

HB0393S01 compared with HB0393

~~deleted text~~ shows text that was in HB0393 but was deleted in HB0393S01.

inserted text shows text that was not in HB0393 but was inserted into HB0393S01.

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Senator Evan J. Vickers proposes the following substitute bill:

INSURANCE PRODUCER AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon E. Stanard

Senate Sponsor: ~~_____~~ Evan J. Vickers

LONG TITLE

General Description:

This bill amends provisions of the Insurance Code related to insurance producers.

Highlighted Provisions:

This bill:

- ▶ ~~repeals~~ exempts a health benefit plan placed with a small employer or an individual from the requirement that an insurance producer disclose to the insurance producer's customer that the insurance producer will receive compensation from an insurer or third party administrator for insurance placement; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

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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 2013, Chapter 341~~
- ~~31A-30-202, as last amended by Laws of Utah 2010, Chapter 68~~

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

Section 1. Section ~~{31A-23a-401}~~31A-23a-501 is amended to read:

- ~~{ 31A-23a-401. Disclosure of conflicting interests.~~
- ~~—— (1) (a) Except as provided under Subsection (1)(b):~~
- ~~—— (i) a licensee under this chapter may not act in the same or any directly related transaction as:~~
- ~~—— (A) a producer for the insured or consultant; and~~
- ~~—— (B) producer for the insurer; and~~
- ~~—— (ii) a producer for the insured or consultant may not recommend or encourage the purchase of insurance from or through an insurer or other producer:~~
- ~~—— (A) of which the producer for the insured or consultant or producer for the insured's or consultant's spouse is an owner, executive, or employee; or~~
- ~~—— (B) to which the producer for the insured or consultant has the type of relation that a material benefit would accrue to the producer for the insured or consultant or spouse as a result of the purchase.~~
- ~~—— (b) Subsection (1)(a) does not apply if the following three conditions are met:~~
- ~~—— (i) Prior to performing the consulting services, the producer for the insured or consultant shall disclose to the client, prominently, in writing:~~
- ~~—— (A) the producer for the insured's or consultant's interest as a producer for the insurer, or the relationship to an insurer or other producer; and~~
- ~~—— (B) that as a result of those interests, the producer for the insured's or the consultant's recommendations should be given appropriate scrutiny.~~
- ~~—— (ii) The producer for the insured's or consultant's fee shall be agreed upon, in writing, after the disclosure required under Subsection (1)(b)(i), but before performing the requested~~

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services:

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

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

~~—— (3) Whenever a person applies for insurance coverage through a producer for the insured, the producer for the insured shall disclose to the applicant, in writing, that the producer for the insured is not the producer for the insurer or the potential insurer. This disclosure shall also inform the applicant that the applicant likely does not have the benefit of an insurer being financially responsible for the conduct of the producer for the insured.~~

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

~~—— Section 2. 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:

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(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.

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(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 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.

(d) Subject to Section 31A-23a-402.5, a producer for the insured may receive

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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), "producer" includes:~~§§~~

~~§§~~(i) a producer;~~§§~~

~~§§~~(ii) an affiliate of a producer; or~~§§~~

~~§§~~(iii) 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 the customer's initial purchase of the health benefit plan the producer 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.~~§§~~

~~§§~~(c) A producer shall:~~§§~~

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

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

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

~~§§~~(d) (i) 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)(c)(i); or~~§§~~

~~§§~~(B) the signed statement described in Subsection (4)(c)(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).~~§§~~

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~~§§~~(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. ~~§~~

~~§~~ ~~(5)~~ ~~(4)~~

(f) Subsections (4)(b) and (4)(c) do not apply to a health benefit plan placed by a producer with:

(i) an individual; or

(ii) a small employer, as defined in Section 31A-1-301.

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

~~§§~~(7) ~~§~~ ~~(6)~~ 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.

Section ~~§§~~2. Section **31A-30-202** is amended to read:

31A-30-202. Definitions.

For purposes of this part:

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

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

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

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

(2) "Defined contribution arrangement":

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

(i) complies with this part; and

(ii) is sold through the Health Insurance Exchange in accordance with Title 63M,

Chapter 1, Part 25, Health System Reform Act; and

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(b) beginning January 1, 2011, includes an employer choice of either a defined contribution arrangement health benefit plan or a defined benefit plan offered through the Health Insurance Exchange.

(3) "Health reimbursement arrangement" means an employer provided health reimbursement arrangement in which reimbursements for medical care expenses are excluded from an employee's gross income under the Internal Revenue Code.

(4) (a) "Producer" [~~is as defined in Subsection 31A-23a-501(4)(a).~~] means an insurance producer as defined in Section 31A-1-301.

(b) "Producer" includes:

(i) an affiliate of a producer; or

(ii) a consultant.

(5) "Section 125 Cafeteria plan" means a flexible spending arrangement that qualifies under Section 125, Internal Revenue Code, which permits an employee to contribute pre-tax dollars to a health benefit plan.

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

†

Legislative Review Note

~~as of 2-21-14 11:26 AM~~

~~Office of Legislative Research and General Counsel}~~