

[NOTE: This is an unofficial version of the model amendment adopted by the NAIC on December 29, 2004. It may not reflect the exact language of the model as adopted.]

**Proposed Compensation Disclosure Amendment
To The Producer Licensing Model Act**

Section __. Compensation Disclosure

- A. (1) Where any insurance producer or any affiliate of such 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:
- (a) Obtained the customer's documented acknowledgment that such compensation will be received by the producer or affiliate; and
 - (b) 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 such compensation and, if possible, a reasonable estimate of the amount.
- (2) Subsection A(1) shall not apply to an insurance producer who:
- (a) Does not receive compensation from the customer for the placement of insurance; and
 - (b) In connection with that placement of insurance represents an insurer that has appointed the producer; and
 - (c) Discloses to the customer prior to the purchase of insurance:
 - (i) That the insurance producer will receive compensation from an insurer in connection with that placement; **or***
 - (ii) That, in connection with that placement of insurance, the insurance producer represents the insurer and that the producer may provide services to the customer for the insurer.

Drafting Note: In states where no appointment is required, the phrase "that has contractually authorized the producer to act as its legal agent" may be substituted for "that has appointed the producer."

- B. A person shall not be considered a "customer" for purposes of this section if the person is merely:
- (1) A participant or beneficiary of an employee benefit plan; or

*** The amendment is drafted to permit the insurance producer utilizing Subsection A(2) to determine whether to disclose item (i) or (ii). Other options would be that the producer must disclose the statement in item (i) only, item (ii) only, or both items (i) and (ii).**

- (2) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.
- C. 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; or
 - (2) A reinsurance intermediary.
- D. 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) "Documented acknowledgement" means the customer's written consent obtained prior to the customer's purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot reasonably be obtained, consent documented by the producer shall be acceptable.
- E. This Section shall take effect [insert date].

Drafting Note: States that are considering the licensing of business entities should reference subsection 6B of the NAIC's *Producer Licensing Model Act* and the Uniform Application for Business Entity License/Registration, which address the licensing of a business entity acting as an insurance producer.