

State of Utah
Administrative Rule Analysis
Revised November 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.):	R590-166	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:
R590-166. Home Protection Service Contracts
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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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, and update the Severability section to use the department's current language. 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	Section 31A-6a-110	

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): 01/31/2022

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): 02/07/2022

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):	12/08/2021
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R590. Insurance, Administration.

R590-166. Home Protection Service Contracts~~[Rule]~~.

R590-166-1. Authority.

This rule is ~~issued by the Insurance Commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Subsections 31A-6a-110(1) and (2)]promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-6a-110.~~

R590-166-2. Purpose and Scope.

(1) The purpose of this rule is to:

~~(a) establish [certain] exemptions from [the]certain requirements of [Chapter 6a of]Title 31A, Chapter 6a, Service Contracts;[as it relates to home protection companies as defined herein]~~

~~(b) allow for the use of a security deposit, a surety bond, or an irrevocable letter of credit in place of a reimbursement insurance policy; and~~

~~(c) establish annual report filing requirements.~~

~~(2) This rule applies to a home protection company that chooses to be backed by a security deposit, a surety bond, or an irrevocable letter of credit.~~

R590-166-3. Definition.

~~[A. "Home protection service contract," also referred to as "home service contract" or "home warranty," means a service contract as defined by Subsection 31A-6a-101(4)(a) whereby a person, other than a builder, seller, or lessor of a home which is the subject of the contract, undertakes, for a specified period of time and for a predetermined fee, to repair or replace components, systems, or appliances of~~

~~such home upon mechanical or operational failure, or to make indemnification to the holder of such contract for such repair or replacement.~~

~~B. "Home protection company" means a service contract provider as defined by 31A 6a 101(6) who issues home protection service contracts, excluding insurers authorized for casualty insurance.]Terms used in this rule are defined in Sections 31A-1-301 and 31A-6a-101. Additional terms are defined as follows:~~

~~(1) "Home protection service contract," "home service contract," or "home warranty" has the same meaning as the term "home warranty service contract" under Section 31A-6a-101.~~

~~(2) "Home protection company" has the same meaning as the term "service contract provider" under Section 31A-6a-101.~~

R590-166-4. [Rule]Exemption from Requirements of Title 31A, Chapter 6a.

~~[A. Upon prior written notification to the commissioner, home protection companies doing business in this state who are, at the time of notification, in compliance with all the terms and provisions set forth in this rule and are in compliance with all of the terms and provisions of Chapter 6a of Title 31A, except those terms and provisions specifically exempted herein, shall be exempt from the requirements of Subsections 31A 6a 103(1)(a) and (b), and 31A 6a 103(2)(b)(iv) and the requirements of Subsections 31A 6a 104(1)(a) and (b), and 31A 6a 104(2)(a)(i); provided, however, that nothing herein shall abrogate the requirement that home protection companies file copies of the service contracts to be used in this state, and any modifications thereto as would otherwise be required pursuant to Subsections 31A 6a 103(2)(a) and (b). So long as a home protection company remains in compliance with this rule, the home protection company's election to be subject to this rule shall remain in effect until written notification to the commissioner by the company of the company's withdrawal of its election. Notwithstanding the foregoing, home protection companies who are doing business in this state prior to the effective date of this rule and who elect to be subject to this rule as of the rule's effective date shall have until 60 days from the rule's effective date to attain compliance with all the terms and provisions of the rule](1) Upon registering, a home protection company that does not maintain a reimbursement insurance policy shall maintain a security deposit, a surety bond, or an irrevocable letter of credit.~~

~~(2) A home protection company that maintains a security deposit, a surety bond, or an irrevocable letter of credit is exempt from the requirements of Subsections 31A-6a-103(1)(a) and (b), 31A-6a-103(2)(b)(iv), 31A-6a-104(1)(a) and (b), 31A-6a-104(2)(a)(i), and 31A-6a-104(3)(a)(i).~~

R590-166-5. Security Deposit, Surety Bond, or Irrevocable Letter of Credit.

~~[B. To assure the faithful performance of its obligations to its contract holders the home protection company shall deposit in accordance with Section 31A 2 206 an amount not less than \$10,000 for each 500 home protection service contracts in force in this state, but not to exceed \$100,000. In the event of any failure of the home protection company to perform its obligations to its contract holders, the commissioner may make equitable distributions to contract holders from funds held on deposit.](1) A home protection company that maintains a security deposit, a surety bond, or an irrevocable letter of credit shall comply with this subsection.~~

~~(a)(i) A security deposit shall be in an amount not less than \$10,000 for each 500 home protection service contracts in force in this state, but not to exceed \$100,000.~~

~~(ii) A security deposit must be made in a federally insured financial institution under a tri-party agreement that names the commissioner as a party.~~

~~(iii) If a home protection company fails to perform its obligations to its contract holders, the commissioner may make equitable distributions to contract holders from funds on deposit.~~

~~[C. In lieu of the deposit required in paragraph B above, a surety bond or irrevocable letter of credit in favor of the commissioner for \$50,000 may be filed by the home protection company. When, based on the home protection company's annual report pursuant to Section 5(A) hereof, the number of home protection service contracts issued by a protection company then in force in this state exceeds 2,500, the amount of the surety bond or letter of credit shall be increased to \$100,000. The bond shall be issued by an insurer authorized to transact surety business in this state. Any letter of credit shall be from a bank approved by the commissioner and in a form acceptable to the commissioner. The surety bond or letter of credit shall be held for the same purpose as the deposit in lieu of which it is filed. No bond or letter of credit shall be cancelled or subject to cancellation unless at least 30 days advance notice, in writing, thereof is filed with the commissioner and evidence of other security is provided.](b)(i) A surety bond shall be in favor of the commissioner in the amount of \$50,000.~~

~~(ii) When the number of home protection service contracts issued by a home protection company in force in this state exceeds 2,500, the amount of a surety bond shall be increased to \$100,000.~~

~~(iii) A surety bond shall be issued by an insurer authorized to transact surety business in this state.~~

~~(iv) A surety bond may not be cancelled or subject to cancellation unless at least 30 days advance written notice is filed with the commissioner and evidence of other security is provided.~~

~~(c)(i) An irrevocable letter of credit shall be in favor of the commissioner in the amount of \$50,000.~~

~~(ii) When the number of home protection service contracts issued by a home protection company in force in this state exceeds 2,500, the amount of an irrevocable letter of credit shall be increased to \$100,000.~~

~~(iii) An irrevocable letter of credit shall be issued from a bank approved by the commissioner and in a form acceptable to the commissioner.~~

~~(iv) An irrevocable letter of credit may not be cancelled or subject to cancellation unless at least 30 days advance written notice is filed with the commissioner and evidence of other security is provided.~~

~~[D. The securities, bond or letter of credit of a home protection company deposited as required by this rule shall constitute a claim fund to be administered by the commissioner for the benefit of persons sustaining actionable injury due to the insolvency or impairment of the home protection company. The commissioner may, at his option, seek assumption of an insolvent home protection company's obligations~~

~~and business by a solvent company, and apply the insolvent home protection company's deposit or proceeds of any surety bond or letter of credit to this purpose.](d)(i) Proceeds from a security deposit, a surety bond, or an irrevocable letter of credit under this rule may be administered by the commissioner for the benefit of a person sustaining actionable injury due to the insolvency or impairment of a home protection company.~~

~~(ii) At the option of the commissioner, the commissioner may seek to arrange the assumption of an insolvent home protection company's obligations and business on behalf of a solvent company, and apply the insolvent home protection company's deposits or proceeds of a surety bond or an irrevocable letter of credit with the assuming company.~~

~~[E. Any deposit, surety bond or letter of credit shall be maintained unimpaired as long as the home protection company continues to do business in this state. Whenever the home protection company ceases to do business in this state and furnishes the commissioner proof that it has discharged or otherwise adequately provided for all its obligations to its home protection service contract holders in this state, the commissioner shall authorize release of the deposited securities, surety bond or letter of credit on file at that time.](2)(a) A security deposit, a surety bond, or an irrevocable letter of credit shall be maintained unimpaired while a home protection company continues to do business in this state.~~

~~(b) When a home protection company ceases to do business in this state and furnishes the commissioner proof that it has discharged or otherwise adequately provided for each of its obligations to its contract holders, the commissioner shall authorize release of a security deposit, a surety bond, or an irrevocable letter of credit on file at that time.~~

R590-166-[5]6. Annual Statement[s, Interim Reports].

~~[A.](1) A home protection company [electing to be subject to this rule-]subject to this rule shall annually, within 90 days after the close of its fiscal year, file with the commissioner [its-]an annual statement in a form prescribed by the commissioner[-. Such annual statement shall include a current financial statement prepared in accordance with generally accepted accounting principles, reviewed by an independent certified public accountant, and verified by the home protection company's president and principal financial or accounting officer].~~

~~[B. Each annual statement shall also report the home protection company's volume of business in this state during the preceding fiscal year, the losses thereon, open depositories at year end, and a statement of assets and liabilities.](2) An annual statement shall include:~~

~~(a) a current financial statement prepared in accordance with generally accepted accounting principles, reviewed by an independent certified public accountant and verified by the home protection company's president and principal financial officer;~~

~~(b) a home protection company's volume of business in this state during the preceding fiscal year;~~

~~(c) a home protection company's business losses;~~

~~(d) a list showing each security deposit, surety bond, and irrevocable letter of credit at year end; and~~

~~(e) a statement of assets and liabilities.~~

~~[C.](3) A home protection company [which-]that fails to timely file its annual statement [in the form and within the time provided in this rule-]may be:~~

~~(a) fined \$500 for each month, or any part thereof, during which such delinquency continues[-, and upon notice by the commissioner, its election to be subject to this rule may be suspended or revoked until such delinquency is cured to the satisfaction of the commissioner];~~

~~(b) subject to suspension until the delinquency is cured to the satisfaction of the commissioner; and~~

~~(c) subject to revocation.~~

~~[D. In addition to an annual statement, t](4) The commissioner may require [of any particular-]a home protection company[-, in any situation where that home protection company's ability to service its obligations to holders or creditors is in reasonable doubt, such-] to file additional regular or special reports, as the commissioner [may deem-]considers necessary.~~

R590-166-[6]7. Severability.

~~[If a provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions is not effected.][If any provision of this rule, Rule R590-166, 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

Date of Enactment or Last Substantive Amendment: January 24, 2006

Notice of Continuation: April 3, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-6a-110