

CHAPTER 60J

BUSINESS TRANSACTED WITH PRODUCER
CONTROLLED PROPERTY/CASUALTY INSURER ACT

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60J.01 TITLE.

Sections 60J.01 to 60J.05 may be cited as the business transacted with producer controlled property/casualty insurer act.

History: 1991 c 325 art 13 s 1

NOTE: This section, as added by Laws 1991, chapter 325, article 13, section 1, is effective August 1, 1992. See Laws 1991, chapter 325, article 13, section 6.

60J.02 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 60J.01 to 60J.05, the terms defined in this section have the meanings given them.

Subd. 2. **Producer.** "Producer" means an insurance broker or brokers or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the producer.

Subd. 3. **Reinsurance intermediary.** "Reinsurance intermediary" means a person, firm, association, or corporation who acts as a producer in soliciting, negotiating, or procuring the making of a reinsurance contract or binder on behalf of a ceding insurer or acts as a producer in accepting any reinsurance contract or binder on behalf of an assuming insurer.

Subd. 4. **Control.** "Control" or "controlled" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the powers to vote, or holds proxies representing a majority of the outstanding voting securities of any other person. No person is considered to control another person solely by reason of being an officer or director of the other person.

Subd. 5. **Licensed property/casualty insurer.** "Licensed property/casualty insurer" or "insurer" means a person, firm, association, or corporation licensed to transact a property/casualty insurance business in this state and that issues policies covered by chapter 60C. The following are not licensed property/casualty insurers for the purposes of sections 60J.01 to 60J.05:

- (1) all nonadmitted insurers;
- (2) all risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Public Law Number 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, United States Code, title 15, section 3901 et seq. and chapter 60E;
- (3) all residual market pools and joint underwriting authorities or associations; and
- (4) all captive insurers. This term includes insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations and/or group members and their affiliates.

Subd. 6. **Independent casualty actuary.** "Independent casualty actuary" means a casualty actuary who is a member of the American Academy of Actuaries and who is not affiliated with, nor an employee, principal, nor the direct or indirect owner of, or in any way controlled by the insurer or producer.

Subd. 7. **Violation.** "Violation" means a finding by the commissioner that:

- (1) the controlling producer did not materially comply with section 60J.03;
- (2) the controlled insurer, with respect to business placed by the controlling producer, engaged in a pattern of charging premiums that were lower than those being charged by the insurer or other insurers for similar risks written during the same period and placed by noncontrolling producers. When determining whether premiums were lower than those prevailing in the market, the commissioner shall take into consideration applicable industry or actuarial standards at the time the business was written;
- (3) the controlling producer failed to maintain records, sufficient:
 - (i) to demonstrate that the producer's dealings with its controlled insurer were fair and equitable and in compliance with chapter 60D; and
 - (ii) to accurately disclose the nature and details of its transactions with the controlled insurer, including information necessary to support the charges or fees to the respective parties;
- (4) the controlled insurer, with respect to business placed by the controlling producer, either failed to establish or deviated from its underwriting procedures;
- (5) the controlled insurer's capitalization at the time the business was placed by the controlling producer and with respect to this business was not in compliance with criteria established by the commissioner or with the insurance law or rules adopted under it; or
- (6) the controlling producer or the controlled insurer failed to substantially comply with the insurance holding company act, chapter 60D and any rules adopted under it.

History: 1991 c 325 art 13 s 2

NOTE: This section, as added by Laws 1991, chapter 325, article 13, section 2, is effective August 1, 1992. See Laws 1991, chapter 325, article 13, section 6.

60J.03 LIMITATION ON BUSINESS PLACED WITH CONTROLLED INSURER.

Subdivision 1. **Producer limitation.** No producer that has control of a licensed property/casualty insurer may directly or indirectly place business with the insurer in any transaction in which the producer, at the time the business is placed, is acting as such on behalf of the insured for any compensation, commission, or other thing of value, unless:

- (1) there is a written contract between the controlling producer and the insurer, which contract has been approved by the board of directors of the insurer;
- (2) the producer, before the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. The disclosure, signed by the insured, must be retained in the underwriting file until the filing of the report on examination covering the period in which the coverage is in effect. Except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured;
- (3) all funds collected for the account of the insurer by the controlling producer must be paid, net of commissions, cancellations, and other adjustments, to the insurer no less often than quarterly;
- (4) in addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion

of an independent casualty actuary, or other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported, on business placed by the producer;

(5) the controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage the amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance; and

(6) every controlled insurer shall have an audit committee of the board of directors composed of independent directors. Before approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary, or other independent loss reserve specialist acceptable to the commissioner, to review the adequacy of the insurer's loss reserves.

Subd. 2. Reinsurance intermediary limitation. No reinsurance intermediary that has control of an assuming insurer may directly or indirectly place business with the insurer in any transaction in which the reinsurance intermediary is acting as a broker on behalf of the ceding insurer. No reinsurance intermediary that has control of a ceding insurer may directly or indirectly accept business from the insurer in any transaction in which the reinsurance intermediary is acting as a producer on behalf of the assuming insurer. The prohibitions in this subdivision do not apply to a reinsurance intermediary that makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer before completion of the transaction.

History: 1991 c 325 art 13 s 3

NOTE: This section, as added by Laws 1991, chapter 325, article 13, section 3, is effective August 1, 1992. See Laws 1991, chapter 325, article 13, section 6.

60J.04 LIABILITY OF CONTROLLING PRODUCER IN THE EVENT OF INSOLVENCY OF CONTROLLED INSURER.

Subdivision 1. Initiation of action. If the commissioner has reason to believe that a controlling producer has committed or is committing an act that could be determined to be a violation of sections 60J.01 to 60J.05, the commissioner shall serve upon the controlling producer, in the manner provided by chapter 14, a statement of the charges and notice of a hearing to be conducted in accordance with chapter 14, at a time not less than 30 days after the service of the notice and at a place fixed in the notice.

Subd. 2. Hearing. At the hearing, the commissioner shall establish that the controlling producer engaged in a violation of sections 60J.01 to 60J.05. The controlling producer shall have an opportunity to be heard and to present evidence rebutting the charges and to establish that the insolvency of the controlled insurer arose out of events not attributable to the violation. The decision, determination, or order of the commissioner is subject to judicial review pursuant to chapter 14.

Subd. 3. Penalty. Upon finding that the controlling producer committed a violation, and the controlling producer failed to establish that the violation did not substantially contribute to the insolvency, the controlling producer shall reimburse the state guaranty funds for all payments made for losses, loss adjustment, and administrative expenses on the business placed by the producer in excess of gross earned premiums and investment income earned on premiums and loss reserves for the business.

Subd. 4. Other penalties. Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in the insurance laws.

History: 1991 c 325 art 13 s 4

NOTE: This section, as added by Laws 1991, chapter 325, article 13, section 4, is effective August 1, 1992. See Laws 1991, chapter 325, article 13, section 6.

60J.05 SCOPE.

Nothing contained in sections 60J.01 to 60J.05 is intended to or in any manner alters or affects the rights of policyholders, claimants, creditors, or other third parties.

History: *1991 c 325 art 13 s 5*

NOTE: This section, as added by Laws 1991, chapter 325, article 13, section 5, is effective August 1, 1992. See Laws 1991, chapter 325, article 13, section 6.