

1 **UNFAIR INDUCEMENTS RELATED TO INSURANCE**

2 **PRODUCTS**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 Senate Sponsor: \_\_\_\_\_

7 

---

---

**LONG TITLE**

8 **General Description:**

9 This bill modifies the Insurance Code to address what constitutes unfair inducements  
10 related to insurance.  
11

12 **Highlighted Provisions:**

13 This bill:

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

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides an immediate effective date.

22 **Utah Code Sections Affected:**

23 **AMENDS:**

24 **31A-3-303**, as last amended by Laws of Utah 2003, Chapters 252 and 298

25 **31A-6a-103**, as last amended by Laws of Utah 2008, Chapter 345

26 **31A-15-103**, as last amended by Laws of Utah 2008, Chapter 257

27 **31A-21-404**, as last amended by Laws of Utah 2004, Chapter 90



28 31A-23a-402, as last amended by Laws of Utah 2008, Chapter 382

29 31A-23a-504, as last amended by Laws of Utah 2009, Chapter 349

30 ENACTS:

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

32 REPEALS:

33 31A-23a-404, as renumbered and amended by Laws of Utah 2003, Chapter 298



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

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

37 **31A-3-303. Payment of tax.**

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

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

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

56 (4) If a policy covers risks that are only partially located in this state, for computation  
57 of tax under this part the premium shall be reasonably allocated among the states on the basis  
58 of risk locations. However, all premiums with respect to surplus lines insurance received in

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

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

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

68 Section 2. Section **31A-6a-103** is amended to read:

69 **31A-6a-103. Requirements for doing business.**

70 (1) A service contract may not be issued, sold, or offered for sale in this state unless the  
71 service contract is insured under a service contract reimbursement insurance policy issued by:

72 (a) an insurer authorized to do business in this state; or

73 (b) a recognized surplus lines carrier.

74 (2) (a) A service contract may not be issued, sold, or offered for sale unless the service  
75 contract provider completes the registration process described in this Subsection (2).

76 (b) To register, a service contract provider shall submit to the department the  
77 following:

78 (i) an application for registration;

79 (ii) a fee established in accordance with Section 31A-3-103;

80 (iii) a copy of any service contract that the service contract provider offers in this state;

81 and

82 (iv) a copy of the service contract provider's reimbursement insurance policy.

83 (c) A service provider shall submit the information described in Subsection (2)(b) no  
84 less than 30 days before the day on which the service provider issues, sells, offers for sale, or  
85 uses a service contract or reimbursement insurance policy in this state.

86 (d) A service provider shall file any modification of the terms of a service contract or  
87 reimbursement insurance policy 30 days before the day on which it is used in this state.

88 (e) A person complying with this chapter is not required to comply with:

89 (i) Subsections 31A-21-201(1) and 31A-23a-402~~(3)~~(2); or

- 90 (ii) Chapter 19a, Utah Rate Regulation Act.
- 91 (3) (a) Premiums collected on a service contract are not subject to premium taxes.
- 92 (b) Premiums collected by an issuer of a reimbursement insurance policy are subject to
- 93 premium taxes.
- 94 (4) A person marketing, selling, or offering to sell a service contract for a service
- 95 contract provider that complies with this chapter is exempt from the licensing requirements of
- 96 this title.
- 97 (5) A service contract provider complying with this chapter is not required to comply
- 98 with:
- 99 (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 100 (b) Chapter 7, Nonprofit Health Service Insurance Corporations;
- 101 (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 102 (d) Chapter 9, Insurance Fraternal;
- 103 (e) Chapter 10, Annuities;
- 104 (f) Chapter 11, Motor Clubs;
- 105 (g) Chapter 12, State Risk Management Fund;
- 106 (h) Chapter 13, Employee Welfare Funds and Plans;
- 107 (i) Chapter 14, Foreign Insurers;
- 108 (j) Chapter 19a, Utah Rate Regulation Act;
- 109 (k) Chapter 25, Third Party Administrators; and
- 110 (l) Chapter 28, Guaranty Associations.

111 Section 3. Section **31A-15-103** is amended to read:

112 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

113 (1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a

114 certificate of authority to do business in this state under Section 31A-14-202 may negotiate for

115 and make an insurance contract with a person in this state and on a risk located in this state,

116 subject to the limitations and requirements of this section.

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

- 118 (i) inspect the risks to be insured;
- 119 (ii) collect premiums;
- 120 (iii) adjust losses; and

- 121 (iv) do another act reasonably incidental to the contract.
- 122 (b) An act described in Subsection (2)(a) may be done through:
- 123 (i) an employee; or
- 124 (ii) an independent contractor.
- 125 (3) (a) Subsections (1) and (2) do not permit a person to solicit business in this state on
- 126 behalf of an insurer that has no certificate of authority.
- 127 (b) Insurance placed with a nonadmitted insurer shall be placed with a surplus lines
- 128 producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,
- 129 and Reinsurance Intermediaries.
- 130 (c) The commissioner may by rule prescribe how a surplus lines producer may:
- 131 (i) pay or permit the payment, commission, or other remuneration on insurance placed
- 132 by the surplus lines producer under authority of the surplus lines producer's license to one
- 133 holding a license to act as an insurance producer; and
- 134 (ii) advertise the availability of the surplus lines producer's services in procuring, on
- 135 behalf of a person seeking insurance, a contract with a nonadmitted insurer.
- 136 (4) For a contract made under this section, a nonadmitted insurer is subject to Sections
- 137 31A-23a-402, 31A-23a-402.5, and 31A-23a-403 and the rules adopted under those sections.
- 138 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to
- 139 an employer located in this state, except for stop loss coverage issued to an employer securing
- 140 workers' compensation under Subsection 34A-2-201(3).
- 141 (6) (a) The commissioner may by rule prohibit making a contract under Subsection (1)
- 142 for a specified class of insurance if authorized insurers provide an established market for the
- 143 class in this state that is adequate and reasonably competitive.
- 144 (b) The commissioner may by rule place a restriction or a limitation on and create
- 145 special procedures for making a contract under Subsection (1) for a specified class of insurance
- 146 if:
- 147 (i) there have been abuses of placements in the class; or
- 148 (ii) the policyholders in the class, because of limited financial resources, business
- 149 experience, or knowledge, cannot protect their own interests adequately.
- 150 (c) The commissioner may prohibit an individual insurer from making a contract under
- 151 Subsection (1) and all insurance producers from dealing with the insurer if:

- 152 (i) the insurer willfully violates:
- 153 (A) this section;
- 154 (B) Section 31A-4-102, 31A-23a-402, 31A-23a-402.5, or 31A-26-303; or
- 155 (C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);
- 156 (ii) the insurer fails to pay the fees and taxes specified under Section 31A-3-301; or
- 157 (iii) the commissioner has reason to believe that the insurer is:
- 158 (A) in an unsound condition;
- 159 (B) operated in a fraudulent, dishonest, or incompetent manner; or
- 160 (C) in violation of the law of its domicile.
- 161 (d) (i) The commissioner may issue one or more lists of unauthorized foreign insurers
- 162 whose:
- 163 (A) solidity the commissioner doubts; or
- 164 (B) practices the commissioner considers objectionable.
- 165 (ii) The commissioner shall issue one or more lists of unauthorized foreign insurers the
- 166 commissioner considers to be reliable and solid.
- 167 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner
- 168 may issue other relevant evaluations of unauthorized insurers.
- 169 (iv) An action may not lie against the commissioner or an employee of the department
- 170 for a written or oral communication made in, or in connection with the issuance of, a list or
- 171 evaluation described in this Subsection (6)(d).
- 172 (e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list
- 173 only if the unauthorized insurer:
- 174 (i) delivers a request to the commissioner to be on the list;
- 175 (ii) establishes satisfactory evidence of good reputation and financial integrity;
- 176 (iii) (A) delivers to the commissioner a copy of the unauthorized insurer's current
- 177 annual statement certified by the insurer; and
- 178 (B) continues each subsequent year to file its annual statements with the commissioner
- 179 within 60 days of the day on which it is filed with the insurance regulatory authority where the
- 180 insurer is domiciled;
- 181 (iv) (A) (I) is in substantial compliance with the solvency standards in Chapter 17, Part
- 182 6, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is

183 greater; and

184 (II) maintains in the United States an irrevocable trust fund in either a national bank or  
185 a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit  
186 requirements for insurers in the state where it is made, which trust fund or deposit:

187 (Aa) shall be in an amount not less than \$2,500,000 for the protection of all of the  
188 insurer's policyholders in the United States;

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

191 (Ac) may include as part of the trust arrangement a letter of credit that qualifies as  
192 acceptable security under Section 31A-17-404.1; or

193 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group  
194 of alien individual insurers, maintains a trust fund that:

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

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

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

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

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

- 207 (i) a financially unsound insurer;
- 208 (ii) an insurer engaging in unfair practices; or
- 209 (iii) an otherwise substandard insurer.

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

- 212 (i) gives the applicant notice in writing of the known deficiencies of the insurer or the  
213 limitations on the surplus line producer's investigation; and

214 (ii) explains the need to place the business with that insurer.

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

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

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

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

223 (i) include a description of the subject of the insurance; and

224 (ii) indicate:

225 (A) the coverage, conditions, and term of the insurance;

226 (B) the premium charged the policyholder;

227 (C) the premium taxes to be collected from the policyholder; and

228 (D) the name and address of the policyholder and insurer.

229 (b) If the direct risk is assumed by more than one insurer, the policy shall state:

230 (i) the names and addresses of all insurers; and

231 (ii) the portion of the entire direct risk each assumes.

232 (c) A policy issued under this section shall have attached or affixed to the policy the  
233 following statement: "The insurer issuing this policy does not hold a certificate of authority to  
234 do business in this state and thus is not fully subject to regulation by the Utah insurance  
235 commissioner. This policy receives no protection from any of the guaranty associations created  
236 under Title 31A, Chapter 28."

237 (9) Upon placing a new or renewal coverage under this section, a surplus lines  
238 producer shall promptly deliver to the policyholder or the policyholder's agent evidence of the  
239 insurance consisting either of:

240 (a) the policy as issued by the insurer; or

241 (b) if the policy is not available upon placing the coverage, a certificate, cover note, or  
242 other confirmation of insurance complying with Subsection (8).

243 (10) If the commissioner finds it necessary to protect the interests of insureds and the  
244 public in this state, the commissioner may by rule subject a policy issued under this section to



245 as much of the regulation provided by this title as is required for a comparable policy written  
246 by an authorized foreign insurer.

247 (11) (a) A surplus lines transaction in this state shall be examined to determine whether  
248 it complies with:

249 (i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;

250 (ii) the solicitation limitations of Subsection (3);

251 (iii) the requirement of Subsection (3) that placement be through a surplus lines  
252 producer;

253 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

254 (v) the policy form requirements of Subsections (8) and (10).

255 (b) The examination described in Subsection (11)(a) shall take place as soon as  
256 practicable after the transaction. The surplus lines producer shall submit to the examiner  
257 information necessary to conduct the examination within a period specified by rule.

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

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

265 (A) by rule; and

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

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

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

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

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

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

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

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

284 (e) The commissioner, representatives of the department, advisory organizations,  
285 representatives and members of advisory organizations, authorized insurers, and surplus lines  
286 insurers are not liable for damages on account of statements, comments, or recommendations  
287 made in good faith in connection with their duties under this Subsection (11)(e) or under  
288 Section 31A-15-111.

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

291 Section 4. Section **31A-21-404** is amended to read:

292 **31A-21-404. Out-of-state insurers.**

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

296 (1) comply with:

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

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

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

302 Section 5. Section **31A-23a-402** is amended to read:

303 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**  
304 **discrimination -- Coercion or intimidation -- Restriction on choice.**

305 (1) (a) (i) Any of the following may not make or cause to be made any communication  
306 that contains false or misleading information, relating to an insurance product or contract, any

307 insurer, or any licensee under this title, including information that is false or misleading  
308 because it is incomplete:

- 309 (A) a person who is or should be licensed under this title;
- 310 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);
- 311 (C) a person whose primary interest is as a competitor of a person licensed under this  
312 title; and
- 313 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

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

- 315 (A) assuring the nonobligatory payment of future dividends or refunds of unused  
316 premiums in any specific or approximate amounts, but reporting fully and accurately past  
317 experience is not false or misleading information; and
- 318 (B) with intent to deceive a person examining it:
  - 319 (I) filing a report;
  - 320 (II) making a false entry in a record; or
  - 321 (III) wilfully refraining from making a proper entry in a record.
- 322 (iii) A licensee under this title may not:
  - 323 (A) use any business name, slogan, emblem, or related device that is misleading or  
324 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee  
325 already in business; or
  - 326 (B) use any advertisement or other insurance promotional material that would cause a  
327 reasonable person to mistakenly believe that a state or federal government agency:
    - 328 (I) is responsible for the insurance sales activities of the person;
    - 329 (II) stands behind the credit of the person;
    - 330 (III) guarantees any returns on insurance products of or sold by the person; or
    - 331 (IV) is a source of payment of any insurance obligation of or sold by the person.
  - 332 (iv) A person who is not an insurer may not assume or use any name that deceptively  
333 implies or suggests that person is an insurer.
  - 334 (v) A person other than persons licensed as health maintenance organizations under  
335 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to  
336 itself.
- 337 (b) A licensee's violation creates a rebuttable presumption that the violation was also

338 committed by the insurer if:

339 (i) the licensee under this title distributes cards or documents, exhibits a sign, or  
340 publishes an advertisement that violates Subsection (1)(a), with reference to a particular  
341 insurer:

342 (A) that the licensee represents; or

343 (B) for whom the licensee processes claims; and

344 (ii) the cards, documents, signs, or advertisements are supplied or approved by that  
345 insurer.

346 ~~[(2)(a)(i) A licensee under this title, or an officer or employee of a licensee may not  
347 induce any person to enter into or continue an insurance contract or to terminate an existing  
348 insurance contract by offering benefits not specified in the policy to be issued or continued,  
349 including premium or commission rebates.]~~

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

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

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

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

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

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

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

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

362 ~~[(c)(i) A title insurer or producer or any officer or employee of either may not pay,  
363 allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining  
364 any title insurance business:]~~

365 ~~[(A) any rebate, reduction, or abatement of any rate or charge made incident to the  
366 issuance of the title insurance;]~~

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

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

369 or]

370 [~~(D)~~ material inducement.]

371 [(ii) "Charge made incident to the issuance of the title insurance" includes escrow  
372 charges, and any other services that are prescribed in rule by the Title and Escrow Commission  
373 after consultation with the commissioner and subject to Section 31A-2-404.]

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

378 [~~(3)~~ (2) (a) An insurer may not unfairly discriminate among policyholders by charging  
379 different premiums or by offering different terms of coverage, except on the basis of  
380 classifications related to the nature and the degree of the risk covered or the expenses involved.

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

385 [~~(4)~~ (3) (a) This Subsection [~~(4)~~ (3) applies to:

- 386 (i) a person who is or should be licensed under this title;
- 387 (ii) an employee of that licensee or person who should be licensed;
- 388 (iii) a person whose primary interest is as a competitor of a person licensed under this  
389 title; and

390 (iv) one acting on behalf of any person described in Subsections [~~(4)~~ (3)(a)(i) through  
391 (iii).

392 (b) A person described in Subsection [~~(4)~~ (3)(a) may not commit or enter into any  
393 agreement to participate in any act of boycott, coercion, or intimidation that:

- 394 (i) tends to produce:
  - 395 (A) an unreasonable restraint of the business of insurance; or
  - 396 (B) a monopoly in that business; or
- 397 (ii) results in an applicant purchasing or replacing an insurance contract.

398 [~~(5)~~ (4) (a) (i) Subject to Subsection [~~(5)~~ (4)(a)(ii), a person may not restrict in the  
399 choice of an insurer or licensee under this chapter, another person who is required to pay for

400 insurance as a condition for the conclusion of a contract or other transaction or for the exercise  
401 of any right under a contract.

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

404 (b) The form of corporate organization of an insurer authorized to do business in this  
405 state is not a reasonable ground for disapproval, and the commissioner may by rule specify  
406 additional grounds that are not reasonable. This Subsection [~~(5)~~] (4) does not bar an insurer  
407 from declining an application for insurance.

408 [~~(6)~~] (5) A person may not make any charge other than insurance premiums and  
409 premium financing charges for the protection of property or of a security interest in property, as  
410 a condition for obtaining, renewing, or continuing the financing of a purchase of the property or  
411 the lending of money on the security of an interest in the property.

412 [~~(7)~~] (6) (a) A licensee under this title may not refuse or fail to return promptly all  
413 indicia of agency to the principal on demand.

414 (b) A licensee whose license is suspended, limited, or revoked under Section  
415 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the  
416 commissioner on demand.

417 [~~(8)~~] (7) (a) A person may not engage in [~~any other~~] an unfair method of competition or  
418 any other unfair or deceptive act or practice in the business of insurance, as defined by the  
419 commissioner by rule, after a finding that [~~they~~] the method of competition, the act, or the  
420 practice:

- 421 (i) [~~are~~] is misleading;
- 422 (ii) [~~are~~] is deceptive;
- 423 (iii) [~~are~~] is unfairly discriminatory;
- 424 (iv) [~~provide~~] provides an unfair inducement; or
- 425 (v) unreasonably [~~restrain~~] restrains competition.

426 (b) Notwithstanding Subsection [~~(8)~~] (7)(a), for purpose of the title insurance industry,  
427 the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define  
428 [~~any other~~] an unfair method of competition or [~~any other~~] unfair or deceptive act or practice  
429 after a finding that [~~they~~] the method of competition, the act, or the practice:

- 430 (i) [~~are~~] is misleading;

- 431 (ii) [~~are~~] is deceptive;
- 432 (iii) [~~are~~] is unfairly discriminatory;
- 433 (iv) [~~provide~~] provides an unfair inducement; or
- 434 (v) unreasonably [~~restrain~~] restrains competition.

435 Section 6. Section **31A-23a-402.5** is enacted to read:

436 **31A-23a-402.5. Inducements.**

437 (1) As used in this section, "charge made incident to the issuance of the title insurance"  
438 includes escrow charges, and any other services that are prescribed in rule by the Title and  
439 Escrow Commission after consultation with the commissioner and subject to Section  
440 31A-2-404.

441 (2) (a) A licensee under this title, or an officer or employee of a licensee, may not  
442 induce a person to enter into, continue, or terminate an insurance contract by offering a benefit  
443 that is not:

444 (i) specified in the insurance contract; or

445 (ii) directly related to the insurance contract.

446 (b) An insurer may not make or knowingly allow an agreement of insurance that is not  
447 clearly expressed in the insurance contract to be issued or renewed.

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

449 (3) (a) A title insurer or producer, or an officer or employee of either, may not pay,  
450 allow, give, or offer to pay, allow, or give, directly or indirectly, one or more of the following  
451 as an inducement to obtaining title insurance business:

452 (i) a rebate, a reduction, or an abatement of a rate or charge made incident to the  
453 issuance of the title insurance;

454 (ii) a special favor or advantage not generally available to others;

455 (iii) money or other consideration, except if approved under Section 31A-2-405; or

456 (iv) material inducement.

457 (b) An insured or any other person connected, directly or indirectly, with a transaction,  
458 including a mortgage lender, real estate broker, builder, attorney, or an officer, employee, or  
459 agent of any of them, may not knowingly receive or accept, directly or indirectly, any benefit  
460 referred to in Subsection (3)(a).

461 (4) Items not prohibited by Subsection (2) include an insurer:

- 462 (a) reducing premiums because of expense savings;
- 463 (b) providing to a policyholder or insured one or more incentives, as defined by the
- 464 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 465 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim
- 466 expenses; or
- 467 (c) receiving premiums under an installment payment plan.
- 468 (5) Items not prohibited by Subsection (2) include a licensee, or an officer or employee
- 469 of a licensee, either directly or through a third party:
- 470 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
- 471 conditioned on the purchase of a particular insurance product;
- 472 (b) extending credit on a premium to the insured:
- 473 (i) without interest, for no more than 90 days from the effective date of the insurance
- 474 contract;
- 475 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
- 476 balance after the time period described in Subsection (6)(b)(i); and
- 477 (iii) except that an installment or payroll deduction payment of premiums on an
- 478 insurance contract issued under an insurer's mass marketing program is not considered an
- 479 extension of credit for purposes of this Subsection (6)(b);
- 480 (c) preparing or conducting a survey that:
- 481 (i) is directly related to a health benefit plan purchased from the licensee; or
- 482 (ii) used by the licensee to assess the benefit needs and preferences of employers or
- 483 employees directly related to an insurance product sold by the licensee;
- 484 (d) providing limited human resource services that are directly related to an insurance
- 485 product sold by the licensee, including:
- 486 (i) answering questions directly related to:
- 487 (A) an employee benefit offering or administration, if the insurance product purchased
- 488 from the licensee is accident and health insurance or health insurance; and
- 489 (B) employment practices liability, if the insurance product purchased from the
- 490 licensee is property or casualty insurance; and
- 491 (ii) providing limited human resource compliance training and education directly
- 492 pertaining to an insurance product purchased from the licensee;



- 493 (e) providing the following types of information or guidance:  
494 (i) providing guidance directly related to compliance with federal and state laws for an  
495 insurance product purchased from the licensee;  
496 (ii) providing a workshop or seminar addressing an insurance issue that is directly  
497 related to an insurance product purchased from the licensee; or  
498 (iii) providing information regarding:  
499 (A) employee benefit issues;  
500 (B) directly related insurance regulatory and legislative updates; or  
501 (C) similar education about an insurance product sold by the licensee and how the  
502 insurance product interacts with tax law;  
503 (f) preparing or providing a form that is directly related to an insurance product  
504 purchased from, or offered by, the licensee;  
505 (g) preparing or providing documents directly related to a flexible savings plan, but not  
506 providing ongoing administration of a flexible savings plan;  
507 (h) providing enrollment and billing assistance, including:  
508 (i) providing benefit statements or new hire insurance benefits packages; and  
509 (ii) providing technology services such as an electronic enrollment platform or  
510 application system;  
511 (i) communicating coverages in writing and in consultation with the insured and  
512 employees;  
513 (j) providing employee communication materials and notifications directly related to an  
514 insurance product purchased from a licensee;  
515 (k) providing claims management and resolution to the extent permitted under the  
516 licensee's license;  
517 (l) providing underwriting or actuarial analysis or services;  
518 (m) negotiating with an insurer regarding the placement and pricing of an insurance  
519 product;  
520 (n) recommending placement and coverage options;  
521 (o) providing a health fair, but not providing an ongoing wellness program, as defined  
522 by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah  
523 Administrative Rulemaking Act;

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

526 (q) assisting with a summary plan description;

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

530 (s) providing services directly related to the Health Insurance Portability and  
531 Accountability Act of 1996, Pub. L. 504-191, 110 Stat. 1936, as amended, such as services  
532 directly related to health care access, portability, and renewability when offered in connection  
533 with accident and health insurance sold by a licensee;

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

535 (u) providing information directly related to determining whether an insurance product  
536 sold by the licensee meets the requirements of a third party contract that requires or references  
537 insurance coverage;

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

540 (i) risk management;

541 (ii) claims and loss control services; and

542 (iii) risk assessment consulting;

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

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

546 (6) An inducement prohibited under Subsection (2) includes a licensee, or an officer or  
547 employee of a licensee:

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

549 (ii) paying the salary of an employee of a person who purchases an insurance product  
550 from the licensee; or

551 (iii) if the licensee is an insurer, or a third party administrator who contracts with an  
552 insurer, paying the salary for an onsite staff member to perform an act prohibited under  
553 Subsection (6)(b)(xi); or

554 (b) engaging in one or more of the following unless a fee is paid in accordance with

555 Subsection (8):

- 556 (i) performing background checks of prospective employees;  
557 (ii) providing legal services;  
558 (iii) performing drug testing;  
559 (iv) preparing employer or employee handbooks, except that a licensee may:  
560 (A) provide information for a medical benefit section of an employee handbook;  
561 (B) provide information for the section of an employee handbook directly related to an  
562 employment practices liability insurance product purchased from the licensee; or  
563 (C) prepare or print an employee benefit enrollment guide;  
564 (v) providing job descriptions, postings, and applications for a person that purchases an  
565 employment practices liability insurance product from the licensee;  
566 (vi) providing payroll services;  
567 (vii) providing performance reviews or performance review training;  
568 (viii) providing union advice;  
569 (ix) providing accounting services;  
570 (x) providing data analysis information technology programs, except as provided in

571 Subsection (5)(h)(ii):

- 572 (xi) providing administration of health reimbursement accounts or health savings  
573 accounts; or  
574 (xii) if the licensee is an insurer, or a third party administrator who contracts with an  
575 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of  
576 the following prohibited benefits:  
577 (A) performing background checks of prospective employees;  
578 (B) providing legal services;  
579 (C) performing drug testing;  
580 (D) preparing employer or employee handbooks;  
581 (E) providing job descriptions positing, and applications;  
582 (F) providing payroll services;  
583 (G) providing performance reviews or performance review training;  
584 (H) providing union advice;  
585 (I) providing accounting services;

586 (J) providing discrimination testing; or

587 (K) providing data analysis information technology programs.

588 (7) A de minimis gift or meal not to exceed \$25 for each individual receiving the gift  
589 or meal is presumed to be a social courtesy not conditioned on the purchase of a particular  
590 insurance product for purposes of Subsection (5)(a).

591 (8) If as provided under Subsection (6)(b) a licensee is paid a fee to provide an item  
592 listed in Subsection (6)(b), the licensee shall comply with Subsection 31A-23a-501(2) in  
593 charging the fee, except that the fee paid for the item shall equal or exceed the fair market  
594 value of the item.

595 Section 7. Section **31A-23a-504** is amended to read:

596 **31A-23a-504. Sharing commissions.**

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

- 601 (i) a producer;
- 602 (ii) a limited line producer;
- 603 (iii) a customer service representative;
- 604 (iv) a consultant;
- 605 (v) a managing general agent; or
- 606 (vi) a reinsurance intermediary.

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

611 (2) (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive  
612 a commission or other compensation that is directly or indirectly the result of an insurance  
613 transaction.

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

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

- 617 (ii) to the extent that the other consultant contributed to the services performed.
- 618 (3) This section does not prohibit:
- 619 (a) the payment of renewal commissions to former licensees under this chapter, former  
620 Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency  
621 sales agreement;
- 622 (b) compensation paid to or received by a person for referral of a potential customer  
623 that seeks to purchase or obtain an opinion or advice on an insurance product if:
- 624 (i) the person is not licensed to sell insurance;
- 625 (ii) the person does not sell or provide opinions or advice on the product; and
- 626 (iii) the compensation does not depend on whether the referral results in a purchase or  
627 sale; or
- 628 (c) the payment or assignment of a commission, service fee, brokerage, or other  
629 valuable consideration to an agency or a person who does not sell, solicit, or negotiate  
630 insurance in this state, unless the payment would constitute an inducement or commission  
631 rebate under Section 31A-23a-402 or 31A-23a-402.5.
- 632 (4) (a) In selling a policy of title insurance, sharing of commissions under Subsection  
633 (1) may not occur if it will result in:
- 634 (i) an unlawful rebate;
- 635 (ii) compensation in connection with controlled business; or
- 636 (iii) payment of a forwarding fee or finder's fee.
- 637 (b) A person may share compensation for the issuance of a title insurance policy only  
638 to the extent that the person contributed to the search and examination of the title or other  
639 services connected with the title insurance policy.
- 640 (5) This section does not apply to a bail bond producer or bail enforcement agent as  
641 defined in Section 31A-35-102.

642 **Section 8. Repealer.**

643 This bill repeals:

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

645 **Section 9. Effective date.**

646 If approved by two-thirds of all the members elected to each house, this bill takes effect  
647 upon approval by the governor, or the day following the constitutional time limit of Utah

648 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
649 the date of veto override.

---

---

**Legislative Review Note**  
as of 2-11-11 4:58 PM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 333

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.