

**State of Utah**  
**Administrative Rule Analysis**  
Revised May 2023

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Title No. - Rule No. - Section No.**

**Rule or Section Number:**

**R590-281**

**Filing ID: Office Use Only**

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room number:</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 persons:</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 persons listed above.**

**General Information**

<b>2. Rule or section catchline:</b>
R590-281. License Application Submitted by an Individual Who Has a Criminal Conviction or Pending Proceeding
<b>3. Purpose of the new rule or reason for the change:</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:</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, and make explicit that the rule also applies to proceedings that are pending. 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) 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	FY2024	FY2025	FY2026
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>
Fiscal Benefits	FY2024	FY2025	FY2026
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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. 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	Ex 2: Subsection 63G-3-403(3)	

**Incorporations by Reference Information**

**7. Incorporations by Reference** (if this rule incorporates more than two items by reference, please include additional tables):

**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>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</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>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</b>	

<b>Issue or Version</b>	
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**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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>		01/17/2024
<b>B) A public hearing (optional) will be held:</b>		
<b>Date (mm/dd/yyyy):</b>	<b>Time (hh:mm AM/PM):</b>	<b>Place (physical address or URL):</b>
<b>To the agency:</b> If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

<b>9. This rule change MAY become effective on:</b>	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	11/28/2023

**R590. Insurance, Administration.**

**R590-281. License ~~Applications~~ Application Submitted by ~~Individuals~~ an Individual Who ~~Have~~ Has a Criminal Conviction or Pending Proceeding.**

**R590-281-1. Authority.**

This rule is promulgated by the commissioner pursuant to ~~[Subsection 31A-2-201(3) which authorizes the commissioner to adopt rules to implement the provisions of Title 31A]~~ Section 31A-2-201.

**R590-281-2. Purpose and Scope.**

- (1) ~~[This rule sets]~~ The purpose of this rule is to set eligibility requirements for a license ~~[applicants who have]~~ applicant who has a criminal conviction or a pending proceeding.
- (2) This rule applies to a license ~~[applicants who have]~~ applicant who has a criminal conviction or a pending proceeding.

**R590-281-3. Definitions.**

~~[The following definitions shall apply for the purpose of this rule:]~~ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

- (1) "Criminal conviction" means a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty, that results in:
  - (a) judgment of guilt entered by a court;
  - (b) an admission;
  - (c) a guilty plea;
  - (d) a no contest plea;
  - (e) a proceeding involving a plea in abeyance; or
  - (f) another deferred adjudication agreement that has not yet been dismissed.
- (2) "License" means an initial ~~[resident individual or resident agency insurance]~~ license issued by the commissioner~~[- and]~~.
- (3) "License applicant" means an individual applying for a license under:
  - (a) Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;
  - (b) Title 31A, Chapter 23b, Navigator License Act;
  - (c) Title 31A, Chapter 25, Third Party Administrators; or
  - (d) Title 31A, Chapter 26, Insurance Adjusters.
- ~~(2)~~(4) "Proceeding" means:
  - (a) a criminal proceeding in which an individual is charged with a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty~~[- including a proceeding involving a plea in abeyance]~~; or
  - (b) ~~[a]~~ an administrative, civil, or regulatory enforcement proceeding in which an individual is alleged to have engaged in conduct involving fraud, misrepresentation, theft, or dishonesty.

#### **R590-281-4. Eligibility to Apply for a License.**

(1) Except as provided in Subsections ~~[(2)](3)~~ through ~~[(4)](5)~~, ~~[and except in the case of a juvenile adjudication,]~~ an individual who has ~~[been convicted of or pleaded no contest to a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty]~~ a criminal conviction is eligible to apply for a license if:

- (a) the individual has completed probation, parole, or has been released from incarceration;
  - (b) the individual has no criminal proceeding pending;
  - (c) the individual has paid in full all fines and interest ordered by the court related to the criminal conviction;
  - (d) the individual has paid in full all restitution ordered by the court related to the criminal conviction; and
  - (e) the following time periods have elapsed from the date the individual was convicted~~[or]~~, released from incarceration, parole, or probation, or the expiration of the probationary term, whichever occurred last:
    - (i) seven years in the case of a felony;
    - (ii) five years in the case of a class A misdemeanor;
    - (iii) four years in the case of a class B misdemeanor; or
    - (iv) three years in the case of any other misdemeanor.
- (2) Any pending administrative, civil, or regulatory proceeding must be resolved before an individual is eligible to apply for a license.

(3) Subsection (1) does not apply to:

(a) a juvenile adjudication; or

(b) an individual whose criminal charge was dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance.

~~[(3) In applying this rule, the]~~ (4) The department will give effect to a conviction for a lower degree of offense pursuant to Section 76-3-402.

~~[(4)](5)(a)(i)~~ An individual ~~[who has been]~~ convicted of violating the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033, or who ~~[is deemed]~~ under 18 U.S.C. Sec. 1033 ~~[to have]~~ has been convicted of a felony involving dishonesty or breach of trust, may not apply for a license without first obtaining written consent from the commissioner to engage or participate in the business of insurance.

(ii) The policy and application for written consent are available on the department's website~~[at www.insurance.utah.gov]~~, <https://insurance.utah.gov>.

(b) An individual who obtains written consent may apply for a license~~[.The individual remains]~~, subject to all other license application requirements.

(c) An application for written consent is required even if:

(i) a felony ~~[charge]~~ conviction involving dishonesty or breach of trust has been dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance;~~[or]~~

(ii) a felony conviction involving dishonesty or breach of trust has been reduced to a lower degree of offense ~~[pursuant to]~~ under Section 76-3-402; or

(iii) a felony conviction involving dishonesty or breach of trust has been expunged under Title 77, Chapter 40a, Expungement.

~~[(5)](6)~~ The department ~~[will]~~ shall deny a license application submitted by an individual who is not eligible under this ~~[Section]~~ section.

~~[(6)](7)~~ Eligibility to apply for a license under this Rule R590-281 is a separate determination from and does not affect eligibility to engage in the business of insurance under 18 U.S.C. Sec. 1033.

#### **R590-281-5. Severability.**

If any provision of this rule, R590-281, or its application to any person or situation is held 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, licensing**

**Date of Enactment or Last Substantive Amendment: December 23, 2020**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)**