

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0302

SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 61** - 01/22/2013

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

1 FOR AN ACT ENTITLED, An Act to allow licensed insurance agents to act as consultants in
2 certain circumstances.

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

4 Section 1. That § 58-30-142 be amended to read as follows:

5 58-30-142. Terms used in §§ 58-30-141 to 58-30-195, inclusive, mean:

6 (1) "Agent of the insurer," any insurance producer who is compensated directly or
7 indirectly by an insurer and sells, solicits, or negotiates any product of that insurer;

8 (2) "Agent of insured," any insurance producer or person who secures compensation
9 from an insured or insurance customer only and receives no compensation directly
10 or indirectly from an insurer for a transaction with that insured or insurance
11 customer;

12 (3) "Business entity," a corporation, association, partnership, limited liability company,
13 limited liability partnership, or other legal entity;

14 (3A) "Consultant," an agent of the insured who sells, solicits, or negotiates insurance on



1 behalf of an insured or prospective insured or who assists an insured or prospective
2 insured in the procurement of insurance;

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

9 (5) "Crop insurance," insurance providing protection against damage to crops from
10 unfavorable weather conditions, fire or lightening, flood, hail, insect infestation,
11 disease or other yield-reducing conditions or perils provided by the private insurance
12 market, or that is subsidized by the Federal Crop Insurance Corporation, including
13 Multi-Peril Crop Insurance;

14 (6) "Home state," the District of Columbia and any state or territory of the United States
15 in which an insurance producer maintains the insurance producer's principal place of
16 residence or principal place of business and is licensed to act as an insurance
17 producer;

18 (7) "Limited lines producer," any person authorized by the director to sell, solicit, or
19 negotiate limited lines insurance;

20 (8) "Negotiate," the act of conferring directly with or offering advice directly to a
21 purchaser or prospective purchaser of a particular contract of insurance concerning
22 any of the substantive benefits, terms, or conditions of the contract if the person
23 engaged in that act either sells insurance or obtains insurance from insurers for
24 purchasers;

- 1 (9) "Sell," to exchange a contract of insurance by any means, for money or its equivalent,
2 on behalf of an insurance company;
- 3 (10) "Solicit," attempting to sell insurance or asking or urging a person to apply for a
4 particular kind of insurance from a particular company;
- 5 (11) "Terminate," the cancellation of the relationship between an insurance producer and
6 the insurer or the termination of an insurance producer's authority to transact
7 insurance;
- 8 (12) "Travel insurance," insurance coverage for trip cancellation, trip interruption,
9 baggage, life, sickness and accident, disability, and personal effects when limited to
10 a specific trip and sold in connection with transportation provided by a common
11 carrier.

12 Section 2. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any person acting as a consultant shall be licensed as an agent pursuant to this chapter. A
15 consultant may collect a fee from an insurance customer for services provided as a consultant
16 but may not collect a fee for any insurance placed with that insurance customer if a commission
17 is payable to that consultant. A consultant may act as a consultant and collect a fee from an
18 insurance customer and also receive a commission for insurance sold, solicited, or negotiated
19 with that same insurance customer provided that the fee and commission are for separate and
20 distinct insurance products. The term, fee, as used in this section, does not include a fee that is
21 payable pursuant to the terms or conditions of an insurance policy, contract, or certificate or that
22 are required to be paid for reasons other than the services provided by the consultant.

23 A separate license for acting as a consultant is not required of a licensed agent. Any
24 consultant collecting a fee from an insurance customer shall set forth the fee to be charged to

1 that insurance customer and the terms and conditions of the services provided to that insurance
2 customer in the form of a written agreement with that insurance customer.

3 Section 3. An insurer may by contract prohibit an insurance producer from collecting a fee
4 from an insurance customer for services provided as a consultant.