

there is no loss of insurance producer licensing revenue to the State; and

(5) prescribing and enforcing laws and regulations regulating the conduct of resident and nonresident insurance producers.

(Pub. L. 106-102, title III, §322, as added Pub. L. 114-1, title II, §202(a), Jan. 12, 2015, 129 Stat. 13.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6753 of this title, prior to the general amendment of this subchapter by Pub. L. 114-1.

A prior section 6752, Pub. L. 106-102, title III, §322, Nov. 12, 1999, 113 Stat. 1424, related to National Association of Registered Agents and Brokers, prior to the general amendment of this subchapter by Pub. L. 114-1. See section 6751 of this title.

§ 6753. Membership

(a) Eligibility

(1) In general

Any insurance producer licensed in its home State shall, subject to paragraphs (2) and (4), be eligible to become a member of the Association.

(2) Ineligibility for suspension or revocation of license

Subject to paragraph (3), an insurance producer is not eligible to become a member of the Association if a State insurance regulator has suspended or revoked the insurance license of the insurance producer in that State.

(3) Resumption of eligibility

Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator reissues or renews the license of the insurance producer in the State in which the license was suspended or revoked, or otherwise terminates or vacates the suspension or revocation; or

(B) the suspension or revocation expires or is subsequently overturned by a court of competent jurisdiction.

(4) Criminal history record check required

(A) In general

An insurance producer who is an individual shall not be eligible to become a member of the Association unless the insurance producer has undergone a criminal history record check that complies with regulations prescribed by the Attorney General of the United States under subparagraph (K).

(B) Criminal history record check requested by home State

An insurance producer who is licensed in a State and who has undergone a criminal history record check during the 2-year period preceding the date of submission of an application to become a member of the Association, in compliance with a requirement to undergo such criminal history record check as a condition for such licensure in the State, shall be deemed to have undergone a criminal history record check for purposes of subparagraph (A).

(C) Criminal history record check requested by Association

(i) In general

The Association shall, upon request by an insurance producer licensed in a State, submit fingerprints or other identification information obtained from the insurance producer, and a request for a criminal history record check of the insurance producer, to the Federal Bureau of Investigation.

(ii) Procedures

The board of directors of the Association (referred to in this subchapter as the “Board”) shall prescribe procedures for obtaining and utilizing fingerprints or other identification information and criminal history record information, including the establishment of reasonable fees to defray the expenses of the Association in connection with the performance of a criminal history record check and appropriate safeguards for maintaining confidentiality and security of the information. Any fees charged pursuant to this clause shall be separate and distinct from those charged by the Attorney General pursuant to subparagraph (I).

(D) Form of request

A submission under subparagraph (C)(i) shall include such fingerprints or other identification information as is required by the Attorney General concerning the person about whom the criminal history record check is requested, and a statement signed by the person authorizing the Attorney General to provide the information to the Association and for the Association to receive the information.

(E) Provision of information by Attorney General

Upon receiving a submission under subparagraph (C)(i) from the Association, the Attorney General shall search all criminal history records of the Federal Bureau of Investigation, including records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, that the Attorney General determines appropriate for criminal history records corresponding to the fingerprints or other identification information provided under subparagraph (D) and provide all criminal history record information included in the request to the Association.

(F) Limitation on permissible uses of information

Any information provided to the Association under subparagraph (E) may only—

(i) be used for purposes of determining compliance with membership criteria established by the Association;

(ii) be disclosed to State insurance regulators, or Federal or State law enforcement agencies, in conformance with applicable law; or

(iii) be disclosed, upon request, to the insurance producer to whom the criminal history record information relates.

(G) Penalty for improper use or disclosure

Whoever knowingly uses any information provided under subparagraph (E) for a purpose not authorized in subparagraph (F), or discloses any such information to anyone not authorized to receive it, shall be fined not more than \$50,000 per violation as determined by a court of competent jurisdiction.

(H) Reliance on information

Neither the Association nor any of its Board members, officers, or employees shall be liable in any action for using information provided under subparagraph (E) as permitted under subparagraph (F) in good faith and in reasonable reliance on its accuracy.

(I) Fees

The Attorney General may charge a reasonable fee for conducting the search and providing the information under subparagraph (E), and any such fee shall be collected and remitted by the Association to the Attorney General.

(J) Rule of construction

Nothing in this paragraph shall be construed as—

- (i) requiring a State insurance regulator to perform criminal history record checks under this section; or
- (ii) limiting any other authority that allows access to criminal history records.

(K) Regulations

The Attorney General shall prescribe regulations to carry out this paragraph, which shall include—

- (i) appropriate protections for ensuring the confidentiality of information provided under subparagraph (E); and
- (ii) procedures providing a reasonable opportunity for an insurance producer to contest the accuracy of information regarding the insurance producer provided under subparagraph (E).

(L) Ineligibility for membership**(i) In general**

The Association may, under reasonably consistently applied standards, deny membership to an insurance producer on the basis of criminal history record information provided under subparagraph (E), or where the insurance producer has been subject to disciplinary action, as described in paragraph (2).

(ii) Rights of applicants denied membership

The Association shall notify any insurance producer who is denied membership on the basis of criminal history record information provided under subparagraph (E) of the right of the insurance producer to—

- (I) obtain a copy of all criminal history record information provided to the Association under subparagraph (E) with respect to the insurance producer; and
- (II) challenge the denial of membership based on the accuracy and completeness of the information.

(M) Definition

For purposes of this paragraph, the term “criminal history record check” means a national background check of criminal history records of the Federal Bureau of Investigation.

(b) Authority to establish membership criteria

The Association may establish membership criteria that bear a reasonable relationship to the purposes for which the Association was established.

(c) Establishment of classes and categories of membership**(1) Classes of membership**

The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, experience, or other qualifications.

(2) Business entities

The Association shall establish a class of membership and membership criteria for business entities. A business entity that applies for membership shall be required to designate an individual Association member responsible for the compliance of the business entity with Association standards and the insurance laws, standards, and regulations of any State in which the business entity seeks to do business on the basis of Association membership.

(3) Categories**(A) Separate categories for insurance producers permitted**

The Association may establish separate categories of membership for insurance producers and for other persons or entities within each class, based on the types of licensing categories that exist under State laws.

(B) Separate treatment for depository institutions prohibited

No special categories of membership, and no distinct membership criteria, shall be established for members that are depository institutions or for employees, agents, or affiliates of depository institutions.

(d) Membership criteria**(1) In general**

The Association may establish criteria for membership which shall include standards for personal qualifications, education, training, and experience. The Association shall not establish criteria that unfairly limit the ability of a small insurance producer to become a member of the Association, including imposing discriminatory membership fees.

(2) Qualifications

In establishing criteria under paragraph (1), the Association shall not adopt any qualification less protective to the public than that contained in the National Association of Insurance Commissioners (referred to in this subchapter as the “NAIC”) Producer Licensing Model Act in effect as of January 12, 2015, and

shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(3) Assistance from States

(A) In general

The Association may request a State to provide assistance in investigating and evaluating the eligibility of a prospective member for membership in the Association.

(B) Authorization of information sharing

A submission under subsection (a)(4)(C)(i) made by an insurance producer licensed in a State shall include a statement signed by the person about whom the assistance is requested authorizing—

- (i) the State to share information with the Association; and
- (ii) the Association to receive the information.

(C) Rule of construction

Subparagraph (A) shall not be construed as requiring or authorizing any State to adopt new or additional requirements concerning the licensing or evaluation of insurance producers.

(4) Denial of membership

The Association may, based on reasonably consistently applied standards, deny membership to any State-licensed insurance producer for failure to meet the membership criteria established by the Association.

(e) Effect of membership

(1) Authority of Association members

Membership in the Association shall—

(A) authorize an insurance producer to sell, solicit, or negotiate insurance in any State for which the member pays the licensing fee set by the State for any line or lines of insurance specified in the home State license of the insurance producer, and exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustments and settlement to the extent permissible under the laws of the State, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities;

(B) be the equivalent of a nonresident insurance producer license for purposes of authorizing the insurance producer to engage in the activities described in subparagraph (A) in any State where the member pays the licensing fee; and

(C) be the equivalent of a nonresident insurance producer license for the purpose of subjecting an insurance producer to all laws, regulations, provisions or other action of any State concerning revocation, suspension, or other enforcement action related to the ability of a member to engage in any activity within the scope of authority granted under this subsection and to all State laws, regulations, provisions, and actions preserved under paragraph (5).

(2) Violent Crime Control and Law Enforcement Act of 1994

Nothing in this subchapter shall be construed to alter, modify, or supercede any re-

quirement established by section 1033 of title 18.

(3) Agent for remitting fees

The Association shall act as an agent for any member for purposes of remitting licensing fees to any State pursuant to paragraph (1).

(4) Notification of action

(A) In general

The Association shall notify the States (including State insurance regulators) and the NAIC when an insurance producer has satisfied the membership criteria of this section. The States (including State insurance regulators) shall have 10 business days after the date of the notification in order to provide the Association with evidence that the insurance producer does not satisfy the criteria for membership in the Association.

(B) Ongoing disclosures required

On an ongoing basis, the Association shall disclose to the States (including State insurance regulators) and the NAIC a list of the States in which each member is authorized to operate. The Association shall immediately notify the States (including State insurance regulators) and the NAIC when a member is newly authorized to operate in one or more States, or is no longer authorized to operate in one or more States on the basis of Association membership.

(5) Preservation of consumer protection and market conduct regulation

(A) In general

No provision of this section shall be construed as altering or affecting the applicability or continuing effectiveness of any law, regulation, provision, or other action of any State, including those described in subparagraph (B), to the extent that the State law, regulation, provision, or other action is not inconsistent with the provisions of this subchapter related to market entry for non-resident insurance producers, and then only to the extent of the inconsistency.

(B) Preserved regulations

The laws, regulations, provisions, or other actions of any State referred to in subparagraph (A) include laws, regulations, provisions, or other actions that—

- (i) regulate market conduct, insurance producer conduct, or unfair trade practices;
- (ii) establish consumer protections; or
- (iii) require insurance producers to be appointed by a licensed or authorized insurer.

(f) Biennial renewal

Membership in the Association shall be renewed on a biennial basis.

(g) Continuing education

(1) In general

The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to the

continuing education requirements under the licensing laws of a majority of the States.

(2) State continuing education requirements

A member may not be required to satisfy continuing education requirements imposed under the laws, regulations, provisions, or actions of any State other than the home State of the member.

(3) Reciprocity

The Association shall not require a member to satisfy continuing education requirements that are equivalent to any continuing education requirements of the home State of the member that have been satisfied by the member during the applicable licensing period.

(4) Limitation on the Association

The Association shall not directly or indirectly offer any continuing education courses for insurance producers.

(h) Probation, suspension and revocation

(1) Disciplinary action

The Association may place an insurance producer that is a member of the Association on probation or suspend or revoke the membership of the insurance producer in the Association, or assess monetary fines or penalties, as the Association determines to be appropriate, if—

(A) the insurance producer fails to meet the applicable membership criteria or other standards established by the Association;

(B) the insurance producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator;

(C) an insurance license held by the insurance producer has been suspended or revoked by a State insurance regulator; or

(D) the insurance producer has been convicted of a crime that would have resulted in the denial of membership pursuant to subsection (a)(4)(L)(i) at the time of application, and the Association has received a copy of the final disposition from a court of competent jurisdiction.

(2) Violations of Association standards

The Association shall have the power to investigate alleged violations of Association standards.

(3) Reporting

The Association shall immediately notify the States (including State insurance regulators) and the NAIC when the membership of an insurance producer has been placed on probation or has been suspended, revoked, or otherwise terminated, or when the Association has assessed monetary fines or penalties.

(i) Consumer complaints

(1) In general

The Association shall—

(A) refer any complaint against a member of the Association from a consumer relating to alleged misconduct or violations of State insurance laws to the State insurance regulator where the consumer resides and, when appropriate, to any additional State insur-

ance regulator, as determined by standards adopted by the Association; and

(B) make any related records and information available to each State insurance regulator to whom the complaint is forwarded.

(2) Telephone and other access

The Association shall maintain a toll-free number for purposes of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet webpage.

(3) Final disposition of investigation

State insurance regulators shall provide the Association with information regarding the final disposition of a complaint referred pursuant to paragraph (1)(A), but nothing shall be construed to compel a State to release confidential investigation reports or other information protected by State law to the Association.

(j) Information sharing

The Association may—

(1) share documents, materials, or other information, including confidential and privileged documents, with a State, Federal, or international governmental entity or with the NAIC or other appropriate entity referred to¹ paragraphs (3) and (4), provided that the recipient has the authority and agrees to maintain the confidentiality or privileged status of the document, material, or other information;

(2) limit the sharing of information as required under this subchapter with the NAIC or any other non-governmental entity, in circumstances under which the Association determines that the sharing of such information is unnecessary to further the purposes of this subchapter;

(3) establish a central clearinghouse, or utilize the NAIC or another appropriate entity, as determined by the Association, as a central clearinghouse, for use by the Association and the States (including State insurance regulators), through which members of the Association may disclose their intent to operate in 1 or more States and pay the licensing fees to the appropriate States; and

(4) establish a database, or utilize the NAIC or another appropriate entity, as determined by the Association, as a database, for use by the Association and the States (including State insurance regulators) for the collection of regulatory information concerning the activities of insurance producers.

(k) Effective date

The provisions of this section shall take effect on the later of—

(1) the expiration of the 2-year period beginning on January 12, 2015; and

(2) the date of incorporation of the Association.

(Pub. L. 106-102, title III, §323, as added Pub. L. 114-1, title II, §202(a), Jan. 12, 2015, 129 Stat. 13.)

¹ So in original. Probably should be followed by "in".

Editorial Notes

REFERENCES IN TEXT

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (e)(2), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796. For complete classification of this Act to the Code, see Short Title of 1994 Act note set out under section 10101 of Title 34, Crime Control and Law Enforcement, and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6755 of this title, prior to the general amendment of this subchapter by Pub. L. 114-1.

A prior section 6753, Pub. L. 106-102, title III, §323, Nov. 12, 1999, 113 Stat. 1424, related to purpose of the Association, prior to the general amendment of this subchapter by Pub. L. 114-1. See section 6752 of this title.

§ 6754. Board of directors**(a) Establishment**

There is established a board of directors of the Association, which shall have authority to govern and supervise all activities of the Association.

(b) Powers

The Board shall have such of the powers and authority of the Association as may be specified in the bylaws of the Association.¹

(c) Composition**(1) In general**

The Board shall consist of 13 members who shall be appointed by the President, by and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, of whom—

(A) 8 shall be State insurance commissioners appointed in the manner provided in paragraph (2), 1 of whom shall be designated by the President to serve as the chairperson of the Board until the Board elects one such State insurance commissioner Board member to serve as the chairperson of the Board;

(B) 3 shall have demonstrated expertise and experience with property and casualty insurance producer licensing; and

(C) 2 shall have demonstrated expertise and experience with life or health insurance producer licensing.

(2) State insurance regulator representatives**(A) Recommendations**

Before making any appointments pursuant to paragraph (1)(A), the President shall request a list of recommended candidates from the States through the NAIC, which shall not be binding on the President. If the NAIC fails to submit a list of recommendations not later than 15 business days after the date of the request, the President may make the requisite appointments without considering the views of the NAIC.

(B) Political affiliation

Not more than 4 Board members appointed under paragraph (1)(A) shall belong to the same political party.

¹So in original. Probably should be "such powers and authority as may be specified in the bylaws of the Association."

(C) Former State insurance commissioners**(i) In general**

If, after offering each currently serving State insurance commissioner an appointment to the Board, fewer than 8 State insurance commissioners have accepted appointment to the Board, the President may appoint the remaining State insurance commissioner Board members, as required under paragraph (1)(A), of the appropriate political party as required under subparagraph (B), from among individuals who are former State insurance commissioners.

(ii) Limitation

A former State insurance commissioner appointed as described in clause (i) may not be employed by or have any present direct or indirect financial interest in any insurer, insurance producer, or other entity in the insurance industry, other than direct or indirect ownership of, or beneficial interest in, an insurance policy or annuity contract written or sold by an insurer.

(D) Service through term

If a Board member appointed under paragraph (1)(A) ceases to be a State insurance commissioner during the term of the Board member, the Board member shall cease to be a Board member.

(3) Private sector representatives

In making any appointment pursuant to subparagraph (B) or (C) of paragraph (1), the President may seek recommendations for candidates from groups representing the category of individuals described, which shall not be binding on the President.

(4) State insurance commissioner defined

For purposes of this subsection, the term "State insurance commissioner" means a person who serves in the position in State government, or on the board, commission, or other body that is the primary insurance regulatory authority for the State.

(d) Terms**(1) In general**

Except as provided under paragraph (2), the term of service for each Board member shall be 2 years.

(2) Exceptions**(A) 1-year terms**

The term of service shall be 1 year, as designated by the President at the time of the nomination of the subject Board members for—

(i) 4 of the State insurance commissioner Board members initially appointed under paragraph (1)(A),² of whom not more than 2 shall belong to the same political party;

(ii) 1 of the Board members initially appointed under paragraph (1)(B);³ and

²So in original. Probably should be "paragraph (1)(A) of subsection (c)."

³So in original. Probably should be "paragraph (1)(B) of subsection (c)."