

TITLE 41
INSURANCE

CHAPTER 17
BUSINESS TRANSACTED WITH BROKER CONTROLLED INSURER

41-1701. SHORT TITLE. This chapter may be cited as the "Business Transacted with Broker Controlled Insurer Act."

[41-1701, added 1993, ch. 194, sec. 12, p. 502.]

41-1702. DEFINITIONS. As used in this chapter:

(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 (NAIC).

(2) "Broker" 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 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.

(3) "Control" or "controlled" has the meaning ascribed in section [41-3802](#)(2), Idaho Code.

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

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

(6) "Licensed insurer" or "insurer" means any person, firm, association or corporation duly licensed to transact a property/casualty insurance business in this state. 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 reauthorization act of 1986, P.L. 99-499, 100 Stat. 1613 (1986) and the risk retention act 15 U.S.C. section 3901 et seq. (1982 and supp. 1986) and [chapter 48, title 41](#), Idaho Code;

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

(c) All captive insurers. For purposes of this chapter, captive insurers are 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 and/or group members and their affiliates.

[41-1702, added 1993, ch. 194, sec. 12, p. 502; am. 2013, ch. 266, sec. 9, p. 683.]

41-1703. APPLICABILITY. This chapter shall apply to licensed insurers as defined in section [41-1702](#), Idaho Code, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of [chapter 38, title 41](#), Idaho Code, to the extent they are not superseded by this chapter, shall continue to ap-

ply to all parties within holding company systems subject to the provisions of this chapter.

[41-1703, added 1993, ch. 194, sec. 12, p. 503.]

41-1704. MINIMUM STANDARDS. (1) The provisions of this section:

(a) Shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurers' quarterly statement filed as of September 30 of the prior year.

(b) Notwithstanding paragraph (a) of this subsection, the provisions of this section shall not apply if:

(i) The controlling broker:

1. 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 such insurance; and

2. Accepts insurance placements only from nonaffiliated subbrokers, and not directly from insureds; and

(ii) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling broker, a broker controlled by a controlled insurer, or a broker that is a subsidiary of the controlled insurer.

(2) Required contract provisions. A controlled insurer shall not accept business from a controlling broker and a controlling broker shall not place business with a controlled insurer unless there is a written contract between the controlling broker and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of any dispute regarding the cause for the termination;

(b) The controlling broker 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 broker;

(c) The controlling broker 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 thereof collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under this contract;

(d) All funds collected for the controlled insurer's account shall be held by the controlling broker in a fiduciary capacity, in one (1) or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling broker not required to be licensed in this state shall be maintained in compliance

with the requirements of the controlling broker's domiciliary jurisdiction;

(e) The controlling broker shall maintain separately identifiable records of business written for the controlled insurer;

(f) The contract shall not be assigned in whole or in part by the controlling broker;

(g) The controlled insurer shall provide the controlling broker 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 broker 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 broker other than the controlling broker;

(h) The rates and terms of the controlling broker'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 brokers other than controlling brokers. For purposes of this subsection and subsection (2) (g) 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;

(i) If the contract provides that the controlling broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (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 subsection (4) (a) of this section;

(j) A limit on the controlling broker'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 broker when the applicable limit is approached and shall not accept business from the controlling broker if the limit is reached. The controlling broker shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(k) The controlling broker may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker 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 such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

(3) 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 director to review the adequacy of the insurer's loss reserves.

(4) 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 director an opinion of an independent casualty actuary (or such other independent loss reserve specialist acceptable to the director) 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 year-end (including incurred but not reported) on business placed by the broker; and

(b) The controlled insurer shall annually report to the director the amount of commissions paid to the broker, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling brokers for placements of the same kinds of insurance.

[41-1704, added 1993, ch. 194, sec. 12, p. 503.]

41-1705. DISCLOSURE. The broker, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the broker and the controlled insurer; except that, if the business is placed through a subbroker who is not a controlling broker, the controlling broker shall retain in his records a signed commitment from the subbroker that the subbroker is aware of the relationship between the insurer and the broker and that the subbroker has or will notify the insured.

[41-1705, added 1993, ch. 194, sec. 12, p. 506.]

41-1706. PENALTIES. (1) If the director believes that the controlling broker or any other person has not materially complied with the provisions of this chapter, or any regulation or order promulgated hereunder, after notice and opportunity to be heard, the director may order the controlling broker to cease placing business with the controlled insurer; and, if it was found that because of such material noncompliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the director 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 other appropriate relief.

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to [chapter 33, title 41](#), Idaho Code, and the receiver appointed under that order believes that the controlling broker or any other person has not materially complied with the provisions of 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.

(3) Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the insurance code.

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

[41-1706, added 1993, ch. 194, sec. 12, p. 506.]