

HB0336S01 compared with HB0336

~~{deleted text}~~ shows text that was in HB0336 but was deleted in HB0336S01.

inserted text shows text that was not in HB0336 but was inserted into HB0336S01.

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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 ~~{licensing of}~~ 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 ~~{grandfathering}~~ exemptions with regard to the examination requirement

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for licensing;

- ▶ addresses emergency licenses; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

31A-26-102. Definitions.

As used in this chapter, unless expressly provided otherwise:

(1) "Company adjuster" means ~~[a person]~~ an individual ~~required to be licensed under Section 31A-26-201~~;

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

(b) whose regular duties include insurance adjusting.

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

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

(i) place of residence; or

(ii) place of business;

(b) if the resident state, territory, or District of Columbia of the adjuster does not license adjusters for the line of authority sought, the adjuster has qualified for the license as if the person were a resident in the state, territory, or District of Columbia described in Subsection (2)(a), including an applicable:

(i) examination requirement;

(ii) fingerprint background check requirement; and

(iii) continuing education requirement; and

(c) the adjuster has designated the state, territory, or District of Columbia as the designated home state.

(3) "Home state" means:

(a) a state or territory of the United States or the District of Columbia in which an insurance adjuster:

(i) maintains the adjuster's principal:

(A) place of residence; or

(B) place of business; and

(ii) is licensed to act as a resident adjuster; or

(b) if the resident state, territory, or the District of Columbia described in Subsection (3)(a) does not license adjusters for the line of authority sought, a state, territory, or the District of Columbia:

(i) in which the adjuster is licensed;

(ii) in which the adjuster is in good standing; and

(iii) that the adjuster has designated as the adjuster's designated home state.

(4) "Independent adjuster" means [~~an insurance adjuster~~] a person required to be licensed under Section 31A-26-201, who engages in insurance adjusting as a representative of one or more insurers.

(5) "Insurance adjusting" or "adjusting" means directing or conducting the investigation, negotiation, or settlement of a claim under an insurance policy, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

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(6) "Organization" means a person other than a natural person, and includes a sole proprietorship by which a natural person does business under an assumed name.

(7) "Portable electronics insurance" ~~[is-as]~~ means the same as that term is defined in Section 31A-22-1802.

(8) "Property and casualty company adjustor" means a company adjustor who:

(a) is required beginning January 1, 2016, to be licensed under Section 31A-26-201;

and

(b) engages in insurance adjusting of property and casualty insurance.

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

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

31A-26-201. Requirement of license.

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

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

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

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

~~[(a)]~~ (a) an individual engaged in insurance adjusting as a regular salaried employee of, and not an independent contractor for, an insurer ~~[(b)]~~

~~[(b)]~~ (a), except beginning January 1, 2016, a property and casualty company adjuster;

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

~~[(c)]~~ ~~[(b)]~~ (c) an attorney at law acting in an attorney-client relationship;

~~[(d)]~~ ~~[(c)]~~ (d) an insurance producer, but only as to:

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

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

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producer;

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

~~§§(f)§(e)~~ an employee of a licensed insurance adjuster who provides only administrative or clerical assistance;

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

- (i) a photographer;
- (ii) an estimator;
- (iii) an appraiser;
- (iv) a marine surveyor;
- (v) a private detective;
- (vi) an engineer; and
- (vii) a handwriting expert;

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

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

~~§(j)§(h)~~; except beginning January 1, 2016, a property and casualty company adjuster;

or

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

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

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

(5) (a) A person may not provide insurance adjusting services in this state from an

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out-of-state location unless that person is licensed under this chapter or exempt from licensure under Subsection (2).

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

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

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

31A-26-202. Application for license.

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

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

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

(b) The application shall provide:

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

(A) the applicant's:

(I) Social Security number; or

(II) federal employer identification number;

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

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

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

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

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

(3) An applicant's Social Security number contained in an application filed under this

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section is a private record under Section 63G-2-302.

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

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

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

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

(b) satisfies the applicable continuing education requirements under Section 31A-26-206;

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

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

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

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

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

(i) an applicant for:

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

(B) a public adjuster's license; or

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

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

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

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

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

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

(A) in another jurisdiction; or

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

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

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

(i) be filed:

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

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

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

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

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

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

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

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

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

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

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

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

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

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

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

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

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

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

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(c)(ii); and

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

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

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

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

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

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

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

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

31A-26-204. License types.

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

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

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

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

(c) crop insurance; and

(d) workers' compensation insurance.

(2) ~~[Public]~~ A public adjuster license ~~[classifications include]~~ type includes the following lines of authority:

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

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

(c) crop insurance; and

(d) workers' compensation insurance.

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

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

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

~~——~~ ~~(c) crop insurance;†~~ and

~~(d)†b~~ workers' compensation insurance.

~~{3}~~ (4) (a) The commissioner may by rule:

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

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

(b) Notwithstanding Subsection ~~{3}~~ (4)(a), for purpose of title insurance, the Title and Escrow Commission may make the rules provided for in Subsection ~~{3}~~ (4)(a), subject to

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Section 31A-2-404.

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

31A-26-207. Examination requirements.

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

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

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

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

(c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant applies for an insurance [~~producer~~] adjuster license in this state; or

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

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

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

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

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

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

(ii) the commissioner imposes the requirements by rule.

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~~{ (4) A company adjuster who acted as a company adjuster for 10 consecutive years before May 12, 2015, is not required to take an examination under this section to be licensed under this chapter.~~

† ~~{(4)}~~{(5)}~~~~ The requirements of this section only apply to an applicant who is a natural person.

~~{(5)}~~{(6)}~~~~ The requirements of this section do not apply to:

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

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

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

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

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

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

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

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

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

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

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

(c) the date of license issuance; and

(d) any other information the commissioner considers advisable.

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

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

(i) an independent adjuster; or

(ii) a public adjuster.

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

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

31A-26-212. Emergency license.

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

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

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

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

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

(4) An emergency license may remain in force for not more than 90 days, unless extended by the commissioner before it expires for an additional period of not more than 90 additional days.

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

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

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

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

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

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

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

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

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

(i) an employee of:

(A) the insurer; or

(B) the insured;

(ii) an independent contractor; [or]

(iii) a public adjuster[-]; or

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

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

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

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

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

(i) an insurer; or

(ii) an insured.

†

Legislative Review Note

— as of ~~2-12-15~~ 6:15 PM

— ~~Office of Legislative Research and General Counsel~~ Section 11. Effective date.

This bill takes effect on July 1, 2015.