

**INSURANCE LICENSEE AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code to address licensees.

**Highlighted Provisions:**

This bill:

- ▶ addresses the amount and type of noncommission compensation;
- ▶ modifies the disclosure requirements related to health benefit plans; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-23a-501**, as last amended by Laws of Utah 2014, Chapters 290 and 300

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **31A-23a-501** is amended to read:

**31A-23a-501. Licensee compensation.**

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of a licensee from:

(i) commission amounts deducted from insurance premiums on insurance sold by or placed through the licensee;

(ii) commission amounts received from an insurer or another licensee as a result of the sale or placement of insurance; or

(iii) overrides, bonuses, contingent bonuses, or contingent commissions received from an insurer or another licensee as a result of the sale or placement of insurance.

33 (b) (i) "Compensation from an insurer or third party administrator" means  
34 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,  
35 gifts, prizes, or any other form of valuable consideration:

36 (A) whether or not payable pursuant to a written agreement; and

37 (B) received from:

38 (I) an insurer; or

39 (II) a third party to the transaction for the sale or placement of insurance.

40 (ii) "Compensation from an insurer or third party administrator" does not mean  
41 compensation from a customer that is:

42 (A) a fee or pass-through costs as provided in Subsection (1)(e); or

43 (B) a fee or amount collected by or paid to the producer that does not exceed an  
44 amount established by the commissioner by administrative rule.

45 (c) (i) "Customer" means:

46 (A) the person signing the application or submission for insurance; or

47 (B) the authorized representative of the insured actually negotiating the placement of  
48 insurance with the producer.

49 (ii) "Customer" does not mean a person who is a participant or beneficiary of:

50 (A) an employee benefit plan; or

51 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or  
52 negotiated by the producer or affiliate.

53 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the  
54 benefit of a licensee other than commission compensation.

55 (ii) "Noncommission compensation" does not include charges for pass-through costs  
56 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

57 (e) "Pass-through costs" include:

58 (i) costs for copying documents to be submitted to the insurer; and

59 (ii) bank costs for processing cash or credit card payments.

60 (2) A licensee may receive from an insured or from a person purchasing an insurance  
61 policy, noncommission compensation if the noncommission compensation is stated on a  
62 separate, written disclosure.

63 (a) The disclosure required by this Subsection (2) shall:

64 (i) include the signature of the insured or prospective insured acknowledging the  
65 noncommission compensation;

66 (ii) clearly specify:

67 (A) the amount [~~or extent~~] of [~~the~~] any noncommission compensation; and

68 (B) any potential and contingent noncommission compensation; and

69 (iii) be provided to the insured or prospective insured before the performance of the  
70 service.

71 (b) Noncommission compensation shall be:

72 (i) limited to actual or reasonable expenses incurred for services; and

73 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of  
74 business or for a specific service or services.

75 (c) A copy of the signed disclosure required by this Subsection (2) shall be maintained  
76 by any licensee who collects or receives the noncommission compensation or any portion of  
77 the noncommission compensation.

78 (d) All accounting records relating to noncommission compensation shall be  
79 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

80 (3) (a) A licensee may receive noncommission compensation when acting as a  
81 producer for the insured in connection with the actual sale or placement of insurance if:

82 (i) the producer and the insured have agreed on the producer's noncommission  
83 compensation; and

84 (ii) the producer has disclosed to the insured the existence and source of any other  
85 compensation that accrues to the producer as a result of the transaction.

86 (b) The disclosure required by this Subsection (3) shall:

87 (i) include the signature of the insured or prospective insured acknowledging the  
88 noncommission compensation;

89 (ii) clearly specify:

90 (A) the amount [~~or extent~~] of [~~the~~] any noncommission compensation [~~and~~];

91 (B) any potential and contingent noncommission compensation; and

92 (C) the existence and source of any other compensation; and

93 (iii) be provided to the insured or prospective insured before the performance of the  
94 service.

95 (c) The following additional noncommission compensation is authorized:

96 (i) compensation received by a producer of a compensated corporate surety who under  
97 procedures approved by a rule or order of the commissioner is paid by surety bond principal  
98 debtors for extra services;

99 (ii) compensation received by an insurance producer who is also licensed as a public  
100 adjuster under Section 31A-26-203, for services performed for an insured in connection with a  
101 claim adjustment, so long as the producer does not receive or is not promised compensation for  
102 aiding in the claim adjustment prior to the occurrence of the claim;

103 (iii) compensation received by a consultant as a consulting fee, provided the consultant  
104 complies with the requirements of Section 31A-23a-401; or

105 (iv) other compensation arrangements approved by the commissioner after a finding  
106 that they do not violate Section 31A-23a-401 and are not harmful to the public.

107 (d) Subject to Section 31A-23a-402.5, a producer for the insured may receive  
108 compensation from an insured through an insurer, for the negotiation and sale of a health  
109 benefit plan, if there is a separate written agreement between the insured and the licensee for  
110 the compensation. An insurer who passes through the compensation from the insured to the  
111 licensee under this Subsection (3)(d) is not providing direct or indirect compensation or  
112 commission compensation to the licensee.

113 (4) (a) For purposes of this Subsection (4) [~~,"producer" includes~~]:

114 (i) "Large customer" means an employer who, with respect to a calendar year and to a  
115 plan year:

116 (A) employed an average of at least 100 eligible employees on each business day  
117 during the preceding calendar year; and

118 (B) employs at least two employees on the first day of the plan year.

119 (ii) "Producer" includes:

120 [~~(i)~~] (A) a producer;

121 [~~(ii)~~] (B) an affiliate of a producer; or

122 [~~(iii)~~] (C) a consultant.

123 (b) A producer may not accept or receive any compensation from an insurer or third  
124 party administrator for the initial placement of a health benefit plan, other than a hospital  
125 confinement indemnity policy, unless prior to ~~the~~ a large customer's initial purchase of the

126 health benefit plan the producer discloses in writing to the large customer that the producer will  
127 receive compensation from the insurer or third party administrator for the placement of  
128 insurance, including the amount or type of compensation known to the producer at the time of  
129 the disclosure.

130 (c) A producer shall:

131 (i) obtain the large customer's signed acknowledgment that the disclosure under  
132 Subsection (4)(b) was made to the large customer; or

133 (ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to  
134 the large customer; and

135 (B) keep the signed statement on file in the producer's office while the health benefit  
136 plan placed with the large customer is in force.

137 (d) ~~[(f)]~~ A licensee who collects or receives any part of the compensation from an  
138 insurer or third party administrator in a manner that facilitates an audit shall, while the health  
139 benefit plan placed with the large customer is in force, maintain a copy of:

140 ~~[(A)]~~ (i) the signed acknowledgment described in Subsection (4)(c)(i); or

141 ~~[(B)]~~ (ii) the signed statement described in Subsection (4)(c)(ii).

142 ~~[(ii) The standard application developed in accordance with Section 31A-22-635 shall  
143 include a place for a producer to provide the disclosure required by this Subsection (4), and if  
144 completed, shall satisfy the requirement of Subsection (4)(d)(i).]~~

145 (e) Subsection (4)(c) does not apply to:

146 (i) a person licensed as a producer who acts only as an intermediary between an insurer  
147 and the customer's producer, including a managing general agent; or

148 (ii) the placement of insurance in a secondary or residual market.

149 (f) (i) A producer shall provide to a large customer listed in this Subsection (4)(f) an  
150 annual accounting, as defined by rule made by the department in accordance with Title 63G,  
151 Chapter 3, Utah Administrative Rulemaking Act, of all amounts the producer receives in  
152 commission compensation from an insurer or third party administrator as a result of the sale or  
153 placement of insurance to a large customer that is:

154 (A) the state;

155 (B) a political subdivision or instrumentality of the state or a combination thereof  
156 primarily engaged in educational activities or the administration or servicing of educational

157 activities, including the State Board of Education and its instrumentalities, an institution of  
158 higher education and its branches, a school district and its instrumentalities, a vocational and  
159 technical school, and an entity arising out of a consolidation agreement between entities  
160 described under this Subsection (4)(f)(i)(B);

161 (C) a county, city, town, local district under this Title 17B, Limited Purpose Local  
162 Government Entities - Local Districts, special service district under Title 17D, Chapter 1,  
163 Special Service District Act, an entity created by interlocal cooperation agreement under Title  
164 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in  
165 statute as a political subdivision of the state; or

166 (D) a quasi-public corporation, that has the same meaning as defined in Section  
167 63E-1-102.

168 (ii) The department shall pattern the annual accounting required by this Subsection  
169 (4)(f) on the insurance related information on Internal Revenue Service Form 5500 and its  
170 relevant attachments.

171 (g) At the request of the department, a producer shall provide the department a copy of:

172 (i) a disclosure required by this Subsection (4); or

173 (ii) an Internal Revenue Service Form 5500 and its relevant attachments.

174 (5) This section does not alter the right of any licensee to recover from an insured the  
175 amount of any premium due for insurance effected by or through that licensee or to charge a  
176 reasonable rate of interest upon past-due accounts.

177 (6) This section does not apply to bail bond producers or bail enforcement agents as  
178 defined in Section 31A-35-102.

179 (7) A licensee may not receive noncommission compensation from an insured or  
180 enrollee for providing a service or engaging in an act that is required to be provided or  
181 performed in order to receive commission compensation, except for the surplus lines  
182 transactions that do not receive commissions.