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Subject: Louisiana Producer Licensing Requirements

Background: In recent weeks, the Louisiana Department of Insurance (LDI) has issued cease and desist orders, fines and penalties against several producers and insurance agencies for operating without insurance producer licenses. A significant number of members have contacted IIABL asking for clarification about what insurance agency activities unlicensed employees may conduct, and what activities require an insurance producer license. Following is an analysis of what insurance agency activities require an insurance producer license.

Main Points: There are numerous statutes which define Louisiana insurance producer licensing requirements. This analysis will be restricted to three statutes which define what activities may be conducted by unlicensed employees, what activities require a producer license, and what activities are prohibited by law.

1. LICENSE REQUIRED TO PAY OR RECEIVE COMMISSIONS

The first requirement is simple and straight forward; an agency employee must be licensed in order for the agency to pay or for the employee to receive commissions.

Commission is defined in the statute as "a fee paid to an insurance producer as a percentage of the premium generated by a sold insurance policy, or direct compensation or reward of a producer when the same is calculated as a flat fee or as a percentage of the premium or on the profit to the principal." Following is Louisiana Revised Statute 22:1557 which prohibits payment or receipt of commissions unless the employee has the proper Louisiana producer license:

§ 1557. Commissions

A. (1) An insurer or insurance producer shall not pay, directly or indirectly, any commission, service fee, brokerage, or other valuable consideration to any person or entity for selling, soliciting, or negotiating insurance in this state unless such person or entity holds a valid license as required by law.

(2) No person or business entity other than a person or business entity duly licensed by the Department of Insurance as an insurance producer shall accept any commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state.

(3) 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 Subpart at the time of the sale, solicitation, or negotiation and was so licensed at that time.

B. (1) No member of an insurance advisory committee of any state agency, board, commission, or of any political subdivision of this state, including but not limited to school boards, levee boards, deep water port commissions, deep water port, harbor and terminal districts, and the Louisiana Stadium and Exposition District, shall split, pass on, or share with any insurance producer or other person who is not a member of his own firm or corporation and is not a member of said insurance advisory committee, all or any portion of the commission derived by such committee from the purchase of insurance by such state agency, board, commission, or political subdivision of the state without express authorization by official action of such state agency, board, commission, or political subdivision of the state. Any insurance producer or other person who is not a member of such firm or corporation and is not a member of said insurance advisory committee who receives without authorization all or any portion of such commission shall also be in violation of this Subsection.

(2) Any violator of the provisions of this Subsection shall, upon conviction, be fined not less than one thousand dollars, nor more than five thousand dollars per violation, or imprisoned for not more than two years, or both.

(3) Any conviction for a violation of the provisions of this Subsection shall constitute grounds for suspension or revocation by the commissioner of insurance of the license of such insurance producer, in addition to those grounds of R.S. 22:1554.

2. LICENSE REQUIRED FOR CERTAIN INSURANCE ACTIVITIES

Louisiana Revised Statute 22:1543 defines certain activities that require a Louisiana insurance producer license.

§ 1543. License required

A. No person shall act as or hold himself out to be an insurance producer unless licensed by the Department of Insurance.

B. No insurance producer shall sell, solicit, make an application for, procure, negotiate for, or place for others, any policies for any lines of insurance as to which he is not then qualified and duly licensed in this state.

Obviously, Louisiana law prohibits a person from presenting themselves as an insurance producer unless they are properly licensed.

The law also prohibits certain activities unless the person is properly licensed. These prohibited activities include:

ACTIVITIES WHICH REQUIRE AN INSURANCE PRODUCER LICENSE

1. "Sell" shall mean to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.
2. "Solicit" shall mean to attempt to sell insurance or to ask or urge a person to apply for a particular kind of insurance from a particular insurer.
3. Make an application for, procure, negotiate for, or place for others, any policies
"Negotiate" shall mean to confer directly with or to offer advice directly to a purchaser, certificate holder, or enrollee, or prospective purchaser, certificate holder, or enrollee, of a particular contract of insurance, including certificates, riders, endorsements, or amendments, concerning any of the benefits, terms, or conditions of the contract, provided that the person engaged in that act is an insurance producer who either sells insurance or obtains insurance from insurers for purchasers, certificate holders, or enrollees.

There are two key characteristics of these prohibited activities. First, they involve interaction with the consumer public. Second, they involve effecting insurance coverage for a consumer.

Unlicensed employees may conduct many activities in an insurance agency as long as they do not involve interacting with consumers for the purpose of effecting new insurance coverage (or changing insurance coverage) for that consumer.

ACTIVITIES WHICH DO NOT REQUIRE AN INSURANCE PRODUCER LICENSE

1. Answering the phone, directing calls, and answering general questions not involving effecting new insurance coverages or interpreting coverages
2. Receiving payments
3. Accounting and bookkeeping
4. General administrative computer work and paperwork which does not involve contact with consumers – this does NOT include signing applications or policies
5. Creation of quotes and proposals (which does not involve contact with consumers) with information obtained from the producer for presentation by the licensed producer

6. Completion, processing and administration of applications (which does not involve contact with consumers) with information obtained from the consumer by a licensed producer
7. Taking and processing simple change requests from existing policyholders that do not involve effecting new insurance coverages or changing insurance coverages (Examples might include adding, deleting, or changing vehicles or property locations on existing policies WITHOUT changes in the insurance coverages provided under the policy)
8. Processing policy endorsements, changes, binders, certificates of insurance under the supervision of a licensed producer for their signature (an unlicensed employee may not sign any evidence of insurance)
9. Transmittal and processing of claims without making any determination of coverage
10. Other work which does not involve effecting new insurance coverages or changes to insurance coverage with consumers, or otherwise acting as a licensed insurance producer

3. PROHIBITED ACTS FOR PRODUCERS

Louisiana Revised Statute 22:1562 outlines certain activities which are prohibited for insurance agency employees.

§ 1562. Prohibited acts

A. (1) No insurer or insurance producer shall pay any money or commission or brokerage, or give or allow any valuable consideration or compensation to any person or business entity not duly licensed as an insurance producer, nor to an insurer not licensed to do business in this state, for or because of service rendered or performed in this state in selling, soliciting, negotiating, or effecting a contract of insurance on any property or risks, or insurable interests, or business activities located within or transacted within this state. The prohibition of this Subsection shall not apply with respect to any contract of reinsurance.

(2) The prohibition of this Subsection shall not apply to the distribution of profits to the owners of an insurance agency. The provisions of this Paragraph shall not apply to the Louisiana Workers' Compensation Corporation.

B. (1) Whoever violates this Section shall, upon conviction, be fined not less than two thousand dollars, nor more than fifty thousand dollars, or imprisoned with or without hard labor, for not more than three years, or both.

(2) Any conviction for violation of this Section shall constitute grounds for the immediate suspension or revocation by the commissioner of insurance of the license of such insurance producer to sell insurance, in addition to those grounds set forth in R.S. 22:1554.

C. (1) It shall be unlawful for any person or business entity, without conforming to the provisions of this Part, directly or indirectly, to represent himself or itself to be an insurance producer or limited lines producer, or to solicit, negotiate, or effect any contract of insurance or renewal thereof, or to attempt to effect the same on any property, or risk or insurable interests or business activities, located within or transacted within this state. This Subsection shall not apply to:

(a) The clerical duties of office employees not involved in soliciting insurance.

(b) Employees of insurance companies who solicit insurance only for or in conjunction with licensed insurance producers compensated on a commission basis.

(c) The collection of premiums by secretarial or clerical employees of a licensed insurance producer, or other person so authorized by a licensed insurance producer.

(d) Employees of insurance companies who do not solicit insurance but are authorized by their employer to sign policies of insurance.

(2) Wherever the commissioner of insurance determines that a violation of Paragraph (1) of this Subsection has occurred, whether that violation be intentional or not, the commissioner or his designee is hereby authorized to issue an order to cease and desist from the violations complained of, and the commissioner is hereby authorized to seek injunctive relief from the district court of the district in which the violation may have occurred or in any proper venue authorized under the Louisiana Code of Civil Procedure.

D. (1) No person licensed as, or representing himself to be, an insurance producer shall receive anything of value as premium payment or commission for an insurance policy rider, binder, or plan without making a bona fide application to an insurer for an insurance policy.

(2) No person licensed as, or representing himself to be, an insurance producer shall fail to account for or remit any premiums, monies, or properties belonging to another which come into the possession of the applicant in the course of doing insurance business, or improperly withholding, misappropriating, converting, or failing to timely remit any

premiums, monies, or properties received in the course of doing insurance business, whether such premiums, monies, or properties belong to policyholders, insurers, beneficiaries, claimants, or others.

E. (1) It shall be unlawful for any insurance producer, directly or indirectly, to collect any insurance premium payment, or compensation, or to solicit, negotiate, effect, procure, receive, or forward any contract of insurance or renewal thereof, in relation to any property or risk or insurable interest in this state, for any insurer not lawfully authorized to transact business in this state, or in any manner to aid or assist in any such transaction, except through licensed surplus lines brokers.

(2) Except as hereinafter provided in Paragraph (3) of this Subsection, any person or business entity shall be liable for the full amount of any loss sustained on any contract of insurance made by or through him or it, directly or indirectly, with any insurer not lawfully authorized to transact business in this state, and for any taxes which may become due under any law of this state by reason of such contract. For purposes of this Section, any surplus lines insurer which is approved by the commissioner shall be considered lawfully authorized to transact business in this state.

(3) Any licensed producer who writes a policy through a licensed surplus lines broker shall not be liable for any losses or taxes as provided for in this Section.

(4) Any person or business entity found to have violated this Subpart shall be deemed to have engaged in unfair trade practices and shall be subjected to the penalties provided herein. Additionally, any person found to have knowingly and intentionally violated any provisions of this Subsection shall be guilty of a felony and shall be subjected to a term of imprisonment, with or without hard labor, not to exceed five years, on each count, and each day on which a violation of this Subsection occurs shall be considered a separate violation.

F. It shall be unlawful for any producer to sign any policy of insurance endorsement in blank.

G. Repealed by Acts 2001, No. 1158, § 3.

H. No insurer, agent, or broker shall accept or process an application for coverage under a Medicare+Choice plan unless the following requirements are met:

(1) The Medicare enrollee or his authorized representative has signed the application for coverage.

(2) The Medicare enrollee is provided a written notice upon transfer from one approved Medicare+Choice plan to another stating that his coverage is being transferred. Such notice shall also state how the change in coverage will impact the Medicare enrollee's access to health care providers, including specifying any known change in health care providers available to provide care.

(3) The Medicare enrollee is provided a written notice upon plan cancellation of his current Medicare+Choice coverage that clearly states the date his coverage ends.

(4) The Medicare enrollee is notified of any known change in health care providers that may reasonably result from the action of the agent or broker.

Necessary Action: Review the activities of agency employees with the guidance of this Technical Advisory to make certain that all appropriate agency employees are properly licensed. Review the activities of any unlicensed agency employees to make sure that their activities are appropriate without a license. If you have questions, or need assistance with licensing issues, please contact the Louisiana Department of Insurance:

**Louisiana Department of Insurance
Producer Licensing**

The Producer Licensing Division licenses individuals, partnerships and corporations to engage in the insurance industry in Louisiana. This division maintains records on all producers, surplus lines brokers and adjusters to determine their qualification to conduct business in accordance with Louisiana laws.

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