

Representative Curtis Oda proposes the following substitute bill:

INSURANCE ADJUSTER AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Insurance Code to address insurance adjusters.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ removes certain adjusters from the exemption from licensing;
- ▶ grants rulemaking to commissioner to provide for the transition of licensing certain company adjusters;
- ▶ addresses out-of-state adjusters;
- ▶ incorporates property and casualty company adjusters within chapter addressing adjusters;
- ▶ provides exemptions with regard to the examination requirement for licensing;
- ▶ addresses emergency licenses; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **31A-26-102**, as last amended by Laws of Utah 2014, Chapters 290 and 300

29 **31A-26-201**, as last amended by Laws of Utah 2010, Chapter 10

30 **31A-26-202**, as last amended by Laws of Utah 2008, Chapter 382

31 **31A-26-203**, as last amended by Laws of Utah 2012, Chapter 253

32 **31A-26-204**, as last amended by Laws of Utah 2009, Chapter 349

33 **31A-26-207**, as last amended by Laws of Utah 2014, Chapters 290 and 300

34 **31A-26-209**, as last amended by Laws of Utah 2004, Chapter 173

35 **31A-26-212**, as enacted by Laws of Utah 1985, Chapter 242

36 **31A-26-304**, as enacted by Laws of Utah 1985, Chapter 242

37 **31A-26-310**, as last amended by Laws of Utah 2003, Chapter 252



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

40 Section 1. Section **31A-26-102** is amended to read:

41 **31A-26-102. Definitions.**

42 As used in this chapter, unless expressly provided otherwise:

43 (1) "Company adjuster" means ~~[a person]~~ an individual:

44 (a) who is employed by an insurer or third party administrator as a regular salaried
45 employee and not as an independent contractor; and

46 (b) whose regular duties include insurance adjusting.

47 (2) "Designated home state" means the state or territory of the United States or the
48 District of Columbia:

49 (a) in which an insurance adjuster does not maintain the adjuster's principal:

50 (i) place of residence; or

51 (ii) place of business;

52 (b) if the resident state, territory, or District of Columbia of the adjuster does not
53 license adjusters for the line of authority sought, the adjuster has qualified for the license as if
54 the person were a resident in the state, territory, or District of Columbia described in

55 Subsection (2)(a), including an applicable:

56 (i) examination requirement;

- 57 (ii) fingerprint background check requirement; and
58 (iii) continuing education requirement; and
59 (c) the adjuster has designated the state, territory, or District of Columbia as the
60 designated home state.
- 61 (3) "Home state" means:
62 (a) a state or territory of the United States or the District of Columbia in which an
63 insurance adjuster:
64 (i) maintains the adjuster's principal:
65 (A) place of residence; or
66 (B) place of business; and
67 (ii) is licensed to act as a resident adjuster; or
68 (b) if the resident state, territory, or the District of Columbia described in Subsection
69 (3)(a) does not license adjusters for the line of authority sought, a state, territory, or the District
70 of Columbia:
71 (i) in which the adjuster is licensed;
72 (ii) in which the adjuster is in good standing; and
73 (iii) that the adjuster has designated as the adjuster's designated home state.
- 74 (4) "Independent adjuster" means [~~an insurance adjuster~~] a person required to be
75 licensed under Section [31A-26-201](#), who engages in insurance adjusting as a representative of
76 one or more insurers.
- 77 (5) "Insurance adjusting" or "adjusting" means directing or conducting the
78 investigation, negotiation, or settlement of a claim under an insurance policy, on behalf of an
79 insurer, policyholder, or a claimant under an insurance policy.
- 80 (6) "Organization" means a person other than a natural person, and includes a sole
81 proprietorship by which a natural person does business under an assumed name.
- 82 (7) "Portable electronics insurance" [~~is as~~] means the same as that term is defined in
83 Section [31A-22-1802](#).
- 84 (8) "Property and casualty company adjustor" means a company adjustor who:
85 (a) is required beginning January 1, 2016, to be licensed under Section [31A-26-201](#);
86 and
87 (b) engages in insurance adjusting of property and casualty insurance.

88 [~~(8)~~] (9) "Public adjuster" means a person required to be licensed under Section
89 31A-26-201, who engages in insurance adjusting as a representative of insureds and claimants
90 under insurance policies.

91 Section 2. Section 31A-26-201 is amended to read:

92 **31A-26-201. Requirement of license.**

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

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

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

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

101 (a) an individual engaged in insurance adjusting as a regular salaried employee of, and
102 not an independent contractor for, an insurer, except beginning January 1, 2016, a property and
103 casualty company adjuster;

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

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

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

108 (i) a class of insurance for which the insurance producer is licensed under Section
109 31A-23a-106; and

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

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

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

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

119 (i) a photographer;

120 (ii) an estimator;

121 (iii) an appraiser;

122 (iv) a marine surveyor;

123 (v) a private detective;

124 (vi) an engineer; and

125 (vii) a handwriting expert;

126 (h) a holder of a group insurance policy, with respect to administrative activities in
127 connection with that insurance policy, who receives no compensation for the policyholder's
128 services beyond the actual expenses estimated on a reasonable basis;

129 (i) an individual engaged in insurance adjusting as a regular salaried employee of, and
130 not an independent contractor for, an administrator licensed under Chapter 25, Third Party
131 Administrators, except beginning January 1, 2016, a property and casualty company adjuster;
132 or

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

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

137 (4) The commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah
138 Administrative Rulemaking Act, may provide for the transition of licensing of a property and
139 casualty company adjuster beginning January 1, 2016.

140 (5) (a) A person may not provide insurance adjusting services in this state from an
141 out-of-state location unless that person is licensed under this chapter or exempt from licensure
142 under Subsection (2).

143 (b) This Subsection (5) does not apply to a person providing insurance adjusting
144 services from outside the state as part of a regional claims center affiliated with an insurer if the
145 person is licensed as an insurance adjuster on or after January 1, 2016, in the company
146 insurance adjuster's home state or designated home state.

147 (c) The commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah
148 Administrative Rulemaking Act, may define "regional claims center" consistent with this
149 Subsection (5).

150 Section 3. Section 31A-26-202 is amended to read:

151 **31A-26-202. Application for license.**

152 (1) (a) The application for a license as an independent adjuster [or], public adjuster, or
153 beginning January 1, 2016, a property and casualty company adjuster shall be:

154 (i) made to the commissioner on forms and in a manner the commissioner prescribes;
155 and

156 (ii) accompanied by the applicable fee, which is not refunded if the application is
157 denied.

158 (b) The application shall provide:

159 (i) information about the applicant's identity, including:

160 (A) the applicant's:

161 (I) Social Security number; or

162 (II) federal employer identification number;

163 (B) the applicant's personal history, experience, education, and business record;

164 (C) if the applicant is a natural person, whether the applicant is 18 years of age or
165 older; and

166 (D) whether the applicant has committed an act that is a ground for denial, suspension,
167 or revocation as set forth in Section 31A-25-208; and

168 (ii) any other information as the commissioner reasonably requires.

169 (2) The commissioner may require documents reasonably necessary to verify the
170 information contained in the application.

171 (3) An applicant's Social Security number contained in an application filed under this
172 section is a private record under Section 63G-2-302.

173 Section 4. Section 31A-26-203 is amended to read:

174 **31A-26-203. Adjuster's license required.**

175 (1) The commissioner shall issue a license to act as an independent adjuster [or], public
176 adjuster, or beginning January 1, 2016, property and casualty company adjuster to a person
177 who, as to the license [~~classification~~] type and line of authority applied for under Section
178 31A-26-204:

179 (a) satisfies the character requirements under Section 31A-26-205;

180 (b) satisfies the applicable continuing education requirements under Section

181 31A-26-206;

182 (c) satisfies the applicable examination requirements under Section 31A-26-207;

183 (d) has not committed an act that is a ground for denial, suspension, or revocation
184 provided for in Section 31A-26-213;

185 (e) if a nonresident, complies with Section 31A-26-208; and

186 (f) pays the applicable fees under Section 31A-3-103.

187 (2) (a) This Subsection (2) applies to the following persons:

188 (i) an applicant for:

189 (A) an independent adjuster's license; [~~or~~]

190 (B) a public adjuster's license; or

191 (C) beginning January 1, 2016, a property and casualty company adjuster's license;

192 (ii) a licensed independent adjuster; [~~or~~]

193 (iii) a licensed public adjuster[~~;~~]; or

194 (iv) beginning January 1, 2016, a licensed property and casualty company adjuster.

195 (b) A person described in Subsection (2)(a) shall report to the commissioner:

196 (i) an administrative action taken against the person, including a denial of a new or
197 renewal license application:

198 (A) in another jurisdiction; or

199 (B) by another regulatory agency in this state; and

200 (ii) a criminal prosecution taken against the person in any jurisdiction.

201 (c) The report required by Subsection (2)(b) shall:

202 (i) be filed:

203 (A) at the time the person applies for an adjustor's license; and

204 (B) if an action or prosecution occurs on or after the day on which the person applies
205 for an adjustor's license:

206 (I) for an administrative action, within 30 days of the final disposition of the
207 administrative action; or

208 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;

209 and

210 (ii) include a copy of the complaint or other relevant legal documents related to the
211 action or prosecution described in Subsection (2)(b).

212 (3) (a) The department may require a person applying for a license or for consent to
213 engage in the business of insurance to submit to a criminal background check as a condition of
214 receiving a license or consent.

215 (b) A person, if required to submit to a criminal background check under Subsection
216 (3)(a), shall:

217 (i) submit a fingerprint card in a form acceptable to the department; and

218 (ii) consent to a fingerprint background check by:

219 (A) the Utah Bureau of Criminal Identification; and

220 (B) the Federal Bureau of Investigation.

221 (c) For a person who submits a fingerprint card and consents to a fingerprint
222 background check under Subsection (3)(b), the department may request concerning a person
223 applying for [~~an independent or public adjuster's~~] a license:

224 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
225 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

226 (ii) complete Federal Bureau of Investigation criminal background checks through the
227 national criminal history system.

228 (d) Information obtained by the department from the review of criminal history records
229 received under this Subsection (3) shall be used by the department for the purposes of:

230 (i) determining if a person satisfies the character requirements under Section
231 [31A-26-205](#) for issuance or renewal of a license;

232 (ii) determining if a person has failed to maintain the character requirements under
233 Section [31A-26-205](#); and

234 (iii) preventing a person who violates the federal Violent Crime Control and Law
235 Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from engaging in the business of insurance in
236 the state.

237 (e) If the department requests the criminal background information, the department
238 shall:

239 (i) pay to the Department of Public Safety the costs incurred by the Department of
240 Public Safety in providing the department criminal background information under Subsection
241 (3)(c)(i);

242 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau

243 of Investigation in providing the department criminal background information under
 244 Subsection (3)(c)(ii); and

245 (iii) charge the person applying for a license or for consent to engage in the business of
 246 insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

247 (4) The commissioner may deny a license application to act as an independent adjuster
 248 [~~or~~], public adjuster, or beginning January 1, 2016, a property and casualty company adjuster to
 249 a person who, as to the license [~~classification~~] type and line of authority applied for under
 250 Section 31A-26-204:

251 (a) fails to satisfy the requirements in this section; or

252 (b) commits an act that is a ground for denial, suspension, or revocation provided for in
 253 Section 31A-26-213.

254 (5) Notwithstanding the other provisions of this section, the commissioner may:

255 (a) issue a license to an applicant for a license for a title insurance [~~classification~~] line
 256 of authority only with the concurrence of the Title and Escrow Commission; or

257 (b) renew a license for a title insurance [~~classification~~] line of authority only with the
 258 concurrence of the Title and Escrow Commission.

259 Section 5. Section 31A-26-204 is amended to read:

260 **31A-26-204. License types.**

261 A resident or nonresident license issued under this chapter shall be issued under the
 262 classifications described under Subsections (1)~~[(2), and (3)]~~ through (4). A classification
 263 describes the matters to be considered under a prerequisite education or examination required
 264 of license applicants under Sections 31A-26-206 and 31A-26-207.

265 (1) [~~Independent~~] An independent adjuster license [~~classifications include~~] type
 266 includes the following lines of authority:

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

270 (b) property and casualty insurance, including a surety or other bond;

271 (c) crop insurance; and

272 (d) workers' compensation insurance.

273 (2) [~~Public~~] A public adjuster license [~~classifications include~~] type includes the

274 following lines of authority:

275 (a) accident and health insurance, including related service insurance under Chapter 7
276 or 8;

277 (b) property and casualty insurance, including a surety or other bond;

278 (c) crop insurance; and

279 (d) workers' compensation insurance.

280 (3) Beginning January 1, 2016, a property and casualty company adjuster license type
281 includes the following lines of authority:

282 (a) property and casualty insurance, including a surety or other bond; and

283 (b) workers' compensation insurance.

284 [~~(3)~~] (4) (a) The commissioner may by rule:

285 (i) recognize other independent adjuster [~~or~~], public adjuster, or beginning January 1,
286 2016, a property and casualty company adjuster license [classifications] lines of authority as to
287 other kinds of insurance not listed under Subsection (1); and

288 (ii) create a license [classifications] line of authority that [~~grant~~] grants only part of the
289 authority arising under another license [~~class~~] line of authority.

290 (b) Notwithstanding Subsection [~~(3)~~] (4)(a), for purpose of title insurance, the Title and
291 Escrow Commission may make the rules provided for in Subsection [~~(3)~~] (4)(a), subject to
292 Section 31A-2-404.

293 Section 6. Section 31A-26-207 is amended to read:

294 **31A-26-207. Examination requirements.**

295 (1) The commissioner may require applicants for a particular [~~class~~] type of license
296 under Section 31A-26-204 to pass an examination as a requirement to receiving a license. The
297 examination shall reasonably relate to the specific license [~~class~~] line of authority for which it
298 is prescribed. The examinations may be administered by the commissioner or as specified by
299 rule.

300 (2) The commissioner shall waive the requirement of an examination for a nonresident
301 applicant who:

302 (a) applies for an insurance adjuster license in this state;

303 (b) has been licensed for the same line of authority in another state; and

304 (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant

305 applies for an insurance [~~producer~~] adjuster license in this state; or

306 (ii) if the application is received within 90 days of the cancellation of the applicant's
307 previous license:

308 (A) the prior state certifies that at the time of cancellation, the applicant was in good
309 standing in that state; or

310 (B) the state's [~~producer~~] database records, maintained by the National Association of
311 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or
312 subsidiaries, [~~indicates that the producer~~] indicate the adjuster is or was licensed in good
313 standing for the line of authority requested.

314 (3) (a) To become a resident licensee in accordance with Sections 31A-26-202 and
315 31A-26-203, a person licensed as an insurance [~~producer~~] adjuster in another state who moves
316 to this state shall make application within 90 days of establishing legal residence in this state.

317 (b) A person who becomes a resident licensee under Subsection (3)(a) may not be
318 required to meet prelicensing education or examination requirements to obtain any line of
319 authority previously held in the prior state unless:

320 (i) the prior state would require a prior resident of this state to meet the prior state's
321 prelicensing education or examination requirements to become a resident licensee; or

322 (ii) the commissioner imposes the requirements by rule.

323 (4) The requirements of this section only apply to an applicant who is a natural person.

324 (5) The requirements of this section do not apply to:

325 (a) a member of the Utah State Bar; [~~or~~]

326 (b) an applicant for the crop insurance license [~~class~~] line of authority who has
327 satisfactorily completed:

328 (i) a national crop adjuster program, as adopted by the commissioner by rule; or

329 (ii) the loss adjustment training curriculum and competency testing required by the
330 Federal Crop Insurance Corporation Standard Reinsurance Agreement through the Risk
331 Management Agency of the United States Department of Agriculture[~~;~~];

332 (c) a property and casualty company adjuster who acted as a company adjuster for 10
333 consecutive years before January 1, 2016; or

334 (d) a property and casualty company adjuster who completes a claims certification
335 offered by a nationally recognized educational program for claims adjusters approved by the

336 commissioner.

337 Section 7. Section **31A-26-209** is amended to read:

338 **31A-26-209. Form and contents of license.**

339 (1) Licenses issued under this chapter shall be in the form the commissioner prescribes
340 and shall set forth:

341 (a) the name, address, and telephone number of the licensee;

342 (b) the license ~~[classifications]~~ types and lines of authority under Section **31A-26-204**;

343 (c) the date of license issuance; and

344 (d) any other information the commissioner considers advisable.

345 (2) An adjuster doing business under any other name than the adjuster's legal name
346 shall notify the commissioner prior to using the assumed name in this state.

347 (3) (a) An organization shall be licensed as an agency if the organization acts as:

348 (i) an independent adjuster; or

349 (ii) a public adjuster.

350 (b) The agency license issued under Subsection (3)(a) shall set forth the names of all
351 natural persons licensed under this chapter who are authorized to act in ~~[those]~~ the capacities
352 listed in Subsection (3)(a) or beginning January 1, 2016, as a property and casualty company
353 adjuster for the organization in this state.

354 Section 8. Section **31A-26-212** is amended to read:

355 **31A-26-212. Emergency license.**

356 (1) In the event of a catastrophe or emergency [which] that arises out of a disaster, act
357 of God, riot, civil commotion, conflagration, or other similar occurrence, the commissioner
358 shall, upon application, issue emergency licenses to persons who are not licensed [adjusters-
359 At] under this chapter.

360 (2) A person shall apply for an emergency license [shall be applied for] within a week
361 of beginning claims adjustment. [H]

362 (3) To be eligible for an emergency license the applicant shall:

363 (a) be licensed in the applicant's home state or designated home state; or

364 (b) meet criteria that the commissioner may establish by rule, made in accordance with
365 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

366 (4) An emergency license may remain in force for not more than 90 days, unless

367 extended by the commissioner before it expires for an additional period of not more than 90
368 additional days.

369 (5) The insurer who contracts with an ~~independent~~ adjuster who is ~~so~~ licensed
370 under this section is responsible for all ~~his~~ the adjuster's claims practices while ~~so~~ engaged
371 as an adjuster, as if ~~he~~ the adjuster were a regular salaried employee.

372 (6) The fee for an emergency license is the same as the fee required of other licensed
373 adjusters, unless the commissioner waives the fee.

374 Section 9. Section 31A-26-304 is amended to read:

375 **31A-26-304. Prohibition of conflicting roles.**

376 A person licensed concurrently as both an independent and a public adjuster or
377 beginning January 1, 2016, a property and casualty company adjuster, and public adjuster may
378 not represent both the insurer and the insured in the same transaction.

379 Section 10. Section 31A-26-310 is amended to read:

380 **31A-26-310. Compensation of insurer's or insured's claims adjuster.**

381 (1) (a) Except as provided in Subsection (2), an insurer or an insured may not pay a
382 person who is representing the insurer or insured in connection with an insurance claim
383 adjustment on any basis that is dependent, in whole or in part, upon the amounts paid an
384 insured or claimant under an insurance policy.

385 (b) Subsection (1)(a) includes payments to:

386 (i) an employee of:

387 (A) the insurer; or

388 (B) the insured;

389 (ii) an independent contractor; ~~or~~

390 (iii) a public adjuster~~[-];~~ or

391 (iv) beginning January 1, 2016, a property and casualty company adjuster.

392 (2) Subsection (1) does not prohibit a compensation arrangement:

393 (a) based upon the overall profitability of the insurer;

394 (b) based upon the discovery or proof of fraudulent insurance claims; or

395 (c) conforming to an order or rule of the commissioner that addresses the compensation
396 of persons engaged in insurance adjusting on behalf of:

397 (i) an insurer; or

398 (ii) an insured.
399 Section 11. **Effective date.**
400 This bill takes effect on July 1, 2015.