TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 2
LICENSING AND CONDUCT OF
~~INDIVIDUAL~~ INSURANCE PRODUCERS AND AGENCIES ~~AND SOLICITORS~~

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§114-2-1. General.

1.1. Scope. -- This rule establishes the general requirements and practices of producers and brokers ~~and solicitors~~.

1.2. Authority. -- W. Va. Code §33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§114-2-2. Requirements for Licensing.

2.1. Trustworthiness. -- ~~Insurers~~ An insurer making application for an individual insurance ~~producers' appointments~~ producer's appointment shall make an investigation as to the suitability of the appointee. The appointing company shall, prior to submitting the appointment to this office, satisfy itself that the appointee is a suitable person and is trustworthy and qualified to act as its individual insurance producer. The Insurance Commissioner may, at any time, direct the appointing company to furnish proof that the company has made the investigation required by this subsection and that the investigation was made prior to the execution of the application for appointment.

2.2. Competency. -- The competency of persons applying to the Insurance Commissioner for an individual insurance producer's license shall be determined by examination, with the exception of those persons qualifying under subsection 2.3 of this section.

2.3. Waiver of examination. -- An examination is not required as proof of competency for those persons applying for a resident individual insurance producer's license if such person:

2.3.a. With respect to the following lines of authority, holds one or more of the following professional designations or degrees:

2.3.a.1. Life Line of Authority -- Certified Employee Benefits Specialist (CEBS), Chartered Financial Consultant (ChFC), Certified Insurance Counselor (CIC), Certified Financial Planner (CFP), Chartered Life Underwriter (CLU), Fellow Life Management Institute (FLMI), Life Underwriting Training Counsel Fellow (LUTCF);

2.3.a.2. Health Line of Authority -- Registered Health Underwriter (RHU), Certified Employee Benefits Specialist (CEBS), Registered Employee Benefits Consultant (REBC), Health Information Administration (HIA);

2.3.a.3. Property and Casualty Lines of Authority -- Accredited Advisor in Insurance (AAI) , Associate in Risk Management (ARM), Certified Insurance Counselor (CIC), Chartered Property Casualty Underwriter (CPCU); or

2.3.a.4. All lines of authority except crop -- College insurance degree.

2.3.b. Is currently licensed as a resident and in good standing in his or her home state and otherwise meets the requirements of W. Va. Code §33-12-14(a).

2.4. ~~Applicants~~ Any applicant who previously held a West Virginia insurance license which was terminated as a condition of public employment ~~are~~ is exempt from re-examination provided that the public employment was in an insurance-related field and the license application was made within one year of the termination of the employment.

2.5. Limited lines insurance.

2.5.a. An examination is not required as proof of competency for those persons applying for a limited lines insurance license.

2.5.b. Each insurer that sells, solicits or negotiates any form of limited line insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line insurance a program of instruction that may be approved by the Insurance Commissioner.

2.5.c. Limited lines insurance includes the following lines of insurance:

2.5.c.1. Car rental -- insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars for a period not to exceed ninety (90) consecutive days, whether at the rental office or by pre-selection of coverage in master, corporate, group or individual agreements, that (i) is non-transferable; (ii) applies only to the rental car that is the subject of the rental agreement; and (iii) is limited to the following kinds of insurance:

2.5.c.1.A. Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment; and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

2.5.c.1.B. Liability insurance that provides protection to the renters

and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

2.5.c.1.C. Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;

2.5.c.1.D. Roadside assistance and emergency sickness protection insurance; or

2.5.c.1.E. Any other coverage designated by the Insurance Commissioner.

2.5.c.2. Credit -- credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, or any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that is designated by the Insurance Commissioner as limited line credit insurance.

2.5.c.3. Crop insurance -- insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi-Peril Crop Insurance.

2.5.c.4. Surety -- insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. For purpose of limited line licensing, "Surety" does not include Surety Bail Bonds.

2.5.c.5. Travel -- insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

2.6. Variable Contracts.

2.6.a. No individual shall be eligible to sell or offer for sale a variable contract unless, prior to making any solicitation or sale of such a contract, he or she has a producer license for a variable contract line of authority. For the purposes of this subsection, "variable contract" means one that is required to be registered under the Federal Securities Act of 1933 (15 U.S.C. 77(a) *et seq.*).

2.6.b. Any individual applicant for a variable line of authority must file with the Commissioner proof of passing the Financial Industry Regulatory Authority Series 6 or 7 examination or any superseding examination that grants authority to sell variable contracts.

§114-2-3. Requirements for Licensing Insurance Agencies.

3.1. Each agency, as defined in W. Va. Code §33-12-2(e), shall file an application with the Commissioner for an agency insurance producer license on a form provided by this office. This requirement applies to each corporation, partnership, limited liability company, or other business entity in which more than one person has an interest or which operates under a corporate or trade name. The requirement for an agency insurance producer license does not apply to sole proprietors or partnerships in which there is only one licensed individual producer, so long as no other individual or agency insurance producer has any interest in, or affiliation with, the business of the individual insurance producer or his or her agency.

3.2. The Insurance Commissioner may refuse to grant a license to act as an agency insurance producer proposing to do business under a name which is likely to deceive or mislead the public in this state.

3.3. No agency insurance producer may be licensed in West Virginia which has or uses a name so similar to that of any agency insurance producer already so licensed as to cause uncertainty or confusion; except that in case of conflict of names between two agency insurance producers, the Commissioner may permit or require the newly licensed agency insurance producer to use in West Virginia a trade name that is reasonably necessary to avoid such conflict.

3.4. No license may be issued in a trade name except upon proof satisfactory to the Commissioner that the trade name has been lawfully registered.

3.5. Foreign corporations, limited partnerships and any other entities required by law to be registered with the Secretary of State must be so registered before a license will be issued.

3.6. Each application shall be accompanied by the fee required by W. Va. Code §33-12-10. Each insurer is required to notify every agency affiliated with the insurer of its responsibility to file an agency insurance producer application and to pay the required fee. No agency is required to obtain more than one agency insurance producer license regardless of the number of insurers it represents. When an agency ceases to have a stockholder, officer, director, member, employee or associate possessing a current individual insurance producer's license, the agency insurance producer license shall be considered terminated. The agency insurance producer shall surrender the terminated agency insurance producer license for cancellation not more than thirty (30) days after the last person to hold the individual insurance producer license ceased affiliation with the agency or was no longer

so licensed.

3.7. A domestic insurance agency must be organized pursuant to the laws of this state and must maintain its principal place of business in this state.

3.8. Every business entity transacting insurance must be licensed as an agency insurance producer. For purposes of this section:

3.8.a. "Insurance" means all products defined or regulated by the State of West Virginia except: (i) Limited lines insurance as defined in W. Va. Code §33-12-2(i) and (k); (ii) insurance placed by a lender in connection with collateral pledged for a loan when the debtor breaches the contractual obligation to provide this insurance; and (iii) private mortgage insurance.

3.8.b. "Transaction of insurance" means any of the following acts in this state effected by mail or otherwise considered to constitute the transaction of an insurance business in or from this state:

3.8.b.1. The making of or proposing to make an insurance contract;

3.8.b.2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

3.8.b.3. The taking or receiving of an application for insurance;

3.8.b.4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration required for obtaining or renewing insurance;

3.8.b.5. The issuance or delivery in this state of certificates or contacts of insurance to residents of this state or to persons authorized to do business in this state;

3.8.b.6. The solicitation, negotiation, procurement or effectuation of insurance or renewals thereof;

3.8.b.7. The dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, the fixing of rates or investigation or adjustment of claims or losses or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of insurance with respect to any risk or exposure located or to

be performed in this state;

3.8.b.8. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;

3.8.b.9. The offering of insurance or the transacting of insurance business; or

3.8.b.10. Offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.

3.9. The licensee shall notify the Commissioner of all changes in status among its members, directors, and officers, and all other individuals designated in the application within ten (10) days after the change.

3.10. No individual whose individual insurance producer license has been revoked by order of the Commissioner or whose application for a license may be denied pursuant to W. Va. Code §33-12-24, nor any business entity in which such individual has a majority ownership interest, whether direct or indirect, may own any interest in any agency licensed under this section.

3.11. No individual insurance producer whose license has been revoked by order of the Commissioner or whose application for a license may be denied pursuant to W. Va. Code §33-12-24, may be employed by an insurance agency in any position that involves the transaction of insurance.

3.12. An agency insurance producer which allows its license to lapse may reinstate the same license by filing its application for renewal of its license within twelve (12) months from the due date of the renewal fee and paying a penalty in the amount of twenty-five dollars ($25) in addition to the unpaid renewal fee.

§114-2-4. Commissions and Commission Sharing.

4.1. An individual insurance producer may pay a commission for or on account of the sale, solicitation or negotiation in this state of insurance on property or risks in this state only to another licensed individual insurance producer.

4.2. If an individual insurance producer who does not have an appointment from a particular insurance company ("non-appointed producer") refers an application for an insurance policy from such company to an individual insurance producer or managing general agent who does have an appointment with that company ("appointed producer"), and such a referral results in the issuance

of an insurance policy, the appointed producer may share the commission with the non-appointed producer.

4.3. Before a non-appointed producer refers an application for insurance to an appointed producer, he or she shall disclose to the applicant, on a form that is substantially similar to that set forth in Appendix A to this rule, that he or she is not authorized to bind coverage or to execute or issue a policy on the company's behalf.

4.4. A non-appointed producer may solicit an application for insurance, prepare an application for such policy, collect and remit premiums and deliver the policy and any endorsements to the insured, but he or she may not sign or execute such policy or issue binders, endorsements or any other indication or coverage on behalf of that insurer. In any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, the non-appointed producer shall be regarded as the agent of the company and shall not be considered to be the agent of the insured for any purpose.

§114-2-5. Switching.

5.1. No person who owns or is affiliated with an insurance agency or individual insurance producer may require, as a condition precedent to making a loan, that the borrower cancel insurance and purchase new insurance with the individual insurance producer or with an agency insurance producer with which the person is affiliated.

5.2. Any individual insurance producer who, directly or indirectly, or by subterfuge or artifice aids, abets or participates in violating this section is subject to the penalties prescribed by W. Va. Code §33-12-24.

5.3. The act of any person, who owns or is affiliated with an insurance agency or individual insurance producer in making a loan in violation of this section will be considered to be the act of the individual insurance producer or agency insurance producer with which the person making the loan is affiliated. The individual insurance producer or agency insurance producer will be held strictly accountable for the acts of a person who is affiliated with the individual insurance producer or agency insurance producer and who makes a loan in violation of this section.

5.4. Any insurance company licensed under the laws of West Virginia that accepts business from an insurance producer which it knows or reasonably should know to have violated this rule is subject to the penalties prescribed by W. Va. Code §33-3-11.

§114-2-6. Referrals.

6.1. A person who is not licensed to sell insurance may refer a customer who seeks to purchase or seeks an opinion or advice on any insurance product to, or provide the phone number of, a person who sells or provides opinions or advice on such product, only if the person making the referral receives no fee or only a nominal fee for the referral and such fee is not based on the customer's application for or purchase of the insurance product.

6.2. Any individual insurance producer or agency insurance producer licensed under the laws of West Virginia who violates this rule is subject to the penalties prescribed by W. Va. Code §33-12-24.

§114-2-7. Procedures Governing Persons Subject to 18 U.S.C. 1033.

7.1. No person who has been convicted of a felony involving breach of trust or dishonesty or who has been convicted under 18 U.S.C. § 1033 may engage in the business of insurance in this state in any capacity without having first obtained a waiver from the Commissioner or from the insurance regulatory official of the person's home state in accordance with the provisions of 18 U.S.C. § 1033(e)(2) and this rule.

7.2. No insurer, producer, or any other person or independent contractor involved in the business of insurance in this state may employ, appoint, contract with, or permit any prohibited person in any capacity to engage in the business of insurance without first determining that the prohibited person has obtained a waiver in accordance with 18 U.S.C. § 1033(e)(2) and this rule.

7.3. All prohibited persons seeking to obtain a waiver in accordance with subsection 7.1 of this section shall complete and file with the Commissioner an application for waiver on the form prescribed by the Commissioner, together with the nonrefundable application fee of one hundred dollars ($100).

7.4. All fees collected under this section shall be deposited, transferred and paid out in accordance with W. Va. Code §33-3-13.

7.5. West Virginia is the appropriate state from which an applicant must obtain a waiver where the applicant will be employed in the business of insurance in this state and:

7.5.a. The applicant would be required to obtain a resident producer's license to do business in this state; or

7.5.b. The applicant is or will be an officer, director or employee of a domestic insurer, reinsurer, producer, third-party administrator or independent contractor performing substantial insurance related activities for a domestic insurer or producer.

APPENDIX A

Producer Company Relationship Disclosure
Non-Appointed Producer

Name of Producer | West Virginia Producer Number

Name of Agency, Company or Firm | West Virginia Agency Producer Number

Address City State Zip Code

Name of Applicant for Insurance

Address City State Zip Code

I, the above named applicant, have been advised by the above named individual insurance producer that he or she is not appointed with the insurer to which my application is being submitted, and the above named producer will be placing my application for insurance through an appointed producer. The above name producer has disclosed to me that he or she is not authorized to bind coverage or to execute or issue a policy on the company's behalf.

Signature of Applicant | Date

Signature of Individual Insurance Producer | Date