

Effective 5/10/2016

Superseded 5/9/2017

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.