



THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

DIVISION OF INSURANCE

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BULLETIN B 16-02

**TO: ALL INSURANCE PRODUCERS AND COMPANIES AUTHORIZED TO
TRANSACTION INSURANCE BUSINESS IN THE STATE OF ALASKA AND OTHER
INTERESTED PARTIES**

RE: Fees in Insurance Transactions

An inquiry has been made to the Alaska Division of Insurance concerning whether an insurance producer¹ acting as an agent may charge a fee to an applicant for insurance or to an insured that is in addition to the premium that may be, or is, charged for an insurance policy.

The division, in Bulletin B 99-03, previously addressed this question and clearly stated that "An insurance producer acting as an agent may not charge a client a fee. Any fees must be charged by the insurer, and all fees must be filed and approved as premiums where required by statute."

AS 21.97.900 defines "premium" to mean "the consideration of insurance, by whatever name called, and by whatever method paid or collected, including an assessment, or membership, policy, survey, inspection, service or similar fee or charge made in consideration for an insurance contract." This broad definition of "premium" includes any fee by "whatever name called" that a producer acting as an agent charges an applicant or insured to obtain or renew an insurance policy.

Therefore, if a producer acting as an agent desires to charge a fee, the fee must first be agreed to by the insurer as it is the insurer that is required to file rates under AS 21. Any such fee must be included in the rate filing for review by the division. If approved, the fee is part of the premium and is subject to premium tax under AS 21.09.210.

Under AS 21.42.160(a)(5), a policy must specify the premium. Further, under AS 21.27.360(a), "a licensee involved in the procuring or issuance of an insurance contract must report to the insurer the exact amount of consideration charged as a premium for the contract. The amount charged shall be shown in the contract and in the records of the licensee." Since the acts of a producer appointed by an insurer as an agent are considered the acts of that insurer, the insurer

¹ The term "producer" includes both licensees holding an individual producer insurance license and licensees holding a firm producer insurance license.

could be in violation of the first provision if the producer charges a fee in addition to the premium because the fee was not specified in the policy and was not approved as part of the insurer's rates. Similarly, the producer acting as an agent could be in violation of the second provision if the producer charges a fee in addition to the insurer's premium because the fee was not specified in the policy, was not part of the insurer's approved rate filing, and was not reported to the insurer.

Moreover, such a fee would place an insurer and the producer agent in violation of AS 21.42.150 which provides:

The policy, when issued, shall contain the entire contract between the parties, and neither the insurer nor its agent or representative, nor a person insured by the policy, may make an agreement as to the insurance that is not expressed in the policy. This section does not prohibit the modification of a policy, after issuance, by written rider or endorsement issued by the insurer.

Bulletin B 99-03 also noted the distinction between a fee charged by a producer acting as an agent, which is prohibited, and a fee charged by a broker, which is allowed. There, we stated: "An insurance producer acting as a broker may charge a fee or may be compensated by a combination of fees and commissions. A broker must enter into a written contract in accordance with AS 21.27.560(a) that describes the services the broker is to perform and all compensation the broker is to receive. If compensation includes a fee to be paid by the client, any commission paid by an insurer with which the insurance is placed must also be described."²

This fee distinction between a producer acting as an agent and a producer acting as a broker can be readily seen by comparing AS 21.27.550 with AS 21.27.560. AS 21.27.550 concerns the appointment of a producer as an agent and provides no authorization whatsoever that such producer may charge a fee. AS 21.27.560 concerns the appointment of a producer as a broker and provides express authority to charge a fee.

Producers acting as agents are strongly cautioned not to charge a fee unless it was included in the insurer's rate filing approved by the division. Producers acting as agents who charge a fee which is not specified in an insurer's policy and not part of an insurer's rate filing approved by the division may be subject to AS 21.36.360(b)(4) which provides:

A fraudulent insurance act is committed by a person who, with intent to injure, defraud, or deceive... (4) willfully collects as premium or charge for insurance a sum in excess of the premium or charge applicable to the insurance as specified in the policy by the insurer in accordance with the applicable classifications and rates approved by the director, or in cases where the classifications and rates are not subject to approval, the premiums and charges applicable to the insurance as specified in the policy and fixed by the insurer.

Given an insurer under AS 21.09.210(a)(2) is required to report "the total direct premium income including policy membership and other fees," and must meet the requirements of AS 21.42 above, an insurer should take reasonable steps to ensure each producer acting as its agent is not

² Bulletin B 04-14 provides additional guidance concerning broker's fees and the appointment of insurance producers as brokers.

charging a fee unless such fee is included in the insurer's rate filing and the fee is approved by the division.

If you have questions regarding this bulletin, please contact the Division of Insurance, P.O. Box 110805, Juneau, AK 99811-0805; (907) 465-2515; or via electronic mail at insurance@alaska.gov.

Dated January 21st, 2016.



Lori Wing-Heier
Director