

## Part 8 Reinsurance Intermediaries

### 31A-23a-801 Licensure.

- (1) A person, firm, association, or corporation may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation unless:
  - (a) in this state, the reinsurance intermediary-broker is a licensed producer in this state; or
  - (b) in another state, the reinsurance intermediary-broker is a licensed producer in this state or another state having a licensing law substantially similar to this part, or the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.
- (2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:
  - (a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;
  - (b) in this state, if the reinsurance intermediary-manager maintains an office either directly 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 reinsurance intermediary-manager is a licensed producer in this state; or
  - (c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state having a licensing law substantially similar to this chapter, or the person is licensed in this state as a nonresident reinsurance intermediary.
- (3) The commissioner may require a bond in an amount he finds acceptable for the protection of each reinsurer represented.
- (4)
  - (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation which has complied with the requirements of this chapter.
    - (i) Any 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. Each member, employee, or similar person shall be named in the application and any supplements to the application.
    - (ii) Any license issued to a corporation shall authorize all of the officers, directors, and any designated employees to act as reinsurance intermediaries on behalf of the corporation, and all authorized persons shall be named in the application and any supplements to the application.
  - (b) 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 the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers. The applicant 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 the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the change does not become effective until acknowledged by the commissioner.
- (5) The commissioner may refuse to issue a reinsurance intermediary license if he determines that the applicant, any one named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy

to act as a reinsurance intermediary, or that any of the persons named has given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of the license. Upon written request the commissioner will furnish a summary of the basis for his refusal to issue a license. The summary document shall be confidential.

- (6) Licensed attorneys-at-law of this state when acting in their professional capacity as attorneys are exempt from this section.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-802 Required contract provisions -- Reinsurance intermediary-broker.**

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

- (1) may have his authority terminated by the insurer at any time;
- (2) will 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 that he will remit all funds due to the insurer within 30 days of receipt;
- (3) shall hold, in a fiduciary capacity, all funds collected for the insurer's account in a financial institution, which is a qualified United States financial institution;
- (4) will comply with Section 31A-23a-803;
- (5) will comply with the written standards established by the insurer for the cession or retrocession of all risks; and
- (6) will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-803 Books and records -- Reinsurance intermediary-broker.**

- (1) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, he will 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 the effective and expiration dates, cancellation provisions, and notice required of cancellation;
  - (c) 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) related correspondence and memoranda;
  - (h) proof of placement;
  - (i) 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 premium and loss accounts; and
  - (k) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

- (i) directly from any 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.
- (2) The insurer will 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.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-804 Duties of insurers utilizing the services of a reinsurance intermediary-broker.**

- (1) An insurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by Subsection 31A-23a-801(1).
- (2) 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 Title 31A, Chapter 16, Insurance Holding Companies.
- (3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-805 Required contract provisions -- Reinsurance intermediary-manager.**

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract, which specifies the responsibilities of each party, and which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, provide or require the following:

- (1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately 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 will 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 he shall remit all funds due under the contract to the reinsurer at least monthly.
- (3) All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a financial institution which is a qualified United States financial institution. 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 account for each reinsurer that it represents.
- (4) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, he shall keep a complete record for each transactions showing:
- (a) the type of contract, limits, underwriting restrictions, classes of risks, and territory;
  - (b) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

- (c) reporting and settlement requirements of balances;
- (d) rates used to compute the reinsurance premium;
- (e) names and addresses of reinsurers;
- (f) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;
- (g) related correspondence and memoranda;
- (h) proof of placement;
- (i) details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by Subsection 31A-23a-807(4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (j) financial records, including premium and loss accounts; and
- (k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:
  - (i) directly from any 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 will have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager which are 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 will 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:
  - (a) All claims will be reported to the reinsurer in a timely manner.
  - (b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
    - (i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
    - (ii) involves a coverage dispute;
    - (iii) may exceed the reinsurance intermediary-manager claims settlement authority;
    - (iv) is open for more than six months; or
    - (v) 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 will 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, that the contract shall provide interim profits will 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 time period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to Subsection 31A-23a-807(3).

- (11) The reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.
- (12) The reinsurer shall at least semi-annually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.
- (13) The reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any 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 shall be considered to be the acts of the reinsurer on whose behalf it is acting.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-806 Prohibited acts.**

- (1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.
- (2) The reinsurance intermediary-manager may not commit the reinsurer to participate in reinsurance syndicates.
- (3) The reinsurance intermediary-manager may not appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which the producer is appointed.
- (4) The reinsurance intermediary-manager may not, without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.
- (5) The reinsurance intermediary-manager may not 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 shall be promptly forwarded to the reinsurer.
- (6) The reinsurance intermediary-manager may not jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.
- (7) The reinsurance intermediary-manager may not appoint a subreinsurance intermediary-manager.

Amended by Chapter 297, 2011 General Session

**31A-23a-807 Duties of reinsurers utilizing the services of reinsurance.**

- (1) A reinsurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by Subsection 31A-23a-801(2).

- (2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which the reinsurer has engaged, which shall be prepared by an independent certified public 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. The actuary's 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 may not be affiliated with the reinsurance intermediary-manager.
- (5) Within 30 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 may not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by Title 31A, Chapter 16, Insurance Holding Companies, or Chapter 23a, Part 7, Producer Controlled Insurers, if it applies.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-808 Examination authority.**

- (1) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary, which shall be kept in a form usable to the commissioner.
- (2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-809 Penalties and liabilities.**

- (1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be in violation of any provisions of this title, shall:
  - (a) for each separate violation, pay a civil penalty in an amount not exceeding \$5,000;
  - (b) be subject to revocation or suspension of its license; and
  - (c) if a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall 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.
- (2) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided in this title.
- (3) Nothing contained in this part is intended to, or in any manner limits or restricts the rights of policyholders, claimants, creditors, or other third parties; nor does it confer any rights to such persons.

Amended by Chapter 382, 2008 General Session