WEST VIRGINIA CODE CHAPTER 33 ARTICLE 38

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§33-38-1. Short title.

This article may be cited as the "Reinsurance Intermediary Act."

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§33-38-2. Definitions.

The definitions set forth in section two, article twelve of this chapter apply to this article. In addition, as used in this article:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(b) "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.

(c) "Commissioner" means the Insurance Commissioner of West Virginia.

(d) "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of this chapter as an insurer.

(e) "Firm" means an individual doing business as a sole proprietor, a partnership, limited liability company, limited liability partnership or other legal entity.

(f) "Licensed producer" means an insurance producer or reinsurance intermediary licensed pursuant to the applicable provisions of this chapter.

(g) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subdivisions (g) and (h) of this section.

(h) "Reinsurance intermediary-broker" means any person, other than an officer or employee of the ceding insurer, firm, association or corporation 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 such insurer.

(i) "Reinsurance intermediary-manager" means any person, firm, association or corporation who has authority to bind or manages 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 such reinsurer, whether known as a reinsurance intermediary-manager, manager or other similar term. Notwithstanding the above, the following persons are not considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this article:

(1) An employee of the reinsurer;

(2) A United States manager of the United States branch of an alien reinsurer;

(3) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to article twenty-seven of this chapter, and whose compensation is not based on the volume of

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premiums written.

(4) The 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 official charged with regulation of insurance in the state in which the manager's principal business office is located.

(j) "Reinsurer" means any person, firm, association or corporation duly licensed or accredited in this state pursuant to the applicable provisions of this chapter as an insurer with the authority to assume reinsurance.

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

(l) A "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Commissioner or the securities valuation office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

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§33-38-3. Licensure.

(a) No person, firm, association or corporation may 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:

(1) In this state, unless such reinsurance intermediary-broker is a licensed insurance producer or reinsurance intermediary in this state; or

(2) In another state, unless such reinsurance intermediary-broker is a licensed insurance producer or reinsurance intermediary in this state or another state having a law substantially similar to this article or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(b) No person, firm, association or corporation may act as a reinsurance intermediary-manager:

(1) For a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed insurance producer or reinsurance intermediary in this state;

(2) 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 an officer, director or employee of a corporation in this state, unless such reinsurance intermediary-manager is a licensed insurance producer or reinsurance intermediary in this state;

(3) In another state for a nondomestic insurer, unless such reinsurance intermediary-manager is a licensed insurance producer in this state or another state having a law substantially similar to this article or such person is licensed in this state as a nonresident reinsurance intermediary.

(c) The Commissioner may require a reinsurance intermediary-manager subject to the provisions of subsection (b) of this section to:

(1) File a bond in an amount from an insurer acceptable to the Commissioner for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy in an amount acceptable to the Commissioner.

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

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§33-38-3a. License applications, issuance, refusal and renewal.

(a) An applicant for a reinsurance intermediary license shall file with the Commissioner an application on the form prescribed by the Commissioner and pay a nonrefundable application fee of $500.

(b) The application shall include: (1) For a firm or association, the name of each member of the firm or association and of each employee of the firm or association who will act as a reinsurance intermediary under the license; and (2) for a corporation, the name of each officer of the corporation and of each employee and director of the corporation who will act as a reinsurance intermediary under the license.

(c) The Commissioner shall issue a nonresident reinsurance intermediary license if: (1) The applicant is currently licensed as a resident reinsurance intermediary or insurance producer and is in good standing in his or her home state, has submitted either the application for licensure that the person submitted to his or her home state or a completed application deemed appropriate by the Commissioner and has paid the fees required by this section; and (2) the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(d) Any license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license and all of these persons shall be named in the application and any supplements thereto. Any license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof, to act as reinsurance intermediaries on behalf of such corporation and all of these persons shall be named in the application and any supplements thereto. To add a name to or delete a name from a reinsurance intermediary license, the licensee shall submit to the Commissioner the change on a form prescribed by the Commissioner.

(e) The Commissioner may refuse to issue or renew a reinsurance intermediary license if the Commissioner finds that the applicant, any individual named on the application, a member, principal, officer or director of the applicant or a controlling person of the applicant is not trustworthy, as that term may be defined by the Commissioner in legislative rules promulgated pursuant to section twelve of this article, to act as a reinsurance intermediary, has given cause for revocation or suspension of a license or has failed to comply with a requirement for issuance of a license.

(f) Every nonresident firm, association or corporation licensed as a reinsurance intermediary in this state or acting as a reinsurance intermediary in this state but which is not licensed shall be subject to the provisions of section twelve, article four of this chapter to the same extent as licensed insurers with regard to the service of process and payment of fees.

(g) Upon written request, the Commissioner shall furnish a summary of the basis for refusal to issue or renew a license, which document shall be privileged and not subject to the

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provisions of article one, chapter twenty-nine-a of this code. Within ten days of receipt of the summary, if the applicant or licensee makes a written demand upon the Commissioner for a hearing to determine the reasonableness of the Commissioner's action, a hearing shall be conducted in accordance with the provisions of section thirteen, article two of this chapter.

(h) Each license issued pursuant to this article expires on June 30 next following the date of issuance. Between May 1 and June 1 of the renewal year, each licensed reinsurance intermediary shall submit to the Commissioner a renewal application and a nonrefundable annual renewal fee of $200: Provided, That a reinsurance intermediary who allows the reinsurance intermediary license to lapse may, within eleven months from the expiration date, reinstate the same license upon payment of a renewal fee of $400.

(i) All application and renewal fees collected by the Commissioner pursuant to the provisions of this section shall be paid into the state Treasury and credited to the special revenue account created in section thirteen, article three of this chapter.

(j) Within thirty days of a change in its legal name or mailing address, a licensee shall notify the Commissioner of such change on a form prescribed by the Commissioner, and failure to timely file such form may result in a penalty pursuant to section eleven of this article.

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§33-38-4. Required contract provisions; reinsurance intermediary-brokers.

(a) Transactions between a reinsurance intermediary-broker and the insurer it represents in that capacity may only be entered into pursuant to a written authorization, specifying the responsibilities of each party.

(b) Each written authorization shall, at a minimum, 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) All funds collected for the insurer's account shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank which is a qualified United States financial institution as defined herein.

(4) The reinsurance intermediary-broker shall comply with section five of this article.

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

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§33-38-5. Books and records; reinsurance intermediary-brokers.

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

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

(2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

(3) Reporting and settlement requirements of balances;

(4) Rate used to compute the reinsurance premium;

(5) Names and addresses of assuming reinsurers;

(6) Rates of all reInsurance Commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(7) Related correspondence and memoranda;

(8) Proof of placement;

(9) Details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) Financial records, including, but not limited to, premium and loss accounts; and

(11) When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(A) Directly from any 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 such reinsurer has delegated binding authority to the representative.

(b) The insurer shall 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.

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§33-38-6. Duties of insurers utilizing the services of a reinsurance intermediary-broker.

(a) 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 that person is licensed as required by subsection (a), section three of this article.

(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 article twenty-seven of this chapter.

(c) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

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§33-38-7. Required contract provisions; reinsurance intermediary-managers.

(a) Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the commissioner for approval.

(b) Every contract required by this section shall, at a minimum, provide, that:

(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 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 on not less than a monthly basis.

(3) All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution as defined herein. 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 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, the reinsurance intermediary-manager shall keep a complete record for each transaction 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) Rate 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;

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(G) Related correspondence and memoranda;

(H) Proof of placement;

(I) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by subsection (d), section nine of this article, 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; 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 such reinsurer has delegated binding authority to the representative.

(5) The reinsurer shall 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 cannot 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) Sets 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 shall be reported to the reinsurer in a timely manner;

(B) A copy of the claim file shall 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's claims settlement authority;

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(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 these 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 these interim profits may 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 commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to subsection (c), section nine of this article.

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.

(12) The reinsurer shall periodically, at least multiannually, 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 any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf it is acting.

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§33-38-8. Prohibited acts.

The reinsurance intermediary-manager may not:

(a) 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 the retrocessions. The guidelines shall 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.

(b) Commit the reinsurer to participate in reinsurance syndicates.

(c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed.

(d) 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 one percent of the reinsurer's policyholder's surplus as of December 31, next preceding.

(e) 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 must be promptly forwarded to the reinsurer.

(f) Jointly employ an individual who is employed by the reinsurer unless such reinsurance intermediary-manager is under common control with the reinsurer subject to article twenty-seven of this chapter.

(g) Appoint a subreinsurance intermediary-manager.

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§33-38-9. Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.

(a) 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 that person is licensed as required by subsection (b), section three of this article.

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which such reinsurer has engaged prepared by an independent certified public accountant in a form acceptable to the commissioner.

(c) 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. This opinion shall be in addition to any other required loss reserve certification.

(d) 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.

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

(f) 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 article twenty-seven of this chapter.

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§33-38-10. Examination authority.

(a) A reinsurance intermediary is subject to examination by the commissioner at his or her discretion. The commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the commissioner.

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

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§33-38-11. Penalties and liabilities.

(a) A reinsurance intermediary, insurer or reinsurer found by the commissioner, after a hearing conducted in accordance with section thirteen, article two of this chapter, to be in violation of any provision or provisions of this article, shall:

(1) For each separate violation, pay a penalty in an amount not exceeding $5,000;

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

(3) If a violation was committed by the reinsurance intermediary, such 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.

(b) The decision, determination or order of the commissioner pursuant to subsection (a) of this section is subject to judicial review pursuant to section fourteen, article two of this chapter.

(c) Nothing contained in this section may affect the right of the commissioner to impose any other penalties provided in the insurance law.

(d) Nothing contained in this article is intended to or may in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

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§33-38-12. Regulatory authority.

The commissioner is hereby authorized to promulgate reasonable rules, pursuant to chapter twenty-nine-a of the West Virginia code, for the implementation and administration of the provisions of this article, these rules to include, but not be limited to, setting reasonable fees and standards for licensing.

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§33-38-13. Fees.

Except where it is otherwise specially provided, the Commissioner shall demand and receive the following fees from all reinsurance intermediaries: For receiving and filing annual reports, $100; for filing certified copy of articles of incorporation, $50; for filing copy of its charter, $50; for filing statements preliminary to admission, $100; for filing of designated contract, $25; for filing of notification of termination of a contract with a reinsurance intermediary-manager by the reinsurer, $10; for filing to add or delete names on the reinsurance intermediary license, $25; for filing an address change, $25; for filing a legal name change, $75; for filing a bond or an errors and omissions policy, $25; and for filing any additional documents as required by law or furnishing copies thereof, copies of reports or certificates of condition of reinsurance intermediary to be filed in any other state, $20. All such fees shall be paid into the State Treasury and credited to the special revenue account created in section thirteen, article three of this chapter.

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§33-38-14. Reciprocity.

(a) The Commissioner may waive any requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by sections three and three-a of this article, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(b) A nonresident reinsurance intermediary's satisfaction of his or her home state's continuing education requirements for licensed insurance producers or reinsurance intermediaries shall constitute satisfaction of this state's continuing education requirements if the nonresident's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers or reinsurance intermediaries from this state on the same basis.

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