

**State of Utah**  
**Administrative Rule Analysis**  
 Revised June 2021

| NOTICE OF PROPOSED RULE  |          |                             |
|--|----------|-----------------------------|
| TYPE OF RULE: New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___ |          |                             |
| Title No. - Rule No. - Section No.                                       |          |                             |
| Utah Admin. Code Ref (R no.):  | R590-122 | Filing ID (Office Use Only) |
| Changed to Admin. Code Ref. (R no.):                                     | R        |                             |

**Agency Information**

|  |                                    |                 |
|--|------------------------------------|-----------------|
| <b>1. Department:</b>  | Insurance                          |                 |
| <b>Agency:</b>   | Administration                     |                 |
| <b>Room no.:</b>   | Suite 2300                         |                 |
| <b>Building:</b>   | Taylorsville State Office Building |                 |
| <b>Street address:</b>   | 4315 S. 2700 W.                    |                 |
| <b>City, state and zip:</b>  | Taylorsville, UT 84129             |                 |
| <b>Mailing address:</b>  | PO Box 146901                      |                 |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84114-6901      |                 |
| <b>Contact person(s):</b>  |                                    |                 |
| <b>Name:</b>   | <b>Phone:</b>                      | <b>Email:</b>   |
| Steve Gooch  | 801-957-9322                       | sgooch@utah.gov |
| Please address questions regarding information on this notice to the agency. |                                    |                 |

**General Information**

|   |
|---|
| <b>2. Rule or section catchline:</b>  |
| R590-122. Permissible Arbitration Provisions  |
| <b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):   |
| The rule is being changed as a result of Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.   |
| <b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):  |
| The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Others are changes to make the language of the rule more clear, and the Severability section is being updated to use the department's current language. The changes do not add, remove, or change any regulations or requirements. |

**Fiscal Information**

|  |
|--|
| <b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>   |
| <b>A) State budget:</b>  |
| There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions. |
| <b>B) Local governments:</b>   |
| There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.           |
| <b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):   |
| There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.             |
| <b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):   |

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

**6. A) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

| <b>Fiscal Cost</b>           | <b>FY2022</b> | <b>FY2023</b> | <b>FY2024</b> |
|------------------------------|---------------|---------------|---------------|
| State Government             | \$0           | \$0           | \$0           |
| Local Governments            | \$0           | \$0           | \$0           |
| Small Businesses             | \$0           | \$0           | \$0           |
| Non-Small Businesses         | \$0           | \$0           | \$0           |
| Other Persons                | \$0           | \$0           | \$0           |
| <b>Total Fiscal Cost</b>     | <b>\$0</b>    | <b>\$0</b>    | <b>\$0</b>    |
| <b>Fiscal Benefits</b>       |               |               |               |
| State Government             | \$0           | \$0           | \$0           |
| Local Governments            | \$0           | \$0           | \$0           |
| Small Businesses             | \$0           | \$0           | \$0           |
| Non-Small Businesses         | \$0           | \$0           | \$0           |
| Other Persons                | \$0           | \$0           | \$0           |
| <b>Total Fiscal Benefits</b> | <b>\$0</b>    | <b>\$0</b>    | <b>\$0</b>    |
| <b>Net Fiscal Benefits</b>   | <b>\$0</b>    | <b>\$0</b>    | <b>\$0</b>    |

**B) Department head approval of regulatory impact analysis:**

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

|                   |  |  |
|-------------------|--|--|
| Section 31A-2-201 |  |  |
|                   |  |  |
|                   |  |  |

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

|   | <b>First Incorporation</b> |
|---|----------------------------|
| <b>Official Title of Materials Incorporated (from title page)</b> |                            |
| <b>Publisher</b>  |                            |
| <b>Date Issued</b>  |                            |

|                          |  |
|--------------------------|--|
| <b>Issue, or version</b> |  |
|--------------------------|--|

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

|   |                             |
|---|-----------------------------|
|   | <b>Second Incorporation</b> |
| <b>Official Title of Materials Incorporated (from title page)</b> |                             |
| <b>Publisher</b>  |                             |
| <b>Date Issued</b>  |                             |
| <b>Issue, or version</b>  |                             |

#### Public Notice Information

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

|   |                          |                    |
|---|--------------------------|--------------------|
| <b>A) Comments will be accepted until</b> (mm/dd/yyyy): | 11/15/2021               |                    |
| <b>B) A public hearing (optional) will be held:</b>     |                          |                    |
| <b>On</b> (mm/dd/yyyy):                                 | <b>At</b> (hh:mm AM/PM): | <b>At</b> (place): |
|   |                          |                    |
|   |                          |                    |
|   |                          |                    |

|  |            |
|--|------------|
| <b>10. This rule change MAY become effective on</b> (mm/dd/yyyy):  | 11/22/2021 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10. |            |

#### Agency Authorization Information

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

|  |   |                           |            |
|--|---|---------------------------|------------|
| <b>Agency head or designee, and title:</b> | Steve Gooch, Public Information Officer | <b>Date</b> (mm/dd/yyyy): | 09/22/2021 |
|--|---|---------------------------|------------|

### R590. Insurance, Administration.

#### R590-122. Permissible Arbitration Provisions.

##### R590-122-1. Authority.

This rule is promulgated by the commissioner ~~[of Insurance under the general authority granted under]~~ pursuant to Section 31A-2-201~~(3)~~.

##### R590-122-2. Purpose and Scope.

(1) ~~[This rule recognizes]~~ The purpose of this rule is to:

~~(a) recognize~~ arbitration as an acceptable method of alternative dispute resolution~~[- The rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:~~

~~(a) define the term "permissible arbitration provision" as set forth in Sections 31A-21-313(3)(c) and 31A-21-314(2); and~~

~~(b) provide guidelines [upon which] for disclosure of a contract arbitration provision[- is to be made].~~

(2)~~(a)~~ Except as provided in Subsection (b)(3), this rule ~~[is applicable to both]~~ applies to individual and group contracts and ~~[to]~~ all classifications or lines of insurance.

~~(b)(3)~~ This rule does not apply to individual and group income replacement ~~[policies-]insurance or a health benefit plan[s] that [comply]complies~~ with Rule R590-215.

##### R590-122-3. Definitions.

~~[For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 78B-11-102 and 31A-1-301, and the following]~~ Terms used in this rule are defined in Sections 31A-1-301 and 78B-11-102. Additional terms are defined as follows:

(1) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for

any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(2) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

(3) "Optional binding arbitration" means a contract provision requiring any party to an insurance contract to submit to arbitration as set forth in ~~[such]~~the contract at the election of any contracting party, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(4) "Permissible arbitration provision" means an arbitration provision in an insurance policy that:

(a) allows for an action to be brought against an insurer;

(b) prohibits the insurance policy to be construed according to the laws of another jurisdiction, except as necessary to meet the requirements of compulsory insurance laws of other jurisdictions;

(c) permits Utah courts jurisdiction over an action against the insurer; and

(d) limits the right of action against the insurer to less than three years from the date the cause of action accrues.

#### **R590-122-4. Rule.**

(1) Compulsory non-binding arbitration is contrary to the public interest and is not a <sup>["]</sup>permissible arbitration provision.<sup>["]</sup>

(2) Optional binding arbitration at the exclusive election of an insured party is a <sup>["]</sup>permissible arbitration provision,<sup>["]</sup> in which case the disclosure provisions in ~~[paragraph 5 below may not be applicable]~~Subsection (5) may not apply.

(3) ~~[Both e]~~Compulsory and optional binding arbitration at the election of either the insured or the insurer are <sup>["]</sup>permissible arbitration provisions.<sup>["]</sup>

(4)(a) ~~[Policy forms]~~A policy form containing an optional binding arbitration provision[s] for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv). ~~Such~~, and these provisions in any previously approved form[s] are declared not enforceable.~~[They]~~

(b) A policy form described in Subsection (4)(a) will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.

(5) Except as excluded in ~~[paragraph 2 above]~~Subsection (2), each application or binder pertaining to an insurance policy ~~[which]~~that contains a permissible arbitration provision must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY STATE LAW AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

~~[Such]~~This statement must be disclosed prior to the execution of the insurance contract between the insurer and the policy holder and, in the case of group insurance, shall be contained in the certificate of insurance or other disclosure of benefits.

(6) ~~[Both compulsory]~~No compulsory binding arbitration provision[s] and or optional binding arbitration provision[s] may~~[not]~~ be construed to preclude any dispute resolution by any small claims court having jurisdiction.

(7) ~~[All]~~Any arbitration provision[s] contained in an insurance ~~[policies]~~policy shall ~~[be in compliance with the "Utah Arbitration Act" (Title 78B, Chapter 11)]~~comply with Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(8) ~~[Any such]~~No agreement for arbitration may ~~[not]~~obligate an<sup>[y]</sup> insured to pay more than 50% of the advance payments required to begin the arbitration process.

(9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

#### **R590-122-5. Severability.**

~~[If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]~~If any provision of this rule, Rule R590-122, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: insurance law**

**Date of Enactment or Last Substantive Amendment: October 3, 2012**

**Notice of Continuation: June 5, 2017**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201**