

TITLE AND ESCROW COMMISSION RELATED

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Insurance Code to address scope of authority of the Title and Escrow Commission.

Highlighted Provisions:

This bill:

- ▶ prohibits the Title and Escrow Commission from setting a minimum charge or fee for an escrow settlement service; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-2-402, as last amended by Laws of Utah 2007, Chapter 325

31A-2-404, as last amended by Laws of Utah 2008, Chapter 382

31A-19a-209, as last amended by Laws of Utah 2007, Chapter 325

31A-23a-402, as last amended by Laws of Utah 2008, Chapter 382



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

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

30 **31A-2-402. Definitions.**

31 As used in this part:

32 (1) "Commission" means the Title and Escrow Commission created in Section
33 31A-2-403.

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

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

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

38 (b) a license or certificate under:

39 (i) Title 61, Chapter 2, Division of Real Estate [~~Division~~];

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

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

42 (4) "Escrow settlement service" means a service provided in connection with a
43 prospective or actual settlement to execute one or more legally binding documents regarding:

44 (a) a lien on property that is subject to a mortgage loan; or

45 (b) the conveyance of an interest in real property.

46 [~~4~~] (5) "Real Estate Commission" means the Real Estate Commission created in
47 Section 61-2-5.5.

48 [~~5~~] (6) "Title licensee" means a person licensed under this title as:

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

50 (b) a producer with:

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

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

53 (c) a title insurance adjuster.

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

55 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

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

58 (a) title insurance; and

- 59 (b) escrow conducted by a title licensee or title insurer.
- 60 (2) The commission shall:
- 61 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
62 subject to ~~[Subsection]~~ Subsections (3) and (4), make rules for the administration of the
63 provisions in this title related to title insurance including rules related to:
- 64 (i) rating standards and rating methods for a title ~~[agencies and producers]~~ agency or
65 producer as provided in Section 31A-19a-209;
- 66 (ii) the licensing for a title licensee, including the licensing requirements of Sections
67 31A-23a-203 and 31A-23a-204;
- 68 (iii) continuing education requirements of Section 31A-23a-202;
- 69 (iv) examination procedures, after consultation with the department and the
70 department's test administrator when required by Section 31A-23a-204; and
- 71 (v) standards of conduct for a title licensee;
- 72 (b) concur in the issuance and renewal of ~~[licenses]~~ a license in accordance with
73 Section 31A-23a-105 or 31A-26-203;
- 74 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the
75 department, ~~[all fees]~~ a fee imposed by this title on a title licensee;
- 76 (d) in accordance with Section 31A-23a-415 determine, after consulting with the
77 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;
- 78 (e) conduct ~~[all]~~ an administrative ~~[hearings]~~ hearing not delegated by the commission
79 to an administrative law judge related to the:
- 80 (i) licensing of ~~[any]~~ an applicant;
- 81 (ii) conduct of ~~[any]~~ a title licensee; or
- 82 (iii) approval of a continuing education ~~[programs]~~ program required by Section
83 31A-23a-202;
- 84 (f) with the concurrence of the commissioner, approve assets that can be included in a
85 reserve fund ~~[required by]~~ under Section 31A-23a-204;
- 86 (g) with the concurrence of the commissioner, approve a continuing education
87 ~~[programs]~~ program required by Section 31A-23a-202;
- 88 (h) with the concurrence of the commissioner, impose penalties:
- 89 (i) under this title related to:

90 (A) title insurance; or
91 (B) escrow conducted by a title licensee;
92 (ii) after investigation by the department in accordance with Part 3, Procedures and
93 Enforcement; and
94 (iii) that are enforced by the commissioner;
95 (i) advise the commissioner on the administration and enforcement of [~~any matters~~] a
96 matter affecting the title insurance industry;
97 (j) advise the commissioner on [~~matters~~] a matter affecting the department's budget
98 related to title insurance; and
99 (k) perform other duties as provided in this title.
100 (3) The commission may make a rule under this title only if at the time the commission
101 files its proposed rule and rule analysis with the Division of Administrative Rules in
102 accordance with Section 63G-3-301, the commission provides the Real Estate Commission that
103 same information.
104 (4) The commission may not set a minimum charge or fee for an escrow settlement
105 service.
106 [~~(4)~~] (5) (a) The commissioner shall annually report the information described in
107 Subsection [~~(4)~~] (5)(b) in writing to:
108 (i) the commission; and
109 (ii) the Business and Labor Interim Committee.
110 (b) The information required to be reported under this Subsection [~~(4)~~] (5):
111 (i) may not identify a person; and
112 (ii) shall include:
113 (A) the number of complaints the department receives with regard to transactions
114 involving title insurance or a title licensee during the calendar year immediately preceding the
115 report;
116 (B) the type of complaints described in Subsection [~~(4)~~] (5)(b)(ii)(A); and
117 (C) for each complaint described in Subsection [~~(4)~~] (5)(b)(ii)(A):
118 (I) any action taken by the department with regard to the complaint; and
119 (II) the time-period beginning the day on which a complaint is made and ending the
120 day on which the department determines it will take no further action with regard to the

121 complaint.

122 Section 3. Section **31A-19a-209** is amended to read:

123 **31A-19a-209. Special provisions for title insurance.**

124 (1) (a) (i) The Title and Escrow Commission shall adopt rules [~~subject to Section~~
125 ~~31A-2-404,~~] establishing rate standards and rating methods for a title [~~agencies and producers~~
126 ~~agency or producer, subject to Section 31A-2-404 including the prohibition in Subsection~~
127 ~~31A-2-404(4) against the Title and Escrow Commission setting a minimum charge or fee for~~
128 ~~an escrow settlement service.~~

129 (ii) The commissioner shall determine compliance with rate standards and rating
130 methods for a title insurance [~~insurers, agencies, and producers~~] insurer, agency, or producer.

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

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

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

139 (2) (a) [~~Every~~] A title insurance insurer, agency, [~~and~~] or title insurance producer shall
140 file with the commissioner:

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

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

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

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

150 (ii) [~~Any changes~~] A change to the schedule of the escrow charges required to be filed
151 by Subsection (2)(a)(ii) [~~take~~] takes effect on the day specified in the change to the schedule of

152 escrow charges, except that the effective date may not be less than 30 calendar days after the
153 day on which the change to the schedule of escrow charges is filed.

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

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

158 (i) the insurance business; or

159 (ii) the escrow business; or

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

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

164 (b) [~~Each~~] A change or amendment shall:

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

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

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

171 (5) While [~~the~~] a schedule of rates [~~and~~] or a schedule of charges [~~are~~] is effective, a
172 copy of [~~each~~] the schedule shall be:

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

174 (i) the title insurance insurer in this state;

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

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

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

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

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

183 Section 4. Section 31A-23a-402 is amended to read:

184 **31A-23a-402. Unfair marketing practices -- Communication -- Inducement --**
185 **Unfair discrimination -- Coercion or intimidation -- Restriction on choice.**

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

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

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

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

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

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

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

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

200 (I) filing a report;

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

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

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

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

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

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

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

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

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

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

214 implies or suggests that person is an insurer.

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

218 (b) A licensee's violation creates a rebuttable presumption that the violation was also
219 committed by the insurer if:

220 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
221 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
222 insurer:

223 (A) that the licensee represents; or

224 (B) for whom the licensee processes claims; and

225 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
226 insurer.

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

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

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

234 (A) an insurer from reducing premiums because of expense savings;

235 (B) an insurer from providing to a policyholder or insured one or more incentives to
236 participate in programs or activities designed to reduce claims or claim expenses;

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

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

239 (iv) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah
240 Administrative Rulemaking Act, to define what constitutes an incentive described in
241 Subsection (2)(a)(iii)(B).

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

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

245 any title insurance business:

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

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

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

250 (D) material inducement.

251 (ii) "Charge made incident to the issuance of the title insurance" includes escrow
252 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
253 after consultation with the commissioner and subject to Section 31A-2-404, including the
254 prohibition in Subsection 31A-2-404(4) against the Title and Escrow Commission setting a
255 minimum charge or fee for an escrow settlement service.

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

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

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

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

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

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

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

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

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

275 (i) tends to produce:

- 276 (A) an unreasonable restraint of the business of insurance; or
- 277 (B) a monopoly in that business; or
- 278 (ii) results in an applicant purchasing or replacing an insurance contract.

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

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

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

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

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

295 (b) A licensee whose license is suspended, limited, or revoked under Section
296 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
297 commissioner on demand.

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

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

306 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the

307 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define any
308 other unfair method of competition or any other unfair or deceptive act or practice after a
309 finding that they:

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

Legislative Review Note
as of **2-17-09 2:00 PM**

Office of Legislative Research and General Counsel

S.B. 268 - Title and Escrow Commission Related Amendments

Fiscal Note

2009 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 individuals, businesses, or local governments.
