

1 **INSURANCE POLICY AND CONTRACT LAW**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd E. Kiser**

6 Senate Sponsor: Thomas V. Hatch

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Insurance Code to address requirements for policy or contracts.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ clarifies the scope of the provisions related to insurance contracts in general and
14 contracts in specific lines;

15 ▶ provides that an insurer unless otherwise provided by the Insurance Code shall
16 follow the terms of an insurance policy issued or assumed by the insurer;

17 ▶ clarifies application to cancellations of a reference in the provision related to
18 nonrenewal of insurance policies by an insurer;

19 ▶ addresses minimum requirements for personal injury protection coverage and
20 benefits; and

21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **31A-21-101**, as last amended by Chapter 222, Laws of Utah 2000

29 **31A-21-303**, as last amended by Chapters 123 and 247, Laws of Utah 2005

30 **31A-22-307**, as last amended by Chapter 117, Laws of Utah 2004

31 ENACTS:

32 **31A-21-111**, Utah Code Annotated 1953



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

35 Section 1. Section **31A-21-101** is amended to read:

36 **31A-21-101. Scope of Title 31A, Chapters 21 and 22.**

37 (1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22,
38 Contracts in Specific Lines, apply to all insurance policies, applications, and certificates:

- 39 (a) delivered or issued for delivery in this state;
- 40 (b) on property ordinarily located in this state;
- 41 (c) on persons residing in this state when the policy is issued; ~~and~~ or
- 42 (d) on business operations in this state.

43 (2) This chapter and Chapter 22 do not apply to:

- 44 (a) ~~the exemptions~~ an exemption provided in Section 31A-1-103;
- 45 (b) an insurance ~~policies~~ policy procured under Sections 31A-15-103 and

46 31A-15-104;

47 (c) an insurance policy on business operations in this state;

48 (i) if;

49 (A) the contract is negotiated primarily outside this state; and ~~if~~

50 (B) the operations in this state are incidental or subordinate to operations outside this
51 state~~;~~; and

52 (ii) except that insurance required by a Utah statute must conform to the statutory
53 requirements; or

54 (d) other exemptions provided in this title.

55 (3) (a) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107 (1)
56 and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean
57 marine and inland marine insurance.

58 (b) Section 31A-21-201 applies to inland marine insurance that is written according to

59 manual rules or rating plans.

60 (4) ~~[Group]~~ A group or blanket [policies are] policy is subject to this chapter and
61 Chapter 22, except:

62 (a) a group or blanket [policies] policy outside the scope of this title under Subsection
63 31A-1-103(3)(h); and

64 (b) other exemptions provided under Subsection (5).

65 (5) The commissioner may by rule exempt any class of insurance contract or class of
66 insurer from any or all of the provisions of this chapter and Chapter 22 if the interests of the
67 Utah insureds, creditors, or the public would not be harmed by the exemption.

68 (6) Workers' compensation insurance, including that written by the Workers'
69 Compensation Fund created under Chapter 33, is subject to this chapter and Chapter 22.

70 (7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable
71 to either a policy or a contract is applicable to both.

72 Section 2. Section **31A-21-111** is enacted to read:

73 **31A-21-111. Insurers to follow terms of policy.**

74 Unless otherwise provided by this title, an insurer shall follow the terms of an insurance
75 policy issued or assumed by the insurer.

76 Section 3. Section **31A-21-303** is amended to read:

77 **31A-21-303. Cancellation, issuance, renewal.**

78 (1) (a) Except as otherwise provided in this section, other statutes, or by rule under
79 Subsection (1)(c), this section applies to all policies of insurance:

80 (i) except for:

81 (A) life insurance;

82 (B) accident and health insurance; and

83 (C) annuities; and

84 (ii) if the policies of insurance are issued on forms that are subject to filing under
85 Subsection 31A-21-201(1).

86 (b) A policy may provide terms more favorable to insureds than this section requires.

87 (c) The commissioner may by rule totally or partially exempt from this section classes
88 of insurance policies in which the insureds do not need protection against arbitrary or
89 unannounced termination.

90 (d) The rights provided by this section are in addition to and do not prejudice any other
91 rights the insureds may have at common law or under other statutes.

92 (2) (a) As used in this Subsection (2), "grounds" means:

93 (i) material misrepresentation;

94 (ii) substantial change in the risk assumed, unless the insurer should reasonably have
95 foreseen the change or contemplated the risk when entering into the contract;

96 (iii) substantial breaches of contractual duties, conditions, or warranties;

97 (iv) attainment of the age specified as the terminal age for coverage, in which case the
98 insurer may cancel by notice under Subsection (2)(c), accompanied by a tender of proportional
99 return of premium; or

100 (v) in the case of motor vehicle insurance, revocation or suspension of the driver's
101 license of:

102 (A) the named insured; or

103 (B) any other person who customarily drives the motor vehicle.

104 (b) (i) Except as provided in Subsection (2)(e) or unless the conditions of Subsection
105 (2)(b)(ii) are met, an insurance policy may not be canceled by the insurer before the earlier of:

106 (A) the expiration of the agreed term; or

107 (B) one year from the effective date of the policy or renewal.

108 (ii) Notwithstanding Subsection (2)(b)(i), an insurance policy may be canceled by the
109 insurer for:

110 (A) nonpayment of a premium when due; or

111 (B) on grounds defined in Subsection (2)(a).

112 (c) (i) The cancellation provided by Subsection (2)(b), except cancellation for
113 nonpayment of premium, is effective no sooner than 30 days after the delivery or first-class
114 mailing of a written notice to the policyholder.

115 (ii) Cancellation for nonpayment of premium is effective no sooner than ten days after
116 delivery or first class mailing of a written notice to the policyholder.

117 (d) (i) Notice of cancellation for nonpayment of premium shall include a statement of
118 the reason for cancellation.

119 (ii) Subsection (7) applies to the notice required for grounds of cancellation other than
120 nonpayment of premium.

121 (e) (i) Subsections (2)(a) through (d) do not apply to any insurance contract that has not
122 been previously renewed if the contract has been in effect less than 60 days when the written
123 notice of cancellation is mailed or delivered.

124 (ii) A cancellation under this Subsection (2)(e) may not be effective until at least ten
125 days after the delivery to the insured of a written notice of cancellation.

126 (iii) If the notice required by this Subsection (2)(e) is sent by first-class mail, postage
127 prepaid, to the insured at the insured's last-known address, delivery is considered accomplished
128 after the passing, since the mailing date, of the mailing time specified in the Utah Rules of
129 Civil Procedure.

130 (iv) A policy cancellation subject to this Subsection (2)(e) is not subject to the
131 procedures described in Subsection (7).

132 ~~[(f) Cancellation under this Subsection (2) is subject to Subsection (5).]~~

133 (3) A policy may be issued for a term longer than one year or for an indefinite term if
134 the policy includes a clause providing for cancellation by the insurer by giving notice as
135 provided in Subsection (4)(b)(i) 30 days prior to any anniversary date.

136 (4) (a) Subject to Subsections (2), (3), and (4)(b), a policyholder has a right to have the
137 policy renewed:

138 (i) on the terms then being applied by the insurer to similar risks; and

139 (ii) (A) for an additional period of time equivalent to the expiring term if the agreed
140 term is one year or less; or

141 (B) for one year if the agreed term is longer than one year.

142 (b) Except as provided in Subsections (4)(c) and (5), the right to renewal under
143 Subsection (4)(a) is extinguished if:

144 (i) at least 30 days prior to the policy expiration or anniversary date a notice of
145 intention not to renew the policy beyond the agreed expiration or anniversary date is delivered
146 or sent by first-class mail by the insurer to the policyholder at the policyholder's last-known
147 address;

148 (ii) not more than 45 nor less than 14 days prior to the due date of the renewal
149 premium, the insurer delivers or sends by first-class mail a notice to the policyholder at the
150 policyholder's last-known address, clearly stating:

151 (A) the renewal premium;

- 152 (B) how the renewal premium may be paid; and
- 153 (C) that failure to pay the renewal premium by the due date extinguishes the
- 154 policyholder's right to renewal;
- 155 (iii) the policyholder has:
- 156 (A) accepted replacement coverage; or
- 157 (B) requested or agreed to nonrenewal; or
- 158 (iv) the policy is expressly designated as nonrenewable.
- 159 (c) Unless the conditions of Subsection (4)(b)(iii) or (iv) apply, an insurer may not fail
- 160 to renew an insurance policy as a result of a telephone call or other inquiry that:
- 161 (i) references a policy coverage; and
- 162 (ii) does not result in the insured requesting payment of a claim.
- 163 (d) Failure to renew under this Subsection (4) is subject to Subsection (5).
- 164 (5) Notwithstanding [~~Subsections (2) and~~ Subsection (4), an insurer may not [~~cancel~~
- 165 ~~or~~] fail to renew the following personal lines insurance policies solely on the basis of:
- 166 (a) in the case of a motor vehicle insurance policy:
- 167 (i) a claim from the insured that:
- 168 (A) results from an accident in which:
- 169 (I) the insured is not at fault; and
- 170 (II) the driver of the motor vehicle that is covered by the motor vehicle insurance
- 171 policy is 21 years of age or older; and
- 172 (B) is the only claim meeting the condition of Subsection (5)(a)(i)(A) within a
- 173 36-month period;
- 174 (ii) a single traffic violation by an insured that:
- 175 (A) is a violation of a speed limit under Title 41, Chapter 6a, Traffic Code;
- 176 (B) is not in excess of ten miles per hour over the speed limit;
- 177 (C) is not a traffic violation under:
- 178 (I) Section 41-6a-601;
- 179 (II) Section 41-6a-604; or
- 180 (III) Section 41-6a-605;
- 181 (D) is not a violation by an insured driver who is younger than 21 years of age; and
- 182 (E) is the only violation meeting the conditions of Subsections (5)(a)(ii)(A) through

183 (D) within a 36-month period; or
184 (iii) a claim for damage that:
185 (A) results solely from:
186 (I) wind;
187 (II) hail;
188 (III) lightning; or
189 (IV) an earthquake;
190 (B) is not preventable by the exercise of reasonable care; and
191 (C) is the only claim meeting the conditions of Subsections (5)(a)(iii)(A) and (B)
192 within a 36-month period; and
193 (b) in the case of a homeowner's insurance policy, a claim by the insured that is for
194 damage that:
195 (i) results solely from:
196 (A) wind;
197 (B) hail; or
198 (C) lightning;
199 (ii) is not preventable by the exercise of reasonable care; and
200 (iii) is the only claim meeting the conditions of Subsections (5)(b)(i) and (ii) within a
201 36-month period.
202 (6) (a) (i) Subject to Subsection (6)(b), if the insurer offers or purports to renew the
203 policy, but on less favorable terms or at higher rates, the new terms or rates take effect on the
204 renewal date if the insurer delivered or sent by first-class mail to the policyholder notice of the
205 new terms or rates at least 30 days prior to the expiration date of the prior policy.
206 (ii) If the insurer did not give the prior notification described in Subsection (6)(a)(i) to
207 the policyholder, the new terms or rates do not take effect until 30 days after the notice is
208 delivered or sent by first-class mail, in which case the policyholder may elect to cancel the
209 renewal policy at any time during the 30-day period.
210 (iii) Return premiums or additional premium charges shall be calculated
211 proportionately on the basis that the old rates apply.
212 (b) Subsection (6)(a) does not apply if the only change in terms that is adverse to the
213 policyholder is:

214 (i) a rate increase generally applicable to the class of business to which the policy
215 belongs;

216 (ii) a rate increase resulting from a classification change based on the altered nature or
217 extent of the risk insured against; or

218 (iii) a policy form change made to make the form consistent with Utah law.

219 (7) (a) If a notice of cancellation or nonrenewal under Subsection (2)(c) does not state
220 with reasonable precision the facts on which the insurer's decision is based, the insurer shall
221 send by first-class mail or deliver that information within ten working days after receipt of a
222 written request by the policyholder.

223 (b) A notice under Subsection (2)(c) is not effective unless it contains information
224 about the policyholder's right to make the request.

225 (8) If a risk-sharing plan under Section 31A-2-214 exists for the kind of coverage
226 provided by the insurance being cancelled or nonrenewed, a notice of cancellation or
227 nonrenewal required under Subsection (2)(c) or (4)(b)(i) may not be effective unless it contains
228 instructions to the policyholder for applying for insurance through the available risk-sharing
229 plan.

230 (9) There is no liability on the part of, and no cause of action against, any insurer, its
231 authorized representatives, agents, employees, or any other person furnishing to the insurer
232 information relating to the reasons for cancellation or nonrenewal or for any statement made or
233 information given by them in complying or enabling the insurer to comply with this section
234 unless actual malice is proved by clear and convincing evidence.

235 (10) This section does not alter any common law right of contract rescission for
236 material misrepresentation.

237 Section 4. Section **31A-22-307** is amended to read:

238 **31A-22-307. Personal injury protection coverages and benefits.**

239 (1) Personal injury protection coverages and benefits include:

240 (a) up to the minimum amount required coverage of not less than \$3,000 per person,
241 the reasonable value of all expenses for necessary:

242 (i) medical[;] services;

243 (ii) surgical[;] services;

244 (iii) X-ray[;] services;

245 (iv) dental[;] services;
246 (v) rehabilitation services, including prosthetic devices[;];
247 (vi) ambulance[;] services;
248 (vii) hospital[;] services; and
249 (viii) nursing services[; ~~not to exceed the total minimum required coverage of \$3,000~~
250 ~~per person~~];

251 (b) (i) the lesser of \$250 per week or 85% of any loss of gross income and loss of
252 earning capacity per person from inability to work, for a maximum of 52 consecutive weeks
253 after the loss, except that this benefit need not be paid for the first three days of disability,
254 unless the disability continues for longer than two consecutive weeks after the date of injury;
255 and

256 (ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days,
257 for services actually rendered or expenses reasonably incurred for services that, but for the
258 injury, the injured person would have performed for the injured person's household, except that
259 this benefit need not be paid for the first three days after the date of injury unless the person's
260 inability to perform these services continues for more than two consecutive weeks;

261 (c) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

262 (d) compensation on account of death of a person, payable to the person's heirs, in the
263 total of \$3,000.

264 (2) (a) (i) To determine the reasonable value of the medical expenses provided for in
265 Subsection (1) and under Subsection 31A-22-309(1)(a)(v), the commissioner shall conduct a
266 relative value study of services and accommodations for the diagnosis, care, recovery, or
267 rehabilitation of an injured person in the most populous county in the state to assign a unit
268 value and determine the 75th percentile charge for each type of service and accommodation.

269 (ii) The relative value study shall be updated every other year.

270 (iii) In conducting the relative value study, the department may consult or contract with
271 appropriate public and private medical and health agencies or other technical experts.

272 (iv) The costs and expenses incurred in conducting, maintaining, and administering the
273 relative value study shall be funded by the tax created under Section 59-9-105.

274 (v) Upon completion of the relative value study, the department shall prepare and
275 publish a relative value study which sets forth the unit value and the 75th percentile charge

276 assigned to each type of service and accommodation.

277 (b) (i) The reasonable value of any service or accommodation is determined by
278 applying the unit value and the 75th percentile charge assigned to the service or
279 accommodation under the relative value study.

280 (ii) If a service or accommodation is not assigned a unit value or the 75th percentile
281 charge under the relative value study, the value of the service or accommodation shall equal the
282 reasonable cost of the same or similar service or accommodation in the most populous county
283 of this state.

284 (c) This Subsection (2) does not preclude the department from adopting a schedule
285 already established or a schedule prepared by persons outside the department, if it meets the
286 requirements of this Subsection (2).

287 (d) Every insurer shall report to the commissioner any pattern of overcharging,
288 excessive treatment, or other improper actions by a health provider within 30 days after the day
289 on which the insurer has knowledge of the pattern.

290 (e) (i) In disputed cases, a court on its own motion or on the motion of either party,
291 may designate an impartial medical panel of not more than three licensed physicians to
292 examine the claimant and testify on the issue of the reasonable value of the claimant's medical
293 services or expenses.

294 (ii) An impartial medical panel designated under Subsection (2)(e)(i) shall consist of a
295 majority of health care professionals within the same license classification and specialty as the
296 provider of the claimant's medical services or expenses.

297 (3) Medical expenses as provided for in Subsection (1)(a) and in Subsection
298 31A-22-309(1)(a)(v) include expenses for any nonmedical remedial care and treatment
299 rendered in accordance with a recognized religious method of healing.

300 (4) The insured may waive for the named insured and the named insured's spouse only
301 the loss of gross income benefits of Subsection (1)(b)(i) if the insured states in writing that:

302 (a) within 31 days of applying for coverage, neither the insured nor the insured's spouse
303 received any earned income from regular employment; and

304 (b) for at least 180 days from the date of the writing and during the period of insurance,
305 neither the insured nor the insured's spouse will receive earned income from regular
306 employment.

- 307 (5) This section does not:
- 308 (a) prohibit the issuance of [~~policies~~] a policy of insurance providing coverages greater
- 309 than the minimum coverage required under this chapter; or
- 310 (b) require the segregation of those minimum coverages from other coverages in the
- 311 same policy.
- 312 (6) Deductibles are not permitted with respect to the insurance coverages required
- 313 under this section.

Legislative Review Note
as of 1-19-06 11:46 AM

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