

## REINSURANCE INTERMEDIARIES

### **521C.1 Short title.**

This chapter shall be known and may be cited as the "*Reinsurance Intermediary Model Act.*"

91 Acts, ch 26, §19

### **521C.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Actuary*" means a person who is a member in good standing of the American academy of actuaries.
2. "*Controlling person*" means a person who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.
3. "*Insurer*" means a person licensed to transact the business of insurance in this state.
4. "*Licensed producer*" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law of any jurisdiction.
5. "*Qualified United States financial institution*" means an institution that satisfies all of the following conditions:
  - a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.
  - b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.
  - c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, 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.
6. "*Reinsurance intermediary*" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.
7. "*Reinsurance intermediary-broker*" means a 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 the ceding insurer.
8. "*Reinsurance intermediary-manager*" means a person who has authority to bind or manage 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 or manager, or known by any other similar term or title. However, for the purposes of this chapter, the following persons shall not be considered a reinsurance intermediary-manager, with respect to the reinsurer:
  - a. An employee of the reinsurer.
  - b. A manager of a United States branch of an alien reinsurer who resides in this country.

c. An underwriting manager who, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, who is under common control with the reinsurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.

d. The manager of a group, association, pool, or organization of insurers who engages in joint underwriting or joint reinsurance and who is subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

9. "*Reinsurer*" means a person licensed in this state as a reinsurer with the authority to assume reinsurance.

10. "*To be in violation*" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this chapter.

91 Acts, ch 26, §20; 94 Acts, ch 1176, §14

### **521C.3 Licensure.**

1. A person shall not act as a reinsurance intermediary- broker in this state if the person maintains an office in this state or another state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation, unless the person is a licensed producer 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.

2. A person shall not act as a reinsurance intermediary- manager in any of the following circumstances:

a. Where the reinsurer is domiciled in this state, unless the person is a licensed producer in this state.

b. Where the person maintains an office in this state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the person is a licensed producer in this state.

c. Where the person would be acting in another state for a nondomestic insurer, unless the person is a licensed producer in this state or in another state having a law substantially similar to this law, or is licensed in this state as a nonresident reinsurance intermediary.

3. The commissioner may require a reinsurance intermediary-manager subject to subsection 2 to do one or more of the following:

a. File a bond in an amount determined by the commissioner from an insurer acceptable to the commissioner for the protection of each reinsurer represented by the reinsurance intermediary-manager.

b. Maintain an errors and omissions policy in an amount acceptable to the commissioner.

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

*b.* A reinsurance intermediary license applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process, and also shall 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 such nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of a change of the designated agent for service of process, and the change becomes effective upon acknowledgment by the commissioner.

5. The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, any of the following conditions are present:

*a.* The applicant, anyone named in the application, or any member, principal, officer, or director of the applicant, is not trustworthy.

*b.* A controlling person of such applicant is not trustworthy to act as a reinsurance intermediary.

*c.* Conditions present in paragraph "*a*" or "*b*" have given cause for revocation or suspension of a license, or a person referred to in paragraph "*a*" or "*b*" has failed to comply with any prerequisite for the issuance of a license.

Upon written request, the commissioner shall furnish a written summary of the basis for refusal to issue a license, which document is privileged and not subject to disclosure under chapter 22.

6. A licensed attorney in this state when acting in a professional capacity as an attorney is exempt from the requirements of this section.

91 Acts, ch 26, §21; 2003 Acts, ch 91, §49

#### **521C.4 Required contract provisions reinsurance intermediary-brokers.**

Transactions between a reinsurance intermediary-broker and the insurer that the reinsurance intermediary-broker represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that satisfy all of the following requirements:

1. The insurer may terminate the authority of the reinsurance intermediary-broker at any time.
2. The reinsurance intermediary-broker shall 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 shall remit all funds due to the insurer within thirty days of receipt.
3. All funds collected for the account of the insurer shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank, as defined in section 524.103.
4. The reinsurance intermediary-broker shall comply with section 521C.5.
5. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.
6. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

91 Acts, ch 26, §22

### **521C.5 Books and records reinsurance intermediary-brokers.**

1. For a minimum of ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall 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. The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation.
  - c. The reporting and settlement requirements of balances.
  - d. The rate used to compute the reinsurance premium.
  - e. The names and addresses of assuming reinsurers.
  - f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker.
  - g. All related correspondence and memoranda.
  - h. Proof of placement.
  - i. The details regarding retrocessions handled by the reinsurance intermediary-broker 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. If the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer one or both of the following shall be included in the record:
    - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.
    - (2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.
2. The insurer has a right of 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.

91 Acts, ch 26, §23

### **521C.6 Duties of insurers utilizing the services of a reinsurance intermediary-broker.**

1. An insurer shall not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by section 521C.3, subsection 1.
2. An insurer shall not employ an individual who is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless such reinsurance intermediary-broker is under common control with the insurer and subject to chapter 521A relating to the regulation of insurance company holding systems.

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

91 Acts, ch 26, §24

**521C.7 Required contract provisions reinsurance intermediary-managers.**

Transactions between a reinsurance intermediary-manager and the reinsurer that the reinsurance intermediary-manager 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 thirty days before the reinsurer assumes or cedes business through a reinsurance intermediary-manager, a true copy of the approved contract shall be filed with the commissioner for approval by the commissioner. The contract, at a minimum, shall contain the following provisions:

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.
2. The reinsurance intermediary-manager shall 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 shall remit all funds due under the contract to the reinsurer on not less than a monthly basis.
3. All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution, as defined in section 521C.2. The reinsurance intermediary-manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that the reinsurance intermediary-manager represents.
4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall 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. The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks.
  - c. The reporting and settlement requirements of balances.
  - d. The rate used to compute the reinsurance premium.
  - e. The names and addresses of reinsurers.
  - f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager.
  - g. Any related correspondence and memoranda.
  - h. Proof of placement.
  - i. The details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section 521C.9, subsection 4, 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.* If the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer one or both of the following shall be included in the record:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

5. The reinsurer has a right of 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.

6. The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

7. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

8. The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

9. If the contract permits the reinsurance intermediary- manager to settle claims on behalf of the reinsurer, all of the following apply:

*a.* All claims shall be reported to the reinsurer in a timely manner.

*b.* A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim meets any or all of the following conditions:

(1) The claim has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer.

(2) The claim involves a coverage dispute.

(3) The claim may exceed the claims settlement authority of the reinsurance intermediary-manager.

(4) The claim is open for more than six months.

(5) The claim is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

*c.* All claim files shall be the joint property of the reinsurer and 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.

*d.* 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 the dispute regarding the cause of termination.

10. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits shall not be paid until one year after the end of each underwriting period for property insurance business and five years after the end of each underwriting period for casualty insurance business, or a later period as determined by the commissioner for each type of insurance, but in no case until the adequacy of reserves on remaining claims has been verified pursuant to section 521C.9, subsection 3.

11. The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

12. The reinsurer shall periodically, but not less than semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

13. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship the reinsurance intermediary-manager has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

14. The acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf the reinsurance intermediary-manager is acting.

91 Acts, ch 26, §25

#### **521C.8 Prohibited acts.**

The reinsurance intermediary-manager shall not do any of the following:

1. Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The 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.

2. Commit the reinsurer to participate in reinsurance syndicates.

3. Appoint any producer without assuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed.

4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, or a net amount of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

5. 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.

6. Jointly employ an individual who is employed by the reinsurer.

7. Appoint an agent of a reinsurance intermediary-manager.

91 Acts, ch 26, §26

#### **521C.9 Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.**

1. A reinsurer shall not engage the services of a person to act as a reinsurance intermediary-manager on its

behalf unless the person is licensed as required by section 521C.3, subsection 2.

2. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager whom the reinsurer has engaged pursuant to subsection 1. The statements of financial condition shall be prepared by an independent certified accountant in a form acceptable to the commissioner.
3. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall 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 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 thirty 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 an agent of a producer of its reinsurance intermediary- manager. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems or, if applicable, governed by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

91 Acts, ch 26, §27

#### **521C.10 Examination authority.**

1. A reinsurance intermediary is 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.

91 Acts, ch 26, §28

#### **521C.11 Penalties and liabilities.**

1. A reinsurance intermediary or other person found by the commissioner, after a hearing conducted in accordance with chapter 17A, to have not materially complied with a provision of this chapter is subject to one or more of the following:
  - a. For each separate violation, a civil penalty in an amount not exceeding five thousand dollars.
  - b. Revocation or suspension of the license of the reinsurance intermediary.

If the commissioner finds that such noncompliance has resulted in a loss or damage to the insurer or reinsurer, the commissioner may bring a civil action on behalf of the insurer or reinsurer, and the policyholders and creditors of the insurer or reinsurer, seeking the recovery of compensatory damages for the benefit of the insurer or reinsurer, and the policyholders and creditors of the insurer or reinsurer, or seeking other relief as appropriate.

If an order of rehabilitation or liquidation has been entered pursuant to chapter 507C, and the receiver appointed under the order determines that the reinsurance intermediary or any other person has not materially

complied with a provision of this chapter and such noncompliance has resulted in a loss or damage to the insurer or reinsurer, the receiver may bring a civil action on behalf of the insurer or reinsurer seeking the recovery of damages for the benefit of the insurer or reinsurer, or seeking other appropriate sanction or relief.

2. A decision, determination, or order of the commissioner made or entered pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided in this subtitle.

4. This chapter shall not in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties, or confer any rights to such persons.

91 Acts, ch 26, §29; 91 Acts, ch 213, §31; 94 Acts, ch 1176, §15

#### **521C.12 Rules.**

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the administration of this chapter.

91 Acts, ch 26, §30