

Representative John Dougall proposes the following substitute bill:

**TITLE INSURANCE AND REAL ESTATE RELATED
TRANSACTIONS AND REGULATION**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Title and Escrow Commission Act, provisions related to licensing by the Division of Real Estate, and related provisions.

Highlighted Provisions:

This bill:

- requires disclosure of certain business interests by members of the Title and Escrow Commission;
- requires notice to the Real Estate Commission with regard to rules made by the Title and Escrow Commission;
- addresses limitations on conducting title insurance business when licensed by the Department of Insurance and the Division of Real Estate;
- modifies reserve fund requirements for title insurance producers and agencies;
- provides for revocation of certain licenses or certificates; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

AMENDS:

31A-2-402, as enacted by Chapter 185, Laws of Utah 2005

31A-2-403, as enacted by Chapter 185, Laws of Utah 2005

31A-2-404, as enacted by Chapter 185, Laws of Utah 2005

31A-19a-209, as last amended by Chapter 185, Laws of Utah 2005

31A-23a-106, as last amended by Chapters 185 and 219, Laws of Utah 2005

31A-23a-204, as last amended by Chapter 312, Laws of Utah 2006

31A-23a-402, as last amended by Chapters 123 and 185, Laws of Utah 2005

31A-23a-406, as last amended by Chapters 124 and 185, Laws of Utah 2005

31A-23a-415, as last amended by Chapter 185, Laws of Utah 2005

31A-26-204, as last amended by Chapter 185, Laws of Utah 2005

61-2-12, as last amended by Chapter 199, Laws of Utah 2005

61-2b-29, as last amended by Chapter 199, Laws of Utah 2005

61-2c-402, as last amended by Chapter 199, Laws of Utah 2005

ENACTS:

31A-2-405, Utah Code Annotated 1953

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

Section 1. Section **31A-2-402** is amended to read:

31A-2-402. Definitions.

As used in this part:

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

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

(3) "Dual licensed title licensee" means a title licensee who holds:

(a) a producer license as a title licensee; and

(b) a license or certificate under:

(i) Title 61, Chapter 2, Real Estate Division;

(ii) Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act; or

(iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices Act.

(4) "Real Estate Commission" means the Real Estate Commission created in Section 61-2-5.5.

~~[(3)]~~ (5) "Title licensee" means a person licensed under this title as:

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

(b) a producer with:

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

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

(c) a title insurance adjuster.

Section 2. Section **31A-2-403** is amended to read:

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

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

(i) four members shall:

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

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

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

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

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

(ii) any single company.

(2) (a) Subject to Subsection (2)(c), each member of the commission shall file with the department a disclosure of any position of employment or ownership interest that the member of the commission has with respect to any person that is subject to the jurisdiction of the department.

(b) The disclosure statement required by this Subsection (2) shall be:

(i) filed by no later than the day on which the person begins that person's appointment;
and

(ii) amended when a significant change occurs in any matter required to be disclosed

88 under this Subsection (2).

89 (c) A member of the commission is not required to disclose an ownership interest that
90 the member of the commission has if the ownership interest is held as part of a mutual fund,
91 trust, or similar investment.

92 ~~[(2)]~~ (3) (a) Except as required by Subsection ~~[(2)]~~ (3)(b), as terms of current
93 commission members expire, the governor shall appoint each new member to a four-year term
94 ending on June 30.

95 (b) Notwithstanding the requirements of Subsection ~~[(2)]~~ (3)(a), the governor shall, at
96 the time of appointment, adjust the length of terms to ensure that the terms of the commission
97 members are staggered so that approximately half of the commission is appointed every two
98 years.

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

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

102 ~~[(3)]~~ (4) (a) A member of the commission ~~[shall receive no]~~ may not receive
103 compensation or benefits for the member's services, but may receive per diem and expenses
104 incurred in the performance of the member's official duties at the rates established by the
105 Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

107 ~~[(4)]~~ (5) Members of the commission shall annually select one member to serve as
108 chair.

109 ~~[(5)]~~ (6) (a) The commission shall meet at least monthly.

110 (b) The commissioner may call additional meetings:

111 (i) at the commissioner's discretion;

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

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

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

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

118 ~~[(6)]~~ (7) The department shall staff the commission.

Section 3. Section **31A-2-404** is amended to read:

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

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

(a) title insurance; and

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

(2) The commission shall:

(a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and subject to Subsection (3), make rules for the administration of the provisions in this title related to title insurance including rules related to:

(i) rating standards and rating methods for title agencies and producers as provided in Section 31A-19a-209;

(ii) the licensing for a title licensee including the licensing requirements of Sections 31A-23a-203 and 31A-23a-204;

(iii) continuing education requirements of Section 31A-23a-202;

(iv) examination procedures, after consultation with the department and the department's test administrator when required by Section 31A-23a-204; and

(v) standards of conduct for a title licensee;

(b) concur in the issuance and renewal of licenses in accordance with Section 31A-23a-105 or 31A-26-203;

(c) in accordance with Section 31A-3-103, establish, with the concurrence of the department, all fees imposed by this title on a title licensee;

(d) in accordance with Section 31A-23a-415 determine, after consulting with the commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

(e) conduct all administrative hearings not delegated by [it] the commission to an administrative law judge related to the:

(i) licensing of any applicant;

(ii) conduct of any title licensee; or

(iii) approval of continuing education programs required by Section 31A-23a-202;

(f) with the concurrence of the commissioner, approve assets that can be included in a reserve fund required by Section 31A-23a-204;

(g) with the concurrence of the commissioner, approve continuing education programs required by Section 31A-23a-202;

(h) with the concurrence of the commissioner, impose penalties:

(i) under this title related to:

(A) title insurance; or

(B) escrow conducted by a title licensee;

(ii) after investigation by the department in accordance with Part 3, Procedures and Enforcement; and

(iii) that are enforced by the commissioner;

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

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

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

(3) The commission may make a rule under this title only if at the time the commission files its proposed rule and rule analysis with the Division of Administrative Rules in accordance with Section 63-46a-4, the commission provides the Real Estate Commission that same information.

(4) (a) The commissioner shall annually report the information described in Subsection (4)(b) in writing to:

(i) the commission; and

(ii) the Business and Labor Interim Committee.

(b) The information required to be reported under this Subsection (4):

(i) may not identify a person; and

(ii) shall include:

(A) the number of complaints the department receives with regard to transactions involving title insurance or a title licensee during the calendar year immediately proceeding the report;

(B) the type of complaints described in Subsection (4)(b)(ii)(A); and

(C) for each complaint described in Subsection (4)(b)(ii)(A):

(I) any action taken by the department with regard to the complaint; and

181 (II) the time-period beginning the day on which a complaint is made and ending the
182 day on which the department determines it will take no further action with regard to the
183 complaint.

184 Section 4. Section **31A-2-405** is enacted to read:

185 **31A-2-405. Dual licensing.**

186 (1) A dual licensed title licensee may provide a title insurance product or service under
187 this title only if before providing that title insurance product or service the dual licensed title
188 licensee obtains approval as provided in this section.

189 (2) (a) Except as provided in Subsection (3), a dual licensed title licensee shall obtain
190 approval from the commissioner by filing under penalty of perjury with the department:

191 (i) a statement that includes:

192 (A) a description of the title insurance product or service to be provided;

193 (B) the names of the principals anticipated to be involved in the provision or receipt of
194 the title insurance product or service;

195 (C) a legal description of the property to be involved in the provision or receipt of the
196 title insurance product or service;

197 (D) whether or not the dual licensed title licensee received any consideration from a
198 person described in Subsection (2)(a)(i)(B) within 18 months prior to the day on which the dual
199 licensed title licensee files the statement; and

200 (E) any other information the commission requires by rule made in accordance with
201 this section and Section 31A-2-404; and

202 (ii) the fee applicable under Section 31A-3-103.

203 (b) The commissioner shall approve the provision of a title insurance product or
204 service under this section if the commissioner finds that the dual licensed title licensee:

205 (i) completed the filing required by Subsection (2)(a);

206 (ii) is acting in good faith; and

207 (iii) has not received consideration from a person described in Subsection (2)(a)(i)(B)
208 within the 18-month period described in Subsection (2)(a)(i)(D).

209 (c) If the commissioner does not deny approval under this section, the commissioner is
210 considered to have approved the provision of the title insurance product or service the earlier
211 of:

(i) the day on which the commissioner issues the commissioner's approval in writing;
or

(ii) 15 days after the day on which the dual licensed title licensee completes the filing
under Subsection (2)(a).

(3) Notwithstanding Subsection (2), a dual licensed title licensee may obtain approval
from the chair of the commission if:

(a) the dual licensed title licensee completes the filing under Subsection (2)(a);

(b) the dual licensed title licensee establishes a need for expedited approval; and

(c) the chair of the commission issues approval in writing after making the findings
described in Subsection (2)(b).

(4) The commissioner shall revoke the license under this title of a dual licensed title
licensee if the dual licensee:

(a) provides a title insurance product or service without the approval required by this
section; or

(b) knowingly provides false or misleading information in the statement required by
Subsection (2).

(5) The commission may make rules, subject to Section 31A-2-404, to implement the
filing requirements under Subsection (2), including the definition of terms.

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

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

(1) (a) (i) The Title and Escrow Commission shall adopt rules [~~in accordance with Title~~
~~63, Chapter 46a, Utah Administrative Rulemaking Act~~] subject to Section 31A-2-404,
establishing rate standards and rating methods for title agencies and producers.

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

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

(i) the maintenance of title plants; and

(ii) the searching and examining of public records to determine insurability of title to real redevelopment property.

(2) (a) Every title insurance insurer, agency, and title insurance producer shall file with the commissioner:

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

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

(b) Except for a schedule filed by a title insurance insurer under this Subsection (2), a schedule filed under this Subsection (2) is subject to review by the Title and Escrow Commission.

(c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes effect on the day on which the schedule of escrow charges is filed.

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

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

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

(i) the insurance business; or

(ii) the escrow business; or

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

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

(b) Each change or amendment shall:

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

(ii) state the effective date of the change or amendment, which may not be less than 30

calendar days after the day on which the change or amendment is filed.

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

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

(a) retained in each of the offices of:

(i) the title insurance insurer in this state;

(ii) the title insurance insurer's producers in this state; and

(b) upon request, furnished to the public.

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

(a) in connection with the issuance of a policy of title insurance; or

(b) for escrow services performed in connection with the issuance of a policy of title insurance.

Section 6. Section **31A-23a-106** is amended to read:

31A-23a-106. License types.

(1) (a) A resident or nonresident license issued under this chapter shall be issued under the license types described under Subsection (2).

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

(2) (a) A producer license type includes the following lines of authority:

(i) life insurance, including nonvariable contracts;

(ii) variable contracts, including variable life and annuity, if the producer has the life insurance line of authority;

(iii) accident and health insurance, including contracts issued to policyholders under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

305 (iv) property insurance;
306 (v) casualty insurance, including surety and other bonds;
307 (vi) title insurance under one or more of the following categories:
308 (A) search, including authority to act as a title marketing representative;
309 (B) escrow, including authority to act as a title marketing representative;
310 (C) search and escrow, including authority to act as a title marketing representative;
311 and
312 (D) title marketing representative only;
313 (vii) workers' compensation insurance;
314 (viii) personal lines insurance; and
315 (ix) surplus lines, if the producer has the property or casualty or both lines of authority.
316 (b) A limited line producer license type includes the following limited lines of
317 authority:
318 (i) limited line credit insurance;
319 (ii) travel insurance;
320 (iii) motor club insurance;
321 (iv) car rental related insurance;
322 (v) legal expense insurance; and
323 (vi) bail bond producer.
324 (c) A customer service representative license type includes the following lines of
325 authority, if held by the customer service representative's employer producer:
326 (i) life insurance, including nonvariable contracts;
327 (ii) accident and health insurance, including contracts issued to policyholders under
328 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
329 Organizations and Limited Health Plans;
330 (iii) property insurance;
331 (iv) casualty insurance, including surety and other bonds;
332 (v) workers' compensation insurance;
333 (vi) personal lines insurance; and
334 (vii) surplus lines, if the employer producer has the property or casualty or both lines of
335 authority.

336 (d) A consultant license type includes the following lines of authority:
337 (i) life insurance, including nonvariable contracts;
338 (ii) variable contracts, including variable life and annuity, if the consultant has the life
339 insurance line of authority;
340 (iii) accident and health insurance, including contracts issued to policyholders under
341 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
342 Organizations and Limited Health Plans;
343 (iv) property insurance;
344 (v) casualty insurance, including surety and other bonds;
345 (vi) workers' compensation insurance; and
346 (vii) personal lines insurance.
347 (e) A managing general agent license type includes the following lines of authority:
348 (i) life insurance, including nonvariable contracts;
349 (ii) variable contracts, including variable life and annuity, if the managing general
350 agent has the life insurance line of authority;
351 (iii) accident and health insurance, including contracts issued to policyholders under
352 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
353 Organizations and Limited Health Plans;
354 (iv) property insurance;
355 (v) casualty insurance, including surety and other bonds;
356 (vi) workers' compensation insurance; and
357 (vii) personal lines insurance.
358 (f) A reinsurance intermediary license type includes the following lines of authority:
359 (i) life insurance, including nonvariable contracts;
360 (ii) variable contracts, including variable life and annuity, if the reinsurance
361 intermediary has the life insurance line of authority;
362 (iii) accident and health insurance, including contracts issued to policyholders under
363 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
364 Organizations and Limited Health Plans;
365 (iv) property insurance;
366 (v) casualty insurance, including surety and other bonds;

(vi) workers' compensation insurance; and

(vii) personal lines insurance.

(g) A holder of licenses under Subsections (2)(a), (d), (e), and (f) has all qualifications necessary to act as a holder of a license under Subsections (2)(b) and (c).

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

(b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and Escrow Commission may by rule, with the concurrence of the commissioner and subject to Section 31A-2-404, recognize other categories for a title insurance producer line of authority not listed under Subsection (2)(a)(vi).

(4) The variable contracts, including variable life and annuity line of authority requires:

(a) licensure as a registered agent or broker by the National Association of Securities Dealers; and

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

(5) A surplus lines producer is a producer who has a surplus lines line of authority.

Section 7. Section **31A-23a-204** is amended to read:

31A-23a-204. Special requirements for title insurance producers and agencies.

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

(1) (a) A person that receives a new license under this title on or after July 1, 2007 as a title insurance agency, shall at the time of licensure be owned or managed by one or more natural persons who are licensed with the following lines of authority for at least three of the five years immediately proceeding the date on which the title insurance agency applies for a license:

(i) both a:

(A) search line of authority; and

(B) escrow line of authority; or

(ii) a search and escrow line of authority.

(b) A title insurance agency subject to Subsection (1)(a) may comply with Subsection

(1)(a) by having the title insurance agency owned or managed by:

(i) one or more natural persons who are licensed with the search line of authority for the time period provided in Subsection (1)(a); and

(ii) one or more natural persons who are licensed with the escrow line of authority for the time period provided in Subsection (1)(a).

(c) The Title and Escrow Commission may by rule ~~[made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act]~~, subject to Section 31A-2-404, exempt an attorney with real estate experience from the experience requirements in Subsection (1)(a).

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

(i) a fidelity bond;

(ii) a professional liability insurance policy; or

(iii) a financial protection:

(A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

(B) that the commissioner considers adequate.

(b) The bond or insurance required by this Subsection (2):

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

(ii) be in a face amount no less than \$50,000.

(c) The Title and Escrow Commission may by rule ~~[made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act]~~, subject to Section 31A-2-404, exempt title insurance producers from the requirements of this Subsection (2) upon a finding that, and only so long as, the required policy or bond is generally unavailable at reasonable rates.

(3) (a) (i) Every title insurance agency or producer appointed by an insurer shall maintain a reserve fund.

(ii) The reserve fund required by this Subsection (3) shall be:

(A) (I) composed of assets approved by the commissioner and the Title and Escrow Commission;

(II) maintained as a separate trust account; and

(III) charged as a reserve liability of the title insurance producer in determining the producer's financial condition; and

(B) accumulated by segregating 1% of all gross income on premiums received from the title insurance business.

(iii) The reserve fund shall contain the accumulated assets for the immediately preceding ten years as defined in Subsection (3)(a)(ii).

(iv) That portion of the assets held in the reserve fund over ten years may be:

(A) withdrawn from the reserve fund; and

(B) restored to the income of the title insurance producer.

(v) The title insurance producer may withdraw interest from the reserve fund related to the principal amount as it accrues.

(b) (i) A disbursement may not be made from the reserve fund except as provided in Subsection (3)(a) unless the title insurance producer ceases doing business as a result of:

(A) sale of assets;

(B) merger of the producer with another producer;

(C) termination of the producer's license;

(D) insolvency; or

(E) any cessation of business by the producer.

(ii) Any disbursements from the reserve fund may be made only to settle claims arising from the improper performance of the title insurance producer in providing services defined in Section 31A-23a-406.

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

(iv) The notice required by this Subsection (3)(b) shall contain:

(A) the amount of claim;

(B) the nature of the claim; and

(C) the name of the payee.

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

(ii) Any assets remaining in the reserve fund at the end of the two years specified in Subsection (3)(c)(i) may be withdrawn and restored to the former title insurance producer.

(4) Any examination for licensure shall include questions regarding the search and

examination of title to real property.

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

(6) The Title and Escrow Commission shall adopt rules, ~~[in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act]~~ subject to Section 31A-2-404, after consulting with the department and the department's test administrator, establishing an examination for a license that will satisfy this section.

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

(a) to perform only searches and examinations of title as specified in Subsection (4);

(b) to handle only escrow arrangements as specified in Subsection (5); or

(c) to act as a title marketing representative.

(8) (a) A person licensed to practice law in Utah is exempt from the requirements of Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

(b) In determining the number of policies issued by a person licensed to practice law in Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a policy to more than one party to the same closing, the person is considered to have issued only one policy.

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

Section 8. Section **31A-23a-402** is amended to read:

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

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

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

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

(C) a person whose primary interest is as a competitor of a person licensed under this

491 title; and

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

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

494 (A) assuring the nonobligatory payment of future dividends or refunds of unused

495 premiums in any specific or approximate amounts, but reporting fully and accurately past

496 experience is not false or misleading information; and

497 (B) with intent to deceive a person examining it:

498 (I) filing a report;

499 (II) making a false entry in a record; or

500 (III) wilfully refraining from making a proper entry in a record.

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

502 (A) use any business name, slogan, emblem, or related device that is misleading or

503 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee

504 already in business; or

505 (B) use any advertisement or other insurance promotional material that would cause a

506 reasonable person to mistakenly believe that a state or federal government agency:

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

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

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

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

511 (iv) A person who is not an insurer may not assume or use any name that deceptively

512 implies or suggests that person is an insurer.

513 (v) A person other than persons licensed as health maintenance organizations under

514 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to

515 itself.

516 (b) A licensee's violation creates a rebuttable presumption that the violation was also

517 committed by the insurer if:

518 (i) the licensee under this title distributes cards or documents, exhibits a sign, or

519 publishes an advertisement that violates Subsection (1)(a), with reference to a particular

520 insurer:

521 (A) that the licensee represents; or

(B) for whom the licensee processes claims; and
(ii) the cards, documents, signs, or advertisements are supplied or approved by that insurer.

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

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

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

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

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

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

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

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

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

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

(C) any money or other consideration except if approved under Section 31A-2-405; or

(D) material inducement.

(ii) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.

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

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of

classifications related to the nature and the degree of the risk covered or the expenses involved.

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

(4) (a) This Subsection (4) applies to:

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

(ii) an employee of that licensee or person who should be licensed;

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

(iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

(b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(i) tends to produce:

(A) an unreasonable restraint of the business of insurance; or

(B) a monopoly in that business; or

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

(5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

(ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

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

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

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

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

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

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

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, [~~in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~] subject to Section 31A-2-404, that define any other unfair method of competition or any other unfair or deceptive act or practice after a finding that they:

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

Section 9. Section **31A-23a-406** is amended to read:

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

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

(a) the title insurance producer is licensed with:

- (i) the title line of authority; and
- (ii) the escrow subline of authority;

(b) the title insurance producer is appointed by a title insurer authorized to do business

615 in the state;

616 (c) one or more of the following is to be issued as part of the transaction:

617 (i) an owner's policy of title insurance; or

618 (ii) a lender's policy of title insurance;

619 (d) (i) all funds deposited with the title insurance producer in connection with any

620 escrow:

621 (A) are deposited:

622 (I) in a federally insured financial institution; and

623 (II) in a trust account that is separate from all other trust account funds that are not

624 related to real estate transactions; and

625 (B) are the property of the persons entitled to them under the provisions of the escrow;

626 and

627 (ii) are segregated escrow by escrow in the records of the title insurance producer;

628 (e) earnings on funds held in escrow may be paid out of the escrow account to any

629 person in accordance with the conditions of the escrow; and

630 (f) the escrow does not require the title insurance producer to hold:

631 (i) construction funds; or

632 (ii) funds held for exchange under Section 1031, Internal Revenue Code.

633 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the

634 escrow business if:

635 (a) the escrow involves:

636 (i) a mobile home;

637 (ii) a grazing right;

638 (iii) a water right; or

639 (iv) other personal property authorized by the commissioner; and

640 (b) the title insurance producer complies with all the requirements of this section

641 except for the requirement of Subsection (1)(c).

642 (3) Funds held in escrow:

643 (a) are not subject to any debts of the title insurance producer;

644 (b) may only be used to fulfill the terms of the individual escrow under which the funds

645 were accepted; and

(c) may not be used until all conditions of the escrow have been met.

(4) Assets or property other than escrow funds received by a title insurance producer in accordance with an escrow shall be maintained in a manner that will:

(a) reasonably preserve and protect the asset or property from loss, theft, or damages; and

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

(5) (a) A check from the trust account described in Subsection (1)(d) may not be drawn, executed, or dated, or funds otherwise disbursed unless the segregated escrow account from which funds are to be disbursed contains a sufficient credit balance consisting of collected or cleared funds at the time the check is drawn, executed, or dated, or funds are otherwise disbursed.

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

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

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

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

(A) a cashier's check;

(B) a certified check;

(C) a teller's check;

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

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

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

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

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

(c) Subject to Subsections (5)(a) and (b), any material change to a settlement statement made after the final closing documents are executed must be authorized or acknowledged by date and signature on each page of the settlement statement by the one or more persons affected

677 by the change before disbursement of funds.

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

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

681 (a) Section 31A-23a-409;

682 (b) Title 46, Chapter 1, Notaries Public Reform Act; and

683 (c) any rules adopted by the Title and Escrow Commission [~~in accordance with Title~~

684 ~~63, Chapter 46a, Utah Administrative Rulemaking Act~~], subject to Section 31A-2-404, that

685 govern escrows.

686 Section 10. Section **31A-23a-415** is amended to read:

687 **31A-23a-415. Assessment on title insurance agencies or title insurers.**

688 (1) For purposes of this section:

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

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

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

692 (A) insurer;

693 (B) guarantor; or

694 (C) surety;

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

696 (A) insurer;

697 (B) guarantor; or

698 (C) surety; or

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

700 (A) soliciting;

701 (B) negotiating preliminary to execution;

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

703 (D) insuring; and

704 (E) transacting matters subsequent to the execution of the contract and arising out of

705 the contract.

706 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
707 personal property located in Utah, an owner of real or personal property, the holders of liens or

encumbrances on that property, or others interested in the property against loss or damage suffered by reason of:

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

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

(2) (a) Beginning on July 1, 1998, the commissioner may assess each title insurer and each title insurance agency an annual assessment:

(i) determined by the Title and Escrow Commission:

(A) after consultation with the commissioner; and

(B) in accordance with this Subsection (2); and

(ii) to be used for the purposes described in Subsection (3).

(b) A title insurance agency shall be assessed up to:

(i) \$200 for the first office in each county in which the title insurance agency maintains an office; and

(ii) \$100 for each additional office the title insurance agency maintains in the county described in Subsection (2)(b)(i).

(c) A title insurer shall be assessed up to:

(i) \$200 for the first office in each county in which the title insurer maintains an office;

(ii) \$100 for each additional office the title insurer maintains in the county described in Subsection (2)(c)(i); and

(iii) an amount calculated by:

(A) aggregating the assessments imposed on:

(I) title insurance agencies under Subsection (2)(b); and

(II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

(B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total costs and expenses determined under Subsection (2)(d); and

(C) multiplying:

(I) the amount calculated under Subsection (2)(c)(iii)(B); and

(II) the percentage of total premiums for title insurance on Utah risk that are premiums of the title insurer.

(d) Notwithstanding Section 31A-3-103 and ~~in accordance with Title 63, Chapter 46a,~~

~~Utah Administrative Rulemaking Act]~~ subject to Section 31A-2-404, the Title and Escrow Commission by rule shall establish the amount of costs and expenses described under Subsection (3) that will be covered by the assessment, except the costs or expenses to be covered by the assessment may not exceed \$75,000 annually.

(3) All money received by the state under this section:

(a) shall be deposited in the General Fund as a dedicated credit of the department; and

(b) may be expended by the department only to pay for any cost or expense incurred by the department in the administration, investigation, and enforcement of [~~Chapter 23a, Parts 4~~] this part and Part 5, Compensation of Producers and Consultants, related to:

(i) the marketing of title insurance; and

(ii) audits of agencies.

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

Section 11. Section **31A-26-204** is amended to read:

31A-26-204. License classifications.

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

(1) Independent adjuster license classifications include:

(a) accident and health insurance, including related service insurance under Chapter 7, Nonprofit Health Service Insurance Corporation, or 8, Health Maintenance Organizations and Limited Health Plans;

(b) property and liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety bonds; and

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

(c) service insurance;

(d) title insurance;

(e) credit insurance; and

- 770 (f) workers' compensation insurance.
- 771 (2) Public adjuster license classifications include:
- 772 (a) accident and health insurance, including related service insurance under Chapter 7
- 773 or 8;
- 774 (b) property and liability insurance, which includes:
- 775 (i) property insurance;
- 776 (ii) liability insurance;
- 777 (iii) surety bonds; and
- 778 (iv) policies containing combinations or variations of these coverages;
- 779 (c) service insurance;
- 780 (d) title insurance;
- 781 (e) credit insurance; and
- 782 (f) workers' compensation insurance.
- 783 (3) (a) The commissioner may by rule:
- 784 (i) recognize other independent adjuster or public adjuster license classifications as to
- 785 other kinds of insurance not listed under Subsection (1); and
- 786 (ii) create license classifications that grant only part of the authority arising under
- 787 another license class.
- 788 (b) Notwithstanding Subsection (3)(a), for purpose of title insurance, the Title and
- 789 Escrow Commission may make the rules provided for in Subsection (3)(a), subject to Section
- 790 31A-2-404.
- 791 Section 12. Section **61-2-12** is amended to read:
- 792 **61-2-12. Disciplinary action -- Judicial review.**
- 793 (1) (a) On the basis of a violation of Section 61-2-11, the division shall give notice to
- 794 the licensee or certificate holder and commence an adjudicative proceeding before:
- 795 (i) imposing an educational requirement;
- 796 (ii) imposing a civil penalty; or
- 797 (iii) taking any of the following actions related to a license or certificate:
- 798 (A) revoking;
- 799 (B) suspending;
- 800 (C) placing on probation; or

(D) denying the renewal, reinstatement, or reissuance.

(b) If the licensee is an active sales agent or active associate broker, the division shall inform the principal broker with whom the licensee is affiliated of the charge and of the time and place of any hearing.

(c) If the presiding officer at a hearing determines that any licensee or certificate holder is guilty of a violation of this chapter, the division by written order may:

(i) with regard to the license or certificate:

(A) suspend;

(B) revoke;

(C) place on probation; or

(D) deny renewal, reinstatement, or reissuance; or

(ii) impose a civil penalty.

(2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the complainant, may obtain agency review by the executive director and judicial review of any adverse ruling, order, or decision of the division.

(b) If the applicant, certificate holder, or licensee prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, certificate holder, or licensee as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

(c) (i) An order, ruling, or decision of the division shall take effect and become operative 30 days after the service of the order, ruling, or decision unless otherwise provided in the order.

(ii) If an appeal is taken by a licensee, the division may stay enforcement of an order, ruling, or decision in accordance with Section 63-46b-18.

(iii) The appeal shall be governed by the Utah Rules of Appellate Procedure.

(3) The commission and the director shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in all adjudicative proceedings.

(4) Subject to procedural requirements for a violation of this chapter, the division shall revoke the license of a licensee if the licensee:

(a) is a dual licensed title licensee as defined in Section 31A-2-402; and

(b) (i) provides a title insurance product or service without the approval required by
Section 31A-2-405; or
(ii) knowingly provides false or misleading information in the statement required by
Subsection 31A-2-405(2).

Section 13. Section **61-2b-29** is amended to read:

61-2b-29. Disciplinary action -- Grounds.

(1) The board may order disciplinary action against any person licensed or certified under this chapter. On the basis of any of the grounds listed in Subsection (2) for disciplinary action, board action may include:

- (a) revoking, suspending, or placing a person's license or certification on probation;
- (b) denying a person's original or renewal license or certification;
- (c) ordering remedial education; and
- (d) imposing a civil penalty upon a person not to exceed \$1,000 per violation.

(2) The following are grounds for disciplinary action under this section:

- (a) procuring or attempting to procure a license or certification under this chapter by fraud or by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;
- (b) paying money or attempting to pay money other than the fees provided for by this chapter to any member or employee of the division to procure a license or certification under this chapter;
- (c) an act or omission in the practice of real estate appraising that constitutes dishonesty, fraud, or misrepresentation;
- (d) entry of a judgment against a licensee or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
- (e) a guilty plea to a criminal offense involving moral turpitude that is held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a criminal offense involving moral turpitude;
- (f) engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;
- (g) paying a finder's fee or a referral fee to a person not licensed or certified under this chapter in connection with an appraisal of real estate or real property in this state;

(h) making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(i) violating or disregarding any provision of this chapter, an order of the board, or any rule issued under this chapter;

(j) violation of the confidential nature of governmental records to which a person registered, licensed, or certified under this chapter gained access through employment or engagement as an appraiser by a governmental agency;

(k) acceptance of a contingent fee for performing an appraisal as defined in Subsection 61-2b-2(1)(a) if in fact the fee is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion or is or was contingent upon the analysis, opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment;

(l) unprofessional conduct as defined by statute or rule; or

(m) any other conduct that constitutes dishonest dealing.

(3) Subject to procedural requirements for a violation of this chapter, the board shall revoke the license or certificate of a licensee or certificate holder if the licensee or certificate holder:

(a) is a dual licensed title licensee as defined in Section 31A-2-402; and

(b) (i) provides a title insurance product or service without the approval required by Section 31A-2-405; or

(ii) knowingly provides false or misleading information in the statement required by Subsection 31A-2-405(2).

Section 14. Section **61-2c-402** is amended to read:

61-2c-402. Disciplinary action -- Reinstatement -- Education providers.

(1) Subject to the requirements of Section 61-2c-402.1, if an individual or entity required to be licensed under this chapter violates this chapter, or an education provider required to be certified under this chapter violates this chapter, the commission, with the concurrence of the director, may:

(a) impose a civil penalty against the individual or entity in an amount not to exceed \$2,500 per violation;

894 (b) do any of the following to a license under this chapter:

895 (i) suspend;

896 (ii) revoke;

897 (iii) place on probation;

898 (iv) deny renewal; or

899 (v) deny reinstatement; or

900 (c) do both Subsections (1)(a) and (b).

901 (2) (a) If a license under this chapter is revoked, the individual or entity may apply to
902 have the license reinstated by complying with the requirements of Section 61-2c-202 for
903 licensure.

904 (b) Notwithstanding Subsection (2)(a) and except as provided in Subsection
905 61-2c-202(4)(e), if a license under this chapter is revoked, the individual or entity may not
906 apply for reinstatement of the license sooner than five years after the day on which the license
907 is revoked in accordance with this section.

908 (c) If an individual or entity whose license has been revoked applies for reinstatement
909 in accordance with Subsection (2)(b), the presiding officer may grant the application for
910 reinstatement if the presiding officer finds that:

911 (i) (A) there has been good conduct on the part of the applicant subsequent to the
912 events that led to the revocation; and

913 (B) the subsequent good conduct outweighs the events that led to the revocation; and

914 (ii) the interest of the public is not likely to be harmed by the granting of the license.

915 (3) Subject to the requirements of Section 61-2c-402.1, if an individual or entity
916 required to be licensed under this chapter violates this chapter, or an education provider
917 required to be certified under this chapter violates this chapter, the presiding officer in an
918 adjudicative proceeding commenced after a person or an entity applies for an original or
919 renewed license may:

920 (a) deny an application for an original license;

921 (b) deny an application for renewal;

922 (c) deny an application for reinstatement; or

923 (d) issue or renew the license but:

924 (i) place the license on probation;

925 (ii) suspend the license for a period of time;
926 (iii) impose a civil penalty not to exceed \$2,500 per violation; or
927 (iv) any combination of Subsections (3)(d)(i) through (iii).
928 (4) Subject to procedural requirements for a violation of this chapter, the commission
929 shall revoke the license or certificate of a licensee or certificate holder if the licensee or
930 certificate holder:
931 (a) is a dual licensed title licensee as defined in Section 31A-2-402; and
932 (b) (i) provides a title insurance product or service without the approval required by
933 Section 31A-2-405; or
934 (ii) knowingly provides false or misleading information in the statement required by
935 Subsection 31A-2-405(2).

Fiscal Note**H.B. 415 2nd Sub. (Gray) - Title Insurance and Real Estate Related
Transactions and Regulation**

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. The bill will allow real estate agents, real estate title appraisers and residential mortgage brokers to obtain licenses to provide title insurance products and services.
