

## CHAPTER 60H

### MANAGING GENERAL AGENTS

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#### 60H.01 SHORT TITLE.

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

**History:** 1991 c 325 art 4 s 1

#### 60H.02 DEFINITIONS.

Subdivision 1. **Application.** The terms defined in this section apply to this chapter.

Subd. 2. **Actuary.** "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

Subd. 3. **Insurer.** "Insurer" means a person, firm, association, or corporation duly licensed in this state as an insurance company.

Subd. 4. **Managing general agent.** (a) "Managing general agent" means a person, firm, association or corporation who: (1) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and (2) acts as an agent for the insurer whether known as a managing general agent, manager, 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 equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year, together with one or more of the following activities related to the business produced: (i) adjusts or pays claims in excess of an amount determined by the commissioner, or (ii) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding paragraph (a), the following persons shall not be considered as managing general agents for the purposes of this chapter:

- (1) an employee of the insurer;
- (2) a United States manager of the United States branch of an alien insurer;
- (3) an underwriting manager who, pursuant to contract, manages all or a part of the insurance or reinsurance operation of the insurer, is under common control with the insurer, subject to the Insurance Holding Company Act, chapter 60D, and whose compensation is not based on the volume of premiums written; or
- (4) an attorney in fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

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

**History:** 1991 c 325 art 4 s 2; 1995 c 214 s 12

**60H.03 LICENSURE.**

Subdivision 1. **Risks located in state.** A managing general agent representing an insurer licensed in this state with respect to risks located in this state must be licensed in this state.

Subd. 2. **Risks located outside of state.** A managing general agent representing an insurer domiciled in this state with respect to risks located outside this state must be licensed in this state as a managing general agent. The license may be a nonresident license.

Subd. 3. **Requirements.** The commissioner may require a bond in an amount acceptable for the protection of the insurer. The commissioner may require the managing general agent to maintain an errors and omissions policy.

Subd. 4. **Term and fees.** The term of a managing general agent license issued under this section and the license fees imposed are the same as those applicable to a licensed insurance agent under chapter 60K.

**History:** 1991 c 325 art 4 s 3; 2000 c 483 s 5; 2000 c 488 art 2 s 2

**60H.04 REQUIRED CONTRACT PROVISIONS.**

No person, firm, association, or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties. The contract must specify the responsibilities of each party and, where both parties share responsibility for a particular function, must specify the division of the responsibilities. The contract must include the following minimum 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 the managing general agent during the pendency of any dispute regarding the cause for termination.

(b) The managing general agent must give 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 must be held by the managing general agent in the name of the insurer in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account must be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses. A managing general agent shall deposit only trust funds in a trust account and shall not commingle personal funds or other funds in a trust account, except that a managing general agent may deposit and maintain a sum in a trust account from personal funds, which sum shall be specifically identified and used to pay service charges or satisfy the minimum balance requirements relating to the trust account.

(d) Separate records of business written by the managing general agent must be maintained. The insurer shall have access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. The records shall be retained on a basis acceptable to the commissioner.

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

(f) Appropriate underwriting guidelines, including:

(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; and
- (8) the maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies.

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

- (1) All claims must be reported 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 it becomes known that the claim:
    - (i) has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;
    - (ii) involves a coverage dispute;
    - (iii) may exceed the managing general agent's claim settlement authority;
    - (iv) is open for more than six months; or
    - (v) 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 are the joint property of the insurer and 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.
- (h) Where electronic claims files are in existence, the contract must address the timely transmission of the data.
- (i) 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 or controlling claim payments, or in any other manner, interim profits will 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 on casualty business and not until the profits have been verified as provided under section 60H.05.

(j) The managing general agent shall not:

- (1) 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 the automatic agreements

are in effect, the coverage and amounts or percentages that may be reinsured, and commission schedules;

(2) commit the insurer to participate in insurance or reinsurance syndicates;

(3) appoint an agent without assuring that the agent is lawfully licensed to transact the type of insurance for which that person is appointed;

(4) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(5) 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 to the insurer;

(6) permit its subagent to serve on the insurer's board of directors;

(7) jointly employ an individual who is employed with the insurer; or

(8) appoint a submanaging general agent.

(k) The contract term may not be for an unreasonable period of time, but in no circumstance may the term exceed five years.

(l) The insurer may not authorize the managing general agent to establish the amount of the loss reserves.

**History:** 1991 c 325 art 4 s 4

## **60H.05 DUTIES OF INSURERS.**

Subdivision 1. **Independent financial examination.** The insurer shall 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.

Subd. 2. **On-site review.** The insurer shall periodically, at least semiannually, conduct an on-site review of the underwriting and claims processing operation of the managing general agent and maintain on its records the results of that review.

Subd. 3. **Officer of insurer.** Except as authorized under section 60H.04, paragraph (j), clause (1), binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer not affiliated with the managing general agent.

Subd. 4. **Written notification.** Within 30 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. Notices of appointment of a managing general agent must include a statement of duties which the managing general agent is expected to perform on behalf of the insurer, the lines of insurance for which the managing general agent is to be authorized to act, and any other information the commissioner may request.

Subd. 5. **Review of books and records.** An insurer shall review its books and records each quarter to determine if a licensed agent has become a managing general agent as defined in section 60H.02, subdivision 4. If the insurer determines that an agent has become a managing general agent, the insurer shall promptly notify the agent and the commissioner of the determination and the insurer and agent must fully comply with this chapter within 30 days.

Subd. 6. **Prohibited appointments.** An insurer shall not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its managing general agents. This section does not apply to relationships governed by the Insurance Holding Company Act, chapter 60D, or, if applicable, the Business Transacted With Producer Controlled Insurer Act, chapter 60J.

**History:** 1991 c 325 art 4 s 5; 2000 c 260 s 13

#### **60H.06 EXAMINATION AUTHORITY.**

A managing general agent may be examined as if it were the insurer.

**History:** 1991 c 325 art 4 s 6

#### **60H.07 ACTS OF MANAGING GENERAL AGENT.**

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting.

**History:** 1991 c 325 art 4 s 7

#### **60H.08 PENALTIES AND LIABILITIES.**

Subdivision 1. **Commissioner's authority.** If the commissioner finds pursuant to the procedural requirements of section 45.027 that a person has violated a provision of this chapter, the commissioner may take any action authorized under that section.

Subd. 2. **Additional penalty.** In addition to authority granted by section 45.027 for each separate violation, the commissioner may impose a penalty of up to \$10,000 for each day the violation continues and order the managing general agent to reimburse the insurer, rehabilitator, or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

Subd. 3. **Civil remedies.** (a) If the commissioner finds that because of the violation that the insurer has suffered loss or damage, the commissioner may maintain a civil action for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to chapter 60B, and the receiver appointed under that order determines that the managing general agent or any other person has violated this chapter, or any rule or order adopted under this chapter, and the insurer suffered loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

Subd. 4. **Judicial review.** The decision, determination, or order of the commissioner under subdivision 1 is subject to judicial review as provided under chapter 14.

Subd. 5. **Imposition of other penalties.** Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for by law.

Subd. 6. **Policyholder rights.** Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

**History:** 1991 c 325 art 4 s 8; 1995 c 214 s 13

**60H.09 RULES.**

The commissioner of commerce may adopt rules for the implementation and administration of this chapter.

**History:** *1991 c 325 art 4 s 9*