

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

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-170</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**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>
R590-170. Fiduciary and Trust Account Obligations
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
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.
<b>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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
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 Penalties section because penalties are already provided for in statute. 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 ("small business" means a business employing 1-49 persons):</b>
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 ("non-small business" means a business employing 50 or more persons):</b>

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):	05/16/2022	
<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):	05/23/2022
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.

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date</b> (mm/dd/yyyy):	04/01/2022
--	---	---------------------------	------------

**R590. Insurance, Administration.**

**R590-170. Fiduciary and Trust Account Obligations.**

**R590-170-1. Authority.**

This rule is promulgated 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 under Sections 31A-23a-406, 31A-23a-409, 31A-23a-410, 31A-23a-411.1, 31A-23a-412 and 31A-25-305 authorizing the commissioner to establish by rule, records to be kept by licensees]~~ commissioner pursuant to Section 31A-2-201.

**R590-170-2. Purpose and Scope.**

- (1) The purpose of this rule is to set minimum standards ~~[that shall be followed for fiduciary and ]~~ for a licensee's trust account obligations ~~[pursuant to Sections 31A-23a-406, 31A-23a-409 and 31A-25-305].~~
- (2) This rule applies to ~~[all Chapter 31A-23a and Chapter 31A-25 licensees.]~~ a licensee holding funds in a fiduciary capacity.

**R590-170-3. Definitions.**

~~[For the purposes of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and the following]~~ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

- (1) "Trust ~~[A]~~ account" means a checking or savings account where funds are held in a fiduciary capacity.
- (2) "Accounts ~~[R]~~ receivable" means a licensee's invoiced premiums, fees, or taxes ~~[invoiced by a licensee].~~
- (3) "Accounts ~~[P]~~ payable" means:

(a) premiums or fees due to insurers that a licensee is responsible for invoicing and collecting from insureds on an insurer or licensee's behalf ~~[of insurers and licensees];~~ and

~~(b) premium taxes due to taxing entities.~~

~~(4) "Licensee" means a [licensee] person licensed under [Chapters 31A-23a and 31A-25];~~

~~(a) Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries; or~~

~~(b) Title 31A, Chapter 25, Third Party Administrators.~~

#### **R590-170-4. Establishing ~~the~~ a Trust Account.**

~~(1)(a) [All] Each record[s] relating to a trust account shall be identified with the wording "[F] trust [A] account" or [words of similar import,] wording similar to the term "trust account," including the term "premium fund account."~~

~~(b) [These] A trust account record[s] includes a:~~

~~(i) check[s,];~~

~~(ii) bank statement[s,];~~

~~(iii) general ledger[s and]; or~~

~~(iv) bank-retained record[s retained by the bank] pertaining to the trust account.~~

~~(2) [All] A licensee shall open a trust account[s shall be established] with a Federal Employer Identification [N] number or a Social Security [N] number.~~

~~(3)(a) A trust account shall be a separate and distinct account from the licensee's operating and personal accounts[; i.e.,];~~

~~(b) The trust account shall have:~~

~~(i) a separate account number[;];~~

~~(ii) a separate account register[, and different]; and~~

~~(iii) separate checks, deposit slips, and withdrawal slips.~~

~~(4) A [non] person other than a licensee may [not] be a signatory on a licensee's trust account[, unless the non licensee signatory] only if that person:~~

~~(a) is an employee of the licensee; and~~

~~(b) has specific responsibility for the licensee's trust account.~~

#### **R590-170-5. Maintaining ~~the~~ a Trust Account.**

~~(1) Funds deposited into a trust account shall be limited to:~~

~~(a) premiums, which may include commissions;~~

~~(b) return premiums;~~

~~(c) fees or taxes paid with premiums;~~

~~(d) financed premiums;~~

~~(e) funds held pursuant to a third[-] party administrator contract;~~

~~(f) funds deposited with a title insurance agent [in connection with any] regarding an escrow settlement or closing[, amounts];~~

~~(g) funds necessary to cover trust account bank charges[- on the trust account]; and~~

~~(h) interest on the trust account, except as provided under Subsection 31A-23a-406(2)(b).~~

~~(2) Disbursements from a trust account shall be limited to:~~

~~(a) premiums paid to insurers;~~

~~(b) return premiums to policyholders; [transfer of]~~

~~(c) commission[s] and fee[s] transfers;~~

~~(d) fees or taxes collected with premiums paid to an insurer[s] or taxing authority;~~

~~(e) funds paid pursuant to a third[-] party administrator contract;~~

~~(f) funds [disbursed by] a title insurance agent [in connection with any] disburses regarding an escrow settlement or closing; and~~

~~(g) [the transfer of] accrued interest transfers.~~

~~(3) Personal or business expenses may not be paid from a trust account, even if the trust account has sufficient commissions [exist in the account] to cover the[se] personal or business expenses.~~

~~(4) [Commissions] A commission may not be disbursed from a trust account [prior to] before the beginning of the policy period for which the premium [has been] is collected.~~

~~(5) [Commissions] A commission attributed to premiums and fees collected [must] shall be disbursed from a trust account on a date no[~~t~~] later than the first business day of the calendar quarter after the end of the policy period for which the funds were collected.~~

~~(6) [Premiums] A premium due to an insurer[s] may not be paid from a trust account unless:~~

~~(a) the premiums [directly] relating to the amount due [have been deposited into, and] are being held in[;] the trust account[; or unless funds have been retained in the trust account consistent with Subsection 5 above,]; or~~

~~(b) a licensee placed [by a licensee into] the funds in the trust account to finance premiums on the insured's behalf [of insureds].~~

~~(7) Premiums financed by a licensee [must] shall be accounted for as a loan [with] and accrue interest [charged at no less than the statutory rate for any loan exceeding 90 days, pursuant to Section 31A-23a-404] at the contracted rate.~~

#### **R590-170-6. Insurers' Access to a Trust Account[s].**

~~(1) [Insurer access to licensee trust funds is not prohibited by the trust relationship; however, licensees must take reasonable steps to assure trust funds are protected from misappropriation by limiting access to those trust funds] An insurer may access licensee trust funds in a trust relationship when a licensee takes reasonable steps to prevent misappropriation by limiting access to trust funds.~~

- (2) An insurer ~~[desiring to]~~ may access funds in a licensee's trust account ~~[may do so]~~ if:
- (a)(i) the contract between the insurer and the licensee allows ~~[electronic]~~ fund transfers into or out of the licensee's trust account~~[-]~~;
  - (ii) the contract expressly permits the insurer to withdraw only the amount [authorized by] the licensee authorizes for each transaction; and
  - (iii) [specific] the insurer receives the licensee's authorization [from the licensee of the amount to be withdrawn] to withdraw a specific amount from the licensee's trust account [must be received by the insurer prior to the withdrawal] before the insurer withdraws the funds; or
- (b) the licensee provides the insurer electronic funds transfer into or out of a separate trust account set up solely for trust funds deposited for that insurer.
- (3) ~~[By implementing]~~ An insurer that implements electronic funds transfers from a licensee's trust account~~[-, the insurer]~~ accepts the commissioner's right to oversight ~~[of]~~ on all electronic funds transfers between the insurer and the licensee;
- ~~\_\_\_\_\_~~ (4) ~~Insurers utilizing electronic funds transfer contracts will annually report to the commissioner the name of each licensee with whom they have such contracts.~~
- ~~\_\_\_\_\_~~ (a) ~~The report is due January 15 of each year.~~
- ~~\_\_\_\_\_~~ (b) ~~The report will include the name and address of each licensee and the line of business involved, i.e. personal lines, commercial lines, health, life, etc].~~

#### **R590-170-7. Maintaining Accounting Records~~[to be Maintained]~~.**

- (1) ~~[Bank statements for trust accounts]~~ Trust account bank statements shall be reconciled monthly.
- (2) An accounts receivable report showing each credit[s] and debit[s] shall be maintained and reconciled monthly~~[-. This report must list, at a minimum, -]~~, and shall list, at a minimum, the following:
- ~~\_\_\_\_\_~~ (a) ~~the account name[- and-]~~;
  - ~~\_\_\_\_\_~~ (b) the amount and date due for each receivable[-. The sum of all receivables shall be shown on the report]; and
  - ~~\_\_\_\_\_~~ (c) the sum of all receivables. [Receivables-]
- (3) The report required under Subsection (2) shall list separately each receivable and their sums that are over 90 days old[- shall be shown separately on the report].
- ~~[(3)](4)~~ (4) An accounts payable report showing ~~[the status of-]~~ each account's status shall be maintained and reconciled monthly.
- ~~[(4)](5)~~ (5) Adequate records shall be maintained to establish ownership of all funds in the trust account, including:
- ~~\_\_\_\_\_~~ (a) records showing from whom the [y-] funds were received; and
  - ~~\_\_\_\_\_~~ (b) records showing for whom the [y-] funds are held.
- ~~[(5)](6)~~ (6) Trust account registers shall maintain a running balance.
- ~~[(6)](7)~~ (7) All accounting records relating to the business of insurance shall be maintained in a manner that facilitates an audit.

#### **R590-170-8. Insurer Responsibility.**

- (1) Insurers and their managing general agents shall provide a written report to the ~~[insurance-]~~ commissioner within 15 days if:
- ~~[(1) if]~~ (a) a licensee fails to pay an account payable within 30 days of the due date~~[-. This does not apply where a legitimate dispute exists regarding the account payable if the licensee has properly notified the insurer of any disputed items and has provided documentation supporting that position]; or~~
  - ~~[(2) if]~~ (b) a licensee issues a check that is not honored when presented ~~[at-]~~ to the bank ~~[is not honored-]~~ or is returned because of insufficient funds.
- (2) Subsection (1)(a) may not apply when a legitimate dispute exists regarding the account payable if:
- ~~\_\_\_\_\_~~ (a) the licensee has properly notified the insurer of any disputed items; and
  - ~~\_\_\_\_\_~~ (b) the licensee has provided documentation to the insurer supporting the licensee's position.

#### **R590-170-9. Severability.**

~~[If any provision or clause of this rule or its application to any person or situation is held invalid such invalidity will 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 R590-170, 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: October 30, 2014**

**Notice of Continuation: February 11, 2019**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-406; 31A-23a-409; 31A-23a-412; 31A-25-305**