



SPONSOR: Sen. Cook & Rep. Hudson

## DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 146

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO LICENSING OF INSURANCE AGENTS, BROKERS, AND OTHER LICENSEES OF THE INSURANCE DEPARTMENT.

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

1           Section 1. Amend Chapter 17 of Title 18 of the Delaware Code by striking said Chapter 17 in its entirety and  
2    inserting in lieu thereof the following:

3 “CHAPTER 17 LICENSING OF PROFESSIONAL INSURANCE PERSONNEL

4 Table of Contents

5                      Section

6                   Section 1701.     Purpose and Scope.

7                   Section 1702.   Definitions.

8                   Section 1703.     License Required.

9                   Section 1704.     Exceptions to Licensing.

Section 1705. Application for Examination.

11           Section 1706.     Application for License.

12                   Section 1707.     License.

13                   Section 1708.     Nonresident Licensing.

14                   Section 1709.   Exemption From Examination.

15                      Section 1710.      Assumed Names.

16                      Section 1711.      Temporary Licensing.

17           Section 1712.   License Denial, Non-Renewal or Revocation.

18           Section 1713.   Conservation of producer business.

19           Section 1714.   Commissions.

20           Section 1715.   Appointments.

21           Section 1716.   Notification to Insurance Commissioner of Termination.

22           Section 1717.   Reciprocity.

23           Section 1718.   Additional or continuing education.

24           Section 1719.   Reporting of Actions.

25           Section 1720.   Regulations.

26           Section 1721.   Enforcement after license lapses or is surrendered.

27           Section 1722.   Severability.

28           Section 1723.   Effective Date.

29           §1701.   Purpose and Scope

30           (a) This chapter governs the qualifications and procedures for the licensing of insurance producers, surplus lines

31 brokers, fraternal representatives, adjusters, apprentice adjusters, property damage appraisers, apprentice property damage

32 appraisers, and temporary licensees. This chapter shall apply to all lines of insurance including, but not limited to, life,

33 health, variable annuity and variable life, property, casualty, surety, title, credit, personal lines, travel, transportation and

34 marine, and to all types of insurers, whether operating on a mutual, stock, reciprocal, fraternal, group or other plan.

35 It simplifies and organizes some statutory language to improve efficiency, permits the use of new technology and reduces

36 costs associated with issuing and renewing insurance licenses.

37           (b) This chapter shall establish the qualifications for granting licenses to professional insurance personnel; to

38 establish the procedures to be followed in determining the initial and continuing qualifications for such personnel to

39 provide definitions of their authorities, duties, responsibilities and prohibitions, in a manner that will provide guidance to

40 such personnel and control over such personnel by the Commissioner of Insurance for the benefit and protection of the

41 citizens of the State.

42           (c) All transactions entered into by a surplus lines broker shall also be subject to Chapter 19 of this Title.

43           §1702.   Definitions

(a) 'Adjuster' means a licensee of the Department who, as an independent contractor, or on behalf of an independent contractor, insurer, self-insurer, producer, or managing general agent, investigates and/or negotiates settlement of claims arising under insurance contracts.

(b) 'Agent of the Insurer' means a licensed producer of the Department appointed by an insurer to sell, solicit or negotiate applications for policies of insurance on its behalf and, if authorized to do so by the insurer, to issue conditional receipts.

(c) 'Appraiser' means a licensee of the Department who assesses property damage to motor vehicles.

(d) 'Apprentice' means a licensee of the Department who is qualified in all respects as an adjuster or appraiser, except as to experience, education, and/or training.

(e) 'Broker of Insured' means a licensed producer of the Department who for compensation negotiates on behalf of others contracts for insurance from companies to whom he or she is not appointed.

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

(g) 'Fraternal Representative' means a licensee of the Department who is appointed or authorized to act for a society of fraternal organization to sell, solicit or negotiate, or making of a life insurance, accident, and health insurance or annuity contract, for no compensation except as specifically exempted from this requirement by § 6233 of this Title.

(h) '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.

(i) 'Insurance producer' means a person required to be licensed under the laws of this state to sell, solicit or negotiate; contracts of insurance or annuity or the lines of authority authorized within the scope of such license. For the purposes of Title 18, Delaware Code, the term "insurance agent," "insurance broker," "insurance consultant" shall be used interchangeably with the term "insurance producer".

(j) 'License' means a document issued by this State's Insurance 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.

(k) '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 Insurance Commissioner determines should be designated a form of limited line credit insurance.

(l) '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.

(m) 'Limited lines insurance' means those lines of insurance defined in Section 1707(b) or any other line of insurance that the Insurance Commissioner deems necessary to recognize for the purposes of complying with Section 1708(e).

(n) 'Limited lines producer' means a person authorized by the Insurance Commissioner to sell, solicit or negotiate limited lines insurance.

(o) '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.

(p) 'Person' means an individual or a business entity.

(q) 'Revocation' means recalling or taking back an insurance license(s) for a minimum period of 12 months. Any insurer appointments of such license shall likewise be revoked. No individual whose license is revoked shall be issued another license without first complying with all requirements of Title 18 Del. C. §1706.

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

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

(t) 'Suspension' means to bar temporarily the privileges of an insurance license(s), granted under Chapter 17 of Title 18 of the Delaware Code, for a maximum of 12 months. A suspension shall also include a suspension of the appointment of such licensee. Upon the expiration of the suspension period and upon satisfactory completion of such terms and conditions as the Commissioner has imposed pursuant to the suspension, all licenses and appointments shall be reinstated.

(u) '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.

(v) 'Travel Accident & Baggage licensee' means a limited line producer of the Department who is a ticket-selling agent or other representative of a common carrier who solicits over-the-counter, short-term, non-renewable, travel accident ticket policies and baggage insurance

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

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

#### §1703. 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 Chapter.

#### §1704. Exceptions to Licensing

(a) Nothing in this Chapter 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; 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 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; or
- (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.

§1705. Application for Examination

(a) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to § 1709. 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, general insurance knowledge, insurance ethics as established by the Commissioner and the insurance laws and regulations of this state.

(b) The Insurance Commissioner may make arrangements for administration and grading by an independent testing service as specified by contract.

(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.

(d) Reexamination. The failure of an applicant to pass an examination or the failure to appear for the examination or to take or complete the examination does not preclude the applicant from taking subsequent examinations.

(e) All examination score reports are valid for a period of 12 months from the date of examination.

#### §1706. Application for License

(a) A person applying for a resident insurance producer license shall make application to the Insurance Commissioner on the Uniform Application or on forms prescribed by the Commissioner for license types and lines of authority not available 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 Insurance 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 § 1712;

(3) Has paid the fees set forth in Title 18 Delaware Code, Chapter 7; and

(4) Has successfully passed the examinations for the lines of authority for which the person has applied unless specifically exempted from such examination by this chapter.

(b) Each resident application shall further contain a statement of the applicant's criminal history, which the applicant shall obtain from the Delaware State Bureau of Identification pursuant to § 8513(a)(2) of Title 11 of the Delaware Code.

(c) Every applicant for a license as an apprentice adjuster or apprentice property damage appraiser must file with the Commissioner a certification from one holding a license as an adjuster or property damage appraiser in which said

holder of the license assumes responsibility for the applicant's training and for all actions undertaken by the applicant pursuant to the requested license.

(d) Every applicant for a license as an producer for the line of variable annuity must hold a license as a life insurance agent and must be registered with the National Association of Security Dealers.

(e) All premiums, return premiums, or other funds received in any manner by a producer or a surplus lines broker shall be held in a fiduciary capacity and shall be accounted for by such producer or surplus lines broker. The producer or surplus lines broker shall, in the ordinary course of business, pay the funds to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment.

(f) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application or on forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Business Entity Application. Before approving the application, the Insurance Commissioner shall find that:

(1) The business entity has paid the fees set forth in Title 18 Delaware Code, Chapter 7; and

(2) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

(g) The Insurance Commissioner may require any documents reasonably necessary to verify the information contained in an application.

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

#### §1707. License

(a) Unless denied licensure pursuant to § 1712, persons who have met the requirements of § 1705 and § 1706 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) Life-insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income as defined in § 902 of this Title.



- (2) Accident and health or sickness-insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income as defined in § 903 of this Title.
- (3) Property-insurance coverage for the direct or consequential loss or damage to property of every kind as defined in § 904 of this Title.
- (4) Casualty-insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property as defined in § 906 of this Title.
- (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 noncommercial purposes.
- (7) Fidelity and surety, as defined in § 905 of this Title.
- (8) Marine and transportation insurance, as defined in § 907 of this Title.
- (9) Title insurance, as defined in § 908 of this Title.
- (10) Any other line of insurance permitted under state laws or regulations.
- (b) Limited lines producer may be qualified and licensed and a qualified producer may hold one or more of the following limited lines of authority:
- (1) Credit insurance lines.
- (2) Life insurance or annuity products used solely to fund a pre-arranged funeral program.
- (3) Travel Accident & Baggage.
- (4) Any other limited line of insurance permitted under state laws or regulations.
- (c) A property damage appraiser's license shall convey authority for the appraisal of damage to motor vehicles as defined in 21 Del. C. § 101.
- (d) An adjuster's license shall convey authority to investigate and negotiate settlement of claims on behalf of licensed agents, brokers, self-insurers, or insurers in one or more of the following lines of insurance:
- (1) Property insurance.
- (2) Casualty insurance.
- (3) Fidelity and surety insurance.
- (4) Automobile insurance.

(5) Marine and transportation insurance.

(e) No adjuster's license shall be required for any adjuster sent into this State on behalf of an insurer for the investigation or adjustment of a particularly unusual or extraordinary loss, or series of losses, resulting from a catastrophe common to all such losses; provided that such adjuster shall furnish to the Commissioner written notice within 10 calendar days of any such catastrophic insurance adjustment work.

(f) An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in Title 18 Delaware Code, Chapter 7 is paid and education requirements for resident individual producers are met by the due date.

(g) An individual 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 and within the first grace period of six (6) months from the due date of the renewal fee; and may be subject to a civil fine of not less than \$200 and not more than \$1,000 within the second grace period of six (6) months after the due date of the first grace period.

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

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

(j) Licensees shall inform the Insurance Commissioner by any means acceptable to the Insurance Commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the Insurance Commissioner of a change in legal name or address shall result in a penalty pursuant to § 1712(d) of this Act.

(k) The Commissioner may issue a new license for any lost, stolen, or destroyed license issued pursuant to this Chapter upon written request from the licensee and payment of appropriate fees for such duplicate license. In order to assist in the performance of the Insurance Commissioner's duties, the Insurance Commissioner may contract with non-governmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates

or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the Insurance Commissioner and the non-governmental entity may deem appropriate.

(l) The Commissioner may participate, in whole or in part, with the NAIC, or any affiliates or subsidiaries the NAIC oversees, in a centralized producer license registry where insurance producer licenses and appointments may be centrally or simultaneously effected for all states that require an insurance producer license and participate in such centralized producer license registry. If the Commissioner finds that participation in such a centralized producer license registry is in the public interest, the Commissioner may adopt by rule any uniform standards and procedures as necessary to participate in the registry. This includes the central collection of all fees for licenses or appointments that are processed through the registry.

(m) Records

The licensee shall maintain at his/her principal place of business the license issued by the Commissioner, together with such records as may be reasonably required by the Commissioner. Such records shall show, for each policy or contract placed or countersigned by or through the licensee, names of the insurers, insureds, policy number, expiration date thereof, premium payable under the terms of the policy or contract, and such other information as the Commissioner may, from time to time, require. Records shall be retained and available for inspection by the Commissioner for a period of three years.

§1708. Nonresident Licensing

(a) Unless denied licensure pursuant to §1712 of this Title, a nonresident person shall receive a nonresident producer license if:

- (1) The person is currently licensed as a resident and in good standing in his or her home state; and
- (2) The person has submitted the proper request for licensure and has paid the fees required by Title 18 Delaware Insurance Code Chapter 7. Notwithstanding any other provision of the Title, every applicant for a nonresident license shall be subject to the same fees as a resident applicant; and
- (3) The person has submitted or transmitted to the Insurance 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 or on forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Application; and

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

(5) Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Commissioner as the agent for service of process on the applicant in any action or proceeding arising in this State out of or in connection with the exercise of the license. Such appointment of the Commissioner as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this State. Process shall be served upon the Commissioner or any Deputy Insurance Commissioner or such other person(s) as the Commissioner shall designate by rule or regulation.

(b) The Insurance Commissioner may verify the producer's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(c) A nonresident producer who moves from one state to another state or a resident 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 license fee or license application is required.

(d) Notwithstanding any other provision of this Chapter, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to Subsection (a) of this section. Except as to Subsection(a), nothing in this section otherwise amends or supercedes any provision of Title 18 Delaware Code Chapter 19.

(e) Notwithstanding any other provision of this Chapter, 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 § 1708 (e), limited line 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 § 1707 (a)(1) through (6).

(f) Miscellaneous Limited Line Insurance: Insurance for an insurer authorized to do business in Delaware which is permitted as a limited line of insurance in a Delaware nonresident producer's home state and is not described in this

section shall have the same scope of authority as granted under the limited license issued by the producer's resident state which shall be briefly described on the license issued.

§1709. 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 National Association of Insurance Commissioners, 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 § 1706. 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 Insurance Commissioner determines otherwise by regulation.

(c) Every applicant for a license as a producer for title insurance who is an attorney licensed to practice law in this state.

(d) Every applicant for a license as a Travel Accident & Baggage licensee.

§1710. Assumed Names

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

§1711. Temporary Licensing

(a) The Insurance 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 Insurance 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 Insurance Commissioner deems that the public interest will best be served by the issuance of this license.

(b) The Insurance Commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The Insurance 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. The Insurance Commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

#### §1712. License Denial, Nonrenewal or Revocation

(a) The Insurance Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a penalty in accordance with § 1712 (d) or any combination of 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 insurance laws, or violating any regulation, subpoena or order of the Insurance Commissioner or of another state's Insurance 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 accepting insurance business from an individual who is not licensed;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) In the event that the action by the Insurance Commissioner is to nonrenew or to deny an application for a license, the Insurance Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Insurance Commissioner within ten (10) days for a hearing before the Insurance Commissioner to determine the reasonableness of the Insurance Commissioner's action. The hearing shall be held within twenty (20) days and shall be held pursuant to the Administrative Procedures Act, 29 Del. C. §101 et seq. and such additional implemented regulations as may be published by the Commissioner.

(c) The license of a business entity may be suspended, revoked or refused if the Insurance 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 Insurance Commissioner nor corrective action taken.

(d) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a fine of not less than \$200 and not more than \$20,000 for each such violation. The Commissioner's order shall specify the date upon which such fine shall be paid and shall revoke the license of any licensee failing to comply with such order. The date on which payment shall be due shall be not less than thirty (30) days

399 following the date of the Commissioner's order unless otherwise specified in the order. The Commissioner may institute a  
400 civil action to recover fines so levied and shall pay over all fines paid and recovered to the State Treasurer.

401 (e) The Insurance Commissioner shall retain the authority to enforce the provisions of and impose any penalty or  
402 remedy authorized by this chapter and Title 18 Delaware Code against any person who is under investigation for or  
403 charged with a violation of this chapter or Title 18 Delaware Code even if the person's license or registration has been  
404 surrendered or has lapsed by operation of law. The Commissioner may, upon his or her discretion reinstate a suspended  
405 license at any time, and may impose as conditions upon the reinstatement such terms and conditions as the Commissioner  
406 determines appropriate.

407 (f) The Commissioner may place any individual, or business entity on probation for a period of one year for  
408 violation of any insurance laws, rules, regulations and orders. The probationary period will not exceed one (1) year.

409 (g) Until such person shall qualify for licensing in accordance with the applicable provisions of this Title. A  
410 person whose license has been revoked or suspended on two occasions shall not again be licensed under this Title.

411 §1713. Conservation of producer business.

412 (a) If the Commissioner finds that the business of any licensed producer in this State has become financially  
413 impaired or insolvent, or has been abandoned by the licensee, or has been conducted in such a manner as to require or  
414 justify revocation of the licenses of that licensee, and if the Commissioner further finds that the conservation and  
415 administration of the business of the licensee would be in the public interest, he/she shall file in the Court of Chancery in  
416 the county in which the producer business is located a petition for the appointment of the Commissioner as conservator or  
417 receiver of such producer's business except by leave of the court.

418 (b) The petition shall be verified by the Commissioner and shall set forth the facts and circumstances from  
419 which the existence of one or more of the grounds required under subsection A above, may be determined; such petition  
420 may request that the licensee be required to show cause why the petition should not be granted.

421 (c) A copy of the petition, and of the order to show cause, if they are issued, shall be served upon the  
422 licensee in the same manner as provided by law of this State for service of other legal process.

423 (d) Upon the filing of a petition and pending a hearing upon the order to show cause, the Court may, upon  
424 good cause shown and without notice to the other party, appoint the Commissioner as temporary conservator or receiver  
425 of the producer's business.



(e) The Commissioner shall, as conservator or receiver, be authorized and empowered to conduct and administer the affairs of the producer business in order to expeditiously terminate such business and, to the extent reasonably possible, to provide services and an accounting for funds to all persons previously insured and to insurers who have previously been doing business through such producer. Subject to the Court's order, the Commissioner shall have the power to collect funds owed to the producer on account of insurance business transacted by him/her, and to account for and make payment of those funds to such persons as are entitled to them.

(f) The Commissioner may delegate the actual conduct and administration of the business of the producer and no charges for services so rendered shall be made against the funds or assets of the producer business except by leave of the Court.

(g) Except as expressly herein provided, receivership or conservatorship shall be subject to the applicable laws of this State and to the order of any court of competent jurisdiction.

#### §1714. 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 chapter and is not so licensed.

(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 chapter 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 chapter 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 an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate Title 18, Delaware Code, § 2303 and § 2304.

(e) No producer acting as a consultant may accept any fee, commission, or other consideration from an insurer for any activity for which the producer acting as a consultant has received or will receive a fee from his/her client.

(f) An insurer 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 chapter and is not so licensed. Nothing in this section allows an insurer to pay commissions to a non-appointed insurance producer when an appointment is otherwise required.

§1715. 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) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the Insurance 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. The group appointment provision of this section is only applicable upon implementation by this Department of an electronic appointment process.

(c) Upon receipt of the notice of appointment, the Insurance 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 Insurance Commissioner shall notify the insurer within five (5) days of its determination.

(d) An insurer shall pay an appointment fee, in the amount and method of payment set forth in Title 18 Delaware Code, Chapter 7, for each insurance producer appointed by the insurer.

§1716. Notification to Insurance 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 Insurance Commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the Insurance Commissioner, if the reason for termination is one of the reasons set forth in § 1712 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 in § 1712. Upon the written request of the Insurance 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 § 1712, shall notify the Insurance Commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the

Insurance Commissioner. Upon written request of the Insurance Commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(c) Ongoing Notification Requirement. The insurer or the authorized representative of the insurer shall promptly notify the Insurance Commissioner in a format acceptable to the Insurance Commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Insurance Commissioner in accordance with Subsection A had the insurer then known of its existence.

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

(1) Within fifteen (15) days after making the notification required by Subsections (a), (b) and (c), 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 § 1712, 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 Insurance 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 Insurance Commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under Subsection F.

(e) Immunities

(1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the Insurance Commissioner, or an organization of which the insurance commissioner is a member and that compiles the information and makes it available to other Insurance 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 Insurance 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) was reported to the

Insurance Commissioner, provided that the propriety of any termination for cause under Subsection A 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 Paragraph (1) for making any statement required by this section or providing any information relating to any statement that may be requested by the Insurance Commissioner, the party bringing the action shall plead specifically in any allegation that Paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.

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

(f) Confidentiality

(1) Any documents, materials or other information in the control or possession of the Department of Insurance 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 Insurance Commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to Chapter 100 of Title 29, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Insurance 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 Insurance Commissioner's duties.

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

(3) In order to assist in the performance of the Insurance Commissioner's duties under this Chapter, the Insurance Commissioner:

- a. May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Paragraph (1), with other state, federal, and international regulatory agencies, with the National Association of Insurance

Commissioners, 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 National Association of Insurance Commissioners, 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.

d. 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 Paragraph (3).

e. Nothing in this Chapter shall prohibit the Insurance Commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to Chapter 100 of Title 29 to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.

f. Penalties for Failing to Report. An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have 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 and may be fined in accordance with Title 18 Delaware Code.

§1717. Reciprocity

(a) The Insurance 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 § 1708 of this chapter, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(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 nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

#### §1718. Additional or Continuing Education

In addition to meeting the standards prescribed in other sections of this chapter for the issuance of a license, the Commissioner may promulgate regulations and/or prerequisites which will establish reasonable standards and criteria for requiring additional or continuing education of licensees, in order to ensure the maintenance or improvement of a licensee's insurance skills and knowledge. Failure to provide proof of meeting continuing education requirements may result in suspension of license(s).

#### §1719. Reporting of Actions

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

(b) Within thirty (30) days of the initial pretrial hearing date, a producer shall report to the Insurance 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.

#### §1720. Regulations

The Insurance Commissioner may promulgate reasonable regulations as are necessary or proper to carry out the purposes of this chapter.

#### §1721 Enforcement after license, lapses or is surrendered

The Commissioner shall retain authority to enforce the provisions of, and impose any penalty or remedy authorized by, this chapter and title against any person who is under investigation for, or charged with, a violation of this chapter and title even if, while the investigation or charges are pending, such person's license, or registration is surrendered or lapses by operation of law.

592 §1722. Severability

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

596 §1723. Effective Date

597 This Chapter shall take effect March 1, 2002.

#### SYNOPSIS

This Bill replaces the current Insurance Department Statute for agent, broker and other licensees of the Department and creates a system of reciprocity for producer licensing and creates uniform standards for key areas of producer licensing. It complies with Public Law 106-102 (the Gramm-Leach-Bliley Act) which mandates that a majority of the states 1) enact uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the state or 2) enact reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those states. If states do not enact such uniform laws and regulations or enact a system of reciprocal licensing by November 12, 2002, the National Association of Registered Agents and Brokers will be established to provide a mechanism through which uniform licensing, appointment, continuing education and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis and Delaware will lose regulatory oversight.

This Bill when adopted will preserve the authority of Delaware to license insurance producers. It creates a system of reciprocity for producer licensing and creates a more uniform and efficient system of producer licensing.

Author: Senator Cook