

**TITLE INSURANCE RECOVERY,
EDUCATION, AND RESEARCH FUND ACT**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Dan R. Eastman

LONG TITLE

General Description:

This bill modifies the Insurance Code to create the Title Insurance Recovery, Education, and Research Fund and make related amendments.

Highlighted Provisions:

This bill:

- ▶ modifies requirements for title insurance producer reserve accounts;
- ▶ enacts the Title Insurance Recovery, Education, and Research Fund Act, including:
 - defining terms;
 - addressing disciplinary actions;
 - creating the fund;
 - providing for assessments;
 - providing for how the fund may be used;
 - providing procedures for making claims against the fund; and
 - creating subrogation rights; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2008.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **31A-23a-204**, as last amended by Laws of Utah 2007, Chapters 307 and 325

31 ENACTS:

32 **31A-40-101**, Utah Code Annotated 1953

33 **31A-40-102**, Utah Code Annotated 1953

34 **31A-40-103**, Utah Code Annotated 1953

35 **31A-40-201**, Utah Code Annotated 1953

36 **31A-40-202**, Utah Code Annotated 1953

37 **31A-40-203**, Utah Code Annotated 1953

38 **31A-40-301**, Utah Code Annotated 1953

39 **31A-40-302**, Utah Code Annotated 1953

40 **31A-40-303**, Utah Code Annotated 1953

41 **31A-40-304**, Utah Code Annotated 1953

42 **31A-40-305**, Utah Code Annotated 1953

43 **31A-40-306**, Utah Code Annotated 1953



44
45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **31A-23a-204** is amended to read:

47 **31A-23a-204. Special requirements for title insurance producers and agencies.**

48 [~~Title~~] A title insurance [~~producers~~] producer, including [~~agencies~~] an agency, shall be
49 licensed in accordance with this chapter, with the additional requirements listed in this section.

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

55 (i) both a:

56 (A) search line of authority; and

57 (B) escrow line of authority; or

58 (ii) a search and escrow line of authority.

59 (b) A title insurance agency subject to Subsection (1)(a) may comply with Subsection
60 (1)(a) by having the title insurance agency owned or managed by:

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

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

65 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
66 exempt an attorney with real estate experience from the experience requirements in Subsection
67 (1)(a).

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

70 (i) a fidelity bond;

71 (ii) a professional liability insurance policy; or

72 (iii) a financial protection:

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

74 (B) that the commissioner considers adequate.

75 (b) The bond, insurance, or financial protection required by this Subsection (2):

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

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

80 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,
81 exempt title insurance producers from the requirements of this Subsection (2) upon a finding
82 that, and only so long as, the required policy or bond is generally unavailable at reasonable
83 rates.

84 (3) (a) ~~(i) Every~~ A title insurance agency or producer appointed by an insurer shall
85 maintain a reserve fund to the extent required by this Subsection (3).

86 ~~[(ii) The reserve fund required by this Subsection (3) shall be:]~~

87 ~~[(A) (i) composed of assets approved by the commissioner and the Title and Escrow
88 Commission;]~~

89 ~~[(H) maintained as a separate trust account; and]~~

90 ~~[(H)] charged as a reserve liability of the title insurance producer in determining the~~
91 ~~producer's financial condition; and]~~

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

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

96 ~~[(iv) That] (b) On or after July 1, 2008, a title insurance agency or producer may not~~
97 ~~deposit monies to a reserve fund required by this Subsection (3).~~

98 (c) On or after July 1, 2008, a title insurance agency or producer for the portion of the
99 assets held in the reserve fund over the preceding ten years may [be]:

100 ~~[(A) withdrawn] (i) withdraw from the reserve fund[; and] in accordance with a time~~
101 ~~schedule adopted by the title insurance agency or producer that allows:~~

102 (A) all the monies to be withdrawn in one year; or

103 (B) the monies to be withdrawn in equal partial withdrawals of principal over a time
104 period of two years, three years, four years, five years, or ten years; and

105 ~~[(B) restored] (ii) restore the amounts withdrawn to the income of the title insurance~~
106 ~~producer.~~

107 ~~[(v)] (d) The title insurance producer may withdraw interest from the reserve fund~~
108 ~~related to the principal amount as it accrues.~~

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

111 (A) a sale of assets;

112 (B) a merger of the producer with another producer;

113 (C) a termination of the producer's license;

114 (D) an insolvency; or

115 (E) any cessation of business by the producer.

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

119 ~~(iii) The commissioner shall be notified ten days before any [disbursements]~~
120 ~~disbursement from the reserve fund.~~

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

122 (A) the amount of claim;

123 (B) the nature of the claim; and

124 (C) the name of the payee.

125 ~~(c)~~ (f) (i) ~~The~~ Except as provided in Subsection (3)(c), the reserve fund shall be
126 maintained by the title insurance producer or the title insurance producer's representative for a
127 period of two years after the day on which the title insurance producer ceases doing business.

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

130 (4) Any examination for licensure shall include questions regarding the search and
131 examination of title to real property.

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

135 (6) The Title and Escrow Commission shall adopt rules, subject to Section 31A-2-404,
136 after consulting with the department and the department's test administrator, establishing an
137 examination for a license that will satisfy this section.

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

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

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

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

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

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

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

151 Section 2. Section **31A-40-101** is enacted to read:

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**CHAPTER 40. TITLE INSURANCE RECOVERY,
EDUCATION, AND RESEARCH FUND ACT**

Part 1. General Provisions

31A-40-101. Title.

This chapter is known as the "Title Insurance Recovery, Education, and Research Fund Act."

Section 3. Section **31A-40-102** is enacted to read:

31A-40-102. Definitions.

As used in this chapter:

(1) "Commission" means the Title and Escrow Commission created in Section

31A-2-403.

(2) "Fund" means the Title Insurance Recovery, Education, and Research Fund created in Section 31A-40-201.

(3) "Title insurance licensee" means:

(a) a title insurance agency; or

(b) a title insurance producer.

Section 4. Section **31A-40-103** is enacted to read:

31A-40-103. Authority to take disciplinary action not limited.

(1) This chapter does not limit the authority of the commissioner or the commission to take disciplinary action against a title insurance licensee for a violation of this title or rules made by the department or commission under this title.

(2) The repayment in full of obligations to the fund by a title insurance licensee does not nullify or modify the effect of another disciplinary proceeding brought pursuant to this title or rules and regulations made by the department or commission under this title.

Section 5. Section **31A-40-201** is enacted to read:

Part 2. Creation of Fund

31A-40-201. Creation of Title Insurance Recovery, Education, and Research Fund.

(1) There is created a restricted special revenue fund to be known as the "Title Insurance Recovery, Education, and Research Fund."

(2) The fund shall consist of:

183 (a) assessments on title insurance producers made under this chapter;

184 (b) amounts collected under Section 31A-40-305; and

185 (c) interest earned on the fund.

186 (3) Interest on fund monies shall be deposited into the fund.

187 (4) The department shall administer the fund.

188 Section 6. Section **31A-40-202** is enacted to read:

189 **31A-40-202. Assessments.**

190 (1) Beginning January 1, 2009, a title insurance agency licensed under this title shall
191 pay an annual assessment determined by the commission by rule made in accordance with Title
192 63, Chapter 46a, Utah Administrative Rulemaking Act, except that the annual assessment:

193 (a) may not exceed \$1,000; and

194 (b) shall be determined on the basis of title insurance premium volume.

195 (2) Beginning January 1, 2009, an individual who applies for a license or renewal of a
196 license as a title insurance producer, shall pay in addition to any other fee required by this title,
197 an assessment no to exceed \$20, as determined by the commission by rule made in accordance
198 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, except that if the individual
199 holds more than one license, the total of all assessments under this Subsection (2) may not
200 exceed \$20 in a fiscal year.

201 (3) (a) Subject to Subsection (3)(b), a title insurance licensee licensed on July 1, 2008
202 shall pay to the department an assessment equal to the greater of:

203 (i) \$1,000; or

204 (ii) 2% of the balance as of July 1, 2008 in the title insurance licensee's reserve account
205 required under Subsection 31A-23a-204(3).

206 (b) If the aggregate amount collected from title insurance licensees under Subsection
207 (3)(a) exceeds \$250,000, the commission may reduce the assessment by an equal percentage
208 for all title insurance licensees required to pay the assessment under Subsection (3)(a).

209 (c) A title insurance licensee required to pay an assessment under Subsection (3)(a)
210 shall pay the assessment to the department by no later than August 1, 2008.

211 (4) The department may not assess a title insurance licensee an assessment for
212 purposes of the fund if that assessment is not expressly provided for in this section.

213 Section 7. Section **31A-40-203** is enacted to read:

214 **31A-40-203. Use of monies.**

215 (1) Monies in the fund may be used to pay claims made under Part 3, Claims on Fund.

216 (2) (a) Except as limited by Subsection (2)(b), monies in the fund in excess of

217 \$250,000 may be used by the commissioner, with the consent of the commission, to:

218 (i) investigate violations of this chapter related to fraud by a title insurance licensee;

219 (ii) conduct education and research in the field of title insurance; or

220 (iii) audit or review a title insurance licensee's:

221 (A) escrow and trust account;

222 (B) financial condition;

223 (C) search and examine procedures; or

224 (D) compliance with applicable statutes and rules.

225 (b) The commissioner may not use more than 75% of monies collected under this

226 chapter in a fiscal year from assessments and interest for the purposes outlined in this

227 Subsection (2).

228 (3) An audit conducted under this section is confidential.

229 Section 8. Section **31A-40-301** is enacted to read:

230 **Part 3. Claims on Fund**

231 **31A-40-301. Procedure for making a claim against the fund.**

232 (1) (a) To bring a claim against the fund a person shall notify the department within 30

233 business days of the day on which the person files an action against a title insurance licensee

234 alleging the following related to a title insurance transaction:

235 (i) fraud;

236 (ii) misrepresentation; or

237 (iii) deceit.

238 (b) The notification required by Subsection (1) shall be:

239 (i) in writing; and

240 (ii) signed by the person who provides the notice.

241 (c) Within 30 days of the day on which the department receives a notice under

242 Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).

243 (2) (a) Subject to the other provisions in this section, a person who provides the notice

244 required under Subsection (1) may maintain a claim against the fund if:

- 245 (i) in an action described in Subsection (1), the person obtains a final judgment in a
246 court of competent jurisdiction in this state against a title insurance licensee;
- 247 (ii) all proceedings including appeals related to the final judgment described in
248 Subsection (2)(a)(i) are at an end; and
- 249 (iii) the person files a verified petition in the court where the judgment is entered for an
250 order directing payment from the fund for the uncollected actual damages included in the
251 judgment and unpaid.
- 252 (b) A court may not direct the payment from the fund of:
- 253 (i) punitive damages;
- 254 (ii) attorney fees;
- 255 (iii) interest; or
- 256 (iv) court costs.
- 257 (c) Regardless of the number of claimants or parcels of real estate involved in a single
258 real estate transaction, the liability of the fund may not exceed:
- 259 (i) \$15,000 for a single real estate transaction; or
- 260 (ii) \$50,000 for all transactions of a title insurance license.
- 261 (d) A person shall:
- 262 (i) serve the verified petition required by Subsection (2)(a) on the department; and
- 263 (ii) file an affidavit of service with the court.
- 264 (3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days
265 after the day on which the department is served.
- 266 (b) The person who files the petition may recover from the fund only if the person
267 shows all of the following:
- 268 (i) the person is not a spouse of the judgment debtor or the personal representative of
269 the spouse;
- 270 (ii) the person complied with this chapter;
- 271 (iii) the person has obtained a final judgment in accordance with this section indicating
272 the amount of the judgment awarded;
- 273 (iv) the amount still owing on the judgment at the date of the petition;
- 274 (v) (A) the person has had a writ of execution issued under the judgment, and the
275 officer executing the writ has returned showing that no property subject to execution in

276 satisfaction of the judgment could be found; or

277 (B) that the amount realized upon the execution levied against the property of the
278 judgment debtor is insufficient to satisfy the judgement;

279 (vi) the person has made reasonable searches and inquiries to ascertain whether the
280 judgment debtor has any interest in property, real or personal, that may satisfy the judgment;
281 and

282 (vii) the person has exercised reasonable diligence to secure payment of the judgment
283 from the assets of the judgment debtor.

284 (4) If the person described in Subsection (3) satisfies the court that it is not practicable
285 for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through
286 (vii), the court may waive those requirements.

287 (5) (a) A judgment that is the basis for a claim against the fund may not have been
288 discharged in bankruptcy.

289 (b) If a bankruptcy proceeding is still open or is commenced during the pendency of the
290 claim, the person bringing a claim against the fund shall obtain an order from the bankruptcy
291 court declaring the judgement and debt to be nondischargeable.

292 Section 9. Section **31A-40-302** is enacted to read:

293 **31A-40-302. Department's authority to act upon receipt of petition.**

294 (1) Upon receipt of a petition required by Section 31A-40-301, the department may
295 answer, initiate review proceedings of its own, or appear in any proceeding:

296 (a) in the name of the defendant to the action; or

297 (b) on behalf of the fund.

298 (2) Subject to court approval, the department may compromise a claim on the basis of
299 an application of the person who files the petition.

300 Section 10. Section **31A-40-303** is enacted to read:

301 **31A-40-303. Court determination and order.**

302 Subject to the requirements of this part, if the court determines that a claim should be
303 levied against the fund, the court shall enter an order directing the department to pay from the
304 fund that portion of the petitioner's judgment that is payable from the fund.

305 Section 11. Section **31A-40-304** is enacted to read:

306 **31A-40-304. Insufficient funds to satisfy judgment.**

307 If the monies in the fund are insufficient to satisfy a claim ordered to be paid under
308 Section 31A-40-303, when sufficient money is in the fund, the department shall pay a person
309 with an unpaid claim:

310 (1) in the order that petitions related to unpaid claims are originally served on the
311 department; and

312 (2) an amount equal to the sum of:

313 (a) the unpaid claim; and

314 (b) interest on the unpaid claim at a rate of 5% per annum from the date the court
315 orders payment from the fund until the day on which the claim is paid.

316 Section 12. Section **31A-40-305** is enacted to read:

317 **31A-40-305. Department subrogated -- Authority to revoke license.**

318 (1) (a) If the department makes payment from the fund, the department is subrogated to
319 all the rights of the person who received monies from the fund for the amounts paid out of the
320 fund.

321 (b) Any amounts recovered by the department under the subrogated rights shall be
322 deposited in the fund.

323 (2) (a) The license of a title insurance licensee for whom payment from the fund is
324 made under this chapter is automatically revoked.

325 (b) Before a title insurance licensee whose license is revoked under this section may
326 apply for a new license under this title, the title insurance licensee shall pay to the department
327 for deposit in the fund:

328 (i) the amounts paid by the fund because of an action brought against the title insurance
329 licensee; and

330 (ii) interest at a rate determined by the commissioner with the concurrence of the
331 commission.

332 Section 13. Section **31A-40-306** is enacted to read:

333 **31A-40-306. Failure to comply constitutes a waiver.**

334 The failure of a person to comply with this chapter constitutes a waiver of any right
335 provided under this chapter.

336 Section 14. **Effective date.**

337 This bill takes effect on July 1, 2008.

Legislative Review Note
as of 2-8-08 7:01 PM

Office of Legislative Research and General Counsel

H.B. 466 - Title Insurance Recovery, Education, and Research Fund Act

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will generate additional revenue to a new restricted account, Title Recovery, Education and Research Fund in FY 2009 of \$250,000 and \$250,000 in FY 2010.

| | <u>FY 2008</u> <u>Approp.</u> | <u>FY 2009</u> <u>Approp.</u> | <u>FY 2010</u> <u>Approp.</u> | <u>FY 2008</u> <u>Revenue</u> | <u>FY 2009</u> <u>Revenue</u> | <u>FY 2010</u> <u>Revenue</u> |
|------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| Restricted Funds | \$0 | \$0 | \$0 | \$0 | \$250,000 | \$250,000 |
| Total | \$0 | \$0 | \$0 | \$0 | \$250,000 | \$250,000 |

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments or individuals. Certain businesses will be affected due to changes in assessments.