

THE INSURANCE CODE OF 1956 (EXCERPT)

Act 218 of 1956

CHAPTER 11A

REINSURANCE INTERMEDIARIES

500.1151 Definitions.

Sec. 1151. As used in this chapter:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries, the society of actuaries, or the casualty actuarial society.

(b) "Qualified United States Financial institution" means an institution that meets either subparagraph (i) or (ii):

(i) Is organized, or in the case of a United States office of a foreign banking organization, is licensed, under federal or state law, is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies, and has been determined by the commissioner to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(ii) For those institutions that are eligible to act as a fiduciary of a trust, is organized, or in the case of a United States branch or agency office of a foreign banking organization, is licensed, under federal or state law, has been granted authority to operate with fiduciary powers, and is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(c) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(d) "Reinsurance intermediary-broker" means any person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of that insurer.

(e) "Reinsurance intermediary-manager" means any person who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager, manager, or other similar term. Notwithstanding the above, the following persons are not considered a reinsurance intermediary-manager, with respect to a reinsurer, for the purposes of this chapter:

(i) An employee of the reinsurer.

(ii) A United States manager of the United States branch of an alien reinsurer.

(iii) An underwriting manager that, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to chapter 13, and whose compensation is not based on the volume of premiums written.

(iv) The manager of a group, association, pool, or organization of insurers that engage in joint underwriting or joint reinsurance and who are subject to examination by the commissioner of the state where the manager's principal office is located.

(f) "Reinsurer" means any person duly authorized in this state pursuant to the applicable provisions of this act as an insurer with the authority to assume reinsurance.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1153 Person acting as reinsurance intermediary-broker; bond; license; nonresident; service of process; refusal to issue license.

Sec. 1153. (1) A person shall not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker, either directly or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation, does either of the following:

(a) Maintains an office in this state, unless the person is licensed as an agent or a reinsurance intermediary-broker in this state.

(b) Maintains an office in another state, unless the person is licensed as an agent or a reinsurance intermediary-broker in this state or another state having a law substantially similar to this law or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person shall not act as a reinsurance intermediary-manager in any of the following cases:

(a) For a reinsurer domiciled in this state, unless such person is licensed as an agent or a reinsurance intermediary-manager in this state.

(b) In this state, if the person maintains an office either directly or as a member of a firm or association, or an officer, director, or employee of a corporation in this state, unless such person is licensed as an agent or a reinsurance intermediary-manager in this state.

(c) In another state for a nondomestic insurer, unless the person is licensed as an agent or a reinsurance intermediary-manager in this state or another state having a law substantially similar to this law or the person is licensed in this state as a nonresident reinsurance intermediary.

(3) The commissioner may require a reinsurance intermediary-manager subject to subsection (2) to file a bond in an amount acceptable to the commissioner from an insurer acceptable to the commissioner for the protection of the reinsurer, and maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4) The commissioner may issue a reinsurance intermediary license to any person who has complied with the requirements of this chapter. Any license issued to a firm or association shall authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any license issued to a corporation shall authorize all of the officers and any designated employees and directors to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements thereto.

(5) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this act for designation of service of process upon unauthorized insurers, and shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process.

(6) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, if any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or if any of the foregoing has given cause for revocation or suspension of license or has failed to comply with any prerequisite for issuance of a license. Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a license, which document shall be confidential and shall not be divulged to any person except as provided in this section.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1155 Transactions between reinsurance intermediary-broker and insurer; authorization.

Sec. 1155. Transactions between a reinsurance intermediary-broker and the insurer it represents in such capacity shall be entered into only pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, provide for all of the following:

(a) That the insurer may terminate the reinsurance intermediary-broker's authority at any time.

(b) That the reinsurance intermediary-broker will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance intermediary-broker, and remit all funds due to the insurer within 30 days of receipt.

(c) That all funds collected for the insurer's account will be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution.

(d) That the reinsurance intermediary-broker will comply with the record-keeping requirements of section 1157.

(e) That the insurer will have access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

(f) That the reinsurance intermediary-broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(g) That the reinsurance intermediary-broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1157 Record of transaction.

Sec. 1157. For at least 10 years after expiration of each contract of reinsurance transacted by a reinsurance

intermediary, the reinsurance intermediary will keep a complete record for each transaction showing all of the following:

- (a) The type of contract, limits, underwriting restrictions, classes or risks, and territory.
- (b) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation.
- (c) Reporting and settlement requirements of balances.
- (d) Rate used to compute the reinsurance premium.
- (e) Names and addresses of assuming reinsurers.
- (f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary.
- (g) Related correspondence and memoranda.
- (h) Proof of placement.
- (i) Details regarding retrocessions handled by the reinsurance intermediary including the identity of retrocessionaires and percentage of each contract assumed or ceded.
- (j) Financial records, including, but not limited to, premium and loss accounts.
- (k) When the reinsurance intermediary procures a reinsurance contract on behalf of a licensed ceding insurer as follows:
 - (i) If directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.
 - (ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1159 Person acting as reinsurance-broker; license required; employment of individual employed by reinsurance intermediary-broker; annual copy of statements of financial condition.

Sec. 1159. (1) An insurer shall not engage the services of any person to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by section 1153.

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to chapter 13.

(3) The insurer shall obtain annually a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1161 Transactions between reinsurance intermediary-manager and reinsurer; contract.

Sec. 1161. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through such person, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, provide for all of the following:

(a) That the reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(b) That the reinsurance intermediary-manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(c) That all funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than 3 months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(d) That the reinsurance intermediary-manager will comply with the record-keeping requirements of section 1157. In addition to all the records required by section 1157, the reinsurance intermediary-manager

will keep a complete record of all outstanding reserves on covered risks.

(e) That the reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(f) That the contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

(g) That the reinsurance intermediary-manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(h) That the rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer are set forth.

(i) That if the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer, then all of the following are required:

(i) That all claims will be reported to the reinsurer in a timely manner.

(ii) That a copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim meets any of the following:

(A) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer.

(B) Involves a coverage dispute.

(C) May exceed the reinsurance intermediary-manager's claims settlement authority.

(D) Is open for more than 6 months.

(E) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

(iii) That all claim files will be the joint property of the reinsurer and the reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

(iv) That any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of any dispute regarding the cause of termination.

(j) That if the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, that such interim profits will not be paid until 1 year after the end of each underwriting period for policies providing property coverages and 5 years after the end of each underwriting period for policies providing casualty coverages, and in any event, not until the adequacy of reserves on remaining claims has been verified pursuant to section 1165.

(k) That the reinsurance intermediary-manager will provide the reinsurer annually with a statement of its financial condition prepared by an independent certified accountant.

(l) That the reinsurer shall periodically, but at least semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(m) That the reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

(n) That within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager shall be considered to be the acts of the reinsurer on whose behalf it is acting.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1163 Reinsurance intermediary-manager; prohibited conduct.

Sec. 1163. A reinsurance intermediary-manager shall not do any of the following:

(a) Cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. These guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured and commission schedules.

(b) Commit the reinsurer to participate in reinsurance syndicates.

(c) Appoint any agent without assuring that the agent is lawfully licensed to transact the type of reinsurance for which he or she is appointed.

(d) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the preceding calendar year.

(e) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a

retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(f) Jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to chapter 13.

(g) Appoint a subreinsurance intermediary-manager.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1165 Reinsurance intermediary-manager; license required; obtaining annual copy of statement of financial condition and opinion of actuary; authority for retrocessional contracts or participation in reinsurance syndicates; termination of contract; appointment to board of directors.

Sec. 1165. (1) A reinsurer shall not engage the services of any person to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by section 1153.

(2) The reinsurer shall obtain annually a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has engaged. The statements shall be prepared by an independent certified accountant and shall be in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall obtain annually the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.

(5) Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection shall not apply to relationships governed by chapter 13 or, if applicable, chapter 14a.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1167 Reinsurance intermediary and reinsurance intermediary-manager; examination of books, bank accounts, and records.

Sec. 1167. (1) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1169 Violation; penalties.

Sec. 1169. (1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner to be in violation of any of the provisions of this chapter, after a hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, is subject to all of the following penalties:

(a) For each separate violation, payment of a civil fine of not more than \$5,000.00.

(b) The suspension, limitation, or revocation of its license.

(c) If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) This section does not preclude the commissioner from imposing any other penalties provided in this act.

(3) This chapter shall not in any manner confer any rights upon or limit or restrict the rights of policyholders, claimants, creditors, or other third parties.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1171 Reinsurance intermediary; use of services.

Sec. 1171. Neither an insurer nor a reinsurer shall continue to use the services of a reinsurance intermediary on or after December 31, 1994 except in compliance with this chapter.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218