WEST VIRGINIA CODE CHAPTER 33 ARTICLE 12

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§33-12-1. Purpose and scope.

This article governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes some statutory language to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance licenses.

This article does not apply to excess line and surplus line agents and brokers licensed pursuant to article twelve-c of this chapter except as provided in sections six, twelve, twenty-four and thirty-three of this article.

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§33-12-2. Definitions.

For the purpose of this article:

(a) "Business entity" means a corporation, association, partnership, limited liability company, or other legal entity.

(b) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

(c) "Individual" means any private or natural person as distinguished from a partnership, corporation, limited liability company or other legal entity.

(d) "Insurance" means any of the lines of authority in section ten, article one of this chapter.

(e) "Insurance agency" means an individual, corporation, partnership, association, limited liability company, or other legal entity except for an employee of the individual, corporation, partnership, association, limited liability company, or other legal entity, and other than an insurer or an adjuster as defined by section twelve-b, article one of this chapter, which employs individuals licensed to engage in activity or whose members engage in any activity be performed only by a licensed individual insurance producer or solicitor. It shall not include sole proprietor or partnerships in which there is only one licensed insurance producer.

(f) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. Wherever the word "agent" appears in this chapter, it shall mean an individual insurance producer.

(g) "Insurer" means every person engaged in the business of making contracts of insurance under section two, article one of this chapter.

(h) "License" means a document issued by this state's Insurance Commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

(i) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the Insurance Commissioner determines should be designated a form of limited line credit insurance.

(j) "Limited line credit insurance producer" means an individual who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through

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a master, corporate, group or individual policy.

(k) "Limited lines insurance" means those lines of insurance defined in section thirty-two of this article or any other line of insurance that the Insurance Commissioner considers necessary to recognize for the purposes of complying with subsection (g), section twelve of this article.

(l) "Limited lines producer" means an individual authorized by the Insurance Commissioner to sell, solicit or negotiate limited lines insurance.

(m) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract: Provided, That the individual engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(n) "Person" means an individual or a business entity.

(o) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(p) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(q) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

(r) "Uniform application" means the current version of the NAIC uniform application for resident and nonresident producer licensing.

(s) "Uniform business entity application" means the current version of the NAIC uniform business entity application for resident and nonresident insurance agencies.

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§33-12-3. License required.

(a) A person may not sell, solicit or negotiate insurance covering subjects of insurance resident, located or to be performed in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

(b) No person shall in West Virginia act as or hold himself or herself out to be an individual insurance producer or insurance agency or solicitor unless then licensed therefor pursuant to this article.

(c) No individual insurance producer, insurance agency or solicitor or any representative or employee thereof shall solicit or take application for, negotiate, procure or place for others any kind of insurance or receive or share, directly or indirectly, any commission or other valuable consideration arising from the sale, solicitation or negotiation of any insurance contract for which that person is not then licensed.

(d) No insurer shall accept any business from or pay any commission to any individual insurance producer who does not then hold an appointment as an individual insurance producer for such insurer pursuant to this article.

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§33-12-4. Exceptions to licensing.

(a) Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

(b) A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an 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; or

(C) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting 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;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities in this state are limited to advertising without the intent to

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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;

(6) An individual who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract: Provided, That individual is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(7) A 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.

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§33-12-5. Application for examination.

(a) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section fourteen of this article. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section may be developed and conducted under rules and regulations prescribed by the Insurance Commissioner.

(b) The Insurance Commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in subdivision (8), subsection (a), section six of this article.

(c) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the Insurance Commissioner as set forth in subdivision (8), subsection (a), section six of this article.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(e) An individual who fails to pass examination is limited to seven additional attempts to pass the examination.

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§33-12-6. Application for license.

(a) An individual applying for a resident insurance producer license shall make application to the Insurance Commissioner on the Uniform Application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the Insurance Commissioner shall find that the individual:

(1) Is at least eighteen years of age;

(2) Has not committed any act that is a ground for denial, suspension or revocation set forth in section twenty-four of this article;

(3) Where required by the Insurance Commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied;

(4) Has paid the fees set forth in section thirteen, article three of this chapter; and section ten of this article;

(5) Has successfully passed the examinations for the lines of authority for which the person has applied;

(6) On or after June 1, 1990, no solicitor's license will be issued which is not a renewal of an existing license;

(7) Does not intend to use the license principally for the purpose, in the case of life or accident and sickness insurance, of procuring insurance on himself or herself, members of his or her family or his or her relatives; or, as to insurance other than life and accident and sickness, upon his or her property or insurable interests of those of his or her family or his or her relatives or those of his or her employer, employees or firm, or corporation in which he or she owns a substantial interest, or of the employees of the firm or corporation, or on property or insurable interests for which the applicant or any relative, employer, firm or corporation is the trustee, bailee or receiver. For the purposes of this provision, a vendor's or lender's interest in property sold or being sold under contract or which is the security for any loan, shall not be considered to constitute property or an insurable interest of the vendor or lender;

(8) Satisfies the commissioner that he or she is trustworthy and competent. The commissioner may test the competency of an applicant for a license under this section by examination. Each examinee shall pay a $25 examination fee for each examination to the commissioner who shall deposit said examination fee into the state Treasury for the benefit of the state fund, general revenue. The commissioner may, at his or her discretion, designate an independent testing service to prepare and administer the examination subject to direction and approval by the commissioner, and examination fees charged by the service shall be paid by the applicant. In addition to examination fees charged by the independent

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testing service, the independent testing service shall collect and remit to the commissioner the $25 examination fee; and

(9) For new agents first licensed on or after July 1, 1989, completes a program of insurance education as established in section seven of this article.

(b) A business entity acting as an insurance agency is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the Insurance Commissioner shall find that:

(1) The insurance agency has disclosed to the Insurance Commissioner all officers, partners, and directors, whether or not they are licensed as insurance producers;

(2) The insurance agency's officers, directors, or partners are trustworthy, of good moral character, and of good business reputation;

(3) The insurance agency has paid the fees set forth as set forth in section ten of this article;

(4) The insurance agency has designated an individual licensed producer who is an officer, partner, or director responsible for the insurance agency's or business entity's compliance with the insurance laws and rules of this state;

(5) The insurance agency has registered with the commissioner the name of each natural person who, as an officer, director, partner, owner, or member of the agency, is acting as and is licensed as an insurance producer;

(6) The insurance agency has registered with the commissioner the name of each natural person who, as an officer, director, partner, owner, or member of the insurance agency or business entity, is acting as and is licensed as an insurance producer;

(7) The insurance agency or business entity has registered with the commissioner at least one individual who holds a valid insurance producer license for the line or lines of authority requested in the application;

(8) If the insurance agency's filing status is nonresident, the insurance agency or business entity has complied with the qualification requirements of section twelve of this article; and

(9) An insurance agency may qualify as a resident if the agency has its principal office in this state.

(c) The Insurance Commissioner may require any documents reasonably necessary to verify the information contained in an application.

(d) Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that may be approved by the Insurance

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§33-12-6a. Residency–Individuals–Agencies.

The commissioner may qualify an applicant as a resident of this state and shall issue an insurance producer license to any qualified resident person of this state in accordance with the following:

(1) An individual applicant may qualify as a resident only if he or she resides in this state. Any license issued pursuant to any application claiming residency for licensing purposes shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in or thereafter claims to be a resident of any other state or jurisdiction, or if the licensee ceases to be a resident of this state.

(2) An insurance agency or business entity may qualify as a resident if the agency has its principal office in this state;

(3) The resident person is in compliance with the requirements of section six of this article.

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§33-12-6b. Licensing of agencies.

(a) For the purposes set forth in section twenty-three of this article, an insurance agency shall be licensed as an insurance producer.

(b) The insurance agency shall maintain a current list with the name of every individual who, as a member, officer, director, stockholder, owner, or employee of the insurance agency, is acting as and is licensed as an insurance producer. Each insurance agency shall make such list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

(c) The insurance agency shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of every change relative to the licensed individual insurance producers registered and authorized to act as insurance producers for the insurance agency.

(d) The insurance agency shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of any change relative to the insurance agency or business entity name, officers, directors, partners, or owners, to report a merger, or that the insurance agency or business entity has ceased doing business in this state.

(e) When an insurance agency ceases to do business in this state, the insurance agency shall return the producer license to the commissioner within ten days after ceasing to do business.

(f) When an insurance agency changes its principal address to another state, the insurance agency shall, within ten days, notify the commissioner and return the producer license for cancellation. Relicensing will be subject to section twelve of this article.

(g)(1) The insurance agency shall comply with section six of this article.

(2) A nonresident insurance agency shall also comply with the qualification requirements of section twenty-three of this article.

(h) The provisions of this section become effective on or after July 1, 2003.

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§33-12-7. Board of insurance agent education.

The Board of Insurance Agent Education shall continue in existence. The Board of Insurance Agent Education shall consist of the commissioner of insurance and six members appointed by the commissioner. The members appointed by the commissioner shall be two licensed property and casualty insurance agents, one licensed life insurance agent, one licensed health and accident insurance agent, one representative of a domestic insurance company, and one representative of a foreign insurance company: Provided, That no board shall be appointed that fails to include companies or agents for companies representing at least two thirds of the net written insurance premiums in the state. Each member shall serve a term of three years and shall be eligible for reappointment.

(a) The Board of Insurance Agent Education shall establish the criteria for a program of insurance education and submit the proposal for the approval of the commissioner on or before December 31, of each year.

(b) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this article.

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§33-12-8. Continuing education required.

The purpose of this section is to provide continuing education requirements under guidelines set up under the Insurance Commissioner's office in conjunction with the Board of Insurance Agent Education.

(a) This section applies to individual insurance producers licensed to engage in the sale of the following types of insurance:

(1) *Life*. — Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) *Accident and health or sickness*. — Insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(3) *Property*. — Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) *Casualty*. — Insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(5) *Variable life and variable annuity products*. — Insurance coverage provided under variable life insurance contracts and variable annuities;

(6) *Personal lines*. — Property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(7) Any other line of insurance permitted under state laws or regulations.

(b) This section does not apply to:

(1) Individual insurance producers holding limited line credit insurance licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any limited or restricted license as the commissioner may exempt; and

(2) Individual insurance producers selling credit life or credit accident and health insurance.

(c)(1) The Board of Insurance Agent Education as established by §33-12-7 of this code shall develop a program of continuing insurance education and submit the proposal for the approval of the commissioner on or before December 31 of each year. No program may be approved by the commissioner that includes a requirement that any individual insurance producer complete more than 24 hours of continuing insurance education biennially. No program may be approved by the commissioner that includes a requirement that any of the following individual insurance producers complete more than six hours of continuing

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insurance education biennially:

(A) Individual insurance producers who sell only preneed burial insurance contracts; and

(B) Individual insurance producers who engage solely in telemarketing insurance products by a scripted presentation which scripted presentation has been filed with and approved by the commissioner.

(C) The biennium mandatory continuing insurance education provisions of this section become effective on the reporting period beginning July 1, 2006.

(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents' association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(d) Individual insurance producers licensed to sell insurance and who are not otherwise exempt shall satisfactorily complete the courses or programs of instructions the commissioner may prescribe.

(e) Every individual insurance producer subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs, or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs, or seminars of instruction.

(f) Subject to the approval by the commissioner, the active annual membership by an individual insurance producer in an organization or association recognized and approved by the commissioner as a state, regional, or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: *Provided*, That not more than two hours of continuing insurance education may be awarded to an individual insurance producer for membership in a professional insurance organization during a biennial reporting period. Credit for continuing insurance education pursuant to this subdivision may only be awarded to individual insurance producers who are required to complete more than six hours of continuing education biennially.

(g) Individual insurance producers who are required to complete more than six hours of continuing education biennially and who exceed the minimum continuing education requirement for the biennial reporting period may carry-over a maximum of six credit hours only into the next reporting period.

(h) Any individual insurance producer failing to meet the requirements mandated in this section and who has not been granted an extension of time, with respect to the

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requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(i) The commissioner shall notify the individual insurance producer of his or her suspension pursuant to §33-12-8(h) of this code by electronic mail or regular mail, if requested, to the last respective address on file with the commissioner pursuant to §33-12-9(f) of this code. Any individual insurance producer who has had a suspension notice entered against him or her pursuant to this section may, within 30 calendar days of receipt of the notice, file with the commissioner a request for a hearing for reconsideration of the matter.

(j) Any individual insurance producer who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically canceled and is subject to the education and examination requirements of §33-12-5 of this code.

(k) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for insurers. The commissioner shall charge a fee of $25 to continuing education providers for each continuing education course submitted for approval which shall be used to maintain the continuing education system. The commissioner may, at his or her discretion, designate an outside administrator to provide all of or part of the administrative duties of the continuing education system subject to direction and approval by the commissioner. The fees charged by the outside administrator shall be paid by the continuing education providers. In addition to fees charged by the outside administrator, the outside administrator shall collect and remit to the commissioner the $25 course submission fee.

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§33-12-8a. Producer training for long-term care products; record retention requirements.

(a) (1) No individual may sell, solicit or negotiate long-term care insurance unless he or she is licensed as a producer for accident and sickness insurance in accordance with the provisions of this article and has completed a one-time training course that meets the requirements of subsection (b) of this section: Provided, That a producer selling, soliciting or negotiating long-term care insurance on July 1, 2009, is permitted to continue such activities and must complete the one-time training course prior to July 1, 2010.

(2) In addition to the one-time training course required in subdivision (1) of this subsection, every producer who sells, solicits or negotiates long-term care insurance shall complete ongoing training that meets the requirements of subsection (b) of this section.

(b) (1) The one-time training shall be no less than eight hours.

(2) Beginning July 1, 2010, the ongoing training required by subsection (a) of this section shall be no less than four hours in each mandatory continuing education biennium subsequent to that in which the one-time training was completed.

(3) The training required by this section shall consist of topics related to long-term care insurance, long-term care services and, if applicable, qualified state long-term care insurance partnership programs, including, but not limited to, state and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid; available long-term services and providers; changes or improvements in long-term care services or providers; alternatives to the purchase of private long-term care insurance; the effect of inflation on benefits and the importance of inflation protection; and consumer suitability standards and guidelines: Provided, That the training required by this section may not include training that is insurer or company product-specific or that includes any sales or marketing information, materials or training, other than those required by state or federal law.

(4) The training required by this section may be approved for continuing education credit by the board of Insurance Agent Education in the manner as set forth in section eight of this article.

(c) An insurer subject to this chapter shall:

(1) Verify that each producer appointed to sell its long-term care products is compliant with this section before the producer is permitted to sell, solicit or negotiate such products; and

(2) Maintain records supporting the verification for five years and make the records available to the commissioner upon request.

(d) If this state participates in the federal Long-Term Care Partnership Program established

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under the Deficit Reduction Act of 2005, Pub. L. 109-171:

(1) All training required by this section must be approved by the commissioner; and

(2) Any insurer subject to this chapter shall maintain records with respect to the training of its appointed producers that will allow the commissioner to provide assurances to the state Medicaid agency that producers have received the training required by this section and that completion of such training is sufficient to demonstrate that the producer understands partnership policies and their relationship to public and private coverage of long-term care, including Medicaid, in this state.

(e) A nonresident individual producer's satisfaction of another state's training requirements is satisfaction of this section.

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§33-12-9. Issuance of license.

(a) Unless denied licensure pursuant to §33-12-24 of this code, individuals who have met the requirements of §33-12-5 and §33-12-6 of this code shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) Life insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) *Accident and health or sickness*. — Insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(3) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) *Casualty*. — Insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(5) *Variable life and variable annuity products*. — Insurance coverage provided under variable life insurance contracts and variable annuities;

(6) *Personal lines*. — Property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(7) *Credit*. — Limited line credit insurance; or

(8) Any other line of insurance permitted under state laws or regulations.

(b) An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in §33-3-13 of this code is paid and education requirements for resident individual producers are met by the due date.

(c) An individual insurance producer who allows his or her license to lapse may, within 12 months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

(d) An individual licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(e) The license shall contain the licensee’s name, address, personal identification number,

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and the date of issuance, the lines of authority, the expiration date, and any other information the Insurance Commissioner considers necessary.

(f) At the time of application for licensure, the applicant shall inform the Insurance Commissioner of the applicant's full name, physical and mailing address, if different, and electronic mail address. Each agent, insurance agency, solicitor, or service representative that is licensed on July 1, 2021, shall provide the Insurance Commissioner with the licensee's electronic mail address in connection with the next license renewal application of the respective licensee. If a change occurs to the licensee's name, physical address, mailing address, or electronic mail address after licensure, the licensee shall inform the Insurance Commissioner by any means acceptable to the Insurance Commissioner of the updated contact information within 30 days of the change. Failure to timely inform the Insurance Commissioner of a change in legal name, residency, mailing address, or electronic mail address may result in a penalty pursuant to §33-12-24 of this code. The commissioner shall maintain the information provided pursuant to this subsection for each agent, insurance agency, solicitor, and service representative on file.

(g) In order to assist in the performance of the Insurance Commissioner's duties, the Insurance Commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the Insurance Commissioner and the nongovernmental entity may consider appropriate.

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§33-12-10. Fees.

The fee for an individual insurance producer's license shall be $25, the fee for a solicitor's license shall be $25 and the fee for an insurance agency producer license shall be $200. The commissioner shall receive the following fees from individual insurance producers, solicitors and insurance agency producers: For letters of certification, $5; for letters of clearance, $10; and for duplicate license, $5. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter.

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§33-12-11. Countersignature.

No contract of insurance covering a subject of insurance, resident, located or to be performed in this state, shall be executed, issued or delivered by any insurer unless the contract or, in the case of an interstate risk, a countersignature endorsement carrying full information as to the West Virginia risk, is signed or countersigned in writing by a licensed resident agent of the insurer, except that excess line insurance shall be countersigned by a duly licensed excess line broker. This section does not apply to: Reinsurance; credit insurance; any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce or covering any liability or other risks incident to the ownership, maintenance or operation thereof; any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto. Countersignature of a duly licensed resident agent of the company originating a contract of insurance participated in by other companies as cosureties or coindemnitors shall satisfy all countersignature requirements in respect to such contract of insurance: Provided, That the countersignature requirements of this section shall no longer be required for any contract of insurance executed, issued or delivered on or after December 31, 2004.

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§33-12-12. Nonresident licensing.

(a) Unless denied licensure pursuant to section twenty-four, a nonresident person shall receive a nonresident producer license if:

(1) The person is currently licensed as a resident and in good standing in his or her home state;

(2) The person has submitted the proper request for licensure and has paid the fees required by section thirteen, article three of this chapter;

(3) The nonresident person holds a similar license that is awarded on the same basis in the nonresident's home state and for the same line or lines of authority applied for in this state;

(4) The person has submitted or transmitted to the Insurance Commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application; and

(5) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(b) An insurance agency may qualify as a nonresident if the agency has its principal office located in another state.

(c) The Insurance Commissioner may verify the producer's licensing status through the producer database maintained by the national association of Insurance Commissioners, its affiliates or subsidiaries.

(d) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

(e) If the insurance department of the nonresident insurance producer's resident state suspends, terminates, or revokes the producer's insurance license in that state, the nonresident insurance producer shall notify the commissioner and shall return the West Virginia nonresident license.

(f) Notwithstanding any other provision of this article, an individual licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to subsection (a) of this section. Except as to subsection (a), nothing in this section otherwise amends or supercedes any provision of sections one through fourteen, article twelve-c of this chapter.

(g) Notwithstanding any other provision of this article, an individual licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall

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receive a nonresident limited lines producer license, pursuant to subsection (a) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of subsection (e), section twelve of this article, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to subdivisions (1) through (6), subsection (a), section nine of this article.

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§33-12-13. Agent resident in contiguous municipalities.

An agent who has his or her residence in an urban community composed of two immediately contiguous municipal corporations not separated by a river or other stream, one of which is located in this state and the other located in another state, shall be considered a resident of this state for the purposes of this article if his or her residence is in any part of such urban community and the state wherein the other municipal corporation is located has established by law or regulation like requirements as to residence of agents in such urban community.

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§33-12-14. Exemption from examination.

(a) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination. This exemption is only available if the individual is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the national association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(b) An individual licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section five of this article. No prelicensing education or examination shall be required of that individual to obtain any line of authority previously held in the prior state except where the Insurance Commissioner determines otherwise by regulation.

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§33-12-15. Assumed names.

An insurance producer doing business under any name other than the producer's legal name is required to notify the Insurance Commissioner prior to using the assumed name.

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§33-12-16. Temporary licensing.

(a) The Insurance Commissioner may issue an individual a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the Insurance Commissioner considers that the temporary license is necessary for the servicing of an insurance business in the following cases:

(1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business;

(2) To the designee of a licensed insurance producer entering active service in the Armed Forces of the United States of America; or

(3) In any other circumstance where the Insurance Commissioner considers that the public interest will best be served by the issuance of this license.

(b) The Insurance Commissioner may by order limit the authority of any temporary licensee in any way considered necessary to protect insureds and the public. The Insurance Commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The Insurance Commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

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§33-12-17. Expiration of license; renewal.

(a) The commissioner may, in his or her discretion, fix the dates of expiration of respective licenses for individual insurance producers and solicitors in any manner as is considered by him or her to be advisable for an efficient distribution of the work load of his or her office. If the expiration date so fixed would upon first occurrence shorten the period for which license fee has theretofore been paid, no refund of unearned fee shall be made; and if the expiration date so fixed would upon first occurrence lengthen the period for which license fee had theretofore been paid, the commissioner shall charge no additional fee for the lengthened period. If another date is not so fixed by the commissioner, each license shall, unless continued as herein above provided, expire at midnight on the thirty-first day of May next following the date of issuance. The commissioner shall renew annually on the date as provided for in this section the license of the licensee who qualifies and makes application therefor, and has paid the fees set forth in section thirteen, article three of this chapter; and section ten of this article.

(b) All producer licenses of insurance agencies shall expire at midnight on June 30 following the date of issuance. The commissioner shall renew annually the license of all licensees who qualify and make application therefor and have paid the fees set forth in section ten of this article.

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§33-12-18. Individual insurance producer to deal only with licensed insurer or solicitor; appointment as individual insurance producer required.

(a) An individual insurance producer may not act as an agent of an insurer unless the individual insurance producer becomes an appointed agent of that insurer. An individual insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(b) To appoint an individual insurance producer as its agent, the appointing insurer shall file, in a format approved by the Insurance Commissioner, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint an individual insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

(c) Upon receipt of the notice of appointment, the Insurance Commissioner shall verify within a reasonable time not to exceed thirty days that the individual insurance producer is eligible for appointment. If the individual insurance producer is determined to be ineligible for appointment, the Insurance Commissioner shall notify the insurer within five days of its determination.

(d) An insurer shall pay a nonrefundable appointment processing fee, in the amount and method of payment set forth in section thirteen, article three of this chapter, for each appointment notification submitted by the insurer to the commissioner.

(e) An insurer shall remit, in a manner prescribed by the Insurance Commissioner, a renewal appointment fee in the amount set forth in section thirteen, article three of this chapter no later than midnight the thirty-first day of May annually.

(f) Each insurer shall maintain a current list of individual insurance producers appointed to accept applications on behalf of the insurer. Each insurer shall make a list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

(g) Insurance agencies licensed as producers are not subject to the provisions of this section.

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§33-12-19. Solicitor to act only through appointed agent.

A solicitor shall solicit and receive applications for insurance only for the duly licensed agent who appointed such solicitor, and shall report all business through the agent. The expiration, cancellation, suspension or revocation of the license of the appointing agent shall automatically expire, cancel, suspend or revoke the solicitor's license in like manner, and the appointing agent may cancel a solicitor's license at any time by written request to the commissioner. No agent may apply for licenses for more than two solicitors. No solicitors shall be permitted for life insurance agents.

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§33-12-20. Personal liability of agent.

Any agent who participates directly or indirectly in effecting any insurance contract, except authorized reinsurance, upon any subject of insurance resident, located or to be performed in this state, where the insurer is not licensed to transact insurance in this state, shall be personally liable upon the contract as though such agent were the insurer thereof. This section shall not apply to excess line insurance procured in the manner provided in article twelve-c of this chapter, nor to ocean marine insurance or marine protection and indemnity insurance.

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§33-12-21. Coverage must be placed with a solvent insurer.

No agent, or excess line broker shall knowingly place any coverage in an insolvent insurer.

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§33-12-22. Person soliciting insurance is agent of insurer.

Any person who shall solicit within this state an application for insurance shall, in any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, be regarded as the agent of the insurer and not the agent of the insured.

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§33-12-23. Payment of commissions.

(a) The entire commission payable by any insurer licensed to transact insurance in this state on any insurance policy shall be paid directly to the licensed individual insurance producer who countersigns the policy. The countersigning individual insurance producer may not pay any part of the commission to any person other than a licensed individual insurance producer: Provided, That the portion of such commission retained by the countersigning individual insurance producer may not be less than ten percent of the gross policy premium or fifty percent of the commission payable by the insurer as provided herein, whichever is the lesser amount. The term "commission" as used herein shall include engineering fees, service fees or any other compensation incident to the issuance of a policy payable by or to any insurer or individual insurance producer: Provided, however, That the provisions and requirements of this subsection shall no longer be required for any insurance contract executed, issued or delivered after December 31, 2004.

(b) It shall be unlawful for any insurer or individual insurance producer to pay, and any person to accept, directly or indirectly, any commission except as provided in this section: Provided, That any licensed individual insurance producer may pay his or her commissions, or direct that his or her commissions be paid, to a business entity licensed as an insurance producer if:

(1) The business entity is engaged, through its licensed individual insurance producers, in conducting an insurance agency business with respect to the general public;

(2) If a partnership licensed as an insurance agency producer, each partner satisfies the commissioner that he or she meets the licensing qualifications as set forth in section six of this article;

(3) If a corporation licensed as an insurance agency producer, each officer, employee or any one or more stockholders owning, directly or indirectly, the controlling interest in the corporation satisfies the commissioner that he or she meets the licensing qualifications as set forth in section six of this article. The requirements set forth in this subdivision do not apply to clerical employees or other employees not directly engaged in the selling or servicing of insurance;

(4) If a limited liability company licensed as an insurance agency producer, each officer, employee or any one or more members owning, directly or indirectly, the controlling interest in a limited liability company satisfies the commissioner that he or she meets the licensing qualifications as set forth in section six of this article. The requirements set forth in this subdivision do not apply to clerical employees or other employees not directly engaged in the selling or servicing of insurance; and

(5) If any other business entity licensed as an insurance agency producer, approval is granted by the commissioner.

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(c) Subsections (a) and (b) of this section do not apply to reinsurance nor to limited line credit insurance, limited lines insurance, any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, any liability or other risks incident to the ownership, maintenance or operation thereof, any contract of insurance covering any property in interstate or foreign commerce or any liability or risks incident thereto.

(d) An insurance company or insurance producer may not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(e) A person may not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(f) Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this article at the time of the sale, solicitation or negotiation and was so licensed at that time.

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§33-12-24. Revocation, suspension or refusal to renew license; penalty.

(a) The commissioner may examine and investigate the business affairs and conduct of every person applying for or holding an insurance producer license, solicitor's license or excess line broker's license to determine whether such person has been or is engaged in any violation of the insurance laws or rules of this state or has engaged in unfair or deceptive acts or practices in any state.

(b) The Insurance Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license, solicitor's license or excess line broker's license, or may levy a civil penalty or any combination of actions, for any one or more of the following causes:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the Insurance Commissioner or of another state's Insurance Commissioner;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of or pleaded nolo contendere to any felony;

(7) Been convicted of or pleaded nolo contendere to a misdemeanor in connection with his or her activities as an agent, solicitor, or excess line broker;

(8) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(9) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(10) Having an insurance producer license, solicitor license, excess line broker license or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(11) Forging another's name to an application for insurance or to any document related to an insurance transaction or fraudulently procured a forged signature to an insurance application or any other document, knowing the signature to be forged;

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(12) Improperly using notes or any other reference material to complete an examination for an insurance producer license;

(13) Knowingly accepting insurance business from an individual who is not licensed;

(14) Failing to comply with an administrative or court order imposing a child support obligation;

(15) Having a statutory lien recorded for failing to pay state income tax or comply with any administrative or court order directing payment of state income tax; or

(16) Obtained the license for the purpose of writing controlled business, as described in subdivision (7), subsection (a), section six of this article;

(c) In the event that the action by the Insurance Commissioner is to nonrenew or to deny an application for a license, the Insurance Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Insurance Commissioner within ten days for a hearing before the Insurance Commissioner to determine the reasonableness of the Insurance Commissioner's action. The hearing shall be held within forty-five days and shall be held pursuant to section thirteen, article two of this chapter.

(d) The producer's license of a business entity may be placed on probation, suspended, revoked, refused or have civil penalty or any combination of actions, if the Insurance Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership, corporation, limited liability company or other business entity and the violation was neither reported to the Insurance Commissioner nor corrective action taken.

(e) In addition to or in lieu of any applicable denial, probation, suspension or revocation of a license, a person may, after hearing, be subject to a civil penalty in a sum not to exceed $5,000. Upon the failure of the licensee to pay such penalty by delivery of the sum to the commissioner within thirty days of notice thereof, the commissioner shall revoke or suspend such license.

(f) The Insurance Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article against any person even if the person's license or registration has been surrendered or has lapsed by operation of law.

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§33-12-25. Termination of authority to represent insurer.

(a) Termination for cause. -– An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the Insurance Commissioner within thirty days following the effective date of the termination, using a format prescribed by the Insurance Commissioner, if the reason for termination is one of the reasons set forth in section twenty-four of this article or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section twenty-four of this article. Upon the written request of the Insurance Commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

(b) Termination without cause. -- An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in section twenty-four of this article, shall notify the Insurance Commissioner within thirty days following the effective date of the termination, using a format prescribed by the Insurance Commissioner. Upon written request of the Insurance Commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(c) Ongoing notification requirement. -- The insurer or the authorized representative of the insurer shall promptly notify the Insurance Commissioner in a format acceptable to the Insurance Commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Insurance Commissioner in accordance with subsection (a) of this section had the insurer then known of its existence.

(d) Copy of notification to be provided to producer. --

(1) At the time of making the notification required by subsections (a), (b) and (c) of this section, the insurer shall simultaneously mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in section twenty-four of this article, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the Insurance Commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the Insurance Commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (f) of this section.

(e) Immunities. --

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(1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the Insurance Commissioner, or an organization of which the Insurance Commissioner is a member and that compiles the information and makes it available to other Insurance Commissioners or regulatory or law-enforcement agencies may not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the Insurance Commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (a) of this section was reported to the Insurance Commissioner, provided that the propriety of any termination for cause under subsection (a) is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(2) In any action brought against a person that may have immunity under subdivision (1), subsection (e) of this section for making any statement required by this section or providing any information relating to any statement that may be requested by the Insurance Commissioner, the party bringing the action shall plead specifically in any allegation that subdivision (1), subsection (e) does not apply because the person making the statement or providing the information did so with actual malice.

(3) Subdivision (1), subsection (e) or subdivision (2), subsection (e) shall not abrogate or modify any existing statutory or common law privileges or immunities.

(f) Confidentiality. --

(1) Any documents, materials or other information in the control or possession of the department of insurance that is furnished by an insurer, producer or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the Insurance Commissioner in an investigation pursuant to this section shall be confidential by law and privileged, may not be subject to chapter twenty-nine-b of this code, may not be subject to subpoena, and may not be subject to discovery or admissible in evidence in any private civil action. However, the Insurance Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Insurance Commissioner's duties.

(2) Neither the Insurance Commissioner nor any person who received documents, materials or other information while acting under the authority of the Insurance Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (1) of subsection (f).

(3) In order to assist in the performance of the Insurance Commissioner's duties under this article, the Insurance Commissioner:

(A) May share documents, materials or other information, including the confidential and

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privileged documents, materials or information subject to subdivision (1) of this subsection, with other state, federal, and international regulatory agencies, with the national association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(B) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(C) May enter into agreements governing sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (3) of this subsection.

(5) Nothing in this article shall prohibit the Insurance Commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to chapter twenty-nine-b of this code to a database or other clearinghouse service maintained by the national association of Insurance Commissioners, its affiliates or subsidiaries of the national association of Insurance Commissioners.

(g) Penalties for failing to report. -– An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with subsection (e), section twenty-four of this article.

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§33-12-26.

Repealed.

Acts, 2004 Reg. Sess., Ch. 141.

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§33-12-27. Payment of commissions under assigned risk plan.

An insurer participating in a plan for assignment of personal injury liability insurance or property damage liability insurance on owner's automobiles or operators, which plan has been approved by the commissioner, may pay a commission to a qualified individual insurance producer who is licensed to act as individual insurance producer for any insurer participating in the plan when the individual insurance producer is designated by the insured as the individual insurance producer of record under an automobile assigned risk plan pursuant to which a policy is issued under the plan and section eleven of this article is not applicable thereto.

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§33-12-28. Service representative permit.

Individual nonresidents of West Virginia, employed on salary by an insurer, who enter the state to assist and advise resident individual insurance producers in the solicitation, negotiation, making or procuring of contracts of insurance on risks resident, located or to be performed in West Virginia shall obtain a service representative permit. The commissioner may, upon receipt of a properly prepared application, issue the permit without requiring a written examination therefor. On or after July 1, 2004, no service representative license will be issued which is not a renewal of an existing license. The fee for a service representative permit shall be $25 and the permit shall expire at midnight on the thirty-first day of March next following the date of issuance. Issuance of a service representative permit may not entitle the holder to countersign policies. The representative may not in any manner sell, solicit, negotiate, make or procure insurance in this state except when in the actual company of the licensed resident individual producer whom he or she has been assigned to assist. All fees collected under this section shall be used for the purposes set forth in section thirteen, article three of this chapter.

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§33-12-29. Notice of hearing before the commissioner; failure to appear; entry of orders; appeal.

(a) When conducting any hearing authorized by section thirteen, article two of this chapter which concerns any insurance producer, solicitor, or service representative, the commissioner shall give notice of the hearing and the matters to be determined therein to the insurance producer, solicitor or service representative by certified mail, return receipt requested, sent to the last address filed by the person or entity pursuant to subsection (e), section nine of this article.

(b) If an insurance producer, solicitor or service representative fails to appear at the hearing, the hearing may proceed, at which time the commissioner shall establish that notice was sent to the person pursuant to this section prior to the entry of any orders adverse to the interests of the insurance producer, solicitor or service representative based upon the allegations against a person which were set forth in the notice of hearing. Certified copies of all orders entered by the commissioner shall be sent to the person affected therein by certified mail, return receipt requested, at the last address filed by such person with the division.

(c) An insurance producer, solicitor or service representative who fails to appear at a hearing of which notice has been provided pursuant to this section, and who has had an adverse order entered by the commissioner against them as a result of their failure to so appear may, within thirty calendar days of the entry of an adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto, which demonstrates good and reasonable cause for the person's failure to appear, and may request reconsideration of the matter and a new hearing. The commissioner in his or her discretion, and upon a finding that the insurance producer, solicitor or service representative has shown good and reasonable cause for his or her failure to appear, shall issue an order that the previous order be rescinded, that the matter be reconsidered, and that a new hearing be set.

(d) Orders entered pursuant to this section are subject to the judicial review provisions of section fourteen, article two of this chapter.

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§33-12-30. Termination of contractual relationship prohibited.

No insurance company may cancel, refuse to renew or otherwise terminate a written contractual relationship with any individual insurance producer who has been employed or appointed pursuant to that written contract by an insurance company as a result of any analysis of a loss ratio resulting from claims paid under the provisions of an endorsement for uninsured and underinsured motor vehicle coverage issued pursuant to the provisions of section thirty-one, article six of this chapter, nor may any provision of that contract, including the provisions for compensation therein, operate to deter or discourage the individual insurance producer from selling and writing endorsements for optional uninsured or underinsured motor vehicle coverage.

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§33-12-31. Termination of contractual relationship; continuation of certain commissions; exceptions.

(a) In the event of a termination of a contractual relationship between a duly licensed individual insurance producer and an automobile insurer of private passenger automobiles who is withdrawing from writing private passenger automobile insurance within the state, the insurer shall pay the individual insurance producer a commission, equal to the commission the individual insurance producer would have otherwise been entitled to under his or her contract with the insurer, for a period of two years from the date of termination of the contractual relationship for those renewal policies that cannot otherwise be canceled or nonrenewed pursuant to law, which policies the individual insurance producer continues to service. The insurer must continue the appointment of the individual insurance producer for the duration of time the individual insurance producer continues to service the business: Provided, That this requirement shall not obligate the withdrawing insurer to accept any new private passenger automobile insurance within the state.

(b) Subsection (a) of this section does not apply to an individual insurance producer who is an employee of the insurer or an individual insurance producer as defined by article twelve-a of this chapter or an individual insurance producer who by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to others.

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§33-12-32. Limited licenses for rental companies.

(a) Purpose. -- This section authorizes the Insurance Commissioner to issue limited licenses for the sale of automobile rental coverage.

(b) Definitions. -- The following words when used in this section shall have the following meanings:

(1) "Authorized insurer" means an insurer that is licensed by the commissioner to transact insurance in West Virginia.

(2) "Automobile rental coverage" or "rental coverage" is insurance offered incidental to the rental of a vehicle as described in this section.

(3) "Limited license" means the authorization by the commissioner for a person to sell rental coverage as an individual insurance producer of an authorized insurer pursuant to the provisions of this section without the necessity of individual insurance producer prelicensing education, examination or continuing education.

(4) "Limited licensee" is an individual resident of this state or nonresident of this state who obtains a limited license.

(5) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental company for rental or lease.

(6) "Rental company" means any person or entity in the business of providing private motor vehicles to the public under a rental agreement for a period not to exceed ninety days.

(7) "Renter" means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed ninety days.

(8) "Vehicle" or "rental vehicle" means a motor vehicle of the private passenger type including passenger vans, minivans and sport utility vehicles and of the cargo type, including cargo vans, pick-up trucks and trucks with a gross vehicle weight of twenty-six thousand pounds or less and which do not require the operator to possess a commercial driver's license.

(9) "Rental period" means the term of the rental agreement.

(c) The commissioner may issue a limited license for the sale of automobile rental coverage to an employee of a rental company, who has satisfied the requirements of this section.

(d) As a prerequisite for issuance of a limited license under this section, there shall be filed with the commissioner a written application for a limited license, signed by the applicant, in a form or forms and supplements thereto and containing any information as the commissioner may prescribe. The limited licensee shall pay to the Insurance Commissioner

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an annual fee of $25.

(e) The limited licensee shall be appointed by the licensed insurer or insurers for the sale of automobile rental coverage. The employer of the limited licensee shall maintain at each insurance sales location a list of the names and addresses of employees which are selling insurance at the location.

(f) In the event that any provision of this section or applicable provisions of the insurance code is violated by a limited licensee or other employees operating under his or her direction, the commissioner may:

(1) After notice and a hearing, revoke or suspend a limited license issued under this section in accordance with the provisions of section thirteen, article two of this chapter; or

(2) After notice and hearing, impose any other penalties, including suspending the transaction of insurance at specific locations where applicable violations of the insurance code have occurred, as the commissioner considers to be necessary or convenient to carry out the purposes of this section.

(g) Any limited license issued under this section shall also authorize any other employee working for the same employer and at the same location as the limited licensee to act individually, on behalf and under the supervision of the limited licensee with respect to the kinds of coverage authorized in this section. In order to sell insurance products under this section at least one employee who has obtained a limited license must be present at each location where insurance is sold. All other employees working at that location may offer or sell insurance consistent with this section without obtaining a limited license. However, the limited licensee shall directly supervise and be responsible for the actions of all other employees at that location related to the offer or sale of insurance as authorized by this section. No limited licensee under this section may advertise, represent or otherwise hold himself or herself or any other employees out as licensed insurers or individual insurance producers.

(h) No automobile rental coverage insurance may be issued by a limited licensee pursuant to this section unless:

(1) The rental period of the rental agreement does not exceed ninety consecutive days; and

(2) At every rental location where rental agreements are executed, brochures or other written material are readily available to the prospective renter that:

(A) Summarize, clearly and correctly, the material terms of coverage offered to renters, including the identity of the insurer;

(B) Disclose that the coverage offered by the rental company may provide a duplication of coverage provided by a renter's personal automobile insurance policy, homeowner's insurance policy, personal liability insurance policy or other source of coverage;

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(C) State that the purchase by the renter of the kinds of coverage specified in this section is not required in order to rent a vehicle; and

(D) Describe the process for filing a claim in the event the renter elects to purchase coverage.

(3) Any evidence of coverage on the face of the rental agreement is disclosed to every renter who elects to purchase the coverage.

(4) The limited licensee to sell automobile rental coverage may offer or sell insurance only in connection with and incidental to the rental of vehicles, whether at the rental office or by preselection of coverage in a master, corporate, group rental or individual agreements in any of the following general categories:

(A) Personal accident insurance covering the risks of travel, including, but not limited to, accident and health insurance that provides coverage, as applicable, to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period;

(B) Liability insurance (which may include uninsured and underinsured motorist coverage whether offered separately or in combination with other liability insurance) that provides coverage, as applicable, to renters and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle;

(C) Personal effects insurance that provides coverage, applicable to renters and other vehicle occupants of the loss of, or damage to, personal effects that occurs during the rental period;

(D) Roadside assistance and emergency sickness protection programs; and

(E) Any other travel or auto-related coverage that a rental company offers in connection with and incidental to the rental of vehicles.

(i) Each rental company for which an employee has received a limited license pursuant to this section shall conduct a training program in which its employees being trained shall receive basic instruction about the kinds of coverage specified in this section and offered for purchase by prospective renters of rental vehicles: Provided, That limited licensees and employees working hereunder are not subject to the agent prelicensing education, examination or continuing education requirements of this article.

(j) Notwithstanding any other provision of this section or any rule adopted by the commissioner, neither the rental company, the limited licensee, nor the other employees working with the limited licensee at the rental company shall be required to treat moneys collected from renters purchasing such insurance when renting vehicles as funds received in a fiduciary capacity, provided that the charges for coverage shall be itemized and be ancillary to a rental transaction. The sale of insurance not in conjunction with a rental

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transaction is not permitted.

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§33-12-32a. Exemption for Portable Electronics.

(a) Definitions. For purposes of this section, the following terms have the following meanings:

(1) "Authorized Representative" means any individual who is authorized by a vendor to engage in portable electronic transactions on behalf of the vendor and who conducts such transactions under the direction and authority of such vendor;

(2) "Customer" means a person who purchases portable electronics or services;

(3) "Enrolled Customer" means a customer who elects coverage under a portable electronics insurance policy and issued to a vendor of portable electronics;

(4) "Location" means any physical location in the State of West Virginia or any website, call center site, or similar location directed to residents of the State of West Virginia.

(5) "Portable Electronics" means electronic devices that are portable in nature, their accessories and services related to the use of the device;

(6) (A) "Portable Electronic Insurance" means insurance providing coverage for the repair or replacement of portable electronics which may cover portable electronics against any one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage or other applicable perils.

(B) "Portable Electronics Insurance" does not include:

(i) A service contract or extended warranty providing coverage limited solely to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling or normal wear and tear;

(ii) A policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

(iii) A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.

(7) "Portable Electronics Transaction" means:

(A) The sale or lease of portable electronics by a vendor to a customer; or

(B) The sale of a service related to the use of portable electronics by a vendor to a customer.

(8) "Supervising Entity" means a business entity that is a licensed insurance producer or an insurer;

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(9) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly, whether through an entity that is a corporate affiliate or an entity with which it has a contractual relationship to market portable electronics.

(b) Exemption from licensing.

(1) A vendor that complies with the provisions of this section is deemed to be in compliance with the requirements of this article regarding producer licensing not only for the vendor, but also for any employee or authorized representative of the vendor selling or offering coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(2) A vendor shall maintain, and share with its supervising entity, a list of all locations in this state that offer portable electronics insurance on its behalf. The supervising entity shall submit the list to the Insurance Commissioner within thirty days upon request.

(c) Requirements for Sale of Portable Electronics Insurance.

(1) At every location where portable electronics insurance is offered to customers, brochures or other written materials must be made available to a prospective customer which:

(A) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy or other source of coverage;

(B) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(C) Summarize the material terms of the insurance coverage, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) Benefits of the coverage; and

(v) Key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment.

(D) Summarize the process for filing a claim, including a description of any requirements:

(i) To return portable electronics and the maximum fee applicable in the event the enrolled customer fails to comply with any equipment return requirements; and

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(ii) Proof of loss requirements.

(E) State that the enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(2) Portable electronics insurance may be offered on a month to month or other periodic basis as a group or master commercial insurance policy issued to a vendor of portable electronics under which individual customers may elect to enroll for coverage.

(3) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

(d) Authority of Vendors of Portable Electronics.

(1) The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this article provided that:

(A) The vendor complies with the provisions of this section;

(B) The insurer issuing the portable electronics insurance appoints a supervising entity to supervise the administration of the program including development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision shall comply with the following:

(i) The training shall be delivered to all employees and authorized representatives of the vendors who sell or offer portable electronics insurance.

(ii) The training may be provided in electronic form. However, if conducted in an electronic form the supervising entity shall implement a supplemental education program regarding portable electronics insurance that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under subsection (C);

(C) No employee or authorized representative of a vendor of portable electronics shall advertise, represent or otherwise hold himself or herself out as a licensed insurance producer.

(D) No employee or authorized representative of a vendor of portable electronics is compensated based primarily on the number of customers enrolled for portable electronics insurance coverage but may receive compensation for enrolling customers for portable electronics insurance coverage so long as the compensation for those activities is incidental

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to their overall compensation.

(2) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the coverage is included in the purchase or lease of portable electronics or related services the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services. No vendor shall require the purchase of any kind of insurance specified in this section as a condition of the purchase or lease of portable electronics or services. Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty (60) days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

(e) Suspension of Privileges.

(1) If a vendor of portable electronics or its employee or authorized representative violates any provision of this section, the Insurance Commissioner may do any of the following:

(A) After notice and hearing, impose fines not to exceed $500 per violation or $5,000 in the aggregate for such conduct.

(B) After notice and hearing, impose other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this article, including:

(i) Suspending the privilege of transacting portable electronics insurance pursuant to this section at specific business locations where violations have occurred; and

(ii) Suspending or revoking the ability of individual employees or authorized representatives to act under the section.

(f) Termination of Portable Electronics Insurance.

(1) Notwithstanding any other provision of law:

(A) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty (30) days notice.

(B) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy of endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in

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the terms and conditions has occurred and a summary of material changes.

(2) Notwithstanding subdivision (1) of this subsection, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen (15) days notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim number.

(3) Notwithstanding subdivision (2) of this subsection, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(A) For nonpayment of premium;

(B) If the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(C) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(4) Where a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination. The written notice shall be mailed or delivered to the enrolled customer at least (30) days prior to the termination.

(5) Whenever notice is required pursuant to this section, it shall be in writing and may be mailed or delivered to the vendor of portable electronics at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer. If notice is mailed, the insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service. Alternatively, an insurer or vendor policyholder may comply with any notice required by this section by providing electronic notice to a vendor or its affected enrolled customers, as the case may be, by electronic means. If notice is accomplished through electronic means the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice was sent.

(g) If a supervising entity is determined by the Insurance Commissioner to have not performed its required duties under this section or has otherwise violated any provision of this section, it shall be subject to the administrative actions set forth in section twenty-four of this article.

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§33-12-32b. Travel Insurance Entity Producer Limited License Act.

[Repealed.]

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§33-12-33. Reciprocity.

(a) The Insurance Commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by section twelve of this article, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(b) An individual nonresident producer's satisfaction of his or her home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

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§33-12-34. Reporting of actions.

(a) A producer shall report to the Insurance Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(b) Within thirty days of the initial pretrial hearing date, a producer shall report to the Insurance Commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

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§33-12-35. Regulations.

The Insurance Commissioner may, in accordance with article three, chapter twenty-nine-a of this code, promulgate reasonable regulations as are necessary or proper to carry out the purposes of this article. Any legislative rules promulgated under the former article twelve of this chapter shall remain in full force and effect but shall henceforth relate to the redesignated statutory provisions contained herein.

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§33-12-36. Severability.

If any provisions of this article, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the article, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

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§33-12-37. Authorization for criminal history record check; fees; rules.

(a) In furtherance of the national goal of promoting uniformity and reciprocity among the states with regard to producer licensing, this section sets forth the requirements to obtain access to the Federal Bureau of Investigation Criminal Justice Information Services Division criminal history record information and to secure information or reports from the Federal Bureau of Investigation Criminal Justice Information Services Division. The scope of this section is to set forth the applicability of the criminal history record check to applicants for a home state insurance producer license.

(b) As used in this section, the following terms have the meanings ascribed in this subsection, unless a different meaning is clearly required by the context:

(1)"Applicant" means a natural person applying for:

(A) An initial home state license as an insurance producer;

(B) An additional line of authority under an existing home state insurance producer license where a criminal history record check has not been obtained; or

(C) A resident insurance producer license under change of home state provisions.

"Applicant" does not mean a person applying for renewal or continuation of a home state insurance producer license or a nonresident insurance producer license.

(2) "Fingerprint" means an impression of the lines on the finger taken for the purpose of identification. The impression may be obtained electronically or in ink converted to an electronic format.

(c) In order to make a determination of license eligibility, the commissioner is authorized to require fingerprints of applicants and to submit the fingerprints and the fee required to perform the criminal history record checks to the West Virginia State Police and to the Federal Bureau of Investigation for the state and national criminal history record checks.

(d) The commissioner shall require a criminal history record check on each applicant in accordance with this section. The commissioner shall require each applicant to submit a full set of fingerprints, including a scanned file from a hard copy fingerprint, in order for the commissioner to obtain and receive national criminal history records from the Federal Bureau of Investigation Criminal Justice Information Services Division.

(e) The commissioner shall collect a fee from each applicant in an amount established by rule. The amount of the fee must be sufficient to cover:

(1) The cost of the collection and transmittal of fingerprints by persons, including local law enforcement agencies that are approved by the commissioner to capture fingerprints, to the West Virginia State Police and the Federal Bureau of Investigation; and

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(2) The cost of any amounts charged by the State Police and the Federal Bureau of Investigation to perform the criminal history record checks.

(f) The commissioner may contract for the collection and transmission of fingerprints authorized under this section and may order that the fee for collecting and transmitting fingerprints be payable directly by the applicant to the contractor.

(g) The commissioner is authorized to receive criminal history record information directly from the Federal Bureau of Investigation, in lieu of via transmission of the information from the Federal Bureau of Investigation to the West Virginia State Police.

(h) The commissioner shall treat and maintain an applicant's fingerprints and any criminal history record information obtained under this section as confidential and shall apply security measures consistent with the Federal Bureau of Investigation Criminal Justice Information Services Division standards for the electronic storage of fingerprints and necessary identifying information. The commissioner shall limit the use of records solely to the purposes authorized in this section. The fingerprints and the criminal history record information in the custody of the commissioner are not subject to subpoena, other than one issued in a criminal action or investigation; are confidential by law and privileged; and are not subject to discovery or admissible in evidence in any private civil action.

(i) The commissioner shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code as are necessary for the administration of this section, including rules governing the issuance of provisional producer licences pending receipt of the criminal background check.

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§33-12-38. Self-Service Storage Limited License Act.

(a) Definitions. For purposes of this section, the following terms have the following meanings:

(1) "Leased space" means the individual storage space at the self-service storage facility which is leased or rented to an occupant pursuant to a rental agreement;

(2) "Location" means any physical location in the State of West Virginia or any website, call center site, or similar location directed to residents of the State of West Virginia;

(3) "Occupant" means a person entitled to the use of a leased space at a self-service storage facility under a rental agreement, or the person’s sublessee, successor, or assign;

(4) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility or the owner’s agent or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement;

(5) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, motor vehicles, and household items and furnishings;

(6) "Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions or rules concerning the lawful and reasonable use and occupancy of leased space at a self-service storage facility;

(7) "Self-service storage facility" means any real property used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants have access for storing or removing their personal property;

(8) "Self-service storage insurance" means personal property insurance offered in connection with and incidental to the lease or rental of leased space at a self-service storage facility that provides coverage to occupants at the self-service storage facility where the insurance is transacted for the loss of or damage to personal property that occurs at that facility or when the property is in transit to or from that facility during the period of the rental agreement; and

(9) "Supervising entity" means a business entity that is a licensed insurance producer or an insurer.

(b) Licensure of owners.

(1) An owner shall hold a limited lines license under this section if the owner sells, solicits, or offers coverage for self-service storage insurance. Notwithstanding any other provision of this section to the contrary, an owner is not required to be licensed solely to display and make available to occupants and prospective occupants brochures and other promotional

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materials created by or on behalf of an authorized insurer or surplus lines insurer.

(2) A limited lines license issued under this section is limited to authorizing an owner and the owner's employees and authorized representatives to sell, solicit, and offer coverage for self-service storage insurance to occupants.

(3) A limited lines license issued under this section authorizes an owner and the owner's employees and authorized representatives to sell, solicit, and offer self-service storage insurance coverage at each location at which the owner conducts business.

(4) An owner shall maintain, and share with its supervising entity, a list of all locations in this state at which self-service storage insurance is offered on its behalf. The supervising entity shall submit the list to the Insurance Commissioner within 30 days upon request.

(5) An owner and its employees and authorized representatives are not subject to the agent pre-licensing education, examination, or continuing education requirements of this article.

(c) Requirements for Sale of Self-Service Storage Insurance.

(1) At every location where self-service storage insurance is offered, the owner shall make brochures or other written or electronic materials available to occupants which:

(A) Disclose that self-service storage insurance may provide a duplication of coverage already provided by an occupant's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(B) State that the enrollment by the occupant for the self-service storage insurance coverage offered by the owner is not required in order to lease or rent leased space from the owner;

(C) Provide the actual terms of the self-service storage insurance coverage, or summarize the material terms of the insurance coverage, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) Benefits of the coverage; and

(v) Key terms and conditions of coverage;

(D) Summarize the process for filing a claim;

(E) State that the occupant may cancel enrollment for the self-service storage insurance coverage at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

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(2) Self-service storage insurance may be provided under an individual policy or under a commercial, corporate, group, or master policy.

(3) Eligibility and underwriting standards for occupants electing to enroll in coverage shall be established for each self-service storage insurance program.

(d) Authority of owners.

(1) The employees and authorized representatives of owners may sell, solicit, and offer self-service storage insurance to occupants and are not subject to licensure as an insurance producer under this article provided that:

(A) The owner obtains a limited lines license to authorize the owner's employees and authorized representatives to sell, solicit, and offer self-service storage insurance;

(B) The insurer issuing the self-service storage insurance appoints a supervising entity to supervise the administration of the program including development of a training program for employees and authorized representatives of the owner who sell, solicit, or offer self-service storage insurance. The training required by this subdivision shall comply with the following:

(i) The training shall be delivered to all employees and authorized representatives of the owner who sell, solicit, or offer self-service storage insurance;

(ii) The training may be provided in electronic form. However, if provided in an electronic form the supervising entity shall implement a supplemental education program regarding the self-service storage insurance that is provided and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative selling, soliciting, or offering self-service storage insurance shall receive basic instruction about the self-service storage insurance offered to occupants and the disclosures required under paragraph (C) of this subdivision.

(C) An employee or authorized representative of an owner does not advertise, represent, or otherwise hold himself or herself out as a licensed insurance producer, unless so licensed;

(D) An employee or authorized representative of an owner is compensated based primarily on the number of occupants enrolled for self-service storage insurance coverage. Employees and authorized representatives may receive compensation for enrolling occupants for self-service storage insurance coverage as long as the compensation for those activities is incidental to their overall compensation;

(2) The charges for self-service storage insurance coverage may be billed and collected by the owner. Any charge to the occupant for coverage that is not included in the cost associated with the lease or rental of leased space shall be separately itemized on the occupant's bill. If the coverage is included in the lease or rental of leased space, the owner shall clearly and conspicuously disclose to the occupant that the self-service storage

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insurance coverage is included with the lease or rental of leased space. An owner billing and collecting the charges is not required to maintain the funds in a segregated account, provided that the owner is authorized by the insurer to hold the funds in an alternative manner and remits the amounts to the supervising entity or insurer within 60 days of receipt. All premiums received by an owner from an occupant for self-service storage insurance shall be considered funds held by the owner in a fiduciary capacity for the benefit of the insurer. Owners may receive compensation for billing and collection services.

(e) Suspension of Privileges.

(1) If an owner or its employee or authorized representative violates any provision of this section, the commissioner may do any of the following:

(A) After notice and hearing, impose fines not to exceed $500 per violation or $5,000 in the aggregate for such conduct.

(B) After notice and hearing, impose other penalties that the commissioner considers necessary and reasonable to carry out the purpose of this article, including:

(i) Suspending the privilege of transacting self-service storage insurance pursuant to this section at specific business locations where violations have occurred; and

(ii) Suspending or revoking the ability of individual employees or authorized representatives to act under this section.

(2) If a supervising entity is determined by the commissioner to have not performed its required duties under this section or has otherwise violated any provision of this section, it is subject to the administrative actions set forth in §33-12-24 of this code.

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