

R590. Insurance, Administration.

R590-154. Unfair Marketing Practices Rule; Misleading Names.

R590-154-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code, ~~[and] Section[s] 31A-23a-402 [and 31A-23a-402.5]~~, which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, ~~[provide an unfair inducement,]~~ or unreasonably restrain competition, and to prohibit them by rule, and Section 31A-23a-110(2), which provides a licensee may do business under another name than the licensee's legal name by notifying the commissioner.

R590-154-2. Purpose and Scope.

(1) The purpose of this rule is to provide guidance to all licensees regarding unfair marketing practices.

(2) This rule applies to all insurance producers, limited lines producers, consultants and insurers licensed under Title 31A, Utah Insurance Code.

R590-154-3. Definitions.

(1) "Licensee" means, as used in this rule, all individual producers, all agency producers, all individual limited line producers, all agency limited line producers, all individual consultants, all agency consultants, and all insurers.["Agency" means:

~~_____ (a) A person other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and~~

~~_____ (b) An insurance organization licensed or required to be licensed under Section 31A-23a-301.~~

~~_____ (2) "Arm's length" means a transaction between two or more parties who are unrelated and unaffiliated by family, marriage or commercial enterprise. This transaction entails that the contract or price has been negotiated by parties, each party acting in his or her own self interest, and that the sale price is based on fair market value.~~

~~_____ (3) "Barter" means the sale of an insurance or annuity contract for anything of value other than cash or other negotiable instruments.~~

~~_____ (4) "Discrimination testing" in 31A-23a-402.5(5)(b)(xii)(K) means either eligibility testing or utilization testing.~~

~~_____ (a) Eligibility test results must demonstrate that eligibility is not limited to or weighted in favor of key or highly compensated employees. Self-funded plans (such as a cafeteria plan) may not exclude non-highly compensated employees from participating in favor of highly compensated or key employees. In accordance with Internal Revenue Service 26 USC 125(4) and 26 USC 410 the exclusion of certain groups of employees is allowed, including:~~

~~_____ (i) employees with less than three years of service;~~

~~_____ (ii) employees under age 25;~~

~~_____ (iii) part time or seasonal employees;~~

~~_____ (iv) non resident aliens; and~~

~~_____ (v) collective bargaining employees.~~

~~_____ (b) Utilization test results must demonstrate that comparable benefits are utilized by a fair number of employees at all compensation levels and for all positions. See 26 CFR Part 1 41, REG 156518-04, RIN 1545-BE10.~~

~~_____ (5) "Fair market value" means what a knowledgeable, willing, and unpressured buyer would pay for a product or service to a knowledgeable, willing, and unpressured seller in the open market without any connection to other goods, services or contracts sold by the licensee.~~

~~_____ (6) "Social courtesy" means a respectful act or expression of generosity that is not connected with the sale or retention of an insurance product, the fair market value of which is less than or equal to \$25.00.]~~

R590-154-4. Findings.

The commissioner finds that each of the practices prohibited in this rule constitute misleading, deceptive or unfairly discriminatory practices [~~or provide an unfair inducement~~] or unreasonably restrain competition, except as specifically allowed in this rule.

R590-154-5. ~~[Producer, Limited Lines Producer or Consultant Agency]~~Licensee Name.

(1) [~~An insurance producer, limited lines producer or consultant agency~~] A licensee licensed under the [laws of this state] Utah Insurance Code shall not use any name that is:

(a) misleading or deceptive;

(b) likely to be mistaken for another licensee already in business; or

(c) implies association or connection with any other organization where actual bona fide association or connection does not exist.

(2) [~~A producer, limited line producer or consultant agency licensee shall comply with either of the following:~~

~~_____ (a) The agency shall include words such as "insurance agency" or "insurance consultant" or other similar words in the agency's name.~~

~~_____ (i) Other similar words such as "insurance services", "insurance benefits", "insurance counselors", or "insurance advisors" may also be used.]~~

~~_____ (ii)] "Insurance consulting," "insurance consultants" or similar words shall only be used if the licensee[agency] is licensed as a consultant.~~

~~[(b) The agency shall state that the licensee is an insurance agency in any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed by the agency in the State of Utah.]~~

(3) An individual shall be licensed using the individual's full legal name. The full legal name shall include first name or initial, middle name or initial, last name, and suffix.

(4) An individual may file with the commissioner a preferred name or nickname to use with the individual's full legal name, consistent with Section 31A-23a-110(2).

(5)(a) Section 31A-23a-110(2) permits a licensee to use an assumed name by notifying the commissioner.

(b) In order to give notice of an assumed name as required by Section 31A-23a-110(2), the licensee shall comply with R590-244-13.

(6) A licensee may use its legal name or an assumed name provided the commissioner is properly notified.

~~[R590-154-6. Individual Licensee Name.~~

~~(1) An individual shall be licensed using the individual's full legal name — first name or initial, middle name or initial, last name, suffix, jr/sr/II/III/etc.~~

~~(2) An individual may file with the department a preferred name or nickname to use in combination with the individual's full legal name.]~~

R590-154-[7]6. Sale, Solicitation, or Negotiation of Insurance; Consultation.

~~{(1) An individual licensee and a producer, limited line producer or consultant agency licensee shall not mislead or deceive a person or organization through oral contact or through any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed in Utah by:~~

~~(a) failing to disclose that the licensee is an individual insurance licensee or a producer, limited line producer or consultant agency licensee in every oral or written contact;~~

~~(b) using or implying license classifications not held by the individual licensee or natural persons designated to the producer, limited line producer or consultant agency licensee;~~

~~(c) using a name other than the exact name appearing on the producer, limited line producer or consultant agency license;~~

~~(d) using a name other than the individual licensee's full legal name exactly as filed with the department; or~~

~~(e) using an individual's preferred name or nickname when the preferred name or nickname has not been filed with the department.~~

~~(2) The use of an initial letter, rather than the full first or middle name is not a violation of this section.~~

~~(3) An individual may only use the name of a producer, limited line producer, or consultant agency that has its own separate agency license if the individual licensee is designated to act under that agency's license.~~

~~(4) An individual may not sell, solicit, or negotiate insurance as a producer, limited line producer, or consultant agency; unless the individual has a separate producer, limited line producer, or consultant agency license, and the individual is designated to act under the agency's license.]~~

(1) A licensee shall not, orally or in writing, fail to disclose that the licensee is an insurance licensee.

(2) A licensee shall not use or imply license types or lines of authority not held by the licensee.

(3) An individual licensee may only use the name of an agency licensee if the individual licensee is designated to act under the agency's license.

(4) An individual licensee may not sell, solicit, or negotiate

insurance; or consult or advise for an agency licensee unless the individual licensee is designated to act under the agency's license.

R590-154-[8]7. Claiming or Representing Department Approval.

(1) A licensee may not represent, either directly or indirectly, that the department, the [~~insurance~~] commissioner, or any employee of the department, has approved, reviewed, or endorsed[~~, or in any way favorably passed upon~~] any marketing program, insurance product, insurance company, practice or act.

(2) A licensee may report the fact of the filing of any form, financial report, or other document with the department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.

R590-154-[9]8. Bartering for Insurance.

Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall retain said documentation for three years following the expiration of the policy period or bartering transaction, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.

R590-154-[10]9. Prohibited Insurance Sales Tie-Ins.

Multi-level marketing programs, investment programs, memberships, or other similar programs, designed or represented to produce or provide funds to pay all or any part of the cost of insurance constitutes an illegal inducement. This does not preclude the provision of insurance through a bona fide employee benefits program.

~~**[R590-154-11. Electronic Platform and Application Systems.**~~

~~Producers or agencies may provide electronic platforms that provide directly related services of the insurance products to the employer. Fair market value must be charged for items such as human resources and legal services whether electronic or paper.]~~

R590-154-[12]10. [Commission—Contributions]Commissions or Consulting Fees.

A licensee shall not give or offer to give a premium reduction by means of commission [~~contribution~~]or consulting fee back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. The insurer's underwriting files must document the savings in order to enable the commissioner to verify compliance. This documentation must demonstrate legitimate expense savings realized by the insurer and its producer.

R590-154-[13]11. Prohibited Financing Arrangements.

A licensee may not obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

R590-154-[14]12. Acting as [~~An Individual or Agency~~]A Licensee in Other Jurisdictions.

~~[An individual or agency licensee licensed in the State of Utah under a]~~A resident licensee~~[.]~~ may not sell, solicit, or negotiate insurance or advise or consult about insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

R590-154-[15]13. Use of Comparative Information.

(1) Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its producers will be fair and accurate.

(2) A licensee may not use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

R590-154-[16]14. Disclosure of Insurer in Group Insurance.

Every certificate of insurance or booklet describing coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the full legal name and address of the actual insurer.

R590-154-[17]15. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the rule's effective date.

R590-154-[18]16. Severability.

If any provision of this rule or the application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provision of this rule are declared to be severable.

KEY: insurance; unfair marketing practices; misleading names

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Notice of Continuation: March 20, 2013

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402; [~~31A-23a-402.5~~]31A-23a-110