

THE INSURANCE CODE OF 1956 (EXCERPT)

Act 218 of 1956

CHAPTER 14

MANAGING GENERAL AGENTS

500.1400 Repealed. 1972, Act 133, Eff. Mar. 30, 1973.

Compiler's note: The repealed section pertained to application of chapter as to agents, solicitors, adjustors, and counselors.

Popular name: Act 218

500.1401 Definitions.

Sec. 1401. As used in this chapter:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(b) "Managing general agent" or "MGA" means a person who is not listed under section 1403 and meets both of the following:

(i) Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office.

(ii) Acts as an agent for such insurer whether known as a managing general agent or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium of not less than 5% of the policyholder surplus as reported in the last annual statement of the insurer in any 1 quarter or year and adjusts or pays claims in excess of an amount determined by the commissioner or negotiates reinsurance on behalf of the insurer.

(c) "Guaranty association" means the property and casualty guaranty association created in chapter 79 and the life and health insurance guaranty association created in chapter 77.

(d) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Popular name: Act 218

500.1402 Repealed. 1972, Act 133, Eff. Mar. 30, 1973.

Compiler's note: The repealed section pertained to definition of general, district, state, or special agent.

Popular name: Act 218

500.1403 Persons not considered managing general agents.

Sec. 1403. For the purposes of the chapter, the following persons are not considered managing general agents:

(a) An employee of the insurer.

(b) A United States manager of the United States branch of an alien insurer.

(c) An underwriting manager who pursuant to contract manages all the insurer's insurance operations, is under common control with the insurer, is subject to chapter 13, and whose compensation is not based on the volume of premiums written.

(d) An attorney-in-fact for a reciprocal or inter-insurance exchange.

History: Add. 1990, Act 350, Eff. June 1, 1991;—Am. 1991, Act 57, Imd. Eff. June 27, 1991.

Popular name: Act 218

500.1404 Repealed. 1972, Act 133, Eff. Mar. 30, 1973.

Compiler's note: The repealed section pertained to resident agents, definition, and licenses.

Popular name: Act 218

500.1405 Licensing.

Sec. 1405. (1) A person shall not act in the capacity of a managing general agent with respect to risks located in this state for an insurer authorized in this state unless that person is licensed as an agent in this state.

(2) A person shall not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless that person is licensed as an agent in this state pursuant to the provisions of this chapter.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Popular name: Act 218

500.1407 Bond; errors and omissions policy.

Sec. 1407. The commissioner may require a managing general agent to do both of the following:

- (a) Maintain a bond in an amount acceptable to the commissioner for the protection of the insurer.
- (b) Maintain an errors and omissions policy.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Popular name: Act 218

500.1408 Repealed. 1972, Act 133, Eff. Mar. 30, 1973.

Compiler's note: The repealed section pertained to definition of solicitor.

Popular name: Act 218

500.1409 Contract between managing general agent and insurer; required provisions.

Sec. 1409. No person acting in the capacity of a managing general agent shall place business with an insurer unless there is a written contract between the parties that sets forth the responsibilities of each party, and if both parties share responsibility for a particular function, specifies the division of the responsibilities, and that contains the following provisions:

(a) That the insurer may terminate the contract upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(b) That the managing general agent shall render accounts to the insurer detailing all transactions and shall remit all funds due to the insurer on not less than a monthly basis.

(c) That funds collected for the account of the insurer shall be held by the managing general agent in a fiduciary capacity in a federally insured financial institution. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than 3 months' estimated claims payments and allocated loss adjustment expenses.

(d) That separate records of business written by the managing general agent shall be maintained by the managing general agent for the period between each examination of the insurer and until 1 year after each examination of the insurer by the commissioner or licensing authority. The insurer shall have access to and the right to copy all books, accounts, and records related to its business in a form usable by the insurer and the commissioner shall have access to and the right to copy all books, accounts, and records of the managing general agent in a form usable to the commissioner.

(e) That the contract shall not be assigned in whole or in part by the managing general agent.

(f) That the managing general agent is subject to appropriate underwriting guidelines that include, but are not limited to, the following:

(i) The maximum annual premium volume.

(ii) The basis of the rates to be charged.

(iii) The types of risks that may be written.

(iv) Maximum limits of liability.

(v) Applicable exclusions.

(vi) Territorial limitations.

(vii) Policy cancellation provisions.

(viii) The maximum policy period.

(g) If the contract permits the managing general agent to settle claims on behalf of the insurer, all of the following apply:

(i) All claims must be reported to the insurer in a timely manner.

(ii) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim meets any of the following:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.

(B) Involves a coverage dispute.

(C) May exceed the managing general agent's claims settlement authority.

(D) Is open for more than 6 months.

(E) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(iii) All claims files are the joint property of the insurer and the managing general agent.

(iv) Any settlement authority granted to the managing general agent may be terminated upon the insurer's

written notice to the managing general agent or upon the termination of the contract. The insurer may suspend any settlement authority granted to the managing general agent during the pendency of any dispute regarding the cause for termination.

(h) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or in any other manner, that interim profits shall not be paid to the managing general agent until 1 year after they are earned for property insurance business and 5 years after they are earned for casualty insurance business and not until section 1411(a) and (b) has been met.

(i) That the managing general agent shall not do any of the following:

(i) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(ii) Commit the insurer to participate in insurance or reinsurance syndicates.

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

(iv) Without prior approval of the insurer pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, that shall not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year.

(v) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer.

(vi) Permit its agent to serve on the insurer's board of directors.

(vii) Jointly employ an individual who is employed with the insurer.

(viii) Appoint another managing general agent to perform its duties under this chapter.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Popular name: Act 218

500.1411 Insurer; duties.

Sec. 1411. An insurer shall comply with all of the following:

(a) Have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(b) If a managing general agent establishes loss reserves for the insurer, annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This subdivision is in addition to any other required loss reserve certification.

(c) Periodically, and not less than semiannually, conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Provide that binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates rests with an officer of the insurer who is not affiliated with the managing general agent.

(e) Within 30 days of entering into or terminating a contract with a managing general agent, provide written notification of the appointment or termination to the commissioner. Notices of appointment of a managing general agent shall include a statement of duties that the applicant is a licensed agent, is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(f) Review each quarter its books and records to determine if an agent has become a managing general agent. If the insurer determines that an agent has become a managing general agent, the insurer shall promptly notify the agent and the commissioner of this determination and the insurer and agent shall fully comply with the provisions of this chapter within 30 days.

(g) Except as to relationships governed by chapter 13, shall not appoint to the board of directors an officer, director, employee, agent, or controlling shareholder of the insurer's managing general agents.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Popular name: Act 218

500.1412 Repealed. 1972, Act 133, Eff. Mar. 30, 1973.

Compiler's note: The repealed section pertained to license requirement and employment of insurance agent.

Popular name: Act 218

500.1413 Acts of managing general agent deemed acts of insurer; examination.

Sec. 1413. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Compiler's note: Former MCL 500.1413, which pertained to action by unlicensed agent, was repealed by Act 133 of 1972, Eff. Mar. 30, 1973.

Popular name: Act 218

500.1414 Repealed. 1972, Act 133, Eff. Mar. 30, 1973.

Compiler's note: The repealed section pertained to license requirement of clerical help.

Popular name: Act 218

500.1415 Violation; penalties; judicial review; rights of policyholders, claimants, and auditors.

Sec. 1415. (1) If the commissioner finds after a hearing conducted in accordance with 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, that any person has violated any provision of this chapter, the commissioner may order the following:

(a) For each separate violation, a civil fine in an amount that does not exceed \$25,000.00.

(b) Revocation or suspension of the agent's license.

(c) Restitution by the managing general agent to reimburse the insurer, the rehabilitator, liquidator of the insurer, or the guaranty associations for any losses incurred by the insurer or the guaranty associations because of a violation of this chapter.

(2) The decision, determination, or order of the commissioner pursuant to subsection (1) shall be subject to judicial review pursuant to Act No. 306 of the Public Acts of 1969.

(3) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in this act.

(4) Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Popular name: Act 218

500.1416 Repealed. 1972, Act 133, Eff. Mar. 30, 1973.

Compiler's note: The repealed section pertained to requisition of agent's license by insurer.

Popular name: Act 218

500.1417 Rules and regulations.

Sec. 1417. The commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this chapter.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Compiler's note: Former MCL 500.1417, which pertained to license, application, form, and examination fee, was repealed by Act 133 of 1972, Eff. Mar. 30, 1973.

Popular name: Act 218

500.1419 Effective date of chapter.

Sec. 1419. This chapter shall take effect on June 1, 1991. An insurer shall not use the services of a managing general agent on and after June 1, 1991, unless such use is in compliance with this chapter.

History: Add. 1990, Act 350, Eff. June 1, 1991.

Popular name: Act 218

500.1420-500.1450 Repealed. 1972, Act 133, Eff. Mar. 30, 1973.

Compiler's note: The repealed sections pertained to agents and solicitors.

Popular name: Act 218