

1 TITLE INSURANCE REPORTING ~~H→~~ AND ASSESSMENT ~~←H~~

1a AMENDMENTS

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Marc K. Roberts

5 Senate Sponsor: Alvin B. Jackson

6

7 LONG TITLE

8 General Description:

9 This bill amends the Insurance Code related to title insurance reporting.

10 Highlighted Provisions:

11 This bill:

12 ▶ exempts an individual insurance producer, who is ~~H→~~ [not] ~~←H~~ an employee of
12a a title insurer

13 or who is ~~H→~~ [not] ~~←H~~ designated by an agency title insurance producer, from certain title
14 insurance reporting requirements and assessments;

15 ▶ provides a limited exemption for an individual licensed to practice law in Utah; and

16 ▶ makes technical changes.

17 Money Appropriated in this Bill:

18 None

19 Other Special Clauses:

20 None

21 Utah Code Sections Affected:

22 AMENDS:

23 31A-19a-209, as last amended by Laws of Utah 2013, Chapter 319

24 31A-23a-203.5, as last amended by Laws of Utah 2013, Chapter 319

25 31A-23a-413, as last amended by Laws of Utah 2013, Chapter 319

26 31A-23a-415, as last amended by Laws of Utah 2013, Chapter 319



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

29 Section 1. Section **31A-19a-209** is amended to read:

30 **31A-19a-209. Special provisions for title insurance.**

31 (1) (a) (i) The Title and Escrow Commission shall adopt rules subject to Section
32 [31A-2-404](#), establishing rate standards and rating methods for individual title insurance
33 producers and agency title insurance producers.

34 (ii) The commissioner shall determine compliance with rate standards and rating
35 methods for title [~~insurance~~] insurers, individual title insurance producers, and agency title
36 insurance producers.

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

42 (i) the maintenance of title plants; and

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

45 (2) (a) [~~Every~~] A title [~~insurance~~] insurer [~~or~~], an agency title insurance producer, [~~and~~
46 ~~every~~] or an individual title insurance producer who is not an employee of a title insurer or who
47 is not designated by an agency title insurance producer[;] shall file with the commissioner:

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

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

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

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

57 (ii) Any changes to the schedule of the escrow charges required to be filed by
58 Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow

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

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

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

66 (i) the insurance business; or

67 (ii) the escrow business; or

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

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

72 (b) Each change or amendment shall:

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

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

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

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

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

82 (i) the title [insurance] insurer in this state;

83 (ii) the title [insurance] insurer's individual title insurance producers or agency title
84 insurance producers in this state; and

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

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

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

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

92 Section 2. Section 31A-23a-203.5 is amended to read:

93 **31A-23a-203.5. Errors and omissions coverage requirements.**

94 (1) In accordance with this section, a resident individual producer shall ensure that the
95 resident individual producer is covered:

96 (a) for the legal liability of the resident individual producer as the result of an
97 erroneous act or failure to act in the resident individual producer's capacity as a producer; and

98 (b) at all times during the term of the resident individual producer's license.

99 (2) The coverage required by Subsection (1) shall consist of:

100 (a) a policy naming the resident individual producer;

101 (b) a policy naming the agency that designates the resident individual producer in
102 accordance with this chapter; or

103 (c) a written agreement by an insurer or group of affiliated insurers, on behalf of a
104 resident individual producer who is or will become an exclusive agent of the insurer or group
105 of affiliated insurers, under which the insurer or group of affiliated insurers agrees to assume
106 responsibility, to the benefit of an aggrieved person, for legal liability of the resident individual
107 producer as the result of an erroneous act or failure to act in the resident individual producer's
108 capacity as a producer for the insurer or group of affiliated insurers.

109 (3) The commissioner may, by rule made in accordance with Title 63G, Chapter 3,
110 Utah Administrative Rulemaking Act, provide for:

111 (a) the terms and conditions of the coverage required under Subsection (1); and

112 (b) if the coverage required by Subsection (1) is terminated during a resident individual
113 producer's license term, requirements to:

114 (i) provide notice; and

115 (ii) replace the coverage.

116 (4) An individual title insurance producer is considered to be in compliance with this
117 section when:

118 (a) the individual title insurance producer who is not designated by an agency title
119 producer [~~and~~] maintains the individual title insurance producer's own bond, policy, or other
120 financial protection in accordance with Subsection 31A-23a-204(2); [~~or~~]

121 (b) the individual title insurance producer is designated by an agency title insurance
122 producer that maintains a bond, policy, or other financial protection in accordance with
123 Subsection [31A-23a-204\(2\)](#)[~~;~~]; or

124 (c) the individual title insurance producer is an employee of and is appointed by a title
125 insurer.

126 (5) Notwithstanding the other provisions of this section, a resident individual producer
127 is exempt from the requirement to maintain coverage as provided in this section during a
128 period in which the resident individual producer is not either:

129 (a) appointed by an insurer under this title; or

130 (b) designated by an agency under this title.

131 (6) A limited lines producer is exempt from this section.

132 Section 3. Section **31A-23a-413** is amended to read:

133 **31A-23a-413. Title insurance producer's annual report.**

134 An agency title insurance producer and an individual title insurance producer who is not
135 an employee of a title insurer or who has not been designated by an agency title insurance
136 producer shall annually file with the commissioner, by a date and in a form the commissioner
137 specifies by rule, a verified statement of the agency title insurance producer's or individual title
138 insurance producer's financial condition, transactions, and affairs as of the end of the preceding
139 calendar year.

140 Section 4. Section **31A-23a-415** is amended to read:

141 **31A-23a-415. Assessment on agency title insurance producers or title insurers --**
142 **Account created.**

143 (1) For purposes of this section:

144 (a) "Premium" is as defined in Subsection [59-9-101\(3\)](#).

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

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

147 (A) insurer;

148 (B) guarantor; or

149 (C) surety;

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

151 (A) insurer;

- 152 (B) guarantor; or
- 153 (C) surety; or
- 154 (iii) transacting or proposing to transact any phase of title insurance, including:
- 155 (A) soliciting;
- 156 (B) negotiating preliminary to execution;
- 157 (C) executing of a contract of title insurance;
- 158 (D) insuring; and
- 159 (E) transacting matters subsequent to the execution of the contract and arising out of
- 160 the contract.

161 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
162 personal property located in Utah, an owner of real or personal property, the holders of liens or
163 encumbrances on that property, or others interested in the property against loss or damage
164 suffered by reason of:

- 165 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
- 166 property; or
- 167 (ii) invalidity or unenforceability of any liens or encumbrances on the property.

168 (2) (a) The commissioner may assess each title insurer, each individual title insurance
169 producer who is not an employee of a title insurer or who is not designated by an agency title
170 insurance producer, and each agency title insurance producer an annual assessment:

- 171 (i) determined by the Title and Escrow Commission:
- 172 (A) after consultation with the commissioner; and
- 173 (B) in accordance with this Subsection (2); and
- 174 (ii) to be used for the purposes described in Subsection (3).

175 (b) An agency title insurance producer and individual title insurance producer who is
176 not an employee of a title insurer or who is not designated by an agency title insurance
177 producer shall be assessed up to:

- 178 (i) \$250 for the first office in each county in which the agency title insurance producer
179 or individual title insurance producer maintains an office; and
- 180 (ii) \$150 for each additional office the agency title insurance producer or individual
181 title insurance producer maintains in the county described in Subsection (2)(b)(i).

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

183 (i) \$250 for the first office in each county in which the title insurer maintains an office;
184 (ii) \$150 for each additional office the title insurer maintains in the county described in

185 Subsection (2)(c)(i); and

186 (iii) an amount calculated by:

187 (A) aggregating the assessments imposed on:

188 (I) agency title insurance producers and individual title insurance producers under

189 Subsection (2)(b); and

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

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

193 (C) multiplying:

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

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

197 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title
198 and Escrow Commission by rule shall establish the amount of costs and expenses described
199 under Subsection (3) that will be covered by the assessment, except the costs or expenses to be
200 covered by the assessment may not exceed \$80,000 annually.

201 (e) (i) An individual licensed to practice law in Utah is exempt from the requirements
202 of this Subsection (2) if that person issues 12 or less policies during a 12-month period.

203 (ii) In determining the number of policies issued by an individual licensed to practice
204 law in Utah for purposes of Subsection (2)(e)(i), if the individual issues a policy to more than
205 one party to the same closing, the individual is considered to have issued only one policy.

206 (3) (a) Money received by the state under this section shall be deposited into the Title
207 Licensee Enforcement Restricted Account.

208 (b) There is created in the General Fund a restricted account known as the "Title
209 Licensee Enforcement Restricted Account."

210 (c) The Title Licensee Enforcement Restricted Account shall consist of the money
211 received by the state under this section.

212 (d) The commissioner shall administer the Title Licensee Enforcement Restricted
213 Account. Subject to appropriations by the Legislature, the commissioner shall use the money

214 deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or
215 expense incurred by the department in the administration, investigation, and enforcement of
216 this part and Part 5, Compensation of Producers and Consultants, related to:

217 (i) the marketing of title insurance; and

218 (ii) audits of agency title insurance producers.

219 (e) An appropriation from the Title Licensee Enforcement Restricted Account is
220 nonlapsing.

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

Legislative Review Note
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Office of Legislative Research and General Counsel