

CHAPTER 46.

REINSURANCE INTERMEDIARY ACT

SECTION 38-46-10. Short title.

This chapter may be cited as the “Reinsurance Intermediary Act”.

SECTION 38-46-20. Definitions.

As used in this chapter:

- (1) “Actuary” means a person who is a member in good standing of the American Academy of Actuaries.
- (2) “Controlling person” means a person, a firm, an association, or a corporation who directly or indirectly has power to direct or cause to be directed the management, control, or activities of the reinsurance intermediary.
- (3) “Insurer” means a corporation, a fraternal organization, a burial association, another association, a partnership, a society, an order, an individual, or an aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.
- (4) “Licensed producer” means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law.
- (5) “Reinsurance intermediary” means a reinsurance intermediary-broker or a reinsurance intermediary-manager defined in this section.
- (6) “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 insurer.
- (7) “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 other similar term. The following persons are not reinsurance intermediary-managers with respect to the reinsurer for the purposes of this chapter:
 - (a) an employee of the reinsurer;
 - (b) a United States reinsurance intermediary-manager of the United States branch of an alien reinsurer;
 - (c) an underwriting reinsurance intermediary-manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to the Insurance Holding Company Regulatory Act, and whose compensation is not based on the volume of premiums written.
 - (d) the reinsurance intermediary-manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner of the state in which the reinsurance intermediary-manager’s principal business office is located.

(8) "Reinsurer" means a person, a firm, an association, or a corporation licensed in this State pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance.

(9) "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to comply substantially with this chapter.

(10) "Qualified United States financial institution" means an institution that:

(a) is organized or, for a United States office of a foreign banking organization, licensed under the laws of the United States or its states;

(b) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies;

(c) has been determined by either the director or his designee or the Securities Valuation Office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the director or his designee.

SECTION 38-46-30. Licensing requirement for intermediary-broker and intermediary-manager; bond; requisites for licensing; fee; refusal of license; designation of person to receive process; attorneys exempt.

(A) No person may act as a reinsurance intermediary-broker in this State if he maintains an office directly or as a member or an employee of a firm or an association or as an officer, a director, or an employee of a corporation in:

(1) this State unless the reinsurance intermediary-broker is a licensed producer in this State; or

(2) another state unless the reinsurance intermediary-broker is a licensed producer in that state and is licensed in this State as a reinsurance intermediary. The license may be a nonresident license.

(B) No person may act as a reinsurance intermediary-manager:

(1) for a reinsurer domiciled in this State, unless the reinsurance intermediary-manager is a licensed producer in this State;

(2) in this State if the reinsurance intermediary-manager maintains an office directly or as a member or an employee of a firm or an association or an officer, a director, or an employee of a corporation in this State unless the reinsurance intermediary-manager is a licensed producer in this State;

(3) in another state for a foreign insurer, unless the reinsurance intermediary-manager is a licensed producer in that state and is licensed in this State as a reinsurance intermediary. The license may be a nonresident license.

(C) For the protection of the reinsurer, the director or his designee shall require a reinsurance intermediary-manager subject to subsection (B) to file a fifty thousand dollar bond for each reinsurer represented. The bond must be issued by an insurer acceptable to the director or his designee.

(D)(1) The director or his designee may issue a reinsurance intermediary license to a person who has:

(a) demonstrated compliance with the requirements of this chapter;

(b) completed satisfactorily an application for a license on forms prepared by the director or his designee;

(c) paid a licensing fee of one hundred dollars in connection with the issuance or annual renewal of the license.

(2) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate a resident of this State upon whom notices or orders of the director or his designee or process affecting the nonresident reinsurance intermediary may be served. The licensee shall notify the department in writing within thirty days of every change in its designated agent for service of process, and the change does not become effective until acknowledged by the director or his designee.

(E) The director or his designee may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, a person named on the application, or a member, a principal, an officer, or a director of the applicant is not trustworthy or a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary or if one or more of the foregoing has given cause for revocation or suspension of the license or has failed to comply with a prerequisite for the issuance of the license. Upon written request the director or his designee shall furnish a summary of the basis for refusal to issue a license. No reinsurance intermediary license may be refused except on reasonable notice and opportunity to be heard afforded the applicant. An applicant whose application has been denied may appeal as provided in Section 38-3-210.

(F) Licensed attorneys of this State when acting in their professional capacity are exempt from this section.

SECTION 38-46-40. Written contract required between intermediary-broker and insurer it represents; minimum terms contract must provide.

Transactions between a reinsurance intermediary-broker and the insurer it represents in that capacity only may be entered into pursuant to a written contract specifying the responsibilities of each party. The contract, at a minimum, must provide that:

(1) The insurer may terminate the reinsurance intermediary-broker's authority 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 remit all funds due to the insurer within thirty days of receipt.

(3) Funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank which is a qualified United States financial institution.

(4) The reinsurance intermediary-broker shall comply with Section 38-46-50.

(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 a relationship with a reinsurer to which business will be ceded or retroceded.

SECTION 38-46-50. Records of contracts of reinsurance to be maintained for at least ten years; access by insurer.

(A) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, he shall keep a complete record for each transaction showing:

(1) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

- (2) the period of coverage, including effective and expiration dates, cancellation provisions, and notice required for cancellation;
- (3) reporting and settlement requirements of balances;
- (4) the rate used to compute the reinsurance premium;
- (5) the names and addresses of assuming reinsurers;
- (6) the rates of all reinsurance commissions, including the commissions on retrocessions handled by the reinsurance intermediary-broker;
- (7) related correspondence and memoranda;
- (8) proof of placement;
- (9) the details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of retrocessionaries and percentage of each contract assumed or ceded;
- (10) financial records, including, but not limited to, premium and loss accounts;
- (11) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of an insurer:
 - (a) directly from an assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (b) if placed through a representative of the assuming reinsurer other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.
- (B) The insurer must have 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.

SECTION 38-46-60. Party engaged as intermediary-broker to be licensed; regulation of contacts between insurer and intermediary-broker with which it transacts business; annual filing of financial statements.

- (A) An insurer may not engage the services of a person, a firm, an association, or a corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by Section 38-46-30.
- (B) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business unless the reinsurance intermediary-broker is under common control with the insurer and subject to the Insurance Holding Company Regulatory Act.
- (C) The insurer annually shall file with the department not later than March first a copy of the statements of the financial condition of each reinsurance intermediary-broker which the insurer has engaged. The statements must be prepared by an independent certified accountant in a form acceptable to the director or his designee.

SECTION 38-46-70. Transactions between reinsurance intermediary-manager and reinsurer it represents regulated; written contract required; approval by reinsurer's directors and by director; terms contract must include.

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity only may be entered into pursuant to a written contract specifying the responsibilities of each party, which must be approved by the reinsurer's board of directors. No contract by which a reinsurer assumes or cedes business through a reinsurance intermediary-manager may be

entered into unless the insurer has notified the department in writing at least thirty days in advance of its intention to enter into the contract, has furnished a true copy of the contract to the director or his designee, and the director or his designee has not disapproved it within the thirty days. The contract, at a minimum, must provide:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance-intermediary manager. The reinsurer immediately may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of a 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 remit all funds due under the contract to the reinsurer within thirty days.

(3) All funds collected for the reinsurer's account must be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than ninety days estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, he shall keep a complete record for each transaction showing:

(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, notice required of cancellation, and disposition of outstanding reserves on covered risks;

(c) 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 retrocessions handled by the reinsurance intermediary-manager;

(g) related correspondence and memoranda;

(h) proof of placement;

(i) the details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by Section 38-46-90(D), 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) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) directly from an assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

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

(5) The reinsurer must have 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 must not 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 rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer must be set forth.
- (9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:
- (a) All claims must be reported to the reinsurer in a timely manner.
 - (b) A copy of the claim file must be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - (i) has the potential to exceed fifty thousand dollars or the limit set by the reinsurer, whichever is less;
 - (ii) involves a coverage dispute;
 - (iii) may exceed the reinsurance intermediary-manager's claims settlement authority;
 - (iv) is open for more than six months; or
 - (v) is closed by payment of fifty thousand dollars or an amount set by the reinsurer, whichever is less;
 - (c) All claim files must be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager must have reasonable access to and the right to copy the files on a timely basis.
 - (d) 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 must not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the director or his designee for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to Section 38-46-90(C).
- (11) The reinsurance intermediary-manager annually shall provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.
- (12) The reinsurer at least semi-annually shall 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 relationships it has with an insurer before ceding or assuming business with the insurer pursuant to this contract.
- (14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager are considered to be the acts of the reinsurer on whose behalf it is acting.

SECTION 38-46-80. Acts prohibited of reinsurance intermediary-manager.

The reinsurance intermediary-manager may not:

- (1) cede retrocessions on behalf of the reinsurer, except the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines must 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 a licensed producer without assuring that the licensed producer is licensed lawfully to transact the type of reinsurance for which he is appointed;
- (4) without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds fifty thousand dollars or one percent of the reinsurer's policyholder's surplus as of December thirty-first of the last completed calendar year, whichever is less;
- (5) collect payment from a retrocessionaire or commit the reinsurer to a claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be forwarded to the reinsurer within ten days;
- (6) jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to the Insurance Holding Company Regulatory Act;
- (7) appoint a reinsurance intermediary-submanager.

SECTION 38-46-90. Party engaged to act as intermediary-manager to be licensed; annual filing of financial statements; loss reserves; authority for retrocessional contracts or participation in reinsurance syndicates; notice of termination of contract with intermediary-manager; persons in certain positions not to serve on reinsurer's board.

(A) A reinsurer may not engage the services of a person, a firm, an association, or a corporation to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by Section 38-46-30.

(B) The reinsurer annually shall file with the department not later than March first a copy of statements of the financial condition of each reinsurance intermediary-manager, which the reinsurer has engaged, prepared by an independent certified accountant in a form acceptable to the director or his designee.

(C) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer annually shall 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. The opinion must be filed not later than March first. This opinion is in addition to other required loss reserve certification.

(D) Binding authority for all retrocessional contracts or participation in reinsurance syndicates rests with an officer of the reinsurer who must not be affiliated with the reinsurance intermediary-manager.

(E) Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of termination to the department.

(F) A reinsurer may not appoint to its board of directors an officer, a director, an employee, a controlling shareholder, or a subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by the Insurance Holding Company Regulatory Act or, if applicable, the Broker Controlled Insurer Act.

SECTION 38-46-100. Reinsurance intermediary subject to examination; access to books, accounts and records.

(A) A reinsurance intermediary is subject to examination by the director or his designee. The director or his designee must have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the director or his designee.

(B) A reinsurance intermediary-manager may be examined as if he were the reinsurer.

SECTION 38-46-110. Violations; hearings; penalties; judicial review; rights of policy holders, claimants, creditors, and other third parties not affected.

(A) A reinsurance intermediary, insurer, or reinsurer found by the director or his designee after a hearing conducted in accordance with Insurance Department Regulation 69-31 to be in violation of this chapter:

(1) for each separate violation, shall pay a penalty of not more than fifteen thousand dollars and thirty thousand dollars if the violation is wilful;

(2) is subject to revocation or suspension of its license;

(3) for a violation committed by the reinsurance intermediary, make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(B) The decision, determination, or order of the director or his designee pursuant to subsection (A) is subject to judicial review pursuant to Section 38-3-210.

(C) This section does not affect the right of the director or his designee to impose other penalties provided by Title 38.

(D) This chapter does not limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer rights to those persons.

SECTION 38-46-120. Department to promulgate regulations.

The department may promulgate reasonable regulations for the implementation and administration of this chapter.