WEST VIRGINIA CODE: §46a-6F-302

§46A-6F-302. Security requirement.

(a) An application for registration or renewal shall be accompanied by a continuing surety bond executed by a corporation that is licensed to transact the business of fidelity and surety insurance in the State of West Virginia. The bond must be approved by the Department of Tax and Revenue before a certificate of registration is issued in accordance with the provisions of section three hundred one of this article. A separate bond in the amount of $100,000 may be filed for each telemarketing location, including each principal office and each branch office thereof, or a single bond in the amount of $500,000 may be filed for all locations of the telemarketer.

(b) The bond shall provide that the telemarketer will pay all damages to the state or a private person resulting from any unlawful act or action by the telemarketer or its agent in connection with the conduct of telemarketing activities.

(c) The registration of any telemarketer shall be void upon termination of the bond of the surety company, or loss of the bond, unless, prior to such termination, a new bond has been filed with the Department of Tax and Revenue. The surety, for any cause, may cancel the bond upon giving a sixty-day written notice by certified mail to the telemarketer and to the Department of Tax and Revenue. Unless the bond is replaced by that of another surety before the expiration of the sixty-day notice of cancellation, the registration of the telemarketer shall be treated as lapsed.

(d) The surety bond shall remain in effect for three years from the period the telemarketing business ceases to operate in this state.

(e) Any business required under this article to file a bond with a registration application, may file, in lieu thereof, an irrevocable letter of credit, with annual renewals, a certificate of deposit, cash or government bond in the same amount as would be required for the bond. The Department of Tax and Revenue shall deposit any such funds in an interest bearing account. The Department of Tax and Revenue shall hold such letter of credit, cash, certificate of deposit or government bond for three years from the period the telemarketing business ceases to operate or registration lapses, in order to pay claims made against the telemarketing business during its period of operation. At the end of the three-year term all interest accrued, not required for payment of claims, shall be remitted to the telemarketer.

(f) The registration of the telemarketing business will be treated as lapsed if at any time, the amount of the letter of credit, bond, cash, certificate of deposit or government bond falls below the amount required by this section.

(g) Should the license of any surety company to transact business in this state be terminated, all bonds given pursuant to this article upon which such company is surety shall thereupon

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be suspended, and the Department of Tax and Revenue shall immediately notify each affected licensee of such suspension and require that a new bond be filed. This notice shall be sent by registered or certified mail, return receipt requested, and shall be addressed to the telemarketer at his or its principal place of business as shown by the Department of Tax and Revenue records. The failure of any telemarketer to file a bond with new or additional surety within thirty days after being advised in writing by the Department of Tax and Revenue of the necessity to do so shall be cause for the Department of Tax and Revenue to revoke the telemarketer's registration.

(h) An action may be brought in any court of competent jurisdiction upon the bond by any person to whom the licensee fails to account and pay as set forth in such bond. The aggregate liability of the surety company to all persons injured by a telemarketer's violations may not exceed the amount of the bond.

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