

MOTOR VEHICLE INSURANCE AMENDMENT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions relating to motor vehicle insurance.

Highlighted Provisions:

This bill:

► provides that an individual is subject to the insurance adjusting license requirement if:

- the individual is engaged in insurance adjusting as a regular salaried employee of, and not an independent contractor for, an insurer; and

- the individual or the insurer that the individual is working for as a regular salaried employee is found liable for ~~§~~ **[a bad faith cause of action] breach of the implied**

covenant of good faith and fair dealing ~~←§~~ with respect to a motor vehicle insurance coverage policy claim by court of competent jurisdiction in a final unappealable judgment or order; and

► makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **31A-26-201**, as last amended by Laws of Utah 2010, Chapter 10

29

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

31 Section 1. Section **31A-26-201** is amended to read:

32 **31A-26-201. Requirement of license.**

33 (1) Except as provided in Subsection (2):

34 (a) a person may not perform, offer to perform, or solicit the opportunity to perform an
35 act of insurance adjusting without a valid license under Section 31A-26-203; and

36 (b) a person may not use the insurance adjusting services of another if the person
37 knows or should know that the one providing these services does not have a license as required
38 by law.

39 (2) The following are exempt from the license requirement of Subsection (1), when
40 acting in the indicated capacity:

41 (a) except as provided in Subsection (4), an individual engaged in insurance adjusting
42 as a regular salaried employee of, and not an independent contractor for, an insurer;

43 (b) an arbitrator or an umpire selected by the claimant and insurer to decide, alone or
44 with others, whether a claim should be paid and how much should be paid;

45 (c) an attorney at law acting in an attorney-client relationship;

46 (d) an insurance producer, but only as to:

47 (i) a class of insurance for which the insurance producer is licensed under Section
48 31A-23a-106; and

49 (ii) a claim adjusted on the request of an insurer for which the insurance producer is a
50 producer;

51 (e) a regular salaried employee of, and not an independent contractor for, a
52 policyholder or claimant under an insurance policy;

53 (f) an employee of a licensed insurance adjuster who provides only administrative or
54 clerical assistance;

55 (g) an individual who does not do insurance adjusting under Section 31A-26-102, but
56 who is specially employed to obtain facts about a loss for or furnish technical assistance to a
57 licensed adjuster or a company adjuster, including:

58 (i) a photographer;

59 (ii) an estimator;
 60 (iii) an appraiser;
 61 (iv) a marine surveyor;
 62 (v) a private detective;
 63 (vi) an engineer; and
 64 (vii) a handwriting expert;
 65 (h) a holder of a group insurance policy, with respect to administrative activities in
 66 connection with that insurance policy, who receives no compensation for the policyholder's
 67 services beyond the actual expenses estimated on a reasonable basis;

68 (i) an individual engaged in insurance adjusting as a regular salaried employee of, and
 69 not an independent contractor for, an administrator licensed under Chapter 25, Third Party
 70 Administrators; or

71 (j) a person who gives advice or assistance without compensation or expectation of
 72 compensation, direct or indirect.

73 (3) A claim settlement between an insurer and an insured or a claimant under an
 74 insurance policy may not be considered invalid as a result of a violation of this section.

75 (4) (a) Notwithstanding Subsection (2), an individual is subject to the insurance
 76 adjusting license requirement under Subsection (1) if:

77 (i) the individual is engaged in insurance adjusting as a regular salaried employee of,
 78 and not an independent contractor for, an insurer; and

79 (ii) the individual or the insurer that the individual is working for as a regular salaried
 80 employee is found liable for ~~§~~→ [a bad faith cause of action] breach of the implied covenant of
 80a good faith and fair dealing, based upon evidence supporting a pattern of conduct as to indicate
 80b a general business practice by an insurer or a person representing an insurer, ←§ with respect
 80c to a motor vehicle
 81 insurance coverage policy claim by court of competent jurisdiction in a final unappealable
 82 judgment or order.

83 (b) The requirement under Subsection (4)(a) to be licensed shall begin 30 days after the
 84 final unappealable judgment or order is entered that finds the individual or insurer liable for a
 85 bad faith cause of action and shall remain in effect for five years after the final unappealable
 86 judgment or order is entered.

Legislative Review Note
as of 2-28-11 8:35 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 310

SHORT TITLE: **Motor Vehicle Insurance Amendment**

SPONSOR: **Madsen, M.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.