

## Chapter 62.

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Subchapter 1.  
Definitions.

23-62-101. Definitions not mutually exclusive.

It is intended that certain insurance coverages may come within the definitions of two (2) or more kinds of insurance as defined in this subchapter and §§ 23-62-201, 23-62-202, 23-62-203, 23-62-204, 23-62-205, and 23-63-701, and the inclusion of the coverage within one (1) definition shall not exclude it as to any other kind of insurance within the definition of which that coverage is reasonably includable.

23-62-102. Life insurance.

- (a) As used in the Arkansas Insurance Code, unless the context otherwise requires, "life insurance" is insurance on human lives.
- (b) The transaction of life insurance includes also the granting of endowment benefits, benefits for expenses incurred in connection with death, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance.
- (c) Transaction of life insurance does not include workers' compensation, as defined in § 23-62-105(a)(3).

23-62-103. Accident and health insurance.

- (a) As used in the Arkansas Insurance Code, unless the context otherwise requires, "accident and health insurance" is insurance of human beings against bodily injury, disablement, or death by accident or accidental means or the expense thereof or against loss of income due to disablement or expense resulting from sickness and every insurance appertaining thereto.
- (b) Transaction of accident and health insurance does not include workers' compensation, as defined in § 23-62-105(a)(3).

23-62-104. Property insurance.

As used in the Arkansas Insurance Code, unless the context otherwise requires, "property insurance" is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause and against loss consequential upon the loss or damage, other than noncontractual legal liability for the loss or damage.

23-62-105. Casualty insurance.

- (a) As used in the Arkansas Insurance Code, unless the context otherwise requires, "casualty insurance" includes:
  - (1) Vehicle Insurance. Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being

loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of the vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;

(2) Liability Insurance. Insurance against legal liability for the death, injury, or disability of any human being or for damage to property and the provision of medical, hospital, surgical, disability, or accident and health benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(3) Workers' Compensation and Employer's Liability. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(4) Burglary and Theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation; or wrongful conversion, disposal, or concealment; or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(5) Personal Property Floater. Insurance upon personal effects against loss or damage from any cause under a personal property floater;

(6) Glass. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(7) Boiler and Machinery. Insurance against any liability and loss or damage to property or interest therein resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(8) Leakage and Fire Extinguishing Equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings and insurance against loss or damage to sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(9) Credit. Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(10) Malpractice. Insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of liability including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service. However, malpractice insurance shall not include abstractor's professional liability insurance;

- (11) Livestock. Insurance against loss or damage to livestock and for services of a veterinarian for those animals;
- (12) Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;
- (13) Elevator. Insurance against loss of or damage to any property of the insured resulting from the ownership, maintenance, or use of elevators, escalators, and moving stairways, except loss or damage by fire, and to make inspection of and issue certificates of inspection upon elevators, escalators, and moving stairways;
- (14) Abstractor's Professional Liability. Insurance against legal liability of the insured, and against loss, damage, or expense incidental to a claim of liability arising out of damage to the economic interest of any person as the result of negligence in rendering the professional service of an abstractor;
- (15) Miscellaneous. Insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this subchapter and §§ 23-62-201, 23-62-202, 23-62-204, 23-62-205, and 23-63-701 if that insurance is not disapproved by the Insurance Commissioner as being contrary to law or public policy.
- (b) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury as incidental to and part of other insurance as stated under subdivisions (a)(1), (2), (4), and (10) of this section shall for all purposes be deemed to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of the Arkansas Insurance Code applicable to life insurance or accident and health insurance.

#### 23-62-106. Surety insurance.

As used in the Arkansas Insurance Code, unless the context otherwise requires, "surety insurance" includes:

- (1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;
- (2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship; and
- (3) Insurance indemnifying banks, bankers, brokers, and financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while they are being transported in armored motor vehicles or by messenger, but not including any other risks of transportation or navigation; also, insurance against loss or damage to an insured's premises or to his or her furnishings, fixtures, equipment, safes and vaults therein caused by burglary, robbery, theft, vandalism, or malicious mischief, or any attempt thereof.

23-62-107. Marine insurance.

As used in the Arkansas Insurance Code, unless the context otherwise requires, "marine insurance" includes:

(1) Insurance against any and all kinds of loss or damage to:

(A) Vessels, craft, aircraft, cars, automobiles, and vehicles of every kind as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting shipment or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks;

(B) Person or property in connection with or appertaining to a marine, inland marine, transit, or transportation insurance, including liability for, loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of the insurance, but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance, or use of automobiles;

(C) Precious stones, jewels, jewelry, gold, silver, and other precious metals, whether used in business or trade or otherwise and whether they are in course of transportation or otherwise;

(D) Bridges, tunnels, and other instrumentalities of transportation and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion are the only hazards to be covered; piers, wharves, docks and ships, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks; and

(2) "Marine protection and indemnity insurance", meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage to the property of another person.

23-62-108. Title insurance.

As used in the Arkansas Insurance Code, unless the context otherwise requires, "title insurance" is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title.

23-62-109. Funding agreements.

(a)(1) As used in this section, the term "funding agreement" means an agreement which authorizes an admitted life insurer to accept funds and which provides for an accumulation of those funds for the purpose of making one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(2)(A) However, the term "funding agreement" does not include any agreement in connection with the funding of one (1) or more payments which are excludable from the gross income of the recipient under section 104(a)(2) of the Internal Revenue Code, as it may be amended or renumbered from time to time.

(B) The term "funding agreement" shall not be construed so as to include any annuity contract.

(b) An insurer authorized to deliver or issue for delivery annuity contracts in this state may deliver or issue for delivery one (1) or more funding agreements. Notwithstanding the definition of "contracts of insurance", "life insurance", and "endowment insurance" or of "annuities" within subtitle 3 of this title, the issuance or delivery of a funding agreement meeting the definition set forth in subsection (a) of this section shall constitute a lawful activity of that insurer which is reasonably related to and incidental to its insurance activities and constitutes doing an insurance business in this state.

(c)(1) Funding agreements may be issued to:

(A) Individuals;

(B) Entities authorized by this state to engage in an insurance business;

(C) Entities other than individuals and other than persons or entities authorized to engage in an insurance business, but only for the purpose of funding benefits under any employee benefit plan as defined in the Employee Retirement Income Security Act of 1974, as now or hereafter amended, maintained in the United States or in a foreign country;

(D) Fund any employee benefit plan or any other program sponsored by the Government of the United States, the government of any state or foreign country, or political subdivision thereof, or any agency thereof, and only if such agreement is issued in an amount of no less than five hundred thousand dollars (\$500,000); or

(E) Fund a program of an institution which has assets in excess of twenty-five million dollars (\$25,000,000).

(2) Otherwise, funding agreements may only be issued to any person or entity identified in this subsection, and in any sum, if the funding agreements are issued to fund an agreement providing for periodic payments in satisfaction of a claim and pursuant to order of a court of competent jurisdiction or a settlement agreement between the claimant and the putative or apparent obligor.

(d) No amounts shall be guaranteed or credited under a funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. The funding agreements shall not provide for payments to or by the insurer based on mortality or morbidity contingencies.

(e) Amounts paid to the insurer and proceeds applied under optional modes of settlement under the funding agreements may be allocated by the insurer to one (1) or more separate accounts pursuant to § 23-81-402, but only if the insurer has separately qualified to issue variable products and only if the policy owner has elected and directed the insurer to invest the moneys backing the funding agreement in variable accounts.

(f) Any and all funding agreements or guaranteed investment contracts issued prior to April 21, 1993, which do not meet the definition of "insurance", "life insurance", or "annuity" as hereinabove set forth are, nonetheless, valid obligations of the respective insurers which issue them according to the terms of the particular agreements.

(g)(1) All basic or generic funding agreement forms shall be submitted to the Insurance Commissioner for approval and pursuant to the procedures at § 23-79-109.

(2) The commissioner may adopt rules relating to:

(A) The standards to be followed in the approval of the forms of the funding agreements;

(B) The reserves to be maintained by insurers issuing the funding agreements;

(C) The accounting and reporting of funds credited under the funding agreements;

(D) The disclosure of information to be given to holders and prospective holders of the funding agreements; and

(E) The qualification and compensation of persons selling the funding agreements on behalf of insurers.

(h) Notwithstanding any other provision of law, the commissioner has sole authority to regulate the issuance and sale of the funding agreements, including the persons selling the funding agreements on behalf of insurers.

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## Subchapter 2.

### Reinsurance Generally.

#### 23-62-201. Exception.

This subchapter shall not apply to insurance of wet marine and foreign trade insurance risks.

#### 23-62-202. Limits of risk.

Any authorized insurer may accept reinsurance only of such risks, in this state, and retain risk thereon within such limits, as it is authorized to insure.

#### 23-62-203. Rules and regulations.

The Insurance Commissioner may adopt reasonable rules and regulations to implement the provisions of this subchapter.

#### 23-62-204. Allowance of credit.

No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

#### 23-62-205. Approval and notice of reinsurance.

- (a) Every insurer authorized to do business in the State of Arkansas, whether foreign, domestic, or alien, including, but not limited to, farmers' mutual aid associations or companies, reciprocal insurers, stipulated premium insurers, mutual assessment life and disability companies, and foreign fraternal benefit societies, shall petition the Insurance Commissioner for prior approval of any agreement of assumption reinsurance which provides for the ceding of Arkansas risks to an insurer not authorized to do business in this state.
- (b) After notice and hearing, the commissioner may approve the agreement for reinsurance if it is found:
- (1) That the agreement is fair and equitable and does not lessen or diminish any benefit to a policyholder which would have been provided by the ceding entity;
  - (2) That the agreement promotes the public interest and does not create a monopoly;
  - (3) That the agreement is not harmful to the best interests of the policyholders;
  - (4) That the agreement will not impair the financial condition of either the ceding insurer or the assuming insurer;
  - (5) That the assuming insurer is in sound financial condition; and
  - (6) That the assumption certificates, after being filed with and approved by the commissioner, shall be given to Arkansas policyholders affected by the agreement, provided, that notice to credit life and credit disability policyholders may be given to the creditor beneficiary of the credit life or credit disability policy.
- (c) The commissioner, in his or her sole discretion, may waive notice and hearing as to any agreement under subsection (b) of this section pursuant to written motion by any party to the agreement.
- (d)(1) Every insurer authorized to do business in the State of Arkansas, whether foreign, domestic, or alien, including, but not limited to, farmers' mutual aid associations or companies, reciprocal insurers, stipulated premium insurers, mutual assessment life and disability companies, and foreign fraternal benefit societies, shall file with the commissioner any agreement of assumption reinsurance which provides for the ceding of Arkansas risks to any insurer authorized to do business in this state. The agreement shall be deemed approved within thirty (30) days after the date filed.
- (2) This subsection shall not apply to any agreement for assumption reinsurance which cedes Arkansas risks if the assuming insurer is authorized to do business in this state and the transaction is approved by the state insurance regulator of the domiciliary state of the ceding insurer.
- (e) Any assumption certificates issued to Arkansas policyholders pursuant to assumption reinsurance agreements shall be filed with and approved by the commissioner prior to delivery to policyholders.
- (f) Domestic stock and domestic mutual insurers shall be exempt from the requirements of subsections (a)-(d) of this section, but shall comply with the provisions of §§ 23-69-149 and 23-69-150, respectively.
- (g) Domestic fraternal benefit societies shall be exempt from the requirements of subsections (a)-(d) of this section, but shall comply with the provisions of § 23-74-304.

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Subchapter 3.

Model Act for the Regulation of Reserves Ceded to Nonadmitted Reinsurers.

23-62-301. Title - Applicability.

- (a) This subchapter may be cited as "The Model Act for the Regulation of Reserves Ceded to Nonadmitted Reinsurers".
- (b) All reserves ceded to a nonadmitted reinsurer on life insurance and accident and health insurance written in this state shall be subject to the provisions of this subchapter.

23-62-302. Sections 23-62-201, 23-62-202, 23-62-204, and 23-62-205 applicable - Purpose - Construction.

- (a) Reinsurance of life and accident and health insurance risks by domestic and foreign insurance companies is regulated under the provisions of §§ 23-62-201, 23-62-202, 23-62-204, and 23-62-205.
- (b) The purpose of this subchapter is to promote the public welfare by regulating the reinsuring of risks located in this state with insurance companies not authorized to transact business in this state.
- (c)(1) Nothing in this subchapter is intended to prohibit or discourage reasonable competition or to prohibit or discourage the continued availability of insurance regulated by this subchapter.
- (2) The provisions of this subchapter shall be liberally construed.

23-62-303. Report of funds withheld under reinsurance treaties.

Deposits and funds withheld under reinsurance treaties shall be reported in the annual statement in the exhibit entitled "Special Deposits Not for the Protection of All Policyholders".

23-62-304. Agreement examination.

The Insurance Commissioner shall have the right to examine any of the reinsurance agreements or deposit arrangements of the ceding insurer at any time.

23-62-305. Credit allowed a domestic ceding insurer.

- (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of this subchapter.
- (b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.
- (c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:
  - (1) Files with the Insurance Commissioner evidence of its submission to this state's jurisdiction;
  - (2) Submits to this state's authority to examine its books and records;

(3) Is licensed to transact insurance or reinsurance in at least one (1) state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state; and

(4) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either:

(A) Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission; or

(B) Maintains a surplus as regards policyholders in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the commissioner.

(d) No credit shall be allowed a domestic ceding insurer, if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

(e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(1) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000); and

(2) Submits to the authority of this state to examine its books and records. Provided, however, that the requirement of subdivision (c)(1) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(f)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in § 23-62-307(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars (\$20,000,000). In the case of a group of incorporated and/or individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members, and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(2) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subdivision (f)(1) of this section and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ten billion dollars (\$10,000,000,000); the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain a joint trusteed surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(3) Such trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(4) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next-following December 31.

(g) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (a), (b), (c), or (d), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

(h) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (e) and (g) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1)(A) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

(B) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(2) This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

23-62-306. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.

(a) A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 23-62-305 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer, and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in § 23-62-307(b).

(b) This security may be in the form of:

(1) Cash;

(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in § 23-62-307(a), no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the Insurance Commissioner.

23-62-307. Qualified United States financial institutions.

(a) For purposes of this subchapter, a "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Insurance Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

- (1) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
- (2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

23-62-308. Rules and regulations.

The Insurance Commissioner may adopt rules and regulations implementing the provisions of §§ 23-62-303 - 23-62-307.

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Subchapter 4.  
Reinsurance Intermediary Act.

23-62-401. Short title.

This subchapter may be cited as the "Reinsurance Intermediary Act".

23-62-402. Definitions.

As used in this subchapter:

- (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, or corporation who directly or indirectly has the power to direct or cause to be directed the management, control, or activities of a 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 agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law;
- (5) "Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as these terms are defined in subdivisions (6) and (7) of this section;
- (6) "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;
- (7)(A) "Reinsurance intermediary manager" means any person, firm, association, or corporation who has authority to bind, or who 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 such a reinsurer whether known as a reinsurance intermediary manager, a manager, or other similar term.

(B) Notwithstanding the above, the following persons shall not be considered reinsurance intermediary managers, with respect to such a reinsurer, for the purposes of this subchapter:

- (i) An employee of the reinsurer;
  - (ii) A United States manager of the United States branch of an alien reinsurer;
  - (iii) An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and whose compensation is not based on the volume of premiums written; and
  - (iv) The manager of a group, association, pool, or organization of insurers which engages in joint underwriting or joint reinsurance and which is subject to examination by the insurance commissioner of the state in which the manager's principal business office is located;
- (8) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance; and
- (9) "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 subchapter.

#### 23-62-403. Qualified United States financial institutions.

For purposes of this subchapter, a "qualified United States financial institution" means an institution that:

- (1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
- (2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the Insurance Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

#### 23-62-404. Licensure.

(a) No person, firm, association, or corporation shall 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 as an officer, director, or employee of a corporation:

- (1) In this state, unless the reinsurance intermediary broker is a licensed producer in this state; or
- (2) In another state, unless the reinsurance intermediary broker is a licensed producer in this state or the reinsurance intermediary broker is licensed in this state as a nonresident reinsurance intermediary.

(b) No person, firm, association, or corporation shall act as a reinsurance intermediary manager:

(1) For a reinsurer domiciled in this state, unless the reinsurance intermediary manager is a licensed producer in this state;

(2) 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; and

(3) In another state for a nondomestic insurer, unless the reinsurance intermediary manager is a licensed producer in this state or the person is licensed in this state as a nonresident reinsurance intermediary.

(c) The Insurance Commissioner may require a reinsurance intermediary manager subject to subsection (b) of this section to:

(1) File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(d)(1)(A) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation who has complied with the requirements of this subchapter.

(B) 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 shall be named in the application and any supplements thereto.

(C) Any such license issued to a corporation shall 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 shall be named in the application and any supplements thereto.

(2)(A) 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 subchapter for designation of service of process upon unauthorized insurers; and also 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 reinsurance intermediary may be served.

(B) The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the change shall not become effective until acknowledged by the commissioner.

(e)(1) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her 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 one (1) 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 the license.

(2) Upon written request therefor, the commissioner will furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(f) Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section.

23-62-405. Required contract provisions - Reinsurance intermediary brokers.

(a) Transactions between a reinsurance intermediary broker and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party.

(b) The authorization shall, at a minimum, provide 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 (30) 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 in § 23-62-403;

(4) The reinsurance intermediary broker will comply with § 23-62-406;

(5) The reinsurance intermediary broker will comply with the written standards established by the insurer for the cession or retrocession of all risks; and

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

23-62-406. Books and records - Reinsurance intermediary brokers.

(a) For at least ten (10) 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:

(1) The type of contract, limits, underwriting restrictions, classes or risks, and territory;

(2) The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;

(3) The reporting and settlement requirements of balances;

(4) The rate used to compute the reinsurance premium;

(5) The names and addresses of assuming reinsurers;

(6) The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary broker;

(7) Related correspondence and memoranda;

(8) Proof of placement;

(9) Details regarding retrocessions handled by the reinsurance intermediary broker, including the identity of retrocessionaires and the percentage of each contract assumed or ceded;

- (10) Financial records, including, but not limited to, premium and loss accounts; and
- (11) When the reinsurance intermediary broker procures a reinsurance contract on behalf of a licensed ceding insurer:
  - (A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
  - (B) 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) The insurer will have access to 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.

23-62-407. Duties of insurers utilizing the services of a reinsurance intermediary broker.

- (a) An insurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary broker on its behalf unless the person is licensed as required by § 23-62-404.
- (b) 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 the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.
- (c) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary broker with which it transacts business.

23-62-408. Required contract provisions - Reinsurance intermediary managers.

- (a) Transactions between a reinsurance intermediary manager and the reinsurer it represents in such capacity 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.
- (b) At least thirty (30) days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract shall be filed with the Insurance Commissioner for approval.
- (c) The contract shall, at a minimum, contain provisions that:
  - (1)(A) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary manager.
  - (B) 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)(A) 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 in § 23-62-403.

(B) The reinsurance intermediary manager may retain no more than three (3) months' estimated claims payments and allocated loss adjustment expenses.

(C) The reinsurance intermediary manager shall maintain a separate bank account for each reinsurer that it represents;

(4) For at least ten (10) 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) The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(C) The reporting and settlement requirements of balances;

(D) The rate used to compute the reinsurance premium;

(E) The names and addresses of reinsurers;

(F) The rates 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 § 23-62-410(d), including the identity of retrocessionaires and the percentage of each contract assumed or ceded;

(J) Financial records, including, but not limited to, premium and loss accounts; and

(K) When the reinsurance intermediary manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) 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 to 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:

- (i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
  - (ii) Involves a coverage dispute;
  - (iii) May exceed the reinsurance intermediary manager's claims settlement authority;
  - (iv) Is open for more than six (6) months; or
  - (v) 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 the reinsurance intermediary manager. However, upon an order of liquidation of the reinsurer the files shall 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; and
- (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, then the interim profits will not be paid until one (1) year after the end of each underwriting period for property business and five (5) 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 § 23-62-410(c);
- (11) The reinsurance intermediary manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;
- (12) The reinsurer shall periodically, at least semiannually, conduct an on-site 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 the contract; and
- (14) The acts of the reinsurance intermediary manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

#### 23-62-409. Prohibited acts.

The reinsurance intermediary manager shall not:

- (1)(A) 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.
- (B) 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 lawfully licensed to transact the type of reinsurance for which he or she 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 (1%) of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;
- (5)(A) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer.
- (B) 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; or
- (7) Appoint a reinsurance intermediary submanager.

23-62-410. Duties of reinsurers utilizing the services of a reinsurance intermediary manager.

- (a) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary manager on its behalf unless the person is licensed as required by § 23-62-404.
- (b) 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 accountant in a form acceptable to the Insurance Commissioner.
- (c)(1) 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.
- (2) This opinion shall be in addition to any other required loss reserve certification.
- (d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with a reinsurance intermediary manager.
- (e) Within thirty (30) days of termination of a contract with a reinsurance intermediary manager, the reinsurer shall provide written notification of the termination to the commissioner.
- (f)(1) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary manager.
- (2) This subsection shall not apply to relationships governed by the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.

23-62-411. Examination authority.

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

23-62-412. Penalties and liabilities.

- (a) A reinsurance intermediary, insurer, or reinsurer found by the Insurance Commissioner, after a hearing conducted in accordance with §§ 23-61-301 - 23-61-307, to be in violation of any provision of this subchapter shall:
- (1) For each separate violation, pay a penalty in an amount not exceeding five thousand dollars (\$5,000);
  - (2) Be subject to revocation or suspension of its license; and
  - (3) If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.
- (b) The decision, determination, or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to § 23-61-307.
- (c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in the insurance law.
- (d) Nothing contained in this subchapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties, or confer any rights to those persons.

23-62-413. Rules and regulations.

The Insurance Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this subchapter.