

H.B. 39

INSURANCE RELATED AMENDMENTS

Representative **James A. Dunnigan** proposes the following amendments:

1. *Page 2, Lines 31 through 32:*

- 31 ▶ addresses provisions related to licensure and insurance adjusting;
 ▶ **addresses licensee compensation;**
32 ▶ modifies definitions related to life settlements;

2. *Page 3, Lines 62 through 63:*

- 62 31A-23a-415, as last amended by Laws of Utah 2007, Chapter 325
 31A-23a-501, as last amended by Laws of Utah 2009, Chapters 12 and 274
63 31A-26-201, as last amended by Laws of Utah 2003, Chapter 298

3. *Page 79, Line 2422:*

2422 assessment imposed under Subsection 59-9-101(3).

Section 22. 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; or

(ii) commission amounts 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 the amount or extent of the 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) must 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 the amount or extent of the noncommission compensation and 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.
- (4) (a) For purposes of this Subsection (4), "producer" includes:
 - (i) a producer;
 - (ii) an affiliate of a producer; or
 - (iii) a consultant.
- (b) Beginning January 1, 2010, in addition to any other disclosures required by this section, a producer may not accept or receive any compensation from an insurer or third party administrator for the placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to the customer's purchase of the health benefit plan the producer:
 - (i) except as provided in Subsection (4)(c), discloses in writing to the 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; and
 - (ii) except as provided in Subsection (4)(c):
 - (A) obtains the customer's signed acknowledgment that the disclosure under Subsection (4)(b)(i) was made to the customer; or
 - (B) ~~{certifies to the insurer}~~ (I signs a statement that the disclosure required by Subsection (4)(b)(i) was made to the customer ~~{-}~~ ; and
 - (II keeps the signed statement on file in the producer's office while the health benefit plan placed with the customer is in force.
- (c) If the compensation to the producer from an insurer or third party administrator is for the renewal of a health benefit plan, once the producer has made an initial disclosure that complies with Subsection (4)(b), the producer does not have to disclose compensation received for the subsequent yearly renewals in accordance with Subsection (4)(b) until the renewal period immediately following 36 months after the initial disclosure.
- (d) (i) ~~{A copy of the signed acknowledgment required by Subsection (4)(b) must be maintained by the}~~ 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 customer is in force, maintain a copy of:

(A) the signed acknowledgment described in Subsection (4)(b)(i); or

(B) the signed statement described in Subsection (4)(b)(ii).

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

(e) Subsection (4)(b)(ii) 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.

(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.

Renumber remaining sections accordingly