WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2002

ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 4497
(By Delegate Beane)

Passed March 9, 2002
In Effect Ninety Days from Passage
AN ACT to amend and reenact article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twelve-c, all relating to insurance, licensing, insurance producers, solicitors and excess lines; defining terms for implementation of the NAIC producer licensing model act; creating an insurance producer license for individuals and insurance agencies; creating a new license type that would allow the licensee to sell all types of credit insurance; establishing consistency among states; licensing laws; creating new specific nonresident license types to allow for full reciprocal licensing with other states; creating a new “personal lines” license, pursuant to the most recent amendments to the model act; providing specific provisions from the model act that have been added to clarify in detail who needs to be licensed and who does not; liberalizing reciprocity for licensing nonresident agents;
providing grounds upon which the commission may deny a license or seek the suspension or revocation of a license; placing notice requirements upon insurers and insurance producers when an appointment is terminated for “cause,” including notice to the commissioner, immunity provisions, and protection of confidentiality of documentation; changing certain continuing education requirements for agents; allowing the commissioner to contract for the administration of the continuing education system; providing for the regulation of excess lines; and eliminating certain conflicting and redundant excess line-related provisions.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article twelve-c, all to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-1. Purpose and scope.

1 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.

6 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.

§33-12-2. Definitions.

1 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 a master, corporate, group or individual policy.

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

(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 termina-
tion of a producer’s authority to transact insurance.

(r) “Uniform application” means the current version of the
NAIC uniform application for resident and nonresident pro-
ducer licensing.

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

§33-12-3. License required.

(a) A person shall not sell, solicit or negotiate insurance 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 agent or insurance agency or solicitor
unless then licensed therefor pursuant to this article.
(c) No agent, 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 for which that person is not then licensed.

(d) No insurer shall accept any business from any agent who does not then hold an appointment as agent for such insurer pursuant to this article.

§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 associa-
tion'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 compen-
sated, 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 classifica-
tion 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 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.

§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, article twelve of this chapter. 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, article twelve of this chapter.
(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, article twelve of this chapter.

(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.

§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, article twelve of this chapter;

(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, article twelve of this chapter;
(5) Has successfully passed the examinations for the lines of authority for which the person has applied;

(6) On or after the first day of June, one thousand nine hundred ninety, 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 twenty-five dollar 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 testing service,
the independent testing service shall collect and remit to the commissioner the twenty-five dollar examination fee; and

(9) For new agents first licensed on or after the first day of July, one thousand nine hundred eighty-nine, completes a program of insurance education as established in section seven, article twelve of this chapter.

(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, article twelve of this chapter;

(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; and

(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, article twelve of this chapter; 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 commissioner.

§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 require-
ments of section six of this article.

§33-12-6b. Licensing of agencies.

(a) For the purposes set forth in section twenty-three, article
twelve of this chapter, 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 conduct-
ing 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 produc-
ers 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, article twelve of this chapter.

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

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

(h) The provisions of this section become effective on or after the first day of July, two thousand three.

§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 the thirty-first day of December 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.

§33-12-8. Continuing education required.

The purpose of this provision is to provide continuing education under guidelines set up under the insurance commissioner’s office, with the guidelines to be set up under the board of insurance agent education. Nothing in this section prohibits an individual from receiving commissions which have been vested and earned while that individual maintained an approved insurance agent’s license.

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

(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; and

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

(b) This section does not apply to:

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

(c)1) The board of insurance agent education as established by section seven of this article shall develop a program of continuing insurance education and submit the proposal for
the approval of the commissioner on or before the thirty-first
day of December of each year. No program may be approved by
the commissioner that includes a requirement that any agent
complete more than twenty-four hours of continuing insurance
education triennially. No program may be approved by the
commissioner that includes a requirement that any of the
following individual producers complete more than six hours of
continuing 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 educa-
tion provisions of this section become effective on the reporting
period beginning the first day of July, two thousand three.

(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) 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 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.

(g) The commissioner shall notify the individual insurance producer of his or her suspension pursuant to subsection (f) of this section by certified mail, return receipt requested, to the last address on file with the commissioner pursuant to subsection (e), section nine of this article. Any individual insurance producer who has had a suspension order entered against him or her pursuant to this section may, within thirty calendar days of receipt of the order, file with the commissioner a request for a hearing for reconsideration of the matter.

(h) 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 section five of this article.
(i) 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 twenty-five dollars 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 twenty-five dollar course submission fee.

§33-12-9. Issuance of license.

(a) Unless denied licensure pursuant to article twenty-four of this chapter, individuals who have met the requirements of articles five and six of this chapter 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 section thirteen, article three of this chapter 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 twelve 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, and the date of issuance, the lines of authority, the expiration date and any other information the insurance commissioner considers necessary.

(f) Licensees shall inform the insurance commissioner by any means acceptable to the insurance commissioner of a change of address or residency within thirty days of the change. Failure to timely inform the insurance commissioner of a change in legal name, residency or address may result in a penalty pursuant to section twenty-four, article twelve of this chapter. The commissioner shall maintain the mailing address of 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 commissioner (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.

§33-12-10. Fees.

The fee for an agent’s license shall be twenty-five dollars as provided in section thirteen, article three of this chapter, the fee for a solicitor’s license shall be twenty-five dollars, and the fee for an insurance agency producer license shall be two hundred dollars. The commissioner shall receive the following fees from insurance agents, solicitors, insurance agencies and excess line brokers: For letters of certification, five dollars; for letters of clearance, ten dollars; for duplicate license, five dollars. All fees and moneys so collected shall be used for the
§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.

§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 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, article twelve of this chapter.

§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.

§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 article twelve. 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.

§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.

§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.

§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, article twelve of this chapter.

(b) All producer licenses of insurance agencies shall expire at midnight on the thirtieth day of June 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, article twelve of this chapter.

§33-12-18. Agent to deal only with licensed insurer or solicitor; appointment as agent required prior to transacting business.

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

(b) To appoint an individual 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 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.

§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.

§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.

§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.

§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.

§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 resident agent who countersigns
the policy. The countersigning agent may not pay any part of
the commission to any person other than a licensed agent:
Provided, That the portion of such commission retained by the
countersigning resident agent 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 compensa-
tion incident to the issuance of a policy payable by or to any
insurer or agent.

(b) It shall be unlawful for any insurer or agent to pay, and
any person to accept, directly or indirectly, any commission
except as provided in this section: Provided, That any licensed
resident agent 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
resident agents, 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 stockhold-
ers 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 may 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
shall 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.

(c) This section will not apply to reinsurance, or life
insurance, or accident and sickness insurance; nor to excess line
insurance procured in accordance with the provisions of article
twelve-c relating thereto; nor to 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, any liability or other risks incident to the
ownership, maintenance or operation thereof, any contract of
insurance covering any property in interstate or foreign com-
merce, 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 shall 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.

§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;

(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;
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, article twelve of this chapter;

(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 five thousand dollars. 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.

§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, article twelve of this chapter 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, article twelve of this chapter. 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, article twelve of this chapter, 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

24 information, documents, records or other data pertaining to the
25 termination.

26 (c) Ongoing notification requirement. — The insurer or the
27 authorized representative of the insurer shall promptly notify
28 the insurance commissioner in a format acceptable to the
29 insurance commissioner if, upon further review or investiga-
30 tion, the insurer discovers additional information that would
31 have been reportable to the insurance commissioner in accor-
32 dance with subsection (a) of this section had the insurer then
33 known of its existence.

34 (d) Copy of notification to be provided to producer. —

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

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

53 (e) Immunities. —
(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.
86  (1) Any documents, materials or other information in the
87 control or possession of the department of insurance that is
88 furnished by an insurer, producer or an employee or agent
89 thereof acting on behalf of the insurer or producer, or obtained
90 by the insurance commissioner in an investigation pursuant to
91 this section shall be confidential by law and privileged, may not
92 be subject to chapter twenty-nine-b of this code, may not be
93 subject to subpoena, and may not be subject to discovery or
94 admissible in evidence in any private civil action. However, the
95 insurance commissioner is authorized to use the documents,
96 materials or other information in the furtherance of any
97 regulatory or legal action brought as a part of the insurance
98 commissioner’s duties.

99  (2) Neither the insurance commissioner nor any person who
100 received documents, materials or other information while acting
101 under the authority of the insurance commissioner shall be
102 permitted or required to testify in any private civil action
103 concerning any confidential documents, materials, or informa-
104 tion subject to subdivision (1) of subsection (f).

105  (3) In order to assist in the performance of the insurance
106 commissioner’s duties under this article, the insurance commis-
107 sioner:

108  (A) May share documents, materials or other information,
109 including the confidential and privileged documents, materials
110 or information subject to subdivision (1) of this subsection,
111 with other state, federal, and international regulatory agencies,
112 with the national association of insurance commissioners, its
113 affiliates or subsidiaries, and with state, federal, and interna-
114 tional law enforcement authorities, provided that the recipient
115 agrees to maintain the confidentiality and privileged status of
116 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, article twelve of this chapter.
§33-12-26. Insurance vending machines.

(a) A licensed resident agent may solicit applications for and issue policies for trip accident insurance by means of mechanical vending machines supervised by him or her, if:

(1) The commissioner finds that the kind of insurance and form of policy to be so sold is reasonably suited for sale and issuance through vending machines and otherwise complies with this chapter, and that use of such machines therefor would be of convenience to the public; and

(2) The commissioner finds that the type of vending machines to be used is reasonably suitable and practical for the purpose.

(b) The commissioner shall issue to the agent a special vending machine license as to each such machine to be used. The license shall specify name and address of the insurer and agent, kind of insurance and type of policy to be sold, and the place where the machine is to be in operation. The license shall expire, be renewable, and be suspended or revoked, coincidently with that of the agent. The license fee shall be five dollars for each year or part thereof for each vending machine. Proof of existence of the license shall be displayed on or about each machine in a manner as the commissioner may reasonably require. Fees so collected are subject to the provisions of section thirteen, article three of this chapter.

§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 agent who is licensed to act as agent for any insurer participating in the plan when the agent is designated by the
insured as the 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 shall not be applicable thereto.

§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 agents 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 repre-
sentative permit. The commissioner may, upon receipt of a
properly prepared application, issue the permit without requir-
ing a written examination therefor. The fee for a service
representative permit shall be twenty-five dollars and the permit
shall expire at midnight on the thirty-first day of March next
following the date of issuance. Issuance of a service representa-
tive permit may not entitle the holder to countersign policies.
The representative may not in any manner solicit, negotiate,
make or procure insurance in this state except when in the
actual company of the licensed resident agent 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.

§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 insur-
ance producer, solicitor, or service representative, the commis-
sioner 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 re-
quested, 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 representa-
tive 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 representa-
tive 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.

§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
insurance agent 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 insurance
agent from selling and writing endorsements for optional
uninsured or underinsured motor vehicle coverage.

§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 insurance agent 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 agent a commission, equal to the
commission the agent 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
agent continues to service. The insurer must continue the
appointment of the agent for the duration of time the agent
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 agent
who is an employee of the insurer, or an agent as defined by
article twelve-a of this chapter, or an agent, who by contractual
agreement either represents only one insurer or group of
affiliated insurers or who is required by contract to submit risks
§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 agent of an authorized insurer pursuant to the provisions of this section without the necessity of agent prelicensing education, examination, or continuing education.

(4) “Limited licensee” is an individual resident 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 an annual fee of twenty-five dollars.

(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 shall advertise, represent, or otherwise hold himself or herself or any other employees out as licensed insurers, insurance agents or insurance brokers.

(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;

(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 and in the event of a claim.

(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 employ-
ees 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 transaction may not
be permitted.
§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, article twelve of this chapter, 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.

§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.

§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.

§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.

ARTICLE 12C. EXCESS LINE.

§33-12C-1. Excess lines.

Any portion or all of an insurance coverage against loss or
damage to property or person from any cause which cannot be
procured from licensed insurers, which coverages are hereinafter designated as “excess line,” may be procured from unlicensed insurers subject to the following conditions:

(a) The insurance must be procured only through a licensed
excess line broker; and

(b) The insurance coverage must not be procurable, after
diligent effort has been made to do so by the individual
insurance producer from licensed insurers authorized to transact
that kind of insurance in this state, or has been procured to the
full extent the insurers are willing to insure, and the placing of
insurance with an unlicensed insurer must not be for the
purpose of securing advantages either as to premium rate or
terms of the insurance contract.

§33-12C-2. Excess line broker’s reporting requirements.
On or before the first day of March, one thousand nine hundred ninety-six, and on or before the first day of March thereafter, each excess line broker shall file, on a form prescribed by the commissioner, a report under oath, setting forth facts from which it may be determined whether the requirements of section one of this article have been met with respect to each excess line policy procured by the excess line broker during the preceding calendar year. The report shall include, but not be limited to, the following:

(a) Name and address of the insurer;
(b) Number of the policy issued;
(c) Name and address of the insured;
(d) Nature and amount of liability assumed by the insurer;
(e) Premium, and premium rate if applicable; and
(f) Other information reasonably required by the commissioner.

The commissioner may promulgate rules pursuant to the provisions of section one, article one, chapter twenty-nine-a of this code, specifying the reporting forms required by this section. Legislative rules previously promulgated under former article twelve of this chapter regarding excess line brokers at the effective date of this article shall remain in full force and effect to this article.

§33-12C-3. Excess line insurance valid.

Insurance contracts procured as excess line coverage from unlicensed insurers in accordance with this article shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like
contracts issued by licensed insurers whose rates and terms have been filed and approved by the insurance commissioner.

§33-12C-4. Licensing of excess line brokers.

(a) Any licensed insurance agent determined by the commissioner to be competent and trustworthy for the purpose, may be licensed as an excess line broker.

(b) The license fee shall be two hundred dollars, all fees so collected are to be used for the purposes set forth in section thirteen, article three of this chapter.

(c) Prior to issuance of the license, the applicant therefor shall file with the commissioner and thereafter maintain in force for so long as the license or any renewal thereof remains in effect, a bond in favor of the state of West Virginia in the penal sum of two thousand dollars, with an authorized corporate surety approved by the commissioner, conditioned that he or she will conduct business under the license in accordance with this article, that he or she will promptly remit the taxes provided by section sixteen of this article, and that he or she will properly account to the person entitled thereto for funds received by him or her through transactions under the license. No bond shall be terminated unless at least thirty days’ prior written notice thereof is filed with the commissioner.

§33-12C-5. License expiration and renewal.

All licenses of excess line brokers shall expire at midnight on the thirty-first day of May next following the date of issuance. The commissioner shall renew annually the license of all such licensees who qualify and make application therefor.

§33-12C-6. Licensed excess line brokers may accept business from agents.
A licensed excess line broker may accept and place authorized excess line business from any insurance agent or broker licensed in this state for the kind of insurance involved, and may compensate an agent or broker therefor. The excess line broker shall have the right to receive from the insurer the customary commission.

§33-12C-7. Countersignature requirements.

Excess line insurance shall be countersigned by a duly licensed excess line broker.

§33-12C-8. Records of excess line brokers.

Each excess line broker shall keep in his or her office a full and true record of each excess line contract procured by him or her, and the record may be examined at any time thereafter by the commissioner. The record shall include such of the following items as are applicable:

(a) Name and address of the insurer;
(b) Name and address of the insured;
(c) Amount of insurance;
(d) Gross premium charged;
(e) Return premium paid, if any;
(f) Rate of premium charged on the several items of coverage;
(g) Effective date of the contract and the terms thereof; and
(h) Brief general description of the risks insured against and the property insured.
§33-12C-9. Excess line brokers; additional premium tax.

(a) Every excess line broker shall make an annual return, under oath, on or before the first day of March to the commissioner of the gross amount of premiums charged by the insurers and of the gross amount of the fees charged by the excess line broker for the insurance procured by the excess line broker during the previous calendar year. Every excess line policyholder obtaining insurance from an excess line broker shall pay and every excess line broker shall collect from the policyholder and remit to the commissioner a sum equal to four percent of the gross premiums and fees received on the excess line policies procured by the excess line broker on subjects of insurance, resident, located or to be performed in this state, including any so-called dividends on participating policies applied in reduction of premiums, but less premiums returned to policyholders because of cancellation of policy. This tax is imposed for the purpose of providing additional revenue for municipal police-men’s and firemen’s pension and relief funds and additional revenue for volunteer and part volunteer fire companies and departments. This tax is required to be paid and remitted, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and payable and final computation of actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments prior made, and filed with the annual return to be made on or before the first day of March of the succeeding year. Provisions of this chapter relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this tax to the extent that the provisions are not in conflict with this section.
All taxes remitted to the commissioner pursuant to this section shall be paid by him or her into a special account in the state treasury, designated "municipal pensions and protection fund," and after appropriation by the Legislature, shall be distributed in accordance with the provisions of subsection (c), section fourteen-d, article three of this chapter. The excess line broker shall return to the policyholder the tax on any unearned portion of the premium returned to the policyholder because of cancellation of policy.

(b) The excess line broker may not:

(1) Pay directly or indirectly the tax or any portion thereof, either as an inducement to the policyholder to purchase the insurance or for any other reason; or

(2) Rebate all or part of the tax or the excess line broker's commission, either as an inducement to the policyholder to purchase the insurance or for any reason.

(c) The licensed excess line broker may charge the prospective policyholder a fee for the cost of underwriting, issuing, processing, inspecting, service or auditing the policy for placement with the excess line insurer if:

(1) The service is required by the excess line insurer;

(2) The service is actually provided by the excess line broker or the cost of the service is actually incurred by the excess line broker; and

(3) The provision or cost of the service is reasonable, documented and verifiable.

(d) The excess line broker shall make a clear and conspicuous written disclosure to the policyholder of:
(1) The total amount of premium for the policy;

(2) Any fee charged;

(3) The total amount of any fee charged; and

(4) The total amount of tax on the premium and fee.

(e) The clear and conspicuous written disclosure required by subsection (d) of this section is subject to the record maintenance requirements of section eight of this article.

§33-12C-10. Fees.

The commissioner shall receive the following fees from excess line brokers: For letters of certification, five dollars; for letters of clearance, ten dollars; for duplicate license, five dollars. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter.

§33-12C-11. Coverage must be placed in solvent insurer.

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

§33-12C-12. Change of address.

An excess line broker shall notify the commissioner of any change in his or her mailing address within thirty days of such change. The commissioner shall maintain the mailing address of each excess line broker, and service representative on file. Failure to timely inform the insurance commissioner of a change in legal name or address may result in a penalty pursuant to section twenty-four, article twelve of this chapter.

§33-12C-13. Service of process on excess line insurers and brokers.
As to every unlicensed insurer issuing or delivering an excess line policy through an excess line broker in this state, the secretary of state shall be, and is hereby constituted the attorney-in-fact of each such insurer and broker for service of process in the same manner as for licensed insurers as provided in section twelve, article four of this chapter.

§33-12C-14. Hearings.

(a) When conducting any hearing authorized by section thirteen, article two of this chapter which concerns any excess line broker, the commissioner shall give notice of the hearing and the matters to be determined therein to the excess line broker by certified mail, return receipt requested, sent to the last address filed by a person or entity pursuant to section twelve of this article.

(b) If an excess line broker 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 an excess line broker based upon the allegations against the 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 a person with the division.

(c) An excess line broker 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 excess line broker 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.

§33-12C-15. 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 3rd day of April, 2002.

Governor