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BULLETIN

TO: All Licensed Insurers and Insurance Producers

FROM: Leslie A. Newman, Commissioner *LAN*
Department of Commerce and Insurance

RE: Recent Insurance Producer Changes

DATE: August 21, 2008

The purpose of this Bulletin is to give an overview of changes in the law, particularly Public Chapter 1192 (2008), which will impact licensed insurance producers in this state. This Bulletin specifically addresses the areas of license renewal, continuing education requirements, referral fees to non-producers, financial planning designations and titles, charging of fees, and penalties for selling unauthorized insurance.

License Renewals

In 2007, the law was changed to allow insurance producers to renew their licenses every other year. This legislative session, the law was modified so that the *date* on which insurance producers renew their licenses will change. Currently, an insurance producer renews his/her license prior to the anniversary date of the issuance of the license. Effective immediately, producers will renew their licenses *before the last day of their birth month*. Note that all renewals in 2009 will occur prior to the last day of the licensee's birth month regardless of when the producer renewed or was licensed in 2007. The following two examples are provided to help clarify how these changes will work:

Example 1 - A producer last renewed his current license in August of 2007 and his birthday is in September. He will renew his current license prior to September 30, 2009. The next time his license will need to be renewed will be September 30, 2011.

Example 2 - A producer last renewed her current license in August of 2007 and her birthday is in July. She will renew her license prior to July 31, 2009. The next time her license will need to be renewed will be July 31, 2011.

Continuing Education

The law concerning exemptions from continuing education requirements also changed during the 2008 legislative session. Prior to the changes, producers that had been licensed continuously for fifteen (15) or more years, or were over the age of 65 were exempt from having to meet continuing education requirements. Effective January 1, 2009 a producer will only be exempt from continuing education requirements if the producer, on the date of the producer's renewal, has been licensed continuously since 1994. As such, if you have not had to receive continuing education because you were over 65, but you have not been continuously licensed since January 1, 1994, you will need to receive all required credit hours prior to renewing your license in 2009. Note that the law requires continuous licensure since January 1, 1994. So a producer whose license has been inactive for any amount of time since 1994 will not qualify for the exemption.

There were also changes to the education requirements of producers who sell long-term care insurance. Effective immediately, any producer not licensed to sell long-term care insurance prior to July 1, 2008 must complete a one-time, eight (8) hour training course in long-term care insurance approved by the Department prior to selling any long-term care insurance product in this state. In order to obtain information about the required training, you may contact the Department at (615) 741-2693.

Those who are licensed to sell long-term care insurance products prior to July 1, 2008 must complete this course by July 1, 2009. After the initial eight hours, producers who wish to continue to sell long-term care insurance are required to complete an additional four (4) hours of continuing education every twenty-four (24) months, unless you are exempt from continuing education requirements on the date of the renewal of your license. The long-term care continuing education courses may be counted towards meeting a producer's twenty-four (24) hour continuing education requirements.

Referral Fees

The law was also amended with regards to the payment of referral fees. Effective January 1, 2009, the law allows unlicensed people to receive referral fees for their referral of consumers to insurance producers under certain restrictions. The unlicensed person may not discuss specific insurance policy terms and conditions with the potential purchaser. In addition, the statute allows for an unlicensed person who is not employed by or affiliated with the producer to receive a fee in a fixed dollar amount not to exceed twenty-five dollars (\$25) for each referral. Those unlicensed persons who are employed by or affiliated with the producer may receive compensation in a fixed nominal dollar amount. It is very important to note, though, that the payment of a referral fee may never be contingent upon whether the referred customer purchases an insurance product from the producer.

Financial Planning Designations/Titles

The law also addresses the issue of using certain titles to describe oneself in marketing of insurance products. The law provides that it is an unfair trade practice for an insurance producer to hold himself or herself out, directly or indirectly, to the public as a “financial planner”, “investment adviser”, “consultant”, “financial counselor”, “risk manager” or any other specialist engaged in the business of giving financial planning, risk management or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when such person is in fact engaged only in the sale of insurance policies. This provision does not preclude persons who hold some form of formal recognized financial planning, risk management or consultant certification or designation from using this certification or designation when they are only selling insurance. It is also an unfair trade practice to engage in the business of financial planning without disclosing to the client or solicitation of the sale of a product or service that: (A) He or she is also an insurance salesperson; and (B) That a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case. The disclosure requirement under this subsection may be met by including it in any disclosure required by federal or state securities law.

Charging of Fees

The law has additionally been changed to address what fees may be charged for actions by an insurance producer during the sale, solicitation or negotiation of insurance. Insurance producers may only charge fees in excess of their commissions when it is done pursuant to a written agreement with an insurer, and, where applicable, incorporated in the insurer’s rate filing made with the Department. Also, the law specifies that an insurance producer may charge fees for services not connected with the sale, solicitation and negotiation of insurance by the insurance producer if such fees are based upon a written agreement, and signed by the consumer in advance of the performance of the services under the agreement. The law requires that a copy of the agreement must be provided to the consumer at the time the agreement is signed. Further, the law requires that the agreement must include the services for which the fee is to be charged; the amount of the fee to be charged or how it will be determined or calculated; and a disclosure stating that the client is under no obligation to purchase any insurance product through the insurance producer or consultant. The insurance producer must retain a copy of the agreement for not less than three (3) years after completion of services.

Insurance producers should still refer to the Department’s bulletin dated January 8, 1998, for an explanation of when services are related to the sale, solicitation or negotiation of insurance.

Selling Insurance for Unauthorized Insurance Companies

The law has also clarified the issue of selling insurance for unauthorized insurance companies. Prior to the new law, the Department has consistently taken the position that it was an unlawful and dishonest act for an insurance producer to sell insurance through a

company not authorized to do business in the State. The new law clarifies the position by allowing the Department to take disciplinary action against an insurance producer that sells, solicits or negotiates insurance for a company not authorized to transact the business of insurance in this state. The law also imposes personal civil liability on insurance producers that sell insurance for or on behalf of an unauthorized insurance company for premiums paid or valid claims made on such policies. Lastly, the law also makes such conduct a fraudulent insurance act subject to criminal penalties under Title 56, Chapter 53.

Thank you for your attention to this matter. Any questions about the positions set forth in or the intent of this Bulletin should be directed to the Insurance Division, Fourth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, and/or telephone number (615) 741-2176.

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