

HB0333S01 compared with HB0333

~~{deleted text}~~ shows text that was in HB0333 but was deleted in HB0333S01.

inserted text shows text that was not in HB0333 but was inserted into HB0333S01.

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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: _____

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:

HB0333S01 compared with HB0333

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

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

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

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

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

ENACTS:

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

REPEALS:

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

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

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

31A-3-303. Payment of tax.

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

(2) The commissioner shall by rule prescribe accounting and reporting forms and procedures for insurers, producers, and policyholders to use in determining the amount of taxes

HB0333S01 compared with HB0333

owed under this part, and the manner and time of payment. If a tax is not paid within the time prescribed under the commissioner's rule, a penalty shall be imposed of 25% of the tax due, plus 1-1/2% per month from the time of default until full payment of the tax.

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

(4) If a policy covers risks that are only partially located in this state, for computation of tax under this part the premium shall be reasonably allocated among the states on the basis of risk locations. However, all premiums with respect to surplus lines insurance received in this state by a surplus lines producer or charged on policies written or negotiated in or from this state are taxable in full under this part, subject to a credit for any tax actually paid in another state to the extent of a reasonable allocation on the basis of risk locations.

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

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

Section 2. Section ~~{31A-6a-103}~~31A-15-103 is amended to read:

~~{~~ ~~31A-6a-103. Requirements for doing business.~~

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

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

~~_____ (b) a recognized surplus lines carrier.~~

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

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

~~_____ (i) an application for registration;~~

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

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

HB0333S01 compared with HB0333

and

- ~~—— (iv) a copy of the service contract provider's reimbursement insurance policy;~~
- ~~—— (c) A service provider shall submit the information described in Subsection (2)(b) no less than 30 days before the day on which the service provider issues, sells, offers for sale, or uses a service contract or reimbursement insurance policy in this state.~~
- ~~—— (d) A service provider shall file any modification of the terms of a service contract or reimbursement insurance policy 30 days before the day on which it is used in this state.~~
- ~~—— (e) A person complying with this chapter is not required to comply with:~~
 - ~~—— (i) Subsections 31A-21-201(1) and 31A-23a-402[(3)](2); or~~
 - ~~—— (ii) Chapter 19a, Utah Rate Regulation Act.~~
- ~~—— (3) (a) Premiums collected on a service contract are not subject to premium taxes.~~
- ~~—— (b) Premiums collected by an issuer of a reimbursement insurance policy are subject to premium taxes.~~
- ~~—— (4) A person marketing, selling, or offering to sell a service contract for a service contract provider that complies with this chapter is exempt from the licensing requirements of this title.~~
- ~~—— (5) A service contract provider complying with this chapter is not required to comply with:~~
 - ~~—— (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;~~
 - ~~—— (b) Chapter 7, Nonprofit Health Service Insurance Corporations;~~
 - ~~—— (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;~~
 - ~~—— (d) Chapter 9, Insurance Fraternal;~~
 - ~~—— (e) Chapter 10, Annuities;~~
 - ~~—— (f) Chapter 11, Motor Clubs;~~
 - ~~—— (g) Chapter 12, State Risk Management Fund;~~
 - ~~—— (h) Chapter 13, Employee Welfare Funds and Plans;~~
 - ~~—— (i) Chapter 14, Foreign Insurers;~~
 - ~~—— (j) Chapter 19a, Utah Rate Regulation Act;~~
 - ~~—— (k) Chapter 25, Third Party Administrators; and~~
 - ~~—— (l) Chapter 28, Guaranty Associations.~~
- ~~—— Section 3. Section 31A-15-103 is amended to read:~~

HB0333S01 compared with HB0333

† 31A-15-103. Surplus lines insurance -- Unauthorized insurers.

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

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

- (i) inspect the risks to be insured;
- (ii) collect premiums;
- (iii) adjust losses; and
- (iv) do another act reasonably incidental to the contract.

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

- (i) an employee; or
- (ii) an independent contractor.

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

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

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

(i) pay or permit the payment, commission, or other remuneration on insurance placed by the surplus lines producer under authority of the surplus lines producer's license to one holding a license to act as an insurance producer; and

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

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

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

(6) (a) The commissioner may by rule prohibit making a contract under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the

HB0333S01 compared with HB0333

class in this state that is adequate and reasonably competitive.

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

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

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

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

(i) the insurer willfully violates:

(A) this section;

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

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

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

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

(A) in an unsound condition;

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

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

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

(A) solidity the commissioner doubts; or

(B) practices the commissioner considers objectionable.

(ii) The commissioner shall issue one or more lists of unauthorized foreign insurers the commissioner considers to be reliable and solid.

(iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner may issue other relevant evaluations of unauthorized insurers.

(iv) An action may not lie against the commissioner or an employee of the department for a written or oral communication made in, or in connection with the issuance of, a list or evaluation described in this Subsection (6)(d).

(e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only if the unauthorized insurer:

HB0333S01 compared with HB0333

- (i) delivers a request to the commissioner to be on the list;
 - (ii) establishes satisfactory evidence of good reputation and financial integrity;
 - (iii) (A) delivers to the commissioner a copy of the unauthorized insurer's current annual statement certified by the insurer; and
 - (B) continues each subsequent year to file its annual statements with the commissioner within 60 days of the day on which it is filed with the insurance regulatory authority where the insurer is domiciled;
 - (iv) (A) (I) is in substantial compliance with the solvency standards in Chapter 17, Part 6, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is greater; and
 - (II) maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit requirements for insurers in the state where it is made, which trust fund or deposit:
 - (Aa) shall be in an amount not less than \$2,500,000 for the protection of all of the insurer's policyholders in the United States;
 - (Bb) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and
 - (Cc) may include as part of the trust arrangement a letter of credit that qualifies as acceptable security under Section 31A-17-404.1; or
 - (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of alien individual insurers, maintains a trust fund that:
 - (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all policyholders and creditors in the United States of each member of the group;
 - (II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and
 - (III) may include as part of this trust arrangement a letter of credit that qualifies as acceptable security under Section 31A-17-404.1; and
 - (v) for an alien insurer not domiciled in the United States or a territory of the United States, is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners International Insurers Department.
- (7) (a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly

HB0333S01 compared with HB0333

or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with:

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

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

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

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

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

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

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

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

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

(ii) indicate:

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

(B) the premium charged the policyholder;

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

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

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

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

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

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

HB0333S01 compared with HB0333

under Title 31A, Chapter 28."

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

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

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

(10) If the commissioner finds it necessary to protect the interests of insureds and the public in this state, the commissioner may by rule subject a policy issued under this section to as much of the regulation provided by this title as is required for a comparable policy written by an authorized foreign insurer.

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

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

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

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

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

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

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

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

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

(A) by rule; and

(B) evidenced by a contract, on a form provided by the commissioner, between the

HB0333S01 compared with HB0333

authorized advisory organization and the department.

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

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

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

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

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

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

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

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

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

Section ~~4~~3. Section **31A-21-404** is amended to read:

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

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

(1) comply with:

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

HB0333S01 compared with HB0333

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

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

Section ~~5~~4. Section **31A-23a-402** is amended to read:

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

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

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

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

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

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

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

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

(B) with intent to deceive a person examining it:

(I) filing a report;

(II) making a false entry in a record; or

(III) wilfully refraining from making a proper entry in a record.

(iii) A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency:

(I) is responsible for the insurance sales activities of the person;

HB0333S01 compared with HB0333

(II) stands behind the credit of the person;

(III) guarantees any returns on insurance products of or sold by the person; or

(IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that person is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:

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

(A) that the licensee represents; or

(B) for whom the licensee processes claims; and

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

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

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

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

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

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

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

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

~~[(iv) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to define what constitutes an incentive described in~~

HB0333S01 compared with HB0333

~~Subsection (2)(a)(iii)(B).~~

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

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

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

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

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

~~[(D)]~~ [(iv)] material inducement. ~~[(f)]~~

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

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

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

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

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

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

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

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

(iv) one acting on behalf of any person described in Subsections ~~[(4)]~~ ~~[(3)]~~ (a)(i)

HB0333S01 compared with HB0333

through (iii).

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

(i) tends to produce:

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

(B) a monopoly in that business; or

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

~~(5)~~~~(4)~~ (a) (i) Subject to Subsection ~~(5)~~~~(4)~~(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

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

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

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

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

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

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

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

HB0333S01 compared with HB0333

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

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

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

Section ~~{6}~~ 5. Section **31A-23a-402.5** is enacted to read:

31A-23a-402.5. Inducements.

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

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

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

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

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

~~{(3)(a)} 2) {A} This section does not apply to a title insurer {or}, a title producer, or an officer or employee of {either, may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, one or more of the following as an inducement to obtaining title insurance business:~~

HB0333S01 compared with HB0333

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

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

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

~~(iv) material inducement.~~

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

~~(4) a title insurer or title producer.~~

(3) Items not prohibited by Subsection (~~(2)~~1) include an insurer:

(a) reducing premiums because of expense savings;

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

(c) receiving premiums under an installment payment plan.

~~(5)~~4 Items not prohibited by Subsection (~~(2)~~1) include a licensee, or an officer or employee of a licensee, either directly or through a third party:

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

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

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

(ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid balance after the time period described in Subsection (~~(6)~~4)(b)(i); and

(iii) except that an installment or payroll deduction payment of premiums on an insurance contract issued under an insurer's mass marketing program is not considered an extension of credit for purposes of this Subsection (~~(6)~~4)(b);

(c) preparing or conducting a survey that:

(i) is directly related to a health benefit plan purchased from the licensee; or

HB0333S01 compared with HB0333

(ii) used by the licensee to assess the benefit needs and preferences of employers or employees directly related to an insurance product sold by the licensee;

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

(i) answering questions directly related to:

(A) an employee benefit offering or administration, if the insurance product purchased from the licensee is accident and health insurance or health insurance; and

(B) employment practices liability, if the insurance product purchased from the licensee is property or casualty insurance; and

(ii) providing limited human resource compliance training and education directly pertaining to an insurance product purchased from the licensee;

(e) providing the following types of information or guidance:

(i) providing guidance directly related to compliance with federal and state laws for an insurance product purchased from the licensee;

(ii) providing a workshop or seminar addressing an insurance issue that is directly related to an insurance product purchased from the licensee; or

(iii) providing information regarding:

(A) employee benefit issues;

(B) directly related insurance regulatory and legislative updates; or

(C) similar education about an insurance product sold by the licensee and how the insurance product interacts with tax law;

(f) preparing or providing a form that is directly related to an insurance product purchased from, or offered by, the licensee;

(g) preparing or providing documents directly related to a flexible ~~{savings plan}~~ ~~spending account~~, but not providing ongoing administration of a flexible ~~{savings plan}~~ ~~spending account~~;

(h) providing enrollment and billing assistance, including:

(i) providing benefit statements or new hire insurance benefits packages; and

(ii) providing technology services such as an electronic enrollment platform or application system;

(i) communicating coverages in writing and in consultation with the insured and

HB0333S01 compared with HB0333

employees:

(j) providing employee communication materials and notifications directly related to an insurance product purchased from a licensee;

(k) providing claims management and resolution to the extent permitted under the licensee's license;

(l) providing underwriting or actuarial analysis or services;

(m) negotiating with an insurer regarding the placement and pricing of an insurance product;

(n) recommending placement and coverage options;

(o) providing a health fair ~~or providing assistance or advice on establishing or operating a wellness program~~, but not providing ~~an ongoing~~ ~~any payment for or direct operation of the~~ wellness program ~~as defined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~;

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

(q) assisting with a summary plan description;

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

(s) providing services directly related to the Health Insurance Portability and Accountability Act of 1996, Pub. L. ~~504-191~~ ~~104-191~~, 110 Stat. 1936, as amended, such as services directly related to health care access, portability, and renewability when offered in connection with accident and health insurance sold by a licensee;

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

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

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

(i) risk management;

(ii) claims and loss control services; and

HB0333S01 compared with HB0333

(iii) risk assessment consulting;

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

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

(~~f6~~5) An inducement prohibited under Subsection (~~f2~~1) includes a licensee, or an officer or employee of a licensee:

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

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

(iii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, paying the salary for an onsite staff member to perform an act prohibited under Subsection (~~f6~~5)(b)(xi); or

(b) engaging in one or more of the following unless a fee is paid in accordance with Subsection (~~f8~~7):

(i) performing background checks of prospective employees;

(ii) providing legal services;

(iii) performing drug testing;

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

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

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

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

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

(vi) providing payroll services;

(vii) providing performance reviews or performance review training;

(viii) providing union advice;

(ix) providing accounting services;

(x) providing data analysis information technology programs, except as provided in Subsection (~~f5~~4)(h)(ii);

(xi) providing administration of health reimbursement accounts or health savings

HB0333S01 compared with HB0333

accounts; or

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

- (A) performing background checks of prospective employees;
- (B) providing legal services;
- (C) performing drug testing;
- (D) preparing employer or employee handbooks;
- (E) providing job descriptions positing, and applications;
- (F) providing payroll services;
- (G) providing performance reviews or performance review training;
- (H) providing union advice;
- (I) providing accounting services;
- (J) providing discrimination testing; or
- (K) providing data analysis information technology programs.

~~(7)6~~ A de minimis gift or meal not to exceed \$25 for each individual receiving the gift or meal is presumed to be a social courtesy not conditioned on the purchase of a particular insurance product for purposes of Subsection ~~(5)4~~(a).

~~(8)7~~ If as provided under Subsection ~~(6)5~~(b) a licensee is paid a fee to provide an item listed in Subsection ~~(6)5~~(b), the licensee shall comply with Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal or exceed the fair market value of the item.

Section ~~(7)6~~. Section **31A-23a-504** is amended to read:

31A-23a-504. Sharing commissions.

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

- (i) a producer;
- (ii) a limited line producer;
- (iii) a customer service representative;

HB0333S01 compared with HB0333

- (iv) a consultant;
- (v) a managing general agent; or
- (vi) a reinsurance intermediary.

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

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

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

- (i) with another consultant licensed under this chapter; and
- (ii) to the extent that the other consultant contributed to the services performed.

(3) This section does not prohibit:

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

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

- (i) the person is not licensed to sell insurance;
- (ii) the person does not sell or provide opinions or advice on the product; and
- (iii) the compensation does not depend on whether the referral results in a purchase or sale; or

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

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

- (i) an unlawful rebate;

HB0333S01 compared with HB0333

(ii) compensation in connection with controlled business; or

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

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

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

Section ~~{8}~~7. **Repealer.**

This bill repeals:

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

Section ~~{9}~~8. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

†

Legislative Review Note

~~as of 2-11-11 4:58 PM~~

~~Office of Legislative Research and General Counsel}~~