

September 29, 1978

SUBJECT: INSURANCE

CIRCULAR LETTER NO. 14 (1978)

TO: ALL INSURERS DOING BUSINESS SUBJECT TO SECTION 167-a OF THE INSURANCE LAW

RE: I. INSURED'S RIGHT TO REPRESENTATION BY A TERMINATED AGENT OR BROKER ON SECTION 167-a BUSINESS

II. COMMISSIONS PAYABLE TO A TERMINATED AGENT OR BROKER ON SECTION 167-A BUSINESS

I. Insured's right to representation by a terminated agent or broker on Section 167-a business. (Effect of Chapter 24 of the Laws of 1978)

The Insurance Department has received many inquiries concerning the rights of insureds, terminated producers and insurers under Section 167-a of the Insurance Law as amended by Chapter 24 of the Laws of 1978, effective March 20, 1978.

Chapter 24 of the Laws of 1978 amended subdivisions 1 and 9 of Section 167-a to redefine the phrase "required policy period" to include any period of "statutory extension" following the end of the previously mandated three year policy period. An insurer must now honor a request by its insured for continued representation by a terminated agent or broker during the redefined "required policy period." Prior to Chapter 24, insurers did not have to recognize a terminated producer when the risk was under a statutory extension.

Chapter 24 affects only motor vehicle policies subject to Section 167-a. It does not affect other personal lines subject to Section 167-a since no other personal lines have been the subject of any "statutory extension." Chapter 24 does not require an insurer to recognize a terminated producer who was not the producer of record on a particular risk on or after March 20, 1978. Chapter 24 does not revive a relationship which had ceased to exist prior to March 20, 1978.

Thus, the effect of Chapter 24 is to require that an insurer, upon the specific request of the insured, CONTINUE to recognize as producer of record a terminated agent or broker who was producer of record on or after March 20, 1978 for the mandatory three year period and for any "statutory extension" of a Section 167-a automobile risk.

ILLUSTRATIONS OF ABOVE PRINCIPLES:

1. A producer of record is terminated effective August 1, 1977. A private passenger automobile policy is in its third year, with a July 1, 1978 anniversary date. The first statutory extension therefore begins on July 1, 1978. Because Chapter 24 redefined "required policy period" to include any "statutory extension," the insured, upon specific request to the insurer, can have continued representation by the terminated producer. The producer is entitled to collect renewal commissions at the insurer's prevailing commission for such line of insurance during the newly defined "required policy period", which includes any "statutory extensions." (See II below re: commissions)

2. A producer is terminated effective August 1, 1977. On that date a private passenger automobile policy is in its first statutory extension and either written as a direct account of the insurer or through a producer designated by the insurer. The terminated producer had no right to represent the insured during any statutory extension, regardless of the insured's wishes. A "required policy period" at the time the producer was terminated was, by Chapter 348 of the Laws of 1976, limited to three years and did not include any statutory extension. The policy has a July 1, 1978 anniversary date. Chapter 24 does not require an insurer to revive a relationship with the

II. Commissions to terminated insurance agents or brokers on lines of insurance subject to Section 167-a.

It has also come to our attention that some insurers have established reduced commission schedules for terminated producers on Section 167-a business based on their terminated status. Section 167-a(9)(a) provides that: "The terminated insurance agent or broker shall be entitled to receive commissions on account of all business continued or written pursuant to this paragraph at the insurer's prevailing commission rate for such lines of insurance." (Emphasis added). The quoted language reflects changes effected by L. 1976, ch. 348. The original standard was "prevailing commission rate for such business." While "such business" have permitted distinctions between business originating from terminated producers and business from active producers, the quoted language in the current law permits no such distinctions.

The permissible criteria for determining the level of commission payable to a terminated agent or broker cannot be based on whether a producer of record is terminated or active. Some insurers have paid different commissions to producers of the same lines of insurance based upon factors and considerations. It is the Department's position that such variations are not proscribed by Section 167-a(9)(a), which does not mandate a single rate of commission for an entire line of insurance. Section 167-a(9)(a) has, however, since August 1, 1976, prohibited distinctions in commissions based upon the active or terminated status of a producer. To hold otherwise would be contrary to the plain language of the law and would frustrate the clear legislative directive that an insured has the right to choose to continue to be represented by the agent or broker of choice. Paying a terminated producer a reduced commission level discourages the producer from continuing to represent the insured, encourages a replacement of the business with another insurer, which may be contrary to the insured's interest, and generally undermines the purpose of the statute. These results would nullify the law, were not intended by the Legislature and cannot be permitted by the Department.

Any insurer which has established rates of commission on Section 167-a risks which arbitrarily discriminate between terminated and non-terminated producers for the same line of insurance is not complying with Section 167-a(9)(a). It is expected that insurers will review their practices since August 1, 1976, when the Section 167-a(9)(a) provision on the prevailing commission rate for "such lines of insurance" became effective, and take all steps necessary to effect full compliance with the statute since that date. On or before November 1, 1978 an officer of every insurer should advise the Department of the procedures it has adopted in this area. Replies should be directed to Deputy Superintendent John F. Lennon, New York State Insurance Department, 2 World Trade Center, New York, N.Y., 10047 with the reply envelope endorsed "Circular Letter No. 14 Reply."

Very truly yours,

[SIGNATURE]

Albert B. Lewis

Superintendent of Insurance