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WASHINGTON STATE LAWS AND RULES

Washington Administrative Code (WAC) Title 284

Revised Code of Washington (RCW) Title 48

Do NOT Memorize the RCW or WAC *numbers*.



A. The Insurance Commissioner...

The Insurance Industry in Washington is regulated by the State of Washington. The Revised Code of Washington (RCWs) is comprised of State Laws (a.k.a. Statute Law) passed by the state legislature, which governs the insurance activities in our state. The insurance commissioner protects the Insurance Consumer by enforcing these laws. They do not write these laws, but they write reasonable rules to be able to properly clarify these laws and enforce them. They are, by their office, a member of the NAIC.

The **National Association of Insurance Commissioners** (NAIC) is the oldest association of **state government officials**. They protect the insurance consumer.

The **Commissioner** is **elected** every **four (4) years** by **the voters** of the State of Washington. Their term will commence on the Wednesday after the second Monday in January following the election.

Washington's current Insurance Commissioner is Mike Kreidler.



Broad Powers... (RCW 48.02.010, .020, .060, .080, .100, .160, 310; WAC 284-02-010)

1) General Powers and Duties of the Commissioner

- a) **Administer and enforce** the provisions of the Insurance Code.
- b) Make **reasonable rules and regulations** for effectuating any provision of the Insurance Code.
- c) **Conduct investigations** to determine whether any person or company has violated any provision of the Insurance Code. The Commissioner may **investigate** grievances filed against any authorized insurance company (provider) or insurance producer.
- d) Take action against an insurance company or health care service contractor by **revocation or suspension of its Certificate of Authority**. A certificate of authority is a company's license to transact insurance in our state.
- e) **Revoke or suspend any insurance license**. Any person violating any provision of the insurance code is guilty of a gross misdemeanor and will, upon conviction, **be fined not less than ten dollars nor more than one thousand dollars, or imprisoned for not more than one year, or both** in addition to any other penalty or forfeiture provided herein or otherwise by law.

- f) Before entering upon their duties, the commissioner shall execute a **bond** to the state in the sum of **twenty-five thousand dollars**, to be approved by the state treasurer and the attorney general, conditioned upon the faithful performance of the duties of their office.
- g) *The commissioner may delegate authority. Any power or duty vested in the commissioner by any provision of this code may be exercised by any deputy, assistant, examiner, or employee of the commissioner acting on their behalf and by their authority. This may, at the commissioner's discretion, include the need for a bond up to the \$25,000 required for the commissioner.*
- h) The commissioner may order the immediate cancellation of any policy the procuring or effectuation of which was accomplished through or accompanied by a violation of this code, except in cases where the policy by its terms is not cancellable by the insurer and the insured did not knowingly participate in any such violation.

2) Enforcement by the Commissioner...

- a) The commissioner may prosecute an action in any court of competent jurisdiction to enforce any order made by them pursuant to any provision of this code.
- b) If the commissioner has cause to believe that any person has violated any penal provision of this code or other laws relating to insurance, they shall certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.
- c) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the commissioner, they may:
 - i. **Issue a cease-and-desist order**; and/or
(A cease-and-desist order means stop committing that particular violation, not necessarily stop all business.)
 - ii. **Bring an action in any court of** competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof.
- d) The **attorney general** and the several **prosecuting attorneys** throughout the state shall prosecute or defend all proceedings brought pursuant to the provisions of this code *when requested by the commissioner*.
- e) SHIBA The OIC offers assistance statewide to consumers regarding health care insurance and health care access through its statewide health insurance benefits advisors (SHIBA) program. Volunteers are trained by OIC employees to provide counseling, education, and other assistance to residents of Washington.

The Commissioner **DOES NOT**:

- Put insurance policies together.
- Restrict the number of insurance producers a company may have.
- **Make the code or decide on the constitutionality of the codes (statutes).**
- Endorse any insurance company.
- Prosecute, arrest, sue or issue warrants against licensees **but does file the complaint through the courts.**

The Commissioner **DOES**:

- Obtain and publish for the use of courts and appraisers throughout the state, tables showing the average expectancy of life and values of annuities.
- Disseminate information concerning the insurance laws of this state.
- Provide assistance to members of the public in obtaining information about insurance products and in resolving complaints involving insurers and other licensees.

www.insurance.wa.gov

3) Examination of Records... (48.03.010-020, 284-03-005, 015, 030) The Commissioner must establish the Examinations Department headed by a Chief Examiner who has the responsibility of monitoring the insurers' financial status.

- The Chief Examiner **must** examine each insurance company holding a certificate of authority at least every five years, but **may** examine at **any time**, and also has the responsibility for licensing applicants and checking their qualifications.
- The Commissioner may elect to accept and rely on an audit report made by an independent certified public accountant for the insurer in the course of that part of the commissioner's examination.
- The commissioner may examine at any time the books and records of any producer, surplus lines broker or adjuster.
- If the commissioner finds the accounts to be inadequate, or improperly kept or posted, they may employ experts to rewrite, post or balance them at the expense of the person being examined.

Public Access to Records... (284-03-005, 015,030) The Insurance Commissioner must allow public access to records by appointing a Public Records Officer. The officer must help individuals by accepting written requests for information, helping obtain the appropriate description of the records, and assisting the public. The Public Records Act provides that a number of types of documents are exempt from public inspection and copying.

Public access to records is available online.

4) Rates and Forms... (48.18.100, 48.19.010, 48.19.040, 48.17.490) Washington is a prior approval state. Every insurer must, **before using**, file with the Insurance Commissioner every **policy, manual, form, rule, rate, and effective date**, utilized in classifications. The insurer must also stipulate why the classifications, premiums, rules, etc., are needed.

- ✓ **The Insurance Commissioner is responsible for the regulation of rates and forms.** The Commissioner's approval of a form may be withdrawn at any time, and they may **order** that the form no longer be used.
- ✓ If a company is offering any product at any price that has not been approved by the commissioner's office, it is an illegal product (even if is better for the consumer). *E.g., if a company were to sell 50 policies when the product has not been approved, they could be fined up to \$1,000 per violation, a total fine of \$50,000.*

5) Penalties... (48.17.530-.560) Licensing Suspension / Revocation / Probation

- a) **Suspension:** The Commissioner can take the license away temporarily for a maximum of **one year** and it is returned without the producer having to retake an exam.
- b) **Revocation:** The Commissioner can take the license away for a maximum of **one year**.
 - That license will never be returned but if they want to sell insurance.
 - The person must reapply for the license, but it may not be approved.
 - However, if the Commissioner does approve the application, the proper license exam must be passed again.
 - *Note: Suspension and revocation are both for a maximum of a year. If a person's license is suspended, they get it back. If a person's license is revoked, they must ask for it, and if told yes, they must start the licensing process over - class, test, etc.*
- c) **Probation:** The commissioner may probate a suspension or revocation of a license under reasonable terms determined by the commissioner. In addition, the commissioner may require a licensee who is placed on probation to:
 - Report regularly to the commissioner on matters that are the basis of the probation.
 - Limit practice to an area prescribed by the commissioner; or continue or renew continuing education until the licensee attains a degree of skill satisfactory to the commissioner in the area that is the basis of the probation.
 - At any time during a probation term where the licensee has violated the probation order, the commissioner may: Rescind the probation and enforce the commissioner's original order; and impose any disciplinary action permitted under this section in addition to or in lieu of enforcing the original order.

Timing: The Commissioner may suspend, revoke, or refuse to renew a license with not less than **15-days written notice**.

The Commissioner may suspend a license with not less than a **three-day** written notice upon **finding** that the public safety requires this **emergency action**.

Immediate revocation (without a hearing) of any insurance license is allowed upon the sentencing of the licensee for conviction of a felony, but only if the facts of the conviction demonstrate the licensee to be untrustworthy to maintain any such license.

d) Fines... (48.17.560, 48.04.010) The Commissioner can fine a minimum of \$10 and a maximum of \$1,000 and/or up to 364 days in jail per offense for a violation of the insurance code.

- Fines and penalties must be paid in **not less than 15 days nor more than 30 days** after the receipt of the order to pay.
- *Failure to pay will result in revocation of the insurance license and the fine recovered in a civil action through the courts on behalf of the Insurance Commissioner.*
- Fines are paid to the State Treasurer for deposit in the general fund.

e) Appeal... The licensee has the legal right to appeal orders, fines, penalties, suspensions, and revocations levied by the State Commissioner within 90 days. The licensee can appeal any decision of the Commissioner or any deputy, assistant, or examiner of the Commissioner. The new hearing must be held within 30 days of the appeal.

6) Unlicensed Activities... (48.17.060, 063) A person shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter.

- For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract.
 - ✓ Any person who knowingly violates this section is **guilty of a Class B felony**.
 - ✓ **The Commissioner may** issue a cease-and-desist order, **suspend, or revoke a license** and/or **assess a civil penalty** of not more than **\$25,000** for each violation.

****A producer in the state of Washington receives one license. Lines of authority may be added as you pass the exams. You may only sell, solicit, or negotiate in the lines you are licensed in. *For example, giving an auto quote to someone while being life-only licensed would be considered in violation of this law.* A producer may share commissions with someone who has a license in a different line of insurance than the line being sold.**

B. Terms and Concepts

1) Insurance... (48.01.040) is a social device for transferring **risk (specifically the financial impact of a loss)** to an insurance company. The funds to cover losses are raised by collecting small amounts of money (premiums) from a broad base and many people.

“Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.”

2) Risk is the uncertainty of a loss, specifically, a financial loss. **Only pure risk is insurable** (the chance of a loss, no gain). *With a **speculative risk**, there is a chance of gain as well as a chance of loss. However, a speculative risk is not insurable.*

3) Insurer... (48.01.050) a.k.a. **Issuer, Insurance Company, Carrier, Principal** is the insurance company or other entity assuming risks and agreeing to pay claims or provide services. Written communications from insurance companies must be phrased in simple language and list *the full name of the insurer and location of its home office or principal office*, if any, in the United States.

4) Insured is the person, persons, or business covered by the insurance, who (usually) pays the premiums in exchange for protection against losses.

5) Insurance Policy is a contract, a legal document, which establishes the terms of the agreement between the insurer and the insured. The policy must **not be** unintelligible, ambiguous, or likely to mislead the person who is purchasing or reading the policy.

6) Insurance Producer means **a person** required to be licensed under the laws of this state to **sell, solicit, or negotiate** insurance. The term, insurance producer, does not include title insurance agents or surplus lines brokers.

7) Person... (48.01.070) means any individual, company, insurer, association, organization, reciprocal exchange, partnership, business trust, or corporation.

- *An office may be considered a person and need to be licensed as a producer to conduct business.*

8) Insurance Transactions... (48.01.060) include:

- a. **Solicitation** - offering to sell insurance.
- b. **Negotiation** - quoting, selling, and any analysis prior to execution.
- c. **Execution** - putting the policy in force, signing any documents, etc.
- d. **Transactions** after the sale, such as adding or changing coverage, etc.
- e. **Any act of insuring** - individuals or companies **who perform transactions** must be licensed to do so.

(The following are definitions from the commissioner's website of the terms sell, solicit, negotiate. Review these, but do not memorize them.)

Soliciting

- *Urging or advising prospective purchasers to buy a policy or insure with a company.*
- *Initiating sales over the telephone or any way other than a face-to-face attempt to solicit or sell insurance, such as the internet, social media, or advertisements.*
- *Setting an appointment - no mention of the product - is clerical.*

Selling

- *Disseminating information about coverages in general, or for any particular policy, except that this shall not prohibit the dissemination of buyers' guides or applications for coverage in response to requests from prospective policyholders.*
- *Disseminating information as to rates in general or for any particular policy where the rate cannot be secured by referring to a published or printed list of standard rates.*
- *Completing or signing applications for insurance.*
- *Making or proposing to make an insurance contract.*
- *Authorizing the issuance or delivery of certificates of insurance, endorsements, binders, or insurance policies.*

Negotiating

- *Discussing or describing the coverages or terms of a proposed contract of insurance with a prospective policyholder, including counseling about which coverages to buy.*
- *Discussing the effect of age, health, or other risk-related conditions of the prospective policyholder.*
- *Collecting premiums in person at other than a recorded place of business.*
- *Responding to a policyholder's request for advice or counsel regarding policy provisions or coverage.*
- *Initiating an inquiry about the terms of existing coverage, except exclusively in the course of the clerical duties.*
- *Recommending or independently initiating additions or deletions to an insured's policy.*

9) Certificate of Authority... (48.15, .020, .040; 48.05.215, 48.05.030, 48.17.067) An insurance company may not transact insurance in Washington unless the Commissioner grants it a certificate of authority. A certificate of authority is issued by the Commissioner and authorizes a company to sell insurance in our state.

A certificate must specify:

- The name of the insurer
- The location of its principal office
- The kind(s) of insurance it is authorized to transact in this state

Once the company has received a Certificate of Authority, they are known as an **authorized** company or an **admitted** company, both meaning they are **licensed** in Washington State.

- a) **Admitted** Companies have been approved by the Office of the Insurance Commissioner and have a Certificate of Authority. The certificate of authority is the insurance company's license to sell insurance in our state. An admitted (a.k.a. authorized) company must comply with all state regulations regarding companies and are covered by the state's guarantee associations.

Certificates of Authority expire July 1.

- b) A **Non-Admitted** (unauthorized) company does not have a certificate of authority, does not have to comply with state laws, and is not covered by a guarantee association.

An **unauthorized** insurance company **may not** transact business in the State of Washington. Each violation is punishable by a **\$25,000 fine**. The Commissioner may order a policy that was improperly placed with an unauthorized insurer, to be replaced with a policy issued by an authorized insurer.

Exception: If certain insurance coverage cannot be obtained from authorized insurers, coverage may be obtained through a **surplus lines broker**. A **Surplus Lines Broker** is hired to find "unauthorized" insurance companies that accept risks not otherwise insurable in the State of Washington.

- **Coverage may not be procured for securing lower premiums.**
- Diligent effort must be made to first place the business with an authorized insurer in Washington State and certification sent to the commissioner within 60 days.

(48.17.067) The **burden of determining** whether a prospective insurer is **authorized** to transact business in our state is the **responsibility of the producer who is soliciting, negotiating, or procuring an application for the insurance**. The producer selling the insurance must make a good faith effort to determine whether the entity that is issuing the coverage is "authorized" in Washington.

10) Life and Disability Insurance Guaranty Association... (48.32A.015-085)

11) Property and Casualty Guarantee Association... (48.32.010, 020, 030, 060(1ai), .120)

The purpose of the Guaranty Associations is to provide a mechanism for the payment of covered claims to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders under certain policies of insurance covered by the scope of this chapter because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

The purpose is the creation of funds arising from a premium tax assessment on all insurers **authorized to transact** insurance business in Washington State. The funds are used to **assure claim payments should the insurer become insolvent**.

The operation of a Guaranty Association is strictly **controlled by statute**. It is run by the commissioner and a board of directors voted in by insurance companies who pay a tax to fund this association (authorized companies). When an insurer is placed into liquidation due to insolvency, claims for **policy benefits** and claims for the **return of unearned premiums** are referred directly to the Guaranty Association for payment.

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

Life and disability insurance policies are usually kept in force because age and insurability make replacing the coverage expensive or even impossible. For these policies, the Guaranty Associations of the various states involved work together to find a buyer for the business and transfer the obligations to a solvent insurer.

Under the Guaranty Association, all property and casualty policy coverage terminates 30 days after the date of liquidation.

✓ Coverage limit is **\$500,000 per person** for **Life or Disability Insurance or Annuities** (\$100 deductible).

✓ Coverage limit is **\$300,000 per claim** for **Property and Casualty (\$100 deductible)**.

❖ **Payment of a claim will not exceed the limit of the policy from which the claim arises.**

❖ **No Duplication of Benefits:** Whenever a payment of proceeds or benefits by the Association is also provided for under a similar law or insurance policy, the Washington Association will act as secondary coverage. *For example, if the vehicle that is at fault in the accident is covered by a company that is bankrupt, the Guarantee Association will pay unless you have uninsured motorist protection. If you do, that will pay any costs.*

- ❖ **The Association does not guarantee:** fraternal insurers, health maintenance organizations, health care service contractors, surplus lines or reinsurance business, variable contracts, title insurance, workers' compensation, ocean marine, and **surety** (bonds).

❖ **Licensees and insurers may not advertise... (48.30.075) or mention this Association to the public (for the purpose of solicitation, sale, or inducement of insurance).**

- ❖ *If someone asks, "what happens if...", you may tell them about the Guarantee Association and where to find more information on them. 'Where' is on the commissioner's website. The Guarantee Associations are not a secret; they are also not a marketing or sales tool.*

C. Licensing

1) Insurance Producer means a **person** required to be licensed under the laws of this state to **sell**, **solicit**, or **negotiate** insurance. The term, insurance producer, does not include title insurance agents or surplus lines brokers.

Must be licensed to receive a commission... (48.17.490), service fee, or other valuable consideration. An insurance company, insurance producer, or title insurance agent shall not pay a commission, service fee, 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 or chapter [48.15](#) RCW and is not so licensed.

Note: the license does not need to be in the same line or lines of authority that the sale was written in order to share commissions. *For example, a life-only licensed producer may share in the commissions with a property and casualty sale. They may NOT sell, solicit, or negotiate the sale. This is not a referral fee; it is sharing commissions.*

2) Pre-licensing Requirements... (48.17.010, .060, .090; 284-17-603) Prior to transacting insurance, an applicant for a resident insurance producer's license must: take and pass the required examination for each line of authority to be applied for; submit an application form with the required attachments and fees; receive a license from the Commissioner. To act as an agent, a producer must be appointed by an insurer or affiliated with an agency. To act as a broker, a producer must have a bond in place.

The major lines of authority are:

- **Life Insurance** includes Life Insurance and Annuities.
- **Disability Insurance** is also known as Health or Accident and Sickness. An agent or broker with this license could sell health, disability income, Medicare supplement, long-term care, accident insurance, etc.
- **Property Insurance** — Insurance that protects the policyholder from loss of or damage to real or personal property. *Examples include flood and earthquake insurance. (i.e., My stuff.)*
- **Casualty Insurance** — Insurance to protect the insured against legal liability for the death, injury, or disability of anyone, or for damage to real and personal property. *(I.e., damage to you and/or your stuff for which I am legally responsible.)*
- **Personal Lines Insurance** — non-commercial Property & Casualty.

- I. **To be a producer, an individual must:**
 - (a) Be at least **18 years** of age and reside in the State of Washington
 - (b) **have not committed** any act that is grounds for denial, suspension, or revocation (**trustworthy**)
 - (c) have paid the appropriate **fees**
- II. Have passed the exams for the lines of authority for which the person has applied (**competent**)
- III. A **business acting as an insurance producer** is required to obtain a producer license. The business must **designate a licensed insurance producer responsible** for the business' compliance with the insurance laws and rules of this state. (**DRLP** or Designated Responsible Licensed Producer.)
- IV. A producer of insurance **does not** need to be a citizen of the United States. However, a non-citizen must have a social security number to become licensed.
- V. A **producer** may receive a license in one or more lines of authority: life, disability, property, casualty, variable life and variable annuity products, personal lines, and limited lines insurance products.
- VI. Variable Life and Variable Annuity Resident Licenses... (284-17-015) Resident insurance producers who desire to sell, solicit, or negotiate variable (security) products in this state must obtain a life insurance producer license and an appropriate securities license. The securities license is issued by the Washington Department of Financial Institutions (DFI).
- VII. The license shall contain the licensee's name, address, personal identification number, and the date of issuance, lines of authority, and the expiration date.

3) Producers... (48.17.010, 48.17.420, 284-17-015)

- a) **An Agent** is a producer who is *appointed by an insurance company* to solicit applications for insurance in its behalf, and when authorized to do so, collect premiums for the insurance policy, and essentially effectuate (put into effect) the insurance coverage.
 - An agent can be an individual, partnership, or corporation.
 - An agent may be given **binding authority** and represents the insurance company they are **appointed** with at all times.
 - **No bond is required for a producer who acts as an agent** because the agent is a legal extension of the insurance company with which they are appointed.
 - **A Conditional Receipt** is issued by **Life and Disability Producers** when money is collected with the application. It does not provide coverage on an unconditional basis but on a conditional basis, that is, on the condition the insurer issues the policy as applied for. If it issues as applied

for, any claim incurred during the underwriting period will be covered. If the policy is issued with a counteroffer, any claims incurred during the underwriting period will not be covered.

- **A Binder** (a.k.a. an unconditional receipt) is issued by **Property and Casualty AGENTS** and gives temporary guaranteed coverage prior to the delivery of a policy. Binders may be written, or they may be verbal. No money is required for a binder premium is not required for coverage to be in force. They are valid for 90 days.

- b) **A Broker** is a producer *licensed to represent the insured* and find the best (*authorized*) company and insurance for the insured in the State of Washington. Brokers do NOT have binding authority.
- A **bond** for a producer acting as a **broker** must be in place before writing any business. The bond penal amount is **\$2,500 or five percent of the premiums brokered in the previous calendar year, whichever is greater, not to exceed \$100,000**, in favor of the people of the State of Washington. If affiliated with a Business Entity or association, they may carry the bond.

A producer can be an agent, a broker, or both

Agent	vs	Broker
* Represents the Insurance Company		* Represents the Client
* Is Appointed by the Insurer		* Is Not appointed
* Cannot sell without an appointment		* Can sell without, but...
* Does not need a bond. The agent is a legal extension of the company.		* Must have a bond of \$2,500 or 5% of the premiums brokered in the previous year BEFORE selling.
* Has Binding authority.		* Cannot issue binders.

4) Temporary... (48.17.510) A **Temporary License**... can be granted by the Commissioner on an **emergency basis** for up to a **maximum of 180 days** without passing an exam.

- A temporary license may be issued to any person *legally representing* the interests of the licensed producer that is disabled, deceased, or entering active service in the United States Armed Forces.
- A temporary license could be issued for any circumstance for which the Commissioner feels it necessary to protect the insured and the public.
- The temporary licensee could be a: **spouse, executor, lawyer, employee, or person with power of attorney.**
- A temporary license **may not** be granted to a **new** prospective licensee.
- *The temporary licensee may, at their option, close the business, sell the business, or take the class and the exam for their own license. Any of which negates the need for the temporary license, and it will not be continued.*

5) Non-Resident... (48.17.173, 284-17-122) A person can obtain a **Non-Resident Producer's License** if they do not live in Washington. The licensee must be licensed in their resident state and **does not have to pass our state's license exam** if they have passed a written exam in their current state.

- Each licensed ***non-resident producer*** appoints the Commissioner as their attorney to receive ***service of legal process*** issued against the producer in this state upon causes of action arising within this state.
- The **state of residence** must reciprocate (***reciprocity***) with Washington in allowing Washington's producers and brokers to be non-resident licensees. (See NIPR site.)

In other words, a person licensed for life insurance in another state would fill out the paperwork and pay the fee to sell life insurance here as a non-resident. Until they are licensed in other lines of insurance, those lines would not be legal here.

No exam -	done in the home state
No fingerprints -	no requirement as a non-resident
No continuing education -	done in the home state

6) An Adjuster (48.17.010) is a person who, for compensation, fee, or commission, investigates or reports to a company regarding claims arising under insurance contracts.

Independent, public, or crop adjusters—Separate licenses. (48.17.390)

(1)(a) The commissioner may license:

- (i) An individual or business entity as an independent adjuster or as a public adjuster;
- (ii) An individual as a crop adjuster; and

(b) Separate licenses shall be required for each type of adjuster.

(2) An individual or business entity may be concurrently licensed under separate licenses as an independent adjuster and as a public adjuster.

(3) An individual may be concurrently licensed under separate licenses as an independent adjuster, a public adjuster, or a crop adjuster.

(4) The full license fee shall be paid for each such license.

Licensed/Self-Employed Adjusters must pass an adjuster's exam and must have experience or special education or training with reference to the handling of loss claims.

- i. **Independent Adjusters** are hired by insurance companies to settle claims. They charge the insurance company for settling the claim, and since they are working for the insurance company, no bond is required.
- ii. **Public Adjusters** are hired by the insured for claims. They are employed by the insured and therefore bill the insured for settling the claim. A \$5,000 bond is required. A public adjuster also may be licensed as an independent adjuster but may not work for an insured and an insurer on the same claim.

- iii. **Non-Licensed Adjusters...** An attorney-at-law who adjusts insurance losses incidental to the practice of their profession, an adjuster of marine losses, or a salaried employee of an insurer (a.k.a. company adjuster) or of a general agent/producer is not considered an adjuster, and thus, does not need to be licensed as an adjuster.

A producer may, from time to time, act as an adjuster without being required to be licensed as an adjuster, but only with the permission of the insurance company with which they are doing business (48.17.420). Applicants for an adjuster's license who for a period of one year have been a full-time salaried employee of an insurer or of a general agent to adjust or investigate insurance contracts do not need to take the exam.

7) Licensing & Examination Exemptions... (48.17.010, .062, 110)

The Commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

The Commissioner may, **at any time**, require any licensed insurance producer or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, *if the licensee has been guilty of violating the insurance laws, or has so conducted affairs under an insurance license as to cause the Commissioner to reasonably desire further evidence of the licensee's qualifications.*

- i. **A license to be an insurance producer or adjuster is not required** of the following:

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; 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

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

A person who secures and furnishes information for group insurance contracts or for the purpose of enrolling individuals under plans; or issuing certificates under plans or otherwise assisting in administering plans; **where no commission is paid to the person for the service**; or

Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the training of insurance producers, and who **are not individually engaged in the sale, solicitation, or negotiation of insurance.**

Sharing commissions with another producer is allowed, and the sale does not have to be in the same line or lines of insurance that the producer is licensed in. As long as there is a license, there can be a commission. There can be no selling, soliciting, or negotiating in a line that a producer is not licensed in. If a life-licensed producer sends referrals to a property and casualty licensed producer, they may share in the commission. They cannot work with the client regarding that sale. This is not a referral fee — which has limits — but a sharing of commissions. If someone is NOT licensed, they may NOT share in the commissions.

ii. **The examination to be a producer or adjuster is not required of the following:**

Any person who receives a waiver from the Commissioner;

Applicants for an adjuster's license who, for a period of one year, have been a full-time salaried employee of an insurer or of a general agent to adjust or investigate insurance contracts;

Applicants for a license as non-resident adjusters who are duly licensed in another state and who are deemed by the Commissioner to be fully qualified and competent for a similar license in this state;

The applicant for a Washington license who has licensed experience in another state in the same lines of insurance and was licensed within the preceding 90 days;

A person who is applying for a non-resident license.

iii. **The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.**

8) Appointments / Termination of Appointments... (48.17.160, 284-17-429-483, 490) A producer acting as an agent must be appointed by an authorized insurer before they can sell for that insurer.

- a) An insurance producer may be appointed or affiliated by submitting electronically the notice of appointment or affiliation through a third-party online licensing provider or the commissioner's online services, available at www.insurance.wa.gov.
- b) Insurance producers must be authorized to transact at least one line of authority within the authority of the insurer or the business entity.
- c) Each appointment or affiliation is continuous until the first of the following occurs: the producer's license is revoked, terminated, or non-renewed; or a notice of termination of the appointment is electronically submitted to the commissioner; or the appointment or affiliation renewal fee of \$20.00 is not paid.
- d) **The insurer and business entities are obligated to ensure that appointed insurance producers are licensed for the proper line of authority for which the insurance producer submits an application.**
- e) The applicable initial and renewal appointment and affiliation fees must be paid at the time of appointment, affiliation, or their renewal. **Appointments renew every two (2) years on a date set by the Commissioner.**
 - At least sixty days prior to the renewal date, an appointment or affiliation renewal notice will be **sent to the insurer or business entity** via e-mail.
 - An appointment with a company *such as Farmers Insurance Group* allows a producer to sell for all of its subsidiaries. Only one appointment will be needed!
 - If a producer is appointed by **only one company or insurer**, they are called a **captive or exclusive** agent. A captive agent does not own their accounts and renewals.

- If a producer is appointed by **more than one company**, they are called an **independent agent**. An independent agent owns the right to their accounts and renewals.
- There are no limits to the number of appointments an agent may have as an independent agent. If there is a conflict of interest, a second company will not appoint that agent. *For example, an agent may not be appointed with 2 companies that sell the same product, e.g., life insurance.* However, an agent may be appointed with one company for life insurance, another for annuities, another for long-term care, etc.
- f) An insurer may terminate an appointment by sending notice of termination to the Commissioner and the producer. If an insurer **terminates** the appointment **“for cause,”** the insurer must electronically notify the Insurance Commissioner **within 30 days** following the effective date of the termination. The **“cause”** for termination must be stated in the notice.
- g) A producer may terminate its appointment by sending advance written notice to the insurer or business and sending a copy via e-mail to the commissioner.
- h) If an insurance producer solicits insurance on behalf of an insurer, but it is later determined that the insurance producer was not eligible for appointment by the insurer:
 - The insurance contract will be effective and cannot be terminated by the insurer
 - The producer must not receive compensation for any insurance product sold
 - The insurance producer and the insurer may be subject to disciplinary action
- i) **Affiliation...**Individual licensees that **represent** a business entity must be **affiliated** with the licensed business entity. *Each business entity must provide the commissioner with the names of all individual licensees authorized to represent the business entity by electronic submission and pay the applicable fees, including renewals.*

If an insurance producer is affiliated with a business entity, the insurance producer is not required to be directly appointed by the insurer who writes the policy. *For example, if a producer is affiliated with Vern Fonk Insurance, they don't need to be appointed by each insurer with which Vern Fonk does business. The producer only needs to be affiliated with Vern Fonk.* The individual insurance producer's authority to transact insurance is limited to those lines of authority for which the insurance producer is licensed and that are within the business entity's lines of authority.

D. Penalties for non-compliance

Penalties... (48.17.530) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license, or may levy a civil penalty or both, for any one or more of the following causes:

- a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

- b. Violating any insurance laws, or violating any rule, subpoena, or order of the commissioner or of another state's insurance commissioner;
 - c. Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - d. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;
 - e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
 - f. Having been convicted of a felony;
 - g. Having admitted or been found to have committed any insurance unfair trade practice or fraud;
 - h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere;
 - i. Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
 - j. Forging another's name to an application for insurance or to any document related to an insurance transaction;
 - k. Improperly using notes or any other reference material to complete an examination for an insurance license;
 - l. Knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed, other than orders for issuance of title insurance on property located in this state placed by a non-resident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state; or
 - m. Obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the commissioner may, by rule, define and permit reasonable arrangements.
- (2) The license of a business entity may be suspended, revoked, or refused if the commissioner finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the commissioner nor corrective action taken.

Noncompliance with support order... (48.17.535) The commissioner shall immediately suspend the license of a person who has been certified as a person who is not in compliance with a support order. As soon as the licensee meets all requirements, the license will be reinstated.

E. Maintenance and Duration of Licenses... In order to obtain a Washington Producers or Adjusters license, the applicant must: be at least 18 years old; must have not committed any act that is grounds for denial, suspension, or revocation of a license; be a resident of Washington State; must pass the appropriate insurance pre-licensing examination; and pay the appropriate fees.

1) Renewal... (284-17-423, 48.14.010) Renewal of a Producer's License... A producer's license will expire every two years on the last day of the licensee's birth month. To renew a producer's license, a renewal application must be submitted electronically by the producer and the fee (currently \$55) must be paid to the Commissioner's office by midnight of the last day of the licensee's birth month.

- **New licenses** will expire on the last day of the month of the applicant's birth, plus one year, and every two years thereafter. The last day you can sell if you choose not to renew is the end of your birth month.

2) Continuing Education... (284-17-200 to 256) **Twenty-four (24) hours** of continuing education (**three of which must be in "Ethics"**) *must be presented as a prerequisite for the renewal of a producer's license.*

- ✓ **Exceptions:** This education requirement **does not apply** to limited-lines licenses. The continuing education **may be waived for licensees** in **active military service**. A medical waiver with a letter from a medical provider describing the illness may be issued for one renewal period.
- ✓ **Retention of Continuing Education (C.E.) Certificates...** A licensee **must keep C.E. certificates for three years** from the date on the certificate. The Commissioner's office may verify the certificates at any time.
- Certification course certificates (flood, initial 8-hour long-term care, refresher 4-hour long-term care required every 2 years after the 8-hour course, and annuity suitability) should be kept for as long as the producer transacts business for these products but not less than 3 years. Certification course hours count towards the continuing education requirement.
- A continuing education course with the same course number may be completed for credit once every license renewal period.
- Carryover of excess hours is not allowed.
- *(As long as the course is by an approved provider, you may take any course you'd like. There is no requirement to match the lines on your license.)*

3) Late Renewal and Reinstatement... (284-17-490, 48.17.170) If a request for renewal of a license is received by the commissioner after its due date, the licensee **must not** transact insurance under the license until the renewal or reinstatement is completed.

Late fees apply if the renewal fee is not paid when due:

- a) 1 to 30 days late = an additional **50%** surcharge penalty of the license renewal fee. (Renew late)
 - b) 31 to 60 days late = an additional **100%** surcharge penalty of the license renewal fee. (Renew late)
 - c) 61 days to twelve months late = **200%** surcharge penalty of the license renewal fee. (Reinstate)
- ✓ **After 60 days from the expiration date** the license must be reinstated. **The individual must complete an application for reinstatement and pay the license fee and surcharge.**
 - ✓ **After 60 days from the expiration date** all appointments are **terminated**. This means that the individual will need to secure a new appointment agreement with any insurance company through which they desire to transact business.
 - ✓ **After one year from the expiration date**, the producer will have to begin the entire licensing process again, including re-taking all applicable licensing exams, new fingerprint card, and re-apply with the state.

F. Marketing Practices

1) Protection of Public Interest... (48.01.030) The business of insurance is one affected by the public interest, requiring that all persons act in good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving the integrity of insurance.

2) Unfair practices and frauds Statutes (laws) define and prohibit certain trade and claims practices that are unfair, misleading, and deceptive. Any person violating any provision of the insurance code is guilty of a gross misdemeanor and will, upon conviction, ***be fined not less than ten dollars nor more than one thousand dollars, or imprisoned for not more than one year, or both.*** Any person violating any provision of the insurance code may have their license suspended or revoked. No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices.

3) Trade practices (284-30 300-380, 400, 570-590, 660, 670) The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:

- (1) Misrepresenting pertinent facts or insurance policy provisions.
- (2) Failing to acknowledge and act reasonably promptly upon insurance policy claims communications.
- (3) Failing to implement reasonable standards for promptly investigating insurance policy claims.
- (4) Refusing to pay claims without conducting a reasonable investigation.
- (5) Failing to affirm or deny coverage of claims within a reasonable time after fully completed proof of loss documentation has been submitted.

Misrepresentation of policy provisions. (284-30-350)

No insurance producer or title insurance agent shall conceal from first-party claimants benefits, coverages, or other provisions of any insurance policy or contract when such are pertinent to a claim.

No insurer shall:

- fail to fully disclose to first-party claimants all pertinent benefits, coverages, or other provisions of an insurance policy or contract under which a claim is presented.
- deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.
- (except where there is a time limit specified in the policy,) make statements requiring a claimant to give written notice or proof of loss within a specified time limit, relieving the company of its obligations upon failure to do so, unless the failure to comply with such time limit prejudices the insurer's rights.
- request a first-party claimant sign a release that extends beyond subject of the claim payment.
- issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.
- pay benefits that may require reimbursement without clearly advising the payee, in writing, of such.

Standards for the insurer to acknowledge pertinent communications. (284-30-360)

(1) Within **ten working days** (for individual insurance policies) or **fifteen working days** (for group insurance contracts) after receiving notification of a claim, the insurer must acknowledge its receipt of the notice of claim.

(a) If payment is made within that period, acknowledgment by payment is sufficient.

(b) If an acknowledgment is made by means other than writing, an appropriate notation of such must be made in the insurer's claim file describing how, when, and to whom the notice was made.

(c) Notification given to an agent of the insurer is notification to the insurer.

Settlement standards applicable to all insurers. (284-30-380)

Within fifteen working days after receipt by the insurer of fully completed and executed proofs of loss, the insurer must notify the first party claimant whether the claim has been accepted or denied. The insurer must not deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer must contain a copy of the denial.

Enforcement (284-30-400)

Violations of the standards for unfair claims settlement practices in this regulation are subject to the enforcement provisions set forth in RCW 48.30.010:

No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices. If the commissioner has cause to believe any person is violating such regulation, the commissioner may issue a cease and desist order.

And also constitute a failure to comply with a regulation pursuant to RCW 48.05.140(1):

The commissioner may refuse, suspend, or revoke an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer fails to comply with any provision of this code, or fails to comply with any proper order or regulation of the commissioner.

Actual reason for canceling, denying, or refusing to renew insurance to be disclosed. (284-30-570)

Whenever an insurer is required by law to give the reason for its canceling, denying, or refusing to renew insurance, it shall give the true and actual reason for its action in clear and simple language, so that the insured or applicant will not need to resort to additional research to understand. It is not sufficient, for example, to state that an insured *"does not meet the company's underwriting standards."* The reason why the individual does not meet such underwriting standards must be given. If the actual reason relates to medical information, the insurer may make a broad reference thereto and limit specific disclosure of details to the applicant's or insured's physician.

Discrimination prohibited. (284-30-572)

(1) It shall be an unfair practice for any insurer to decline, cancel, or refuse to renew any homeowners, dwelling fire, or vehicle insurance policy, or to vary its terms, rates, conditions, or benefits, because of an insured's or applicant's race, creed, color, national origin, religion, or ability to read, write, or speak the English language.

(2) It is an unfair practice for any insurer, and a prohibited practice for any health care service contractor or health maintenance organization, to discourage a claimant or an insured from contacting the insurance commissioner, or to unfairly discriminate because of such contact.

Insurer must make independent evaluation. (284-30-574)

It shall be an unfair practice for any insurer to rely solely on another insurer's denial, cancellation, or nonrenewal of insurance to support a denial or termination of coverage. In every case, an insurer must make its own independent decision on the merits. This section does not prohibit an insurer from denying a binder pending its evaluation of another insurer's action, and does not apply to an insurer-reinsurer relationship.

Unfair practices with respect to policy cancellations, renewals, and changes.

It is an unfair practice to utilize a twenty-day notice to increase premiums by a change of rates or to change the terms of a policy to the adverse interest of the insured thereunder, except on a one time basis in connection with the renewal of a policy as permitted by RCW [48.18.2901](#)(2)

If a policy includes conditions allowing the insured to cancel the policy, the insured may cancel the policy or binder issued as evidence of coverage.

(a) The insured may provide notice before the effective date of cancellation using one of these methods:

- (i) Written notice of cancellation to the insurer or producer by mail, fax or email;
- (ii) Surrender of the policy or binder to the insurer or producer; or
- (iii) Verbal notice to the insurer or producer.

(b) If the insurer receives notice of cancellation from the insured, it must accept and promptly cancel the policy or any binder issued as evidence of coverage effective the later of:

- (i) The date notice is received; or
- (ii) The date the insured requests cancellation.

Deceptive use of quotations or evaluations prohibited. (284-30-660)

It is an unfair or deceptive practice and an unfair method of competition for any insurance company, insurance producer, surplus line broker, or title insurance agent to deceptively utilize quotations or evaluations from rating / advisory services or other independent sources in the business of insurance.

Insurers must transact business in their legal name. (284-30-670)

The purpose of this regulation is to adopt a long standing bulletin and a technical assistance advisory regarding the use of trade names, group names, logos, or trademarks, and to set forth requirements to help ensure that a consumer knows the legal name of the insurer they are doing business with.

It is an unfair practice for an insurer to conduct its business in any name other than its own legal name. For this regulation, the "legal name" of the insurer means the name displayed on the Washington state certificate of authority issued by the commissioner.

a) Unfair Claims methods and trade practices (284-30-450, 600 to 650)**Life and Disability Only**

- i. **Insurance policies and contracts-coverage for drugs:** No insurance policy or contract which provides coverage for prescription drugs to a resident of this state shall exclude coverage of any such drug for a particular indication on the grounds that the drug has not been approved by the Federal Food and Drug Administration for that indication, if such drug is recognized as effective for treatment of such indication.
- ii. **Unfair practices with respect to out-of-state group life and disability insurance.** It is an unfair method of competition and an unfair practice for any insurer to engage in any insurance transaction on individuals in this state under a group policy delivered to a policyholder outside this state when the policy is misleading.
- iii. **Unfair practices with respect to the solicitation of coverage under out-of-state group policies** unless the proper disclosure forms are filled out.
- iv. **Permissible time limit for benefits payable because of accidental injury or death:** It is an unfair practice for any insurer to not pay benefits for accidental death or for covered expenses incurred because of an accidental injury shall be paid if the covered death occurs, or the covered services are incurred, within one year of the accident. (Industry standard is 90 days).
- v. **Health questions in applications to be clear and precise:** If an insurer, including a health care service contractor or a health maintenance organization, intends to rely on an applicant's or enrollee's answers to health questions in an application to determine eligibility for coverage or the existence of a preexisting condition, such questions must be clear and precise. *Simply asking whether the applicant has been under the care of a physician during the preceding year, for example, is not sufficient to require a "yes" answer where the applicant has been using medications that were prescribed prior to the start of the preceding year and the applicant has not seen a physician for more than a year.*

b) Specific Unfair Claims Settlement Practice... (284-30-300 to 750; 48.30.010, .015)**Property and Casualty Only**

- 1) Misrepresenting pertinent facts or insurance policy provisions.
- 2) Failing to acknowledge and act promptly upon communications regarding a claim.
- 3) Failing to implement standards for the prompt investigation of claims.
- 4) Refusing to pay claims without conducting a reasonable investigation.
- 5) Failing to affirm or deny coverage of claims within a reasonable time.
- 6) Not attempting in good faith to make a prompt, fair, and equitable settlement of claims in which liability has become clear. If two or more insurers are involved, they should arrange to make payment to innocent third parties leaving to themselves the burden of apportioning it.

- 7) Compelling insureds to institute or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy.
- 8) Settling a claim for less than a reasonable amount a claimant is entitled to receive.
- 9) Making claims payments not accompanied by a statement setting forth the coverage under which the payments are being made.
- 10) Telling insureds or claimants that there is a policy arbitration award for the purpose of compelling them to accept less than the amount awarded in arbitration.
- 11) Delaying the investigation or payment of claims by requiring an insured or claimant to submit a preliminary claim report and then requiring subsequent submissions that contain the same information.
- 12) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other insurance policy coverage.
- 13) Failing to promptly provide a reasonable explanation for denial of a claim.
- 14) Unfairly discriminating against claimants who are represented by a public adjuster.
- 15) Failure to expeditiously honor drafts given in settlement of claims.
- 16) Failure to adopt and implement reasonable standards for the processing and payment of claims once the obligation to pay has been established.
- 17) Delaying appraisals or adding to their cost through the use of appraisers from outside of the loss area.
- 18) Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal.
- 19) Negotiating or settling a claim directly with any claimant known to be represented by an attorney without the attorney's knowledge and consent.

➤ **Unfair Claims Settlement Practices:**

- Insurance companies must acknowledge receipt of notification of a claim ***within 10 working days***.
 - When the Commissioner requests claims information from an insurance company, the insurance company must respond ***within 15 working days***.
 - Insurance companies must complete investigation of claims ***within 30 days*** after notification of claim.
- The insurer's claim files are subject to examination by the commissioner or by duly appointed designees. The files must contain all notes and work papers pertaining to the claim in enough detail that pertinent events and dates of the events can be reconstructed.

4) Unfair Practices and Frauds

a) Compensation & Disclosure: Insurance Producers... (48.17.270)

- **Unless the agency-insurer agreement provides to the contrary**, an insurance producer may receive the following compensation:
 - a) A **commission** paid by the insurer
 - b) A **fee** paid by the insured
 - c) A **combination of commission paid by the insurer and a fee paid by the insured**
- If the compensation received by an insurance producer who is dealing directly with the **insured includes a fee**, for each policy the insurance producer must disclose in writing to the insured prior to the sale:
 - a) The full amount of the **fee paid** by the insured;
 - b) The full amount of any **commission paid** to the producer;
 - c) **Any contingent or renewal commissions to be received**;
 - d) The full **name of the insurance company** that paid the commission;
 - e) An explanation of any offset or reimbursement of fees or commissions.
- Written disclosure of compensation must be provided by the insurance producer to the insured **prior to the sale of the policy**. Written disclosure must be **signed by the insurance producer and the insured**, and the writing must be retained by the insurance producer for **five years**.
- In the case of a purchase over the telephone or by electronic means for which written consent cannot be **obtained**, consent documented by the producer will be acceptable.

- ### b) Illegal Inducement... (48.30.150)
- It is unlawful for insurance personnel to provide or promise **anything** valued at more than an aggregate of **\$100.00 per year**, to any one prospective or current policyholder.

This is usually about rewards other than money, such as gifts and services.

Offering any special advisory board contract, prizes, goods or wares, agreement or understanding of any kind is illegal inducement. Paying \$101 for an individual's lunch at the time of procuring insurance is illegal inducement. Offering gift cards for referrals is acceptable up to an annual aggregate limit of \$100.00 per person.

- Effective 7/1/2020 this section does not apply to a payment by an insurer to offset documented expenses incurred by a group policyholder in changing coverages from one insurer to another excepting for Medigap and small group coverage.

c) Illegal Rebating... (48.30.140) It is unlawful for a producer or insurance company to provide or promise to give **any** valuable consideration such as a rebate, discount, reduction of premium, commission, etc., to induce a **person** to buy insurance.

- ***This law is usually about money in any way, shape, or form (cash, check, money order, or promise of).***
- The **insured** is subject to a \$200 fine for accepting a rebate. (48.30.170)
- ***Guaranteeing to pay future dividends*** is an example of rebating. (48.30.100)
- Offering cash for a referral is rebating. Gift cards are fine as long as you do not exceed \$100.00 per person per year.
- *Effective 7/1/2020* this section does not apply to a payment by an insurer to offset documented expenses incurred by a group policyholder in changing coverages from one insurer to another excepting for Medigap and small group coverage.

d) Gifts, etc., for the referral of insurance business—Restrictions... (48.30.133)

- 1) An insurance producer may give to an individual, prizes, goods, wares, gift cards, gift certificates, or merchandise not exceeding one hundred dollars in value per person in any consecutive twelve-month period for the referral of insurance business to the insurance producer if the giving of the prizes, goods, wares, gift cards, gift certificates, or merchandise is not conditioned upon the person who is referred applying for or obtaining insurance through the insurance producer.
- 2) The payment for the referral must not be in cash, currency, bills, coins, check, or by money order.

Note: a person who has a license may share commissions with another licensee, even if the transaction is not in the line or lines of insurance for which the person is licensed. This is not subject to the \$100 limit and may be in cash.

e) Illegal Dealings in Premium... (48.30.190)

- (a) **No one can willfully collect money as premium for insurance if insurance coverage is not provided** or is not in due course to be provided by an insurance policy issued by an insurer as authorized by this code.
- (b) **No one can willfully collect money as premium for insurance is in excess of the amount actually due.**
- (c) A person must return any overpayment of money collected as premium, in a reasonable length of time, to the person who paid the premium.
- (d) Each violation of this section which does not amount to a felony constitutes a misdemeanor.

- f) Twisting... (48.30.180)** No person can, by ***misrepresentations or misleading comparisons***, induce or tend to induce, any **insured** to lapse, terminate, forfeit, surrender, retain, or convert any insurance policy.
- ✓ *For example, this can occur when a producer wants a prospective customer to cancel and switch his/her current insurance policy over to the producer's company and does so by giving misleading facts.*
 - ✓ Another example of twisting is failing to give required ***replacement forms*** to an insured when replacing an existing life policy.
 - ✓ *A misrepresentation is a lie. Twisting is the result of that lie IF the client makes a decision about their current policy based on that lie.*
- g) Misrepresentation (48.30.090, .210)** is telling a lie or deceiving anyone about *any aspect* of insurance, like false coverage, inflated benefits, unrealistic returns, etc.
- **Misrepresentation of Policies...** No person may make, issue, or circulate any misrepresentation of the terms of any policy or the benefits or advantages promised, or the dividends or share of surplus to be received, or use any name or title of any policy or class of policies misrepresenting the nature of the policy.
 - **Misrepresentation in an Application for Insurance...** A person who knowingly makes a false or misleading statement or impersonation, or who willfully fails to reveal a material fact relative to an application for insurance, is guilty of a gross misdemeanor, and the license of any such person may be revoked.
- *A misrepresentation is a lie. Twisting is when the client does something to their existing policy as a result of that lie.*
- h) Defamation of Insurer... (48.30.080)** No person shall make, publish, or disseminate, or aid, abet or encourage the making, publishing, or dissemination of any information or statement which is false or maliciously critical and which is designed to injure in its reputation or business any authorized insurer or any domestic corporation or reciprocal being formed pursuant to this code for the purpose of becoming an insurer.
- i) Unfair Discrimination... (48.30.300, 48.18.480)** An insurer may **not** refuse to issue any contract of insurance or cancel or decline to renew such contract, or restrict the amount of insurance benefits payable, on any term, rate, condition, or type of coverage, because of the ***sex, marital status, sexual orientation, or the presence of any sensory, mental, or physical disability (handicap) of the insured or prospective insured.***
- This section of the insurance code does not prohibit **fair** discrimination when **bona fide statistical differences** in risk or exposure have been substantiated. *E.g., women live longer than men, so women pay less for life insurance. A particular age and gender may drive faster and cause more accidents, that group pays a higher premium for auto insurance.*

j) Premium Receipts... (284-30-550) A signed premium receipt for any insurance premiums received by the licensee must be delivered or mailed no later than the next working day. The receipt must include:

- The insurance company by its full legal name.
- The date, amount collected, and name of the person who made the payment.
- Identity of the producer, including the producer's address.
- A brief description of coverage for which payment was received, policy or contract number.
- The signature of the producer.

Special note: The issued date of the policy does NOT have to be on a premium receipt.

(These are the basics of any receipt: Where did you go? (Name and address.) When did you go? (Date.) What did you buy? (Policy #.) What did you spend? (\$\$) Plus client name, producer name, and producer signature.)

k) Advertising... (48.30.040-080)

- i. **False information and advertising... (48.30.040)** No person shall knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or any person engaged therein.
- ii. **Advertising must show name and domicile... (48.30.050)** **Every advertisement of, by, or on behalf of an insurer shall set forth the name in full of the insurer and the location of its home office or principal office, if any, in the United States (if an alien insurer).**
- iii. **Insurer name—Deceptive use prohibited... (48.30.060)** No person who is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer.
- iv. **Advertising of financial condition... (48.30.070)** Every advertisement by or on behalf of any insurer purporting to show its financial condition may be in a condensed form but shall in substance correspond with the insurer's last verified statement filed with the commissioner.

No insurer or person in its behalf shall advertise assets except those actually owned and possessed by the insurer in its own exclusive right, available for the payment of losses and claims, and held for the protection of its policyholders and creditors.

G. Producer Responsibilities

1) Policy Delivery... (284-30-580, 48.18.260, 48.185.005(2)) A producer must make actual physical delivery (mailing is acceptable) of a policy within a **reasonable period of time after its issuance**. As soon as possible is best, 30 days may be considered reasonable. Insurance companies are held responsible for any delay resulting from the failure of their producers to act diligently.

- The producer may not obtain a receipt indicating a delivery and then retain the policy in their possession.
- A producer may secure the insured's policy for servicing or analysis but must give a policy receipt and return the policy promptly.
- Any notice required by law may be delivered, stored, and presented by electronic means. An electronic signature is the equivalent of a digital signature.

2) Premium Accountability... (48.17.480) An insurance producer or any other representative of an insurer involved in procuring an insurance contract must report to the insurer the exact amount of consideration charged as premium for such contract. The amount collected must be shown in the contract and in the records of the insurance producer. Each willful violation of this provision is a misdemeanor.

Fiduciary refers to a person holding the funds of another in a position of trust.

- a) All funds representing premiums or return premiums received by an insurance producer and must be promptly accounted for and paid to the person or company who is entitled to the funds.
- b) Any person licensed who receives funds which belong to or should be paid to another person as a result of an insurance transaction is deemed to have received the funds in a **fiduciary capacity**. The licensee must promptly account for and pay the funds to the person entitled to the funds.
- c) Any insurance producer or other licensed representative who **diverts or appropriates** any funds received in a fiduciary capacity is **guilty of theft** by embezzlement (a.k.a. larceny) and is subject to criminal penalty.

NOTE: You may have a question on the exam about an agent, a broker, a producer, or a fiduciary. The answer would be the same. You are a producer acting as an agent or a broker, as soon as you receive payment, you are a fiduciary.

3) Separate (Trust) Account... (48.17.600, 284-12-080) All funds representing premiums and return premiums received by a producer must be **promptly deposited** in a **separate account** (which may be interest-bearing).

- The Separate Account Funds may be deposited in a checking or savings account *located in the state.*
- An insurance producer or title insurance agent shall not commingle or otherwise combine premiums with any other moneys.
- A business entity may utilize one separate account for use by all of its affiliated persons. (*Think of this as a premium account. Clients pay premium to the agency and the agency pays the carriers.*)

A producer may not deposit any funds, other than premium and return premium funds, into the separate account, with the following exceptions...

A producer may:

- Deposit funds needed to pay bank charges due to the operation of the account.
- Deposit funds for the purpose of having a reserve in the separate account to be able to advance premium or return premium funds to customers.
- Combine Washington State premiums with premiums produced in other states.

Withdrawals from a separate account may be done for the following reasons and must be done promptly:

- For bank charges for the operation of the separate account.
- For payment of premiums to the Insurer or to pay commissions to another producer.
- For payment of return premiums, and it must go directly to the Insured.
- For the transfer of *fiduciary* funds to go directly to another account.

✓ ***Willful violation of this “separate account” regulation is a misdemeanor.***

4) Transaction Records Kept for 5 Years... (284-12-080) *Producers, title insurance agents, and adjusters* must keep records of ***all insurance transactions*** at the licensee’s business address for five years. This section of the law does not apply to life or disability producers.

- *The Insurance Company must keep transaction records for three years.*

5) Written Response to the Commissioner... (48.17.475, 284-30-650) A producer as well as an insurer must respond to any inquiries from the Commissioner’s office **promptly** and it must be in **writing**. **Promptly means within 15 business days** from receipt of the inquiry.

6) Place of Business... (48.17.450, 284-17-005) A producer’s office must be accessible to the public. This law does not apply to a producer who works out of their home, nor does it apply to life-only or disability-only producers.

- A licensee whose personal residence is shown on their license may obscure their residence address as long as the licensee’s name can be clearly seen.
- **A producer must advise the Commissioner’s Office of any change in address within 30 days.**
- **The addresses to update are residence, mailing, business, or e-mail.**
- A producer maintaining more than one place of business in this state must obtain a duplicate license for each additional place.
- Any notice, order, or written communication from the Commissioner to a person licensed must be sent by mail to the licensed person’s last address of record with the Commissioner. For all other matters, the last email address provided by the person or business entity to the commissioner. This will be the email address listed in the mailing address section of the commissioner’s licensing date base [database] (*sic*).

Respond within 15 (business/working) days...

Report (address change or administrative action) within 30 days.

7) Display of license... (48.17.460) The license or licenses of each insurance producer, title insurance agent, or adjuster shall be displayed in a conspicuous place in that part of the place of business which is customarily open to the public.

8) Administrative action taken against a licensee in another jurisdiction or governmental agency — Report to commissioner... (48.17.597)

(1) An insurance producer, title insurance agent, or adjuster shall report to the commissioner any administrative action taken against the insurance producer, title insurance agent, or adjuster in another jurisdiction or by another governmental agency in this state within 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.

(2) Within thirty days of the initial pretrial hearing date, an insurance producer, title insurance agent, or adjuster shall report to the commissioner any criminal prosecution of the insurance producer, title insurance agent, or adjuster 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.

H. Compensation of Licensees

Illegal Dealings in Commission... (48.17.490) An insurance company, insurance producer, or title insurance agent shall not pay a commission, service fee, 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 the law and is not so licensed.

- ❖ *A producer may share commissions with another licensed producer. The sale does NOT need to be in the line of insurance in which the (sharing) producer is licensed in order to share commissions. The producer may not transact the sale, they may share the commissions.*

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

- This does not affect salaries paid to unlicensed persons, as long as the salaries are not contingent on the volume of business transacted.
- **Renewal or other deferred commission may be paid to a person for a transaction if that person was required to be licensed at the time of the sale, solicitation, or negotiation and was so licensed at that time.**