

BUSINESS TRANACTED WITH PRODUCER CONTROLLED PROPERTY/CASUALTY INSURER ACT

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Section 1. Short Title

This Act may be cited as the Business Transacted with Producer Controlled Insurer Act.

Section 2. Definitions

As used in this Act:

- A. "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).
- B. "Control" or "controlled" has the meaning ascribed in [cite insurance law section incorporating NAIC Model Insurance Holding Company Act];
- C. "Controlled insurer" means a licensed insurer that is controlled, directly or indirectly, by a producer.
- D. "Controlling producer" means a producer who, directly or indirectly, controls an insurer.
- E. "Licensed insurer" or "insurer" means a person, firm, association or corporation duly licensed to transact a property/casualty insurance business in this state. The following, among others, are not licensed insurers for the purposes of this Act:
 - (1) All residual market pools and joint underwriting authorities or associations; and
 - (2) All captive insurers other than risk retention groups as defined in 15 U.S.C. Section 3901 et seq. and 42 U.S.C. Section 9671 (for the purposes of this Act, captive insurers are insurance companies 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, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations and group members and their affiliates).
- F. "Producer" means an insurance broker or brokers 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 an insurance contract on behalf of an insured other than the person, firm, association

or corporation.

Drafting Note: The term “producer” as used in this Act is not intended to include an exclusive agent or any independent agent acting on behalf of the controlled insurer and a subagent or representative of the agent, who acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting in the capacity of an insurance broker in the transaction in question. States that define both insurance agent and insurance broker should substitute the term “insurance broker” and an appropriate definition for the term “producer,” and rename the Act accordingly.

Section 3. Applicability

This Act shall apply to licensed insurers as defined in Section 2 of this Act, 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 the Insurance Holding Company Act, to the extent they are not superseded by this Act, shall continue to apply to all parties within holding company systems subject to this Act.

Section 4.

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- (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 render 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.
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 - (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 shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety (90) days after the effective date of a 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. (However, funds of a controlling producer not required to be licensed in this state shall 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 shall 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 setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks- jecnt
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Section 6. Penalties

- A. (1) If the commissioner believes that the controlling producer or any other person has not materially complied with this Act, or any regulation or order promulgated under this Act, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer; and
- (2) If it is found that because of such material non-compliance the controlled insurer or any policyholder thereof has suffered any loss or damage, 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.
- B. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to [insert state's rehabilitation and liquidation statute], and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this Act, or any regulation or order promulgated hereunder, and the insurer suffered any