

INSURANCE RELATED REVISIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the Insurance Code to address inducements.

Highlighted Provisions:

This bill:

- ▶ addresses when a de minimis gift or meal may be given;
- ▶ addresses what constitutes fair market value of certain inducements; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-23a-402.5, as last amended by Laws of Utah 2013, Chapter 319

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

Section 1. Section **31A-23a-402.5** is amended to read:

31A-23a-402.5. Inducements.

(1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee under this title, or an officer or employee of a licensee, may not induce a person to enter into,



28 continue, or terminate an insurance contract by offering a benefit that is not:

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

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

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

34 (2) This section does not apply to a title insurer, an individual title insurance producer,
35 or agency title insurance producer, or an officer or employee of a title insurer, an individual
36 title insurance producer, or an agency title insurance producer.

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

- 38 (a) reducing premiums because of expense savings;
- 39 (b) providing to a policyholder or insured one or more incentives, as defined by the
40 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
41 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim
42 expenses, including:

43 (i) a premium discount offered to a small or large employer group based on a wellness
44 program if:

45 (A) the premium discount for the employer group does not exceed 20% of the group
46 premium; and

47 (B) the premium discount based on the wellness program is offered uniformly by the
48 insurer to all employer groups in the large or small group market;

49 (ii) a premium discount offered to employees of a small or large employer group in an
50 amount that does not exceed federal limits on wellness program incentives; or

51 (iii) a combination of premium discounts offered to the employer group and the
52 employees of an employer group, based on a wellness program, if:

53 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);
54 and

55 (B) the premium discounts for the employees of an employer group comply with
56 Subsection (3)(b)(ii); or

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

58 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other

59 licensee, or an officer or employee of a licensee, either directly or through a third party:

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

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

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

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

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

70 (c) preparing or conducting a survey that:

71 (i) is directly related to an accident and health insurance policy purchased from the
72 licensee; or

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

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

77 (i) answering questions directly related to:

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

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

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

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

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

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

89 (iii) providing information regarding:

- 90 (A) employee benefit issues;
- 91 (B) directly related insurance regulatory and legislative updates; or
- 92 (C) similar education about an insurance product sold by the licensee and how the
93 insurance product interacts with tax law;
- 94 (f) preparing or providing a form that is directly related to an insurance product
95 purchased from, or offered by, the licensee;
- 96 (g) preparing or providing documents directly related to a premium only cafeteria plan
97 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but
98 not providing ongoing administration of a flexible spending account;
- 99 (h) providing enrollment and billing assistance, including:
- 100 (i) providing benefit statements or new hire insurance benefits packages; and
- 101 (ii) providing technology services such as an electronic enrollment platform or
102 application system;
- 103 (i) communicating coverages in writing and in consultation with the insured and
104 employees;
- 105 (j) providing employee communication materials and notifications directly related to an
106 insurance product purchased from a licensee;
- 107 (k) providing claims management and resolution to the extent permitted under the
108 licensee's license;
- 109 (l) providing underwriting or actuarial analysis or services;
- 110 (m) negotiating with an insurer regarding the placement and pricing of an insurance
111 product;
- 112 (n) recommending placement and coverage options;
- 113 (o) providing a health fair or providing assistance or advice on establishing or
114 operating a wellness program, but not providing any payment for or direct operation of the
115 wellness program;
- 116 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other
117 services directly related to an insurance product purchased from the licensee;
- 118 (q) assisting with a summary plan description;
- 119 (r) providing information necessary for the preparation of documents directly related to
120 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as

121 amended;

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

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

127 (u) providing information in a form approved by the commissioner and directly related
128 to determining whether an insurance product sold by the licensee meets the requirements of a
129 third party contract that requires or references insurance coverage;

130 (v) facilitating risk management services directly related to property and casualty
131 insurance products sold or offered for sale by the licensee, including:

132 (i) risk management;

133 (ii) claims and loss control services;

134 (iii) risk assessment consulting, including analysis of:

135 (A) employer's job descriptions; or

136 (B) employer's safety procedures or manuals; and

137 (iv) providing information and training on best practices;

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

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

141 (5) An inducement prohibited under Subsection (1) includes a producer, consultant, or
142 other licensee, or an officer or employee of a licensee:

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

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

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

149 (b) engaging in one or more of the following unless a fee is paid in accordance with
150 Subsection (8):

151 (i) performing background checks of prospective employees;

- 152 (ii) providing legal services by a person licensed to practice law;
- 153 (iii) performing drug testing that is directly related to an insurance product purchased
- 154 from the licensee;
- 155 (iv) preparing employer or employee handbooks, except that a licensee may:
- 156 (A) provide information for a medical benefit section of an employee handbook;
- 157 (B) provide information for the section of an employee handbook directly related to an
- 158 employment practices liability insurance product purchased from the licensee; or
- 159 (C) prepare or print an employee benefit enrollment guide;
- 160 (v) providing job descriptions, postings, and applications for a person;
- 161 (vi) providing payroll services;
- 162 (vii) providing performance reviews or performance review training;
- 163 (viii) providing union advice;
- 164 (ix) providing accounting services;
- 165 (x) providing data analysis information technology programs, except as provided in
- 166 Subsection (4)(h)(ii);
- 167 (xi) providing administration of health reimbursement accounts or health savings
- 168 accounts; or
- 169 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
- 170 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
- 171 the following prohibited benefits:
- 172 (A) performing background checks of prospective employees;
- 173 (B) providing legal services by a person licensed to practice law;
- 174 (C) performing drug testing that is directly related to an insurance product purchased
- 175 from the insurer;
- 176 (D) preparing employer or employee handbooks;
- 177 (E) providing job descriptions postings, and applications;
- 178 (F) providing payroll services;
- 179 (G) providing performance reviews or performance review training;
- 180 (H) providing union advice;
- 181 (I) providing accounting services;
- 182 (J) providing discrimination testing; or

183 (K) providing data analysis information technology programs.

184 (6) A producer, consultant, or other licensee or an officer or employee of a licensee
185 shall itemize and bill separately from any other insurance product or service offered or
186 provided under Subsection (5)(b).

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

190 ~~[(b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10~~
191 ~~may be conditioned on receipt of a quote of a particular insurance product if the de minimis gift~~
192 ~~or meal is provided by the insurer and not by a producer or consultant.]~~

193 (8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee is
194 paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with
195 Subsection [31A-23a-501\(2\)](#) in charging the fee, except that the fee paid for the item shall equal
196 or exceed the fair market value of the item.

197 (9) For purposes of this section, "fair market value" is determined on the basis of what
198 an individual insured or policyholder would pay on the open market for that item.

Legislative Review Note
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Office of Legislative Research and General Counsel