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Bulletin 07-03

TO: All Insurance Companies Writing Property Casualty Insurance in South Dakota

FROM: Merle Scheiber, Director

DATE: May 22, 2007

RE: Voiding Coverage Upon Failure to Pay Initial Premium

It has come to the Division's attention that some insurers have voided or cancelled coverage flat when an insured has failed to remit initial payment, such as in the case of an insufficient funds check. SDCL 58-33-60, 58-11-46 and 58-11-47 require that once a policy is issued it can only be cancelled if prior notice is provided. Furthermore, SDCL 58-11-44 only allows the voiding of a policy under certain conditions, one of which is not the failure to pay premium. An example of an impermissible rescission would be as follows:

A customer enters an agent's office first thing in the morning. The customer and agent agree on an automobile policy that meets the customer's needs. The customer hands the agent a check to pay for the initial premium. The agent hands the new insured a temporary insurance card, and the new insured believes they have coverage. The agent immediately deposits the check in the bank. The agent finds out the next day that the check has insufficient funds to cover the initial premium. Unfortunately the agent does not have time to contact the customer, since the customer, believing he is insured, gets into the accident later that day. The customer/insured files a claim with his agent, only to find out that due to the bad check, the company voided the policy at the date of inception.

The Division firmly believes that as a matter of public policy, coverage should continue until affirmatively cancelled following notice. To do otherwise would allow for an increase in uninsured drivers, which is clearly not in the public's best interest.

However, nothing in this bulletin should be construed to limit an insurer's ability to cancel or to rescind or void coverage if there has been fraud on the part of the insured. An example of fraud that could occur with the nonpayment of premium could include knowingly writing a no account check. Also nothing in this bulletin prohibits an insurer from canceling a policy for nonpayment of premium.

Should you have any questions, please contact:

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