

Article 9.

Reinsurance Intermediaries.

§ 58-9-1: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-9-2. Reinsurance intermediaries.

(a) As used in this Article:

- (1) "Actuary" means a person who meets the standards of a qualified actuary, as specified in the NAIC Annual Statement Instructions, as amended or clarified by rule or order of the Commissioner, for the type of insurer for which an intermediary is establishing loss reserves.
- (2) "Broker" means any person, other than an officer or employee of a ceding insurer, 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 the ceding insurer.
- (3) "Commissioner" includes the Commissioner's authorized deputies and employees.
- (4) "Controlling person" means any person who directly or indirectly has the power to direct or cause to be directed the management, control, or activities of an intermediary.
- (5) "Intermediary" means any person who acts as a broker, as defined in G.S. 58-33-10(3), in soliciting, negotiating, or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer; or acts as a broker, as defined in G.S. 58-33-10(3), in accepting any reinsurance contract on behalf of an assuming insurer. "Intermediary" includes a broker or a manager, as those terms are defined in this section.
- (6) "Manager" means any person 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. The following persons are not managers, with respect to a reinsurer:
 - a. An employee of a reinsurer;
 - b. A United States manager of the United States branch of an alien reinsurer;
 - c. An underwriting manager who, pursuant to contract, manages all the reinsurance operations of a reinsurer, is under common control with the reinsurer under Article 19 of this Chapter, and whose compensation is not based on the volume of premiums written;
 - d. The manager of a group, association, pool, or organization of insurers that engages in joint underwriting or joint reinsurance and that is subject to examination by the insurance regulator of the state in which the manager's principal business office is located.
- (7) "Producer" means an insurance agent or insurance broker licensed under Article 33 of this Chapter or an intermediary licensed under this Article.
- (8) "Qualified United States financial institution" means a bank 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;

- b. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and
 - c. Has been determined by the Securities Valuation Office of the NAIC to meet its standards of financial condition and standing in order to issue letters of credit.
- (9) "Reinsurer" means any insurer that is licensed by the Commissioner and that is authorized to assume reinsurance.
- (b) No person shall act as a broker in this State if the broker maintains an office either directly, as a member or employee of a noncorporate entity, or as an officer, director, or employee of a corporation:
- (1) In this State, unless the broker is a producer in this State; or
 - (2) In another state, unless the broker is a producer in this State or another state having a law or rule substantially similar to this Article or unless the broker is licensed under this Article as a nonresident intermediary.
- (c) No person shall act as a manager:
- (1) For a reinsurer domiciled in this State, unless the manager is a producer in this State;
 - (2) In this State, if the manager maintains an office directly, as a member or employee of a noncorporate entity, or as an officer, director, or employee of a corporation in this State, unless the manager is a producer in this State;
 - (3) In another state for a foreign insurer, unless the manager is a producer in this State or another state having a law or rule substantially similar to this Article, or the manager is licensed in this State as a nonresident intermediary.
- (d) Every manager subject to subsection (c) of this section shall demonstrate to the Commissioner that he has evidence of financial responsibility in the form of fidelity bonds or liability insurance to cover the manager's contractual obligations. If any manager cannot demonstrate this evidence, the Commissioner shall require the manager to:
- (1) Maintain a separate fidelity bond in favor of each reinsurer represented in an amount that will cover those obligations and which bond is issued by an authorized insurer; or
 - (2) Maintain an errors and omissions liability insurance policy in an amount that will cover those obligations and which policy is issued by a licensed insurer. (1993, c. 452, s. 19; 1995, c. 193, s. 20; 2001-203, s. 27; 2002-187, s. 2.7.)

§ 58-9-5: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-9-6. Licensing.

(a) The Commissioner shall issue an intermediary license or an exemption from the license, subject to G.S. 58-9-2(b)(2) or G.S. 58-9-2(c)(3), to any person who has complied with the requirements of this Article. A license issued to a non corporate entity authorizes all of the members of the entity and any designated employees to act as intermediaries under the license, and those persons shall be named in the application and any supplements. A license issued to a corporation authorizes all of the officers and any designated employees and directors of the corporation to act as intermediaries on behalf of the corporation, and those persons shall be named in the application and any supplements.

(b) If an applicant for an intermediary license is a nonresident, the applicant, before receiving a license, shall designate the Commissioner as his agent for service of legal process and shall 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 intermediary may be served. The licensee shall notify the Commissioner in writing of every change in his designated agent for service of process within five business days after the change, and the change shall not become effective until acknowledged by the Commissioner.

(c) The Commissioner shall refuse to issue an intermediary license if:

- (1) The applicant, anyone named on the application, or any member, principal, officer, or director of the applicant is not trustworthy;
- (2) Any controlling person of the applicant is not trustworthy to act as an intermediary; or
- (3) Any of the persons in subdivisions (1) and (2) of this subsection has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

Upon written request, the Commissioner shall furnish a summary of the basis for refusal to issue a license.

(d) Attorneys-at-law licensed by this State are exempt from this section when they are acting in their professional capacities. (1993, c. 452, s. 20; 2001-223, s. 10.1.)

§ 58-9-10: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-9-11. Broker and insurer transactions.

(a) Transactions between a broker and the insurer it represents as a broker shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall include provisions to the effect that:

- (1) The insurer may terminate the broker's authority at any time.
- (2) The broker will render accounts to the insurer that accurately detail all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the broker and will remit all funds due to the insurer within 30 days after receipt by the broker.
- (3) All funds collected for the insurer's account will be held by the broker in a fiduciary capacity in a qualified United States financial institution.
- (4) The broker will comply with this Article.
- (5) The broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.
- (6) The broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.
- (7) The broker will annually provide the insurer with an audited statement of the broker's financial condition, which statement will be prepared by an independent certified public accountant.
- (8) The insurer will have access and the right to copy and audit all accounts and records maintained by the broker related to its business, in a form usable by the insurer.

- (9) For at least 10 years after the expiration of each contract of reinsurance transacted by the broker, the 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 effective and expiration dates, cancellation provisions, and notice required of cancellation;
 - c. Reporting and settlement requirements of balances;
 - d. Rate or rates used to compute the reinsurance premium;
 - e. Names and addresses of assuming reinsurers;
 - f. Rates of all reinsurance commissions, including the commissions on any retrocession handled by the broker;
 - g. Related correspondence and memoranda;
 - h. Proof of placement;
 - i. Details regarding retrocessions handled by the 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 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.

(b) An insurer shall not engage the services of any person to act as a broker on its behalf unless the person is licensed under G.S. 58-9-6 or exempted under this Article. An insurer shall not employ an individual who is employed by a broker with which it transacts business, unless the broker is under common control with the insurer under Article 19 of this Chapter. (1993, c. 452, s. 21; 2001-223, s. 10.2.)

§ 58-9-15: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-9-16. Manager and reinsurer transactions.

(a) Transactions between a manager and the reinsurer it represents as a manager shall 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 30 days before the reinsurer assumes or cedes business through the manager, a certified copy of the approved contract shall be filed with the Commissioner for approval. The contract shall include provisions to the effect that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the manager. The reinsurer may immediately suspend the authority of the manager to assume or cede business during the pendency of any dispute regarding the cause for termination.
- (2) The 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 manager and

- will remit all funds due under the contract to the reinsurer at least once every month.
- (3) All funds collected for the reinsurer's account will be held by the manager in a fiduciary capacity in a qualified United States financial institution. The manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The manager shall maintain a separate bank account for each reinsurer that it represents.
 - (4) For at least 10 years after the expiration of each contract of reinsurance transacted by the manager, the 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 effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risk;
 - 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 manager;
 - g. Related correspondence and memoranda;
 - h. Proof of placement;
 - i. Details regarding retrocessions handled by the manager, as permitted by G.S. 58-9-21, 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 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 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 manager.
 - (7) The manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.
 - (8) The rates, terms, and purposes of commissions, charges, and other fees that the manager may levy against the reinsurer shall be set forth.
 - (9) If the contract permits the 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 an amount set by the reinsurer and approved by the Commissioner;
 2. Involves a coverage dispute;
 3. May exceed the manager's claims settlement authority;
 4. Is open for more than six months; or
 5. Is closed by payment of an amount set by the reinsurer and approved by the Commissioner.
- c. All claim files will be the joint property of the reinsurer and manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the manager shall have reasonable access to and the right to copy the files on a timely basis; and
- d. Any settlement authority granted to the manager may be terminated for cause upon the reinsurer's written notice to the 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 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 and not until the adequacy of reserves on remaining claims has been verified pursuant to G.S. 58-9-21.
- (11) The manager will annually provide the reinsurer with an audited statement of its financial condition prepared by an independent certified public accountant.
- (12) The reinsurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the manager.
- (13) The manager will disclose to the reinsurer any relationship it has with any insurer before ceding or assuming any business with the insurer pursuant to this contract.
- (14) Within the scope of its actual or apparent authority, the acts of the manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.
- (b) A manager shall not:
- (1) Cede retrocessions on behalf of the reinsurer, except that the 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.
 - (2) Commit the reinsurer to participate in reinsurance syndicates.
 - (3) Appoint any producer without assuring that the producer is duly licensed to transact the type of reinsurance for which he is appointed.
 - (4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a 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.

- (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 the manager is under common control with the reinsurer under Article 19 of this Chapter.
- (7) Appoint a submanager. (1993, c. 452, s. 22.)

§ 58-9-20: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-9-21. Miscellaneous provisions.

(a) A reinsurer shall not engage the services of any person to act as a manager on its behalf unless the person is licensed under G.S. 58-9-6 or exempted under this Article.

(b) If a 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 manager. This opinion shall be in addition to any other required loss reserve certification.

(c) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall be given to an officer of the reinsurer who is not affiliated with the manager.

(d) Within 30 days after termination of a contract with a manager, the reinsurer shall provide written notification of the termination to the Commissioner.

(e) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling person, or subproducer of its manager. This Article does not apply to relationships governed by Article 19 of this Chapter or G.S. 58-3-165.

(f) An intermediary is subject to examination by the Commissioner. The Commissioner shall have access to all books, bank accounts, and records of an intermediary in a form usable to the Commissioner. A manager may be examined as if it were the reinsurer. (1993, c. 452, s. 23; 2001-223, s. 10.3.)

§ 58-9-22. Compliance with orders.

An intermediary shall comply with any order of a court of competent jurisdiction or a duly constituted arbitration panel requiring the production of nonprivileged documents by the intermediary or the testimony of an employee or other individual otherwise under the control of the intermediary with respect to any reinsurance transaction for which it acted as an intermediary. (2009-172, s. 1.)

§ 58-9-25: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-9-26. Sanctions.

(a) If the Commissioner determines that any person has not materially complied with this Article or with any rule adopted or order issued under this Article, after notice and opportunity to be heard, the Commissioner may order:

- (1) For each separate violation, a civil penalty under the procedures in G.S. 58-2-70(d); or
- (2) Revocation or suspension of the person's license.

If the Commissioner finds that because of a material noncompliance that an insurer or reinsurer has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the insurer or reinsurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer or reinsurer and its policyholders and creditors or for other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered under Article 30 of this Chapter, and the receiver appointed under that order determines that any person has not materially complied with this Article, or any rule adopted or order issued under this Article, and the insurer suffered any loss or damage from the material noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer. (1993, c. 452, s. 24.)

§ 58-9-30: Repealed by Session Laws 1993, c. 452, s. 65.