

HEALTH INSURANCE PRODUCER AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon E. Stanard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Insurance Marketing-Licensing Producers, Consultants, and Reinsurance Intermediaries chapter of the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ repeals the requirement that a producer disclose to the producer's customer the compensation the producer received or will receive from a health insurer for the customer's initial purchase of a health insurance policy; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-23a-401, as last amended by Laws of Utah 2009, Chapter 12

31A-23a-501, as last amended by Laws of Utah 2012, Chapter 279

31A-30-202, as last amended by Laws of Utah 2010, Chapter 68

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



28 Section 1. Section **31A-23a-401** is amended to read:

29 **31A-23a-401. Disclosure of conflicting interests.**

30 (1) (a) Except as provided under Subsection (1)(b):

31 (i) a licensee under this chapter may not act in the same or any directly related

32 transaction as:

33 (A) a producer for the insured or consultant; and

34 (B) producer for the insurer; and

35 (ii) a producer for the insured or consultant may not recommend or encourage the

36 purchase of insurance from or through an insurer or other producer:

37 (A) of which the producer for the insured or consultant or producer for the insured's or
38 consultant's spouse is an owner, executive, or employee; or

39 (B) to which the producer for the insured or consultant has the type of relation that a
40 material benefit would accrue to the producer for the insured or consultant or spouse as a result
41 of the purchase.

42 (b) Subsection (1)(a) does not apply if the following three conditions are met:

43 (i) Prior to performing the consulting services, the producer for the insured or
44 consultant shall disclose to the client, prominently, in writing:

45 (A) the producer for the insured's or consultant's interest as a producer for the insurer,
46 or the relationship to an insurer or other producer; and

47 (B) that as a result of those interests, the producer for the insured's or the consultant's
48 recommendations should be given appropriate scrutiny.

49 (ii) The producer for the insured's or consultant's fee shall be agreed upon, in writing,
50 after the disclosure required under Subsection (1)(b)(i), but before performing the requested
51 services.

52 (iii) Any report resulting from requested services shall contain a copy of the disclosure
53 made under Subsection (1)(b)(i).

54 (2) A licensee under this chapter may not act as to the same client as both a producer
55 for the insurer and a producer for the insured without the client's prior written consent based on
56 full disclosure.

57 (3) Whenever a person applies for insurance coverage through a producer for the
58 insured, the producer for the insured shall disclose to the applicant, in writing, that the producer

59 for the insured is not the producer for the insurer or the potential insurer. This disclosure shall
 60 also inform the applicant that the applicant likely does not have the benefit of an insurer being
 61 financially responsible for the conduct of the producer for the insured.

62 ~~[(4) If a licensee is subject to both this section and Subsection 31A-23a-501(4), the~~
 63 ~~licensee shall provide the disclosure required under each statute.]~~

64 Section 2. Section **31A-23a-501** is amended to read:

65 **31A-23a-501. Licensee compensation.**

66 (1) As used in this section:

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

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

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

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

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

77 (B) received from:

78 (I) an insurer; or

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

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

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

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

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

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

87 (B) the authorized representative of the insured actually negotiating the placement of
 88 insurance with the producer.

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

90 (A) an employee benefit plan; or

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

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

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

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

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

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

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

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

104 (i) include the signature of the insured or prospective insured acknowledging the
105 noncommission compensation;

106 (ii) clearly specify the amount or extent of the noncommission compensation; and

107 (iii) be provided to the insured or prospective insured before the performance of the
108 service.

109 (b) Noncommission compensation shall be:

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

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

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

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

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

120 (i) the producer and the insured have agreed on the producer's noncommission

121 compensation; and

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

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

125 (i) include the signature of the insured or prospective insured acknowledging the
126 noncommission compensation;

127 (ii) clearly specify the amount or extent of the noncommission compensation and the
128 existence and source of any other compensation; and

129 (iii) be provided to the insured or prospective insured before the performance of the
130 service.

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

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

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

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

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

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

144 [~~(i) a producer;~~]

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

146 [~~(iii) a consultant.]~~

147 [~~(b) A producer may not accept or receive any compensation from an insurer or third
148 party administrator for the initial placement of a health benefit plan, other than a hospital
149 confinement indemnity policy, unless prior to the customer's initial purchase of the health
150 benefit plan the producer discloses in writing to the customer that the producer will receive
151 compensation from the insurer or third party administrator for the placement of insurance;~~

152 including the amount or type of compensation known to the producer at the time of the
153 disclosure.]

154 [~~(c)~~ A producer shall:]

155 [~~(i)~~ obtain the customer's signed acknowledgment that the disclosure under Subsection
156 ~~(4)(b)~~ was made to the customer; or]

157 [~~(ii)~~ (A) sign a statement that the disclosure required by Subsection ~~(4)(b)~~ was made to
158 the customer; and]

159 [~~(B)~~ keep the signed statement on file in the producer's office while the health benefit
160 plan placed with the customer is in force.]

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

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

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

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

169 [~~(e)~~ Subsection ~~(4)(c)~~ does not apply to:]

170 [~~(i)~~ a person licensed as a producer who acts only as an intermediary between an
171 insurer and the customer's producer, including a managing general agent; or]

172 [~~(ii)~~ the placement of insurance in a secondary or residual market.]

173 [~~(5)~~ (4) This section does not alter the right of any licensee to recover from an insured
174 the amount of any premium due for insurance effected by or through that licensee or to charge
175 a reasonable rate of interest upon past-due accounts.

176 [~~(6)~~ (5) This section does not apply to bail bond producers or bail enforcement agents
177 as defined in Section 31A-35-102.

178 [~~(7)~~ (6) A licensee may not receive noncommission compensation from an insured or
179 enrollee for providing a service or engaging in an act that is required to be provided or
180 performed in order to receive commission compensation, except for the surplus lines
181 transactions that do not receive commissions.

182 Section 3. Section ~~31A-30-202~~ is amended to read:

183 **31A-30-202. Definitions.**

184 For purposes of this part:

185 (1) "Defined benefit plan" means an employer group health benefit plan in which:

186 (a) the employer selects the health benefit plan or plans from a single insurer;

187 (b) employees are not provided a choice of health benefit plans on the Health Insurance
188 Exchange; and

189 (c) the employer is subject to contribution requirements in Section 31A-30-112.

190 (2) "Defined contribution arrangement":

191 (a) means a defined contribution arrangement employer group health benefit plan that:

192 (i) complies with this part; and

193 (ii) is sold through the Health Insurance Exchange in accordance with Title 63M,
194 Chapter 1, Part 25, Health System Reform Act; and195 (b) beginning January 1, 2011, includes an employer choice of either a defined
196 contribution arrangement health benefit plan or a defined benefit plan offered through the
197 Health Insurance Exchange.198 (3) "Health reimbursement arrangement" means an employer provided health
199 reimbursement arrangement in which reimbursements for medical care expenses are excluded
200 from an employee's gross income under the Internal Revenue Code.201 (4) (a) "Producer" is [as defined in Subsection 31A-23a-501(4)(a):] a person who is
202 licensed as a producer under Chapter 23a, Insurance Marketing-Licensing Producers,
203 Consultants, and Reinsurance Intermediaries.204 (b) "Producer" includes:205 (i) a producer;206 (ii) an affiliate of a producer; or207 (iii) a consultant.208 (5) "Section 125 Cafeteria plan" means a flexible spending arrangement that qualifies
209 under Section 125, Internal Revenue Code, which permits an employee to contribute pre-tax
210 dollars to a health benefit plan.

211 (6) "Small employer" is defined in Section 31A-1-301.

Legislative Review Note
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Office of Legislative Research and General Counsel