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I. WASHINGTON STATE LAWS AND RULES

15 items



Washington Administrative Code (WAC) Title 284

Revised Code of Washington (RCW) Title 48

Do NOT Memorize the RCW or WAC **numbers**.
2018

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. He does not write these laws but he does write reasonable rules to be able to properly clarify these laws and enforce them. He is, because of his 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. The Commissioner must supply a \$25,000 Bond conditioned upon the faithful performance of the duties of his office, and also may require any of his deputies or employees to post the same bond.

Washington's current Insurance Commissioner is Mike Kreidler. →

1) Broad Powers... (48.01.010, .020, .030, .040, .053, .060, .070, .080, .150, .180, .190, .250, .280; 48.02.010, .020, .060, .080, .100, .160; WAC 284-02-010)

General Powers and Duties of the Commissioner

- ✓ **Administer and enforce** the provisions of the Insurance Code.
- ✓ Make **reasonable rules and regulations** for effectuating any provision of the Insurance Code.
- ✓ **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.

- ✓ 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.
- ✓ **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.
- ✓ The commissioner may delegate authority.

Enforcement by the Commissioner...

- a) The commissioner may prosecute an action in any court of competent jurisdiction to enforce any order made by him or her 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 of other laws relating to insurance he or she 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, he or she may:
 - i. **Issue a cease and desist order;** and/or
 - 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*.
 - ✓ Any person who files reports, or furnishes other information, required under the law, required by the commissioner, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

The Commissioner **DOES NOT**:

- Ø Put insurance policies together.
- Ø Restrict the number of insurance producers a company may have.
- Ø **Make the code or decide on the constitutionality of the codes (statutes).**
- Ø Endorse any insurance company.
- Ø 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

2) Examination of Records... (48.03.010-020, 284-03-015, 030)

The Commissioner must establish the Examinations Department headed by a Chief Examiner who has the responsibility for 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.
- ✓ For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as he or she deems advisable examine the accounts, records, documents, and transactions of : Any insurance producer, surplus line broker, adjuster, or title insurance agent.
- ✓ 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.

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 be located in the Commissioner's Office and will be responsible for implementing the laws. Hours for inspection are Monday through Friday 8-5. 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.

3) Rates and Forms... (48.18.100, 48.19.010, 48.19.040, 48.17.490)

Washington is a **prior approval state**. Every insurer must file with the Insurance Commissioner, **before using**, 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 he 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 .

Penalties... (48.17.530-.560)

a) Licensing Suspension / Revocation

- **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.
- **Revocation:** The Commissioner can take the license away for a maximum of **one year**. The person must reapply for the license but it may not be approved. However, if the Commissioner does approve the application, pre-license education is required and the proper license exam must be passed again.
- 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.

b) Fines... (48.17.560) 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.**
- There is an **exception** that allows for a \$25,000 civil penalty for anyone acting as a producer without being properly licensed to do so.
- Upon failure to pay a civil penalty in **not less than 15 days nor more than 30 days**, the attorney general may bring a civil action on behalf of the Commissioner.

- **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.

4) 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.

B. 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.

2) Pre-licensing Requirements... (48.17.010, .060, .090) 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 with an insurer or affiliated with an agency. To act as a broker a producer must have a bond in place.

As a prerequisite to admission to the examination, an applicant for a **resident insurance producer license** for personal lines, life, disability, property, or casualty lines of authority must complete **twenty**

hours of pre-licensing insurance education for **each major line of authority** for which the applicant will be tested. Each course must include training on Washington insurance laws and rules applicable to that line of authority and general laws.

The major lines of authority are:

- Life Insurance includes Life Insurance and Annuities.
- Disability Insurance 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.
- 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.
- Personal Lines Insurance – non-commercial Property & Casualty.

The prescribed curriculum for each line of authority must be successfully completed within the twelve-month period immediately preceding the examination.

- 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 completed a pre-licensing course of study for the lines of authority for which the person has applied
 - (d) 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.
- 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 Producer can be an Agent or Broker, or both:

An Agent is a producer who is *appointed by an insurance company* to solicit applications for insurance on 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 he is **appointed** with at all times.
- An agent may from time to time act as an adjuster on behalf of and as authorized by an insurer they are appointed with and investigate and report upon claims without being required to be licensed as an adjuster.
- **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 he is 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 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 counter offer, 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.

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.

<u>Agent</u>	<u>vs</u>	<u>Broker</u>
*Represents the Insurance Company		*Represents the Client
*Is Appointed by the Insurer	7	* 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 \$2500 or 5% of the premiums brokered in the

4) Limited-Lines License (48.17.170)

With this license, the producer can sell **only one type of product**.

No pre-license education or continuing education is required. Limited-licenses include:

- **Credit License** (must pass the credit exam) **includes coverage for Life, Disability, Property and Casualty**... Credit Life will pay off a loan if the insured dies. Credit Disability will make the loan payments if the insured becomes disabled.

Credit Property and Casualty is a license for those who sell insurance covering mortgaged property (such as motor vehicles). This is also known as “collateral protection coverage” or “vendor single-interest” insurance.

- **Surety License**... allows the licensee to sell **bonds** (must pass the Surety exam)

Travel License... issued to travel agents (no need to pass any exam).

5) Display of license.

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.

6) 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**.

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 a nonresident adjuster 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 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.

C. Appointments / Termination of Appointments... (48.17.160, 284-17-429 to 483, 490) A producer acting as an agent must be appointed by an authorized insurer before he 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 on-line licensing provider or the commissioner's on-line 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 renewals. **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**, he is called a **captive or exclusive** agent. A captive agent does not own his accounts and renewals.
 - If a producer is appointed by **more than one company**, he is called an **independent agent**. An independent agent owns a right to his 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; i.e. 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 send 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, he doesn'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) Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license.

- (1) 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 nonresident 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... (284-17-005) In order to obtain a Washington Producers or Adjusters license, the applicant must: be at least 18 years old; must not 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 education course study and 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 licensee's birth date. 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 licensee's birth date.

- **New licenses** will expire on the applicant's date of birth, plus one year, and every two years thereafter.

2) Late Renewal and Reinstatement... (284-17-490, 48.17.170)

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)
- b) 31 to 60 days late = an additional **100%** surcharge penalty of the license renewal fee. (Renew)
- 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 he wishes to transact business.
- ✓ **After one year from the expiration date**, the producer will have to begin the entire licensing process again, including pre-licensing education, 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 (48.30.010-.330) The Unfair Trade Practices Act is divided into two parts: **Unfair Marketing Practices and Unfair Claims Practices**. Statutes (laws) define and prohibit certain trade and claims practices which 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 his 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.

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.

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.

d) Offering cash for a referral is rebating 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.

e) Misrepresentation of policies... (48.30.090)

No person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof.

f) Misrepresentation in application for insurance... (48.30.210)

A person who knowingly makes a false or misleading statement or impersonation, or who willfully fails to reveal a material fact, in or relative to an application for insurance to an insurer, is guilty of a gross misdemeanor, and the license of any such person may be revoked.

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

- (a) No one can willfully collect money as premium for insurance if insurance coverage is not provided.
- (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.

h) 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:

- Ø *Where did you go? (Name and address);*
- Ø *When did you go? (Date);*
- Ø *What did you buy? (Policy #);*
- Ø *What did you spend? (\$\$);*
- Ø *Plus: client name, producer name, and producer signature.*

i) 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 relative to 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) 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.

2) 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.

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.***

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.*

3) 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.

4) Reporting Convictions and Administrative Actions (48.17.597): An insurance producer must report to the commissioner **any criminal prosecution, convictions or administrative action** taken against them in any jurisdiction or by another governmental agency in this state **within thirty days of the final disposition of the matter**. This report must include a copy of any order or any other relevant legal documents.

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

- A licensee whose personal residence is shown on his license may obscure his 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.

H. Compensation of Licensees

1) Illegal Dealings in Commission... (48.17.490) (Receiving Compensation)

(1) 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.

(2) 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.

2) Charges for Extra Services... (48.30.157, 48.17.270)

The Commissioner may permit an insurance producer to enter into **reasonable arrangements** with any person to charge a **reasonable fee** in situations where services that are charged for are provided outside the scope of services customarily provided in connection with the solicitation and procurement of insurance.

It is generally illegal for a producer to charge fees in addition to the policy premium for services which are not "truly" extra services. Additional charges **may not be made** for services which a producer would normally be expected to perform in connection with the sale of an insurance policy (such as evaluating a person's needs, recommending coverage, processing an application, etc.). Extra services for which **additional charges may be permitted** are those which are not in the scope of the producer's regular duties (such as special research activities, advising individuals or groups about types of insurance and matters for which the producer does not sell insurance, etc.). The extra service and the **reasonable amount** to be charged must be specified in a written agreement, and it must be approved by the applicant prior to the performance of the service.