

Part 5 Compensation of Producers and Consultants

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.
 - (b)
 - (i) "Compensation from an insurer or third party administrator" means commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration:
 - (A) whether or not payable pursuant to a written agreement; and
 - (B) received from:
 - (I) an insurer; or
 - (II) a third party to the transaction for the sale or placement of insurance.
 - (ii) "Compensation from an insurer or third party administrator" does not mean compensation from a customer that is:
 - (A) a fee or pass-through costs as provided in Subsection (1)(e); or
 - (B) a fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner by administrative rule.
 - (c)
 - (i) "Customer" means:
 - (A) the person signing the application or submission for insurance; or
 - (B) the authorized representative of the insured actually negotiating the placement of insurance with the producer.
 - (ii) "Customer" does not mean a person who is a participant or beneficiary of:
 - (A) an employee benefit plan; or
 - (B) a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the producer or affiliate.
 - (d)
 - (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of a licensee other than commission compensation.
 - (ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.
 - (e) "Pass-through costs" include:
 - (i) costs for copying documents to be submitted to the insurer; and
 - (ii) bank costs for processing cash or credit card payments.
- (2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.
- (a) The disclosure required by this Subsection (2) shall:

- (i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;
 - (ii) clearly specify:
 - (A) the amount of any known noncommission compensation; and
 - (B) the type and amount, if known, of any potential and contingent noncommission compensation; and
 - (iii) be provided to the insured or prospective insured before the performance of the service.
- (b) Noncommission compensation shall be:
- (i) limited to actual or reasonable expenses incurred for services; and
 - (ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.
- (c) A copy of the signed disclosure required by this Subsection (2) shall be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.
- (d) All accounting records relating to noncommission compensation shall be maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.
- (3)
- (a) A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if:
- (i) the producer and the insured have agreed on the producer's noncommission compensation; and
 - (ii) the producer has disclosed to the insured the existence and source of any other compensation that accrues to the producer as a result of the transaction.
- (b) The disclosure required by this Subsection (3) shall:
- (i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;
 - (ii) clearly specify:
 - (A) the amount of any known noncommission compensation;
 - (B) the type and amount, if known, of any potential and contingent noncommission compensation; and
 - (C) the existence and source of any other compensation; and
 - (iii) be provided to the insured or prospective insured before the performance of the service.
- (c) The following additional noncommission compensation is authorized:
- (i) compensation received by a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;
 - (ii) compensation received by an insurance producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;
 - (iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23a-401; or
 - (iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23a-401 and are not harmful to the public.
- (d) Subject to Section 31A-23a-402.5, a producer for the insured may receive compensation from an insured through an insurer, for the negotiation and sale of a health benefit plan, if there is a separate written agreement between the insured and the licensee for the compensation. An insurer who passes through the compensation from the insured to the licensee under

this Subsection (3)(d) is not providing direct or indirect compensation or commission compensation to the licensee.

- (4)
- (a) For purposes of this Subsection (4):
 - (i) "Large customer" means an employer who, with respect to a calendar year and to a plan year:
 - (A) employed an average of at least 100 eligible employees on each business day during the preceding calendar year; and
 - (B) employs at least two employees on the first day of the plan year.
 - (ii) "Producer" includes:
 - (A) a producer;
 - (B) an affiliate of a producer; or
 - (C) a consultant.
 - (b) A producer may not accept or receive any compensation from an insurer or third party administrator for the initial placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to a large customer's initial purchase of the health benefit plan the producer discloses in writing to the large customer that the producer will receive compensation from the insurer or third party administrator for the placement of insurance, including the amount or type of compensation known to the producer at the time of the disclosure.
 - (c) A producer shall:
 - (i) obtain the large customer's signed acknowledgment that the disclosure under Subsection (4)(b) was made to the large customer; or
 - (ii)
 - (A) sign a statement that the disclosure required by Subsection (4)(b) was made to the large customer; and
 - (B) keep the signed statement on file in the producer's office while the health benefit plan placed with the large customer is in force.
 - (d) A licensee who collects or receives any part of the compensation from an insurer or third party administrator in a manner that facilitates an audit shall, while the health benefit plan placed with the large customer is in force, maintain a copy of:
 - (i) the signed acknowledgment described in Subsection (4)(c)(i); or
 - (ii) the signed statement described in Subsection (4)(c)(ii).
 - (e) Subsection (4)(c) does not apply to:
 - (i) a person licensed as a producer who acts only as an intermediary between an insurer and the customer's producer, including a managing general agent; or
 - (ii) the placement of insurance in a secondary or residual market.
 - (f)
 - (i) A producer shall provide to a large customer listed in this Subsection (4)(f) an annual accounting, as defined by rule made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of all amounts the producer receives in commission compensation from an insurer or third party administrator as a result of the sale or placement of a health benefit plan to a large customer that is:
 - (A) the state;
 - (B) a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including the State Board of Education and its instrumentalities, an institution of higher education and its branches, a school district and its instrumentalities, a vocational

and technical school, and an entity arising out of a consolidation agreement between entities described under this Subsection (4)(f)(i)(B);

- (C) a county, city, town, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, an entity created by an interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state; or
- (D) a quasi-public corporation, that has the same meaning as defined in Section 63E-1-102.
- (ii) The department shall pattern the annual accounting required by this Subsection (4)(f) on the insurance related information on Internal Revenue Service Form 5500 and its relevant attachments.
- (g) At the request of the department, a producer shall provide the department a copy of:
 - (i) a disclosure required by this Subsection (4); or
 - (ii) an Internal Revenue Service Form 5500 and its relevant attachments.
- (5) This section does not alter the right of any licensee to recover from an insured the amount of any premium due for insurance effected by or through that licensee or to charge a reasonable rate of interest upon past-due accounts.
- (6) This section does not apply to bail bond producers or bail enforcement agents as defined in Section 31A-35-102.
- (7) A licensee may not receive noncommission compensation from an insured or enrollee for providing a service or engaging in an act that is required to be provided or performed in order to receive commission compensation, except for the surplus lines transactions that do not receive commissions.

Amended by Chapter 138, 2016 General Session

31A-23a-502 Controlled business, except as to title insurance.

- (1) As used in this section, "controlled business" means insurance procured by:
 - (a) an insurance producer who is a natural person upon the life, person, or property of himself, his relative within the second degree by blood or marriage, his employer, employees, or organization; or
 - (b) an insurance producer that is an organization upon its own property or upon the life, person, or property of its partners, shareholders, directors, or employees, or their relatives within the second degree by blood or marriage.
- (2) No producer may receive any compensation from an insurer for effecting insurance upon controlled business unless during the preceding 12 months the producer had effected other insurance with aggregate premiums exceeding the premiums on the controlled business.
- (3) This section does not apply to title insurance.

Renumbered and Amended by Chapter 298, 2003 General Session

31A-23a-503 Controlled business in title insurance.

- (1) As used in this section:
 - (a) "Associate" means any:
 - (i) business organized for profit in which a person who refers title business is a director, officer, partner, or employee;
 - (ii) spouse or relative within the second degree by blood or marriage of a person who refers title business, who is a natural person;

- (iii) employee of a person who refers title business; or
 - (iv) person with whom a person who refers title business or any associate of that title insurer, individual title insurance producer, or agency title insurance producer has any agreement, arrangement, or understanding, or pursues any course of conduct, designed to avoid the provisions of this chapter.
- (b) "Controlled business" means that portion of the title insurance business of a title insurer, individual title insurance producer, or agency title insurance producer in this state that is referred to it by all those producers of title business who have a financial interest in the title insurer, individual title insurance producer, or agency title insurance producer and by all associates of those producers. Business is referred if there is influence over the selection of the person with whom the business is placed.
- (c) "A person who refers title business" includes any person engaged in this state in a business of:
- (i) buying or selling interests in real property;
 - (ii) making loans secured by interests in real property; or
 - (iii) acting as a representative or employee of a person who buys or sells any interest in real property or who lends or borrows money with interest as security, other than acting as a licensed title insurer, individual title insurance producer, or agency title insurance producer doing the business of title insurance.
- (d) "Financial interest" means any legal or beneficial interest that together with other interests entitles the holder to more than 1% of the net profits or net worth of the business in which the interest is held.
- (2) A title insurer, individual title insurance producer, or agency title insurance producer or person having a financial interest in a title insurer, individual title insurance producer, or agency title insurance producer may not knowingly be a party to or knowingly permit to continue in any arrangement in which the title insurer, individual title insurance producer, or agency title insurance producer, or person knows or has reason to believe that any person who refers title business has or will have, directly or indirectly, a financial interest in the title insurer, individual title insurance producer, or agency title insurance producer, if it reasonably appears that a substantial factor in the person who refers title business owning or acquiring the financial interest is the expected realization of financial profit or gain derived in whole or in part from controlled business.
- (3) A title insurer may not appoint or knowingly continue its authorization of any individual title insurance producer or agency title insurance producer in which the company knows or has reason to believe that any person who refers title business has or will have, directly or indirectly, a financial interest, if it reasonably appears that a substantial factor in the person who refers title business owning or acquiring the financial interest is the person's expected realization of financial profit or gain derived in whole or part from controlled business.
- (4)
- (a) If for any calendar quarter, the gross operating revenues of a title insurer, individual title insurance producer, or agency title insurance producer derived from all sources of controlled business in this state amount to more than 1/3 of its gross operating revenues from all other sources of its business of title insurance in this state, it is presumed that the expected realization of financial profit or gain derived in whole or in part from controlled business was a substantial factor in the ownership of financial interest in the title insurer, individual title insurance producer, or agency title insurance producer.
 - (b) The title insurer, individual title insurance producer, or agency title insurance producer has the burden of overcoming the presumption described in Subsection (4)(a).

- (c) This Subsection (4) does not authorize any controlled business if a violation of the standards set forth in Subsection (2) or (3) exists.
- (5) A title insurer, individual title insurance producer, or agency title insurance producer may not accept any order for the business of title insurance that it knows or has reason to believe constitutes controlled business, unless it records and maintains in its permanent records on forms prescribed by the commissioner the facts relating to the transactions.
- (6) An applicant for qualification as a title insurer, individual title insurance producer, or agency title insurance producer may not be granted a license if it reasonably appears that the expected realization of financial profit or gain to be derived in whole or in part from controlled business is or will be a substantial factor in the applicant's plan of operation or in the ownership or acquisition of financial interests in the applicant by any person who refers title business.
- (7) Each title insurer, individual title insurance producer, and agency title insurance producer shall maintain permanent records relating to its controlled business on forms prescribed by the commissioner.
- (8)
 - (a) Each title insurer and agency title insurance producer shall file annually with the commissioner, on forms prescribed by the commissioner, reports setting forth:
 - (i) the names and addresses of any persons owning a financial interest in the title insurer or agency title insurance producer as of the last day of the calendar year, who are known or reasonably believed by the title insurer or agency title insurance producer to be a person who refers title business; and
 - (ii) a summary compiled from the title insurer's or agency title insurance producer's records of the controlled business, sufficient to inform the commissioner and the Title and Escrow Commission as to the proportion of the title insurer's or agency title insurance producer's gross operating revenues attributable to controlled business during the preceding calendar year.
 - (b) The reports shall be filed with the reports required under Section 31A-23a-413 and shall contain the certification of an officer of the title insurer or agency title insurance producer that the information contained in them is true to the best of the officer's knowledge, information, and belief. Upon filing, the reports are public records.
 - (c) A report filed pursuant to Subsection (8)(a) is subject to review by the Title and Escrow Commission.
- (9) An attorney who is also a licensed individual title insurance producer and who issues as producer a policy of title insurance to a client on behalf of whom the attorney is also acting as an attorney and who, in so doing, acts consistently with the applicable ethical standards of the Utah State Bar pertaining to the billing and receipt of legal fees and the receipt of a commission on a policy of title insurance is not, without more, considered to be engaged in controlled business.

Amended by Chapter 319, 2013 General Session

31A-23a-504 Sharing commissions.

- (1)
 - (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the licensee knows that the person is licensed under this chapter as to the particular type of insurance to act in Utah as:
 - (i) a producer;

- (ii) a limited line producer;
 - (iii) a consultant;
 - (iv) a managing general agent; or
 - (v) a reinsurance intermediary.
- (b) A person may only accept commission compensation or other compensation as a person described in Subsections (1)(a)(i) through (v) that is directly or indirectly the result of an insurance transaction if that person is licensed under this chapter to act as described in Subsection (1)(a).
- (2)
- (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive a commission or other compensation that is directly or indirectly the result of an insurance transaction.
 - (b) A consultant may share a consultant fee or other compensation received for consulting services performed within Utah only:
 - (i) with another consultant licensed under this chapter; and
 - (ii) to the extent that the other consultant contributed to the services performed.
- (3) This section does not prohibit:
- (a) the payment of renewal commissions to former licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency sales agreement;
 - (b) compensation paid to or received by a person for referral of a potential customer that seeks to purchase or obtain an opinion or advice on an insurance product if:
 - (i) the person is not licensed to sell insurance;
 - (ii) the person does not sell or provide opinions or advice on the product; and
 - (iii) the compensation does not depend on whether the referral results in a purchase or sale; or
 - (c) the payment or assignment of a commission, service fee, brokerage, or other valuable consideration to an agency or a person who does not sell, solicit, or negotiate insurance in this state, unless the payment would constitute an inducement or commission rebate under Section 31A-23a-402 or 31A-23a-402.5.
- (4)
- (a) In selling a policy of title insurance, sharing of commissions under Subsection (1) may not occur if it will result in:
 - (i) an unlawful rebate;
 - (ii) compensation in connection with controlled business; or
 - (iii) payment of a forwarding fee or finder's fee.
 - (b) A person may share compensation for the issuance of a title insurance policy only to the extent that the person contributed to the examination of the title or other services connected with the title insurance policy.
- (5) This section does not apply to:
- (a) a bail bond producer or bail enforcement agent as defined in Section 31A-35-102 and as described in Subsection 31A-23a-106(2)(c);
 - (b) a travel retailer registered pursuant to Part 9, Travel Insurance Act; or
 - (c) a nonlicensed individual employee or authorized representative of a licensed limited line producer who holds one or more of the following limited lines of authority as described in Subsection 31A-23a-106(2)(c):
 - (i) car rental related insurance;
 - (ii) self-service storage insurance;
 - (iii) portable electronics insurance; or

(iv) travel insurance.

Amended by Chapter 330, 2015 General Session

31A-23a-505 Benefit plans for producers.

An authorized insurer may establish retirement, insurance, and other benefit plans for producers on a basis approved by the commissioner.

Renumbered and Amended by Chapter 298, 2003 General Session