

ERRORS AND OMISSIONS COVERAGE FOR INSURANCE

PRODUCERS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies the Insurance Code to address errors and omission coverage of certain producers.

Highlighted Provisions:

This bill:

- ▶ requires errors and omissions coverage during the license term of a resident individual producer;
- ▶ requires related information to be included in an application;
- ▶ authorizes the commissioner to make related rules;
- ▶ provides an exemption; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-23a-104, as last amended by Laws of Utah 2009, Chapter 349

31A-23a-105, as last amended by Laws of Utah 2009, Chapters 349 and 355

ENACTS:

31A-23a-203.5, Utah Code Annotated 1953

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

Section 1. Section **31A-23a-104** is amended to read:

31A-23a-104. Application for individual license -- Application for agency license.

(1) This section applies to an initial or renewal license as a:

- (a) producer;
- (b) limited line producer;
- (c) customer service representative;
- (d) consultant;
- (e) managing general agent; or
- (f) reinsurance intermediary.

(2) (a) Subject to Subsection (2)(b), to obtain or renew an individual license, an individual shall:

(i) file an application for an initial or renewal individual license [~~shall be: (i) made to~~]
with the commissioner on forms and in a manner the commissioner prescribes; and

(ii) [~~accompanied by~~] pay a license fee that is not refunded if the application:

- (A) is denied; or
- (B) [~~if~~] is incomplete[;] when filed and is never completed by the applicant.

(b) An application described in this Subsection (2) shall provide:

- (i) information about the applicant's identity;
- (ii) the applicant's Social Security number;
- (iii) the applicant's personal history, experience, education, and business record;
- (iv) whether the applicant is 18 years of age or older;
- (v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; [~~and~~]

(vi) if the application is for a resident individual producer license, certification that the applicant complies with Section 31A-23a-203.5; and

[~~(vi)~~] (vii) any other information the commissioner reasonably requires.

(3) The commissioner may require a document reasonably necessary to verify the information contained in an application filed under this section.

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

(5) (a) Subject to Subsection (5)(b), to obtain or renew an agency license, a person shall:

(i) file an application for an initial or renewal agency license [~~shall be: (i) made to~~] with the commissioner on forms and in a manner the commissioner prescribes; and

(ii) [~~accompanied by~~] pay a license fee that is not refunded if the application:

(A) is denied; or

(B) [~~if~~] is incomplete [~~;~~] when filed and is never completed by the applicant.

(b) An application described in Subsection (5)(a) shall provide:

(i) information about the applicant's identity;

(ii) the applicant's federal employer identification number;

(iii) the designated responsible licensed producer;

(iv) the identity of all owners, partners, officers, and directors;

(v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

(vi) any other information the commissioner reasonably requires.

Section 2. Section **31A-23a-105** is amended to read:

31A-23a-105. General requirements for individual and agency license issuance and renewal.

(1) (a) The commissioner shall issue or renew a license to a person described in Subsection (1)(b) to act as:

(i) a producer;

(ii) a limited line producer;

(iii) a customer service representative;

(iv) a consultant;

(v) a managing general agent; or

(vi) a reinsurance intermediary.

(b) The commissioner shall issue or renew a license under Subsection (1)(a) to a person who, as to the license type and line of authority classification applied for under Section 31A-23a-106:

(i) satisfies the application requirements under Section 31A-23a-104;

(ii) satisfies the character requirements under Section 31A-23a-107;

(iii) satisfies any applicable continuing education requirements under Section 31A-23a-202;

(iv) satisfies any applicable examination requirements under Section 31A-23a-108;

(v) satisfies any applicable training period requirements under Section 31A-23a-203;

(vi) if an applicant for a resident individual producer license, certifies that, to the extent applicable, the applicant:

(A) is in compliance with Section 31A-23a-203.5; and

(B) will maintain compliance with Section 31A-23a-203.5 during the period for which the license is issued or renewed;

~~[(vi)]~~ (vii) has not committed an act that is a ground for denial, suspension, or revocation as provided in Section 31A-23a-111;

~~[(vii)]~~ (viii) if a nonresident:

(A) complies with Section 31A-23a-109; and

(B) holds an active similar license in that person's state of residence;

~~[(viii)]~~ (ix) if an applicant for a title insurance producer license, satisfies the requirements of Sections 31A-23a-203 and 31A-23a-204;

~~[(ix)]~~ (x) if an applicant for a license to act as a life settlement provider or life settlement producer, satisfies the requirements of Section 31A-23a-117; and

~~[(x)]~~ (xi) pays the applicable fees under Section 31A-3-103.

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

(i) an applicant for a pending:

- 114 (A) individual or agency producer license;
115 (B) limited line producer license;
116 (C) customer service representative license;
117 (D) consultant license;
118 (E) managing general agent license; or
119 (F) reinsurance intermediary license; or
120 (ii) a licensed:
121 (A) individual or agency producer;
122 (B) limited line producer;
123 (C) customer service representative;
124 (D) consultant;
125 (E) managing general agent; or
126 (F) reinsurance intermediary.
127 (b) A person described in Subsection (2)(a) shall report to the commissioner:
128 (i) an administrative action taken against the person:
129 (A) in another jurisdiction; or
130 (B) by another regulatory agency in this state; and
131 (ii) a criminal prosecution taken against the person in any jurisdiction.
132 (c) The report required by Subsection (2)(b) shall:
133 (i) be filed:
134 (A) at the time the person files the application for an individual or agency license; and
135 (B) for an action or prosecution that occurs on or after the day on which the person
136 files the application:
137 (I) for an administrative action, within 30 days of the final disposition of the
138 administrative action; or
139 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
140 and
141 (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:

(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-23a-107 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-23a-107; and

(iii) preventing a person who violates the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~] Sec. 1033 and 1034, 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) To become a resident licensee in accordance with Section 31A-23a-104 and this section, a person licensed as one of the following in another state who moves to this state shall apply within 90 days of establishing legal residence in this state:

(a) insurance producer;

(b) limited line producer;

(c) customer service representative;

(d) consultant;

(e) managing general agent; or

(f) reinsurance intermediary.

(5) (a) The commissioner may deny a license application for a license listed in Subsection (5)(b) if the person applying for the license, as to the license type and line of authority classification applied for under Section 31A-23a-106:

(i) fails to satisfy the requirements as set forth in this section; or

(ii) commits an act that is grounds for denial, suspension, or revocation as set forth in Section 31A-23a-111.

(b) This Subsection (5) applies to the following licenses:

(i) producer;

(ii) limited line producer;

(iii) customer service representative;

(iv) consultant;

(v) managing general agent; or

(vi) reinsurance intermediary.

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

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

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

Section 3. Section **31A-23a-203.5** is enacted to read:

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

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

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

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

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

(a) a policy naming the resident individual producer;

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

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

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

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

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

- 226 (i) provide notice; and
- 227 (ii) replace the coverage.
- 228 (4) A title insurance producer is considered to be in compliance with this section if the
- 229 title insurance producer maintains a bond, policy, or other financial protection in accordance
- 230 with Subsection 31A-23a-204(2).
- 231 (5) Notwithstanding the other provisions of this section, a resident individual producer
- 232 is exempt from the requirement to maintain coverage as provided in this section during a
- 233 period in which the resident individual producer is not either:
- 234 (a) appointed by an insurer under this title; or
- 235 (b) designated by an agency under this title.
- 236 (6) A limited lines producer is exempt from this section.