

REGULATORY REFORM IN MISSOURI SENATE BILL 193

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On July 12, 2001, Senate Bill 193, otherwise known as the Single Producer Licensing Bill, was signed into law by Missouri's Governor.² Modeled largely after the National Association of Insurance Commissioners' (NAIC) Producer Licensing Model Act, Senate Bill 193 creates greater uniformity and efficiency in the licensing of those who negotiate, sell, or solicit insurance policies. Senate Bill 193 attempts to achieve such licensing efficiency through the adoption of producer licensing and certain key exemptions to the licensing requirement.

Further, Senate Bill 193 creates major statutory modifications regarding several miscellaneous areas of insurance regulation, including an insurer's affirmative duty to disclose adverse actions, maintenance of producer termination lists, incidental fees charged to insureds, temporary licensing, pre-licensing education, expungement of disciplinary acts, and issuance of personal, property, casualty, and surplus lines. The following article highlights the major points of Senate Bill 193.

Producer Licensing

Producers. Senate Bill 193 eliminates the licensing distinction between insurance agents, agencies, and brokers. Rather than requiring a particular license for each subcategory of provider, Senate Bill 193 proscribes one uniform insurance producer license. Such a license is required of any insurance provider who attempts to sell, solicit, or negotiate insurance within the state of Missouri.³ While many states already use the terms of producer and sell, solicit, or negotiate to determine those individuals who require licensing, Missouri's new law defines these terms to specifically exclude certain key entities and individuals from the producer licensing requirement.

Individuals and entities exempt from the producer licensing requirement under Senate Bill 193 include insurers and those individual employees who only indirectly relate to the sale, solicitation or negotiation of insurance. For example, certain insurance company managers, executives, and consumer service representatives do not require licensing in the state of Missouri.⁴ These precisely defined exceptions to the licensing requirement of Senate Bill 193 will assist insurance agents, companies, and representatives in determining when an insurance provider requires a producer license.

Nonresident Producers. Although not totally exempt from licensing like those providers listed above, nonresident producers are also given substantial licensing leeway through the implementation of Senate Bill 193. In a step toward nationally-uniform insurance licensing, Senate Bill 193 enables nonresident producers to obtain a Missouri license without satisfying the educational and technical requirements of the old law. Instead, nonresident producers need only satisfy four basic elements to obtain a producer license in Missouri.⁵ The four basic elements include:

1. Applicant must be currently licensed as a resident in good standing in the home state;
2. Applicant must submit the proper request for licensure and pay the related fee;
3. Applicant must submit the application tendered in the home state for licensure or submit a uniform application; and
4. Applicant's home state must have a comparable, reciprocal licensing process.

The Director of Insurance is given discretion to verify the licensing status of nonresident producers through the NAIC's producer database.⁶ Therefore, nonresident applicants for licensure are generally not required to submit a home state letter of certification. But where the applicant's home state fails to participate in the NAIC Producer Database, then such a letter of certification must be submitted.

In addition to streamlining the nonresident licensing requirement, Senate Bill 193 contains several other provisions targeted at unifying producer licensing on a multi-state level. First, the Director of Insurance is prohibited from charging higher fees to foreign applicants simply because of their nonresident status. Secondly, where a nonresident producer satisfies the resident state's continuing education requirements, such satisfaction will also be recognized in Missouri, so long as the resident state grants the reciprocal privilege to Missouri. Lastly, Senate Bill 193 gives the Director broad discretion to participate in a centralized producer license registry and to promulgate regulations necessary to participate in such registry. These three provisions, combined with the simplified nonresident licensing procedure, establish a foundation for greater uniformity and efficiency in the producer licensing process.

Miscellaneous Producer Licensing Provisions. Senate Bill 193 provides various other noteworthy modifications in the producer licensing regulation scheme. The following is a brief overview of such provisions:

- On January 1, 2003, all insurance licenses held by individuals and entities shall automatically accrue the rights, privileges, and responsibilities of an insurance producer license until the actual producer license is issued upon renewal.
- The producer licensing fee will be \$100 as of January 1, 2003; the licensing period will continue for two years.
- An individual producer who allows his or her license to expire may reinstate such license, without passing a written examination, within twelve months from the due date of the renewal fee.
- If the Director of Insurance fails to take action on a producer application within twenty-five days of its receipt, such application is deemed approved.
- Mandatory pre-licensing education is eliminated; however, prior testing requirements for individual applicants will remain in place.
- The Director of Insurance is imbued with broad discretion to grant a temporary insurance producer license; such temporary license cannot exceed ninety days.
- If any administrative action is taken against an insurance producer by a governmental agency within or outside of the state, the producer must disclose such action to the Director of Insurance within thirty days of the matter's final disposition.

Miscellaneous

Producer Termination Lists. The Department of Insurance will no longer process agent appointment and terminations. Under Senate Bill 193, a register must be maintained by all insurance companies showing the appointment and termination of all agents. The register must include both the name and license number of the appointed/terminated producer. No fee will be charged for adding or terminating a producer from the company register.

All appointments must be reported in the company register within thirty days of the insurer authorizing a producer to transact business of its behalf. The reporting requirement for terminations, however, depends on whether such termination was issued as a result of producer misconduct.⁷ If a termination is for reason other than the misconduct listed in RSMo § 375.141, then such termination need only be listed in the company register within thirty days of the termination. However, if a termination is the result of misconduct as defined by § 375.141, then the company must, in addition to updating its company register, notify the Director of Insurance of such termination and the reasons therefor within thirty days of the termination.

Incidental Fees. Senate Bill 193 authorizes insurers and insurance producers to charge additional incidental fees for

premium installments, late payments, policy reinstatements, or other similar services specifically provided for by law. This new provision allows insurance companies to charge certain enumerated fees without having the insured sign a Broker Service Agreement. Instead, the insured need only disclose the existence of such fees to the insured in writing.

This fee provision became effective August 28, 2001. However, fees allowed under this section are to be specifically defined by Department of Insurance regulation. Because such regulations have not yet been issued, it is highly advised that companies check the status of any proposed regulation or contact the Missouri Department of Insurance for guidance before acting.

Expungement of Disciplinary Acts. Senate Bill 193 provides that when a disciplinary act results in a voluntary forfeiture of \$200 or less, such action will be expunged after a period of five years. Such expungement applies to all kinds of producers, including agents, brokers and agencies. However, disciplinary actions taken in response to those types of misconduct listed in RSMo § 375.141 (see endnote 7) are not covered by this section and will accordingly not be expunged.

Personal Lines. The Department of Insurance is now authorized to issue a new personal lines license. This type of license allows holders to write personal lines property and casualty products only.

Surplus Lines. Prior to Senate Bill 193, only resident holders of property and casualty licenses were able to obtain a surplus lines license. However, Senate Bill 193 provides that both resident and nonresident property and casualty license holders may be issued a surplus lines license. Such surplus lines license holders must file a bond with the Department of Insurance in the amount of \$100,000, or an amount equal to the tax liability of the previous year, whichever is smaller.

Tax Deduction. After April 1, 2003, insurance companies will no longer receive refunds for examination fees which exceed the company's premium tax liability for the same year. However, a deduction for such amount may be taken and carried forward to any subsequent tax year, within five years, until the full deduction is claimed.

Endnotes

1. The author would like to thank Nicole Sublett, an associate in our office, for her assistance in preparing this article.
2. However, most of the provisions of Senate Bill 193 do not become effective until January 2, 2003.
3. See RSMo § 375.014.1.
4. See RSMo § 375.014.3(1).
5. See RSMo § 375.017.1.
6. See RSMo § 375.017.2.
7. Such misconduct is defined by RSMo § 375.141 and includes: a) knowingly violating any laws/regulations of the state, or knowingly aiding and abetting such violation; b) obtaining a license by fraud; c) conviction of a crime involving moral turpitude; d) demonstration of lack of trustworthiness or competence, etc.