

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 31.
INSURANCE AND SECURITIES.

CHAPTER 4.
BUSINESS TRANSACTED WITH PRODUCER
CONTROLLED INSURER.

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PRODUCER CONTROLLED INSURER.

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CHAPTER 4. BUSINESS TRANSACTED WITH PRODUCER CONTROLLED INSURER.

§ 31-401. DEFINITIONS.

For the purposes of this chapter, the term:

(1) "Accredited state" means a jurisdiction 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").

(2) "Captive insurers" means 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 or group members and their affiliates.

(2A) "Commissioner" means the Commissioner of Insurance and Securities.

(3) "Control" or "controlled" has the meaning ascribed in § 31-701(2).

(4) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

(5) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(6) "Holding company system" has the meaning ascribed in § 31-701(4).

(7) "Licensed insurer" or "insurer" means any person, firm, association, or corporation duly licensed to transact a property/casualty insurance business in the District of Columbia. The following, inter alia, are not licensed insurers for the purposes of this chapter:

(A) All risk retention groups as defined in the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), the Product Liability Risk Retention Act of 1981 (15 U.S.C. § 3901 et seq.), and § 31-4101;

(B) All residual market pools and joint underwriting authorities or associations; and

(C) All captive insurers.

(8) "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, such a 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.

(9) Repealed.

(Oct. 21, 1993, D.C. Law 10-52, § 2, 40 DCR 6129; May 21, 1997, D.C. Law 11-268, § 10(hh), 44 DCR 1730.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-4001.

Legislative History of Laws

D.C. Law 10-52, the "Business transacted with Producer Controlled Insurer Act of 1993," was introduced in Council and assigned Bill No. 10-135, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-97 and transmitted to both Houses of Congress for its review. D.C. Law 10-52 became effective on October 21, 1993.

Law 11-268, the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and

Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11-268 became effective on May 21, 1997.

Delegation of Authority

Delegation of authority pursuant to D.C. Law 10-52, the Business Transacted with Producer Controlled Insurance Act of 1993, see Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

Miscellaneous Notes

Mayor authorized to issue rules: Section 10 of D.C. Law 10-52 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1 [subchapter I of Chapter 5 of Title 2, 2001 Ed.], issue rules to implement the provisions of this chapter.

§ 31-402. APPLICABILITY.

This chapter shall apply to licensed insurers either domiciled in the District of Columbia or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of Chapter 7 of this title, to the extent they are not superseded by this chapter, shall continue to apply to all parties within holding company systems subject to this chapter.

(Oct. 21, 1993, D.C. Law 10-52, § 3, 40 DCR 6129.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-4002.

Legislative History of Laws

For legislative history of D.C. Law 10-52, see Historical and Statutory Notes following § 31-401.

§ 31-403. APPLICABILITY OF MINIMUM STANDARDS.

(a) The provisions of §§ 31-404, 31-405, and 31-406 shall 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 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.

(b) Subsection (a) of this section shall 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 the 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.

(Oct. 21, 1993, D.C. Law 10-52, § 4, 40 DCR 6129.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-4003.

Legislative History of Laws

For legislative history of D.C. Law 10-52, see Historical and Statutory Notes following § 31-401.

§ 31-404. 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 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 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 collected shall be 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 applicable provisions of insurance law of the District of Columbia. Funds of a controlling producer not required to be licensed in the District of Columbia 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. 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 shall be included. 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 paragraph and paragraph (7) of this section, 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 shall not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to paragraphs (1) and (6) of this section.
- (10) The contract provides 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.
- (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 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 automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(Oct. 21, 1993, D.C. Law 10-52, § 5, 40 DCR 6129; May 16, 1995, D.C. Law 10-255, § 34, 41 DCR 5193.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-4004.

Legislative History of Laws

For legislative history of D.C. Law 10-52, see Historical and Statutory Notes following § 31-401.

Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No.

10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 31-405. AUDIT COMMITTEE.

Every 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 Mayor, to review the adequacy of the insurer's loss reserves.

(Oct. 21, 1993, D.C. Law 10-52, § 6, 40 DCR 6129.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-4005.

Legislative History of Laws

For legislative history of D.C. Law 10-52, see Historical and Statutory Notes following § 31-401.

§ 31-406. REPORTING REQUIREMENTS.

(a) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the Mayor an opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the Mayor reporting loss reserve 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 that incurred, but not reported, on business placed by the producer.

(b) The controlled insurer shall annually report to the Mayor 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.

(Oct. 21, 1993, D.C. Law 10-52, § 7, 40 DCR 6129; Apr. 26, 1994, D.C. Law 10-103, § 9, 41 DCR 1005.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-4006.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 9 of the Insurance Omnibus Temporary Amendment Act of 1993 (D.C. Law 10-76, March 17 1994, law notification 41 DCR 1626).

Legislative History of Laws

For legislative history of D.C. Law 10-52, see Historical and Statutory Notes following § 31-401.

Law 10-103, the "Insurance Omnibus Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

§ 31-407. 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 his or her 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.

(Oct. 21, 1993, D.C. Law 10-52, § 8, 40 DCR 6129.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-4007.

Legislative History of Laws

For legislative history of D.C. Law 10-52, see Historical and Statutory Notes following § 31-401.

§ 31-408. PENALTIES.

(a)(1) If the Mayor believes that the controlling producer or any other person has not materially complied with this chapter, or any regulation or order promulgated hereunder, 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 was found that because of material noncompliance the controlled insurer or any policyholder has suffered any loss or damage, the Mayor 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 for other appropriate relief.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Chapter 13 of this title, 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 regulation or order promulgated hereunder, 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.

(c) Nothing contained in this section shall affect the right of the Mayor to impose any other penalties provided under the insurance laws of the District of Columbia.

(d) Nothing contained in this section shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

(Oct. 21, 1993, D.C. Law 10-52, § 9, 40 DCR 6129; May 21, 1997, D.C. Law 11-268, § 10, 44 DCR 1730.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-4008.

Legislative History of Laws

For legislative history of D.C. Law 10-52, see Historical and Statutory Notes following § 31-401.

For legislative history of D.C. Law 11-268, see Historical and Statutory Notes following § 31-401.