

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

INSURANCE PRODUCER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses insurance producer compensation.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ requires an insurance producer that provides accident and health insurance to:
 - enter into an agreement with the insured if the producer is compensated for negotiation or sale of the insurance;
 - disclose to a large customer that the producer will receive compensation for placement of the insurance; and
 - provide an annual accounting regarding the producer's noncommission compensation to certain large customers and, upon request, the Insurance Department;
- ▶ provides that an annual accounting and other disclosures that are provided to the Insurance Department are a public record under the Government Records Access and Management Act subject to certain exceptions; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **31A-23a-501**, as last amended by Laws of Utah 2017, Chapter 168

32 **63G-2-301**, as last amended by Laws of Utah 2020, Chapters 255 and 399



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

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

36 **31A-23a-501. Licensee compensation.**

37 (1) As used in this section:

38 (a) "Commission compensation" includes funds paid to or credited for the benefit of a
39 licensee from or in connection with:

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

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

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

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

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

50 (B) received from:

51 (I) an insurer; or

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

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

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

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

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

59 (A) the person signing the application or submission for insurance; or
60 (B) the authorized representative of the insured actually negotiating the placement of
61 insurance with the producer.

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

63 (A) an employee benefit plan; or

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

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

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

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

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

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

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

76 ~~(a)~~ (b) The disclosure required by this Subsection (2) shall:

77 (i) include the signature of the insured or prospective insured acknowledging the
78 noncommission compensation;

79 (ii) clearly specify:

80 (A) the amount of any known noncommission compensation; and

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

83 (iii) be provided to the insured or prospective insured before the performance of the
84 service.

85 ~~(b)~~ (c) Noncommission compensation shall be:

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

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

89 ~~(c)~~ (d) A copy of the signed disclosure required by this Subsection (2) shall be

90 maintained by any licensee who collects or receives the noncommission compensation or any
91 portion of the noncommission compensation.

92 ~~[(d)]~~ (e) All accounting records relating to noncommission compensation shall be
93 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

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

96 (i) the producer and the insured have agreed on the producer's noncommission
97 compensation; and

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

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

101 (i) include the signature of the insured or prospective insured acknowledging the
102 noncommission compensation;

103 (ii) clearly specify:

104 (A) the amount of any known noncommission compensation;

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

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

108 (iii) be provided to the insured or prospective insured before the performance of the
109 service.

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

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

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

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

120 (iv) other compensation arrangements approved by the commissioner after a finding

121 that they do not violate Section 31A-23a-401 and are not harmful to the public.

122 (d) Subject to Section 31A-23a-402.5, a producer for the insured may receive
123 compensation from an insured through an insurer, for the negotiation and sale of [~~a health~~
124 ~~benefit plan~~] accident and health insurance, if there is a separate written agreement between the
125 insured and the licensee for the compensation. An insurer who passes through the
126 compensation from the insured to the licensee under this Subsection (3)(d) is not providing
127 direct or indirect compensation or commission compensation to the licensee.

128 (4) (a) [~~For purposes of~~] As used in this Subsection (4):

129 (i) "Large customer" means an employer who, with respect to a calendar year and to a
130 plan year:

131 (A) employed an average of at least 100 eligible employees on each business day
132 during the preceding calendar year; and

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

134 (ii) "Producer" includes:

135 (A) a producer;

136 (B) an affiliate of a producer; or

137 (C) a consultant.

138 (b) A producer may not accept [~~or~~] nor receive any compensation from an insurer or
139 third party administrator for the initial placement of [~~a health benefit plan~~] accident and health
140 insurance, other than a hospital confinement indemnity policy, unless [~~prior to~~] before a large
141 customer's initial purchase of the [~~health benefit plan~~] accident and health insurance the
142 producer discloses in writing to the large customer that the producer will receive compensation
143 from the insurer or third party administrator for the placement of insurance, including the
144 amount or type of compensation known to the producer at the time of the disclosure.

145 (c) A producer shall:

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

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

150 (B) keep the signed statement on file in the producer's office while the [~~health benefit~~
151 ~~plan~~] accident and health insurance placed with the large customer is in force.

152 (d) A licensee who collects or receives any part of the compensation from an insurer or
153 third party administrator in a manner that facilitates an audit shall, while the [~~health benefit~~
154 ~~plan~~] accident and health insurance placed with the large customer is in force, maintain a copy
155 of:

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

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

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

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

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

162 (f) (i) A producer shall provide to a large customer [~~listed~~] described in this Subsection
163 (4)(f) an annual accounting, as defined by rule made by the department in accordance with Title
164 63G, Chapter 3, Utah Administrative Rulemaking Act, of all amounts the producer receives in
165 commission compensation and noncomission compensation from an insurer or third party
166 administrator as a result of the sale or placement of [~~a health benefit plan~~] accident and health
167 insurance to a large customer that is:

168 (A) the state;

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

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

180 (D) a quasi-public corporation, [~~that has the same meaning~~] as defined in Section
181 [63E-1-102](#).

182 (ii) The department shall pattern the annual accounting required by this Subsection

183 (4)(f) on the insurance related information on Internal Revenue Service Form 5500 and [its] the
184 form's relevant attachments.

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

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

187 (ii) an Internal Revenue Service Form 5500 and [its] the form's relevant attachments.

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

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

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

197 Section 2. Section **63G-2-301** is amended to read:

198 **63G-2-301. Public records.**

199 (1) As used in this section:

200 (a) "Business address" means a single address of a governmental agency designated for
201 the public to contact an employee or officer of the governmental agency.

202 (b) "Business email address" means a single email address of a governmental agency
203 designated for the public to contact an employee or officer of the governmental agency.

204 (c) "Business telephone number" means a single telephone number of a governmental
205 agency designated for the public to contact an employee or officer of the governmental agency.

206 (d) "Correctional facility" means the same as that term is defined in Section
207 [77-16b-102](#).

208 (2) The following records are public except to the extent they contain information
209 expressly permitted to be treated confidentially under the provisions of Subsections
210 [63G-2-201](#)(3)(b) and (6)(a):

211 (a) laws;

212 (b) the name, gender, gross compensation, job title, job description, business address,
213 business email address, business telephone number, number of hours worked per pay period,

214 dates of employment, and relevant education, previous employment, and similar job
215 qualifications of a current or former employee or officer of the governmental entity, excluding:
216 (i) undercover law enforcement personnel; and
217 (ii) investigative personnel if disclosure could reasonably be expected to impair the
218 effectiveness of investigations or endanger any individual's safety;
219 (c) final opinions, including concurring and dissenting opinions, and orders that are
220 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except
221 that if the proceedings were properly closed to the public, the opinion and order may be
222 withheld to the extent that they contain information that is private, controlled, or protected;
223 (d) final interpretations of statutes or rules by a governmental entity unless classified as
224 protected as provided in Subsection [63G-2-305](#)(17) or (18);
225 (e) information contained in or compiled from a transcript, minutes, or report of the
226 open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open
227 and Public Meetings Act, including the records of all votes of each member of the
228 governmental entity;
229 (f) judicial records unless a court orders the records to be restricted under the rules of
230 civil or criminal procedure or unless the records are private under this chapter;
231 (g) unless otherwise classified as private under Section [63G-2-303](#), records or parts of
232 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning
233 commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust
234 Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or
235 other governmental entities that give public notice of:
236 (i) titles or encumbrances to real property;
237 (ii) restrictions on the use of real property;
238 (iii) the capacity of persons to take or convey title to real property; or
239 (iv) tax status for real and personal property;
240 (h) records of the Department of Commerce that evidence incorporations, mergers,
241 name changes, and uniform commercial code filings;
242 (i) data on individuals that would otherwise be private under this chapter if the
243 individual who is the subject of the record has given the governmental entity written
244 permission to make the records available to the public;

- 245 (j) documentation of the compensation that a governmental entity pays to a contractor
246 or private provider;
- 247 (k) summary data;
- 248 (l) voter registration records, including an individual's voting history, except for a voter
249 registration record or those parts of a voter registration record that are classified as private
250 under Subsections 63G-2-302(1)(j) through (m) or withheld under Subsection 20A-2-104(7);
- 251 (m) for an elected official, as defined in Section 11-47-102, a telephone number, if
252 available, and email address, if available, where that elected official may be reached as required
253 in Title 11, Chapter 47, Access to Elected Officials;
- 254 (n) for a school community council member, a telephone number, if available, and
255 email address, if available, where that elected official may be reached directly as required in
256 Section 53G-7-1203;
- 257 (o) annual audited financial statements of the Utah Educational Savings Plan described
258 in Section 53B-8a-111; and
- 259 (p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as
260 defined in Section 20A-7-101, after the packet is submitted to a county clerk.
- 261 (3) The following records are normally public, but to the extent that a record is
262 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),
263 Section 63G-2-302, 63G-2-304, or 63G-2-305:
- 264 (a) administrative staff manuals, instructions to staff, and statements of policy;
- 265 (b) records documenting a contractor's or private provider's compliance with the terms
266 of a contract with a governmental entity;
- 267 (c) records documenting the services provided by a contractor or a private provider to
268 the extent the records would be public if prepared by the governmental entity;
- 269 (d) contracts entered into by a governmental entity;
- 270 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds
271 by a governmental entity;
- 272 (f) records relating to government assistance or incentives publicly disclosed,
273 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a
274 business in Utah, except as provided in Subsection 63G-2-305(35);
- 275 (g) chronological logs and initial contact reports;

276 (h) correspondence by and with a governmental entity in which the governmental entity
277 determines or states an opinion upon the rights of the state, a political subdivision, the public,
278 or any person;

279 (i) empirical data contained in drafts if:

280 (i) the empirical data is not reasonably available to the requester elsewhere in similar
281 form; and

282 (ii) the governmental entity is given a reasonable opportunity to correct any errors or
283 make nonsubstantive changes before release;

284 (j) drafts that are circulated to anyone other than:

285 (i) a governmental entity;

286 (ii) a political subdivision;

287 (iii) a federal agency if the governmental entity and the federal agency are jointly
288 responsible for implementation of a program or project that has been legislatively approved;

289 (iv) a government-managed corporation; or

290 (v) a contractor or private provider;

291 (k) drafts that have never been finalized but were relied upon by the governmental
292 entity in carrying out action or policy;

293 (l) original data in a computer program if the governmental entity chooses not to
294 disclose the program;

295 (m) arrest warrants after issuance, except that, for good cause, a court may order
296 restricted access to arrest warrants prior to service;

297 (n) search warrants after execution and filing of the return, except that a court, for good
298 cause, may order restricted access to search warrants prior to trial;

299 (o) records that would disclose information relating to formal charges or disciplinary
300 actions against a past or present governmental entity employee if:

301 (i) the disciplinary action has been completed and all time periods for administrative
302 appeal have expired; and

303 (ii) the charges on which the disciplinary action was based were sustained;

304 (p) records maintained by the Division of Forestry, Fire, and State Lands, the School
305 and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that
306 evidence mineral production on government lands;

- 307 (q) final audit reports;
- 308 (r) occupational and professional licenses;
- 309 (s) business licenses;
- 310 (t) a notice of violation, a notice of agency action under Section [63G-4-201](#), or similar
- 311 records used to initiate proceedings for discipline or sanctions against persons regulated by a
- 312 governmental entity, but not including records that initiate employee discipline; ~~and~~
- 313 (u) (i) records that disclose a standard, regulation, policy, guideline, or rule regarding
- 314 the operation of a correctional facility or the care and control of inmates committed to the
- 315 custody of a correctional facility; and
- 316 (ii) records that disclose the results of an audit or other inspection assessing a
- 317 correctional facility's compliance with a standard, regulation, policy, guideline, or rule
- 318 described in Subsection (3)(u)(i)~~[-]~~; and
- 319 (v) a disclosure or annual accounting provided to the Insurance Department under
- 320 Subsection [31A-23a-501\(4\)](#).
- 321 (4) The list of public records in this section is not exhaustive and should not be used to
- 322 limit access to records.