

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 company adjusters;
- ▶ addresses out-of-state adjusters;
- ▶ incorporates company adjusters within chapter addressing adjusters;
- ▶ provides grandfathering 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:

None

Utah Code Sections Affected:

AMENDS:

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



- 28 **31A-26-201**, as last amended by Laws of Utah 2010, Chapter 10
- 29 **31A-26-202**, as last amended by Laws of Utah 2008, Chapter 382
- 30 **31A-26-203**, as last amended by Laws of Utah 2012, Chapter 253
- 31 **31A-26-204**, as last amended by Laws of Utah 2009, Chapter 349
- 32 **31A-26-207**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 33 **31A-26-209**, as last amended by Laws of Utah 2004, Chapter 173
- 34 **31A-26-212**, as enacted by Laws of Utah 1985, Chapter 242
- 35 **31A-26-304**, as enacted by Laws of Utah 1985, Chapter 242
- 36 **31A-26-310**, as last amended by Laws of Utah 2003, Chapter 252

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

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

40 **31A-26-102. Definitions.**

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

42 (1) "Company adjuster" means ~~[a person]~~ an individual required to be licensed under

43 Section [31A-26-201](#):

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) "Public adjuster" means a person required to be licensed under Section
85 31A-26-201, who engages in insurance adjusting as a representative of insureds and claimants
86 under insurance policies.

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

88 **31A-26-201. Requirement of license.**

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

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

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

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

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

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

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

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

103 (i) a class of insurance for which the insurance producer is licensed under Section
104 31A-23a-106; and

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

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

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

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

114 (i) a photographer;

115 (ii) an estimator;

116 (iii) an appraiser;

117 (iv) a marine surveyor;

118 (v) a private detective;

119 (vi) an engineer; and

120 (vii) a handwriting expert;

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

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

127 ~~[(j)]~~ (h) a person who gives advice or assistance without compensation or expectation
 128 of compensation, direct or indirect.

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

131 (4) The commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah
 132 Administrative Rulemaking Act, may provide for the transition of licensing of a company
 133 adjuster.

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

137 (b) This Subsection (5) does not apply to a person providing insurance adjusting
 138 services from outside the state as part of a regional claims center affiliated with an insurer if the
 139 person is licensed as a company insurance adjuster in the company insurance adjuster's home
 140 state or designated home state.

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

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

145 **31A-26-202. Application for license.**

146 (1) (a) The application for a license as an independent adjuster ~~[or]~~₂ public adjuster, or
 147 company adjuster shall be:

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

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

- 152 (b) The application shall provide:
- 153 (i) information about the applicant's identity, including:
- 154 (A) the applicant's:
- 155 (I) Social Security number; or
- 156 (II) federal employer identification number;
- 157 (B) the applicant's personal history, experience, education, and business record;
- 158 (C) if the applicant is a natural person, whether the applicant is 18 years of age or
- 159 older; and
- 160 (D) whether the applicant has committed an act that is a ground for denial, suspension,
- 161 or revocation as set forth in Section 31A-25-208; and
- 162 (ii) any other information as the commissioner reasonably requires.
- 163 (2) The commissioner may require documents reasonably necessary to verify the
- 164 information contained in the application.
- 165 (3) An applicant's Social Security number contained in an application filed under this
- 166 section is a private record under Section 63G-2-302.
- 167 Section 4. Section 31A-26-203 is amended to read:
- 168 **31A-26-203. Adjuster's license required.**
- 169 (1) The commissioner shall issue a license to act as an independent adjuster [~~or~~], public
- 170 adjuster, or company adjuster to a person who, as to the license [~~classification~~] type and line of
- 171 authority applied for under Section 31A-26-204:
- 172 (a) satisfies the character requirements under Section 31A-26-205;
- 173 (b) satisfies the applicable continuing education requirements under Section
- 174 31A-26-206;
- 175 (c) satisfies the applicable examination requirements under Section 31A-26-207;
- 176 (d) has not committed an act that is a ground for denial, suspension, or revocation
- 177 provided for in Section 31A-26-213;
- 178 (e) if a nonresident, complies with Section 31A-26-208; and
- 179 (f) pays the applicable fees under Section 31A-3-103.
- 180 (2) (a) This Subsection (2) applies to the following persons:
- 181 (i) an applicant for:
- 182 (A) an independent adjuster's license; [~~or~~]

- 183 (B) a public adjuster's license; or
184 (C) a company adjuster's license;
185 (ii) a licensed independent adjuster; [~~or~~]
186 (iii) a licensed public adjuster[~~;~~]; or
187 (iv) a licensed company adjuster.
- 188 (b) A person described in Subsection (2)(a) shall report to the commissioner:
189 (i) an administrative action taken against the person, including a denial of a new or
190 renewal license application:
191 (A) in another jurisdiction; or
192 (B) by another regulatory agency in this state; and
193 (ii) a criminal prosecution taken against the person in any jurisdiction.
194 (c) The report required by Subsection (2)(b) shall:
195 (i) be filed:
196 (A) at the time the person applies for an adjustor's license; and
197 (B) if an action or prosecution occurs on or after the day on which the person applies
198 for an adjustor's license:
199 (I) for an administrative action, within 30 days of the final disposition of the
200 administrative action; or
201 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;
202 and
203 (ii) include a copy of the complaint or other relevant legal documents related to the
204 action or prosecution described in Subsection (2)(b).
- 205 (3) (a) The department may require a person applying for a license or for consent to
206 engage in the business of insurance to submit to a criminal background check as a condition of
207 receiving a license or consent.
208 (b) A person, if required to submit to a criminal background check under Subsection
209 (3)(a), shall:
210 (i) submit a fingerprint card in a form acceptable to the department; and
211 (ii) consent to a fingerprint background check by:
212 (A) the Utah Bureau of Criminal Identification; and
213 (B) the Federal Bureau of Investigation.

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

217 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
218 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

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

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

223 (i) determining if a person satisfies the character requirements under Section
224 31A-26-205 for issuance or renewal of a license;

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

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

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

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

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

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

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

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

244 (b) commits an act that is a ground for denial, suspension, or revocation provided for in

245 Section 31A-26-213.

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

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

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

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

252 **31A-26-204. License types.**

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

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

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

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

263 (c) crop insurance; and

264 (d) workers' compensation insurance.

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

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

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

270 (c) crop insurance; and

271 (d) workers' compensation insurance.

272 (3) A company adjuster license type includes the following lines of authority:

273 (a) accident and health insurance, including related service insurance under Chapter 7,
274 Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

275 Organizations and Limited Health Plans;

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

277 (c) crop insurance; and

278 (d) workers' compensation insurance.

279 [~~(3)~~] (4) (a) The commissioner may by rule:

280 (i) recognize other independent adjuster [~~or~~], public adjuster, or company adjuster

281 license [~~classifications~~] lines of authority as to other kinds of insurance not listed under

282 Subsection (1); and

283 (ii) create a license [~~classifications~~] line of authority that [~~grant~~] grants only part of the

284 authority arising under another license [~~class~~] line of authority.

285 (b) Notwithstanding Subsection [~~(3)~~] (4)(a), for purpose of title insurance, the Title and

286 Escrow Commission may make the rules provided for in Subsection [~~(3)~~] (4)(a), subject to

287 Section 31A-2-404.

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

289 **31A-26-207. Examination requirements.**

290 (1) The commissioner may require applicants for a particular [~~class~~] type of license

291 under Section 31A-26-204 to pass an examination as a requirement to receiving a license. The

292 examination shall reasonably relate to the specific license [~~class~~] line of authority for which it

293 is prescribed. The examinations may be administered by the commissioner or as specified by

294 rule.

295 (2) The commissioner shall waive the requirement of an examination for a nonresident

296 applicant who:

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

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

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

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

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

302 previous license:

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

304 standing in that state; or

305 (B) the state's [~~producer~~] database records, maintained by the National Association of

306 Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or

307 subsidiaries, [~~indicates that the producer~~] indicate the adjuster is or was licensed in good
308 standing for the line of authority requested.

309 (3) (a) To become a resident licensee in accordance with Sections [31A-26-202](#) and
310 [31A-26-203](#), a person licensed as an insurance [~~producer~~] adjuster in another state who moves
311 to this state shall make application within 90 days of establishing legal residence in this state.

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

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

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

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

321 [~~(4)~~] (5) The requirements of this section only apply to an applicant who is a natural
322 person.

323 [~~(5)~~] (6) The requirements of this section do not apply to:

324 (a) a member of the Utah State Bar; or

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

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

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

331 Section 7. Section [31A-26-209](#) is amended to read:

332 **31A-26-209. Form and contents of license.**

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

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

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

337 (c) the date of license issuance; and

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

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

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

342 (i) an independent adjuster; or

343 (ii) a public adjuster.

344 (b) The agency license issued under Subsection (3)(a) shall set forth the names of all
345 natural persons licensed under this chapter who are authorized to act in [~~those~~] the capacities
346 listed in Subsection (3)(a) or as a company adjuster for the organization in this state.

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

348 **31A-26-212. Emergency license.**

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

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

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

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

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

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

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

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

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

368 **31A-26-304. Prohibition of conflicting roles.**

369 A person licensed concurrently as both an independent and a public adjuster or a
370 company adjuster and public adjuster may not represent both the insurer and the insured in the
371 same transaction.

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

373 **31A-26-310. Compensation of insurer's or insured's claims adjuster.**

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

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

379 (i) an employee of:

380 (A) the insurer; or

381 (B) the insured;

382 (ii) an independent contractor; [~~or~~]

383 (iii) a public adjuster[~~;~~]; or

384 (iv) a company adjuster.

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

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

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

388 (c) conforming to an order or rule of the commissioner that addresses the compensation

389 of persons engaged in insurance adjusting on behalf of:

390 (i) an insurer; or

391 (ii) an insured.

Legislative Review Note
as of 2-12-15 6:15 PM

Office of Legislative Research and General Counsel