WEST virginia legislature

2021 regular session

Committee Substitute

for

House Bill 2682

By Delegates Westfall, Hott and Espinosa
(By Request of the Insurance Commissioner)

[Introduced February 23, 2021; referred to the Committee on Banking and Insurance then the Judiciary]

A BILL to amend and reenact §33-12-8 and §33-12-9 of the Code of West Virginia, 1931, as amended, and to amend and reenact §33-12B-13 and §33-12B-14 of said code, all relating to the issuance of license suspensions to insurance producers and insurance adjusters who have failed to meet continuing education requirements; changing the requirement that the Insurance Commissioner send license suspensions to insurance producers by certified mail with a requirement that the suspensions be sent by electronic mail or regular mail, if requested; providing that each agent, insurance agency, solicitor, or service representative must report his or her respective electronic mail address to the Insurance Commissioner and providing time periods to report changes of information provided to Insurance Commissioner; changing the requirement that the Insurance Commissioner send license suspensions to insurance adjusters by certified mail with a requirement that the suspensions be sent by electronic mail or regular mail, if requested; and providing that each insurance adjuster must report his or her respective electronic mail address to the Insurance Commissioner and providing time periods to report changes of information provided to Insurance Commissioner.

*Be it enacted by the Legislature of West Virginia:*

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-8. Continuing education required.

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

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

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

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

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

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

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

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

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

(b) This section does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§33-12-9. Issuance of license.

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

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

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

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

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

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

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

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

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

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

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

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

(e) The license shall contain the licensee’s name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date and any other information the Insurance Commissioner considers necessary.

(f) ~~Licensees shall inform the Insurance Commissioner by any means acceptable to the Insurance Commissioner of a change of address or residency within 30 days of the change.~~ Upon application for licensure, the applicant shall inform the Insurance Commissioner of his, her, or its full name, physical address (and mailing address if different), and electronic mail address. Each agent, insurance agency, solicitor, or service representative that is licensed on the effective date of the amendments made to this subsection during the 2021 regular legislative session shall provide the Insurance Commissioner with his, her, or its electronic mail address in connection with the next license renewal application of the respective licensee. If a change occurs to the licensee’s name, physical address, mailing address, or electronic mail address after licensure, the licensee shall accordingly inform the Insurance Commissioner by any means acceptable to the Insurance Commissioner within 30 days of the change. Failure to timely inform the Insurance Commissioner of a change in legal name, residency, ~~or~~ mailing address, or electronic mail address may result in a penalty pursuant to ~~section twenty-four of this article~~ §33-12-24 of this code. The commissioner shall maintain the ~~mailing address of~~ information provided pursuant to this subsection for each agent, insurance agency, solicitor and service representative on file.

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

ARTICLE 12B. ADJUSTERS.

§33-12B-13. Continuing education.

(a) The purpose of this section is to provide continuing education requirements for individual adjusters under guidelines established by the commissioner’s office in conjunction with the Board of Insurance Agent Education as provided in §33-12-7 of this code.

(b) This section applies to company adjusters, independent adjusters, and public adjusters licensed pursuant to §33-12B-2 of this code.

(c) This section shall not apply to:

(1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or

(2) Licensees holding nonresident adjuster licenses who have met substantially similar continuing education requirements of their designated home state and whose home state gives credit to residents of this state on the same basis.

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

(2) The biennium mandatory continuing education provisions of this section become effective on the reporting period beginning July 1, 2021.

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

(e) An individual who holds an adjuster license and who is not exempt shall satisfactorily complete a minimum of 24 hours of continuing education courses, of which three hours must be in ethics, reported to the commissioner on a biennial basis in conjunction with their license renewal cycle.

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

(g) Subject to the approval of the commissioner, the active annual membership by an adjuster in an organization or association recognized and approved by the commissioner as a state, regional, or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: *Provided*, That not more than two hours of continuing education may be awarded to an adjuster for membership in a professional insurance organization during a biennial reporting period.

(h) Adjusters who exceed the minimum continuing education requirement for the biennial reporting period may carry over a maximum of six credit hours only into the next reporting period.

(i) Any individual adjuster failing to meet the requirements mandated in this section and who has not been granted an extension of time with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance, shall have his or her license automatically suspended and no further license may be issued to the person until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(j) The commissioner shall notify the individual adjuster of his or her suspension pursuant to subsection (i) of this section by ~~certified~~ electronic mail ~~return receipt requested~~ or regular mail, if requested, to the last ~~address~~ respective address on file with the commissioner pursuant to ~~§33-12B-2(b)~~ §33-12B-14(a) of this code. Any individual insurance adjuster who has had a suspension ~~order~~ notice entered against him or her pursuant to this section may, within 30 calendar days of receipt of the ~~order~~ notice, file with the commissioner a request for a hearing for reconsideration of the matter.

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

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

§33-12B-14. Current address of adjusters to be filed; effective notice of appearance at hearing before commissioner.

(a) Each adjuster shall file with the commissioner the complete address of his principal place of business and the complete address of his residence including the name and number of the street, or if the street where the business is located is not numbered, the number of the post office box. An adjuster shall also file with the commissioner his or her electronic mail address. An adjuster that is licensed on the effective date of the amendments made to this subsection during the 2021 regular legislative session shall provide the commissioner with his or her electronic mail address in connection with the licensee’s next license renewal application. Within ~~thirty~~ 30 days of a change of business or residence address or electronic mail address by an adjuster, the adjuster must file with the commissioner notice of such change of address. The commissioner shall maintain the information provided pursuant to this subsection for each adjuster on file.

(b) When conducting any hearing authorized by ~~section thirteen, article two of this chapter~~ §33-2-13 of this code which concerns any adjuster, the commissioner shall give notice of such hearing and the matters to be determined therein to such adjuster by certified mail, return receipt requested, sent to the last address filed by such person or entity pursuant to this section.

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

(d) An adjuster who fails to appear at a hearing of which notice has been provided pursuant to this section, and who has had an adverse order entered by the commissioner against them as a result of their failure to so appear may, within 30 calendar days of the entry of such adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto, which demonstrates good and reasonable cause for the adjuster’s failure to appear, and may request reconsideration of the matter and a new hearing. The commissioner in his or her discretion, and upon a finding that the adjuster has shown good and reasonable cause for his or her failure to appear, shall issue an order that the previous order be rescinded, that the matter be reconsidered, and that a new hearing be set.

(e) Orders entered pursuant to this section are subject to the judicial review provisions of ~~section fourteen, article two of this chapter~~ §33-2-14 of this code.

NOTE: The purpose of this bill is to replace a certified mail requirement with an electronic mail or regular mail requirement regarding the issuance of license suspensions by the Insurance Commissioner to insurance producers and insurance adjusters who have failed to meet continuing education requirements. The bill further requires a producer or adjuster to report to the Insurance Commissioner his or her electronic mail address.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.