

MEMORANDUM 01-2004

TO: Insurance Producers
FROM: Wyoming Insurance Department
Date: January 14, 2004
Re: Non-sufficient funds fees

The Department of Insurance receives several inquiries each year regarding the propriety of charging a fee to those clients who issue your firm a non-sufficient fund (NSF) check for insurance coverage. The Department offers the following guidelines.

The Wyoming Insurance Code provisions that must be considered are as follows:

W.S. § 26-13-121. Illegal dealing in premiums; excess charges for insurance:

- (a) No person shall willfully collect any sum as premium or charge for insurance;
 - (ii) In excess of the premium or charge applicable to the insurance, and as specified in the policy, in accordance with the applicable classification and rates as filed with and approved by the commission.
 - (iii) In cases where classification, premiums or rates are not required by this code to be filed and approved, in excess of those specified in the policy and as fixed by the insurer. (Emphasis added.)

W.S. § 26-1-102(a) (xxii) defines "Premium" to mean:

the consideration for insurance, by whatever name called, and any assessment, membership, policy, survey, inspection, service or similar fee or other charge in consideration for an insurance contract is part of the premium. (Emphasis added.)

The payment of any NSF check fee assessment can not be made a condition of acceptance of the offer of payment of the insurance premium. If payment of the NSF fee were required before the insurance premium were accepted the NSF fee would then exceed the premium charged by the insurer. Thus a producer is prohibited from charging the NSF fee as a part of the insurance transaction. The NSF check collection process must be kept separate and apart from any fees or charges that could be viewed as an additional cost to the insurance premium.

The following examples illustrate the need for separation of premium payment and collection costs. In this first scenario, a policy holder writes a check that is deposited in the premium trust account. The producer waits for the check to clear before writing a trust check to the insurer. The check is returned NSF and the producer is charged a \$15.00 processing fee. The producer notifies the policy holder of the NSF check which also results in a failure to pay the premium. The policy holder comes to the office and offers to pay the premium but not the NSF check charge. The agent can not represent that a NSF charge must be paid before the premium will be accepted. The policy holder always has the right to send payment directly to the insurer and thus avoid the producer's NSF cost.

In a second scenario the producer deposits the insured's check and immediately writes a trust check for the premium. The insured's check is returned NSF. As far as the insurer is concerned the premium is paid. Now the insured offers to pay the check but not the NSF fee. The producer may accept the premium reimbursement or proceed under Wyoming Statutes § 6-3-702 through 6-3-706. Under these statutes the person issuing the NSF check may be liable for not only the sum of the check, but also costs of collection and reasonable collection fees. The key is that the insurer considers the premium paid.

In summary, the steps taken to collect any non-sufficient fund check collection fees must be separate and distinct from the premium cost associated with the insurance policy purchased. Please direct questions to James Mitchell, 307-777-6889.