

Representative James A. Dunnigan proposes the following substitute bill:

UNFAIR INDUCEMENTS RELATED TO INSURANCE

PRODUCTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code to address what constitutes unfair inducements related to insurance.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits inducements by a licensee or an officer or employee of a licensee;
- ▶ lists activities that constitute or do not constitute a prohibited inducement; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

31A-3-303, as last amended by Laws of Utah 2003, Chapters 252 and 298

31A-15-103, as last amended by Laws of Utah 2008, Chapter 257



26 **31A-21-404**, as last amended by Laws of Utah 2004, Chapter 90
27 **31A-23a-402**, as last amended by Laws of Utah 2008, Chapter 382
28 **31A-23a-504**, as last amended by Laws of Utah 2009, Chapter 349

29 ENACTS:

30 **31A-23a-402.5**, Utah Code Annotated 1953

31 REPEALS:

32 **31A-23a-404**, as renumbered and amended by Laws of Utah 2003, Chapter 298

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

35 Section 1. Section **31A-3-303** is amended to read:

36 **31A-3-303. Payment of tax.**

37 (1) The insurer, all producers involved in the transaction, and the policyholder are
38 jointly and severally liable for the payment of the taxes required under Section 31A-3-301.
39 The policyholder's liability for payment of the premium tax under Section 31A-3-301 ends
40 when the policyholder pays the tax to the producer or insurer. The insurer and all producers
41 involved in the transaction are jointly and severally liable for the payment of the additional tax
42 required under Section 31A-3-302. Except for the tax under Section 31A-3-302, the taxes
43 under this part shall be paid by the policyholder who shall be billed specifically for the tax
44 when billed for the premium. Except for the tax imposed under Section 31A-3-302, absorption
45 of the tax by the producer or insurer is an unfair method of competition under [Section]
46 Sections 31A-23a-402 and 31A-23a-402.5.

47 (2) The commissioner shall by rule prescribe accounting and reporting forms and
48 procedures for insurers, producers, and policyholders to use in determining the amount of taxes
49 owed under this part, and the manner and time of payment. If a tax is not paid within the time
50 prescribed under the commissioner's rule, a penalty shall be imposed of 25% of the tax due,
51 plus 1-1/2% per month from the time of default until full payment of the tax.

52 (3) Upon making a record of its actions, and upon reasonable cause shown, the State
53 Tax Commission may waive, reduce, or compromise any of the penalties or interest imposed
54 under this part.

55 (4) If a policy covers risks that are only partially located in this state, for computation
56 of tax under this part the premium shall be reasonably allocated among the states on the basis

57 of risk locations. However, all premiums with respect to surplus lines insurance received in
58 this state by a surplus lines producer or charged on policies written or negotiated in or from this
59 state are taxable in full under this part, subject to a credit for any tax actually paid in another
60 state to the extent of a reasonable allocation on the basis of risk locations.

61 (5) All premium taxes collected under this part by a producer or by an insurer are the
62 property of this state.

63 (6) If the property of any producer is seized under any process in a court in this state, or
64 if his business is suspended by the action of creditors or put into the hands of an assignee,
65 receiver, or trustee, all taxes and penalties due this state under this part are preferred claims and
66 the state is to that extent a preferred creditor.

67 Section 2. Section **31A-15-103** is amended to read:

68 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

69 (1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a
70 certificate of authority to do business in this state under Section 31A-14-202 may negotiate for
71 and make an insurance contract with a person in this state and on a risk located in this state,
72 subject to the limitations and requirements of this section.

73 (2) (a) For a contract made under this section, the insurer may, in this state:

74 (i) inspect the risks to be insured;

75 (ii) collect premiums;

76 (iii) adjust losses; and

77 (iv) do another act reasonably incidental to the contract.

78 (b) An act described in Subsection (2)(a) may be done through:

79 (i) an employee; or

80 (ii) an independent contractor.

81 (3) (a) Subsections (1) and (2) do not permit a person to solicit business in this state on
82 behalf of an insurer that has no certificate of authority.

83 (b) Insurance placed with a nonadmitted insurer shall be placed with a surplus lines
84 producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,
85 and Reinsurance Intermediaries.

86 (c) The commissioner may by rule prescribe how a surplus lines producer may:

87 (i) pay or permit the payment, commission, or other remuneration on insurance placed

88 by the surplus lines producer under authority of the surplus lines producer's license to one
89 holding a license to act as an insurance producer; and

90 (ii) advertise the availability of the surplus lines producer's services in procuring, on
91 behalf of a person seeking insurance, a contract with a nonadmitted insurer.

92 (4) For a contract made under this section, a nonadmitted insurer is subject to Sections
93 31A-23a-402, 31A-23a-402.5, and 31A-23a-403 and the rules adopted under those sections.

94 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to
95 an employer located in this state, except for stop loss coverage issued to an employer securing
96 workers' compensation under Subsection 34A-2-201(3).

97 (6) (a) The commissioner may by rule prohibit making a contract under Subsection (1)
98 for a specified class of insurance if authorized insurers provide an established market for the
99 class in this state that is adequate and reasonably competitive.

100 (b) The commissioner may by rule place a restriction or a limitation on and create
101 special procedures for making a contract under Subsection (1) for a specified class of insurance
102 if:

103 (i) there have been abuses of placements in the class; or

104 (ii) the policyholders in the class, because of limited financial resources, business
105 experience, or knowledge, cannot protect their own interests adequately.

106 (c) The commissioner may prohibit an individual insurer from making a contract under
107 Subsection (1) and all insurance producers from dealing with the insurer if:

108 (i) the insurer willfully violates:

109 (A) this section;

110 (B) Section 31A-4-102, 31A-23a-402, 31A-23a-402.5, or 31A-26-303; or

111 (C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);

112 (ii) the insurer fails to pay the fees and taxes specified under Section 31A-3-301; or

113 (iii) the commissioner has reason to believe that the insurer is:

114 (A) in an unsound condition;

115 (B) operated in a fraudulent, dishonest, or incompetent manner; or

116 (C) in violation of the law of its domicile.

117 (d) (i) The commissioner may issue one or more lists of unauthorized foreign insurers

118 whose:

- 119 (A) solidity the commissioner doubts; or
- 120 (B) practices the commissioner considers objectionable.
- 121 (ii) The commissioner shall issue one or more lists of unauthorized foreign insurers the
- 122 commissioner considers to be reliable and solid.
- 123 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner
- 124 may issue other relevant evaluations of unauthorized insurers.
- 125 (iv) An action may not lie against the commissioner or an employee of the department
- 126 for a written or oral communication made in, or in connection with the issuance of, a list or
- 127 evaluation described in this Subsection (6)(d).
- 128 (e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list
- 129 only if the unauthorized insurer:
- 130 (i) delivers a request to the commissioner to be on the list;
- 131 (ii) establishes satisfactory evidence of good reputation and financial integrity;
- 132 (iii) (A) delivers to the commissioner a copy of the unauthorized insurer's current
- 133 annual statement certified by the insurer; and
- 134 (B) continues each subsequent year to file its annual statements with the commissioner
- 135 within 60 days of the day on which it is filed with the insurance regulatory authority where the
- 136 insurer is domiciled;
- 137 (iv) (A) (I) is in substantial compliance with the solvency standards in Chapter 17, Part
- 138 6, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is
- 139 greater; and
- 140 (II) maintains in the United States an irrevocable trust fund in either a national bank or
- 141 a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit
- 142 requirements for insurers in the state where it is made, which trust fund or deposit:
- 143 (Aa) shall be in an amount not less than \$2,500,000 for the protection of all of the
- 144 insurer's policyholders in the United States;
- 145 (Bb) may consist of cash, securities, or investments of substantially the same character
- 146 and quality as those which are "qualified assets" under Section 31A-17-201; and
- 147 (Cc) may include as part of the trust arrangement a letter of credit that qualifies as
- 148 acceptable security under Section 31A-17-404.1; or
- 149 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group

150 of alien individual insurers, maintains a trust fund that:

151 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all
152 policyholders and creditors in the United States of each member of the group;

153 (II) may consist of cash, securities, or investments of substantially the same character
154 and quality as those which are "qualified assets" under Section 31A-17-201; and

155 (III) may include as part of this trust arrangement a letter of credit that qualifies as
156 acceptable security under Section 31A-17-404.1; and

157 (v) for an alien insurer not domiciled in the United States or a territory of the United
158 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National
159 Association of Insurance Commissioners International Insurers Department.

160 (7) (a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly
161 or without reasonable investigation of the financial condition and general reputation of the
162 insurer, place insurance under this section with:

- 163 (i) a financially unsound insurer;
- 164 (ii) an insurer engaging in unfair practices; or
- 165 (iii) an otherwise substandard insurer.

166 (b) A surplus line producer may place insurance under this section with an insurer
167 described in Subsection (7)(a) if the surplus line producer:

- 168 (i) gives the applicant notice in writing of the known deficiencies of the insurer or the
169 limitations on the surplus line producer's investigation; and
- 170 (ii) explains the need to place the business with that insurer.

171 (c) A copy of the notice described in Subsection (7)(b) shall be kept in the office of the
172 surplus line producer for at least five years.

173 (d) To be financially sound, an insurer shall satisfy standards that are comparable to
174 those applied under the laws of this state to an authorized insurer.

175 (e) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) or an
176 insurer not on the commissioner's "reliable" list under Subsection (6)(e) is presumed
177 substandard.

178 (8) (a) A policy issued under this section shall:

- 179 (i) include a description of the subject of the insurance; and
- 180 (ii) indicate:

- 181 (A) the coverage, conditions, and term of the insurance;
- 182 (B) the premium charged the policyholder;
- 183 (C) the premium taxes to be collected from the policyholder; and
- 184 (D) the name and address of the policyholder and insurer.
- 185 (b) If the direct risk is assumed by more than one insurer, the policy shall state:
- 186 (i) the names and addresses of all insurers; and
- 187 (ii) the portion of the entire direct risk each assumes.
- 188 (c) A policy issued under this section shall have attached or affixed to the policy the
- 189 following statement: "The insurer issuing this policy does not hold a certificate of authority to
- 190 do business in this state and thus is not fully subject to regulation by the Utah insurance
- 191 commissioner. This policy receives no protection from any of the guaranty associations created
- 192 under Title 31A, Chapter 28."
- 193 (9) Upon placing a new or renewal coverage under this section, a surplus lines
- 194 producer shall promptly deliver to the policyholder or the policyholder's agent evidence of the
- 195 insurance consisting either of:
- 196 (a) the policy as issued by the insurer; or
- 197 (b) if the policy is not available upon placing the coverage, a certificate, cover note, or
- 198 other confirmation of insurance complying with Subsection (8).
- 199 (10) If the commissioner finds it necessary to protect the interests of insureds and the
- 200 public in this state, the commissioner may by rule subject a policy issued under this section to
- 201 as much of the regulation provided by this title as is required for a comparable policy written
- 202 by an authorized foreign insurer.
- 203 (11) (a) A surplus lines transaction in this state shall be examined to determine whether
- 204 it complies with:
- 205 (i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;
- 206 (ii) the solicitation limitations of Subsection (3);
- 207 (iii) the requirement of Subsection (3) that placement be through a surplus lines
- 208 producer;
- 209 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and
- 210 (v) the policy form requirements of Subsections (8) and (10).
- 211 (b) The examination described in Subsection (11)(a) shall take place as soon as

212 practicable after the transaction. The surplus lines producer shall submit to the examiner
213 information necessary to conduct the examination within a period specified by rule.

214 (c) (i) The examination described in Subsection (11)(a) may be conducted by the
215 commissioner or by an advisory organization created under Section 31A-15-111 and authorized
216 by the commissioner to conduct these examinations. The commissioner is not required to
217 authorize an additional advisory organization to conduct an examination under this Subsection
218 (11)(c).

219 (ii) The commissioner's authorization of one or more advisory organizations to act as
220 examiners under this Subsection (11)(c) shall be:

221 (A) by rule; and

222 (B) evidenced by a contract, on a form provided by the commissioner, between the
223 authorized advisory organization and the department.

224 (d) (i) (A) A person conducting the examination described in Subsection (11)(a) shall
225 collect a stamping fee of an amount not to exceed 1% of the policy premium payable in
226 connection with the transaction.

227 (B) A stamping fee collected by the commissioner shall be deposited in the General
228 Fund.

229 (C) The commissioner shall establish a stamping fee by rule.

230 (ii) A stamping fee collected by an advisory organization is the property of the advisory
231 organization to be used in paying the expenses of the advisory organization.

232 (iii) Liability for paying a stamping fee is as required under Subsection 31A-3-303(1)
233 for taxes imposed under Section 31A-3-301.

234 (iv) The commissioner shall adopt a rule dealing with the payment of stamping fees. If
235 a stamping fee is not paid when due, the commissioner or advisory organization may impose a
236 penalty of 25% of the stamping fee due, plus 1-1/2% per month from the time of default until
237 full payment of the stamping fee.

238 (v) A stamping fee relative to a policy covering a risk located partially in this state
239 shall be allocated in the same manner as under Subsection 31A-3-303(4).

240 (e) The commissioner, representatives of the department, advisory organizations,
241 representatives and members of advisory organizations, authorized insurers, and surplus lines
242 insurers are not liable for damages on account of statements, comments, or recommendations

243 made in good faith in connection with their duties under this Subsection (11)(e) or under
244 Section 31A-15-111.

245 (f) An examination conducted under this Subsection (11) and a document or materials
246 related to the examination are confidential.

247 Section 3. Section **31A-21-404** is amended to read:

248 **31A-21-404. Out-of-state insurers.**

249 Any insurer extending mass marketed life or accident and health insurance under a
250 group or blanket policy issued outside of this state to residents of this state shall, with respect
251 to the mass marketed life or accident and health insurance policy:

252 (1) comply with:

253 (a) Sections 31A-23a-402, 31A-23a-402.5, and 31A-23a-403; and

254 (b) Chapter 26, Part 3, Claim Practices; and

255 (2) upon the commissioner's request, deliver to the commissioner a copy of any mass
256 marketed life or accident and health insurance policy, certificates issued under these policies,
257 and advertising material used in this state in connection with the policy.

258 Section 4. Section **31A-23a-402** is amended to read:

259 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**
260 **discrimination -- Coercion or intimidation -- Restriction on choice.**

261 (1) (a) (i) Any of the following may not make or cause to be made any communication
262 that contains false or misleading information, relating to an insurance product or contract, any
263 insurer, or any licensee under this title, including information that is false or misleading
264 because it is incomplete:

265 (A) a person who is or should be licensed under this title;

266 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

267 (C) a person whose primary interest is as a competitor of a person licensed under this
268 title; and

269 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

270 (ii) As used in this Subsection (1), "false or misleading information" includes:

271 (A) assuring the nonobligatory payment of future dividends or refunds of unused
272 premiums in any specific or approximate amounts, but reporting fully and accurately past
273 experience is not false or misleading information; and

274 (B) with intent to deceive a person examining it:
275 (I) filing a report;
276 (II) making a false entry in a record; or
277 (III) wilfully refraining from making a proper entry in a record.
278 (iii) A licensee under this title may not:
279 (A) use any business name, slogan, emblem, or related device that is misleading or
280 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
281 already in business; or
282 (B) use any advertisement or other insurance promotional material that would cause a
283 reasonable person to mistakenly believe that a state or federal government agency:
284 (I) is responsible for the insurance sales activities of the person;
285 (II) stands behind the credit of the person;
286 (III) guarantees any returns on insurance products of or sold by the person; or
287 (IV) is a source of payment of any insurance obligation of or sold by the person.
288 (iv) A person who is not an insurer may not assume or use any name that deceptively
289 implies or suggests that person is an insurer.
290 (v) A person other than persons licensed as health maintenance organizations under
291 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
292 itself.
293 (b) A licensee's violation creates a rebuttable presumption that the violation was also
294 committed by the insurer if:
295 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
296 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
297 insurer:
298 (A) that the licensee represents; or
299 (B) for whom the licensee processes claims; and
300 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
301 insurer.
302 ~~[(2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not~~
303 ~~induce any person to enter into or continue an insurance contract or to terminate an existing~~
304 ~~insurance contract by offering benefits not specified in the policy to be issued or continued;~~

305 including premium or commission rebates.]

306 [~~(ii)~~ An insurer may not make or knowingly allow any agreement of insurance that is
307 not clearly expressed in the policy to be issued or renewed.]

308 [~~(iii)~~ This Subsection (2)(a) does not preclude:]

309 [~~(A)~~ an insurer from reducing premiums because of expense savings;]

310 [~~(B)~~ an insurer from providing to a policyholder or insured one or more incentives to
311 participate in programs or activities designed to reduce claims or claim expenses;]

312 [~~(C)~~ the usual kinds of social courtesies not related to particular transactions; or]

313 [~~(D)~~ an insurer from receiving premiums under an installment payment plan.]

314 [~~(iv)~~ The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah
315 Administrative Rulemaking Act, to define what constitutes an incentive described in
316 Subsection (2)(a)(iii)(B).]

317 [~~(b)~~ A licensee under this title may not absorb the tax under Section 31A-3-301.]

318 [~~(c)~~ ~~(i)~~ (2)(a) A title insurer or producer or any officer or employee of either may not
319 pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to
320 obtaining any title insurance business:

321 [~~(A)~~ (i) any rebate, reduction, or abatement of any rate or charge made incident to the
322 issuance of the title insurance;

323 [~~(B)~~ (ii) any special favor or advantage not generally available to others; or

324 [~~(C)~~ (iii) any money or other consideration, except if approved under Section
325 31A-2-405; or

326 [~~(D)~~ (iv) material inducement.

327 [~~(i)~~ (b) "Charge made incident to the issuance of the title insurance" includes escrow
328 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
329 after consultation with the commissioner and subject to Section 31A-2-404.

330 [~~(iii)~~ (c) An insured or any other person connected, directly or indirectly, with the
331 transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer,
332 employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly,
333 any benefit referred to in Subsection (2)[~~(c)~~ ~~(i)~~ (a)].

334 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
335 different premiums or by offering different terms of coverage, except on the basis of

336 classifications related to the nature and the degree of the risk covered or the expenses involved.

337 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
338 insured under a group, blanket, or franchise policy, and the terms of those policies are not
339 unfairly discriminatory merely because they are more favorable than in similar individual
340 policies.

341 (4) (a) This Subsection (4) applies to:

342 (i) a person who is or should be licensed under this title;

343 (ii) an employee of that licensee or person who should be licensed;

344 (iii) a person whose primary interest is as a competitor of a person licensed under this
345 title; and

346 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

347 (b) A person described in Subsection (4)(a) may not commit or enter into any
348 agreement to participate in any act of boycott, coercion, or intimidation that:

349 (i) tends to produce:

350 (A) an unreasonable restraint of the business of insurance; or

351 (B) a monopoly in that business; or

352 (ii) results in an applicant purchasing or replacing an insurance contract.

353 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
354 insurer or licensee under this chapter, another person who is required to pay for insurance as a
355 condition for the conclusion of a contract or other transaction or for the exercise of any right
356 under a contract.

357 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
358 coverage selected on reasonable grounds.

359 (b) The form of corporate organization of an insurer authorized to do business in this
360 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
361 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
362 declining an application for insurance.

363 (6) A person may not make any charge other than insurance premiums and premium
364 financing charges for the protection of property or of a security interest in property, as a
365 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
366 the lending of money on the security of an interest in the property.

367 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
368 agency to the principal on demand.

369 (b) A licensee whose license is suspended, limited, or revoked under Section
370 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
371 commissioner on demand.

372 (8) (a) A person may not engage in [~~any other~~] an unfair method of competition or any
373 other unfair or deceptive act or practice in the business of insurance, as defined by the
374 commissioner by rule, after a finding that [~~they~~] the method of competition, the act, or the
375 practice:

- 376 (i) [~~are~~] is misleading;
377 (ii) [~~are~~] is deceptive;
378 (iii) [~~are~~] is unfairly discriminatory;
379 (iv) [~~provide~~] provides an unfair inducement; or
380 (v) unreasonably [~~restrain~~] restrains competition.

381 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
382 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define [~~any~~
383 ~~other~~] an unfair method of competition or [~~any other~~] unfair or deceptive act or practice after a
384 finding that [~~they~~] the method of competition, the act, or the practice:

- 385 (i) [~~are~~] is misleading;
386 (ii) [~~are~~] is deceptive;
387 (iii) [~~are~~] is unfairly discriminatory;
388 (iv) [~~provide~~] provides an unfair inducement; or
389 (v) unreasonably [~~restrain~~] restrains competition.

390 Section 5. Section **31A-23a-402.5** is enacted to read:

391 **31A-23a-402.5. Inducements.**

392 (1) (a) Except as provided in Subsection (2), a licensee under this title, or an officer or
393 employee of a licensee, may not induce a person to enter into, continue, or terminate an
394 insurance contract by offering a benefit that is not:

- 395 (i) specified in the insurance contract; or
396 (ii) directly related to the insurance contract.

397 (b) An insurer may not make or knowingly allow an agreement of insurance that is not

398 clearly expressed in the insurance contract to be issued or renewed.

399 (c) A licensee under this title may not absorb the tax under Section 31A-3-301.

400 (2) This section does not apply to a title insurer, a title producer, or an officer or
 401 employee of a title insurer or title producer.

402 (3) Items not prohibited by Subsection (1) include an insurer:

403 (a) reducing premiums because of expense savings;

404 (b) providing to a policyholder or insured one or more incentives, as defined by the
 405 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
 406 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim
 407 expenses; or

408 (c) receiving premiums under an installment payment plan.

409 (4) Items not prohibited by Subsection (1) include a licensee, or an officer or employee
 410 of a licensee, either directly or through a third party:

411 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
 412 conditioned on the purchase of a particular insurance product;

413 (b) extending credit on a premium to the insured:

414 (i) without interest, for no more than 90 days from the effective date of the insurance
 415 contract;

416 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
 417 balance after the time period described in Subsection (4)(b)(i); and

418 (iii) except that an installment or payroll deduction payment of premiums on an
 419 insurance contract issued under an insurer's mass marketing program is not considered an
 420 extension of credit for purposes of this Subsection (4)(b);

421 (c) preparing or conducting a survey that:

422 (i) is directly related to ~~§~~→ [a health benefit plan] an accident and health insurance policy ←~~§~~
 422a purchased from the licensee; or

423 (ii) used by the licensee to assess the benefit needs and preferences of ~~§~~→ insureds, ←~~§~~
 423a employers ~~§~~→, ←~~§~~ or

424 employees directly related to an insurance product sold by the licensee;

425 (d) providing limited human resource services that are directly related to an insurance
 426 product sold by the licensee, including:

427 (i) answering questions directly related to:

428 (A) an employee benefit offering or administration, if the insurance product purchased

429 from the licensee is accident and health insurance or health insurance; and
430 (B) employment practices liability, if the insurance product purchased from the
431 licensee is property or casualty insurance; and
432 (ii) providing limited human resource compliance training and education directly
433 pertaining to an insurance product purchased from the licensee;
434 (e) providing the following types of information or guidance:
435 (i) providing guidance directly related to compliance with federal and state laws for an
436 insurance product purchased from the licensee;
437 (ii) providing a workshop or seminar addressing an insurance issue that is directly
438 related to an insurance product purchased from the licensee; or
439 (iii) providing information regarding:
440 (A) employee benefit issues;
441 (B) directly related insurance regulatory and legislative updates; or
442 (C) similar education about an insurance product sold by the licensee and how the
443 insurance product interacts with tax law;
444 (f) preparing or providing a form that is directly related to an insurance product
445 purchased from, or offered by, the licensee;
446 (g) preparing or providing documents directly related to a flexible spending account,
447 but not providing ongoing administration of a flexible spending account;
448 (h) providing enrollment and billing assistance, including:
449 (i) providing benefit statements or new hire insurance benefits packages; and
450 (ii) providing technology services such as an electronic enrollment platform or
451 application system;
452 (i) communicating coverages in writing and in consultation with the insured and
453 employees;
454 (j) providing employee communication materials and notifications directly related to an
455 insurance product purchased from a licensee;
456 (k) providing claims management and resolution to the extent permitted under the
457 licensee's license;
458 (l) providing underwriting or actuarial analysis or services;
459 (m) negotiating with an insurer regarding the placement and pricing of an insurance

460 product;

461 (n) recommending placement and coverage options;

462 (o) providing a health fair or providing assistance or advice on establishing or
 463 operating a wellness program, but not providing any payment for or direct operation of the
 464 wellness program;

465 (p) providing COBRA and Utah mini COBRA administration, consultations, and other
 466 services directly related to an insurance product purchased from the licensee;

467 (q) assisting with a summary plan description;

468 (r) providing information necessary for the preparation of documents directly related to
 469 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as
 470 amended;

471 (s) providing ~~H~~→ information or ←~~H~~ services directly related to the Health
 471a Insurance Portability and
 472 Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services
 473 directly related to health care access, portability, and renewability when offered in connection
 474 with accident and health insurance sold by a licensee;

475 (t) sending proof of coverage to a third party with a legitimate interest in coverage;

476 (u) providing information ~~H~~→ in a form approved by the commissioner and ←~~H~~
 476a directly related to determining whether an insurance product
 477 sold by the licensee meets the requirements of a third party contract that requires or references
 478 insurance coverage;

479 (v) facilitating risk management services directly related to the insurance product sold
 480 or offered for sale by the licensee, including:

481 (i) risk management;

482 (ii) claims and loss control services; and

483 (iii) risk assessment consulting;

484 (w) otherwise providing services that are legitimately part of servicing an insurance
 485 product purchased from a licensee; and

486 (x) providing other directly related services approved by the department.

487 (5) An inducement prohibited under Subsection (1) includes a licensee, or an officer or
 488 employee of a licensee:

489 (a) (i) providing a premium or commission rebate;

490 (ii) paying the salary of an employee of a person who purchases an insurance product

491 from the licensee; or

492 (iii) if the licensee is an insurer, or a third party administrator who contracts with an
 493 insurer, paying the salary for an onsite staff member to perform an act prohibited under
 494 Subsection (5)(b) ~~H→~~ [(xi)] (xii) ←H ; or

495 (b) engaging in one or more of the following unless a fee is paid in accordance with
 496 Subsection (7):

497 (i) performing background checks of prospective employees;

498 (ii) providing legal services ~~H→~~ by a person licensed to practice law ←H ;

499 (iii) performing drug testing ~~H→~~ that is directly related to an insurance product
 499a purchased from the licensee ←H ;

500 (iv) preparing employer or employee handbooks, except that a licensee may:

501 (A) provide information for a medical benefit section of an employee handbook;

502 (B) provide information for the section of an employee handbook directly related to an
 503 employment practices liability insurance product purchased from the licensee; or

504 (C) prepare or print an employee benefit enrollment guide;

505 (v) providing job descriptions, postings, and applications for a person that purchases an
 506 employment practices liability insurance product from the licensee;

507 (vi) providing payroll services;

508 (vii) providing performance reviews or performance review training;

509 (viii) providing union advice;

510 (ix) providing accounting services;

511 (x) providing data analysis information technology programs, except as provided in

512 Subsection (4)(h)(ii):

513 (xi) providing administration of health reimbursement accounts or health savings
 514 accounts; or

515 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
 516 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
 517 the following prohibited benefits:

518 (A) performing background checks of prospective employees;

519 (B) providing legal services ~~H→~~ by a person licensed to practice law ←H ;

520 (C) performing drug testing ~~H→~~ that is directly related to an insurance product
 520a purchased from the insurer ←H ;

521 (D) preparing employer or employee handbooks;

- 522 (E) providing job descriptions positing, and applications;
- 523 (F) providing payroll services;
- 524 (G) providing performance reviews or performance review training;
- 525 (H) providing union advice;
- 526 (I) providing accounting services;
- 527 (J) providing discrimination testing; or
- 528 (K) providing data analysis information technology programs.

529 (6) A de minimis gift or meal not to exceed \$25 for each individual receiving the gift
530 or meal is presumed to be a social courtesy not conditioned on the purchase of a particular
531 insurance product for purposes of Subsection (4)(a).

532 (7) If as provided under Subsection (5)(b) a licensee is paid a fee to provide an item
533 listed in Subsection (5)(b), the licensee shall comply with Subsection 31A-23a-501(2) in
534 charging the fee, except that the fee paid for the item shall equal or exceed the fair market
535 value of the item.

536 Section 6. Section **31A-23a-504** is amended to read:

537 **31A-23a-504. Sharing commissions.**

538 (1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter
539 or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the
540 licensee knows that the person is licensed under this chapter as to the particular type of
541 insurance to act in Utah as:

- 542 (i) a producer;
- 543 (ii) a limited line producer;
- 544 (iii) a customer service representative;
- 545 (iv) a consultant;
- 546 (v) a managing general agent; or
- 547 (vi) a reinsurance intermediary.

548 (b) A person may only accept commission compensation or other compensation as a
549 person described in Subsections (1)(a)(i) through (vi) that is directly or indirectly the result of
550 an insurance transaction if that person is licensed under this chapter to act as described in
551 Subsection (1)(a).

552 (2) (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive

553 a commission or other compensation that is directly or indirectly the result of an insurance
554 transaction.

555 (b) A consultant may share a consultant fee or other compensation received for
556 consulting services performed within Utah only:

557 (i) with another consultant licensed under this chapter; and

558 (ii) to the extent that the other consultant contributed to the services performed.

559 (3) This section does not prohibit:

560 (a) the payment of renewal commissions to former licensees under this chapter, former
561 Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency
562 sales agreement;

563 (b) compensation paid to or received by a person for referral of a potential customer
564 that seeks to purchase or obtain an opinion or advice on an insurance product if:

565 (i) the person is not licensed to sell insurance;

566 (ii) the person does not sell or provide opinions or advice on the product; and

567 (iii) the compensation does not depend on whether the referral results in a purchase or
568 sale; or

569 (c) the payment or assignment of a commission, service fee, brokerage, or other
570 valuable consideration to an agency or a person who does not sell, solicit, or negotiate
571 insurance in this state, unless the payment would constitute an inducement or commission
572 rebate under Section 31A-23a-402 or 31A-23a-402.5.

573 (4) (a) In selling a policy of title insurance, sharing of commissions under Subsection
574 (1) may not occur if it will result in:

575 (i) an unlawful rebate;

576 (ii) compensation in connection with controlled business; or

577 (iii) payment of a forwarding fee or finder's fee.

578 (b) A person may share compensation for the issuance of a title insurance policy only
579 to the extent that the person contributed to the search and examination of the title or other
580 services connected with the title insurance policy.

581 (5) This section does not apply to a bail bond producer or bail enforcement agent as
582 defined in Section 31A-35-102.

583 Section 7. **Repealer.**

584 This bill repeals:

585 Section **31A-23a-404, Extension of credit on premiums.**

586 Section 8. **Effective date.**

587 If approved by two-thirds of all the members elected to each house, this bill takes effect

588 upon approval by the governor, or the day following the constitutional time limit of Utah

589 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

590 the date of veto override.

FISCAL NOTE

H.B. 333 1st Sub. (Buff)

SHORT TITLE: **Unfair Inducements Related to Insurance Products**

SPONSOR: **Dunnigan, J.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.