

Bulletin 88-1

Contributory negligence

July 19, 1988

Complaints from insureds indicate that some insurance companies are arbitrarily assessing contributory negligence against a claimant without proper grounds for doing so. Companies appear to be assessing a percent of negligence based solely on the fact that the claimant was operating a vehicle that has been involved in an accident.

Assessing a degree of contributory negligence without a reasonable basis supported by specific facts is a violation of SDCL 58-33-67(6), which requires a good faith assignment of the degree of contributory negligence in ascertaining the issue of liability.

A continuation of arbitrarily assessing contributory negligence will result in the imposition of administrative penalties.

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Director of Insurance