**VA DOI COMMENTS – Chapter 11**

**Chapter 11**

**Appointments**

An appointment is a registration with the state insurance department that a producer is acting on behalf of an insurer. The Producer Licensing Model Act (#218) contains several sections related to appointments. Section 14 of Model #218 establishes the requirement that a producer acting as an agent of an insurer must have an appointment. This is an optional provision and applies only in those states that require appointments. Section 15 of Model #218 establishes a procedure for the reporting of appointment terminations. The Gramm-Leach-Bliley Act (GLBA), as modified in 2015, prohibits any state other than a producer’s home state from imposing any appointment requirements upon a member of the National Association of Registered Agents and Brokers (NARAB).

In 2002, the Producer Licensing Task Force adopted a uniform appointment process. The full text is included in the Appendices and is available on the Working Group’s web page. This process is referred to in the Uniform Licensing Standards (ULS). The key elements include:

1. States should allow the electronic filing of appointments and appointment terminations. Paper filings are discouraged.
2. States should establish a billing system for payment by insurers of initial appointments.
3. States shall allow insurers to select the effective date of the initial appointment.
4. States shall require insurers to follow a prescribed timeline to file appointments.
5. States shall require only one appointment or termination form or transaction per producer per company. At this writing, appointments by company group are not available.
6. States shall require insurance companies to submit terminations to the insurance department in accordance with the requirements of Section 15 of Model #218.
7. States shall require that, if a producer is terminated for cause, the insurer must submit supporting documentation. Any information received by the insurance department must remain confidential in accordance with Section 15 of Model #218.

In states that renew appointments, the key elements include:

1. States shall provide or publish a pre-renewal notice to insurers informing them that appointment renewals are imminent.
2. At the time for renewal, a state will deliver an invoice. The invoice may not be altered, amended, or used for appointing or terminating producers.
3. Insurers shall return the invoice and the payment to the department or its designee.
4. States shall establish a dispute resolution process to accommodate errors after the fact.

**Appointment Terminations**

Section 15 of Model #218 imposes a requirement on insurers to report terminations of producer appointments. Section 15 requires that the insurer report a termination within 30 days of its occurrence. If a termination is for any of the reasons listed in Section 12, License Denial, Non-Renewal or Revocation of Model #218, insurers are required to submit a detailed report to the state and a copy of the report to the producer. Section 15(E) grants immunity from civil liability for good-faith reporting to insurers and state insurance regulators. Reports filed under Section 15 are considered confidential.

**Recommended Best Practices for State Insurance Regulators**

* Automatically terminate appointments if a license goes inactive for any reason.
* Eliminate fees for appointment terminations and instead assess all charges at the time of an appointment. This will eliminate delays in cancellations.
* Do not require an appointment as a condition of licensure. Model #218 and the ULS provide that a producer can hold a license without holding an active appointment.
* Require only one appointment or termination form or transaction for each company for each producer per state.
* Sub-appointments and Business Entity appointments are discouraged.
* Immediately accept terminations for cause and refer them for investigation. States should follow the procedures as outlined in Model #218. No advance notice should be required to the producer or the state insurance department.
* Use electronic filing for appointments, terminations and renewals, to the extent possible, to eliminate delays and increase efficiency.

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**Just-In-Time Appointments**

In 2000, the NAIC opened model legislation to the states for Just-In-Time appointments. Just-In-Time appointments allow insurance carriers the ability to delay appointing a producer (and paying the appointment fee) until the producer begins writing business for that carrier. Carriers can onboard agents, background check them, and then wait to pay the appointment fee until the first insurance application has been submitted. Most states allow Just-In-Time appointments. Previously, if a producer wanted to solicit, negotiate and sell insurance they had to be licensed and appointed with the carrier. All too often, producers would never write a single policy for that carrier. Costing the carrier money in wasted appointment fees.

**ULS Language.**

**APPOINTMENT PROCESS STANDARDS**

21. Process:

If a state requires appointments, it shall follow the appointment and termination process as defined in the Uniform Appointment Process or use the NIPR electronic appointment and termination process. In addition, states shall mail a pre-notice renewal letter or provide electronic notice to companies informing them that appointment renewals are imminent. (Process and form attached).

22. Appointment Renewal Cycle:

Appointments shall be continuous subject to payment of any applicable fees. Fees must be calculated as of a date certain.

**PLMA Language**

###### Section 14. Appointments [Optional]

1. 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.
2. 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.

**Drafting Note:** The group appointment provision of Subsection B is only applicable in jurisdictions that have implemented an electronic appointment process.

C. [Optional] 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 [insert appropriate reference to state law or regulation], for each insurance producer appointed by the insurer.

E. [Optional] An insurer shall remit, in a manner prescribed by the insurance commissioner, a renewal appointment fee in the amount set forth in [insert appropriate reference to state law or regulation].

Drafting Note: This act designates as optional the section on appointments of producers by insurers. That designation recognizes that some states do not require the formal appointment of a producer before business can be conducted with an insurer or multiple insurers.

**Section 15. 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 Section 12 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 Section 12. 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 Section 12, 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.

Drafting Note: Those states that do not require formal appointments may delete any reference to appointments in Subsections A and B above.

## **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 Section 12, 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 [insert open records, freedom of information, sunshine or other appropriate phrase], 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 Act, 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) **[OPTIONAL]** May enter into agreements governing sharing and use of information consistent with this subsection.

**Drafting Note:** The language in Paragraph 3(a) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

1. 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).

(5) Nothing in this Act shall prohibit the insurance commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to [insert appropriate reference to state law] 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.

## G. 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 [insert appropriate reference to state law].