

STATE OF NEBRASKA

DEPARTMENT OF INSURANCE

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Director



Dave Heineman
Governor

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BULLETIN

SUBJECT: WORKERS' COMPENSATION INSURANCE

Certain insurance programs are being marketed in Nebraska, as a replacement or alternative to a workers' compensation insurance policy, to employers who are clearly subject to the requirements of the Nebraska Workers' Compensation Act. This bulletin covers (1) contingent workers' compensation policies or endorsements; (2) occupational injury/accident or disability policies, and (3) workers' compensation plans that are alleging ERISA exemption. The purpose of this bulletin is to advise insurers, agents and producers that the Department considers the following activities contrary to Nebraska law.

1. Some programs offer contingent workers' compensation policies or endorsements which promise to issue a workers' compensation policy after a workers' compensation claim or lawsuit is adjudicated. The endorsements are sold in conjunction with an occupational injury/accident or disability policy which provides coverage in the event of a bodily injury or disease occurring on the job. These programs are typically written by an insurer which either is not licensed in Nebraska to transact the business of workers' compensation or uses policy forms which have not been approved by the Department. The Department considers the use of policy forms/endorsements by insurers which have not been approved by the Department a violation of the Property and Casualty Rate and Form Act and appropriate administrative action will be taken including penalties up to \$1,000.00 per violation.
2. Other programs offer an occupational injury/accident or disability policy representing that a policy meets all of the requirements and provisions of the Nebraska Workers' Compensation Act. In some cases, the policy has been filed with the Nebraska Department of Insurance; however, the filing has not been made for purposes of meeting the Nebraska Workers' Compensation Act. Employers and agents should be aware that such programs do not comply with the Workers' Compensation Act. Likewise, principals and

insurers which may require independent contractors, such as owner-operator truckers, to produce a certificate of insurance in order to do business with the principal should be aware that certificates of insurance based upon an occupational injury/accident or disability policy are not evidence of coverage under a workers' compensation policy. The Department considers the marketing of these products under the representation that the program is a replacement or an alternative to a workers' compensation policy a violation of the Unfair Insurance Trade Practices Act and appropriate administrative action will be taken including penalties up to \$1,000.00 per violation as well as possible license suspension or revocation.

3. Still other organizations appear to be engaged in marketing workers' compensation plans alleging they are exempt from Department regulation under ERISA. While it is possible to have ERISA exempt collectively-bargained employee welfare benefit plans, there is nothing in the law of the United States or of any individual state which exempts any plan from the state's workers' compensation insurance laws. Such plans are engaged in the unauthorized business of insurance in this state. Insurance agents, brokers or other producers marketing this type of product should be aware that they are liable to the insured for the full amount of the claim or loss which the unauthorized insurer fails to pay in addition to possible disciplinary sanctions against their license.

Inquiries concerning this bulletin should be directed to the Property and Casualty Division.



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