

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment ___; Repeal ___; Repeal and Reenact <u>x</u>		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R590-128	Filing ID (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

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

General Information

2. Rule or section catchline:
R590-128. Failure to Maintain Prior Owner's or Operator's Security
3. Purpose of the new rule or reason for the change (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 determined that the rule's original language was confusing and needed to be fixed. The changes are extensive enough that the rule needs to be repealed and reenacted.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
As originally written, the rule identifies prohibited conduct by an insurer and then describes exceptions in which the prohibited conduct is not prohibited. For example, the rule prohibits an automobile insurer from refusing to insure if the applicant did not maintain prior automobile insurance. However, the rule also allows an insurer to do this if it has proof that the insurance applicant has driven in the past three years in violation of a state's compulsory auto insurance laws. This approach requires two steps for an understanding of the rule, one to understand the prohibitions and one to understand the exceptions to those prohibitions. The proposed rule is substantively identical; it simply eliminates the two steps by combining the prohibitions and the exceptions into a single list of what insurers may do in certain situations.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The repeal and reenact does not add or remove regulations, nor does it change the way the rule will be applied.
B) Local governments:
There is no anticipated cost or savings to local governments. The repeal and reenact does not add or remove regulations, nor does it change the way the rule will be applied.
C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The repeal and reenact does not add or remove regulations, nor does it change the way the rule will be applied.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The repeal and reenact does not add or remove regulations, nor does it change the way the rule will be applied.

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 repeal and reenact does not add or remove regulations, nor does it change the way the rule will be applied.

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

There no compliance costs for any affected persons. The repeal and reenact does not add or remove regulations, nor does it change the way the rule will be applied.

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

Fiscal Cost	FY2022	FY2023	FY2024
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
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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*):

	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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*):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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.)

A) Comments will be accepted until (mm/dd/yyyy): 11/15/2021

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

10. This rule change MAY become effective on (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.

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date (mm/dd/yyyy):	09/22/2021
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~~**[R590. Insurance, Administration.**~~

~~**R590 128. Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised.)**~~

~~**R590 128 1. Authority.**~~

~~_____ This rule is promulgated pursuant to Subsection 31A 23a 402(3), which provides guidelines for determining what is unfair discrimination, and Subsection 31A 23a 402(8), which allows the commissioner to make rules defining unfair marketing acts or practices.~~

~~**R590 128 2. Purpose.**~~

~~_____ The purpose of this rule is to identify certain practices the commissioner finds are unfair and discriminatory.~~

~~**R590 128 3. Scope and Applicability.**~~

~~_____ This rule applies to all automobile insurance contracts delivered or issued for delivery in this state on or after the effective date of this rule.~~

~~**R590 128 4. Rule.**~~

~~_____ (1) The following are hereby identified as acts or practices which, when applied because of failure to maintain automobile~~

insurance for a period of time prior to the issuance of an insurance policy, constitute unfair discrimination among members of the same class:

- _____ (a) refusing to insure or refusing to continue to insure;
 - _____ (b) limiting the amount, extent or kinds of coverage available;
 - _____ (c) charging applicants different rates for the same coverage by either surcharging one applicant who did not have prior insurance or crediting another applicant who did have prior insurance; or
 - _____ (d) designating the applicant as a non-standard, sub-standard, or otherwise worse than average risk for the purpose of placing the applicant in a specific company or rating tier.
- _____ (2) In the application of Subsection (1) the following shall apply:
- _____ (a) an insurer may reject or surcharge an applicant if the insurer can demonstrate through driving records or other objective means including, but not limited to, a statement from the applicant, that the applicant has at any time in the immediately prior three years been operating a motor vehicle in violation of any state's compulsory auto insurance laws; or
 - _____ (b) an insurer may reject or surcharge an applicant if the applicant represents that prior insurance existed, but fails to provide evidence to the insurer, or fails to assist the insurer in securing evidence that said prior insurance actually existed.
 - _____ (3) Inadvertent lapses in coverage of up to 30 days due to the applicant's reasonable reliance on information from an insurance producer or company that the applicant was insured are not considered to be a failure to maintain automobile insurance for the purposes of this rule.

R590-128-5. Penalties.

_____ Violations of this rule are punishable pursuant to Section 31A-2-308.]

R590. Insurance, Administration.

R590-128. Failure to Maintain Prior Owner's or Operator's Security.

R590-128-1. Authority.

_____ This rule is promulgated by the commissioner pursuant to Section 31A-2-201.

R590-128-2. Purpose and Scope.

_____ (1) The purpose of this rule is to identify permissible practices of an insurer when an applicant fails to maintain prior owner's or operator's security.

_____ (2) This rule applies to an automobile insurance policy delivered or issued for delivery in this state.

R590-128-3. Definitions.

_____ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

_____ (1) "Failure to maintain prior owner's or operator's security" means:

_____ (a) operating a motor vehicle at any time during the prior three years in violation of any state's compulsory auto insurance law; or

_____ (b) after representing that prior owner's or operator's security was maintained, failing to provide or failing to assist an insurer in obtaining evidence of prior owner's or operator's security.

_____ (2) "Failure to maintain prior owner's or operator's security" does not mean a lapse in coverage of up to 30 days due to an applicant's reasonable reliance on information from a producer or an insurer that the applicant was insured.

_____ (3) "Owner's or operator's security" has the same meaning as defined in Section 41-12a-103.

R590-128-4. Failure to Maintain Prior Owner's or Operator's Security.

_____ (1) If an applicant fails to maintain prior owner's or operator's security, an insurer may:

_____ (a) refuse to insure or refuse to continue to insure;

_____ (b) limit the amount, extent, or kinds of coverage available;

_____ (c) surcharge the applicant; or

_____ (d) designate an applicant as a non-standard, sub-standard, or otherwise worse than average risk for the purpose of placing an applicant in a specific insurer or rating tier.

_____ (2) An insurer shall demonstrate with objective evidence, which may include an applicant's statement, that an applicant failed to maintain prior owner's or operator's security.

R590-128-5. Severability.

_____ If any provision of this rule, Rule R590-128, or its application to any person or situation is held to be invalid, such invalidity does not affect any other provision or application of this rule which 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 companies

Date of Enactment or Last Substantive Amendment: June 16, 1998

Notice of Continuation: November 25, 2019

Authorizing, and Implemented or Interpreted Law: 31A-23a-402