



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

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December 1, 2004

Timothy Dodge
Director of Research
Independent Insurance Agents & Brokers
of New York, Inc.
109 Twin Oaks Drive
Syracuse, NY 13206-1205

**Re: Chapter 687 of the Laws of 2003: Permissible Duties of Unlicensed
Customer Service Representatives of Agency or Brokerage**

Dear Mr. Dodge:

I am writing in reply to your recent inquiry.

QUESTION PRESENTED:

Pursuant to N.Y. Ins. Law § 2101, as amended by Chapter 687 of the Laws of 2003, what activities may unlicensed employees or officers of an insurance agent or broker engage in without having to obtain a license?

CONCLUSION:

See analysis below.

FACTS:

You state that you have received inquiries from members of your organization who are confused about the new Producer Licensing Law that amended Article 21 of the Insurance Law (Chapter 687 of the Laws of 2003). You note that Chapter 687 left unchanged the exemption in Section 2101(a)(1) from the definition of insurance agents. However, you state that Chapter 687 added a new Section 2101(c)(2) regarding insurance brokers and added similar language in Section 2101(k).¹ This additional language has generated many questions from your members.

¹ Section 2101(k) defines an insurance producer.

You state that one of your members forwarded to you an insurer's list outlining activities such insurer regards as authorized and unauthorized activities for unlicensed employees to engage in. Specifically, you would like to know what activities customer service representatives of an insurance agency or insurance brokerage are permitted to engage in. The list provides as follows:

Authorized Activities:

Perform secretarial/receptionist duties such as:

- Answering phones
- Scheduling appointments (provided there is no discussion about insurance coverage, cost or related issues)
- Maintaining files and records
- Referring prospect or customer to agent or a licensed sales producer, where appropriate
- Word processing and data entry
- Assisting with advertising and mailing campaigns
- Accept payments on existing policies that are made in the office in situation in which there are no coverage discussions
- Secure expiration dates from prospects limited to the date the policy expires and the current carrier, and whether they would be interested in speaking to the agent or a licensed sales producer
- Take loss information from customers and report this information to claims department
- Handle changes to existing policies that do not involve any discussion of coverages or require the binding of additional coverages, increasing or decreasing coverages, removal of coverages, or the addition of vehicles
- Inform insureds as to coverages indicated in the policy record
- Receive requests for coverage for transmittal to the agent or a licensed sales producer

Unauthorized Activities:

- Prospect or solicit for insurance
- Quote premiums
- Discuss or provide advice concerning coverages, limits or deductibles

- Interview customers for the purpose of developing information as part of the completion of an application
- Bind new policies or make changes to existing policies that require the binding of additional coverages, increasing or decreasing coverages, removal of coverages, or the addition of vehicles
- Accept payments on new policies
- Accept payments on existing policies outside the office
- Receive compensation based on sales
- Be involved in any activity or transaction that is not in compliance with company policies and procedures or that is in violation of state licensing or other laws

ANALYSIS:

As a preliminary matter, please note that the Insurance Law does not use the term "customer service representative." However, we assume that in using that term you are referring to unlicensed in-office employees or officers of an insurance agent or broker. Further, new subsection (k) of Section 2101 includes a new definition, *insurance producer*, defined as "an insurance agent, insurance broker, reinsurance intermediary, excess lines broker, or any other person required to be licensed under the laws of this state to sell, solicit or negotiate insurance...." Subsection (k) also contains exemptions from licensing. To the extent that the exemptions in subsection (k) differ from those in amended subsections (a) and (c), the specific exemptions that are contained in amended subsections (a) and (c), for agents and brokers respectively, will govern.

N.Y. Ins. Law § 2102(a)(1), as amended by Chapter 687 of the Laws of 2003, provides as follows:

(a)(1) No person, firm, association or corporation shall act as an insurance producer or insurance adjuster in this state without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter.

An insurance agent is defined in N.Y. Ins. Law § 2101(a), as amended by Chapter 687 of the Laws of 2003. That section further provides that the term "insurance agent" shall not include certain employees, officers or persons. Section 2101(a) provides, in pertinent part, as follows:

(a) In this article, "insurance agent" means any authorized or acknowledged agent of an insurer...and any subagent or other representative of such an agent, who acts as such in the solicitation of, negotiation for, or sale of, an insurance, health maintenance organization or annuity contract, other than as a licensed insurance broker, except that such term shall not include:

(1) any regular salaried officer or employee of a licensed insurer, fraternal benefit society or health maintenance organization or of a licensed insurance agent, who does not solicit or accept from the public, outside of an office of such insurer, health maintenance organization or agent, applications or orders for any such contract, if such officer or employee does not receive a commission or other compensation for his services which commission or other compensation is directly dependent upon the amount of business done;

...

(8) a person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state[.]

With regard to brokers, N.Y. Ins. Law § 2101(c), as amended by Chapter 687 of the Laws of 2003, provides, in pertinent part, as follows:

(c) In this article, "insurance broker" means any person, firm, association or corporation who or which for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or selling, any insurance or annuity contract or in placing risks or taking out insurance, on behalf of an insured other than himself, herself or itself or on behalf of any licensed insurance broker, except that such term shall not include:

(1) any salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission;

(2) an officer, director or employee of a licensed insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(A) the officer, director or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(B) the officer, director or employee's function relates to underwriting, loss control, inspection or the processing,

adjusting, investigating or settling of a claim on a contract of insurance;² or

(C) the officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting licensed insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance.

...

(7) a person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of this state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be located or to be performed in this state[.]

As a preliminary matter, agents and brokers may delegate certain activities to their officers or employees, provided that the insurer or other principal does not prohibit or restrict the delegation and the Insurance Law does not otherwise prohibit the activity. Subject to the above, in-office delegation is within the discretion of the licensee, who must exercise reasonable judgment based upon considerations such as:

1. the nature and complexity of the task being delegated
2. the education, training, experience and other personal qualifications of the officer or employee who will be performing the task and
3. the type and extent of supervision and internal controls that will be in place.

With respect to the list of unauthorized activities that was drawn up by an insurer, please note that certain of those activities, such as soliciting insurance, may be engaged in by an unlicensed employee of an agent (but not of a broker) inside the office, pursuant to Section 2101(a)(1). Section 2101(a)(1) prohibits such employee of an agent from receiving a commission or other compensation for services which commission or compensation is directly dependent upon the amount of business done. In addition, other activities such as quoting premiums and accepting payments on policies may be merely administrative or ministerial in nature. As a result, such activities may also be engaged by an unlicensed employee of an agent or broker³ under certain conditions provided that, among

² Please note that while such unlicensed person engaging in these activities may be exempt from licensing as an insurance broker, to the extent that such activities involve adjusting, such person would need to obtain an adjuster's license pursuant to Section 2102(a)(1). As a general rule, the exemptions herein must be read in conjunction with the other limitations and requirements in the Insurance Law.


³ See Section 2101(a) & (c).

other things, such employee is not compensated based on sales and there is no discussion of insurance coverage. Thus, in order for us to make a determination as to permissibility, we would need additional and more specific information regarding such activities. Moreover, an insurer may restrict or prohibit the delegation of certain activities or duties to non-licensees, notwithstanding the statutory exemptions. Thus, an insurer may establish a list of non-delegable or unauthorized activities with respect to such insurer, even if the Insurance Law permits non-licensees to otherwise engage in such activities. A licensee that subsequently violates an insurer's prohibition or restriction on delegation may be found by the Superintendent to be acting in an untrustworthy or incompetent manner.

With regard to the authorized activities above, such activities as specifically outlined would be acceptable, provided that, among other things, the employee is not compensated based upon sales and there is discussion of coverage. Please note that unlicensed employees and officers that engage in any delegated activity do so only on behalf, and in the name, of the licensee, via the authority so delegated by the licensee. Thus, the licensee and any sublicensee must properly supervise the non-licensee and will be held strictly accountable by the Department for the activities of such non-licensees. Accordingly, it is incumbent upon the licensee and sublicensee to ensure that the unlicensed person is adequately trained, trustworthy, and aware of the limits on his or her ability to act on behalf of the licensee. Where a licensee has more than one sublicensee, the licensee should clearly delineate the supervisory responsibilities for each such sublicensee so that each unlicensed employee is under the supervision of at least one sublicensee.

I trust this is responsive to your inquiry.

Very truly yours,



D. Monica Marsh
Associate Attorney