

TITLE 41
INSURANCE

CHAPTER 15
MANAGING GENERAL AGENTS ACT

41-1501. SHORT TITLE. This chapter will be known and may be cited as the "Managing General Agents Act."

[41-1501, added 1991, ch. 293, sec. 1, p. 754.]

41-1502. DEFINITIONS. For the purposes of this chapter:

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

(2) "Insurer" means any person, firm, association or corporation duly licensed in this state as an insurance company pursuant to and acting consistent with the definitions provided in sections [41-103](#) and [41-112](#), Idaho Code.

(3) "Managing general agent" (MGA) means any person, firm, association or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office) and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five per cent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year together with one (1) or more of the following:

(a) Adjusts or pays claims in excess of an amount determined by the director, or

(b) Negotiates reinsurance on behalf of the insurer.

(4) Notwithstanding the above definition of MGA, the following persons shall not be considered as MGAs for the purposes of this chapter:

(a) An employee of the insurer;

(b) An United States manager of the United States branch of an alien insurer;

(c) An underwriting manager which, pursuant to contract, manages the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written;

(d) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(5) "Underwrite" means the authority to accept or reject risks on behalf of the insurer.

[41-1502, added 1991, ch. 293, sec. 1, p. 754.]

41-1503. LICENSURE. (1) No person, firm, association or corporation shall act in the capacity of a MGA with respect to risks located in this state for an insurer licensed in this state unless such person is a licensed agent in this state pursuant to the provisions of [chapter 10, title 41](#), Idaho Code.

(2) No person, firm, association or corporation shall act in the capacity of a MGA representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as an agent in this state pursuant to the provisions of [chapter 10, title 41](#), Idaho Code.

(3) Every MGA as defined in section [41-1502](#) (3), Idaho Code, shall be required to be bonded. The bond shall be in favor of the state to be held in trust for the benefit and protection of insureds and insurers whose money the MGA handles. The amount of the bond shall not be less than ten per cent (10%) of the amount of total funds handled, except that in no case shall such bond be less than five thousand dollars (\$5,000). For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the total funds handled by the MGA in the preceding year, or if no funds were handled during the preceding year, the amount of funds reasonably estimated to be handled during the current calendar year by the MGA. Only one (1) such bond shall be required of the MGA for all insurers which utilize the services of the MGA, unless provided otherwise in the written agreement between the insurer and the MGA or otherwise required by the director.

(4) The director may require the MGA to maintain an errors and omissions policy.

[41-1503, added 1991, ch. 293, sec. 1, p. 755.]

41-1504. REQUIRED CONTRACT PROVISIONS. No person, firm, association or corporation acting in the capacity of a MGA shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

(2) The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the MGA will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer and the director shall have access to all books, bank accounts and records of the MGA in a form usable to the director. Such records shall be retained for a minimum period of six (6) years.

(5) The contract may not be assigned in whole or part by the MGA.

(6) Appropriate underwriting guidelines including:

- (a) The maximum annual premium volume;
- (b) The basis of the rates to be charged;
- (c) The types of risks which may be written;
- (d) Maximum limits of liability;
- (e) Applicable exclusions;
- (f) Territorial limitations;
- (g) Policy cancellation provisions; and

(h) The maximum policy period.

Any cancellation or nonrenewal of any policy of insurance is subject to all applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies.

(7) If the contract permits the MGA to settle claims on behalf of the insurer:

(a) All claims must be reported to the company in a timely manner.

(b) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the director or exceeds the limit set by the company, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the MGA's claims settlement authority;

(iv) Is open for more than six (6) months; or

(v) Is closed by payment of an amount set by the director or an amount set by the company, whichever is less.

(c) All claims files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer such files shall become the sole property of the insurer or its estates. The MGA shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(8) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the MGA until one (1) year after they are earned for property insurance business and five (5) years after they are earned on casualty business and not until the profits have been verified pursuant to section [41-1505](#), Idaho Code.

(10) The MGA shall not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with whom such automatic agreements are in effect, the coverages and amounts of percentages that may be reinsured and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

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

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholders surplus as of December 31 of the last completed calendar year;

(e) Collect any payment from a reinsurer or commit the insurer to any claims settlement with a reinsurer without prior approval of the in-

surer. If prior approval is given, a report must be promptly forwarded to the insurer;

- (f) Permit its subagent to serve on the insurer's board of directors;
- (g) Jointly employ an individual who is employed with the insurer; or
- (h) Appoint a sub-MGA.

[41-1504, added 1991, ch. 293, sec. 1, p. 756.]

41-1505. DUTIES OF INSURERS. (1) The insurer shall have on file an independent financial examination, in a form acceptable to the director, of each MGA with whom it has done business.

(2) If a MGA establishes loss reserves, the insurer 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 MGA. This is in addition to any other required loss reserve certification.

(3) The insurer shall conduct an on-site review of the underwriting and claims processing operations of the MGA on a semiannual or more frequent basis.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(5) Within thirty (30) days of entering into or termination of a contract with a MGA, the insurer shall provide written notification of such appointment or termination to the director. Notices of appointment of a MGA shall include:

- (a) A statement of duties which the applicant is expected to perform on behalf of the insurer;
- (b) The lines of insurance for which the applicant is to be authorized to act; and
- (c) Any other information the director may request.

(6) An insurer shall review its books and records each quarter to determine if any agent has become, by operation of the provisions of section [41-1502](#) (3) and (4), Idaho Code, a MGA as defined in that section. If the insurer determines that an agent has become a MGA pursuant to the above, the insurer shall promptly notify the agent and the director of such determination and the insurer and agent must fully comply with the provisions of this chapter within thirty (30) days.

(7) An insurer shall not appoint to its board of directors an officer, director, employee, agent or controlling shareholder of its MGA. The provisions of this subsection shall not apply to relationships governed by [chapter 38, title 41](#), Idaho Code.

[41-1505, added 1991, ch. 293, sec. 1, p. 757.]

41-1506. EXAMINATION AUTHORITY. The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. A MGA may be examined pursuant to the insurance statutes and regulations as if it were the insurer.

[41-1506, added 1991, ch. 293, sec. 1, p. 758.]

41-1507. PENALTIES AND LIABILITIES. (1) If the director finds, after a hearing conducted in accordance with the insurance code and the regulations and procedures adopted by the Idaho department of insurance, that any

person, firm, association or corporation has violated any provision of this chapter, the director may order:

- (a) For each separate violation, a penalty in an amount not to exceed ten thousand dollars (\$10,000);
 - (b) Revocation or suspension of the agent's license; and
 - (c) The MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of the provisions of this chapter committed by the MGA.
- (2) Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the insurance statutes.
- (3) Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

[41-1507, added 1991, ch. 293, sec. 1, p. 758.]