

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0302

SENATE BILL NO. 61

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
15 behalf of an insured or prospective insured or who assists an insured or prospective



1 insured in the procurement of insurance;

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

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

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

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

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

24 (9) "Sell," to exchange a contract of insurance by any means, for money or its equivalent,

1 on behalf of an insurance company;

2 (10) "Solicit," attempting to sell insurance or asking or urging a person to apply for a
3 particular kind of insurance from a particular company;

4 (11) "Terminate," the cancellation of the relationship between an insurance producer and
5 the insurer or the termination of an insurance producer's authority to transact
6 insurance;

7 (12) "Travel insurance," insurance coverage for trip cancellation, trip interruption,
8 baggage, life, sickness and accident, disability, and personal effects when limited to
9 a specific trip and sold in connection with transportation provided by a common
10 carrier.

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

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

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

1 customer in the form of a written agreement with that insurance customer.