INDEX

EXTRA-CONTRACTUAL LIABILITY FOR AGENTS AND UNDERWRITERS

BY RANDALL K. PRICE

The purpose of this paper is to discuss the issue of potential extra-contractual liability (i.e., liability for damages other than a "loss" as defined in a title policy) for title insurance agents and underwriters resulting from the standard and typical inter-action between their employees and their customers. This article is directed primarily at issues arising in Texas with parallel references to other states.

The development of the law relating to extra-contractual liability (which will hereinafter be referred to as "ECL") has seen the use of several legal theories. Some of these are quite old, others are under development and not subject to drawing final conclusions in terms of their impact on the title industry. The debate over ECL problems has existed for over 30 years; see Title Insurance: The Duty To Search, 11 Yale L.J. 1161 (1962) and other articles listed in Table III. As will be discussed herein, the liability issues are still evolving.

The following is a list of causes of action which could be used to impose ECL:

(1) Negligence (usually called "negligent misrepresentation,"

and defined as the failure to use "ordinary care");

(2) Gross Negligence (negligence combined with "conscious indifference");

(3) Fraud (usually called an "intentional misrepresentation") and/or aiding and abetting a fraud;

(4) Deceptive Trade Practices (a statutory definition, basically a representation that goods or services meet a particular standard or have particular characteristics);

(5) Breach of the Duty of Good Faith and Fair Dealing (failure to exercise good faith toward the insured and with the term "good faith" commonly defined as "honesty in fact in the conduct or transaction concerned"); and

(6) Breach of fiduciary duty (failure to use a high degree of care).

ABSTRACTOR LIABILITY OR CONTRACT LIABILITY?

There continues to be a split among the jurisdictions as to whether an agent or underwriter should be liable on the same basis as an abstractor when a negligent error is made. See Table IV.

Some states courts have held that:

> "A title insurance policy is a contract of indemnity....In other words, the only duty imposed by a title insurance policy is the duty

> to indemnify the insured against losses caused by defects in title....issuance of a policy (does) not constitute a representation regarding the status of the property's title..." Chicago Title Insurance Co. v. McDaniel, 875 S.W.2d 310, 311, (Tex. 1994).
>
> "The title insurance company is not a title abstract company employed to examine title, but rather it has a duty to indemnify the insured against loss suffered by defects in title." Stewart Title v. Cheatham, 764 S.W.2d 315, 319 (Tex. App.-Texarkana 1988, writ denied).

See the attached table (Table I) for similar cases negating ECL exposure.

In contrast courts in other states have held that:

> "(A) title insurance company which renders a title report and also issues a policy of title insurance has assumed two distinct duties. In rendering the title report the title insurance company serves as an abstractor of title and must list all matters of public record adversely affecting title to the real estate which is the

> subject of the title report....(this liability) is distinct from the insurance company's responsibility existing on account of its policy of insurance." Heyd v. Chicago Title Insurance Company, 354 N.W.2d 154 (Neb. 1984); and John C. Tess v. Lawyers Title Insurance Corporation and Dakota Title and Escrow Co., 251 Neb. 501; 557 N.W.2d 696; 1997 Neb. LEXIS 20.

See the attached table (Table II) for similar cases which hold that an agent or underwriter does have ECL exposure. Many of these cases refer to the Restatement (Second) of Torts, Section 552. That section provides as follows:

> § **552 Information Negligently Supplied for the Guidance of Others**
>
> (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
>
> (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered
>
> (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and

> (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.
>
> (3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

The split in authority discussed above has created two types of nomenclature. One is the "duty to discover and disclose," which is also sometimes referred to as "abstractor liability" or as "tort liability." The other is the "duty to indemnify" position; this is sometimes referred to as "contract liability." In the "abstractor liability" jurisdictions, there are some courts that require proof of a deviation from the standard of ordinary care and others which have created a form of "strict liability." In at least one case, negligence was proved as a matter of law just by failing to include in the title opinion the existence of a lien. Moore v. Title Ins. Co. of Minnesota, 714 P.2d 1303 (Ariz. App. 1985).

UNDERWRITER LIABILITY FOR AGENTS DEFALCATIONS

The spectrum of legal thought runs from the Texas approach of no vicarious liability as described in 3Z Corp. v. Stewart Title, 851 S.W.2d 933, 937 (Tex. App. - Beaumont 1993, no writ history), to the other extreme, as reflected in Ford v. Guaranty Title, 553

P2d 254 (KS. 1976). The author finds persuasive and instructive the decision of the court Anderson v. Title Insurance Co., 655 P.2d 82 (Idaho 1982). This court looked at cases such as Ford v. Guaranty Title and drew a distinction which is relevant and cogent. Finding that the Ford case actually involved the fiduciary duty of a conveyancer (i.e., closer), the Idaho Court essentially says that the Kansas court used result-oriented thinking.

FIDUCIARY DUTY OWED BY CLOSER/CONVEYANCER

In Texas, like many other states, each closer/escrow agent owes a fiduciary duty to the parties to the transaction. Trevino v. Brookhill Capital Resources, 982 S.W.2d 279, 281 (Tex.App.-Houston [1st Dist.] 1989, writ denied). However, the insurer can have dual duties, contract liability (based on policy coverages), and liability for breach of the fiduciary duties owed to the customer. (This occurs when the escrow officer is an employee of the underwriter.) These duties are:

(1) Duty of Loyalty;

(2) Duty to make full disclosure; and

(3) Duty to exercise a high degree of care to conserve money and pay only to those persons entitled to receive it.

See City of Ft. Worth v. Pippen, 439 S.W.2d 660 (Tex. 1969).

These duties create liability for failing to disclose known facts. See Stewart Title Guaranty Co. v. Sterling, 772 S.W.2d 242, 246 rev'd on other grounds, 822 S.W.2d 1 (Tex. 1991) (failure to disclose known title defects); and City of Ft Worth v. Pippen, 439 S.W.2d 660 (Tex. 1969) (failure to disclose City employee's theft of funds), and Home Loan Corporation v. Texas American Title Company, 191 S.W.3d 728 (Tex. App. – Houston [14th Dist.] 2006, pet. denied) (No limit on scope of duty to make full disclosure). This theory of liability has been used in other states to establish liability which is not covered by a title policy when there was a "failure to disclose a known title defect." See, Lawyers Title Ins. Corp. v. Vella, 570 So.2d 578 (Ala. 1990); and failure to disclose a known fraud. Burkons v. Ticor Title Ins. Co., 813 P.2d 710 (Ariz.1991).

However, if the closer does not know about fraud, there is no liability for "aiding and abetting" the fraud arising from merely closing the transaction. See Bosch v. Chicago Title, 2000 Tex.App. Lexis 1726. But simple things like signatures not matching, can support a claim for aiding and abetting. See for example, Greenapple v. Capital One, N.A., 92 A.D.3d 548 (N.Y. App. – 2012).

Other areas of concern include:

(1) failure to deposit earnest money. See Capital Title v. Donaldson, 739 S.W.2d 384 (Tex.App.-Houston [1st Dist.] 1987, no writ);

(2) failure to follow contract instructions. See Zimmerman v. First American Title, 790 S.W.2d 690 (Tex.App-Tyler 1990) (broker not compensated with real estate as agreed to in contract); and

(3) failure to disclose existence of "flip transaction." See Spring Garden 79U Inc v. Stewart Title Co., 874 S.W.2d 945 (Tex.App-Houston [1st Dist.] 1994).

DECEPTIVE TRADE PRACTICES

Several years ago the National Association of Insurance Commissioners ("NAIC") adopted a Model Act which included in its "unfair and deceptive acts" definitions in the concept of misrepresenting pertinent facts and coverages in the insurance business. A number of states have adopted this model act in one form or another. See Table IV.

The Texas statute has been used in the past to impose liability on the agent and the underwriter for misstatements in the title commitment and mistakes made by a closer. See Stewart Title Guaranty v. Sterling, Supra; First Title Co. v. Garrett, 860 S.W.2d 74 (Tex. 1993), Commercial Escrow Company v. Rockport Rebel, 778 S.W.2d 532 (Tex. App. – Corpus Christi 1989, writ denied). Later cases have limited the impact on the industry. See Chicago Title Co. v. McDaniel, 875 S.W.2d 310 (Tex. 1994); 3Z V.

Stewart, supra; Tri-Legends Corp. v. Ticor Title Ins. Co., 889 S.W.2d 432 (Tex.App.-Houston [14th Dist.] 1994, no writ) and First American Title Ins. Co. v. Willard, 949 S.W.2d 342 (Tex.App.-Tyler 1997, no writ history). Of additional interest are Callaham v. First American Title Ins. Co., 837 P.2d 769 (Colo.App.-1992) and Hangman Ridge Training Stables, Inc. v. Safeco Title, 719 P.2d 531 (Wash. 1986).

In Texas, the courts have ruled that a title commitment is intended to indicate what will be insured, and a title policy indemnifies against title being other than as insured. One case held the title insurer and agent liable for a missed restrictive covenant. First Title Company v. Garrett, supra. (This case should be limited to its facts, and the policy language has been changed.) However, to the extent that an employee (closer, underwriting counsel, or claims counsel) has contact with the customer and makes a representation regarding the status of title (as opposed to the company's willingness to insure title) a misrepresentation can arise. See First American Title Company of El Paso v. Prata, 783 S.W.2d 697 (Tex.App.-El Paso 1989, writ denied). Thus, mistakes made in a commitment which are verbalized by a closer or others as a "status of title" will likely continue to result in liability.

A legislative change to the Texas statutes has exempted closers from exposure to some of this type of liability (See §17.49, Texas

Business & Commerce Code). However, the exemption has exceptions

§**17.49. Exemptions**

> (c) Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. This exemption does not apply to:
>
> (1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;
> (2) a failure to disclose information in violation of Section 17.46(b)(23);
> (3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion; or
> (4) breach of an express warranty that cannot be characterized as advice, judgment or opinion.
>
> (d) Subsection (c) applies to a cause of action brought against the person who provided the professional service and a cause of action brought against any entity that could be found to be vicariously liable for the person's conduct.

The ramifications of a deceptive trade statute can be egregious. Often the causation standard (i.e., the degree of causal linkage between the event and the damages sought) is reduced from "proximate cause" to "producing cause" (this means that there is no requirement for foreseeability of the damages). Additionally, common law defenses can be unavailable; so we lose defenses such as "privity of contract," etc. Such defenses as "privity" would otherwise be

important. See Jefmor, Inc. v. Chicago Title Insurance Co., 839 S.W.2d 161, (Tex.App.-Ft. Worth 1992, no writ); and Spring Garden 79U v. Stewart Title, supra. Also see, Williams v. Polgar, 215 N.W.2d 149 (Mich. 1974) where an index of then-existing privity requirements is provided for 50 states.

BAD FAITH

The failure to timely investigate, and/or defend, or pay a claim based upon an issued policy commonly brings with it a claim for "bad faith claims handling." In Texas, this idea derives from the Texas Insurance Code (Section 541.060)and common law concepts, and is often included in cases where Deceptive Trade Practices are alleged.

Texas courts have struggled with a "safe harbor" from bad faith claims. For a while, we thought an expert's opinion would suffice; but cases based on egregious facts took that away. State Farm Lloyds v. Nicolau, 951 S.W.2d 444 (Tex. 1997). The Texas Supreme Court says an insurer cannot insulate itself from bad faith liability by investigating a claim in a manner calculated to construct a pretextual basis for denial. Nicolau, 951 S.W.2d at 448. State Farm Fire & Cas. Co. v. Simmons, 963 S.W.2d 42 (Tex. 1998).

Texas cases provide a "safe harbor" for Texas title insurers. The Plaintiff must show that liability under the policy is "reasonably clear." See Chicago Title Ins. Co. v. Alford, 3 S.W.3d

164 (Tex.App.-Eastland 1999, writ denied). If the alleged defect which is the basis for the claim is not reasonably clear or has been cured, then no bad faith can exist.

In addition, no bad faith claim is presented if the title insurer did not breach the coverage provisions of the policy. Thus, in Fidelity National Title Ins. Co. v. Doubletree Partners, 866 F.Supp 2d 604 (E.D. Texas, 2011), the court holds:

> "Since there was no breach of the insurance contract, then there can be no breach of the duty of good faith and fair dealing."

However, the insurer cannot cure the defect and leave the insured in a position which was worse than where he started. Transamerica Title Ins. Co. v. San Benito Bank and Trust Co., 756 S.W.2d 772 (Tex.App.-Corpus Christi, set aside by the Texas Supreme Court pursuant to settlement, 773 S.W.2d 13). And a more recent decision indicates that delays in effectuating the cure have been deemed inadequate. *See* Premier Tierra Holdings v. Ticor Title Ins. of Florida, 2011 WL 2313200.

To date, the author has been unable to locate any case which holds that these "good faith/bad faith" principles are applicable to the process of underwriting the policy. One Texas case has held that no cause of action can be maintained for breach of the duty of good faith and fair dealing in the underwriting portion of an

insurance transaction. See Commonwealth Lloyds Insurance Company v. Downs, 853 S.W.2d 104 (Tex.App.-Ft.Worth 1993, writ denied). (This appears to have been the first time that this particular theory was ruled upon by an appellate court in a published decision).

A recent Federal Court case provides a good example of conflating of title insurance and non-title insurance cases. In First American Title Insurance Company v. Columbia Harbison, (2013 WL 1501702) (U.S. Dist. Ct. – South Carolina, Columbia Division), a court held that breach of the duty to defend creates liability for a variety of extra-contractual, consequential damages (including lost profits, lost rents, construction delays, relocation of improvements, etc.). Hopefully this case can be classified as a trial court's results oriented misinterpretation of the law, which will not be reversed because the case was settled prior to trial.

SEARCH AND EXAMINATION STATUTES

In those states which have adopted a statutory framework for the title insurance industry, some have provisions in their statutes requiring that the policy be issued only after a search and examination of title in accordance with "sound underwriting practices". See Table IV. The definition of "sound underwriting practices" is not defined by any statute reviewed by this author. This is the kind of situation which a creative plaintiff's lawyer

can utilize to effectively advocate for a change in the law.

As an example, the cases of Ruiz v. Garcia, 850 P.2d 972 (N.M. 1993) and Bank of California, N.A. v. First American Title Insurance Company, 826 P.2d 1126 (Alaska 1992) used search and examination statutes to modify existing law. In each of these cases, the statutory requirement of search and examination was used to create a cause of action based on the theory that the statute created a duty to the insured to conduct a thorough examination. These cases effectively resulted in a change of these states from "duty to indemnify" status to "duty to discover and disclose" status.

In contrast, other courts have held the statute does not create a duty to discover and disclose. For such a result, see Stewart Title Guaranty Co. v. Becker, 930 S.W.2d 748 (Tex.App.-Corpus Christi 1996, err. dism'd). In this case, the Texas Appellate Court determined that the statute, was not intended to create a "private cause of action." Perhaps the most puzzling aspect of this issue is that the Ruiz case from New Mexico reaches an opposite conclusion based on a statute which is identical to the Texas statute. The author has been informed that the New Mexico statute was copied from the Texas statute.

The courts which have agreed with the Becker decision include Culp Const. Co. v. Buildmart Mall, 795 P.2d 650 (Utah 1990), Walker v. Anderson-Oliver Title Ins. Agency, Inc., 309 P.3d

267 (Utah App. – 2013)and Walter Rogge, Inc. v. Chelsea Title & Guaranty Co., 562 A.2d 208, rev'd 603 A.2d 557 (N.J. 1992). As a result, it is believed that the current weight of authority holds that the search and exam statutes were not intended to create an independent cause of action.

In those states where search and examination statutes are interpreted as creating a duty to discover and disclose title defects, the underwriting process will come under more legal scrutiny. These search and examination statutes were meant to protect the financial integrity of the title insurance underwriter and the local title companies. However, the Ruiz and Bank of California cases are an example of incorrect reasoning which changes the focus, and threatens that integrity.

CRIMINAL LIABILITY ISSUES

Many times, closers see themselves as a mere conduit without liability for any fraudulent or criminal acts which are part of the closing. Criminal convictions of closers and brokers give ample reason for a closer to avoid dicey situations.

For example, a closer in the Eastern District of Texas (Sherman Division) was convicted on multiple counts of fraud on an FDIC insured institution. The closer was charged with assisting a builder in completing a "double contract" closing. The facts indicated the

closer was aware of the double contract and was funding the seller's note proceeds (lender's money) to the seller/builder prior to getting funding from the buyers. (The seller would take his check to the bank and provide the buyers with down payment funds.).

An example of a reported case reveals a real estate agent being convicted of a federal crime when $60,000.00 cash (brought in a brown paper bag) was used by a drug dealer as part of the purchase price for the property in a "double contract." See U.S.A. v. Campbell, 777 F.Supp 1259, (aff'd in part, rev'd in part 977 F.2d 854). In this case, it was admitted that the large amount of cash was presumed to be drug money. Therefore, the jury convicted the agent on the federal crime of "money laundering" and "engaging in a transaction in criminally derived property." The court stated (at page 856):

> (The accused) cannot be convicted on what she objectively should have known. However this requirement is softened by the doctrine of "willful blindness."

This concept of "willful blindness" means to deliberately close your eyes to that which would otherwise be obvious.

ADMINISTRATIVE ISSUES

Some states and the federal government have prosecuted title insurers and title agents using administrative agency regulatory

authority. The Office of Comptroller of the Currency (OCC), has authority under 12 U.S.C. 1813 to pursue enforcement actions. These can include large fines and "debarment" from transactions involving federally insured institutions.

State regulators can revoke licenses for intentionally wrongful acts. As an example see, All American Title Agency LLC v. Department of Financial and Professional Regulation, 2013 WL377974, 2013 Ill. App (1st) 113400 (Ill. App. 1st Dist. 2013).

SUMMARY

The courts of some states continue to recognize (and expand) extra-contractual liability. The "contract liability" states continue to see litigation designed to circumvent prior law. The "abstractor liability" states may also see the use of the statutes to create a form of strict liability. Modifying the terminology in commitments has helped, and legislative intervention has helped (in California and Arizona). Closers, agents, and underwriters have exposure to civil claims, criminal prosecution, and administrative enforcement actions when participating in questionable transactions.

TABLE I

Cases holding a title agent, or title insurance underwriter does not have Extra-Contractual Liability. Based on the commitment or policy.

Idaho	Anderson v. Title Ins. Co., 655 P.2d 82 (Idaho 1982);
	Brown's Tie & Lumber Co. v. Chicago Title Ins. Co., 764 P.2d 423 (Idaho 1988);
New Jersey	Walker Rogge, Inc. v. Chelsea Title & Guaranty Co., 603 A.2d 557 (N.J. 1992);
Oregon	Warrington v. TransAmerica Title Ins. Co., 596 P.2d 627 (OR. 1979);
Rhode Island	Focus Invest. Assoc. Inc. v. American Title Ins. Co., 992 F.2d 1231 91st Cir. 1993);
Texas	Stewart Title v. Cheatham, 764 S.W.2d 315 (Tex. App.-Texarkana 1988);
	Houston Title v. Ojeda de Toca, 733 S.W.2d 325 (Tex.App.-Houston [14th Dist] 1987 rev'd on other grounds);
	Chicago Title v. McDaniel, 875 S.W.2d 310 (Tex. 1994);
Utah	Culp Construction Co. v. Buildmart Mall, 795 P.2d 650 (Utah 1990);
	Breuer-Harrison, Inc. v. Combe, 799 P.2d 716, 730 (Utah Ct.App.-1990);
	Walker v Anderson Oliver Title Ins. Agency, 309 P.3d 267 (Utah App. – 2013);
Wisconsin	Greenberg v. Stewart Title, 492 N.W.2d 147 (Wisc. 1992).

TABLE II

Cases holding a title agent, or title insurance underwriter has Extra-Contractual Liability.

Alabama	Lawyers Title Ins. Corp. v. Vella, 570 So.2d 578 (Ala. 1990);
Alaska:	Bank of California v. First American Title Ins. Co., 826 P.2d 1126 (Alaska 1992);
Arizona	Moore v. Title Ins. Co., 714 P.2d 1303 (Ariz.Ct. App. 1985) changed by statute, A.R.S. 20-1562(5);
Arkansas	Bourland v. Title Ins. Co. of Minn., 627 S.W.2d 567 (Ark. 1982);
California:	Jarchow v. TransAmerica Title, 48 Cal. App. 3d 917 (changed by statute) (Cal.App. 4th Dist. 1975);
Connecticut	Bridgeport Airport, Inc. v. Title Guar. & Tr. Co., 150 A. 509 (Conn. 1930);
Florida:	Shada v. Title & Trust Co., 457 So.2d 553 (Fla. Dist. Ct. App. 4th Dist. 1984); 464 So.2d 556 (rev. denied, Fla. 1985);
	Lawyers Title Ins. Co. v. D.S.C. of Newark Ent. Inc., 544 So.2d 1070 (Fla. 4th DCA 1989);
Georgia	Lawyers Title v. Noland, 230 S.E.2d 102 (Ga. 1976);
Hawaii	Chun v. Park, 464 P.2d 905 (Hi. 1969);
Illinois	Dinges v. Lawyers Title Ins. Corp., 435 N.E. 2d 944 (Ill. 5th Dist. 1982);
Kansas	Ford v. Guarantee Abstract & Title Co., 553 P.2d 254 (Kan. 1976);

Kentucky	Kentucky Title v. Hail, 292 S.W. 817 (Ky.1927);
Massachusetts	Dorr v. Massachusetts Title Co., 131 N.E. 191 (Mass. 1921);
Mississippi	Pruett v. Mississippi Valley Title Ins. Co., 271 So.2d 920 (Miss. 1973);
Missouri	Rosenberg v. Missouri Title Guar. Co., 764 S.W.2d 684 (Mo. Ct. App. 1988);
Montana:	Malinak v. Safeco Title, 661 P.2d 12 (Mont. 1983);
	Doble v. Lincoln County Title, 692 P.2d 1267 (Mont. 1985);
New Mexico:	Ruiz v. Garcia, 850 P.2d 972 (N.M. 1993);
New York	Calamari v. Grace, 469 N.Y.S.2d 942 (2d dept. 1983);
Oklahoma	American Title v. M-H Enter., 815 P.2d 1219 (Okla. Ct. App. 1991);
Pennsylvania	Henkels v. Philadelphia Title Ins. Co., 110 A.2d 878 (Penn. 1955);
Virginia	Marandino v. Lawyers Title Ins. Co., 159 S.E. 181 (Va. 1931);
Washington	Denny's Restaurant, Inc. v. Security Union Title Ins. Co., 859 P.2d 619 (Wash. 1993); Note: Possibly changed by statute.

TABLE III

Additional Sources.

Title Insurance: The Duty to Search, 71 Yale L.J. 1161 (1962);

Does a Title Insurer Qua Title Insurer Owe a Duty To Any But Its Insured,7 Okla City U.L. Rev. 293 (1982);

Title Insurance Company's Liability For Failure To Search Title and Disclose Record Title, 20 Creighton L.R. 455 (1986-1987);

Liability of One Preparing Abstract of Title for Deficiencies therein, To One Other Than Person Directly Contracting for Abstract,34 ALR 3d 1122 (1970);

Negligence in Preparing Abstract of Title as Ground of Liability to One Other Than Person Ordering Abstract, 50 ALR 4th 314 (1986);

Title Insurer's Negligent Failure to Discover and Disclose Defect as Basis for Liability in Tort,19 ALR 5th 786 (1993).

TABLE IV

STATE	MONOLINE INSURER	STATUTE	ECL[1] LIABILITY	UNFAIR INSURANCE PRACTICES STATUTE	STATUTE[2]	SEARCH & EXAM STATUTE	STATUTE	Search and Exam Statute Interpreted
Alabama	Yes	27-3-7	Yes	Yes	27-12-24	No		
Alaska	Yes	21,66,190	Yes	Yes	21.36.125	Yes	21,66.170	826 P.2d 1126
Arizona	Yes	20-1562(5)	No	Yes	20-461	Yes	20-1567	2013 WL5275928
Arkansas	No	23-62-204	Yes	Yes	66-3005	No		
California	Yes	12360	No	Yes	790.03	No		
Colorado	Yes	10-11-108	Yes	Yes	10-3-1104	Yes	10-11-106	
Connecticut	Yes	38a-45	Yes	Yes	38-61(6)	Yes	38a-407	
Delaware	Yes	18-510		Yes	18-2304(16)	No		
Florida	Yes	627.786	Yes	Yes	626.9541	Yes	627.7845(1)	
Georgia	Yes	33-3-4(3)	Yes	No		No		
Hawaii	Yes	431:20-106	Yes	Yes	431:13-103	Yes	431:20-113	
Idaho	Yes	41-312	No	Yes	41-1329	Yes	41-2708	
Illinois	None		Yes	Yes	73-1028	No		
Indiana	No	27-1-5-1		Yes	27-4-1-4.5	No		
Iowa				Yes	507B.4(9)			
Kansas	No		Yes	Yes	40-2474(9)	No		
Kentucky	Yes	304.3-110		Yes	304.12.010	No		
Louisiana	Yes	22.71.1		Ys	22:1214	No		
Maine	Yes	410		Yes	2151	No		
Maryland	Yes	48A-48		Yes	48A-212	No		
Massachusetts	No	175.152	Yes	Yes	176(0)§3(9)	No		
Michigan	No			Yes	500.2026	No		
Minnesota	No	60A.06		Yes	72A.20	No		
Mississippi	No	83-5-15	Yes	Yes	85-5-33	No		
Missouri	No		Yes	Yes	375.936(10)	Yes	381.071	
Montana	Yes	33-25-213	Yes	Yes	33-18-201	Yes	33-25-214	661 P.2d 12
Nebraska			Yes	Yes	44-1525(9)			
Nevada	Yes	692A.110		Yes	686A.310	Yes	692A.220	
New Hampshire	Yes	416A:8		Yes	417:4	Yes	416-A:6	
New Jersey	Yes	17:46B-12	No	Yes	17.29B-4(9)	Yes	17:46B-9	582 A2.d 208
New Mexico	Yes	59A-5-15	Yes	No		Yes	59A-30-11	850 P.2d 972
New York	Yes	6403	Yes	Yes	2601	No		
North Carolina	No			Yes	58-54.4(1)	Yes	58-26-1	
North Dakota	No	26.1-05-02		Yes	26.1-04-03(9)	Yes	26.1-20-05	
Ohio	Yes	3953.10		No		Yes	3953.07	
Oklahoma	Yes	609	Yes	Yes	1204	Yes	5001(c)	
Oregon	Yes	731.394.2	No	Yes	746.230	N		
Pennsylvania	Yes	910-13	Yes	Yes	1171.5(a)(10)	Yes	910-7	
Rhode Island	None		No	No		None		
South Carolina	No	38-5-50		Yes	38-55-10	None		
South Dakota	Yes	58-6-22		Yes	58-33-1	one		
Tennessee	No	56-35-104		Yes	56-8-104(8)	Yes	56-35-129	
Texas	Yes	9.09	No	Yes	21.21-2	Yes	9.34 Ins. Code	930 S.W.2d 748
Utah	Yes	31A-4-107	No	Yes	31A-26-303	Yes	31A-20-110	795 P.2d 650
Vermont	No	3301		Yes	4724(9)	No		
Virginia	Yes	38.2-135		Yes	38.2-510	No		
Washington	Yes	48.05.330(3)	Yes	Yes	48.30.010	N		
West Virginia	None			Yes	33-11-4(9)	None		
Wisconsin	None		No	Yes	628.34	None		
Wyoming	Yes	26-23-306		No		Yes	26-23-308	
Puerto Rico	No	26.2404		No				
Virgin Islands	None	26-23-306		No		None		