

IC 27-1-35

Chapter 35. Business Transacted With Producer Controlled Property and Casualty Insurers

IC 27-1-35-1

Applicability of law

Sec. 1. This chapter applies to licensed insurers either domiciled in Indiana 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 All provisions of the Insurance Holding Company System Regulation Act, to the extent the provisions are not superseded by this chapter, continue to apply to all parties within holding company systems subject to this chapter. *As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.*

IC 27-1-35-2

"Accredited state" defined

Sec. 2. As used in this chapter, "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 periodically by the National Association of Insurance Commissioners (NAIC).

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-3

"Captive insurer" defined

Sec. 3. As used in this chapter, "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, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of any of the following:

- (1) Member organizations.
- (2) Group members and their affiliates.
- (3) Member organizations and group members and their affiliates.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-4

"Control" or "controlled" defined

Sec. 4. As used in this chapter, "control" or "controlled" has the meaning set forth in IC 27-1-23-1.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-5

"Controlled insurer" defined

Sec. 5. As used in this chapter, "controlled insurer" means a licensed insurer that is controlled, directly or indirectly, by a producer.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-6

"Controlling producer" defined

Sec. 6. As used in this chapter, "controlling producer" means a producer that, directly or indirectly, controls an insurer.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-7

"Licensed insurer" or "insurer" defined

Sec. 7. As used in this chapter, "licensed insurer" or "insurer" means any person, firm, association, or corporation licensed to transact a property/casualty insurance business in Indiana. The following are not licensed insurers for the purposes of this chapter:

- (1) All risk retention groups (as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986), and IC 27-7-10-11).
- (2) All residual market pools and joint underwriting authorities or associations.
- (3) All captive insurers.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-8

"Producer" defined

Sec. 8. As used in this chapter, "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 any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-9

Threshold limit of premiums

Sec. 9. The provisions of sections 11 through 14 of this chapter apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) 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.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-10

Exempt transactions

Sec. 10. Notwithstanding section 9 of this chapter, the provisions of sections 11 through 14 of this chapter do not apply if:

- (1) the controlling producer:
 - (A) places insurance only with the controlled insurer, or only with the controlled insurer and a member or members 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 such insurance; and
- (B) 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.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-11

Written contract requirement

Sec. 11. 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 controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and contains 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 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.
- (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 of premiums collected shall be remitted not later than ninety (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 (1) 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 Indiana 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 the controlled insurer's underwriting standards, rules, and procedures, manuals setting forth 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 shall 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 shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subdivision and subdivision (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 such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified under section 13 of this chapter.

(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 sub-line 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 the controlling producer has been notified by the controlled insurer that the limit has been reached.

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

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-12

Audit committees

Sec. 12. Each 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.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-13

Opinions of independent casualty actuaries or independent loss reserve specialists

Sec. 13. 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 such 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.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-14

Annual reports

Sec. 14. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage this amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kind of insurance.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-15

Notice of relationship

Sec. 15. A producer, before 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 controlling 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.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-16

Orders to cease placing business

Sec. 16. If the commissioner believes that the controlling producer or any other person has not materially complied with this chapter or any rule or order adopted under this chapter, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-17

Civil actions by commissioner

Sec. 17. If the commissioner finds that because of a material noncompliance under section 16 of this chapter the controlled insurer or any policyholder of the controlled insurer 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.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-18

Civil actions by receivers

Sec. 18. If an order for liquidation or rehabilitation of the controlled insurer has been entered under IC 27-9, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter or any rule or order adopted under this chapter, 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.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.

IC 27-1-35-19

Other rights not affected

Sec. 19. Sections 16 through 18 of this chapter do not:

- (1) affect the right of the commissioner to impose any other penalties provided by Indiana law; or
- (2) in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

As added by P.L.130-1994, SEC.36 and P.L.116-1994, SEC.47.