unfair inducement[;]; or
- 596 (v) unreasonably restrain competition.

597 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
598 Title and Escrow Commission shall make rules, in accordance with Title 63, Chapter 46a, Utah
599 Administrative Rulemaking Act, that define any other unfair method of competition or any
600 other unfair or deceptive act or practice after a finding that they:

- 601 (i) are misleading;
- 602 (ii) are deceptive;
- 603 (iii) are unfairly discriminatory;
- 604 (iv) provide an unfair inducement; or
- 605 (v) unreasonably restrain competition.

606 Section 11. Section **31A-23a-406** is amended to read:

607 **31A-23a-406. Title insurance producer's business.**

608 (1) A title insurance producer may do escrow involving real property transactions if all
609 of the following exist:

- 610 (a) the title insurance producer is licensed with:
 - 611 (i) the title line of authority; and
 - 612 (ii) the escrow subline of authority;
- 613 (b) the title insurance producer is appointed by a title insurer authorized to do business
614 in the state;
- 615 (c) one or more of the following is to be issued as part of the transaction:
 - 616 (i) an owner's policy of title insurance; or

- 617 (ii) a lender's policy of title insurance;
- 618 (d) (i) all funds deposited with the producer in connection with any escrow:
- 619 (A) are deposited:
- 620 (I) in a federally insured financial institution; and
- 621 (II) in a trust account that is separate from all other trust account funds that are not
- 622 related to real estate transactions; and
- 623 (B) are the property of the persons entitled to them under the provisions of the escrow;
- 624 and
- 625 (ii) are segregated escrow by escrow in the records of the producer;
- 626 (e) earnings on funds held in escrow may be paid out of the escrow account to any
- 627 person in accordance with the conditions of the escrow; and
- 628 (f) the escrow does not require the producer to hold:
- 629 (i) construction funds; or
- 630 (ii) funds held for exchange under Section 1031, Internal Revenue Code.
- 631 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the
- 632 escrow business if:
- 633 (a) the escrow involves:
- 634 (i) a mobile home;
- 635 (ii) a grazing right;
- 636 (iii) a water right; or
- 637 (iv) other personal property authorized by the commissioner; and
- 638 (b) the title insurance producer complies with all the requirements of this section
- 639 except for the requirement of Subsection (1)(c).
- 640 (3) Funds held in escrow:
- 641 (a) are not subject to any debts of the producer;
- 642 (b) may only be used to fulfill the terms of the individual escrow under which the funds
- 643 were accepted; and
- 644 (c) may not be used until all conditions of the escrow have been met.
- 645 (4) Assets or property other than escrow funds received by a producer in accordance
- 646 with an escrow shall be maintained in a manner that will:
- 647 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;

648 and

649 (b) otherwise comply with all general duties and responsibilities of a fiduciary or
650 bailee.

651 (5) (a) A check may not be drawn, executed, or dated, or funds otherwise disbursed
652 unless the segregated escrow account from which funds are to be disbursed contains a
653 sufficient credit balance consisting of collected or cleared funds at the time the check is drawn,
654 executed, or dated, or funds are otherwise disbursed.

655 (b) As used in this Subsection (5), funds are considered to be "collected or cleared,"
656 and may be disbursed as follows:

657 (i) cash may be disbursed on the same day the cash is deposited;

658 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;

659 (iii) the following may be disbursed on the day following the date of deposit:

660 (A) a cashier's check;

661 (B) a certified check;

662 (C) a teller's check;

663 (D) a U.S. Postal Service money order; and

664 (E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and

665 (iv) any other check or deposit may be disbursed:

666 (A) within the time limits provided under the Expedited Funds Availability Act, 12
667 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve
668 System; or

669 (B) upon written notification from the financial institution to which the funds have
670 been deposited, that final settlement has occurred on the deposited item.

671 (c) Subject to Subsections (5)(a) and (b), before the disbursement of funds, any
672 changes to any settlement statement made after the final closing documents are executed shall
673 be authorized or acknowledged by signature of the party or parties affected by the change.

674 (6) The title insurance producer shall maintain records of all receipts and
675 disbursements of escrow funds.

676 (7) The title insurance producer shall comply with:

677 (a) Section 31A-23a-409; and

678 (b) any rules adopted by the ~~[commissioner]~~ Title and Escrow Commission in

679 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that govern
680 escrows.

681 Section 12. Section **31A-23a-415** is amended to read:

682 **31A-23a-415. Assessment on title insurance agencies or title insurers.**

683 (1) For purposes of this section:

684 (a) "Premium" is as defined in Subsection 59-9-101(3).

685 (b) "Title insurer" means a person:

686 (i) making any contract or policy of title insurance as:

687 (A) insurer;

688 (B) guarantor; or

689 (C) surety;

690 (ii) proposing to make any contract or policy of title insurance as:

691 (A) insurer;

692 (B) guarantor; or

693 (C) surety; or

694 (iii) transacting or proposing to transact any phase of title insurance, including:

695 (A) soliciting;

696 (B) negotiating preliminary to execution;

697 (C) executing of a contract of title insurance;

698 (D) insuring; and

699 (E) transacting matters subsequent to the execution of the contract and arising out of
700 the contract.

701 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
702 personal property located in Utah, an owner of real or personal property, the holders of liens or
703 encumbrances on that property, or others interested in the property against loss or damage
704 suffered by reason of:

705 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
706 property; or

707 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

708 (2) (a) Beginning on July 1, 1998, the [insurance] commissioner may assess each title
709 insurer and each title insurance agency an annual assessment;

710 (i) determined by the Title and Escrow Commission:
711 (A) after consultation with the commissioner; and
712 (B) in accordance with this Subsection (2); and
713 (ii) to be used for the purposes described in Subsection (3).
714 (b) A title insurance agency shall be assessed up to:
715 (i) \$200 for the first office in each county in which the title insurance agency maintains
716 an office; and
717 (ii) \$100 for each additional office the title insurance agency maintains in the county
718 described in Subsection (2)(b)(i).
719 (c) A title insurer shall be assessed up to:
720 (i) \$200 for the first office in each county in which the title insurer maintains an office;
721 (ii) \$100 for each additional office the title insurer maintains in the county described in
722 Subsection (2)(c)(i); and
723 (iii) an amount calculated by:
724 (A) aggregating the assessments imposed on:
725 (I) title insurance agencies under Subsection (2)(b); and
726 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);
727 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total
728 costs and expenses determined under Subsection (2)(d); and
729 (C) multiplying:
730 (I) the amount calculated under Subsection (2)(c)(iii)(B); and
731 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
732 of the title insurer.
733 (d) Notwithstanding Section 31A-3-103 and in accordance with Title 63, Chapter 46a,
734 Utah Administrative Rulemaking Act, the ~~department~~ Title and Escrow Commission by rule
735 shall establish the amount of costs and expenses described under Subsection (3) that will be
736 covered by the assessment, except the costs or expenses to be covered by the assessment may
737 not exceed \$75,000 annually.
738 (3) All money received by the state under this section:
739 (a) shall be deposited in the General Fund as a dedicated credit of the department; and
740 (b) may be expended by the department only to pay for any cost or expense incurred by

741 the department in the administration, investigation, and enforcement of Chapter 23a, Parts 4
742 and 5, related to:

743 (i) the marketing of title insurance; and

744 (ii) audits of agencies.

745 (4) The assessment imposed by this section shall be in addition to any premium
746 assessment imposed under Subsection 59-9-101(3).

747 Section 13. Section **31A-23a-503** is amended to read:

748 **31A-23a-503. Controlled business in title insurance.**

749 (1) As used in this section:

750 (a) "Associate" means any:

751 (i) business organized for profit in which a person who refers title business is a
752 director, officer, partner, or employee;

753 (ii) spouse or relative within the second degree by blood or marriage of a person who
754 refers title business, who is a natural person;

755 (iii) employee of a person who refers title business; or

756 (iv) person with whom a person who refers title business or any associate of that
757 producer has any agreement, arrangement, or understanding, or pursues any course of conduct,
758 designed to avoid the provisions of this chapter.

759 (b) "Controlled business" means that portion of the title insurance business of a title
760 insurer or producer in this state that is referred to it by all those producers of title business who
761 have a financial interest in the title insurer or producer and by all associates of those producers.
762 Business is referred if there is influence over the selection of the person with whom the
763 business is placed.

764 (c) "A person who refers title business" includes any person engaged in this state in a
765 business of:

766 (i) buying or selling interests in real property;

767 (ii) making loans secured by interests in real property; or

768 (iii) acting as a representative or employee of a person who buys or sells any interest in
769 real property or who lends or borrows money with interest as security, other than acting as a
770 licensed title insurer or producer doing the business of title insurance.

771 (d) "Financial interest" means any legal or beneficial interest that together with other

772 interests entitles the holder to more than 1% of the net profits or net worth of the business in
773 which the interest is held.

774 (2) A title insurer or producer or person having a financial interest in a title insurer or
775 producer may not knowingly be a party to or knowingly permit to continue in any arrangement
776 in which the title insurer, producer, or person knows or has reason to believe that any person
777 who refers title business has or will have, directly or indirectly, a financial interest in the title
778 insurer or producer, if it reasonably appears that a substantial factor in the person who refers
779 title business owning or acquiring the financial interest is the expected realization of financial
780 profit or gain derived in whole or in part from controlled business.

781 (3) A title insurer may not appoint or knowingly continue its authorization of any title
782 insurance producer in which the company knows or has reason to believe that any person who
783 refers title business has or will have, directly or indirectly, a financial interest, if it reasonably
784 appears that a substantial factor in the person who refers title business owning or acquiring the
785 financial interest is the person's expected realization of financial profit or gain derived in whole
786 or part from controlled business.

787 (4) (a) If for any calendar quarter, the gross operating revenues of a title insurer or
788 producer derived from all sources of controlled business in this state amount to more than 1/3
789 of its gross operating revenues from all other sources of its business of title insurance in this
790 state, it is presumed that the expected realization of financial profit or gain derived in whole or
791 in part from controlled business was a substantial factor in the ownership of financial interest
792 in the title insurer or producer.

793 (b) The title insurer or producer has the burden of overcoming ~~[this]~~ the presumption
794 described in Subsection (4)(a).

795 (c) This Subsection (4) does not authorize any controlled business if a violation of the
796 standards set forth in Subsection (2) or (3) exists.

797 (5) ~~[No]~~ A title ~~[insurance company]~~ insurer or producer may not accept any order for
798 the business of title insurance that it knows or has reason to believe constitutes controlled
799 business, unless it records and maintains in its permanent records on forms prescribed by the
800 commissioner the facts relating to the transactions.

801 (6) An applicant for qualification as a title ~~[insurance company]~~ insurer or producer
802 may not be granted a license if it reasonably appears that the expected realization of financial

803 profit or gain to be derived in whole or in part from controlled business is or will be a
804 substantial factor in the applicant's plan of operation or in the ownership or acquisition of
805 financial interests in the applicant by any person who refers title business.

806 (7) Each title insurer and producer shall maintain permanent records relating to its
807 controlled business on forms prescribed by the commissioner.

808 (8) (a) Each title insurer and producer shall file annually with the commissioner, on
809 forms prescribed by the commissioner, reports setting forth:

810 (i) the names and addresses of any persons owning a financial interest in the title
811 insurer or producer as of the last day of the calendar year, who are known or reasonably
812 believed by the title ~~[insurance company]~~ insurer or producer to be a person who refers title
813 business; and

814 (ii) a summary compiled from the title insurer's or producer's records of the controlled
815 business, sufficient to inform the commissioner and the Title and Escrow Commission as to the
816 proportion of the title insurer's or producer's gross operating revenues attributable to controlled
817 business during the preceding calendar year.

818 (b) The reports shall be filed with the reports required under Section 31A-23a-413 and
819 shall contain the certification of an officer of the title insurer or producer that the information
820 contained in them is true to the best of the officer's knowledge, information, and belief. Upon
821 filing, the reports are public records.

822 (c) A report filed pursuant to Subsection (8)(a) is subject to review by the Title and
823 Escrow Commission.

824 (9) An attorney who is also a licensed title insurance producer and who issues as
825 producer a policy of title insurance to a client on behalf of whom the attorney is also acting as
826 an attorney and who, in so doing, acts consistently with the applicable ethical standards of the
827 Utah State Bar pertaining to the billing and receipt of legal fees and the receipt of a
828 commission on a policy of title insurance is not, without more, considered to be engaged in
829 controlled business.

830 Section 14. Section **31A-26-203** is amended to read:

831 **31A-26-203. Adjuster's license required.**

832 (1) The commissioner shall issue a license to act as an independent adjuster or public
833 adjuster to any person who, as to the license classification applied for under Section

834 31A-26-204, has:

- 835 (a) satisfied the character requirements under Section 31A-26-205;
- 836 (b) satisfied the applicable continuing education requirements under Section
- 837 31A-26-206;
- 838 (c) satisfied the applicable examination requirements under Section 31A-26-207;
- 839 (d) if a nonresident, complied with Section 31A-26-208; and
- 840 (e) paid the applicable fees under Section 31A-3-103.

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

- 842 (i) an applicant for:
 - 843 (A) an independent adjuster's license; or
 - 844 (B) a public adjuster's license;
- 845 (ii) a licensed independent adjuster; or
- 846 (iii) a licensed public adjuster.

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

- 848 (i) any administrative action taken against the person:
 - 849 (A) in another jurisdiction; or
 - 850 (B) by another regulatory agency in this state; and
- 851 (ii) any criminal prosecution taken against the person in any jurisdiction.

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

- 853 (i) be filed:
 - 854 (A) at the time the person applies for a third party administrator's license; or
 - 855 (B) within 30 days of the initiation of an action or prosecution described in Subsection
 - 856 (2)(b); and
- 857 (ii) include a copy of the complaint or other relevant legal documents related to the
- 858 action or prosecution described in Subsection (2)(b).

859 (3) (a) The department may request concerning a person applying for an independent or

860 public adjuster's license:

- 861 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
- 862 2, from the Bureau of Criminal Identification; and
- 863 (ii) complete Federal Bureau of Investigation criminal background checks through the
- 864 national criminal history system.

865 (b) Information obtained by the department from the review of criminal history records
866 received under Subsection (3)(a) shall be used by the department for the purposes of:

867 (i) determining if a person satisfies the character requirements under Section
868 31A-26-205 for issuance or renewal of a license;

869 (ii) determining if a person has failed to maintain the character requirements under
870 Section 31A-25-204; and

871 (iii) preventing persons who violate the federal Violent Crime Control and Law
872 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of
873 insurance in the state.

874 (c) If the department requests the criminal background information, the department
875 shall:

876 (i) pay to the Department of Public Safety the costs incurred by the Department of
877 Public Safety in providing the department criminal background information under Subsection
878 (3)(a)(i);

879 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
880 of Investigation in providing the department criminal background information under
881 Subsection (3)(a)(ii); and

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

884 (4) Notwithstanding the other provisions of this section, the commissioner may:

885 (a) issue a license to an applicant for a license for a title insurance classification only
886 with the concurrence of the Title and Escrow Commission; or

887 (b) renew a license for a title insurance classification only with the concurrence of the
888 Title and Escrow Commission.

889 Section 15. Section **31A-26-204** is amended to read:

890 **31A-26-204. License classifications.**

891 A resident or nonresident license issued under this chapter shall be issued under the
892 classifications described under Subsections (1), (2), and (3). These classifications are intended
893 to describe the matters to be considered under any prerequisite education and examination
894 required of license applicants under Sections 31A-26-206 and 31A-26-207.

895 (1) Independent adjuster license classifications include:

896 (a) accident and health insurance, including related service insurance under Chapter 7
897 or 8;

898 (b) property and liability insurance, which includes:

899 (i) property insurance;

900 (ii) liability insurance;

901 (iii) surety bonds; and

902 (iv) policies containing combinations or variations of these coverages;

903 (c) service insurance;

904 (d) title insurance;

905 (e) credit insurance; and

906 (f) workers' compensation insurance.

907 (2) Public adjuster license classifications include:

908 (a) accident and health insurance, including related service insurance under Chapter 7
909 or 8;

910 (b) property and liability insurance, which includes:

911 (i) property insurance;

912 (ii) liability insurance;

913 (iii) surety bonds; and

914 (iv) policies containing combinations or variations of these coverages;

915 (c) service insurance;

916 (d) title insurance;

917 (e) credit insurance; and

918 (f) workers' compensation insurance.

919 (3) (a) The commissioner may by rule:

920 (i) recognize other independent adjuster or public adjuster license classifications as to
921 other kinds of insurance not listed under Subsection (1)~~[- The commissioner may also by rule];~~

922 and

923 (ii) create license classifications ~~[which]~~ that grant only part of the authority arising
924 under another license class.

925 (b) Notwithstanding Subsection (3)(a), for purpose of title insurance, the Title and
926 Escrow Commission may make the rules provided for in Subsection (3)(a).

927 Section 16. **Effective date.**

928 This bill takes effect on July 1, 2005, except that Section 31A-2-403 takes effect on

929 May 2, 2005.

Legislative Review Note
as of 1-7-05 12:33 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Commission per diem costs are \$4,500 in General Fund. Assume monthly meetings, full attendance, an equal number of full and half day meetings.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$4,500	\$4,500	\$0	\$0
TOTAL	\$4,500	\$4,500	\$0	\$0

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst