

1 **PRODUCER AND AFFILIATE DISCLOSURE**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Beverly Ann Evans**

6 House Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **31A-23a-401**, as renumbered and amended by Chapter 298, Laws of Utah 2003

25 **31A-23a-501**, as renumbered and amended by Chapter 298, Laws of Utah 2003

26
27 *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) (i) Except as provided under Subsection (1)(b)~~[-no]~~:

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

32 transaction as:

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

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

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

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

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

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

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

48 (B) that as a result of those interests the consultant's recommendations should be given
49 appropriate scrutiny.

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

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

55 (2) ~~[No]~~ A licensee under this chapter may not act as to the same client as both a
56 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 (2) A licensee may receive from an insured or from a person purchasing an insurance
103 policy, noncommission compensation if the noncommission compensation is stated on a
104 separate, written disclosure.

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

106 (i) include the signature of the insured or prospective insured acknowledging the
107 noncommission compensation;

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

109 (iii) be provided to the insured or prospective insured before the performance of the
110 service.

111 (b) Noncommission compensation shall be:

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

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

115 (c) A copy of the signed disclosure required by this Subsection (2) must be maintained
116 by any licensee who collects or receives the noncommission compensation or any portion
117 ~~thereof~~ of the noncommission compensation.

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

120 (3) (a) A licensee may receive noncommission compensation when acting as a

121 producer for the insured in connection with the actual sale or placement of insurance if:

122 (i) the producer and the insured have agreed on the producer's noncommission
123 compensation; and

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

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

127 (i) include the signature of the insured or prospective insured acknowledging the
128 noncommission compensation;

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

131 (iii) be provided to the insured or prospective insured before the performance of the
132 service.

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

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

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

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

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

145 (4) (a) Beginning January 1, 2007, in addition to any other disclosures required by this
146 section, if a producer or an affiliate of a producer receives commission or noncommission
147 compensation from a customer for the initial placement of insurance, that producer and the
148 affiliate may not accept or receive any compensation from an insurer or third party for that
149 placement of insurance unless prior to the customer's purchase of insurance the producer:

150 (i) obtains the customer's signed acknowledgment that the compensation from an
151 insurer or third party will be received by the producer or affiliate; and

152 (ii) provides a description of the method and factors used to calculate the compensation
153 from an insurer or third party for that placement.

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

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

158 (i) a person licensed as a producer who acts only as an intermediary between an insurer
159 and the customer's producer, including a managing general agent;

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

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

163 [~~4~~] (5) This section does not alter the right of any licensee to recover from an insured
164 the amount of any premium due for insurance effected by or through that licensee or to charge
165 a reasonable rate of interest upon past-due accounts.

166 [~~5~~] (6) This section does not apply to bail bond producers or bail enforcement agents
167 as defined in Section 31A-35-102.

Legislative Review Note
as of 12-12-05 6:38 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0114

Producer and Affiliate Disclosure Amendments

14-Jan-06

8:10 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst