CHAPTER 510

MANAGING GENERAL AGENTS AND THIRD-PARTY ADMINISTRATORS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 508.15A, 510B.2, 515.144, 669.14, 670.7

MANAGING GENERAL AGENTS

510.1 Repealed by 91 Acts, ch 26, § 61.

510.1A Short title.

This chapter may be cited as the *"Managing General Agents Act."*

91 Acts, ch 26, §1

Referred to in §510.10

510.1B 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. *"Commissioner"* means the commissioner of insurance.

3. *"Insurer"* means a person duly licensed in this state as an insurance company pursuant to this subtitle.

4. *a. "Managing general agent"* means any person who engages in all of the following:

(1) 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, and who acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term or title.

(2) With or without authority and either separately or together with affiliates, directly or indirectly produces, and underwrites, an amount of gross direct written premium equal to or greater than five percent of the policyholder surplus in any one quarter or year as reported in the last annual statement of the insurer.

(3) Engages in either or both of the following:

(a) Adjusts or pays claims in excess of an amount determined by the commissioner.

(b) Negotiates reinsurance on behalf of the insurer.

b. Managing general agent does not include any of the following:

(1) An employee of the insurer.

(2) A manager of a United States branch of an alien insurer who resides in this country.

(3) An underwriting manager who, pursuant to contract, manages all insurance operations of the insurer, who is under common control with the insurer, 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.

(4) An insurance company, in connection with the acceptance or rejection of reinsurance on a block of business.

(5) The attorney-in-fact authorized by or acting for the subscribers of a reciprocal insurer or interinsurance exchange under power of attorney.

5. *"Underwrite"* means the authority to accept or reject risk on behalf of the insurer.

91 Acts, ch 26, §2
Referred to in §510.6, 510.10

510.2 Contracts with managing general agents.

1. A domestic insurer shall not enter into a contract with a managing general agent unless the domestic insurer notifies the commissioner in writing of its intention to enter into the contract at least thirty days prior to entering into the contract or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the contracts within the time period. The commissioner shall not approve the contracts if the commissioner finds any of the following:

a. The service or management charges in the contract are based upon criteria unrelated either to the insurer's profits or to the reasonable, customary, and usual charges for such services to the company.

b. Management personnel or other employees of the insurance company are to be performing management functions and receiving any remuneration for those management functions through the contract in addition to the compensation received directly from the insurance company for their services.

c. The contract would transfer substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurer's management to the managing general agent.

d. The contract contains provisions which would be clearly detrimental to the best interest of policyholders, stockholders, or members of the company.

e. The officers and directors of the managing general agent firm are of known bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

2. If the commissioner disapproves of a contract, notice of the disapproval shall be given to the insurer, specifying the reasons in writing. The commissioner shall grant any party to the contract a hearing on the disapproval upon request pursuant to chapter 17A.

89 Acts, ch 227, §2; 2012 Acts, ch 1023, §157
Referred to in §510.10
[P] Contracts; see also §510.5
[T] Code editor directive applied

510.3 Liability of managing general agents.

Notwithstanding any obligation of a director or officer of an insolvent insurer to the liquidator of the insolvent insurer, a managing general agent of a domestic insurer against whom an order of liquidation has been entered is liable for fees paid to the managing general agent prior to the entry of the order of liquidation upon a finding that the rendering of services, or failure to render services contracted for, substantially caused or contributed to the insolvency of the domestic insurer, and was pursuant to a contract which had not been submitted to the commissioner, or which had been submitted to the commissioner and disapproved, or the services did not meet accepted standards for such services.

89 Acts, ch 227, §3
Referred to in §510.10

510.4 Licensure required — bond.

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 licensed in this state unless the person is a licensed producer 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 the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of this chapter.

3. The commissioner may require a bond for each company represented by a managing general agent in an amount acceptable to the commissioner for the protection of the insurer.

4. The commissioner may require a managing general agent to maintain an errors and omissions policy.

91 Acts, ch 26, §3
Referred to in §510.10

510.5 Required contract provisions — limitations.

1. A person acting in the capacity of a managing general agent shall not place business with an insurer unless a written contract is in force between the parties which sets forth the responsibilities of each party. If both parties share responsibility for a particular function, the contract must specify the division of such responsibilities, and must contain, at a minimum, all of the following provisions:

a. The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of a managing general agent during the pendency of any dispute regarding the cause for termination. The insurer shall advise the commissioner of a termination or a suspension pursuant to this paragraph.

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

c. All funds collected for the account of an insurer shall be held by a managing general agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. A managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

d. Separate records of business written by a managing general agent shall be maintained. An insurer shall have access and a right to copy all accounts and records related to the insurer's business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts, and records of a managing general agent in a form usable by the commissioner. Such records shall be retained at least until after completion by the insurance division of the next examination of the insurer.

e. Appropriate underwriting guidelines including but not limited to the following:

(1) The maximum annual premium volume.
(2) The basis of the rates to be charged.
(3) The types of risks which may be written.
(4) Maximum limits of liability.
(5) Applicable exclusions.
(6) Territorial limitations.
(7) Policy cancellation provisions.
(8) The maximum length or duration of the policy period.

The insurer may cancel or refuse to renew any policy of insurance produced or underwritten by a managing general agent, subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

2. Permissible provisions in a contract and their requirements include the following:

a. If the contract permits a managing general agent to settle claims on behalf of the insurer all of the following requirements apply:

(1) All claims reported must be reported by the managing general agent to the insurer in a timely manner.

(2) A copy of the claim file must be sent to the insurer at its request or as soon as the managing general agent knows that the claim meets one or more of the following conditions:

(a) The claim has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.

(b) The claim involves a coverage dispute.

(c) The claim may exceed the claims settlement authority of the managing general agent.

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

(e) The claim is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(3) All claim files shall be the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

b. If electronic claims files are in existence, the contract must address the timely transmission or transfer of the data contained in the files.

c. 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 interim profits by establishing loss reserves, by controlling claim payments, or by determining the amount of interim profits in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned for casualty insurance business, and not until the interim profits have been verified pursuant to section 510.6.

3. A managing general agent shall not do any of the following:

a. Bind reinsurance or retrocessions on behalf of the insurer, except that a 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.

b. Commit the insurer to participate in insurance or reinsurance syndicates.

c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.

d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which exceeds one percent of the policyholder's surplus of the insurer as of December 31 of the previous calendar year.

e. 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 must be promptly forwarded by the managing general agent to the insurer.

f. Permit its subproducer to serve on the insurer's board of directors.

g. Jointly employ an individual who is employed by the insurer.

h. Appoint a submanaging general agent.

91 Acts, ch 26, §4; 2008 Acts, ch 1123, §19
Referred to in §510.10
[P] Contracts; see also §510.2

510.5A Unfair competition or unfair and deceptive acts or practices prohibited.

A managing general agent is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §11
Referred to in §510.10

510.6 Duties of insurers.

1. An insurer shall have on file an independent financial examination, in a form acceptable

to the commissioner, of each managing general agent with which the insurer does or has done business.

2. If a managing general agent establishes loss reserves, the insurer 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 a managing general agent. This is in addition to any other required loss reserve certification.

3. An insurer shall periodically, but at least semiannually, conduct an on-site review of the underwriting and claims processing operations of each managing general agent with which the insurer is currently doing business.

4. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who is not affiliated with the managing general agent.

5. Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner. A notice of appointment of a managing general agent must include a statement of duties which the applicant 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.

6. An insurer shall review its books and records each quarter and determine if any insurance producer, as defined by section 510A.2, has become, by operation of section 510.1B, subsection 4, a managing general agent as defined in that section. If the insurer determines that an insurance producer has become a managing general agent by operation of section 510.1B, subsection 4, the insurer shall promptly notify the insurance producer and the commissioner of such determination and the insurer and insurance producer shall fully comply with the provisions of this chapter within thirty days.

7. An insurer shall not appoint to its board of directors an officer, director, employee, insurance producer, or controlling shareholder of a managing general agent of the insurer. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems, or, if applicable, by chapter 510A relating to the regulation of insurance producer controlled property and casualty insurers.

91 Acts, ch 26, §5; 91 Acts, ch 258, §56; 2004 Acts, ch 1101, §71
Referred to in §510.5, 510.10

510.7 Examination authority.

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

91 Acts, ch 26, §6
Referred to in §510.10

510.8 Penalties and liabilities.

1. If the commissioner finds, after a hearing conducted in accordance with chapter 17A, that any person has violated one or more provisions of this chapter, the commissioner may do one or more of the following:

a. For each separate violation, order the imposition of an administrative penalty of not more than ten thousand dollars.

b. Order the revocation or suspension of the producer's license.

c. Bring a civil suit seeking reimbursement by the managing general agent of the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

2. The decision, determination, or order of the commissioner 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 for under this subtitle.

4. This chapter is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, and auditors.

91 Acts, ch 26, §7; 91 Acts, ch 213, §8
Referred to in §510.10

510.9 Rules.

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

91 Acts, ch 26, §8
Referred to in §510.10

510.10 Exemption.

A managing general agent who complies with sections 510.1A through 510.9 for a block of business, shall not also be required to comply with sections 510.20 and 510.21 with regard to the same block of business.

91 Acts, ch 26, §9; 91 Acts, ch 258, §57

THIRD-PARTY ADMINISTRATORS

510.11 Definitions.

1. *"Life or health insurance"* includes but is not limited to the following:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. An individual or group Medicare supplemental policy.

e. A long-term care policy.

f. An individual or group life insurance policy or annuity issued pursuant to chapter 508, 508A, or 509A.

2. *"Third-party administrator"* means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities other than any of the following:

a. A union or association on behalf of its members.

b. An insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do insurance business.

c. An entity licensed under chapter 514, including its sales representatives licensed in this state when engaged in the performance of their duties as sales representatives.

d. A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust, its trustees, agents, and employees acting under the trust, established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, and employees acting under the trust.

h. A custodian, its agents, and employees acting pursuant to a custodial account which meets the requirements of section 401(f) of the Internal Revenue Code.

i. A bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities.

j. A credit card-issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims.

k. A person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

89 Acts, ch 227, §4; 2006 Acts, ch 1117, §38
Referred to in §509A.15, 510.12, 729.6

510.12 Written agreement necessary.

A person shall not act as a third-party administrator without a written agreement between the third-party administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the third-party administrator for the duration of the agreement plus five years. The written agreement shall contain provisions which include the requirements of sections 510.11 through 510.16, except insofar as those requirements do not apply to the functions performed by the third-party administrator.

When a policy is issued to a trustee, a copy of the trust agreement and any amendments to the trust agreement shall be furnished to the insurer by the third-party administrator and shall be retained as part of the official records of both the insurer and the third-party administrator for the duration of the policy plus five years.

89 Acts, ch 227, §5; 2006 Acts, ch 1117, §39
Referred to in §510.13, 510.14, 510.21

510.13 Payment to third-party administrator.

If an insurer uses the services of a third-party administrator under the terms of a written contract as required in section 510.12, payment to the third-party administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the third-party administrator shall not be deemed payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the third-party administrator resulting from the third-party administrator's failure to make payments to the insurer, insureds, or claimants.

89 Acts, ch 227, §6; 2006 Acts, ch 1117, §40
Referred to in §510.12, 510.21

510.14 Maintenance of information.

A third-party administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in section 510.12 plus five years, adequate books and records of all transactions between it, insurers, and insured persons. The third-party administrator's books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Trade secrets contained in a third-party administrator's books and records, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except the commissioner may use trade secret information in any proceeding instituted against the third-party administrator. The insurer retains the right to continuing access to the third-party administrator's books and records sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and third-party administrator on the proprietary rights of the parties in the third-party administrator's books and records.

89 Acts, ch 227, §7; 2006 Acts, ch 1117, §41
Referred to in §510.12, 510.21

510.15 Approval of advertising.

A third-party administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by the insurer in advance of its use.

89 Acts, ch 227, §8; 2006 Acts, ch 1117, §42
Referred to in §510.12, 510.21

510.16 Underwriting provision.

The agreement shall provide for the underwriting or other standards pertaining to the business underwritten by the insurer.

89 Acts, ch 227, §9
Referred to in §510.12, 510.21

510.17 Premium collection.

1. All insurance charges or premiums collected by a third-party administrator on behalf of or for an insurer, and return premiums received from the insurer, shall be held by the third-party administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled to them, or shall be deposited promptly in a fiduciary bank account established and maintained by the third-party administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer, the third-party administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The third-party administrator shall promptly obtain and keep copies of all such records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for that insurer.

2. The third-party administrator shall not pay a claim by withdrawal from the fiduciary account. Withdrawals from the fiduciary account shall be made, as provided in the written agreement between the third-party administrator and the insurer, for any of the following:

a. Remittance to an insurer entitled thereto.

b. Deposit in an account maintained in the name of the insurer.

c. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in section 510.18.

d. Payment to a group policyholder for remittance to the insurer entitled thereto.

e. Payment to the third-party administrator of its commission, fees, or charges.

f. Remittance of return premiums to the persons entitled thereto.

89 Acts, ch 227, §10; 2006 Acts, ch 1117, §43
Referred to in §510.21

510.18 Payment of claims.

A claim paid by the third-party administrator from funds collected on behalf of the insurer shall be paid only on a draft, check, or by electronic funds transfer as authorized by the insurer.

89 Acts, ch 227, §11; 96 Acts, ch 1122, §1; 2006 Acts, ch 1117, §44
Referred to in §510.17, 510.21

510.19 Claim adjustment and settlement.

The compensation paid to a third-party administrator shall not be contingent on claim experience on policies for which the third-party administrator adjusts or settles claims. This section does not prevent the compensation of a third-party administrator from being based on premiums or charges collected or number of claims paid or processed.

89 Acts, ch 227, §12; 2006 Acts, ch 1117, §45
Referred to in §510.21

510.20 Notification required.

When the services of a third-party administrator are used, the third-party administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity of and relationship among the third-party administrator, the policyholder, and the insurer. When a third-party administrator collects funds, it shall identify and state separately in writing to the person paying to the third-party administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for such insurance coverage.

89 Acts, ch 227, §13; 2006 Acts, ch 1117, §46
Referred to in §510.10, 510.21

510.21 Certificate of registration required.

A person shall not act as or represent oneself to be a third-party administrator in this state, other than an adjuster licensed in this state for the kinds of business for which the person is acting as a third-party administrator, unless the person holds a current certificate of registration as a third-party administrator issued by the commissioner of insurance. A certificate of registration as a third-party administrator is renewable every three years. Failure to hold a certificate subjects the third-party administrator to the sanctions set out in section 507B.7. The certificate shall be issued by the commissioner to a third-party administrator unless the commissioner, after due notice and hearing, determines that the third-party administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within the preceding five years.

An application for registration shall be accompanied by a filing fee of one hundred dollars. After notice and hearing, the commissioner may impose any or all of the sanctions set out in section 507B.7, upon finding that either the third-party administrator violated any of the requirements of sections 510.12 through 510.20 and this section, or the third-party administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

89 Acts, ch 227, §14; 2006 Acts, ch 1117, §47; 2007 Acts, ch 152, §56; 2008 Acts, ch 1074, §2
Referred to in §509A.15, 510.10, 510.22

510.22 Waiving of requirements.

The commissioner may waive the requirements of section 510.21 for any person or class of persons. The factors taken into account in granting a waiver shall include, but are not limited to whether:

1. The person acting as a third-party administrator is primarily in a business other than that of a third-party administrator.
2. The financial strength and history of the organization indicates stability in its continuity of doing business.
3. The regular duties being performed as a third-party administrator are such that the covered persons are not likely to be injured by a waiver of such requirements.

89 Acts, ch 227, §15; 2006 Acts, ch 1117, §48

510.23 Unfair competition or unfair and deceptive acts or practices prohibited.

A third-party administrator is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §12; 2006 Acts, ch 1117, §49