

**Senator Beverly Ann Evans** proposes the following substitute bill:

**PRODUCER AND AFFILIATE DISCLOSURE**

**AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Beverly Ann Evans**

House Sponsor: James A. Dunnigan

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**LONG TITLE**

**General Description:**

This bill amends the licensee compensation provisions of the Insurance Code.

**Highlighted Provisions:**

This bill:

- ▶ defines terms including "compensation from an insurer or third party";
- ▶ beginning January 1, 2007, under certain circumstances, requires the disclosure of the amount or extent of compensation from an insurer or third party that is received by an insurance producer; and
- ▶ clarifies disclosure requirements for conflict of interest and compensation.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-23a-401**, as renumbered and amended by Chapter 298, Laws of Utah 2003

**31A-23a-501**, as renumbered and amended by Chapter 298, Laws of Utah 2003



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

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

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

(1) (a) (i) Except as provided under Subsection (1)(b)~~[-no]~~:

(A) a licensee under this chapter may not act in the same or any directly related transaction as:

(I) a producer for the insured or consultant; and

(II) a producer for the insurer; ~~[nor may]~~

(B) a producer for the insured or consultant may not recommend or encourage the purchase of insurance from or through an insurer or other producer:

(I) 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

(II) to which ~~[he]~~ the producer for the insured or consultant has the type of relation that a material benefit would accrue to the consultant or spouse as a result of the purchase.

(b) Subsection (1)(a) does not apply if ~~[the following three]~~ each of the conditions in this Subsection (1)(b) are met~~[-]~~.

(i) Prior to performing the consulting services, the producer for the insured or consultant ~~[discloses]~~ shall disclose to the client, prominently, in writing~~[-]~~:

(A) (I) the producer for the insured's or consultant's interest as a producer for the insurer~~[-]~~; or

(II) the relationship to an insurer or other producer~~[-]~~; and

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

(ii) The producer for the insured's or consultant's fee ~~[is]~~ shall be agreed upon, in writing, after the disclosure required under Subsection (1)(b)(i), but prior to performing the requested services.

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

(2) ~~[No]~~ 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

57 based on full disclosure.

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

60 (a) the producer for the insured is not the producer for the insurer of the potential  
61 insurer~~[- This disclosure shall also inform the applicant that];~~ and

62 (b) the applicant likely does not have the benefit of an insurer being financially  
63 responsible for the producer for the insured's conduct.

64 (4) If a licensee is subject to both this section and Subsection 31A-23a-501(4), the  
65 licensee shall provide the disclosures required under each statute.

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

67 **31A-23a-501. Licensee and affiliate compensation.**

68 (1) As used in this section:

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

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

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

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

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

79 (B) received from:

80 (I) an insurer; or

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

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

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

85 (B) a fee or amount collected by or paid to the producer that does not exceed an  
86 amount established by the commissioner.

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

88           (A) the person signing the application or submission for insurance; or  
89           (B) the authorized representative of the insured actually negotiating the placement of  
90 insurance with the producer.

91           (ii) "Customer" does not mean a person who is:

92           (A) a participant or beneficiary of an employee benefit plan; or

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

95           ~~[(b)]~~ (d) (i) "Noncommission compensation" includes all funds paid to or credited for  
96 the benefit of a licensee other than commission compensation.

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

99           ~~[(c)]~~ (e) "Pass-through costs" include:

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

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

102           (f) "State entity" is defined in Section 67-4-2 and includes:

103           (i) state institutions of higher education; and

104           (ii) state institution of public education.

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

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

109           (i) include the signature of the insured or prospective insured acknowledging the  
110 noncommission compensation;

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

112           (iii) be provided to the insured or prospective insured before the performance of the  
113 service.

114           (b) Noncommission compensation shall be:

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

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

118           (c) A copy of the signed disclosure required by this Subsection (2) must be maintained

119 by any licensee who collects or receives the noncommission compensation or any portion  
 120 [thereof] of the noncommission compensation.

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

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

125 (i) the producer and the insured have agreed on the producer's noncommission  
 126 compensation; and

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

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

130 (i) include the signature of the insured or prospective insured acknowledging the  
 131 noncommission compensation;

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

134 (iii) be provided to the insured or prospective insured before the performance of the  
 135 service.

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

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

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

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

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

148 (4) (a) Beginning January 1, 2007, in addition to any other disclosures required by this  
 149 section, a producer ~~§→~~ [or] , ~~←§~~ an affiliate of a producer ~~§→~~ or a consultant ~~←§~~ doing  
 149a business with a state entity may not

150 accept or receive any compensation from an insurer or third party for that placement of  
 151 insurance unless prior to the state entity's purchase or renewal of insurance the producer:

152 (i) obtains the state entity's signed acknowledgment that the compensation from an  
 153 insurer or third party may be received by the producer ~~§~~ [or], ~~§~~ affiliate ~~§~~ or consultant ~~§~~ ;  
 153a and

154 (ii) provides a description of ~~§~~ [the method and factors used to calculate] ~~§~~ the  
 154a ~~§~~ possible ~~§~~ compensation  
 155 from an insurer or third party for that placement.

156 (b) A copy of the signed acknowledgment required by Subsection (4)(a)(i) must be  
 157 maintained by the licensee who collects or receives any part of the compensation from an  
 158 insurer or third party in a manner that facilitates an audit.

159 (c) This Subsection (4) does not apply to:

160 (i) a person licensed as a producer who acts only as an intermediary between an insurer  
 161 and the state entity's producer, including a managing general agent;

162 (ii) the placement of insurance in a secondary or residual market; or

163 (iii) a producer whose sole compensation for the placement is derived from  
 164 commissions, salaries, and other compensation from the insurer.

165 [~~(4)~~] (5) This section does not alter the right of any licensee to recover from an insured  
 166 the amount of any premium due for insurance effected by or through that licensee or to charge  
 167 a reasonable rate of interest upon past-due accounts.

168 [~~(5)~~] (6) This section does not apply to bail bond producers or bail enforcement agents  
 169 as defined in Section 31A-35-102.