

Representative John Knotwell proposes the following substitute bill:

INSURANCE RELATED INDUCEMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Knotwell

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code to address inducements.

Highlighted Provisions:

This bill:

- ▶ defines "inducement";
- ▶ addresses when a fee is required;
- ▶ provides for disclosures; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

31A-23a-402.5, as last amended by Laws of Utah 2014, Chapters 290 and 300

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

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



26 **31A-23a-402.5. Inducements.**

27 (1) (a) As used in this section, "inducement" means to provide or offer goods or
28 services, whether or not the goods or services are directly related to an insurance contract, that
29 are contingent on the purchase, continuation, or termination of an insurance product or
30 receiving a quote for an insurance product.

31 ~~[(1)(a)]~~ (b) Except as provided in Subsection (2), a producer, consultant, or other
32 licensee under this title, or an officer or employee of a licensee, may not ~~[induce]~~ offer or
33 provide an inducement to a person to enter into, continue, or terminate an insurance contract
34 [by offering a benefit that is not:],

35 ~~[(i) specified in the insurance contract; or]~~

36 ~~[(ii) directly related to the insurance contract.]~~

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

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

40 (2) This section does not apply to a title insurer, an individual title insurance producer,
41 or agency title insurance producer, or an officer or employee of a title insurer, an individual
42 title insurance producer, or an agency title insurance producer.

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

44 (a) reducing premiums because of expense savings;

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

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

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

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

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

57 (iii) a combination of premium discounts offered to the employer group and the
58 employees of an employer group, based on a wellness program, if:
59 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);
60 and
61 (B) the premium discounts for the employees of an employer group comply with
62 Subsection (3)(b)(ii); or
63 (c) receiving premiums under an installment payment plan.
64 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other
65 licensee, or an officer or employee of a licensee, either directly or through a third party:
66 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
67 conditioned on a quote or the purchase of a particular insurance product;
68 (b) extending credit on a premium to the insured:
69 (i) without interest, for no more than 90 days from the effective date of the insurance
70 contract;
71 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
72 balance after the time period described in Subsection (4)(b)(i); and
73 (iii) except that an installment or payroll deduction payment of premiums on an
74 insurance contract issued under an insurer's mass marketing program is not considered an
75 extension of credit for purposes of this Subsection (4)(b);
76 (c) preparing or conducting a survey that:
77 (i) is directly related to an accident and health insurance policy purchased from the
78 licensee; or
79 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,
80 employers, or employees directly related to an insurance product sold by the licensee;
81 (d) providing limited human resource services that are directly related to an insurance
82 product sold by the licensee, including:
83 (i) answering questions directly related to:
84 (A) an employee benefit offering or administration, if the insurance product purchased
85 from the licensee is accident and health insurance or health insurance; and
86 (B) employment practices liability, if the insurance product offered by or purchased
87 from the licensee is property or casualty insurance; and

- 88 (ii) providing limited human resource compliance training and education directly
- 89 pertaining to an insurance product purchased from the licensee;
- 90 (e) providing the following types of information or guidance:
- 91 (i) providing guidance directly related to compliance with federal and state laws for an
- 92 insurance product purchased from the licensee;
- 93 (ii) providing a workshop or seminar addressing an insurance issue that is directly
- 94 related to an insurance product purchased from the licensee; or
- 95 (iii) providing information regarding:
- 96 (A) employee benefit issues;
- 97 (B) directly related insurance regulatory and legislative updates; or
- 98 (C) similar education about an insurance product sold by the licensee and how the
- 99 insurance product interacts with tax law;
- 100 (f) preparing or providing a form that is directly related to an insurance product
- 101 purchased from, or offered by, the licensee;
- 102 (g) preparing or providing documents directly related to a premium only cafeteria plan
- 103 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but
- 104 not providing ongoing administration of a flexible spending account;
- 105 (h) providing enrollment and billing assistance, including:
- 106 (i) providing benefit statements or new hire insurance benefits packages; and
- 107 (ii) providing technology services such as an electronic enrollment platform or
- 108 application system;
- 109 (i) communicating coverages in writing and in consultation with the insured and
- 110 employees;
- 111 (j) providing employee communication materials and notifications directly related to an
- 112 insurance product purchased from a licensee;
- 113 (k) providing claims management and resolution to the extent permitted under the
- 114 licensee's license;
- 115 (l) providing underwriting or actuarial analysis or services;
- 116 (m) negotiating with an insurer regarding the placement and pricing of an insurance
- 117 product;
- 118 (n) recommending placement and coverage options;

119 (o) providing a health fair or providing assistance or advice on establishing or
120 operating a wellness program, but not providing any payment for or direct operation of the
121 wellness program;

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

124 (q) assisting with a summary plan description, including providing a summary plan
125 description wraparound;

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

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

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

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

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

139 (i) risk management;

140 (ii) claims and loss control services;

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

142 (A) employer's job descriptions; or

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

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

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

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

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

- 150 (a) (i) providing a rebate;
- 151 (ii) paying the salary of an employee of a person who purchases an insurance product
- 152 from the licensee; or
- 153 (iii) if the licensee is an insurer, or a third party administrator who contracts with an
- 154 insurer, paying the salary for an onsite staff member to perform an act prohibited under
- 155 Subsection (5)(b)(xii); or
- 156 (b) engaging in one or more of the following contingent on the purchase, continuation,
- 157 or termination of an insurance product or receiving a quote for an insurance product, unless a
- 158 fee is paid in accordance with Subsection (8):
- 159 (i) performing background checks of prospective employees;
- 160 (ii) providing legal services by a person licensed to practice law;
- 161 (iii) performing drug testing that is directly related to an insurance product purchased
- 162 from the licensee;
- 163 (iv) preparing employer or employee handbooks, except that a licensee may:
- 164 (A) provide information for a medical benefit section of an employee handbook;
- 165 (B) provide information for the section of an employee handbook directly related to an
- 166 employment practices liability insurance product purchased from the licensee; or
- 167 (C) prepare or print an employee benefit enrollment guide;
- 168 (v) providing job descriptions, postings, and applications for a person;
- 169 (vi) providing payroll services;
- 170 (vii) providing performance reviews or performance review training;
- 171 (viii) providing union advice;
- 172 (ix) providing accounting services;
- 173 (x) providing data analysis information technology programs, except as provided in
- 174 Subsection (4)(h)(ii);
- 175 (xi) providing administration of health reimbursement accounts or health savings
- 176 accounts; or
- 177 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
- 178 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
- 179 the following prohibited benefits:
- 180 (A) performing background checks of prospective employees;

- 181 (B) providing legal services by a person licensed to practice law;
182 (C) performing drug testing that is directly related to an insurance product purchased
183 from the insurer;
184 (D) preparing employer or employee handbooks;
185 (E) providing job descriptions postings, and applications;
186 (F) providing payroll services;
187 (G) providing performance reviews or performance review training;
188 (H) providing union advice;
189 (I) providing accounting services;
190 (J) providing discrimination testing; or
191 (K) providing data analysis information technology programs.

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

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

198 (b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10
199 may be conditioned on receipt of a quote of a particular insurance product.

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

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

206 (10) (a) A producer, consultant, or other licensee, or officer or employee of a licensee
207 that provides or offers goods or services that are not described in Subsection (3) or (4) for free
208 or less than fair market value shall disclose to the recipient before the goods or services are
209 received that receipt of the goods or services is not contingent on purchasing, continuing, or
210 terminating an insurance product or receiving a quote for an insurance product.

211 (b) A producer, consultant, or other licensee, or officer or employee of the licensee

212 may comply with this Subsection (10) if the notice is conspicuously posted electronically on
213 the producer's, consultant's, or other licensee's public website.

214 Section 2. **Effective date.**

215 This bill takes effect on May 30, 2015.