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2004 APR -6 P 3: 34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4303

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

Passed March 13, 2004

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4303

(BY DELEGATES H. WHITE, G. WHITE,
AZINGER, FRICH AND HRUTKAY)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to repeal §33-12-26 of the code of West Virginia, 1931, as amended; to amend and reenact §33-3-33 of said code; to amend and reenact §33-12-3, §33-12-8, §33-12-10, §33-12-11, §33-12-18, §33-12-23, §33-12-27, §33-12-28, §33-12-30, §33-12-31 and §33-12-32 of said code; to amend and reenact §33-12C-24 of said code; to amend and reenact §33-37-1, §33-37-2, §33-37-3, §33-37-4, §33-37-6 and §33-37-7 of said code; and to amend said code by adding thereto a new section, designated §33-37-8, all relating to insurance generally; bringing provisions into compliance with Gramm-Leach-Bliley; eliminating the residency restriction reporting requirement for surplus lines licensees remitting the insurance policy surcharge; defining subjects of insurance for which a license is required; increasing continuing education requirements; allowing nonresidents to obtain a limited license for automobile rental coverage; licensing of managing general

agents; providing for certain penalties for violations by managing general agents; requiring fees for licenser; eliminating renewal of service representative permits; repealing insurance vending machines; repealing and eliminating countersignature requirements, effective thirty-first day of December, two thousand; and, making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §33-12-26 of the code of West Virginia, 1931, as amended, be repealed; that §33-3-33 of said code be amended and reenacted; that §33-12-3, §33-12-8, §33-12-10, §33-12-11, §33-12-18, §33-12-23, §33-12-27, §33-12-28, §33-12-30,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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

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

1 (a) For the purpose of providing additional revenue for
2 volunteer fire departments, part-volunteer fire departments,
3 certain retired teachers and the teachers retirement reserve fund,
4 there is hereby authorized and imposed on and after the first
5 day of July, one thousand nine hundred ninety-two, on the
6 policyholder of any fire insurance policy or casualty insurance
7 policy issued by any insurer, authorized or unauthorized, or by
8 any risk retention group, a policy surcharge equal to one
9 percent of the taxable premium for each such policy. For
10 purposes of this section, casualty insurance may not include
11 insurance on the life of a debtor pursuant to or in connection

12 with a specific loan or other credit transaction or insurance on
13 a debtor to provide indemnity for payments becoming due on a
14 specific loan or other credit transaction while the debtor is
15 disabled as defined in the policy. The policy surcharge may not
16 be subject to premium taxes, agent commissions or any other
17 assessment against premiums.

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

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

36 (d) One half of all money from the policy surcharge shall
37 be collected by the commissioner who shall disburse the money
38 received from the surcharge into a special account in the state
39 treasury, designated the "fire protection fund". The net proceeds
40 of this portion of the tax and the interest thereon, after appropri-
41 ation by the Legislature, shall be distributed quarterly on the
42 first day of the months of January, April, July and October to
43 each volunteer fire company or department on an equal share
44 basis by the state treasurer.

45 (1) Before each distribution date, the state fire marshal shall
46 report to the state treasurer the names and addresses of all
47 volunteer and part-volunteer fire companies and departments
48 within the state which meet the eligibility requirements
49 established in section eight-a, article fifteen, chapter eight of
50 this code.

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

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

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-3. License required.

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

6 (b) No person shall in West Virginia act as or hold himself
7 or herself out to be an individual insurance producer or insur-
8 ance agency or solicitor unless then licensed therefor pursuant
9 to this article.

10 (c) No individual insurance producer, insurance agency or
11 solicitor or any representative or employee thereof shall solicit
12 or take application for, negotiate, procure or place for others
13 any kind of insurance or receive or share, directly or indirectly,
14 any commission or other valuable consideration arising from
15 the sale, solicitation or negotiation of any insurance contract for
16 which that person is not then licensed.

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

§33-12-8. Continuing education required.

1 The purpose of this provision is to provide continuing
2 education under guidelines set up under the insurance commis-
3 sioner's office, with the guidelines to be set up under the board
4 of insurance agent education.

5 (a) This section applies to individual insurance producers
6 licensed to engage in the sale of the following types of insur-
7 ance:

8 (1) *Life*. — Life insurance coverage on human lives, includ-
9 ing benefits of endowment and annuities, and may include
10 benefits in the event of death or dismemberment by accident
11 and benefits for disability income;

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

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

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

20 (5) *Variable life and variable annuity products*. — Insur-
21 ance coverage provided under variable life insurance contracts
22 and variable annuities;

23 (6) *Personal lines*. — Property and casualty insurance
24 coverage sold to individuals and families for primarily noncom-
25 mercial purposes; and

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

28 (b) This section does not apply to:

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

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

37 (c) (1) The board of insurance agent education as estab-
38 lished by section seven of this article shall develop a program
39 of continuing insurance education and submit the proposal for
40 the approval of the commissioner on or before the thirty-first
41 day of December of each year. No program may be approved by
42 the commissioner that includes a requirement that any individ-
43 ual insurance producer complete more than twenty-four hours
44 of continuing insurance education biennially. No program may
45 be approved by the commissioner that includes a requirement
46 that any of the following individual insurance producers

47 complete more than six hours of continuing insurance education
48 biennially:

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

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

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

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

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

70 (e) Every individual insurance producer subject to the
71 continuing education requirements shall furnish, at intervals
72 and on forms as may be prescribed by the commissioner,
73 written certification listing the courses, programs or seminars
74 of instruction successfully completed by the person. The
75 certification shall be executed by, or on behalf of, the organiza-
76 tion sponsoring the courses, programs or seminars of instruc-
77 tion.

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

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

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

103 (i) The commissioner is authorized to hire personnel and
104 make reasonable expenditures considered necessary for
105 purposes of establishing and maintaining a system of continuing
106 education for insurers. The commissioner shall charge a fee of
107 twenty-five dollars to continuing education providers for each
108 continuing education course submitted for approval which shall
109 be used to maintain the continuing education system. The
110 commissioner may, at his or her discretion, designate an outside

111 administrator to provide all of or part of the administrative
112 duties of the continuing education system subject to direction
113 and approval by the commissioner. The fees charged by the
114 outside administrator shall be paid by the continuing education
115 providers. In addition to fees charged by the outside administra-
116 tor, the outside administrator shall collect and remit to the
117 commissioner the 25-dollar course submission fee.

§33-12-10. Fees.

1 The fee for an individual insurance producer's license shall
2 be twenty-five dollars, the fee for a solicitor's license shall be
3 twenty-five dollars and the fee for an insurance agency pro-
4 ducer license shall be two hundred dollars. The commissioner
5 shall receive the following fees from individual insurance
6 producers, solicitors and insurance agency producers: For
7 letters of certification, five dollars; for letters of clearance, ten
8 dollars; and for duplicate license, five dollars. All fees and
9 moneys so collected shall be used for the purposes set forth in
10 section thirteen, article three of this chapter.

§33-12-11. Countersignature.

1 No contract of insurance covering a subject of insurance,
2 resident, located or to be performed in this state, shall be
3 executed, issued or delivered by any insurer unless the contract
4 or, in the case of an interstate risk, a countersignature endorse-
5 ment carrying full information as to the West Virginia risk, is
6 signed or countersigned in writing by a licensed resident agent
7 of the insurer, except that excess line insurance shall be
8 countersigned by a duly licensed excess line broker. This
9 section does not apply to: Reinsurance; credit insurance; any
10 contract of insurance covering the rolling stock of any railroad
11 or covering any vessel, aircraft or motor carrier used in inter-
12 state or foreign commerce or covering any liability or other
13 risks incident to the ownership, maintenance or operation

14 thereof; any contract of insurance covering any property in
15 interstate or foreign commerce, or any liability or risks incident
16 thereto. Countersignature of a duly licensed resident agent of
17 the company originating a contract of insurance participated in
18 by other companies as cosureties or coindemnitors shall satisfy
19 all countersignature requirements in respect to such contract of
20 insurance: *Provided*, That the countersignature requirements of
21 this section shall no longer be required for any contract of
22 insurance executed, issued or delivered on or after the thirty-
23 first day of December, two thousand four.

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

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

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

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

19 commissioner shall notify the insurer within five days of its
20 determination.

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

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

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

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

§33-12-23. Payment of commissions.

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

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

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

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

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

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

41 (4) If a limited liability company licensed as an insurance
42 agency producer, each officer, employee or any one or more
43 members owning, directly or indirectly, the controlling interest
44 in a limited liability company satisfies the commissioner that he

45 or she meets the licensing qualifications as set forth in section
46 six of this article. The requirements set forth in this subdivision
47 do not apply to clerical employees or other employees not
48 directly engaged in the selling or servicing of insurance; and

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

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

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

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

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

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

1 An insurer participating in a plan for assignment of
2 personal injury liability insurance or property damage liability
3 insurance on owner's automobiles or operators, which plan has
4 been approved by the commissioner, may pay a commission to
5 a qualified individual insurance producer who is licensed to act
6 as individual insurance producer for any insurer participating in
7 the plan when the individual insurance producer is designated
8 by the insured as the individual insurance producer of record
9 under an automobile assigned risk plan pursuant to which a
10 policy is issued under the plan and section eleven of this article
11 is not applicable thereto.

§33-12-28. Service representative permit.

1 Individual nonresidents of West Virginia, employed on
2 salary by an insurer, who enter the state to assist and advise
3 resident individual insurance producers in the solicitation,
4 negotiation, making or procuring of contracts of insurance on
5 risks resident, located or to be performed in West Virginia shall
6 obtain a service representative permit. The commissioner may,
7 upon receipt of a properly prepared application, issue the permit
8 without requiring a written examination therefor. On or after the
9 first day of July, two thousand four, no service representative
10 license will be issued which is not a renewal of an existing
11 license. The fee for a service representative permit shall be
12 twenty-five dollars and the permit shall expire at midnight on
13 the thirty-first day of March next following the date of issuance.
14 Issuance of a service representative permit may not entitle the
15 holder to countersign policies. The representative may not in
16 any manner sell, solicit, negotiate, make or procure insurance
17 in this state except when in the actual company of the licensed
18 resident individual producer whom he or she has been assigned
19 to assist. All fees collected under this section shall be used for
20 the purposes set forth in section thirteen, article three of this
21 chapter.

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

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

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

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

17 to accept any new private passenger automobile insurance
18 within the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (e) The limited licensee shall be appointed by the licensed
46 insurer or insurers for the sale of automobile rental coverage.
47 The employer of the limited licensee shall maintain at each

48 insurance sales location a list of the names and addresses of
49 employees which are selling insurance at the location.

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

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

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

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

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

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

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

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

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

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

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

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

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

106 (A) Personal accident insurance covering the risks of travel,
107 including, but not limited to, accident and health insurance that
108 provides coverage, as applicable, to renters and other rental

109 vehicle occupants for accidental death or dismemberment and
110 reimbursement for medical expenses resulting from an accident
111 that occurs during the rental period;

112 (B) Liability insurance (which may include uninsured and
113 underinsured motorist coverage whether offered separately or
114 in combination with other liability insurance) that provides
115 coverage, as applicable, to renters and other authorized drivers
116 of rental vehicles for liability arising from the operation of the
117 rental vehicle;

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

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

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

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

136 (j) Notwithstanding any other provision of this section or
137 any rule adopted by the commissioner, neither the rental
138 company, the limited licensee, nor the other employees working
139 with the limited licensee at the rental company shall be required

140 to treat moneys collected from renters purchasing such insur-
141 ance when renting vehicles as funds received in a fiduciary
142 capacity, provided that the charges for coverage shall be
143 itemized and be ancillary to a rental transaction. The sale of
144 insurance not in conjunction with a rental transaction is not
145 permitted.

ARTICLE 12C. SURPLUS LINE.

§33-12C-24. Countersignature requirements.

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

ARTICLE 37. MANAGING GENERAL AGENTS.

§33-37-1. Definitions.

1 For the purposes of this article:

2 (a) "Actuary" means a person who is a member in good
3 standing of the American academy of actuaries.

4 (b) "Home state" means the District of Columbia or any
5 state or territory of the United States in which a managing
6 general agent is incorporated or maintains its principal place of
7 business. If neither the state in which the managing general
8 agent is incorporated, nor the state in which the managing
9 general agent maintains its principal place of business has
10 adopted this article or a substantially similar law governing
11 managing general agents, the managing general agent may
12 declare another state in which it conducts business to be its
13 "home state".

14 (c) "Insurer" means any person, firm, association or
15 corporation duly licensed in this state as an insurance company
16 pursuant to article three of this chapter. Insurer includes, but is
17 not limited to, any domestic insurer as defined in section six,
18 article one of this chapter and any foreign insurer as defined in
19 section seven of said article, including any stock insurer, mutual
20 insurer, reciprocal insurer, farmers' mutual fire insurance
21 company, fraternal benefit society, hospital service corporation,
22 medical service corporation, dental service corporation, health
23 service corporation, health care corporation, health maintenance
24 organization, captive insurance company or risk retention
25 group.

26 (d) "Managing general agent" (MGA) means any person,
27 firm, association or corporation who:

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

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

40 (A) Adjusts or pays claims in excess of ten thousand dollars
41 per claim; or

42 (B) Negotiates reinsurance on behalf of the insurer.

43 (3) Notwithstanding the above, the following persons are
44 not considered managing general agents for the purposes of this
45 article:

46 (A) An employee of the insurer;

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

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

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

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

58 (f) "Underwrite" means the authority to accept or reject risk
59 on behalf of the insurer.

§33-37-2. Licensure.

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

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

9 (c) No person may act in the capacity of a managing
10 general agent with respect to risks located in this state for an

11 insurer licensed in this state unless the person is a licensed
12 insurance producer in this state.

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

25 (e) Any person seeking a license pursuant to subsection (d)
26 of this section shall apply for the license in a form acceptable
27 to the commissioner and shall pay to the commissioner a
28 nonrefundable application fee in an amount prescribed by the
29 commissioner. The application fee shall be not less than five
30 hundred dollars nor more than one thousand dollars. Every
31 licensed managing general agent shall pay to the commissioner
32 a nonrefundable annual renewal fee in an amount prescribed by
33 the commissioner. The renewal fee shall be not less than two
34 hundred dollars nor more than one thousand dollars. Between
35 the first day of May and the first day of June of the renewal
36 year, each licensed managing general agent shall submit to the
37 commissioner the renewal fee and a renewal application form
38 as prescribed by the commissioner. All fees shall be collected
39 by the commissioner, paid into the state treasury and placed to
40 the credit of the special revenue account provided for in section
41 thirteen, article three of this chapter. Each license issued
42 pursuant to this article expires at midnight on the thirtieth day
43 of June next following the day of issuance.

44 (f) The commissioner may require a bond in an amount
45 acceptable to him or her for the protection of the insurer.

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

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

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

§33-37-3. Required contract provisions.

1 No person, firm, association or corporation acting in the
2 capacity of a managing general agent may place business with
3 an insurer unless there is in force a written contract between the
4 parties which sets forth the responsibilities of each party and
5 where both parties share responsibility for a particular function,
6 specifies the division of such responsibilities and which
7 contains the following minimum provisions:

8 (a) The insurer may terminate the contract for cause upon
9 written notice to the managing general agent. The insurer may
10 suspend the underwriting authority of the managing general
11 agent during the pendency of any dispute regarding the cause
12 for termination.

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

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

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

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

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

32 (1) The maximum annual premium volume;

33 (2) The basis of the rates to be charged;

34 (3) The types of risks which may be written;

35 (4) Maximum limits of liability;

- 36 (5) Applicable exclusions;
- 37 (6) Territorial limitations;
- 38 (7) Policy cancellation provisions; and
- 39 (8) The maximum policy period.

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

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

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

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

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

53 (B) Involves a coverage dispute;

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

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

57 (E) Is closed by payment of an amount set by the commis-
58 sioner or an amount set by the company, whichever is less.

59 (3) All claims files will be the joint property of the insurer
60 and managing general agent. However, upon an order of

61 liquidation of the insurer, such files shall become the sole
62 property of the insurer or its estate. The managing general agent
63 shall have reasonable access to and the right to copy the files on
64 a timely basis.

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

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

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

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

86 (k) The managing general agent may not:

87 (1) Bind reinsurance or retrocessions on behalf of the
88 insurer, except that the managing general agent may bind
89 facultative reinsurance contracts pursuant to obligatory faculta-
90 tive agreements if the contract with the insurer contains
91 reinsurance underwriting guidelines including, for both

92 reinsurance assumed and ceded, a list of reinsurers with which
93 such automatic agreements are in effect, the coverages and
94 amounts or percentages that may be reinsured and commission
95 schedules;

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

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

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

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

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

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

116 (8) Appoint a sub managing general agent.

§33-37-4. Duties of insurers.

1 (a) The insurer shall have on file an independent audited
2 financial statement or reports for the two most recent fiscal

3 years that provide that the managing general agent has a
4 positive net worth. If the managing general agent has been in
5 existence for less than two fiscal years the managing general
6 agent shall include financial statements or reports, certified by
7 an officer of the managing general agent and prepared in
8 accordance with generally accepted accounting procedures, for
9 any completed fiscal years, and for any month during the
10 current fiscal year for which financial statements or reports
11 have been completed. An audited financial/annual report
12 prepared on a consolidated basis shall include a columnar
13 consolidating or combining worksheet that shall be filed with
14 the report and include the following:

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

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

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

20 (b) If a managing general agent establishes loss reserves,
21 the insurer shall annually obtain the opinion of an actuary in a
22 form consistent with the requirements for actuarial certifica-
23 tions as imposed upon the insurer by statute or rule of the
24 commissioner attesting to the adequacy of loss reserves
25 established for losses incurred and outstanding on business
26 produced by the managing general agent. This required actu-
27 ary's opinion is in addition to any other required loss reserve
28 certification.

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

32 (d) Binding authority for all reinsurance contracts or
33 participation in insurance or reinsurance syndicates shall rest

34 with an officer of the insurer who shall not be affiliated with the
35 managing general agent.

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

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

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

§33-37-6. Penalties and liabilities.

1 (a) If the commissioner finds that the managing general
2 agent or any other person has violated any provision of this
3 article, or any rule or order promulgated thereunder, after a
4 hearing conducted in accordance with section thirteen, article
5 two of this chapter, the commissioner may order:

6 (1) For each separate violation, a penalty in an amount not
7 exceeding ten thousand dollars;

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

9 (3) Reimbursement by the managing general agent of the
10 insurer, the rehabilitator or liquidator of the insurer for any
11 losses incurred by the insurer and its policyholders and credi-
12 tors caused by a violation of this article committed by the
13 managing general agent; and

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

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

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

32 (d) Nothing contained in this article is intended to or shall
33 in any manner limit or restrict the rights of policyholders,
34 claimants and creditors.

35 (e) The decision, determination or order of the commis-
36 sioner pursuant to subsection (a) of this section shall be subject
37 to judicial review pursuant to section fourteen, article two of
38 this chapter.

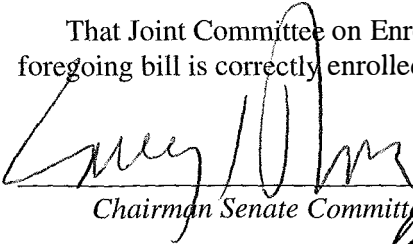
§33-37-7. Rules and regulations.

1 The commissioner is authorized to promulgate reasonable
2 rules for the implementation and administration of the provi-
3 sions of this article pursuant to chapter twenty-nine-a of this
4 code.

§33-37-8. Effective date.

1 This article shall take effect on the first day of July, two
2 thousand four. No insurer may continue to use the services of
3 a managing general agent on and after the first day of July, two
4 thousand four, except in compliance with this article.

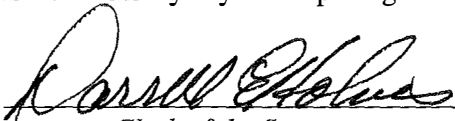
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

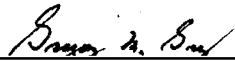

Chairman Senate Committee

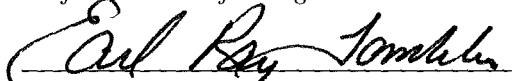

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

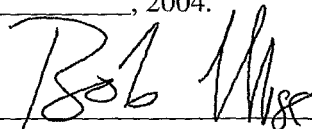

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 6th
day of April, 2004.


Governor

PRESENTED TO THE
GOVERNOR

Date 4/2/04

Time 2:15 pm