

## **CHAPTER 26.1-31.1**

### **REINSURANCE INTERMEDIARIES**

**26.1-31.1-01. Definitions.** As used in this chapter:

1. "Actuary" means a person who is a member in good standing of the American academy of actuaries.
2. "Controlling person" means any person, firm, association, corporation, or limited liability company who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.
3. "Insurer" means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.
4. "Licensed producer" means an insurance producer or reinsurance intermediary licensed pursuant to the applicable provision of this title.
5. "Qualified United States financial institution" means an institution that:
  - a. Is organized or in the case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof;
  - b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
  - c. Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.
6. "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsections 7 and 8.
7. "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.
8. "Reinsurance intermediary-manager" means any person, firm, association, corporation, or limited liability company 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 the reinsurer whether known as a reinsurance intermediary-manager, manager, or other similar term. Notwithstanding this definition, the following persons may not be considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this chapter:
  - a. An employee of the reinsurer.
  - b. A United States manager of the United States branch of an alien reinsurer.
  - c. An underwriting manager which, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the

reinsurer and subject to chapter 26.1-10, and whose compensation is not based on the volume of premiums written.

- d. 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 insurance commissioner of the state in which the manager's principal business office is located.
9. "Reinsurer" means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of this title as an insurer with the authority to assume reinsurance.
10. "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 chapter.

**26.1-31.1-02. Licensure.**

1. 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:
  - a. In this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or
  - b. In another state, unless the reinsurance intermediary-broker is a licensed producer in this state or another state having a law substantially similar to this law or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.
2. No person, firm, association, or corporation may act as a reinsurance intermediary-manager:
  - a. For a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state.
  - b. 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 as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state.
  - c. In another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state having a law substantially similar to this law or the person is licensed in this state as a nonresident reinsurance intermediary.
3. The commissioner may require a reinsurance intermediary-manager subject to subsection 2 to:
  - a. File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and
  - b. Maintain an errors and omissions policy in an amount acceptable to the commissioner.
4. a. The commissioner may issue a reinsurance intermediary license to any person, firm, association, corporation, or limited liability company who has complied with the requirements of this chapter. Any such license issued to a firm or

association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons must be named in the application and any supplements thereto. Any such license issued to a corporation must authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements thereto. Any such license issued to a limited liability company must authorize all of the managers and any designated employees and governors thereof to act as reinsurance intermediaries on behalf of the limited liability company, and all such persons must be named in the application and any supplements thereto.

- b. If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the changes do not become effective until acknowledged by the commissioner.
5. The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the commissioner will furnish a summary of the basis for refusal to issue a license.
6. Licensed attorneys at law of this state when acting in their professional capacity as such are exempt from this section.

**26.1-31.1-03. Required contract provisions - Reinsurance intermediary-brokers.**

Transactions between a reinsurance intermediary-broker and the insurer it represents in such capacity may only be entered into, pursuant to a written authorization, specifying the responsibilities of each party. The authorization must, at a minimum, contain provisions that:

1. The insurer may terminate the reinsurance intermediary-broker's authority at any time.
2. The reinsurance intermediary-broker will 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 will be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank which is a qualified United States financial institution as defined by this chapter.
4. The reinsurance intermediary-broker will comply with section 26.1-31.1-04.
5. The reinsurance intermediary-broker will comply with the written standards established by the insurer for the cessions or retrocession of all risks.

6. The reinsurance intermediary-broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

**26.1-31.1-04. Books and records - Reinsurance intermediary-brokers.**

1. 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:
  - a. The type of contract, limits, underwriting restrictions, classes or risks, and territory;
  - b. Period of coverage, including the effective date and the expiration date, cancellation provisions and notice required of cancellation;
  - c. Reporting and settlement requirements of balances;
  - d. Rate used to compute the reinsurance premium;
  - e. Names and addresses of assuming reinsurers;
  - f. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;
  - g. Related correspondence and memoranda;
  - h. Proof of placement;
  - i. Details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
  - j. Financial records, including premium and loss accounts; and
  - k. When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:
    - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
    - (2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.
2. The insurer will 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.

**26.1-31.1-05. Duties of insurers utilizing the services of reinsurance intermediary-broker.**

1. An insurer may not engage the services of any person, firm, association, corporation, or limited liability company to act as a reinsurance intermediary-broker on its behalf unless the person, firm, association, corporation, or limited liability company is licensed as required by subsection 1 of section 26.1-31.1-02.
2. 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 chapter 26.1-10.

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

**26.1-31.1-06. Required contract provisions - Reinsurance intermediary-managers.**

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract, approved by the reinsurer's board of directors, which specifies the responsibilities of each party. At least thirty days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract must be filed with the commissioner for approval. The contract must, at a minimum, contain provisions 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 will 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 will be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution as defined by this chapter. 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 will keep a complete record for each transaction showing:
  - a. The type of contract, limits, underwriting restrictions, classes or risks, and territory;
  - b. Period of coverage, including the effective date and the expiration date, 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. Rate of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;
  - g. Related correspondence and memoranda;
  - h. Proof of placement;
  - i. Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by subsection 4 of section 26.1-31.1-08,

- including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- j. Financial records premium and loss accounts; and
  - k. When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:
    - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
    - (2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.
- 5. The reinsurer will 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 will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.
  - 8. Set 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 will be reported to the reinsurer in a timely manner.
    - b. A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
      - (1) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
      - (2) Involves a coverage dispute;
      - (3) May exceed the reinsurance intermediary-manager's claims settlement authority;
      - (4) Is open for more than six months; or
      - (5) 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 the files 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, the interim profits will 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 3 of section 26.1-31.1-08.
11. The reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.
12. The reinsurer shall periodically and at least semiannually conduct an onsite review of the underwriting and claims processing operations of the reinsurance intermediary-manager.
13. The reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.
14. The acts of the reinsurance intermediary-manager must be deemed to be the acts of the reinsurer on whose behalf it is acting.

**26.1-31.1-07. Prohibited acts.** The reinsurance intermediary-manager may not:

1. Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines must include a list of reinsurers with which the automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.
2. Commit the reinsurer to participate in reinsurance syndicates.
3. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which the producer is appointed.
4. 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 thirty-first of the last complete calendar year.
5. 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.
6. Jointly employ an individual who is employed by the reinsurer unless such reinsurance intermediary-manager is under common control with the reinsurer subject to chapter 26.1-10.
7. Appoint a subreinsurance intermediary-manager.

**26.1-31.1-08. Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.**

1. A reinsurer may not engage the services of any person, firm, association, corporation, or limited liability company to act as a reinsurance intermediary-manager on its behalf unless such person, firm, association, corporation, or limited liability company is licensed as required by subsection 2 of section 26.1-31.1-02.
2. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which the reinsurer has engaged, prepared by an independent certified public accountant, in a form acceptable to the commissioner.
3. 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 must be in addition to any other required loss reserve certification.
4. Binding authority for all retrocessional contracts or participation in reinsurance syndicates rests with an officer of the reinsurer who may not be affiliated with the reinsurance intermediary-manager.
5. Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of its termination to the commissioner.
6. 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 chapter 26.1-10.

**26.1-31.1-09. Examination authority.**

1. A reinsurance intermediary is subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.
2. A reinsurance intermediary-manager may be examined as if it was the reinsurer.

**26.1-31.1-10. Penalties and liabilities.**

1. If the commissioner determines that the reinsurance intermediary 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:
  - a. For each separate violation, a penalty in an amount not exceeding five thousand dollars;
  - b. Revocation or suspension of the reinsurance intermediary's license; and
  - c. If it was found that because of the material noncompliance the insurer or reinsurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the reinsurer or insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the reinsurer or insurer and its policyholders and creditors or seek other appropriate relief.
2. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to chapter 26.1-06.1, and the receiver appointed under that order determines that the reinsurance intermediary 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 as a result of the material noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

3. Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in the insurance law.
4. Nothing contained in this chapter is intended to or may in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties.
5. The decision, determination, or order of the commissioner pursuant to subsection 1 is subject to judicial review pursuant to chapter 28-32.

**26.1-31.1-11. Rules.** The commissioner may adopt reasonable rules for the implementation and administration of the provisions of this chapter.

**26.1-31.1-12. Effective date.** No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary after July 7, 1991, unless utilization is in compliance with this chapter.