

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:

- ▶ addresses de minimis gifts or meals;
- ▶ addresses when goods and services may be provided;
- ▶ 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) Except as provided in Subsection (2), a producer, consultant, or other licensee
28 under this title, or an officer or employee of a licensee, may not induce a person to enter into,
29 continue, or terminate an insurance contract by offering a benefit that is not:

30 (i) specified in the insurance contract; or

31 (ii) directly related to the insurance contract.

32 (b) An insurer may not make or knowingly allow an agreement of insurance that is not
33 clearly expressed in the insurance contract to be issued or renewed.

34 (c) A licensee under this title may not absorb the tax under Section [31A-3-301](#).

35 (2) This section does not apply to a title insurer, an individual title insurance producer,
36 or agency title insurance producer, or an officer or employee of a title insurer, an individual
37 title insurance producer, or an agency title insurance producer.

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

39 (a) reducing premiums because of expense savings;

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

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

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

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

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

52 (iii) a combination of premium discounts offered to the employer group and the
53 employees of an employer group, based on a wellness program, if:

54 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);
55 and

56 (B) the premium discounts for the employees of an employer group comply with

57 Subsection (3)(b)(ii); or

58 (c) receiving premiums under an installment payment plan.

59 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other
60 licensee, or an officer or employee of a licensee, either directly or through a third party:

61 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not
62 conditioned on a quote or the purchase of a particular insurance product;

63 (b) extending credit on a premium to the insured:

64 (i) without interest, for no more than 90 days from the effective date of the insurance
65 contract;

66 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid
67 balance after the time period described in Subsection (4)(b)(i); and

68 (iii) except that an installment or payroll deduction payment of premiums on an
69 insurance contract issued under an insurer's mass marketing program is not considered an
70 extension of credit for purposes of this Subsection (4)(b);

71 (c) preparing or conducting a survey that:

72 (i) is directly related to an accident and health insurance policy purchased from the
73 licensee; or

74 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,
75 employers, or employees directly related to an insurance product sold by the licensee;

76 (d) providing limited human resource services that are directly related to an insurance
77 product sold by the licensee, including:

78 (i) answering questions directly related to:

79 (A) an employee benefit offering or administration, if the insurance product purchased
80 from the licensee is accident and health insurance or health insurance; and

81 (B) employment practices liability, if the insurance product offered by or purchased
82 from the licensee is property or casualty insurance; and

83 (ii) providing limited human resource compliance training and education directly
84 pertaining to an insurance product purchased from the licensee;

85 (e) providing the following types of information or guidance:

86 (i) providing guidance directly related to compliance with federal and state laws for an
87 insurance product purchased from the licensee;

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

119 (q) assisting with a summary plan description, including providing a summary plan
120 description wraparound;

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

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

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

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

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

134 (i) risk management;

135 (ii) claims and loss control services;

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

137 (A) employer's job descriptions; or

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

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

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

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

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

145 (a) (i) providing a rebate;

146 (ii) paying the salary of an employee of a person who purchases an insurance product
147 from the licensee; or

148 (iii) if the licensee is an insurer, or a third party administrator who contracts with an
149 insurer, paying the salary for an onsite staff member to perform an act prohibited under

150 Subsection (5)(b)(xii); or

151 (b) except as provided in Subsection (10), engaging in one or more of the following,
152 unless a fee is paid in accordance with Subsection (8):

153 (i) performing background checks of prospective employees;

154 (ii) providing legal services by a person licensed to practice law;

155 (iii) performing drug testing that is directly related to an insurance product purchased
156 from the licensee;

157 (iv) preparing employer or employee handbooks, except that a licensee may:

158 (A) provide information for a medical benefit section of an employee handbook;

159 (B) provide information for the section of an employee handbook directly related to an
160 employment practices liability insurance product purchased from the licensee; or

161 (C) prepare or print an employee benefit enrollment guide;

162 (v) providing job descriptions, postings, and applications for a person;

163 (vi) providing payroll services;

164 (vii) providing performance reviews or performance review training;

165 (viii) providing union advice;

166 (ix) providing accounting services;

167 (x) providing data analysis information technology programs, except as provided in

168 Subsection (4)(h)(ii);

169 (xi) providing administration of health reimbursement accounts or health savings
170 accounts; or

171 (xii) if the licensee is an insurer, or a third party administrator who contracts with an
172 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of
173 the following prohibited benefits:

174 (A) performing background checks of prospective employees;

175 (B) providing legal services by a person licensed to practice law;

176 (C) performing drug testing that is directly related to an insurance product purchased
177 from the insurer;

178 (D) preparing employer or employee handbooks;

179 (E) providing job descriptions postings, and applications;

180 (F) providing payroll services;

181 (G) providing performance reviews or performance review training;

182 (H) providing union advice;

183 (I) providing accounting services;

184 (J) providing discrimination testing; or

185 (K) providing data analysis information technology programs.

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

189 (7) (a) A de minimis gift or meal not to exceed a fair market value of [~~\$25~~] \$75 for
190 each individual receiving the gift or meal is presumed to be a social courtesy not conditioned
191 on a quote or purchase of a particular insurance product for purposes of Subsection (4)(a).

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

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

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

200 (10) Notwithstanding any other provision of this section, a producer, consultant, or
201 other licensee, or an officer or employee of a licensee, may offer, make available, or provide
202 goods or services, whether or not the goods or services are directly related to an insurance
203 contract, for free or for less than fair market value if:

204 (a) the goods or services are available on the same terms to the general public;

205 (b) receipt of the goods or services is not contingent upon the immediate or future
206 purchase, continuation, or termination of an insurance product or receipt of a quote for an
207 insurance product.

208 (11) (a) A producer, consultant, or other licensee, or an officer or employee of a
209 licensee, that provides or offers goods or services that are not described in Subsection (3) or (4)
210 for free or less than fair market value shall conspicuously disclose to the recipient before the
211 purchase of insurance, receipt of a quote for insurance, or designation of an agent of record,

212 that receipt of the goods or services is not contingent on the purchase, continuation, or
213 termination of an insurance product or receiving a quote for an insurance product.

214 (b) A producer, consultant, or other licensee, or an officer or employee of the licensee,
215 may comply with this Subsection (11) by an oral or written disclosure.

216 Section 2. **Effective date.**

217 This bill takes effect on May 30, 2015.