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CLERK OF WEST VIRGINIA  
SECRETARY OF STATE

# 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

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OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

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FOR

## H. B. 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  
2 the licensing of insurance producers. It simplifies and organizes  
3 some statutory language to improve efficiency, permits the use  
4 of new technology and reduces costs associated with issuing  
5 and renewing insurance licenses.

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

**§33-12-2. Definitions.**

1 For the purpose of this article:

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

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

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

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

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

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

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

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

38 (i) "Limited line credit insurance" includes credit life,  
39 credit disability, credit property, credit unemployment, involun-  
40 tary unemployment, mortgage life, mortgage guaranty, mort-  
41 gage disability, guaranteed automobile protection (gap)  
42 insurance and any other form of insurance offered in connection  
43 with an extension of credit that is limited to partially or wholly  
44 extinguishing that credit obligation that the insurance commis-  
45 sioner determines should be designated a form of limited line  
46 credit insurance.

47 (j) "Limited line credit insurance producer" means an  
48 individual who sells, solicits or negotiates one or more forms of  
49 limited line credit insurance coverage to individuals through a  
50 master, corporate, group or individual policy.

51 (k) "Limited lines insurance" means those lines of insur-  
52 ance defined in section thirty-two, article twelve of this chapter  
53 or any other line of insurance that the insurance commissioner  
54 considers necessary to recognize for the purposes of complying  
55 with subsection (g), section twelve, article twelve of this  
56 chapter.

57 (l) "Limited lines producer" means an individual authorized  
58 by the insurance commissioner to sell, solicit or negotiate  
59 limited lines insurance.

60 (m) "Negotiate" means the act of conferring directly with  
61 or offering advice directly to a purchaser or prospective  
62 purchaser of a particular contract of insurance concerning any

63 of the substantive benefits, terms or conditions of the contract:  
64 *Provided*, That the individual engaged in that act either sells  
65 insurance or obtains insurance from insurers for purchasers.

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

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

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

73 (q) "Terminate" means the cancellation of the relationship  
74 between an insurance producer and the insurer or the termina-  
75 tion of a producer's authority to transact insurance.

76 (r) "Uniform application" means the current version of the  
77 NAIC uniform application for resident and nonresident pro-  
78 ducer licensing.

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

**§33-12-3. License required.**

1 (a) A person shall not sell, solicit or negotiate insurance in  
2 this state for any class or classes of insurance unless the person  
3 is licensed for that line of authority in accordance with this  
4 article.

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

8 (c) No agent, insurance agency or solicitor or any represen-  
9 tative or employee thereof shall solicit or take application for,  
10 negotiate, procure or place for others any kind of insurance for  
11 which that person is not then licensed.

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

**§33-12-4. Exceptions to licensing.**

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

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

7 (1) An officer, director or employee of an insurer or of an  
8 insurance producer: *Provided*, That the officer, director or  
9 employee does not receive any commission on policies written  
10 or sold to insure risks residing, located or to be performed in  
11 this state and:

12 (A) The officer, director or employee's activities are  
13 executive, administrative, managerial, clerical or a combination  
14 of these, and are only indirectly related to the sale, solicitation  
15 or negotiation of insurance; or

16 (B) The officer, director or employee's function relates to  
17 underwriting, loss control, inspection or the processing,  
18 adjusting, investigating or settling of a claim on a contract of  
19 insurance; or

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

22 insurance producers where the person's activities are limited to  
23 providing technical advice and assistance to licensed insurance  
24 producers and do not include the sale, solicitation or negotiation  
25 of insurance;

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

34 (3) An employer or association or its officers, directors,  
35 employees, or the trustees of an employee trust plan, to the  
36 extent that the employers, officers, employees, director or  
37 trustees are engaged in the administration or operation of a  
38 program of employee benefits for the employer's or associa-  
39 tion's own employees or the employees of its subsidiaries or  
40 affiliates, which program involves the use of insurance issued  
41 by an insurer, as long as the employers, associations, officers,  
42 directors, employees or trustees are not in any manner compen-  
43 sated, directly or indirectly, by the company issuing the  
44 contracts;

45 (4) Employees of insurers or organizations employed by  
46 insurers who are engaging in the inspection, rating or classifica-  
47 tion of risks, or in the supervision of the training of insurance  
48 producers and who are not individually engaged in the sale,  
49 solicitation or negotiation of insurance;

50 (5) A person whose activities in this state are limited to  
51 advertising without the intent to solicit insurance in this state  
52 through communications in printed publications or other forms  
53 of electronic mass media whose distribution is not limited to

54 residents of the state: *Provided*, That the person does not sell,  
55 solicit or negotiate insurance that would insure risks residing,  
56 located or to be performed in this state;

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

65 (7) A salaried full-time employee who counsels or advises  
66 his or her employer relative to the insurance interests of the  
67 employer or of the subsidiaries or business affiliates of the  
68 employer provided that the employee does not sell or solicit  
69 insurance or receive a commission.

**§33-12-5. Application for examination.**

1 (a) A resident individual applying for an insurance producer  
2 license shall pass a written examination unless exempt pursuant  
3 to section fourteen, article twelve of this chapter. The examina-  
4 tion shall test the knowledge of the individual concerning the  
5 lines of authority for which application is made, the duties and  
6 responsibilities of an insurance producer and the insurance laws  
7 and regulations of this state. Examinations required by this  
8 section may be developed and conducted under rules and  
9 regulations prescribed by the insurance commissioner.

10 (b) The insurance commissioner may make arrangements,  
11 including contracting with an outside testing service, for  
12 administering examinations and collecting the nonrefundable  
13 fee set forth in subdivision (8), subsection (a), section six,  
14 article twelve of this chapter.

15 (c) Each individual applying for an examination shall remit  
16 a nonrefundable fee as prescribed by the insurance commis-  
17 sioner as set forth in subdivision (8), subsection (a), section six,  
18 article twelve of this chapter.

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

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

**§33-12-6. Application for license.**

1 (a) An individual applying for a resident insurance producer  
2 license shall make application to the insurance commissioner  
3 on the Uniform Application and declare under penalty of  
4 refusal, suspension or revocation of the license that the state-  
5 ments made in the application are true, correct and complete to  
6 the best of the individual's knowledge and belief. Before  
7 approving the application, the insurance commissioner shall  
8 find that the individual:

9 (1) Is at least eighteen years of age;

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

13 (3) Where required by the insurance commissioner, has  
14 completed a prelicensing course of study for the lines of  
15 authority for which the person has applied;

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

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

21 (6) On or after the first day of June, one thousand nine  
22 hundred ninety, no solicitor's license will be issued which is not  
23 a renewal of an existing license;

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

39 (8) Satisfies the commissioner that he or she is trustworthy  
40 and competent. The commissioner may test the competency of  
41 an applicant for a license under this section by examination.  
42 Each examinee shall pay a twenty-five dollar examination fee  
43 for each examination to the commissioner who shall deposit  
44 said examination fee into the state treasury for the benefit of the  
45 state fund, general revenue. The commissioner may, at his or  
46 her discretion, designate an independent testing service to  
47 prepare and administer the examination subject to direction and  
48 approval by the commissioner, and examination fees charged  
49 by the service shall be paid by the applicant. In addition to  
50 examination fees charged by the independent testing service,

51 the independent testing service shall collect and remit to the  
52 commissioner the twenty-five dollar examination fee; and

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

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

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

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

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

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

74 (5) The insurance agency has registered with the commis-  
75 sioner the name of each natural person who, as an officer,  
76 director, partner, owner, or member of the agency, is acting as  
77 and is licensed as an insurance producer;

78 (6) The insurance agency has registered with the commis-  
79 sioner the name of each natural person who, as an officer,

80 director, partner, owner, or member of the insurance agency or  
81 business entity, is acting as and is licensed as an insurance  
82 producer;

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

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

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

93 (c) The insurance commissioner may require any docu-  
94 ments reasonably necessary to verify the information contained  
95 in an application.

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

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

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

5 (1) An individual applicant may qualify as a resident only  
6 if he or she resides in this state. Any license issued pursuant to  
7 any application claiming residency for licensing purposes shall

8 constitute an election of residency in this state and shall be void  
9 if the licensee, while holding a resident license in this state, also  
10 holds or makes application for a license in or thereafter claims  
11 to be a resident of any other state or jurisdiction, or if the  
12 licensee ceases to be a resident of this state.

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

15 (3) The resident person is in compliance with the require-  
16 ments of section six of this article.

**§33-12-6b. Licensing of agencies.**

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

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

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

16 (d) The insurance agency shall, within ten days, notify the  
17 commissioner, on a form prescribed by the commissioner, of  
18 any change relative to the insurance agency or business entity  
19 name, officers, directors, partners, or owners, to report a

20 merger, or that the insurance agency or business entity has  
21 ceased doing business in this state.

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

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

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

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

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

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

1 The board of insurance agent education shall continue in  
2 existence. The board of insurance agent education shall consist  
3 of the commissioner of insurance and six members appointed  
4 by the commissioner. The members appointed by the commis-  
5 sioner shall be two licensed property and casualty insurance  
6 agents, one licensed life insurance agent, one licensed health  
7 and accident insurance agent, one representative of a domestic  
8 insurance company, and one representative of a foreign  
9 insurance company: *Provided*, That no board shall be appointed  
10 that fails to include companies or agents for companies repre-  
11 senting at least two thirds of the net written insurance premiums

12 in the state. Each member shall serve a term of three years and  
13 shall be eligible for reappointment.

14 (a) The board of insurance agent education shall establish  
15 the criteria for a program of insurance education and submit the  
16 proposal for the approval of the commissioner on or before the  
17 thirty-first day of December of each year.

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

**§33-12-8. Continuing education required.**

1 The purpose of this provision is to provide continuing  
2 education under guidelines set up under the insurance commis-  
3 sioner's office, with the guidelines to be set up under the board  
4 of insurance agent education. Nothing in this section prohibits  
5 an individual from receiving commissions which have been  
6 vested and earned while that individual maintained an approved  
7 insurance agent's license.

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

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

14 (2) Accident and health or sickness—insurance coverage  
15 for sickness, bodily injury or accidental death and may include  
16 benefits for disability income;

17 (3) Property insurance coverage for the direct or conse-  
18 quential loss or damage to property of every kind;

19 (4) Casualty—insurance coverage against legal liability,  
20 including that for death, injury or disability or damage to real  
21 or personal property;

22 (5) Variable life and variable annuity products—insurance  
23 coverage provided under variable life insurance contracts and  
24 variable annuities;

25 (6) Personal lines-property and casualty insurance coverage  
26 sold to individuals and families for primarily noncommercial  
27 purposes; and

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

30 (b) This section does not apply to:

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

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

39 (c)(1) The board of insurance agent education as estab-  
40 lished by section seven of this article shall develop a program  
41 of continuing insurance education and submit the proposal for

42 the approval of the commissioner on or before the thirty-first  
43 day of December of each year. No program may be approved by  
44 the commissioner that includes a requirement that any agent  
45 complete more than twenty-four hours of continuing insurance  
46 education triennially. No program may be approved by the  
47 commissioner that includes a requirement that any of the  
48 following individual producers complete more than six hours of  
49 continuing insurance education biennially:

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

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

56 (C) The biennium mandatory continuing insurance educa-  
57 tion provisions of this section become effective on the reporting  
58 period beginning the first day of July, two thousand three.

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

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

71 (e) Every individual insurance producer subject to the  
72 continuing education requirements shall furnish, at intervals

73 and on forms as may be prescribed by the commissioner,  
74 written certification listing the courses, programs or seminars  
75 of instruction successfully completed by the person. The  
76 certification shall be executed by, or on behalf of, the organiza-  
77 tion sponsoring the courses, programs or seminars of instruc-  
78 tion.

79 (f) Any individual insurance producer failing to meet the  
80 requirements mandated in this section, and who has not been  
81 granted an extension of time, with respect to the requirements,  
82 or who has submitted to the commissioner a false or fraudulent  
83 certificate of compliance shall have his or her license automati-  
84 cally suspended and no further license may be issued to the  
85 person for any kind or kinds of insurance until the person  
86 demonstrates to the satisfaction of the commissioner that he or  
87 she has complied with all of the requirements mandated by this  
88 section and all other applicable laws or rules.

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

98 (h) Any individual insurance producer who does not  
99 satisfactorily demonstrate compliance with this section and all  
100 other laws applicable thereto as of the last day of the biennium  
101 following his or her suspension shall have his or her license  
102 automatically canceled and is subject to the education and  
103 examination requirements of section five of this article.

104 (i) The commissioner is authorized to hire personnel and  
105 make reasonable expenditures considered necessary for  
106 purposes of establishing and maintaining a system of continuing  
107 education for insurers. The commissioner shall charge a fee of  
108 twenty-five dollars to continuing education providers for each  
109 continuing education course submitted for approval which shall  
110 be used to maintain the continuing education system. The  
111 commissioner may, at his or her discretion, designate an outside  
112 administrator to provide all of or part of the administrative  
113 duties of the continuing education system subject to direction  
114 and approval by the commissioner. The fees charged by the  
115 outside administrator shall be paid by the continuing education  
116 providers. In addition to fees charged by the outside administra-  
117 tor, the outside administrator shall collect and remit to the  
118 commissioner the twenty-five dollar course submission fee.

**§33-12-9. Issuance of license.**

1 (a) Unless denied licensure pursuant to article twenty-four  
2 of this chapter, individuals who have met the requirements of  
3 articles five and six of this chapter shall be issued an insurance  
4 producer license. An insurance producer may receive qualifica-  
5 tion for a license in one or more of the following lines of  
6 authority:

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

11 (2) Accident and health or sickness—insurance coverage  
12 for sickness, bodily injury or accidental death and may include  
13 benefits for disability income;

14 (3) Property insurance coverage for the direct or conse-  
15 quential loss or damage to property of every kind;

16 (4) Casualty—insurance coverage against legal liability,  
17 including that for death, injury or disability or damage to real  
18 or personal property;

19 (5) Variable life and variable annuity products—insurance  
20 coverage provided under variable life insurance contracts and  
21 variable annuities;

22 (6) Personal lines—property and casualty insurance  
23 coverage sold to individuals and families for primarily noncom-  
24 mercial purposes;

25 (7) Credit—limited line credit insurance; or

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

28 (b) An insurance producer license shall remain in effect  
29 unless revoked or suspended as long as the fee set forth in  
30 section thirteen, article three of this chapter is paid and educa-  
31 tion requirements for resident individual producers are met by  
32 the due date.

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

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

46 (e) The license shall contain the licensee's name, address,  
47 personal identification number, and the date of issuance, the  
48 lines of authority, the expiration date and any other information  
49 the insurance commissioner considers necessary.

50 (f) Licensees shall inform the insurance commissioner by  
51 any means acceptable to the insurance commissioner of a  
52 change of address or residency within thirty days of the change.  
53 Failure to timely inform the insurance commissioner of a  
54 change in legal name, residency or address may result in a  
55 penalty pursuant to section twenty-four, article twelve of this  
56 chapter. The commissioner shall maintain the mailing address  
57 of each agent, insurance agency, solicitor and service represen-  
58 tative on file.

59 (g) In order to assist in the performance of the insurance  
60 commissioner's duties, the insurance commissioner may  
61 contract with nongovernmental entities, including the national  
62 association of insurance commissioner (NAIC) or any affiliates  
63 or subsidiaries that the NAIC oversees, to perform any ministe-  
64 rial functions, including the collection of fees, related to  
65 producer licensing that the insurance commissioner and the  
66 nongovernmental entity may consider appropriate.

**§33-12-10. Fees.**

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

10 purposes set forth in section thirteen, article three of this  
11 chapter.

**§33-12-11. Countersignature.**

1 No contract of insurance covering a subject of insurance,  
2 resident, located, or to be performed in this state, shall be  
3 executed, issued or delivered by any insurer unless the contract,  
4 or in the case of an interstate risk a countersignature endorse-  
5 ment carrying full information as to the West Virginia risk, is  
6 signed or countersigned in writing by a licensed resident agent  
7 of the insurer except that excess line insurance shall be counter-  
8 signed by a duly licensed excess line broker. This section does  
9 not apply to: Reinsurance; credit insurance; any contract of  
10 insurance covering the rolling stock of any railroad or covering  
11 any vessel, aircraft or motor carrier used in interstate or foreign  
12 commerce, or covering any liability or other risks incident to  
13 the ownership, maintenance or operation thereof; any contract  
14 of insurance covering any property in interstate or foreign  
15 commerce, or any liability or risks incident thereto. Countersig-  
16 nature of a duly licensed resident agent of the company  
17 originating a contract of insurance participated in by other  
18 companies as cosureties or coindemnitors shall satisfy all  
19 countersignature requirements in respect to such contract of  
20 insurance.

**§33-12-12. Nonresident licensing.**

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

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

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

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

12 (4) The person has submitted or transmitted to the insurance  
13 commissioner the application for licensure that the person  
14 submitted to his or her home state, or in lieu of the same, a  
15 completed uniform application; and

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

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

20 (c) The insurance commissioner may verify the producer's  
21 licensing status through the producer database maintained by  
22 the national association of insurance commissioners, its  
23 affiliates or subsidiaries.

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

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

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

42 (g) Notwithstanding any other provision of this article, an  
43 individual licensed as a limited line credit insurance or other  
44 type of limited lines producer in his or her home state shall  
45 receive a nonresident limited lines producer license, pursuant to  
46 subsection (a) of this section, granting the same scope of  
47 authority as granted under the license issued by the producer's  
48 home state. For the purposes of subsection (e), section twelve  
49 of this article, limited line insurance is any authority granted by  
50 the home state which restricts the authority of the license to less  
51 than the total authority prescribed in the associated major lines  
52 pursuant to subdivisions (1) through (6), subsection (a), section  
53 nine, article twelve of this chapter.

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

1 An agent who has his or her residence in an urban commu-  
2 nity composed of two immediately contiguous municipal  
3 corporations not separated by a river or other stream, one of  
4 which is located in this state and the other located in another  
5 state, shall be considered a resident of this state for the purposes  
6 of this article if his or her residence is in any part of such urban  
7 community and the state wherein the other municipal corpora-  
8 tion is located has established by law or regulation like require-  
9 ments as to residence of agents in such urban community.

**§33-12-14. Exemption from examination.**

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

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

**§33-12-15. Assumed names.**

1 An insurance producer doing business under any name  
2 other than the producer's legal name is required to notify the  
3 insurance commissioner prior to using the assumed name.

**§33-12-16. Temporary licensing.**

1 (a) The insurance commissioner may issue an individual a  
2 temporary insurance producer license for a period not to exceed  
3 one hundred eighty days without requiring an examination if  
4 the insurance commissioner considers that the temporary

5 license is necessary for the servicing of an insurance business  
6 in the following cases:

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

14 (2) To the designee of a licensed insurance producer  
15 entering active service in the armed forces of the United States  
16 of America; or

17 (3) In any other circumstance where the insurance commis-  
18 sioner considers that the public interest will best be served by  
19 the issuance of this license.

20 (b) The insurance commissioner may by order limit the  
21 authority of any temporary licensee in any way considered  
22 necessary to protect insureds and the public. The insurance  
23 commissioner may require the temporary licensee to have a  
24 suitable sponsor who is a licensed producer or insurer and who  
25 assumes responsibility for all acts of the temporary licensee and  
26 may impose other similar requirements designed to protect  
27 insureds and the public. The insurance commissioner may by  
28 order revoke a temporary license if the interest of insureds or  
29 the public are endangered. A temporary license may not  
30 continue after the owner or the personal representative disposes  
31 of the business.

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

1 (a) The commissioner may, in his or her discretion, fix the  
2 dates of expiration of respective licenses for individual insur-  
3 ance producers and solicitors in any manner as is considered by

4 him or her to be advisable for an efficient distribution of the  
5 work load of his or her office. If the expiration date so fixed  
6 would upon first occurrence shorten the period for which  
7 license fee has theretofore been paid, no refund of unearned fee  
8 shall be made; and if the expiration date so fixed would upon  
9 first occurrence lengthen the period for which license fee had  
10 theretofore been paid, the commissioner shall charge no  
11 additional fee for the lengthened period. If another date is not  
12 so fixed by the commissioner, each license shall, unless  
13 continued as herein above provided, expire at midnight on the  
14 thirty-first day of May next following the date of issuance. The  
15 commissioner shall renew annually on the date as provided for  
16 in this section the license of the licensee who qualifies and  
17 makes application therefor, and has paid the fees set forth in  
18 section thirteen, article three of this chapter; and section ten,  
19 article twelve of this chapter.

20 (b) All producer licenses of insurance agencies shall expire  
21 at midnight on the thirtieth day of June following the date of  
22 issuance. The commissioner shall renew annually the license of  
23 all licensees who qualify and make application therefor and  
24 have paid the fees set forth in section ten, article twelve of this  
25 chapter.

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

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

6 (b) To appoint an individual producer as its agent, the  
7 appointing insurer shall file, in a format approved by the

8 insurance commissioner, a notice of appointment within fifteen  
9 days from the date the agency contract is executed or the first  
10 insurance application is submitted. An insurer may also elect to  
11 appoint an individual producer to all or some insurers within the  
12 insurer's holding company system or group by the filing of a  
13 single appointment request.

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

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

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

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

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

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

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

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

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

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

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

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

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

**§33-12-23. Payment of commissions.**

1       (a) The entire commission payable by any insurer licensed  
2 to transact insurance in this state on any insurance policy shall  
3 be paid directly to the licensed resident agent who countersigns  
4 the policy. The countersigning agent may not pay any part of  
5 the commission to any person other than a licensed agent:  
6 *Provided*, That the portion of such commission retained by the  
7 countersigning resident agent may not be less than ten percent  
8 of the gross policy premium or fifty percent of the commission  
9 payable by the insurer as provided herein, whichever is the  
10 lesser amount. The term "commission" as used herein shall  
11 include engineering fees, service fees or any other compensa-  
12 tion incident to the issuance of a policy payable by or to any  
13 insurer or agent.

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

20       (1) The business entity is engaged, through its licensed  
21 resident agents, in conducting an insurance agency business  
22 with respect to the general public;

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

27       (3) If a corporation licensed as an insurance agency  
28 producer, each officer, employee or any one or more stockhold-  
29 ers owning, directly or indirectly, the controlling interest in the  
30 corporation satisfies the commissioner that he or she meets the  
31 licensing qualifications as set forth in section six of this article.  
32 The requirements set forth in this subdivision may not apply to

33 clerical employees, or other employees not directly engaged in  
34 the selling or servicing of insurance;

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

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

45 (c) This section will not apply to reinsurance, or life  
46 insurance, or accident and sickness insurance; nor to excess line  
47 insurance procured in accordance with the provisions of article  
48 twelve-c relating thereto; nor to credit insurance, any contract  
49 of insurance covering the rolling stock of any railroad or  
50 covering any vessel, aircraft or motor carrier used in interstate  
51 or foreign commerce, any liability or other risks incident to the  
52 ownership, maintenance or operation thereof, any contract of  
53 insurance covering any property in interstate or foreign com-  
54 merce, or any liability or risks incident thereto.

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

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

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

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

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

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

13 (1) Providing incorrect, misleading, incomplete or materi-  
14 ally untrue information in the license application;

15 (2) Violating any insurance laws, or violating any regula-  
16 tion, subpoena or order of the insurance commissioner or of  
17 another state's insurance commissioner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56 (c) In the event that the action by the insurance commis-  
57 sioner is to nonrenew or to deny an application for a license, the  
58 insurance commissioner shall notify the applicant or licensee  
59 and advise, in writing, the applicant or licensee of the reason for  
60 the denial or nonrenewal of the applicant's or licensee's license.  
61 The applicant or licensee may make written demand upon the  
62 insurance commissioner within ten days for a hearing before the  
63 insurance commissioner to determine the reasonableness of the  
64 insurance commissioner's action. The hearing shall be held  
65 within forty-five days and shall be held pursuant to section  
66 thirteen, article two of this chapter.

67 (d) The producer's license of a business entity may be  
68 placed on probation, suspended, revoked, refused or have civil  
69 penalty or any combination of actions, if the insurance commis-  
70 sioner finds, after hearing, that an individual licensee's viola-  
71 tion was known or should have been known by one or more of  
72 the partners, officers or managers acting on behalf of the  
73 partnership, corporation, limited liability company or other  
74 business entity and the violation was neither reported to the  
75 insurance commissioner nor corrective action taken.

76 (e) In addition to or in lieu of any applicable denial,  
77 probation, suspension or revocation of a license, a person may,  
78 after hearing, be subject to a civil penalty in a sum not to  
79 exceed five thousand dollars. Upon the failure of the licensee to  
80 pay such penalty by delivery of the sum to the commissioner

81 within thirty days of notice thereof, the commissioner shall  
82 revoke or suspend such license.

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

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

1 (a) *Termination for cause.* -- An insurer or authorized  
2 representative of the insurer that terminates the appointment,  
3 employment, contract or other insurance business relationship  
4 with a producer shall notify the insurance commissioner within  
5 thirty days following the effective date of the termination, using  
6 a format prescribed by the insurance commissioner, if the  
7 reason for termination is one of the reasons set forth in section  
8 twenty-four, article twelve of this chapter or the insurer has  
9 knowledge the producer was found by a court, government  
10 body, or self-regulatory organization authorized by law to have  
11 engaged in any of the activities in section twenty-four, article  
12 twelve of this chapter. Upon the written request of the insurance  
13 commissioner, the insurer shall provide additional information,  
14 documents, records or other data pertaining to the termination  
15 or activity of the producer.

16 (b) *Termination without cause.* -- An insurer or authorized  
17 representative of the insurer that terminates the appointment,  
18 employment, or contract with a producer for any reason not set  
19 forth in section twenty-four, article twelve of this chapter, shall  
20 notify the insurance commissioner within thirty days following  
21 the effective date of the termination, using a format prescribed  
22 by the insurance commissioner. Upon written request of the  
23 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 accord-  
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.* —

54 (1) In the absence of actual malice, an insurer, the autho-  
55 rized representative of the insurer, a producer, the insurance  
56 commissioner, or an organization of which the insurance  
57 commissioner is a member and that compiles the information  
58 and makes it available to other insurance commissioners or  
59 regulatory or law-enforcement agencies may not be subject to  
60 civil liability, and a civil cause of action of any nature shall not  
61 arise against these entities or their respective agents or employ-  
62 ees, as a result of any statement or information required by or  
63 provided pursuant to this section or any information relating to  
64 any statement that may be requested in writing by the insurance  
65 commissioner, from an insurer or producer; or a statement by  
66 a terminating insurer or producer to an insurer or producer  
67 limited solely and exclusively to whether a termination for  
68 cause under subsection (a) of this section was reported to the  
69 insurance commissioner, provided that the propriety of any  
70 termination for cause under subsection (a) is certified in writing  
71 by an officer or authorized representative of the insurer or  
72 producer terminating the relationship.

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

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

85 (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;

117 (B) May receive documents, materials or information,  
118 including otherwise confidential and privileged documents,  
119 materials or information, from the national association of  
120 insurance commissioners, its affiliates or subsidiaries and from  
121 regulatory and law-enforcement officials of other foreign or  
122 domestic jurisdictions, and shall maintain as confidential or  
123 privileged any document, material or information received with  
124 notice or the understanding that it is confidential or privileged  
125 under the laws of the jurisdiction that is the source of the  
126 document, material or information; and

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

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

134 (5) Nothing in this article shall prohibit the insurance  
135 commissioner from releasing final, adjudicated actions includ-  
136 ing for cause terminations that are open to public inspection  
137 pursuant to chapter twenty-nine-b of this code to a database or  
138 other clearinghouse service maintained by the national associa-  
139 tion of insurance commissioners, its affiliates or subsidiaries of  
140 the national association of insurance commissioners.

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

**§33-12-26. Insurance vending machines.**

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

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

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

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

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

1 An insurer participating in a plan for assignment of  
2 personal injury liability insurance or property damage liability  
3 insurance on owner's automobiles or operators, which plan has  
4 been approved by the commissioner, may pay a commission to  
5 a qualified agent who is licensed to act as agent for any insurer  
6 participating in the plan when the agent is designated by the

7 insured as the producer of record under an automobile assigned  
8 risk plan pursuant to which a policy is issued under the plan,  
9 and section eleven of this article shall not be applicable thereto.

**§33-12-28. Service representative permit.**

1 Individual nonresidents of West Virginia, employed on  
2 salary by an insurer, who enter the state to assist and advise  
3 resident agents in the solicitation, negotiation, making or  
4 procuring of contracts of insurance on risks resident, located or  
5 to be performed in West Virginia shall obtain a service repre-  
6 sentative permit. The commissioner may, upon receipt of a  
7 properly prepared application, issue the permit without requir-  
8 ing a written examination therefor. The fee for a service  
9 representative permit shall be twenty-five dollars and the permit  
10 shall expire at midnight on the thirty-first day of March next  
11 following the date of issuance. Issuance of a service representa-  
12 tive permit may not entitle the holder to countersign policies.  
13 The representative may not in any manner solicit, negotiate,  
14 make or procure insurance in this state except when in the  
15 actual company of the licensed resident agent whom he or she  
16 has been assigned to assist. All fees collected under this section  
17 shall be used for the purposes set forth in section thirteen,  
18 article three of this chapter.

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

1 (a) When conducting any hearing authorized by section  
2 thirteen, article two of this chapter which concerns any insur-  
3 ance producer, solicitor, or service representative, the commis-  
4 sioner shall give notice of the hearing and the matters to be  
5 determined therein to the insurance producer, solicitor or  
6 service representative by certified mail, return receipt re-  
7 quested, sent to the last address filed by the person or entity  
8 pursuant to subsection (e), section nine of this article.

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

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

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

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

1 No insurance company may cancel, refuse to renew or  
2 otherwise terminate a written contractual relationship with any

3 insurance agent who has been employed or appointed pursuant  
4 to that written contract by an insurance company as a result of  
5 any analysis of a loss ratio resulting from claims paid under the  
6 provisions of an endorsement for uninsured and underinsured  
7 motor vehicle coverage issued pursuant to the provisions of  
8 section thirty-one, article six of this chapter, nor may any  
9 provision of that contract, including the provisions for compen-  
10 sation therein, operate to deter or discourage the insurance  
11 agent from selling and writing endorsements for optional  
12 uninsured or underinsured motor vehicle coverage.

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

1 (a) In the event of a termination of a contractual relation-  
2 ship between a duly licensed insurance agent and an automobile  
3 insurer of private passenger automobiles who is withdrawing  
4 from writing private passenger automobile insurance within the  
5 state, the insurer shall pay the agent a commission, equal to the  
6 commission the agent would have otherwise been entitled to  
7 under his or her contract with the insurer, for a period of two  
8 years from the date of termination of the contractual relation-  
9 ship for those renewal policies that cannot otherwise be  
10 canceled or nonrenewed pursuant to law, which policies the  
11 agent continues to service. The insurer must continue the  
12 appointment of the agent for the duration of time the agent  
13 continues to service the business: *Provided*, That this require-  
14 ment shall not obligate the withdrawing insurer to accept any  
15 new private passenger automobile insurance within the state.

16 (b) Subsection (a) of this section does not apply to an agent  
17 who is an employee of the insurer, or an agent as defined by  
18 article twelve-a of this chapter, or an agent, who by contractual  
19 agreement either represents only one insurer or group of  
20 affiliated insurers or who is required by contract to submit risks

21 to a specified insurer or group of affiliated insurers prior to  
22 submitting them to others.

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

1 (a) *Purpose.* — This section authorizes the insurance  
2 commissioner to issue limited licenses for the sale of automo-  
3 bile rental coverage.

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

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

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

11 (3) “Limited license” means the authorization by the  
12 commissioner for a person to sell rental coverage as agent of an  
13 authorized insurer pursuant to the provisions of this section  
14 without the necessity of agent prelicensing education, examina-  
15 tion, or continuing education.

16 (4) “Limited licensee” is an individual resident of this state  
17 who obtains a limited license.

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

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

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

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

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

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

37 (d) As a prerequisite for issuance of a limited license under  
38 this section, there shall be filed with the commissioner a written  
39 application for a limited license, signed by the applicant, in a  
40 form or forms and supplements thereto, and containing any  
41 information, as the commissioner may prescribe. The limited  
42 licensee shall pay to the insurance commissioner an annual fee  
43 of twenty-five dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 (B) Liability insurance (which may include uninsured and  
113 underinsured motorist coverage whether offered separately or  
114 in combination with other liability insurance) that provides

115 coverage, as applicable, to renters and other authorized drivers  
116 of rental vehicles for liability arising from the operation of the  
117 rental vehicle;

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

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

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

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

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

**§33-12-33. Reciprocity.**

1 (a) The insurance commissioner shall waive any require-  
2 ments for a nonresident license applicant with a valid license  
3 from his or her home state, except the requirements imposed by  
4 section twelve, article twelve of this chapter, if the applicant's  
5 home state awards nonresident licenses to residents of this state  
6 on the same basis.

7 (b) An individual nonresident producer's satisfaction of his  
8 or her home state's continuing education requirements for  
9 licensed insurance producers shall constitute satisfaction of this  
10 state's continuing education requirements if the nonresident  
11 producer's home state recognizes the satisfaction of its continu-  
12 ing education requirements imposed upon producers from this  
13 state on the same basis.

**§33-12-34. Reporting of actions.**

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

7 (b) Within thirty days of the initial pretrial hearing date, a  
8 producer shall report to the insurance commissioner any  
9 criminal prosecution of the producer taken in any jurisdiction.  
10 The report shall include a copy of the initial complaint filed, the  
11 order resulting from the hearing and any other relevant legal  
12 documents.

**§33-12-35. Regulations.**

1 The insurance commissioner may, in accordance with  
2 article three, chapter twenty-nine-a of this code, promulgate

3 reasonable regulations as are necessary or proper to carry out  
4 the purposes of this article. Any legislative rules promulgated  
5 under the former article twelve of this chapter shall remain in  
6 full force and effect but shall henceforth relate to the  
7 redesignated statutory provisions contained herein.

**§33-12-36. Severability.**

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

**ARTICLE 12C. EXCESS LINE.**

**§33-12C-1. Excess lines.**

1 Any portion or all of an insurance coverage against loss or  
2 damage to property or person from any cause which cannot be  
3 procured from licensed insurers, which coverages are hereinaf-  
4 ter designated as “excess line,” may be procured from unli-  
5 censed insurers subject to the following conditions:

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

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

**§33-12C-2. Excess line broker’s reporting requirements.**

1 On or before the first day of March, one thousand nine  
2 hundred ninety-six, and on or before the first day of March  
3 thereafter, each excess line broker shall file, on a form pre-  
4 scribed by the commissioner, a report under oath, setting forth  
5 facts from which it may be determined whether the require-  
6 ments of section one of this article have been met with respect  
7 to each excess line policy procured by the excess line broker  
8 during the preceding calendar year. The report shall include, but  
9 not be limited to, the following:

- 10 (a) Name and address of the insurer;
- 11 (b) Number of the policy issued;
- 12 (c) Name and address of the insured;
- 13 (d) Nature and amount of liability assumed by the insurer;
- 14 (e) Premium, and premium rate if applicable; and
- 15 (f) Other information reasonably required by the commis-  
16 sioner.

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

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

1 Insurance contracts procured as excess line coverage from  
2 unlicensed insurers in accordance with this article shall be fully  
3 valid and enforceable as to all parties, and shall be given  
4 recognition in all matters and respects to the same effect as like

5 contracts issued by licensed insurers whose rates and terms  
6 have been filed and approved by the insurance commissioner.

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

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

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

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

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

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

**§33-12C-6. Licensed excess line brokers may accept business  
from agents.**

1 A licensed excess line broker may accept and place  
2 authorized excess line business from any insurance agent or  
3 broker licensed in this state for the kind of insurance involved,  
4 and may compensate an agent or broker therefor. The excess  
5 line broker shall have the right to receive from the insurer the  
6 customary commission.

**§33-12C-7. Countersignature requirements.**

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

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

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

6 (a) Name and address of the insurer;

7 (b) Name and address of the insured;

8 (c) Amount of insurance;

9 (d) Gross premium charged;

10 (e) Return premium paid, if any;

11 (f) Rate of premium charged on the several items of  
12 coverage;

13 (g) Effective date of the contract and the terms thereof; and

14 (h) Brief general description of the risks insured against and  
15 the property insured.

**§33-12C-9. Excess line brokers; additional premium tax.**

1 (a) Every excess line broker shall make an annual return,  
2 under oath, on or before the first day of March to the commis-  
3 sioner of the gross amount of premiums charged by the insurers  
4 and of the gross amount of the fees charged by the excess line  
5 broker for the insurance procured by the excess line broker  
6 during the previous calendar year. Every excess line policy-  
7 holder obtaining insurance from an excess line broker shall pay  
8 and every excess line broker shall collect from the policyholder  
9 and remit to the commissioner a sum equal to four percent of  
10 the gross premiums and fees received on the excess line policies  
11 procured by the excess line broker on subjects of insurance,  
12 resident, located or to be performed in this state, including any  
13 so-called dividends on participating policies applied in reduc-  
14 tion of premiums, but less premiums returned to policyholders  
15 because of cancellation of policy. This tax is imposed for the  
16 purpose of providing additional revenue for municipal police-  
17 men's and firemen's pension and relief funds and additional  
18 revenue for volunteer and part volunteer fire companies and  
19 departments. This tax is required to be paid and remitted, on a  
20 calendar year basis and in quarterly estimated installments due  
21 and payable on or before the twenty-fifth day of the month  
22 succeeding the close of the quarter in which they accrued,  
23 except for the fourth quarter, in respect of which taxes shall be  
24 due and payable and final computation of actual total liability  
25 for the prior calendar year shall be made, less credit for the  
26 three quarterly estimated payments prior made, and filed with  
27 the annual return to be made on or before the first day of March  
28 of the succeeding year. Provisions of this chapter relating to the  
29 levy, imposition and collection of the regular premium tax are  
30 applicable to the levy, imposition and collection of this tax to  
31 the extent that the provisions are not in conflict with this  
32 section.

33 All taxes remitted to the commissioner pursuant to this  
34 section shall be paid by him or her into a special account in the  
35 state treasury, designated "municipal pensions and protection  
36 fund," and after appropriation by the Legislature, shall be  
37 distributed in accordance with the provisions of subsection (c),  
38 section fourteen-d, article three of this chapter. The excess line  
39 broker shall return to the policyholder the tax on any unearned  
40 portion of the premium returned to the policyholder because of  
41 cancellation of policy.

42 (b) The excess line broker may not:

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

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

49 (c) The licensed excess line broker may charge the prospec-  
50 tive policyholder a fee for the cost of underwriting, issuing,  
51 processing, inspecting, service or auditing the policy for  
52 placement with the excess line insurer if:

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

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

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

59 (d) The excess line broker shall make a clear and conspicu-  
60 ous written disclosure to the policyholder of:

- 61 (1) The total amount of premium for the policy;
- 62 (2) Any fee charged;
- 63 (3) The total amount of any fee charged; and
- 64 (4) The total amount of tax on the premium and fee.
- 65 (e) The clear and conspicuous written disclosure required
- 66 by subsection (d) of this section is subject to the record mainte-
- 67 nance requirements of section eight of this article.

**§33-12C-10. Fees.**

1 The commissioner shall receive the following fees from

2 excess line brokers: For letters of certification, five dollars; for

3 letters of clearance, ten dollars; for duplicate license, five

4 dollars. All fees and moneys so collected shall be used for the

5 purposes set forth in section thirteen, article three of this

6 chapter.

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

1 No excess line broker shall knowingly place any coverage

2 in an insolvent insurer.

**§33-12C-12. Change of address.**

1 An excess line broker shall notify the commissioner of any

2 change in his or her mailing address within thirty days of such

3 change. The commissioner shall maintain the mailing address

4 of each excess line broker, and service representative on file.

5 Failure to timely inform the insurance commissioner of a

6 change in legal name or address may result in a penalty

7 pursuant to section twenty-four, article twelve of this chapter.

**§33-12C-13. Service of process on excess line insurers and brokers.**

1 As to every unlicensed insurer issuing or delivering an  
2 excess line policy through an excess line broker in this state, the  
3 secretary of state shall be, and is hereby constituted the attor-  
4 ney-in-fact of each such insurer and broker for service of  
5 process in the same manner as for licensed insurers as provided  
6 in section twelve, article four of this chapter.

**§33-12C-14. Hearings.**

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

8 (b) If an excess line broker fails to appear at the hearing, the  
9 hearing may proceed, at which time the commissioner shall  
10 establish that notice was sent to the person pursuant to this  
11 section prior to the entry of any orders adverse to the interests  
12 of an excess line broker based upon the allegations against the  
13 person which were set forth in the notice of hearing. Certified  
14 copies of all orders entered by the commissioner shall be sent  
15 to the person affected therein by certified mail, return receipt  
16 requested, at the last address filed by a person with the division.

17 (c) An excess line broker who fails to appear at a hearing of  
18 which notice has been provided pursuant to this section, and  
19 who has had an adverse order entered by the commissioner  
20 against them as a result of their failure to so appear may, within  
21 thirty calendar days of the entry of an adverse order, file with  
22 the commissioner a written verified appeal with any relevant  
23 documents attached thereto, which demonstrates good and  
24 reasonable cause for the person's failure to appear, and may  
25 request reconsideration of the matter and a new hearing. The

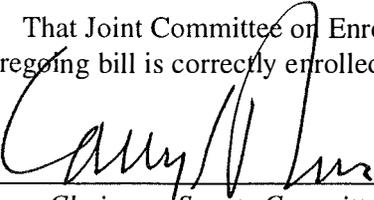
26 commissioner in his or her discretion, and upon a finding that  
27 the excess line broker has shown good and reasonable cause for  
28 his or her failure to appear, shall issue an order that the previous  
29 order be rescinded, that the matter be reconsidered, and that a  
30 new hearing be set.

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

**§33-12C-15. Severability.**

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

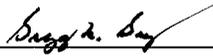
  
\_\_\_\_\_  
Chairman Senate Committee

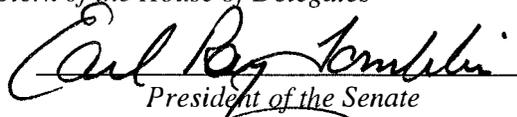
  
\_\_\_\_\_  
Chairman House Committee

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

DATE

3/27/02

TIME

10:20 am

NO.

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