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CHAPTER 44.

MANAGING GENERAL AGENTS ACT

SECTION 38-44-10. Short title.

This chapter may be cited as the “Managing General Agents Act”.

SECTION 38-44-20. Definitions.

As used in this chapter:

- (1) “Actuary” means a person who is a member in good standing of the American Academy of Actuaries.
- (2) “Insurer” means a domestic insurer as defined in Section 38-1-20(17).
- (3)(a) “Managing general agent”, MGA, means a person who:
 - (i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office; and
 - (ii) acts as an agent for the insurer whether known as a MGA, a manager, or another 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 percent of the policyholder surplus as reported in the last annual statement of the insurer in one quarter or year with one or both of the following activities related to the business produced:
 - a. adjusts or pays claims in excess of five thousand dollars;
 - b. negotiates ceding reinsurance contracts on behalf of the insurer.
- (b) Notwithstanding subitem (a), the following are not considered as MGA’s for the purposes of this chapter:
 - (i) an employee of the insurer;
 - (ii) a United States manager of the United States branch of an alien insurer;
 - (iii) an underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, and is subject to the Insurance Holding Company Regulatory Act and whose compensation is not based on the volume of premiums written;
 - (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney;
- (4) “Underwrite” means the authority to accept or reject risk on behalf of the insurer.

SECTION 38-44-30. License required to act as managing general agent; bond requirements.

- (A) No person may act in the capacity of a MGA with respect to risks located in this State for an insurer licensed in South Carolina unless the person is licensed as an agent for that insurer in this State.
- (B) No person may act in the capacity of a MGA representing an insurer domiciled in this State with respect to risks located outside South Carolina unless the person is licensed properly as an agent or broker in that state and licensed as an insurance agent in this State for that insurer. The license may be a nonresident license.
- (C) For the protection of the insurer, the director or his designee shall require the MGA to obtain a bond of fifty thousand dollars for each insurer represented.

SECTION 38-44-40. Contract required for managing general agent to place business with insurer; minimum provisions of contract.

No person acting in the capacity of a MGA may place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party with both parties

sharing responsibility for a particular function, specifies the division of responsibilities, and 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 a dispute regarding the cause for termination. If the contract is terminated or the MGA's underwriting authority is suspended, notification must be given by the insurer within thirty days of the action to agents or brokers who have placed business with the MGA within the last twelve months.

(2) The MGA shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer within thirty days.

(3) All funds collected for the account of an insurer must be held by the MGA in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account must be used for all payments on behalf of the insurer. The MGA may retain no more than ninety days estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the MGA must be maintained. The insurer must have access to and the right to copy all accounts and records related to its business in a form usable by the insurer. The director or his designee must have access to all books, bank accounts, and records of the MGA in a form usable to the director or his designee. The records must be retained according to Section 38-43-250.

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

(6) Appropriate underwriting guidelines must be included such as:

(a) maximum annual premium volume;

(b) basis of the rates to be charged;

(c) types of risks which may be written;

(d) maximum limits of liability;

(e) applicable exclusions;

(f) territorial limitations;

(g) policy cancellation provisions;

(h) maximum policy period.

(7) The insurer must have the right to cancel or not renew a policy of insurance subject to the applicable laws and regulations.

(8) 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 must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed five thousand dollars 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 months; or

(v) is closed by payment of five thousand dollars or an amount set by the company, whichever is less.

(c) All claim files are the joint property of the insurer and the MGA. However, upon an order of liquidation of the insurer the files become the sole property of the insurer or its estate. The MGA must have reasonable access to and the right to copy the files on a timely basis.

(d) 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 a dispute regarding the cause for termination. If a contract is terminated or the MGA's settlement authority is suspended, notification must be given by the insurer within thirty days of the action to agents or brokers who have placed business with the MGA within the last twelve months.

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

(10) 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 another manner, interim profits must not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to Section 38-44-50.

(11) The MGA may not:

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

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

(c) appoint an agent without assuring that the agent is licensed lawfully 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 five thousand dollars, net of reinsurance, or one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year, whichever is less;

(e) collect payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report must be forwarded promptly to the insurer;

(f) permit its agent to serve on the insurer's board of directors;

(g) jointly employ an individual who is employed with the insurer;

(h) appoint a sub-MGA.

SECTION 38-44-50. Examination and review of managing general agent by insurer; authority to assume insurance contracts or syndicates rests with insurer; notice of entering into or terminating contract with managing general agent; review of agents of insurer to determine if agents have become managing general agents; appointment of managing general agent to board of directors of insurer prohibited.

(A) The insurer shall file annually with the department not later than March 1 an annual independent financial examination of each MGA with which it has done business, prepared by a certified public accountant in a form acceptable to the director or his designee.

(B) If a MGA establishes loss reserves, the insurer annually shall 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. The opinion must be filed not later than March 1. This is in addition to other required loss reserve certification.

(C) The insurer at least semi-annually by July 31 and December 31 shall conduct an on-site review of the underwriting and claims processing operations of the MGA.

(D) Binding authority for all assumed reinsurance contracts or participation in insurance or reinsurance syndicates rests with an officer of the insurer who must not be affiliated with the MGA.

(E) Within thirty days of entering into or termination of a contract with a MGA the insurer shall provide written notification of the appointment or termination to the department. Notices of appointment of a MGA must include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and other information the director or his designee may request. If the contract is terminated, notification must be given by the insurer within thirty days of the action to agents or brokers who have placed business with the MGA within the last twelve months.

(F) An insurer shall review its books and records each quarter to determine if an agent, as defined by Section 38-44-20(3), has become, by operation of that section, a MGA. If the insurer determines that an agent has become a MGA, the insurer promptly shall notify the agent and the department of the determination, and the insurer and agent shall comply fully with this chapter within thirty days.

(G) An insurer may not appoint to its board of directors an officer, a director, an employee, an agent, or a broker or a controlling shareholder of its MGA's. This subsection does not apply to relationships governed by the Insurance Holding Company Regulatory Act or, if applicable, Section 38-21-95.

SECTION 38-44-60. Acts of managing general agent as acts of insurer; managing general agent examined as insurer.

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 as if it were the insurer.

SECTION 38-44-70. Penalties for violations of chapter; judicial review; imposition of other penalties not affected; rights of policyholders, claimants, and auditors not affected.

(A) If the director or his designee finds after a hearing conducted in accordance with Insurance Department Regulation 69-31 that a person has violated this chapter, the director or his designee may order:

- (1) for each separate violation, a penalty as provided in Section 38-2-10;
- (2) revocation or suspension of the agent's license of the MGA;
- (3) the MGA to reimburse the insurer, the rehabilitator, or liquidator of the insurer for losses incurred by the insurer caused by a violation of this chapter committed by the MGA.

(B) The decision, determination, or order of the director or his designee pursuant to subsection (A) is subject to judicial review pursuant to Section 38-3-210, and the Administrative Procedures Act before the Administrative Law Judge Division.

(C) Nothing contained in this section affects the right of the director or his designee to impose other penalties in Title 38.

(D) Nothing contained in this chapter limits or restricts the rights of policyholders, claimants, and auditors.

SECTION 38-44-80. Authority to promulgate regulations

The department may promulgate reasonable regulations for the implementation and administration of this chapter.