

### Bulletin 13-04

To: Insurance Producers  
From: Merle Scheiber, Director  
Date: September 30, 2013  
Re: Rebates/Fees/Commissions

Due to the passage of SB 61 in the 2013 Legislature, which allows producers to act as consultants, the Division is providing guidance on rebating, fees, and commissions. This Bulletin replaces Bulletin 06-06 and reconfirms Bulletin 92-01.

To act as a consultant, you must be a licensed insurance producer.

The following conduct is prohibited for producers:

- Rebating. This includes negotiating commissions with consumers or prospective consumers.<sup>1</sup>
- Negotiating commissions with consumers under any circumstances. This includes writing policies “net of commission.”
- Charging any fee not specified in the insurance product.<sup>2</sup> The exception is a consulting fee.
- Collecting a consulting fee and commission on the same product with the same consumer.<sup>3</sup> This also applies to surplus lines brokers.

The following conduct is permitted for producers:

- For large group health and exempt commercial products, producers may negotiate commissions and premiums with the insurance company.
- For large group health and exempt commercial products, producers may negotiate premiums with consumers.
- Collecting only a commission on a product.
- Collecting only a consultant fee concerning a product.
- Collecting a consulting fee on one distinct product, and then collecting a commission on a dissimilar product with the same consumer.

The following conduct is required of producers:

- When an insurance product is sold, the producer must charge the full amount of the premium, which includes any commissions or fees specified in the policy.<sup>4</sup>

Consultant fees are not subject to premium tax. (Consultant services are not consideration for insurance products.<sup>5</sup>) Any other fees are subject to premium tax.<sup>6</sup> Sales tax may apply to consultant services.

<sup>1</sup> SDCL §§ 58-33-14 and 58-33-24 and 58-33-36 and Bulletin 92-01.

<sup>2</sup> SDCL § 58-11-1.

<sup>3</sup> SDCL § 58-30-144.1.

<sup>4</sup> SDCL § 58-33-36.

<sup>5</sup> SDCL §§ 58-11-1 and 58-30-144.1.

<sup>6</sup> SDCL § 58-11-1.