

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0357

SENATE BILL NO. 35

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain requirements for insurance producers.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 58-1-2 be amended to read as follows:

4 58-1-2. Terms used ~~throughout~~ in this title mean:

5 (1) "Alien insurer," one formed under the laws of any country or jurisdiction other than
6 the United States of America, its states, districts, territories, and commonwealths;

7 (2) "Authorized insurer," one authorized, by a subsisting certificate of authority issued
8 by the director, to engage in the insurance business in this state;

9 (3) "Certificate of authority," permission granted to an insurer to issue policies or make
10 contracts of insurance in this state;

11 (4) "Director," the director of the Division of Insurance;

12 (5) "Division," the Division of Insurance of the Department of Revenue and Regulation;

13 (6) "Domestic insurer," one formed under the laws of this state;

14 (7) "Foreign insurer," one formed under the laws of any jurisdiction other than this state;

15 except where distinguished by context, foreign insurer includes an alien insurer;



- 1 (8) "Insurance," a contract whereby one undertakes to indemnify another or to pay or
2 provide a specified or determinable amount or benefit upon determinable
3 contingencies;
- 4 (9) "Insurance business," includes the transaction of all matters pertaining to a contract
5 of insurance, both before and after the effectuation of that contract, and all matters
6 arising out of that contract or any claim thereunder;
- 7 (10) "Insurer," every person engaged as indemnitor, surety, or contractor in the business
8 of entering into contracts of insurance;
- 9 (11) "License," permission granted to an agent or broker to engage in those activities
10 permitted by such persons under this title;
- 11 (12) Repealed by SL 2001, ch 263, § 1.
- 12 (13) "Mechanical breakdown insurance," any contract or agreement, issued by an
13 authorized insurer, to perform or indemnify for a specific duration the repair,
14 replacement, or maintenance of property for operational or structural failure due to
15 a defect in materials, workmanship, or normal wear and tear;
- 16 (14) "Person," an individual, insurer, company, association, organization, Lloyds, society,
17 reciprocal or inter-insurance exchange, partnership, syndicate, business trust,
18 corporation, and any other legal entity;
- 19 (15) "Principal office" or "principal place of business," the office or regional home office
20 from which the business affairs of the insurer are directed and managed;
- 21 (16) "Producer," any person required to be licensed under the laws of this state to sell,
22 solicit, or negotiate insurance. The terms also means an insurance agent;
- 23 (17) "State," when used in context signifying a jurisdiction other than the State of South
24 Dakota, a state, the District of Columbia, a territory, commonwealth, or possession

1 of the United States of America, or a province of the Dominion of Canada; and

2 ~~(17)~~(18) "Unauthorized insurer," one which does not hold a subsisting certificate of
3 authority issued by the director to engage in the insurance business in this
4 state.

5 Section 2. That § 58-30-174 be amended to read as follows:

6 58-30-174. ~~An insurer or insurance producer may pay or assign a commission, service fee,
7 brokerage, nominal fee of a fixed dollar amount for each referral that does not depend on
8 whether the referral results in a transaction, or other valuable consideration to an insurance
9 agency or to persons who do not sell, solicit, or negotiate insurance in this state, unless the
10 payment would violate § 58-33-14 or 58-33-24~~ No insurer may pay or assign a commission,
11 service fee, brokerage fee, or any other valuable consideration for a referral to any person not
12 appropriately licensed pursuant to this chapter unless the payment or assignment is a fixed dollar
13 amount that is not related to the amount of commission or premium for an insurance transaction
14 and that is not dependent upon whether the referral results in a transaction.

15 Section 3. That § 58-30-142 be amended to read as follows:

16 58-30-142. Terms used in §§ 58-30-141 to 58-30-195, inclusive, mean:

- 17 (1) "Agent of the insurer," any insurance producer who is compensated directly or
18 indirectly by an insurer and sells, solicits, or negotiates any product of that insurer;
- 19 (2) "Agent of insured," any insurance producer or person who secures compensation
20 from an insured or insurance customer only and receives no compensation directly
21 or indirectly from an insurer for a transaction with that insured or insurance
22 customer;
- 23 (3) "Business entity," a corporation, association, partnership, limited liability company,
24 limited liability partnership, or other legal entity;

1 (4) "Home state," the District of Columbia and any state or territory of the United States
2 in which an insurance producer maintains the insurance producer's principal place of
3 residence or principal place of business and is licensed to act as an insurance
4 producer;

5 ~~(5)~~ "Insurance producer," any person required to be licensed under the laws of this state
6 to sell, solicit, or negotiate insurance;

7 ~~(6)~~(5) "Limited line credit insurance," includes credit life, credit disability, credit property,
8 credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty,
9 mortgage disability, guaranteed automobile protection insurance, and any other form
10 of insurance offered in connection with an extension of credit that is limited to
11 partially or wholly extinguishing that credit obligation that the insurance director
12 determines should be designated a form of limited line credit insurance;

13 ~~(7)~~(6) "Limited line credit insurance producer," any person who sells, solicits, or negotiates
14 one or more forms of limited line credit insurance coverage to individuals through
15 a master, corporate, group, or individual policy;

16 ~~(8)~~(7) "Limited lines insurance," those lines of insurance defined in § 58-30-68 or any other
17 line of insurance that the insurance director may deem it necessary to recognize for
18 the purposes of complying with § 58-30-163;

19 ~~(9)~~(8) "Limited lines producer," any person authorized by the insurance director to sell,
20 solicit, or negotiate limited lines insurance;

21 ~~(10)~~(9) "Negotiate," the act of conferring directly with or offering advice directly to
22 a purchaser or prospective purchaser of a particular contract of insurance
23 concerning any of the substantive benefits, terms, or conditions of the contract
24 if the person engaged in that act either sells insurance or obtains insurance

1 from insurers for purchasers;

2 ~~(11)~~(10) "Sell," to exchange a contract of insurance by any means, for money or its
3 equivalent, on behalf of an insurance company;

4 ~~(12)~~(11) "Solicit," attempting to sell insurance or asking or urging a person to apply for
5 a particular kind of insurance from a particular company;

6 ~~(13)~~(12) "Terminate," the cancellation of the relationship between an insurance
7 producer and the insurer or the termination of an insurance producer's
8 authority to transact insurance.

9 Section 4. That § 58-30-1 be repealed.

10 ~~58-30-1. An "agent" is an individual, firm, or corporation licensed by the director and if
11 authorized by an insurer to solicit, negotiate, issue, countersign, and effectuate insurance
12 contracts.~~

13 Section 5. That § 58-30-74 be amended to read as follows:

14 58-30-74. All licenses and appointments issued under this title shall continue in force until
15 expired, suspended, revoked, or otherwise terminated, but are subject to renewal by payment
16 to the director annually ~~on or before April thirtieth~~ of the applicable fee as stated in § 58-2-29
17 upon notice by the director. Any request for renewal of a surplus line broker license shall be
18 made by the licensee.