

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08736
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine



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NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Producer Compensation Disclosure Model Amendment to the Producer Licensing Model Act

Adopted by the NCOIL State-Federal Relations and Executive Committees on March 5, 2005; readopted on November 21, 2010.

A revised version of the December 29 NAIC broker disclosure amendment proposed to the Producer Licensing Model Act.

Readopted by the NCOIL State-Federal Relations Committee on November 17, 2017 and the NCOIL Executive Committee on November 19, 2017

Section __. Compensation Disclosure

A. Where any insurance producer or any affiliate of such producer receives any compensation from the customer for the initial placement of insurance, 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 such compensation will be received by the producer or affiliate; and

(2) Provided a description of the method and factors utilized for calculating the compensation to be received from the insurer or other third party for that placement.

B. This section shall not apply to:

(1) A person licensed as an insurance producer who acts only as an intermediary between an insurer and the customer's producer, for example a managing general agent, a sales manager, or wholesale broker;

(2) The placement of insurance in secondary or residual markets; or

(3) A producer whose sole compensation for the placement is derived from commissions, salaries, and other remuneration from the insurer.

C. For purposes of this section:

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

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

(3) “Compensation from the customer” shall not include any fee or similar expense as provided in [insert reference to statutory provision(s) or regulation(s)] or any fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner.

(4) “Customer” means the person signing the application or submission for insurance or the authorized representative of the insured actually negotiating the placement of insurance with the producer. A person shall not be considered a “customer” for purposes of this section if the person is:

- (a) A participant or beneficiary of an employee benefit plan; or
- (b) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.

(5) “Documented acknowledgement” means the customer’s acknowledgement obtained prior to the customer’s purchase of insurance

D. An insurance producer may satisfy any requirements imposed by this Section directly or through an affiliate.

E This Section shall take effect six (6) months after the date of enactment or [insert date], whichever is later.

Drafting Note: In many transactions, a broker will owe a fiduciary or other legal duty to the client. However, the duty may vary depending upon contractual obligations or transaction specific facts. Therefore, the States should review the precedent set forth in their common law to determine if any statutory standards are necessary.