

Chapter Ins 45

**BUSINESS TRANSACTED WITH PRODUCER CONTROLLED
PROPERTY OR CASUALTY INSURER**

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Ins 45.01 Definitions. In this chapter, unless the context otherwise requires:

(1) "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.

(2) "Control" has the meaning provided under s. 600.03 (13), Stats.

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

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

(5) "Insurer" means an insurer licensed to transact property or casualty insurance business in this state. 'Insurer' does not include, for the purposes of this chapter:

(a) A risk retention group as defined in s. 600.03 (41e), Stats.;

(b) A residual market pool or joint underwriting authority or association; or

(c) An insurer owned by another organization and whose exclusive purpose is to insure risks of the parent organization and the parent organization's affiliates or, in the case of groups and associations, an insurer owned by the insureds whose exclusive purpose is to insure risks of member organizations or group members and their affiliates.

(6) "Policyholder surplus" means capital and surplus.

(7) "Producer" means an insurance broker as defined by s. 628.02 (3), Stats., or any other person who, for any compensation, commission or other thing of value, 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.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 45.02 Scope. (1) This chapter applies only to insurers which are domiciled in this state or which are domiciled in a state that is not an accredited state or which does not have in effect a law which is substantially similar to this chapter.

(2) (a) Except as provided by par. (b), ss. Ins 45.03 to 45.06 apply only 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 in-

surer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(b) If both of the following are complied with, ss. Ins 45.03 to 45.06 do not apply:

1. The controlling producer:

a. Places insurance only with the controlled insurer, or only with the controlled insurer and a member 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.

(3) This chapter is in addition to any other law or rule which may apply.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 45.03 Minimum standards. A controlled insurer may not accept business from a controlling producer and a controlling producer may not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, the contract is approved by the board of directors of the insurer, the controlling producer complies with the contract and the contract contains at least all of the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer may 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 and funds shall be due so that premiums or installments collected are required to be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract;

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in accounts in one or more financial institutions that are members of the federal reserve system, except the contract may provide that funds of a controlling producer not required to be licensed in this state may be maintained in compliance with the requirements of the controlling producer's state of domicile.

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(5) The controlling producer shall maintain records of business written for the controlled insurer which are separate from the records of other business.

(6) The contract shall not be assigned in whole or in part by the controlling producer.

(7) The controlling producer shall obtain and adhere to the controlling insurer's written underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks, rates and conditions and 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 subsection and sub. (7) "comparable business" includes, but is not limited to, 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, the contract shall also provide that the compensation shall not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. The contract shall provide that the commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified under s. Ins 45.06 (1).

(10) A limit on the controlling producer's writings in relation to the controlled insurer's policyholder 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 it has been notified by the controlled insurer or knows or reasonably should know that the limit has been reached.

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

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 45.04 Applicability; noncompliance. (1) (a) A controlling producer functioning without a written contract on or after August 1, 1993 is subject to s. Ins 45.03.

(b) A controlling producer which first enters into, amends or renews a contract on or after August 1, 1993 is subject to s. Ins 45.03.

(c) A controlling producer not otherwise subject to s. Ins 45.03 under par. (a) or (b) is subject to s. Ins 45.03 after September 30, 1994.

(2) A contract between a controlling producer and a controlled insurer which violates s. Ins 45.03 is enforceable against the producer as if it conformed to s. Ins 45.03.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 45.05 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 an independent loss reserve specialist approved by the commissioner, to, at a minimum, review the adequacy of the insurer's loss reserves.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 45.06 Reporting requirements. In addition to any loss reserve certification required under s. Ins 50.30, a controlled insurer shall annually, prior to April 1, file with the commissioner:

(1) An opinion of an independent casualty actuary or of an other independent loss reserve specialist who is 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 each calendar year-end on and after December 31, 1993, including incurred but not reported, on business placed by the producer; and

(2) A report of 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, for calendar year 1993 and each subsequent immediately preceding calendar year.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 45.07 Disclosure. A controlling 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 its records a signed statement from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and a commitment that the subproducer has or will notify insureds of the relationship. The subproducer shall deliver the disclosure to prospective insureds.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.