

INSURANCE LICENSEE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon E. Stanard

Senate Sponsor: Curtis S. Bramble

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill modifies the Insurance Code to address licensees.

Highlighted Provisions:

This bill:

- ▶ addresses the amount and type of noncommission compensation;
- ▶ modifies the disclosure requirements related to health benefit plans; 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 2014, Chapters 290 and 300

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

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

31A-23a-501. Licensee compensation.



28 (1) As used in this section:

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

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

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

35 (iii) overrides, bonuses, contingent bonuses, or contingent commissions received from
36 an insurer or another licensee as a result of the sale or placement of insurance.

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

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

41 (B) received from:

42 (I) an insurer; or

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

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

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

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

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

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

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

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

54 (A) an employee benefit plan; or

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

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

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

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

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

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

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

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

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

70 (ii) clearly specify:

71 (A) the amount [or extent] of [the] any known noncommission compensation; and

72 (B) the type and amount, if known, of any potential and contingent noncommission
73 compensation; and

74 (iii) be provided to the insured or prospective insured before the performance of the
75 service.

76 (b) Noncommission compensation shall be:

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

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

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

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

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

87 (i) the producer and the insured have agreed on the producer's noncommission
88 compensation; and

89 (ii) the producer has disclosed to the insured the existence and source of any other

90 compensation that accrues to the producer as a result of the transaction.

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

92 (i) include the signature of the insured or prospective insured acknowledging the
93 noncommission compensation;

94 (ii) clearly specify:

95 (A) the amount [~~or extent~~] of [~~the~~] any known noncommission compensation [~~and~~];

96 (B) the type and amount, if known, of any potential and contingent noncommission
97 compensation; and

98 (C) the existence and source of any other compensation; and

99 (iii) be provided to the insured or prospective insured before the performance of the
100 service.

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

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

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

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

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

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

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

120 (i) "Large customer" means an employer who, with respect to a calendar year and to a

121 plan year:

122 (A) employed an average of at least 100 eligible employees on each business day

123 during the preceding calendar year; and

124 (B) employs at least two employees on the first day of the plan year.

125 (ii) "Producer" includes:

126 [(i)] (A) a producer;

127 [(ii)] (B) an affiliate of a producer; or

128 [(iii)] (C) a consultant.

129 (b) A producer may not accept or receive any compensation from an insurer or third
130 party administrator for the initial placement of a health benefit plan, other than a hospital
131 confinement indemnity policy, unless prior to ~~the~~ a large customer's initial purchase of the
132 health benefit plan the producer discloses in writing to the large customer that the producer will
133 receive compensation from the insurer or third party administrator for the placement of
134 insurance, including the amount or type of compensation known to the producer at the time of
135 the disclosure.

136 (c) A producer shall:

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

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

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

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

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

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

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

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

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

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

155 (f) (i) A producer shall provide to a large customer listed in this Subsection (4)(f) an
156 annual accounting, as defined by rule made by the department in accordance with Title 63G,
157 Chapter 3, Utah Administrative Rulemaking Act, of all amounts the producer receives in
158 commission compensation from an insurer or third party administrator as a result of the sale or
159 placement of insurance to a large customer that is:

160 (A) the state;

161 (B) a political subdivision or instrumentality of the state or a combination thereof
162 primarily engaged in educational activities or the administration or servicing of educational
163 activities, including the State Board of Education and its instrumentalities, an institution of
164 higher education and its branches, a school district and its instrumentalities, a vocational and
165 technical school, and an entity arising out of a consolidation agreement between entities
166 described under this Subsection (4)(f)(i)(B);

167 (C) a county, city, town, local district under this Title 17B, Limited Purpose Local
168 Government Entities - Local Districts, special service district under Title 17D, Chapter 1,
169 Special Service District Act, an entity created by an interlocal cooperation agreement under
170 Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated
171 in statute as a political subdivision of the state; or

172 (D) a quasi-public corporation, that has the same meaning as defined in Section
173 [63E-1-102](#).

174 (ii) The department shall pattern the annual accounting required by this Subsection
175 (4)(f) on the insurance related information on Internal Revenue Service Form 5500 and its
176 relevant attachments.

177 (g) At the request of the department, a producer shall provide the department a copy of:

178 (i) a disclosure required by this Subsection (4); or

179 (ii) an Internal Revenue Service Form 5500 and its relevant attachments.

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

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel