

## **Bulletin 92-1**

### **Reduction in commissions constitutes rebating**

June 22, 1992

It has been brought to the attention of the South Dakota Division of Insurance that agents and companies are negotiating commission in order to reduce premium to write new and renewal commercial and personal lines insurance accounts.

Whether a reduced commission is negotiated between the agent and the insured or the agent and the insurer, the practice of reducing commissions to secure and/or retain new and renewal insurance business violates the rate filing and/or unfair trade practice laws.

SDCL 58-11-1 defines "premium" as "the consideration for insurance by whatever named called. Any 'assessment,' or any 'membership,' 'policy,' 'survey,' 'inspection,' 'service,' or similar fee or other charge in consideration for an insurance contract is deemed part of the premium."

This provision would include "commissions" as part of the premium.

SDCL Chapter 58-24 requires rates to be filed with and approved by the Division. SDCL 58-33-36 states that no agent or company may issue policies with rates more or less than those rates filed with and approved by the Division of Insurance. A reduction in commission to reduce the premium, after all allowable credits have already been applied, would be a direct violation of this law because the reduced premium has not been filed with and approved by the Division.

SDCL 58-33-24 defines rebating. It states "[n]o insurer or any employee or representative thereof, and no agent or broker shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in the policy of insurance, or any special factor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy, except to the extent provided for in an applicable filing with the director as provided by law. Violation of this section is a Class 2 Misdemeanor."

Reducing commissions to secure and/or retain new and renewal insurance business is an inducement for insurance and therefore is rebating. It further constitutes the use of an unapproved rate in violation of the law.

This bulletin is effective immediately.

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Director of Insurance