

RULES – IMPLEMENTATION

APRIL 5, 2021

COMMERCIAL LINES

LI-CL-2021-016

UTAH EXCEPTIONS TO HIRED AUTO AND NON-OWNED AUTO LIABILITY INSURANCE RULES TO BE IMPLEMENTED

KEY MESSAGE

We are implementing rules filing [CL-2021-OWHA2](#), which introduces Utah exceptions for various lines of business to indicate that Hired Auto And Non-owned Auto Liability coverage does not apply in Utah.

Applicable Lines: BP, HH, MS

UPGRADE TO WORD AND EXCEL DOCUMENTS

ISO is currently implementing changes to our authoring and delivery systems so that **newly created** documents will be delivered in Office 365 .docx/.xlsx format. These changes will be phased in by product/service tentatively beginning in second quarter 2021. We are providing advance notification so that you may prepare your internal systems. Products impacted include, but are not limited to, documents delivered/accessed via Circulars, CLM, EFD, ERC, Filings, FIRST, Forms Library (including PolicyWriting Support Forms Instructional Supplement), PRM, Statistical Plans and Suite +.

BACKGROUND

In circular [LI-CL-2021-015](#), we announced the withdrawal of Hired Auto And Non-owned Auto Liability endorsements in several lines of business in response to the Utah Supreme Court's holding in *Dircks v. The Travelers Indemnity Company of America*, 416 P.3d 376 (2017).

ISO ACTION

Under ISO Filing Designation [CL-2021-OWHA2](#), we are introducing Utah exceptions for Businessowners, Home Healthcare and Market Segments to indicate that Hired Auto And Non-owned Auto Liability Insurance does not apply in Utah.

Refer to the attached explanatory material for complete details about the filing.

EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies written on or after September 1, 2021.

COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Designation Number [CL-2021-OWHA2](#), not this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

RATING SOFTWARE IMPACT

No new attributes are being introduced with this revision.

POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2021-004](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

REVISION DISTRIBUTION

We will issue a Notice to Manualholders with an edition date of 9-21 (or the earliest possible subsequent date), along with any new and/or revised manual pages.

RELATED FORMS REVISION

We are announcing in a separate circular the implementation of a corresponding forms revision. Please refer to the Reference(s) block for identification of that circular.

REFERENCE(S)

- [LI-CL-2021-015](#) (04/05/2021) Utah Hired Auto And Non-owned Auto Liability Insurance Endorsements Withdrawn
- [LI-CL-2021-004](#) (02/17/2021) Revised Lead Time Requirements Listing

ATTACHMENT(S)

Filing CL-2021-OWHA2

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Introduction of Utah Exceptions To Hired Auto And Non-Owned Auto Liability Insurance Rules

Applicable Lines of Business

This filing applies to the following lines of business:

- ◆ Businessowners
- ◆ Home Healthcare
- ◆ Market Segments
 - Auto Service Risks Section
 - Golf Courses Section
 - Hardware And Home Improvement Stores Section
 - Health Clubs And Gyms Section
 - Hotels, Motels And Inns Section
 - Personal Care Services Section
 - Restaurants Section
 - Self-storage Facilities Section
 - Staffing Firms Section
 - Supermarkets Section

About This Filing

This filing introduces Utah exceptions for various lines of business to indicate that the rule pertaining to Hired Auto And Non-owned Auto Liability does not apply in Utah.

New Rules

We are introducing exceptions to:

- ◆ Division Ten – Businessowners
 - Rule 24. Deductibles
- ◆ Division Nineteen – Home Healthcare

- Rule 33. Hired Auto And Non-Owned Auto Liability Insurance
- ◆ Division Twelve – Market Segments
 - Auto Service Risks Section, Rule 8. Endorsements
 - Golf Courses Section, Rule 8. Endorsements
 - Hardware And Home Improvement Stores Section, Rule 7. Endorsements
 - Health Clubs And Gyms Section, Rule 8. Endorsements
 - Hotels, Motels And Inns Section, Rule 8. Endorsements
 - Personal Care Services Section, Rule 7. Endorsements
 - Restaurants Section, Rule 8. Endorsements
 - Self-Storage Facilities Section, Rule 8. Endorsements
 - Staffing Firms Section, Rule 7. Endorsements
 - Supermarkets Section, Rule 8. Endorsements

Revised Rule

- ◆ We are revising Division Ten – Businessowners, Rule 29. Endorsements. We have used a format of ~~striking-through~~ deletions and underlining additions to indicate changes.

Related Filing(s)

The following forms companion filing is being filed with a concurrent effective date:

- ◆ CL-2021-OWHA1

Background

In companion forms filing CL-2021-OWHA1, we are withdrawing Hired Auto And Non-owned Auto Liability endorsements in several lines of business in response to the Utah Supreme Court's holding in Dircks v. The Travelers Indemnity Co., 416 P.3d 376 (2017). In Dircks, the Utah Supreme Court held, in part, that any vehicle covered under the liability provisions of an auto insurance policy must also be covered under the underinsured motorist provisions of that policy, and with equal limits, unless a named insured waives the coverage by signing an acknowledgment form meeting certain statutory requirements.

Explanation of Changes

We are introducing Utah exceptions to the multistate Commercial Lines Manual rules indicated above to state that Hired Auto And Non-Owned Auto Liability Insurance does not apply in Utah. We are similarly revising an existing state exception to Businessowners Rule 29. Endorsements.

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DIVISION TEN – BUSINESSOWNERS

24. DEDUCTIBLES

Paragraph **B.4.** is replaced by the following:

B. Optional Fixed Dollar Deductibles

4. Optional deductibles **do not** apply to the following optional endorsements:

a. Additional Insured – Lessor Of Leased Equipment Endorsement **BP 04 16**;

b. Additional Insured – Managers Or Lessors Of Premises Endorsement **BP 04 02**;

c. Pharmacists – Broad Coverage Endorsement **BP 08 06**;

d. Pharmacists Endorsement **BP 08 07**;

e. Utility Services – Time Element Endorsement **BP 04 57**; and

f. Veterinarians Professional Liability Endorsement **BP 08 05**.

DIVISION TEN – BUSINESSOWNERS

29. ENDORSEMENTS

Paragraph **A.5.** is replaced by the following:

A. Property Endorsements

5. Condominium Commercial Unit-owners Optional Coverages

a. Description Of Coverage

This endorsement provides the following coverages for condominium unit-owners:

(1) Loss Assessment

Loss Assessment based on the Condominium Association's Deductible Coverage will pay for the excess over the amount covered under the unit-owner's policy for the unit-owner's share of the Association's deductible, up to the Loss Assessment Limit of Insurance. The unit-owner's policy provides primary coverage for the portion of a loss attributable to the Association's policy deductible, provided the loss results from direct physical loss or damage to property covered by both the unit-owner's policy and the Condominium Association's policy.

Other Loss Assessment Coverage will pay for the unit-owner's share of assessments charged during the policy period to all unit-owners by the Condominium Association provided that the assessment is for damage to property in which each unit-owner has an undivided interest caused by a covered cause of loss. When such an assessment is based on the Association's policy deductible, a \$1,000 limitation (sub-limit) applies. The sub-limit can be increased. The sub-limit does not increase the Loss Assessment Limit of Insurance.

Activate the Loss Assessment option in the Utah – Condominium Commercial Unit-owners Optional Coverages Endorsement **BP 17 37**.

(2) Miscellaneous Real Property

This coverage applies to condominium property that pertains only to the unit-owner's unit or that the unit-owner must insure according to the Condominium Association Agreement.

b. Endorsement

Use Endorsement **BP 17 37**. Use the Schedule of Endorsement **BP 17 37** to identify which of these optional coverages applies.

c. Premium Determination

(1) Loss Assessment

- (a)** Refer to the multistate rates to determine the premium.
- (b)** The premium for this coverage is a flat charge.

(2) Miscellaneous Real Property

Refer to the multistate rates and multiply the rate by the limit of insurance (per \$100) to determine the additional premium.

Paragraph **B.11.** does not apply.

Paragraph **B.13.a.(2)** is replaced by the following:

B. Liability Endorsements

13. Liquor Liability Coverage

a. Endorsements

- (2)** Utah Liquor Liability Coverage Endorsement **BP 05 04** and Utah Liquor Liability Coverage – Bring Your Own Alcohol Establishments Endorsement **BP 14 94** provide coverage against claims for bodily injury or property damage sustained by any person or organization if liability for such injury is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. Endorsement **BP 14 94** extends such coverage to an insured who permits any person to bring alcoholic beverages on their premises, for consumption on their premises. The Schedules of the endorsements provide an entry for:

- (a)** A Liquor Liability Aggregate Limit which is the most that will be paid for all claims for bodily injury or property damage arising out of the selling, serving or furnishing of any alcoholic beverage;

- (b) An Each Common Cause Limit which is the most that will be paid for all bodily injury or property damage sustained by one or more persons or organizations as the result of the selling, serving or furnishing of alcoholic beverages to any one person. UTAH CODE ANN. Section 32B-15-301 generally provides that the aggregate amount that may be awarded to all persons injured as a result of one occurrence, under the Utah Alcoholic Product Liability Act, is limited to \$2,000,000;
- (c) An Each Person Limit which is the most that will be paid for all bodily injury or property damage sustained by any one person or organization as the result of the selling, serving or furnishing of any alcoholic beverage to any one person. UTAH CODE ANN. Section 32B-15-301 generally provides that the total amount that may be awarded to any person pursuant to a cause of action for injury and damage under the Utah Alcoholic Product Liability Act that arises after January 1, 2010 is limited to \$1,000,000.

Neither the Liability And Medical Expenses Limit Of Insurance shown in the Declarations nor its aggregate limits apply to damages arising out of the selling, serving or furnishing of alcoholic beverages.

Paragraph **B.13.b.(4)** is replaced by the following:

b. Liquor Liability Grades

- (4) The Liquor Liability Numerical Grade is 0 for businesses licensed to sell beer at retail only for off-premise consumption. A Liquor Liability Numerical Grade of 6 applies for all other establishments.

Citation of Law: UTAH CODE ANN. Section 32B-15-201 *et seq.*

Comments:

The statute provides, in part, that any person who directly gives, sells or otherwise provides an alcoholic product to one of the following persons as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product, and by those actions causes the intoxication of that person, is liable for injuries in person, property, or means of support to any third person, or the heir of that third person (generally a spouse, child, or parent of that third person), if the injury (or death) results from the intoxication of the individual who is provided the alcoholic product:

- Any person under the age of 21; or
- Any person apparently under the influence of intoxicating alcoholic products or drugs; or
- Any person whom the person furnishing the alcoholic product knew or should have known from the circumstances was under the influence of intoxicating alcoholic products or drugs; or
- Who is a known interdicted person.

The "6" designation reflects the fact that the total amount of damages that may be awarded to any person pursuant to a cause of action arising under the statute is limited to \$1,000,000 and the aggregate amount which may be awarded to all persons injured as a result of any one occurrence is limited to \$2,000,000. It should also be noted that the Supreme Court of Utah ruled in *Reeves v. Gentile*, 813 P.2d 111 (Utah, 1991) that the Dram Shop Act allowed a cause of action against each establishment that served patrons in their intoxicated condition and, thus, the jury could award up to \$100,000* against each tavern owner.

In addition, the Supreme Court in *Red Flame v. Martinez*, 996 P.2d 540 (Utah 2000) ruled that the comparative fault statute (UTAH CODE ANN. Sects. 78-27-37 and 78-27-38) permits recovery by the at-fault vendor against the intoxicated person who directly caused the injury.

* Case was decided when limitation was \$100,000.

Paragraph **D.3.e.(2)** does not apply.

Paragraph **E.1.a.(1)(d)** is replaced by the following:

E. Other Endorsements

1. Information Security Protection Endorsement

a. Description Of Coverage

(1) Insuring Agreements

(d) Insuring Agreement d. Security Breach Liability

This insuring agreement provides coverage for both loss that the insured becomes legally obligated to pay and defense expenses as a result of a claim first made against the insured during the policy period or Extended Reporting Period for a wrongful act or series of interrelated wrongful acts taking place on or after the Retroactive Date. Wrongful act, as it pertains to this insuring agreement, is defined to mean any actual or alleged neglect, breach of duty or omission by an insured that results in a security breach, as that term is defined in the endorsement, or transmission of a computer virus to another person or organization.

Loss, as it pertains to this insuring agreement, does not include civil or criminal fines or penalties imposed by law, or punitive or exemplary damages.

Coverage may also be provided for defense expenses in connection with a regulatory proceeding as a result of a wrongful act covered under the insuring agreement.

Paragraphs **E.1.g.(1)**, **E.1.g.(2)** and **E.1.g.(3)** are replaced by the following:

g. Premium Determination

- (1) For Tier 1 coverages, based on the limit of insurance and deductible selected, refer to state rates Table **29.E.1.g.(1)(LC)** to determine the additional premium.
- (2) For Tier 1 and Tier 2 coverages, based on the limit of insurance and deductible selected, refer to state rates Table **29.E.1.g.(2)(LC)** to determine the additional premium.
- (3) For Tier 1, Tier 2 and Tier 3 coverages, based on the limit of insurance and deductible selected, refer to state rates Table **29.E.1.g.(3)(LC)** to determine the additional premium.

Paragraph **E.1.i.** is replaced by the following:

i. Payment Card Industry Coverage

(1) Description Of Coverage

This endorsement provides coverage for defense expenses as a result of a claim in the form of an action taken by a card company for noncompliance with Payment Card Industry Data Security Standards first made against the insured during the policy period or during the Extended Reporting Period in response to a wrongful act or series of interrelated wrongful acts covered under Insuring Agreement **d. Security Breach Liability**.

(2) Endorsement

Use Payment Card Industry (PCI) – Provide Coverage For Defense Expenses Endorsement **BP 15 09**.

(3) Premium Determination

Develop the additional premium by multiplying the premium determined in Paragraphs **g.(2)** through **g.(6)** by the factor shown in state Table **29.E.1.i.(3)(RF)**.

DIVISION NINETEEN – HOME HEALTHCARE

33. HIRED AUTO AND NON-OWNED AUTO LIABILITY INSURANCE

Rule 33. does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
AUTO SERVICE RISKS SECTION**

8. ENDORSEMENTS

Paragraph A. does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
GOLF COURSES SECTION**

8. ENDORSEMENTS

Paragraph C. does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
HEALTH CLUBS AND GYMS SECTION**

8. ENDORSEMENTS

Paragraph A. does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
HARDWARE AND HOME IMPROVEMENT STORES SECTION**

7. ENDORSEMENTS

Paragraph **B.** does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
HOTELS, MOTELS AND INNS SECTION**

8. ENDORSEMENTS

Paragraph F. does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
PERSONAL CARE SERVICES SECTION**

7. ENDORSEMENTS

Paragraph **B.** does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
RESTAURANTS SECTION**

8. ENDORSEMENTS

Paragraph **B.** does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
SELF-STORAGE FACILITIES SECTION**

8. ENDORSEMENTS

Paragraph C. does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
SUPERMARKETS SECTION**

8. ENDORSEMENTS

Paragraph **B.** does not apply.

**DIVISION TWELVE – MARKET SEGMENTS
STAFFING FIRMS SECTION**

7. ENDORSEMENTS

Paragraph **B.** does not apply.