

BUSINESS PRODUCER CONTROLLED PROPERTY AND CASUALTY INSURERS

510A.1 Short title.

This chapter shall be known and may be cited as the "*Business Producer Controlled Property and Casualty Insurer Act.*"

91 Acts, ch 26, § 10; 92 Acts, ch 1117, § 35

510A.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Accredited state*" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established by the national association of insurance commissioners.
2. "*Control*" or "*controlled*" has the meaning ascribed in section 521A.1, subsection 3.
3. "*Controlled insurer*" means a licensed insurer that is controlled, directly or indirectly, by an insurance producer.
4. "*Controlling producer*" means an insurance producer who, directly or indirectly, controls an insurer.
5. "*Independent casualty actuary*" means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner of, affiliated with, or in any way controlled by the insurer or insurance producer.
6. "*Insurance producer*" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
7. "*Licensed insurer*" or "*insurer*" means any person duly licensed to transact a property and casualty insurance business in this state. The following are not licensed property and casualty insurers for the purposes of this chapter:
 - a. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. § 3901 et seq. (1982 & Supp. 1986), or chapter 515E.
 - b. All residual market pools and joint underwriting authorities or associations.
 - c. All captive insurers. For the purposes of this chapter, captive insurers are 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 any group and association members and any affiliates.

91 Acts, ch 26, § 11; 92 Acts, ch 1117, § 36; 2003 Acts, ch 91, §1315

510A.3 Applicability.

This chapter applies to licensed insurers as defined in section 510A.2, either domiciled in this state or domiciled in a state that is not an accredited state and having a substantially similar law. All provisions of the insurance holding company Act, to the extent those provisions are not superseded by this chapter, continue to

apply to all persons associated with holding companies subject to this chapter.

91 Acts, ch 26, § 12; 92 Acts, ch 1117, § 37

510A.4 Minimum standards.

1. Applicability of section.

a. This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the preceding year.

b. Notwithstanding paragraph "*a*", this section does not apply if both of the following apply:

(1) The controlling producer does all of the following:

(a) Places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with such insurance.

(b) Accepts insurance placements only from nonaffiliated subproducers and not directly from insureds.

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from the controlling producer, an insurance producer controlled by the controlled insurer, or an insurance producer that is a subsidiary of the controlled insurer.

2. Required contract provisions. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party which has been approved by the board of directors of the controlled insurer and filed with the commissioner. The contract must contain, at a minimum, the following provisions:

a. The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

b. The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

c. The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract.

d. All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

e. The controlling producer shall maintain separately identifiable records of business written for the

controlled insurer.

f. The contract shall not be assigned in whole or in part by the controlling producer.

g. The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by an insurance producer other than the controlling producer.

h. The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph "g" of this subsection, "*comparable business*" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

i. If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection 4, paragraph "a".

j. A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer which would exceed the limit. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

k. The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains 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.

3. *Audit committee.* A controlled insurer must establish an audit committee of the board of directors composed of independent directors. Prior to 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.

4. *Reporting requirements.*

a. 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 another 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 on business placed by the insurance producer, including incurred but not reported losses.

b. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the

insurance producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

91 Acts, ch 26, § 13; 91 Acts, ch 213, § 9; 92 Acts, ch 1117, § 38; 2003 Acts, ch 91, §1618; 2004 Acts, ch 1101, §72

510A.5 Disclosure.

The insurance producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the insurance producer and the controlled insurer; 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 insurance producer and that the subproducer has notified or will notify the insured.

92 Acts, ch 1117, § 39; 2003 Acts, ch 91, §19

510A.6 Penalties.

1. If the commissioner believes that a controlling producer or any other person subject to this chapter has not materially complied with this chapter, or any rule adopted or order issued pursuant to this chapter, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer. Additionally, if the commissioner finds that because of such noncompliance the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder, or for other appropriate relief.
2. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to chapter 507C, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter, or any rule adopted or order issued pursuant to this chapter, and that the insurer suffered any loss or damage as a result of the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.
3. This section shall not be construed to affect or limit the right of the commissioner to impose any other penalties, as appropriate, which the commissioner is authorized to impose.
4. This section shall not be construed to affect or limit the rights of policyholders, claimants, creditors, or other third parties.

93 Acts, ch 88, §13