

INSURANCE PRODUCER AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon E. Stanard

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends provisions of the Insurance Code related to insurance producers.

Highlighted Provisions:

This bill:

- ▶ repeals the requirement that an insurance producer disclose to the insurance producer's customer that the insurance producer will receive compensation from an insurer or third party administrator for insurance placement; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-23a-401, as last amended by Laws of Utah 2009, Chapter 12

31A-23a-501, as last amended by Laws of Utah 2013, Chapter 341

31A-30-202, as last amended by Laws of Utah 2010, Chapter 68

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

Section 1. Section **31A-23a-401** is amended to read:



28 **31A-23a-401. Disclosure of conflicting interests.**

29 (1) (a) Except as provided under Subsection (1)(b):

30 (i) a licensee under this chapter may not act in the same or any directly related
31 transaction as:

32 (A) a producer for the insured or consultant; and

33 (B) producer for the insurer; and

34 (ii) a producer for the insured or consultant may not recommend or encourage the
35 purchase of insurance from or through an insurer or other producer:

36 (A) of which the producer for the insured or consultant or producer for the insured's or
37 consultant's spouse is an owner, executive, or employee; or

38 (B) to which the producer for the insured or consultant has the type of relation that a
39 material benefit would accrue to the producer for the insured or consultant or spouse as a result
40 of the purchase.

41 (b) Subsection (1)(a) does not apply if the following three conditions are met:

42 (i) Prior to performing the consulting services, the producer for the insured or
43 consultant shall disclose to the client, prominently, in writing:

44 (A) the producer for the insured's or consultant's interest as a producer for the insurer,
45 or the relationship to an insurer or other producer; and

46 (B) that as a result of those interests, the producer for the insured's or the consultant's
47 recommendations should be given appropriate scrutiny.

48 (ii) The producer for the insured's or consultant's fee shall be agreed upon, in writing,
49 after the disclosure required under Subsection (1)(b)(i), but before performing the requested
50 services.

51 (iii) Any report resulting from requested services shall contain a copy of the disclosure
52 made under Subsection (1)(b)(i).

53 (2) A licensee under this chapter may not act as to the same client as both a producer
54 for the insurer and a producer for the insured without the client's prior written consent based on
55 full disclosure.

56 (3) Whenever a person applies for insurance coverage through a producer for the
57 insured, the producer for the insured shall disclose to the applicant, in writing, that the producer
58 for the insured is not the producer for the insurer or the potential insurer. This disclosure shall

59 also inform the applicant that the applicant likely does not have the benefit of an insurer being
60 financially responsible for the conduct of the producer for the insured.

61 [~~(4) If a licensee is subject to both this section and Subsection 31A-23a-501(4), the~~
62 ~~licensee shall provide the disclosure required under each statute.]~~

63 Section 2. Section 31A-23a-501 is amended to read:

64 **31A-23a-501. Licensee compensation.**

65 (1) As used in this section:

66 (a) "Commission compensation" includes funds paid to or credited for the benefit of a
67 licensee from:

68 (i) commission amounts deducted from insurance premiums on insurance sold by or
69 placed through the licensee; or

70 (ii) commission amounts received from an insurer or another licensee as a result of the
71 sale or placement of insurance.

72 (b) (i) "Compensation from an insurer or third party administrator" means
73 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,
74 gifts, prizes, or any other form of valuable consideration:

75 (A) whether or not payable pursuant to a written agreement; and

76 (B) received from:

77 (I) an insurer; or

78 (II) a third party to the transaction for the sale or placement of insurance.

79 (ii) "Compensation from an insurer or third party administrator" does not mean
80 compensation from a customer that is:

81 (A) a fee or pass-through costs as provided in Subsection (1)(e); or

82 (B) a fee or amount collected by or paid to the producer that does not exceed an
83 amount established by the commissioner by administrative rule.

84 (c) (i) "Customer" means:

85 (A) the person signing the application or submission for insurance; or

86 (B) the authorized representative of the insured actually negotiating the placement of
87 insurance with the producer.

88 (ii) "Customer" does not mean a person who is a participant or beneficiary of:

89 (A) an employee benefit plan; or

90 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or
91 negotiated by the producer or affiliate.

92 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the
93 benefit of a licensee other than commission compensation.

94 (ii) "Noncommission compensation" does not include charges for pass-through costs
95 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

96 (e) "Pass-through costs" include:

97 (i) costs for copying documents to be submitted to the insurer; and

98 (ii) bank costs for processing cash or credit card payments.

99 (2) A licensee may receive from an insured or from a person purchasing an insurance
100 policy, noncommission compensation if the noncommission compensation is stated on a
101 separate, written disclosure.

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

103 (i) include the signature of the insured or prospective insured acknowledging the
104 noncommission compensation;

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

106 (iii) be provided to the insured or prospective insured before the performance of the
107 service.

108 (b) Noncommission compensation shall be:

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

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

112 (c) A copy of the signed disclosure required by this Subsection (2) shall be maintained
113 by any licensee who collects or receives the noncommission compensation or any portion of
114 the noncommission compensation.

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

117 (3) (a) A licensee may receive noncommission compensation when acting as a
118 producer for the insured in connection with the actual sale or placement of insurance if:

119 (i) the producer and the insured have agreed on the producer's noncommission
120 compensation; and

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

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

124 (i) include the signature of the insured or prospective insured acknowledging the
125 noncommission compensation;

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

128 (iii) be provided to the insured or prospective insured before the performance of the
129 service.

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

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

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

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

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

142 (d) Subject to Section 31A-23a-402.5, a producer for the insured may receive
143 compensation from an insured through an insurer, for the negotiation and sale of a health
144 benefit plan, if there is a separate written agreement between the insured and the licensee for
145 the compensation. An insurer who passes through the compensation from the insured to the
146 licensee under this Subsection (3)(d) is not providing direct or indirect compensation or
147 commission compensation to the licensee.

148 [~~(4) (a) For purposes of this Subsection (4), "producer" includes:~~]

149 [~~(i) a producer;~~]

150 [~~(ii) an affiliate of a producer; or~~]

151 [~~(iii) a consultant.~~]

152 ~~[(b) A producer may not accept or receive any compensation from an insurer or third~~
153 ~~party administrator for the initial placement of a health benefit plan, other than a hospital~~
154 ~~confinement indemnity policy, unless prior to the customer's initial purchase of the health~~
155 ~~benefit plan the producer discloses in writing to the customer that the producer will receive~~
156 ~~compensation from the insurer or third party administrator for the placement of insurance,~~
157 ~~including the amount or type of compensation known to the producer at the time of the~~
158 ~~disclosure.]~~

159 ~~[(c) A producer shall:]~~

160 ~~[(i) obtain the customer's signed acknowledgment that the disclosure under Subsection~~
161 ~~(4)(b) was made to the customer; or]~~

162 ~~[(ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to~~
163 ~~the customer; and]~~

164 ~~[(B) keep the signed statement on file in the producer's office while the health benefit~~
165 ~~plan placed with the customer is in force.]~~

166 ~~[(d) (i) A licensee who collects or receives any part of the compensation from an~~
167 ~~insurer or third party administrator in a manner that facilitates an audit shall, while the health~~
168 ~~benefit plan placed with the customer is in force, maintain a copy of:]~~

169 ~~[(A) the signed acknowledgment described in Subsection (4)(c)(i); or]~~

170 ~~[(B) the signed statement described in Subsection (4)(c)(ii).]~~

171 ~~[(ii) The standard application developed in accordance with Section [31A-22-635](#) shall~~
172 ~~include a place for a producer to provide the disclosure required by this Subsection (4), and if~~
173 ~~completed, shall satisfy the requirement of Subsection (4)(d)(i).]~~

174 ~~[(e) Subsection (4)(c) does not apply to:]~~

175 ~~[(i) a person licensed as a producer who acts only as an intermediary between an~~
176 ~~insurer and the customer's producer, including a managing general agent; or]~~

177 ~~[(ii) the placement of insurance in a secondary or residual market.]~~

178 ~~[(5)] (4) This section does not alter the right of any licensee to recover from an insured~~
179 ~~the amount of any premium due for insurance effected by or through that licensee or to charge~~
180 ~~a reasonable rate of interest upon past-due accounts.~~

181 ~~[(6)] (5) This section does not apply to bail bond producers or bail enforcement agents~~
182 ~~as defined in Section [31A-35-102](#).~~

183 ~~[(7)]~~ (6) A licensee may not receive noncommission compensation from an insured or
 184 enrollee for providing a service or engaging in an act that is required to be provided or
 185 performed in order to receive commission compensation, except for the surplus lines
 186 transactions that do not receive commissions.

187 Section 3. Section **31A-30-202** is amended to read:

188 **31A-30-202. Definitions.**

189 For purposes of this part:

190 (1) "Defined benefit plan" means an employer group health benefit plan in which:

- 191 (a) the employer selects the health benefit plan or plans from a single insurer;
 192 (b) employees are not provided a choice of health benefit plans on the Health Insurance

193 Exchange; and

194 (c) the employer is subject to contribution requirements in Section **31A-30-112**.

195 (2) "Defined contribution arrangement":

196 (a) means a defined contribution arrangement employer group health benefit plan that:

- 197 (i) complies with this part; and
 198 (ii) is sold through the Health Insurance Exchange in accordance with Title 63M,

199 Chapter 1, Part 25, Health System Reform Act; and

200 (b) beginning January 1, 2011, includes an employer choice of either a defined
 201 contribution arrangement health benefit plan or a defined benefit plan offered through the
 202 Health Insurance Exchange.

203 (3) "Health reimbursement arrangement" means an employer provided health
 204 reimbursement arrangement in which reimbursements for medical care expenses are excluded
 205 from an employee's gross income under the Internal Revenue Code.

206 (4) (a) "Producer" [is as defined in Subsection **31A-23a-501**(4)(a).] means an insurance
 207 producer as defined in Section **31A-1-301**.

208 (b) "Producer" includes:

- 209 (i) an affiliate of a producer; or
 210 (ii) a consultant.

211 (5) "Section 125 Cafeteria plan" means a flexible spending arrangement that qualifies
 212 under Section 125, Internal Revenue Code, which permits an employee to contribute pre-tax
 213 dollars to a health benefit plan.

214

(6) "Small employer" is defined in Section [31A-1-301](#).

Legislative Review Note

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Office of Legislative Research and General Counsel