

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.):	R590-154	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:
R590-154. Unfair Marketing Practices Rule; Misleading Names
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.
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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, update the Severability section to use the department's current language, and remove the Enforcement Date section because the rule is already in force. The changes do not add, remove, or change any regulations or requirements.

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 changes are largely clerical in nature, and will not change how the department functions.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
C) Small businesses ("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.
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 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

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	
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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): 01/03/2022

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): 01/10/2022

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):	11/08/2021
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R590. Insurance, Administration.

R590-154. Unfair Marketing Practices Rule; Misleading Names.

R590-154-1. Authority.

This rule is ~~adopted pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code, Section 31A-23a-402, which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, or unreasonably restrain competition, and to prohibit them by rule, and Subsection 31A-23a-110(2), which provides that a licensee may do business under a name other than the licensee's legal name by notifying the commissioner]~~promulgated by the commissioner pursuant to Section 31A-2-201.

R590-154-2. Purpose and Scope.

(1) The purpose of this rule is to provide guidance to a[H] licensee[s] regarding unfair marketing practices.

(2) This rule applies to ~~[all insurance producers, limited lines producers, consultants and insurers licensed-]~~a licensee under Title 31A, ~~[Utah-]~~Insurance Code.

R590-154-3. Definitions.

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

(1) "Licensee" means ~~a person who holds a license[-, as used in this rule, all individual producers, all agency producers, all individual limited line producers, all agency limited line producers, all individual consultants, all agency consultants, and all insurers].~~

R590-154-4. Prohibited Practices Findings.

The commissioner finds that each ~~[of the-]~~practice[s] prohibited in this rule constitutes a misleading, deceptive, or unfairly

discriminatory practice~~s or~~ that unreasonably restrains competition, except as specifically allowed in this rule.

R590-154-5. Licensee Name.

- (1) A licensee ~~[licensed under the Utah Insurance Code shall]~~ may not use any name that ~~[is]~~:
 - (a) is misleading or deceptive;
 - (b) is likely to be mistaken for another licensee already in business; or
 - (c) implies association or connection with any other organization where actual bona fide association or connection does not exist.
- (2) "Insurance consulting," "insurance consultants" or similar words shall only be used if the licensee is licensed as a consultant.
- (3) A licensee shall be licensed using the licensee's legal name.
- (4) ~~[(a) Section 31A-23a-110(2) permits a licensee to use an assumed name by notifying the commissioner.~~
- ~~_____ (b) In order to give notice of an assumed name as required by Section 31A-23a-110(2), the licensee shall comply with R590-244-13.~~
- ~~_____ (5) A licensee may use its legal name~~[s]~~ or an assumed name ~~[provided]~~ if the commissioner is ~~[properly]~~ notified ~~[of the assumed name].~~~~

R590-154-6. ~~[Sale, Solicitation, or Negotiation of Insurance; Consultation]~~ Selling, Soliciting, or Negotiating for Insurance or Advising or Consulting About Insurance.

- (1) ~~[A licensee shall not, orally or in writing, fail to disclose that the licensee is an insurance licensee.~~
- ~~_____ (2) A licensee shall not use or imply license types or lines of authority not held by the licensee.~~
- ~~_____ (3) An individual licensee may only use the name of an agency licensee if the individual licensee is designated to act under the agency's license.~~
- ~~_____ (4) An individual licensee may not sell, solicit, or negotiate insurance; or consult or advise for an agency licensee unless the individual licensee is designated to act under the agency's license.]~~ When selling, soliciting, or negotiating for insurance or advising or consulting about insurance, a licensee shall:
 - (a) disclose that the licensee is an insurance licensee; and
 - (b) use the name of the agency licensee if the individual licensee is designated to act under an agency's license.
- (2) When selling, soliciting, or negotiating for insurance or advising or consulting about insurance, a licensee may not:
 - (a) use or imply a license type or line of authority not held by the licensee; and
 - (b) sell, solicit, or negotiate insurance or consult or advise for an agency licensee unless the individual licensee is designated to act under the agency's license.

R590-154-7. Claiming or Representing Department Approval.

- (1) A licensee may not represent, either directly or indirectly, that the department, the commissioner, or any employee of the department, has approved, reviewed, or endorsed any marketing program, insurance product, insurance company, practice, or act.
- (2) A licensee may report:
 - (a) the ~~[fact of the]~~ filing of any form, financial report, or other document with the department~~[s]~~; or ~~[of]~~
 - (b) any licensure, examination, or other action involving the department~~[s]~~ or the commissioner ~~[but]~~.
- (3) A licensee may not misrepresent the ~~[if]~~ effect or import of any item reported under Subsection (2).

R590-154-8. ~~[Bartering for Insurance.~~

~~_____ Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall retain said documentation for three years following the expiration of the policy period or bartering transaction, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.~~

R590-154-9. ~~Prohibited Insurance Sales Tie-Ins]~~ Unfair Inducements.

- (1) A ~~[M]~~ multi-level marketing program~~[s]~~, investment program~~[s]~~, membership~~[s]~~, or other similar program~~[s]~~ designed or represented to produce or provide funds to pay ~~[all or]~~ any part of the cost of insurance constitutes an ~~[illegal]~~ unfair inducement.
- (2) A ~~[This does not preclude the provision of insurance through a]~~ bona fide employee benefit~~[s]~~ program is not an unfair inducement.

R590-154-~~[10]~~2. Premium Reduction Through Commissions or Consulting Fees.

- (1) A licensee ~~[shall]~~ may not give or offer to give a premium reduction ~~[by means of]~~ through a commission or a consulting fee back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. ~~[The]~~
- (2) ~~_____ (a) An insurer's underwriting files must document [the] any savings [in order] to enable the commissioner to verify compliance. [This]~~
 - (b) The documentation must demonstrate legitimate expense savings realized by the insurer and its producer.

R590-154-~~14~~10. Prohibited Financing Arrangements.

A licensee may not obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

R590-154-~~12~~11. Acting as [A]a Licensee in Other Jurisdictions.

A resident licensee may not sell, solicit, or negotiate insurance or advise or consult about insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

R590-154-~~13~~12. Use of Comparative Information.

(1) ~~[Every]~~An insurer marketing insurance in ~~[the State of]~~Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities, or insurance companies by its producers will be fair and accurate.

(2) A licensee may not use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means, as defined by ~~[the]~~a credit rating [service]agency.

R590-154-~~14~~13. Disclosure of Insurer in Group Insurance.

~~[Every]~~A certificate of insurance or booklet describing coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the legal name and address of the actual insurer.

~~R590-154-15. Enforcement Date.~~

~~The commissioner shall begin enforcing the revised provisions of this rule on the rule's effective date.~~

~~R590-154-16~~14. Severability.

~~[If any provision of this rule or the application to any person or situation is held to be invalid, that 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 provision of this rule are declared to be severable.]~~If any provision of this rule, Rule R590-154, 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, unfair marketing practices, misleading names

Date of Enactment or Last Substantive Amendment: January 15, 2016

Notice of Continuation: March 14, 2018

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402; 31A-23a-110