WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4303

(By Delegates H. White, G. White, Azinger, Frich and Hrutkay)

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Passed March 13, 2004

In Effect Ninety Days from Passage
AN ACT to repeal §33-12-26 of the code of West Virginia, 1931, as amended; to amend and reenact §33-3-33 of said code; to amend and reenact §33-12-3, §33-12-8, §33-12-10, §33-12-11, §33-12-18, §33-12-23, §33-12-27, §33-12-28, §33-12-30, §33-12-31 and §33-12-32 of said code; to amend and reenact §33-12C-24 of said code; to amend and reenact §33-37-1, §33-37-2, §33-37-3, §33-37-4, §33-37-6 and §33-37-7 of said code; and to amend said code by adding thereto a new section, designated §33-37-8, all relating to insurance generally; bringing provisions into compliance with Gramm-Leach-Bliley; eliminating the residency restriction reporting requirement for surplus lines licensees remitting the insurance policy surcharge; defining subjects of insurance for which a license is required; increasing continuing education requirements; allowing nonresidents to obtain a limited license for automobile rental coverage; licensing of managing general
agents; providing for certain penalties for violations by managing
general agents; requiring fees for licensor; eliminating renewal of
service representative permits; repealing insurance vending
machines; repealing and eliminating countsignature require­
ments, effective thirty-first day of December, two thousand; and,
making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §33-12-26 of the code of West Virginia, 1931, as amended,
be repealed; that §33-3-33 of said code be amended and reenacted;
that §33-12-3, §33-12-8, §33-12-10, §33-12-11, §33-12-18, §33-12-
23, §33-12-27, §33-12-28, §33-12-30, §33-12-31 and §33-12-32 of
said code be amended and reenacted; that §33-12C-24 of said code be
amended and reenacted; that §33-37-1, §33-37-2, §33-37-3, §33-37-4,
§33-37-6 and §33-37-7 of said code be amended and reenacted; and
that said code be amended by adding thereto a new section, designated
§33-37-8, all to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance policies to
benefit volunteer and part volunteer fire depart­
ments; special fund created; allocation of pro­
ceeds; effective date.

(a) For the purpose of providing additional revenue for
volunteer fire departments, part-volunteer fire departments,
certain retired teachers and the teachers retirement reserve fund,
there is hereby authorized and imposed on and after the first
day of July, one thousand nine hundred ninety-two, on the
policyholder of any fire insurance policy or casualty insurance
policy issued by any insurer, authorized or unauthorized, or by
any risk retention group, a policy surcharge equal to one
percent of the taxable premium for each such policy. For
purposes of this section, casualty insurance may not include
insurance on the life of a debtor pursuant to or in connection
with a specific loan or other credit transaction or insurance on
a debtor to provide indemnity for payments becoming due on a
specific loan or other credit transaction while the debtor is
disabled as defined in the policy. The policy surcharge may not
be subject to premium taxes, agent commissions or any other
assessment against premiums.

(b) The policy surcharge shall be collected and remitted to
the commissioner by the insurer, or in the case of surplus lines
coverage, by the surplus lines licensee, or if the policy is issued
by a risk retention group, by the risk retention group. The
amount required to be collected under this section shall be
remitted to the commissioner on a quarterly basis on or before
the twenty-fifth day of the month succeeding the end of the
quarter in which they are collected, except for the fourth quarter
for which the surcharge shall be remitted on or before the first
day of March of the succeeding year.

(c) Any person failing or refusing to collect and remit to the
commissioner any policy surcharge and whose surcharge
payments are not postmarked by the due dates for quarterly
filing is liable for a civil penalty of up to one hundred dollars
for each day of delinquency, to be assessed by the commis-
sioner. The commissioner may suspend the insurer, broker or
risk retention group until all surcharge payments and penalties
are remitted in full to the commissioner.

(d) One half of all money from the policy surcharge shall
be collected by the commissioner who shall disburse the money
received from the surcharge into a special account in the state
treasury, designated the “fire protection fund”. The net proceeds
of this portion of the tax and the interest thereon, after appropri-
ation by the Legislature, shall be distributed quarterly on the
first day of the months of January, April, July and October to
each volunteer fire company or department on an equal share
basis by the state treasurer.
(1) Before each distribution date, the state fire marshal shall report to the state treasurer the names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(2) The remaining fifty percent of the moneys collected shall be transferred to the teachers retirement system to be disbursed according to the provisions of sections twenty-six-j, twenty-six-k and twenty-six-l, article seven-a, chapter eighteen of this code. Any balance remaining after the disbursements authorized by this subdivision have been paid shall be paid by the teachers retirement system into the teachers retirement system reserve fund.

(e) The allocation, distribution and use of revenues provided in the fire protection fund are subject to the provisions of sections eight-a and eight-b, article fifteen, chapter eight of this code.

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-3. License required.

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

(b) No person shall in West Virginia act as or hold himself or herself out to be an individual insurance producer or insurance agency or solicitor unless then licensed therefor pursuant to this article.
(c) No individual insurance producer, insurance agency or solicitor or any representative or employee thereof shall solicit or take application for, negotiate, procure or place for others any kind of insurance or receive or share, directly or indirectly, any commission or other valuable consideration arising from the sale, solicitation or negotiation of any insurance contract for which that person is not then licensed.

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

§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.

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

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

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

(3) Property. — Property insurance coverage for the direct or consequential loss or damage to property of every kind;
(4) *Casualty.* — Insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property;

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

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

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

(b) This section does not apply to:

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

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

(c) (1) The board of insurance agent education as established by 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 individual insurance producer complete more than twenty-four hours of continuing insurance education biennially. No program may be approved by the commissioner that includes a requirement that any of the following individual insurance producers
complete more than six hours of continuing insurance education biennially:

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

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

(C) The biennium mandatory continuing insurance education provisions of this section become effective on the reporting period beginning the first day of July, two thousand six.

(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 administra-
tor, the outside administrator shall collect and remit to the
commissioner the 25-dollar course submission fee.

§33-12-10. Fees.

The fee for an individual insurance producer’s license shall
be twenty-five dollars, the fee for a solicitor’s license shall be
twenty-five dollars and the fee for an insurance agency pro-
ducer license shall be two hundred dollars. The commissioner
shall receive the following fees from individual insurance
producers, solicitors and insurance agency producers: For
letters of certification, five dollars; for letters of clearance, ten
dollars; and 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.

§33-12-11. 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 endorse-
ment 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 inter-
state or foreign commerce or covering any liability or other
risks incident to the ownership, maintenance or operation
thereof; any contract of insurance covering any property in
interstate or foreign commerce, or any liability or risks incident
thereto. Countersignature of a duly licensed resident agent of
the company originating a contract of insurance participated in
by other companies as cosureties or coindemnitors shall satisfy
all countersignature requirements in respect to such contract of
insurance: Provided, That the countersignature requirements of
this section shall no longer be required for any contract of
insurance executed, issued or delivered on or after the thirty-
first day of December, two thousand four.

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

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

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

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

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

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

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

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

§33-12-23. Payment of commissions.

(a) The entire commission payable by any insurer licensed to transact insurance in this state on any insurance policy shall be paid directly to the licensed individual insurance producer who countersigns the policy. The countersigning individual insurance producer may not pay any part of the commission to any person other than a licensed individual insurance producer: Provided, That the portion of such commission retained by the countersigning individual insurance producer may not be less than ten percent of the gross policy premium or fifty percent of the commission payable by the insurer as provided herein, whichever is the lesser amount. The term “commission” as used herein shall include engineering fees, service fees or any other

compensation incident to the issuance of a policy payable by or to any insurer or individual insurance producer: Provided, however, That the provisions and requirements of this subsection shall no longer be required for any insurance contract executed, issued or delivered after the thirty-first day of December, two thousand four.

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

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

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

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

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

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

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

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

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

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

§33-12-27. Payment of commissions under assigned risk plan.
An insurer participating in a plan for assignment of personal injury liability insurance or property damage liability insurance on owner’s automobiles or operators, which plan has been approved by the commissioner, may pay a commission to a qualified individual insurance producer who is licensed to act as individual insurance producer for any insurer participating in the plan when the individual insurance producer is designated by the insured as the individual insurance producer of record under an automobile assigned risk plan pursuant to which a policy is issued under the plan and section eleven of this article is not applicable thereto.

§33-12-28. Service representative permit.

Individual nonresidents of West Virginia, employed on salary by an insurer, who enter the state to assist and advise resident individual insurance producers in the solicitation, negotiation, making or procuring of contracts of insurance on risks resident, located or to be performed in West Virginia shall obtain a service representative permit. The commissioner may, upon receipt of a properly prepared application, issue the permit without requiring a written examination therefor. On or after the first day of July, two thousand four, no service representative license will be issued which is not a renewal of an existing license. The fee for a service representative permit shall be 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 representative permit may not entitle the holder to countersign policies. The representative may not in any manner sell, solicit, negotiate, make or procure insurance in this state except when in the actual company of the licensed resident individual producer whom he or she has been assigned to assist. All fees collected under this section shall be used for the purposes set forth in section thirteen, article three of this chapter.
§33-12-30. Termination of contractual relationship prohibited.

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

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

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

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

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

(a) Purpose. — This section authorizes the insurance commissioner to issue limited licenses for the sale of automobile rental coverage.

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

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

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

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

(4) “Limited licensee” is an individual resident of this state or nonresident of this state who obtains a limited license.
(5) “Rental agreement” means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental company for rental or lease.

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

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

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

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

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

(d) As a prerequisite for issuance of a limited license under this section, there shall be filed with the commissioner a written application for a limited license, signed by the applicant, in a form or forms and supplements thereto and containing any information as the commissioner may prescribe. The limited licensee shall pay to the insurance commissioner 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
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48 insurance sales location a list of the names and addresses of
49 employees which are selling insurance at the location.

50 (f) In the event that any provision of this section or applica-
51 ble provisions of the insurance code is violated by a limited
52 licensee or other employees operating under his or her direc-
53 tion, the commissioner may:

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

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

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

78 (h) No automobile rental coverage insurance may be issued
79 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.

(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 is not permitted.

ARTICLE 12C. SURPLUS LINE.

§33-12C-24. Countersignature requirements.

Surplus lines insurance shall be countersigned by a duly licensed resident surplus lines licensee: Provided, That the countersignature requirements imposed by this section shall no longer be required for any surplus line of insurance executed, issued or delivered after the thirty-first day of December, two thousand four.

ARTICLE 37. MANAGING GENERAL AGENTS.

§33-37-1. Definitions.

For the purposes of this article:

(a) “Actuary” means a person who is a member in good standing of the American academy of actuaries.

(b) “Home state” means the District of Columbia or any state or territory of the United States in which a managing general agent is incorporated or maintains its principal place of business. If neither the state in which the managing general agent is incorporated, nor the state in which the managing general agent maintains its principal place of business has adopted this article or a substantially similar law governing managing general agents, the managing general agent may declare another state in which it conducts business to be its “home state”.

(c) “Insurer” means any person, firm, association or corporation duly licensed in this state as an insurance company pursuant to article three of this chapter. Insurer includes, but is not limited to, any domestic insurer as defined in section six, article one of this chapter and any foreign insurer as defined in section seven of said article, including any stock insurer, mutual insurer, reciprocal insurer, farmers’ mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, dental service corporation, health service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group.

(d) “Managing general agent” (MGA) means any person, firm, association or corporation who:

1. Manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office); and

2. Acts as an agent for such insurer whether known as a managing general agent, manager or other similar term who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:

   A. Adjusts or pays claims in excess of ten thousand dollars per claim; or

   B. Negotiates reinsurance on behalf of the insurer.
(3) Notwithstanding the above, the following persons are not considered managing general agents for the purposes of this article:

(A) An employee of the insurer;

(B) A U.S. manager of the United States branch of an alien insurer;

(C) An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written; and

(D) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(e) “Person” means an individual or a business entity.

(f) “Underwrite” means the authority to accept or reject risk on behalf of the insurer.

§33-37-2. Licensure.

(a) No domestic insurer may permit a person to act, and no person may act, in the capacity of a managing general agent for an insurer domiciled in this state unless such person is licensed in this state to act as a managing general agent.

(b) No foreign or alien insurer may permit a person to act, and no person may act, in the capacity of a managing general agent representing an insurer unless the person is licensed in this state to act as a managing general agent.

(c) No person may act in the capacity of a managing general agent with respect to risks located in this state for an
insurer licensed in this state unless the person is a licensed insurance producer in this state.

(d) The commissioner may license as a managing general agent any individual or business entity that has complied with the requirements of this article and any regulations concerning licensure that may be promulgated by the commissioner. The commissioner may refuse to issue a license, subject to the right of the applicant to demand a hearing on the application, if the commissioner believes the applicant, any person named on the application or any member, principal, officer or director of the applicant is not trustworthy or competent to act as a managing general agent, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for issuance of such license.

(e) Any person seeking a license pursuant to subsection (d) of this section shall apply for the license in a form acceptable to the commissioner and shall pay to the commissioner a nonrefundable application fee in an amount prescribed by the commissioner. The application fee shall be not less than five hundred dollars nor more than one thousand dollars. Every licensed managing general agent shall pay to the commissioner a nonrefundable annual renewal fee in an amount prescribed by the commissioner. The renewal fee shall be not less than two hundred dollars nor more than one thousand dollars. Between the first day of May and the first day of June of the renewal year, each licensed managing general agent shall submit to the commissioner the renewal fee and a renewal application form as prescribed by the commissioner. All fees shall be collected by the commissioner, paid into the state treasury and placed to the credit of the special revenue account provided for in section thirteen, article three of this chapter. Each license issued pursuant to this article expires at midnight on the thirtieth day of June next following the day of issuance.
(f) The commissioner may require a bond in an amount acceptable to him or her for the protection of the insurer.

(g) The commissioner may require a managing general agent to maintain an errors and omissions policy that is acceptable to the commissioner.

(h) Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the secretary of state as the agent for service of process on the applicant in any action or proceeding arising in this state out of or in connection with the exercise of the license. The appointment of the secretary of state as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this state. Service of process on the secretary of state shall conform to the provisions of section twelve, article four of this chapter.

(i) A person seeking licensure shall provide evidence, in a form acceptable to the commissioner, of its appointments or contracts as a managing general agent. The commissioner may refuse to renew the license of a person that has not been appointed by, or otherwise authorized to act for, an insurer as a managing general agent.


No person, firm, association or corporation acting in the capacity of a managing general agent may place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:
(a) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(b) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity with an FDIC-insured financial institution. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses.

(d) Separate records of business written by the managing general agent shall be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer. The commissioner shall have access to all books, bank accounts and records of the managing general agent in a form usable to the commissioner.

(e) The contract may not be assigned, in whole or part, by the managing general agent.

(f) The contract shall contain appropriate underwriting guidelines including:

1. The maximum annual premium volume;
2. The basis of the rates to be charged;
3. The types of risks which may be written;
4. Maximum limits of liability;
(5) Applicable exclusions;
(6) Territorial limitations;
(7) Policy cancellation provisions; and
(8) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

(g) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(1) All claims must be reported to the company in a timely manner; and

(2) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

(B) Involves a coverage dispute;

(C) May exceed the managing general agents claims settlement authority;

(D) Is open for more than six months; or

(E) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(3) All claims files will be the joint property of the insurer and managing general agent. However, upon an order of
liquidation of the insurer, such files shall become the sole
property of the insurer or its estate. The managing general agent
shall have reasonable access to and the right to copy the files on
a timely basis.

(4) Any settlement authority granted to the managing
general agent may be terminated for cause upon the insurer’s
written notice to the managing general agent or upon the
termination of the contract. The insurer may suspend the
settlement authority during the pendency of any dispute
regarding the cause for termination.

(h) Where electronic claims files are in existence, the
contract must address the timely transmission of the data
contained in such files.

(i) If the contract provides for a sharing of interim profits
by the managing general agent and the managing general agent
has the authority to determine the amount of the interim profits
by establishing loss reserves or controlling claim payments, or
in any other manner, interim profits will not be paid to the
managing general agent until one year after they are earned for
property insurance business and five years after they are earned
on casualty business and not until the profits have been verified
pursuant to section four of this article.

(j) The managing general agent may use only advertising
material pertaining to the business issued by an insurer that has
been approved in writing by the insurer in advance of its use.

(k) The managing general agent may not:

(1) Bind reinsurance or retrocessions on behalf of the
insurer, except that the managing general agent may bind
facultative reinsurance contracts pursuant to obligatory faculta-
tive agreements if the contract with the insurer contains
reinsurance underwriting guidelines including, for both
reinsurance assumed and ceded, a list of reinsurers with which
such automatic agreements are in effect, the coverages and
amounts or percentages that may be reinsured and commission
schedules;

(2) Commit the insurer to participate in insurance or
reinsurance syndicates;

(3) Appoint any individual insurance producer without
assuring that the individual insurance producer is lawfully
licensed to transact the type of insurance for which he or she is
appointed;

(4) Without prior approval of the insurer, pay or commit the
insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer’s
policyholder’s surplus as of the thirty-first day of December of
the last completed calendar year;

(5) Collect any payment from a reinsurer or commit the
insurer to any claim settlement with a reinsurer without prior
approval of the insurer. If prior approval is given, a report must
be promptly forwarded to the insurer;

(6) Except as provided in subsection (g), section four of this
article, permit its subproducer to serve on the insurer’s board of
directors;

(7) Jointly employ an individual who is employed with the
insurer; or

(8) Appoint a sub managing general agent.


(a) The insurer shall have on file an independent audited
financial statement or reports for the two most recent fiscal
years that provide that the managing general agent has a positive net worth. If the managing general agent has been in existence for less than two fiscal years the managing general agent shall include financial statements or reports, certified by an officer of the managing general agent and prepared in accordance with generally accepted accounting procedures, for any completed fiscal years, and for any month during the current fiscal year for which financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:

(1) Amounts shown on the consolidated audited financial report shall be shown on the worksheet;

(2) Amounts for each entity shall be stated separately; and

(3) Explanations of consolidating and eliminating entries shall be included.

(b) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary in a form consistent with the requirements for actuarial certifications as imposed upon the insurer by statute or rule of the commissioner attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This required actuary’s opinion is in addition to any other required loss reserve certification.

(c) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest
with an officer of the insurer who shall not be affiliated with the
managing general agent.

(e) Within thirty days of entering into or terminating a
contract with a managing general agent, the insurer shall
provide written notification to the commissioner. Notices of
entering into a contract with a managing general agent shall
include a statement of duties which the applicant is expected to
perform on behalf of the insurer, the lines of insurance for
which the applicant is to be authorized to act and any other
information the commissioner may request.

(f) An insurer shall review its books and records each
quarter to determine if any producer as defined by subsection
(c), section one of this article has become, by operation of
subsection (d) of said section, a managing general agent as
defined in that subsection. If the insurer determines that a
producer has become a managing general agent pursuant to the
above, the insurer shall promptly notify the producer and the
commissioner of such determination and the insurer and
producer must fully comply with the provisions of this article
within thirty days thereafter.

(g) An insurer shall not appoint to its board of directors an
officer, director, employee, subproducer or controlling share-
holder of its managing general agents. This subsection does not
apply to relationships governed by the Insurance Holding
Company Systems Regulatory Act or the Business Transacted
with Producer Controlled Property/Casualty Insurer Act.

§33-37-6. Penalties and liabilities.

(a) If the commissioner finds that the managing general
agent or any other person has violated any provision of this
article, or any rule or order promulgated thereunder, after a
hearing conducted in accordance with section thirteen, article
two of this chapter, the commissioner may order:
(1) For each separate violation, a penalty in an amount not exceeding ten thousand dollars;

(2) Revocation or suspension of the producer’s license;

(3) Reimbursement by the managing general agent of the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer and its policyholders and creditors caused by a violation of this article committed by the managing general agent; and

(4) If it was found that because of any such violation that the insurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to article ten of this chapter and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with this article, or any rule or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in this chapter.

(d) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and creditors.
(e) The decision, determination or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to section fourteen, article two of this chapter.


The commissioner is authorized to promulgate reasonable rules for the implementation and administration of the provisions of this article pursuant to chapter twenty-nine-a of this code.


This article shall take effect on the first day of July, two thousand four. No insurer may continue to use the services of a managing general agent on and after the first day of July, two thousand four, except in compliance with this article.
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 bill approved this the 6th day of April, 2004.

Governor