

CHAPTER 60J**BUSINESS TRANSACTED WITH PRODUCER CONTROLLED INSURER**

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Sections 60J.06 to 60J.11 may be cited as the "Business Transacted with Producer Controlled Insurer Act."

History: 1992 c 540 art 1 s 1

60J.07 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to sections 60J.06 to 60J.11.

Subd. 2. **Accredited state.** "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 from time to time by the National Association of Insurance Commissioners (NAIC).

Subd. 3. **Captive insurer.** "Captive insurer" means an insurance company 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, an insurance organization owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 5. **Control.** "Control" or "controlled" has the meaning given in section 60D.15, subdivision 4.

Subd. 6. **Controlled insurer.** "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

Subd. 7. **Controlling producer.** "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

Subd. 8. **Licensed insurer.** "Licensed insurer" or "insurer" means any person, firm, association, or corporation licensed to transact a property/casualty insurance business in this state. The following entities are not licensed insurers for the purposes of sections 60J.06 to 60J.11:

(1) all risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613; the Risk Retention Act, United States Code, title 15, section 3901, et seq.; and chapter 60;

(2) all residual market pools and joint underwriting authorities or associations; and

(3) all captive insurers.

Subd. 9. **Producer.** "Producer" means an insurance broker or any other person, firm, association, or corporation, when, for any compensation, commission or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

History: 1992 c 540 art 1 s 2

60J.08 APPLICATION.

Sections 60J.06 to 60J.11 apply to licensed insurers, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of chapter 60D, to the extent they are not superseded by sections 60J.06 to 60J.11, apply to all parties within holding company systems subject to sections 60J.06 to 60J.11.

History: 1992 c 540 art 1 s 3

60J.09 MINIMUM STANDARDS.

Subdivision 1. **Application.** The provisions of this section apply 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 prior year.

Subd. 2. **Exemption.** Notwithstanding subdivision 1, this section does not apply under the following conditions:

(1) the controlling producer:

(i) places insurance only with the controlled insurer, or only with the controlled insurer and a member 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 the insurance; and

(ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

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

Subd. 3. **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 insurer specifying the responsibilities of each party. The contract must be approved by the board of directors of the insurer and contain the following minimum provisions:

(1) 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;

(2) the controlling producer shall submit 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;

(3) 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 must be fixed so that premiums or installments collected are remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(4) 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. Funds of a controlling producer not required to be licensed in this state must be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

(5) the controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

(6) the contract may not be assigned in whole or in part by the controlling producer;

(7) the controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures, manuals specifying 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 must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(8) 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 may be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this clause and clause (7), examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(9) if the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation may 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 may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified as provided under subdivision 5;

(10) 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 if the limit is reached. 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; and

(11) the controlling producer may negotiate but may 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 the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

Subd. 4. **Audit committee.** A controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually 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.

Subd. 5. **Reporting requirements.** 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 other 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, including incurred but not reported, on business placed by the producer. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage the amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

History: 1992 c 540 art 1 s 4

60J.10 DISCLOSURE.

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

History: 1992 c 540 art 1 s 5

60J.11 PENALTIES.

Subdivision 1. **Cease and desist order.** If the commissioner believes that the controlling producer or any other person has not materially complied with sections 60J.06 to 60J.11 or any rule or order, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer.

Subd. 2. **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. 3. **Civil action by commissioner.** 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 other appropriate relief.

Subd. 4. **Civil action by receiver.** If an order for liquidation or rehabilitation of the controlled insurer has been entered under chapter 60B and the receiver appointed under that

order believes that the controlling producer or any other person has not materially complied with sections 60J.06 to 60J.11, or any rule or order, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

Subd. 5. **Additional penalties and rights.** Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in the insurance law. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

History: 1992 c 540 art 1 s 6