

Senator Evan J. Vickers proposes the following substitute bill:

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:

- ▶ exempts a health benefit plan placed with a small employer or an individual from 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-501, as last amended by Laws of Utah 2013, Chapter 341

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



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

27 Section 1. Section **31A-23a-501** is amended to read:

28 **31A-23a-501. Licensee compensation.**

29 (1) As used in this section:

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

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

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

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

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

40 (B) received from:

41 (I) an insurer; or

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

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

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

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

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

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

50 (B) the authorized representative of the insured actually negotiating the placement of
51 insurance with the producer.

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

53 (A) an employee benefit plan; or

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

56 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the

57 benefit of a licensee other than commission compensation.

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

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

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

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

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

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

67 (i) include the signature of the insured or prospective insured acknowledging the
68 noncommission compensation;

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

70 (iii) be provided to the insured or prospective insured before the performance of the
71 service.

72 (b) Noncommission compensation shall be:

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

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

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

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

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

83 (i) the producer and the insured have agreed on the producer's noncommission
84 compensation; and

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

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

88 (i) include the signature of the insured or prospective insured acknowledging the
89 noncommission compensation;

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

92 (iii) be provided to the insured or prospective insured before the performance of the
93 service.

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

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

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

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

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

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

112 (4) (a) For purposes of this Subsection (4), "producer" includes:

113 (i) a producer;

114 (ii) an affiliate of a producer; or

115 (iii) a consultant.

116 (b) A producer may not accept or receive any compensation from an insurer or third
117 party administrator for the initial placement of a health benefit plan, other than a hospital
118 confinement indemnity policy, unless prior to the customer's initial purchase of the health

119 benefit plan the producer discloses in writing to the customer that the producer will receive
120 compensation from the insurer or third party administrator for the placement of insurance,
121 including the amount or type of compensation known to the producer at the time of the
122 disclosure.

123 (c) A producer shall:

124 (i) obtain the customer's signed acknowledgment that the disclosure under Subsection
125 (4)(b) was made to the customer; or

126 (ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to
127 the customer; and

128 (B) keep the signed statement on file in the producer's office while the health benefit
129 plan placed with the customer is in force.

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

133 (A) the signed acknowledgment described in Subsection (4)(c)(i); or

134 (B) the signed statement described in Subsection (4)(c)(ii).

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

138 (e) Subsection (4)(c) does not apply to:

139 (i) a person licensed as a producer who acts only as an intermediary between an insurer
140 and the customer's producer, including a managing general agent; or

141 (ii) the placement of insurance in a secondary or residual market.

142 (f) Subsections (4)(b) and (4)(c) do not apply to a health benefit plan placed by a
143 producer with:

144 (i) an individual; or

145 (ii) a small employer, as defined in Section [31A-1-301](#).

146 (5) This section does not alter the right of any licensee to recover from an insured the
147 amount of any premium due for insurance effected by or through that licensee or to charge a
148 reasonable rate of interest upon past-due accounts.

149 (6) This section does not apply to bail bond producers or bail enforcement agents as

150 defined in Section [31A-35-102](#).

151 (7) A licensee may not receive noncommission compensation from an insured or
152 enrollee for providing a service or engaging in an act that is required to be provided or
153 performed in order to receive commission compensation, except for the surplus lines
154 transactions that do not receive commissions.

155 Section 2. Section **31A-30-202** is amended to read:

156 **31A-30-202. Definitions.**

157 For purposes of this part:

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

159 (a) the employer selects the health benefit plan or plans from a single insurer;

160 (b) employees are not provided a choice of health benefit plans on the Health Insurance
161 Exchange; and

162 (c) the employer is subject to contribution requirements in Section [31A-30-112](#).

163 (2) "Defined contribution arrangement":

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

165 (i) complies with this part; and

166 (ii) is sold through the Health Insurance Exchange in accordance with Title 63M,
167 Chapter 1, Part 25, Health System Reform Act; and

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

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

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

176 (b) "Producer" includes:

177 (i) an affiliate of a producer; or

178 (ii) a consultant.

179 (5) "Section 125 Cafeteria plan" means a flexible spending arrangement that qualifies
180 under Section 125, Internal Revenue Code, which permits an employee to contribute pre-tax

181 dollars to a health benefit plan.

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