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HOUSE BILL 2889 By
Lewis

SENATE BILL 2936
By Cooper J

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, Part 1, relative to the licensing of insurance producers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tenn. Code Ann. Title 56, Chapter 6 is amended by deleting Part 1 in its entirety and replacing it with Sections 2 through 28 in properly designated sections:

SECTION 2. Purpose and Scope

This Act shall be known and may be cited as the "Tennessee Insurance Producer Licensing Act of 2002."

This Act governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes some statutory language to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance licenses.

This Act does not apply to surplus lines agents licensed pursuant to the Surplus Lines Insurance Act, Sections 56-14-101, *et seq.*, except as provided in Section 9 and Section 19(b) of this Act.

SECTION 3. As used in this act, unless the context otherwise requires:

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

(2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.

(3) "Controlled business" means insurance written on the interests of an insurance producer or those of an insurance producer's immediate family or employer, or insurance covering an insurance producer or members of an insurance producer's immediate family or a corporation, association or partnership, or the officers, directors, substantial stockholders, partners, employees of such a corporation, association or partnership, of which an insurance producer or a member of an insurance producer's immediate family is an officer, director, substantial stockholder, partner, associate or employee.

(4) "Department" means the Department of Commerce and Insurance.

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

(6) "Insurance" means any of the lines of authority in Section 56-2-201.

(7) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

(8) "Insurer" means any insurance company authorized to transact insurance business in this state.

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

(10) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage

disability, guaranteed automobile protection (gap) insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(11) "Limited line credit insurance producer" means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy.

(12) "Limited lines insurance" means those lines of insurance defined in Section 11 or any other line of insurance that the commissioner deems necessary to recognize for the purposes of complying with Section 9(e).

(13) "Limited lines producer" means a person authorized by the commissioner to sell, solicit or negotiate limited lines insurance.

(14) "NAIC" means the National Association of Insurance Commissioners.

(15) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

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

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

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

(19) "Surplus lines producer" means a person authorized by the commissioner to sell, solicit or negotiate surplus lines insurance pursuant to the Surplus Lines Insurance Act, Sections 56-14-101, *et seq.* Such person shall have the same authority given to a surplus lines agent licensed under the Surplus Lines Insurance Act.

(20) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

(21) "Uniform Business Entity Application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

(22) "Uniform Application" means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

SECTION 4. License Required

A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Act.

SECTION 5. Exceptions to Licensing

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

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

(1) An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

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

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

(C) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's

activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

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

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(6) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

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

(8) Any regular salaried officer, employee or member of a fraternal benefit society which provides benefits in case of death or disability, resulting solely from accident, and which do not obligate themselves to pay natural death or sick benefits, such officers, employees or members procuring other members and receiving no compensation therefor other than awards or merchandise nominal in value.

SECTION 6. Application for Examination

(a) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to Section 10. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable examination fee.

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

SECTION 7. Application for License

(a) An individual residing in this state applying for a insurance producer license shall make application to the commissioner on the Uniform Application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

- (1) Is at least eighteen (18) years of age;
- (2) Has not committed any act that is a ground for denial, suspension or revocation set forth in Section 13;
- (3) Where required by the commissioner by rule, has completed a prelicensing course of study for the lines of authority for which the person has applied;
- (4) Has paid the fees set forth in Section 22; and
- (5) Has successfully passed the examinations for the lines of authority for which the person has applied.

(b) A business entity is required to obtain an insurance producer license prior to acting as an insurance producer in this state. Application shall be made using the Uniform Business Entity Application. An individual authorized and acting on behalf of the business entity shall declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the applicable fees set forth in Section 22; and

(2) The business entity has designated a principal or officer who also holds a current producer license responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

SECTION 8. License

(a) Unless denied licensure pursuant to Section 13, persons who have met the requirements of Sections 6 and 7 shall be issued an insurance producer license. A resident insurance producer may receive a license in one or more of the following lines of insurance:

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

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

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

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

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

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

(7) Credit—limited line credit insurance.

(8) Any other line of insurance permitted under this title or regulations promulgated under this title.

(b) An insurance producer license shall remain in effect for a period of twelve (12) months unless revoked or suspended.

(c) At the end of the twelve (12) months, the insurance producer license may be renewed, subject to the limitations set forth in Section 13, by paying the applicable fee set forth in Section 22, and submitting the renewal form prescribed by the commissioner. In addition to the foregoing, and subject to the exception found in Section 19, an insurance producer license will not be renewed unless the insurance producer has completed all continuing education requirements, as established by rule. However, the continuing education requirements shall not apply to the following:

(1) An insurance producer who at the time of renewal is at least sixty-five (65) years of age;

(2) An insurance producer who has been continuously licensed in this state as an insurance producer or an insurance agent for no less than the last fifteen (15) years;
or

(3) An insurance producer that is a business entity.

(d) An insurance producer who allows his or her license to lapse may, within twelve (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.

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

(f) The license shall contain the licensee's name, address, insurance producer number, and the date of issuance, the lines of authority, the expiration date and any other information the commissioner deems necessary.

(g) A licensed insurance producer shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a disciplinary action pursuant to Section 13.

(h) In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the 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 commissioner and the non-governmental entity may deem appropriate.

SECTION 9. Nonresident Licensing

(a) Unless denied licensure pursuant to Section 13, a nonresident person shall receive an insurance producer license if:

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

(2) The person has submitted the proper request for licensure and has paid the applicable fees required by Section 22;

(3) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed Uniform Application; and

(4) The person's home state awards insurance producer licenses to residents of this state on the same basis.

(b) The commissioner may verify the insurance producer's licensing status through any producer database maintained by the NAIC, its affiliates or subsidiaries.

(c) A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.

(d) Notwithstanding any other provision of this Act, a person licensed as a surplus lines producer in his or her home state shall receive a surplus lines producer license in this state pursuant to Subsection (a) of this section. Except as provided in Subsection (a), nothing in this section otherwise amends or supercedes any provision of the Surplus Lines Insurance Act, Sections 56-14-101, *et seq.*

(e) Notwithstanding any other provision of this Act, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license, pursuant to Subsection (a) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of Section 9(e), limited lines insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to Section 8(a)(1) through (6).

SECTION 10. Exemption from Examination

(a) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the NAIC, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(b) A person licensed as an insurance producer in another state who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to Section 7. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by regulation.

SECTION 11. Limited Lines Producers

An individual who has met the requirements of Section 7 shall be entitled to a limited lines producer license without examination in one (1) or more of the following limited lines:

- (1) Insurance on personal effects carried as baggage or limited travel accident insurance sold in connection with transportation provided by a common carrier;
- (2) Credit life, credit accident and health insurance, or involuntary unemployment credit insurance;
- (3) County mutual fire insurance;
- (4) Mortgage guaranty insurance;
- (5) Personal property insurance sold to a debtor under a master group policy issued to a creditor;
- (6) Crop hail insurance;
- (7) Title insurance, provided the limited lines producer is an attorney, duly licensed in this state, who acts as a title insurance agent as an ancillary part of the attorney's practice of law;
- (8) Optional insurance sold in connection with and incidental to motor vehicle rental agreements for a period not to exceed ninety (90) days;
 - (A) The insurance which may be offered pursuant to this subdivision shall be limited to the following:
 - (i) Personal accident coverage that provides protection for renters and other rental vehicle occupants, for accidental death or dismemberment, and for

medical expenses resulting from an accident that occurs with the rental vehicle during the rental period;

(ii) Liability coverage that provides protection to renters and to other authorized drivers of the rental motor vehicle for liability arising from the operation of the motor vehicle during the rental period. The liability protection, when purchased by a renter, shall be deemed to be primary over any other coverages which may be available to the renter or other authorized driver of the rental vehicle to the extent of the protection provided;

(iii) Personal effects coverage that provides protection to renters and other motor vehicle occupants for loss of, or damage to, personal effects in the rental motor vehicle during the rental period; and

(iv) Roadside assistance coverage.

(B) As used in this subdivision, "motor vehicle" or "rental vehicle" means a motor vehicle of the private passenger type, including passenger vans, mini vans, and sport utility vehicles, and of the cargo type, including cargo vans, pickup trucks, and trucks with a gross vehicle weight of less than twenty-six thousand (26,000) pounds.

(C) Each limited lines producer who makes application for, procures, negotiates or places for others, any coverage pursuant to this subdivision shall give to each renter who purchases the coverage brochures or other written material that:

(i) Summarizes, clearly and correctly, the material terms and conditions of coverage offered to renters;

(ii) Identifies the insurer;

(iii) Describes the process for filing a claim in the event the renter elects to purchase coverage;

(iv) States that the purchase of the coverage is not required in order to rent a vehicle;

(v) Discloses that the coverage offered by the limited lines producer may provide a duplication of coverage already provided by a renter's personal automobile policy or by another source of coverage; and

(vi) Itemizes the cost for the coverage separately; or

(9) Any other lines which the commissioner finds by rule are essential for the transaction of business in this state and do not require the professional competency demanded by an insurance producer's license.

SECTION 12. Temporary Licensing

(a) The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty (180) days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

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

(2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

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

(4) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this license.

(b) The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the

temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. A temporary license issued under this part may also be suspended or revoked pursuant to Section 13. A temporary license may not continue after the owner or the personal representative disposes of the business.

SECTION 13. License Denial, Nonrenewal, Suspension or Revocation

(a) The commissioner may place on probation, suspend, revoke or refuse to issue or renew a license issued under this part or may levy a civil penalty in accordance with Section 13(e) or take any combination of such actions, for any one or more of the following causes:

- (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
- (2) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(11) Improperly using notes or any other reference material to complete an examination for an insurance license;

(12) Knowingly directing any person to submit an application for health care benefits through the TennCare program at a time when such person is covered by a group policy or when such policy is being renewed, and then quoting a rate for a group health insurance policy if such insurance producer knows such person would otherwise have been eligible to participate or continue participation in such group policy; or

(13) Knowingly accepting insurance business from an individual who is not licensed.

(b) Any action by the commissioner to put on probation, suspend, revoke or deny the renewal of a license pursuant to this section shall be governed by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) In the event that the action by the commissioner is to deny an application for a license, the commissioner shall notify the applicant and advise, in writing, the applicant of the denial of the applicant's application within thirty (30) days.

(d) The license of a business entity may be suspended or revoked if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

(e) With respect to any person licensed or required to be licensed under this part, and in addition to or in lieu of any applicable denial, suspension or revocation of a license, the

commissioner may assess a civil penalty against such person in an amount not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) for each separate violation of a statute, rule or order pertaining to the sale, solicitation or negotiation of insurance in this state. Each day of continued violation constitutes a separate violation.

(f) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title 56 against any person who is under investigation for or charged with a violation of this Act or Title 56 even if the person's license has been surrendered or has lapsed by operation of law.

(g) The commissioner may serve a notice or order in any action arising under this part by registered or certified mail to the insurance producer or applicant at the address of record in the files of the department. Notwithstanding any provisions of law to the contrary, service in the manner set forth herein shall be deemed to constitute actual service on such insurance producer or applicant.

SECTION 14. Commissions

(a) An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed. Further, an insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for services in connection to the sale of insurance where the amount of such consideration is based upon the sale of insurance unless such person is licensed under this Act.

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

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

(d) An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to persons who do not sell, solicit or negotiate insurance in this state if such persons are creditors of the insurance producer, unless the payment would violate Section 56-8-104(4) or (7).

(e) Nothing in this section shall be construed as prohibiting any person who accepts deposits from the public in an area where such transactions are routinely conducted in a financial institution from referring a consumer who seeks to purchase an insurance product or annuity to a person holding an insurance producer license who sells that product and receiving a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in the sale of insurance.

SECTION 15. Controlled business

(a) No insurance producer license shall be granted or used for the purpose of writing controlled business.

(b) An insurance producer license shall be deemed to have been used for the purpose of writing controlled business if the commissioner finds that during any twelve (12) month period the aggregate commission earned from such controlled business has exceeded twenty-five percent (25%) of the aggregate commission earned on all business written by such insurance producer during the same period.

(c) This section does not apply to insurance written in connection with a credit transaction, without regard to whether the agent or the agent's employer is the creditor in the transaction.

SECTION 16. Appointments

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

(b) An insurance producer who solicits or negotiates an application for insurance shall be regarded, in any controversy arising from the application for insurance or any policy issued in connection therewith between the insured or insured's beneficiary and the insurer, as the agent of the insurer and not the insured or insured's beneficiary. This provision shall not affect the apparent authority of an agent.

(c) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen (15) days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

(d) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time not to exceed thirty (30) days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the commissioner shall notify the insurer within five (5) days of the determination.

(e) An insurer shall pay an appointment fee, in the amount set forth in Section 22, for each insurance producer appointed by the insurer. The fees under this section may be paid by the insurer on a quarterly basis.

(f) Any insurance producer may place excess or rejected risks with an insurer lawfully doing business within this state, and shall not be required to enter into an agency contract or agreement with the insurer accepting such excess or rejected risks or be appointed by such insurer; provided that only that portion of the risk in excess of the limits which such insurer will write may be placed as an excess risk, and:

(A) The insurance producer has an agency contract or agreement with an insurer that actually engage in the writing of such insurance; and

(B) Such insurer has deemed such risk to be in excess of, or in noncompliance with, its underwriting standards.

(g) No insurance producer may place an application for insurance with any "residual market mechanism," as defined by Section 56-5-302, unless such insurance producer:

(1) Has an agency contract or agreement with an insurer that actually engages in the writing of such insurance; and

(2) Makes a diligent effort to place such application for insurance with such insurer.

(h) It is unlawful for any insurer to accept applications from, or pay commissions to, an insurance producer or limited lines producer except in accordance with the provisions of this section. Any insurer who unlawfully accepts applications from, or pays commissions to, any insurance producer shall be deemed to have accepted and acknowledged such person as its insurance producer or limited lines producer.

(i) An individual not duly licensed as an insurance producer or limited lines producer who solicits a policy of insurance on behalf of an insurer shall thereby become liable for all the duties, requirements, liabilities and penalties to which an insurance producer of such insurer is subject.

SECTION 17. Fiduciary Duty

Any money which an insurance producer receives for soliciting, negotiating or selling insurance shall be held in a fiduciary capacity, and shall not be misappropriated, converted or improperly withheld. Any violation of this section shall be considered grounds for the denial, suspension, or revocation of the insurance producer's license and shall subject the insurance producer to the sanctions and penalties set forth under Section 13.

SECTION 18. Notification to Commissioner of Termination

(a) Termination for Cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in Section 13 or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities described in Section 13. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

(b) Termination Without Cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in Section 13 shall notify the commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(c) An insurer shall pay a termination of appointment fee, in the amount set forth in Section 22, for each insurance producer appointment terminated by the insurer.

(d) Ongoing Notification Requirement. The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with Subsection (a) of this section had the insurer known of its existence at the time the insurer initially notified the commissioner.

(e) Copy of Notification to be Provided to Producer.

(1) Within fifteen (15) days after making the notification required by Subsections (a), (b) and (d) of this section, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for

any of the reasons listed in Section 13, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(2) Within thirty (30) days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under Subsection (g) of this section.

(f) Immunities

(1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under Subsection (a) of this section was reported to the commissioner, provided that the propriety of any termination for cause under Subsection (a) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(2) In any action brought against a person that may have immunity under Subsection (f)(1) for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that Subsection (f)(1) does not apply because the person making the statement or providing the information did so with actual malice.

(3) Subsection (f)(1) or (2) shall not abrogate or modify any existing statutory or common law privileges or immunities.

(g) Confidentiality

(1) Any documents, materials or other information in the control or possession of the department that is furnished by an insurer, producer or an employee or agent thereof

acting on behalf of the insurer or producer, or obtained by the commissioner in an investigation pursuant to this section shall be confidential by law and absolutely privileged, shall not be subject to Section 10-7-503(a), shall not be subject to subpoena, and shall not be subject to discovery or be admissible as evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection (g)(1).

(3) In order to assist in the performance of the commissioner's duties under this Act, the commissioner:

(A) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection (g)(1), with other state, federal, and international regulatory agencies, with the NAIC, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(B) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the

understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

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

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection (g)(3).

(5) Nothing in this Act shall prohibit the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to Section 10-7-503(a) to a database or other clearinghouse service maintained by the NAIC, its affiliates or subsidiaries.

(h) Penalties for Failing to Report. An insurer or the authorized representative of the insurer, or a producer that fails to report as required under the provisions of this section or that is found to have falsely reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked. In addition to or in lieu of the suspension or revocation of a license or certificate of authority, the commissioner may subject violators of this part to a civil penalty in an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

SECTION 19. Reciprocity

(a) The commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by Section 9 of this Act, if the applicant's home state awards nonresident licenses to residents of this state on the same basis. However, nothing contained in this subsection shall prevent the commissioner from denying, suspending or revoking a license issued under this part pursuant to Section 13.

(b) A nonresident producer's satisfaction of his or her home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the non-resident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

SECTION 20. Reporting of Actions

(a) A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of any order entered or other relevant legal documents.

(b) Within thirty (30) days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

SECTION 21. Investigations

The commissioner may make such investigations as are necessary for the proper administration of this Act. For the purpose of making such investigations, the commissioner shall have inquisitorial powers and shall be empowered to subpoena witnesses and examine them under oath; provided that all testimony, documents and other evidence obtained by the commissioner pursuant to this Act shall be absolutely privileged and shall not be admissible as evidence in any private civil proceeding.

SECTION 22. Fees

In addition to any other fees which may be required elsewhere in this title, the following are the nonrefundable fees which will be paid to the commissioner under this part:

(1) Fifty dollars (\$50.00) for the filing of an application for insurance producer license or limited lines producer license.

(2) Thirty dollars (\$30.00) for the renewal of an insurance producer license.

(3) Fifteen dollars (\$15.00) for the renewal of a limited lines producer license.

(4) Fifteen dollars (\$15.00) for the appointment or termination of appointment of an insurance producer or limited lines producer by an insurer.

SECTION 23. Countersignatures

Notwithstanding any other provision of law to the contrary, there shall be no requirement that an insurance producer who is a resident of this state must countersign a policy of insurance written by an insurance company.

SECTION 24. Assumed Names

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

SECTION 25. Regulations

(a) The commissioner may, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

(b) The commissioner shall have the authority to promulgate any public necessity rules necessary to implement this Act; provided that permanent rules shall be implemented pursuant to the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner shall promulgate continuing education requirements for individuals licensed under this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 26. Persons Licensed Under Previous Law

Persons who on January 1, 2003 hold an insurance agent license issued under prior law of this state shall be entitled to convert their insurance agent license into an insurance producer license at the time of renewal, upon the fulfillment of all the requirements for the renewal of an insurance producer license. Such persons may act as an insurance producer without receiving

an insurance producer license, subject to an action to suspend or revoke pursuant to Section 13, until such time as their insurance agent license would expire. Any insurance agent license not so renewed shall expire one (1) year from the date it was issued or the date it was last renewed, whichever is later. An insurance agent who allows his or her license to so expire may, within twelve (12) months from the due date of the renewal fee, convert his or her insurance agent license into an insurance producer 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.

SECTION 27. Severability

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

SECTION 28. Effective Date

This Act for rulemaking purposes shall take effect immediately, the public welfare requiring it, and for all other purposes shall take effect on January 1, 2003, the public welfare requiring it.