

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS55112-LT-53A* (3/9)

Short Title: Producer Comp. Transparency and Broker Duty.-AB (Public)

Sponsors: Senator Dalton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE INSURANCE PRODUCERS TO DISCLOSE
COMPENSATION ARRANGEMENTS TO CUSTOMERS AND TO CLARIFY
THAT AN INSURANCE BROKER MUST SERVE THE INTEREST OF THE
CUSTOMER FIRST.

The General Assembly of North Carolina enacts:

SECTION 1. Article 33 of Chapter 58 of the General Statutes is amended by
adding a new section to read:

"§ 58-33-86. Insurance producer compensation transparency.

(a) Where any insurance producer or any affiliate of an insurance producer
receives any compensation from the customer for the placement of insurance or
represents the customer with respect to that placement, neither that producer nor the
affiliate shall accept or receive any compensation from an insurer or other third party for
that placement of insurance unless the producer has, prior to the customer's purchase of
insurance:

- (1) Obtained the customer's documented acknowledgment that the
compensation will be received by the producer or affiliate; and
- (2) Disclosed the amount of compensation from the insurer or other third
party for that placement. If the amount of compensation is not known
at the time of disclosure, the producer shall disclose the specific
method for calculating the compensation and, if possible, a reasonable
estimate of the amount.

(b) Subsection (a) of this section shall not apply to an insurance producer who:

- (1) Does not receive compensation from the customer for the placement of
insurance;
- (2) In connection with that placement of insurance, represents an insurer
that has appointed the producer; and

1 (3) Discloses to the customer prior to the purchase of insurance (i) that the
2 insurance producer will receive compensation from an insurer in
3 connection with that placement, or (ii) that, in connection with that
4 placement of insurance, the insurance producer represents the insurer
5 and that the producer may provide services to the customer for the
6 insurer.

7 (c) A person shall not be considered a "customer" for purposes of this section if
8 the person is merely either (i) a participant or beneficiary of an employee benefit plan,
9 or (ii) covered by a group or blanket insurance policy or group annuity contract sold,
10 solicited, or negotiated by the insurance producer or affiliate.

11 (d) This section does not apply to either (i) a person licensed as an insurance
12 producer who acts only as an intermediary between an insurer and the customer's
13 producer, for example a managing general agent, a sales manager, or a wholesale
14 broker, or (ii) a reinsurance intermediary.

15 (e) For purposes of this section:

16 (1) "Affiliate" means a person that controls, is controlled by, or is under
17 common control with the producer.

18 (2) "Compensation from an insurer or other third party" means payments,
19 commissions, fees, awards, overrides, bonuses, contingent
20 commissions, loans, stock options, gifts, prizes, or any other form of
21 valuable consideration, whether or not payable pursuant to a written
22 agreement.

23 (3) "Compensation from the customer" shall not include any fee or
24 amount collected by or paid to the producer that does not exceed an
25 amount established by the Commissioner.

26 (4) "Documented acknowledgment" means the customer's written consent
27 obtained prior to the customer's purchase of insurance. In the case of a
28 purchase over the telephone or by electronic means for which written
29 consent cannot reasonably be obtained, consent documented by the
30 producer shall be acceptable."

31 **SECTION 2.** Article 33 of Chapter 58 of the General Statutes is amended by
32 adding a new section to read:

33 **"§ 58-33-19. Fiduciary duty of broker.**

34 A broker has a fiduciary duty to protect the best interests of the broker's client or
35 customer."

36 **SECTION 3.** Section 1 of this act becomes effective January 1, 2006. The
37 remainder of this act is effective when it becomes law.