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## INSURANCE CODE - INS

**DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8]** ( *Division 1 enacted by Stats. 1935, Ch. 145.*  )

**PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8]** ( *Part 2 enacted by Stats. 1935, Ch. 145.*  )

**CHAPTER 1. General Regulations [680 - 1113]** ( *Chapter 1 enacted by Stats. 1935, Ch. 145.*  )

**ARTICLE 5.3. Agents and Brokers [769 - 769.56]** ( *Article 5.3 added by Stats. 1986, Ch. 781, Sec. 1.*  )

**769.** (a) After a written agency or written brokerage contract, where the broker-agent represents the insurer, has been in effect for at least one year, it shall not be terminated or amended by an insurer, except by mutual agreement, unless 120 days' advance written notice has been given by the insurer to the broker-agent.

(b) The advance notice required by this section does not apply if the broker-agent has done any of the following:

- (1) Exceeded his or her binding authority under the agency or brokerage contract.
- (2) Violated the written underwriting rules or regulations of the insurer, a copy of which has been provided to the broker-agent, which misleads the insurer concerning the nature or extent of a risk.
- (3) Failed to comply with the fiduciary requirements set forth in Section 1733, 1734, 1734.5, or 1735.
- (4) Failed, either within 10 days after written notice upon failure to remit funds within the time limits set forth in the agency or brokerage contract or within 30 days after written demand if the agency or brokerage contract does not set forth time limits, to remit funds due and owing to the insurer.
- (5) Had his or her license suspended or revoked by the commissioner.
- (6) Engaged in fraudulent acts affecting his or her relationship with the insurer or its insureds.
- (7) Transferred ownership, control, or servicing of policies written with the insurer to another insurer, or to an entity directly or indirectly owned or controlled by an insurer or to an entity directly or indirectly owning or controlling an insurer.

(c) When a broker-agent's contract is terminated as provided by this section, the rights, duties, and obligations set forth in the terminated contract of the broker-agent having property rights in renewals shall continue solely with respect to policies then in force or renewed as provided by this section until those policies are canceled in accordance with law, placed by the broker-agent with another insurer, or have expired. The broker-agent's authority during the period following notice of termination of his or her contract shall be governed by the written contract between the broker-agent and the insurer, except that, after the receipt of the notice of termination, the broker-agent shall not bind new risks on behalf of the insurer, renew policies except as permitted by this section, or otherwise increase the obligation of the insurer, without the express approval of the insurer or in accordance with the terms of an existing policy.

(d) If a terminated broker-agent is unable, after making a good faith effort, to place existing policies with another insurer, the insurer then insuring the risk shall, at the broker-agent's request, renew any insurance contract written by the broker-agent for the insurer for one policy term or a period of one year, whichever is shorter. Where the insurer is prohibited by subdivision (c) of Section 1861.03 from nonrenewing the risk, the insurer shall continue to compensate the broker-agent for servicing the policies written by the insurer prior to termination of the broker-agent relationship until the insurer can cancel or nonrenew the policyholder pursuant to statute or the broker-agent moves the policyholder to another insurer but, in no event, shall the insurer's obligation to compensate the broker-agent exceed three years after termination of the broker-agent's contract, unless otherwise provided by terms of the contract. The renewal shall be at the insurer's premium rates in effect on the date of renewal and at prevailing commission rates for that class or line of business in effect on the date of renewal for broker-agents whose contracts are not terminated. An insurer shall not be precluded from paying a commission to a terminated broker-agent pursuant to this section at a level the insurer is paying at the time

it provides notice to the broker-agent that it is terminating the contract or as set forth in the written agreement, providing that there has not been any unilateral change in the commission paid by the insurer within 180 days of the notice of the broker-agent's termination. An insurer shall be allowed to subtract from the three-year time period provided to a broker-agent upon termination, the time period that elapsed during which the broker-agent is involved in a rehabilitation program with an insurer.

(e) (1) Notwithstanding any other provision of this section, no insurer shall be required to renew any policy of insurance or compensate a terminated broker-agent pursuant to the provisions of this section if any of the following apply:

(A) The broker-agent is no longer the broker-agent of record with respect to the policy, or the broker-agent has transferred ownership, control, or servicing of policies written with the insurer to another insurer or an entity owned or controlled, directly or indirectly, by another insurer or to an entity owning or controlling, directly or indirectly, another insurer.

(B) The broker-agent has died or has become unable to conduct his or her business affairs.

(C) The broker-agent has failed, either within 10 days after written demand upon failure to remit funds within the time limits set forth in the agency or brokerage contract or within 30 days after written demand if the agency or brokerage contract does not set forth time limits, to remit funds due and owing to the insurer.

(D) The broker-agent has failed to follow the written instructions of the insurer, a copy of which has been provided to the broker-agent, generally applicable to the renewal of policies.

(E) The commissioner has determined that the renewal of the policy would threaten the solvency of the insurer.

(F) The insurer suffers the withdrawal of reinsurance covering all or part of the risk and this withdrawal of reinsurance is likely to threaten, in the opinion of the commissioner, the financial integrity or solvency of the insurer.

(G) The insurer has withdrawn from the State of California in accordance with Sections 1070 to 1076, inclusive.

(2) Nothing in this subdivision shall be construed to authorize the nonrenewal of a good driver discount policy as defined and issued pursuant to the provisions of Sections 1861.02, 1861.025, and 1861.03.

(f) This section shall not apply to a life insurer, an agent of a life insurer, a disability insurer, a nonprofit hospital service plan, an agent of a disability insurer or nonprofit hospital service plan, an agent who is the employee of an insurer, or to an agent who, by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to other insurers.

(g) This section does not apply to any management contract of a managing general agent as defined in Section 1735, but it shall continue to apply to any agency or brokerage contract of a managing general agent or any portion of a management contract authorizing a managing general agent to act in his or her capacity as an insurance agent as defined in Section 1621, or an insurance broker as defined in Section 1623.

(h) (1) For purposes of this section, a "rehabilitation program" shall include, but not be limited to, all of the following:

(A) Written communication to the broker-agent outlining the fact that the broker-agent is on rehabilitation status.

(B) Identification by the company of problem areas.

(C) Mutual agreement on performance objectives and specific dates for accomplishment.

(D) Length of rehabilitation plan to be negotiated, but not less than six months.

(2) For purposes of subdivision (d), a good faith effort is satisfied by a terminated broker-agent who markets his or her book of business to other insurers that underwrite the same or similar lines of insurance, consistent with the interests of the policyholders. An insurer who terminates a broker-agent shall be entitled to be informed of the marketing activity and to obtain copies of any correspondence reflecting these efforts. However, nothing in this section shall be interpreted to allow the insurer to require the terminated broker-agent to obtain written rejections of an agency appointment from other insurers, or written rejections from individual policyholders.

(i) An insurer that takes action, other than terminating the written agency or brokerage contract, solely for the purpose of avoiding the provisions of subdivision (a) shall be required to extend existing policies pursuant to the applicable provision of subdivision (d) if both of the following apply:

(1) The action is designed to impact only a specific agency or agencies and the business produced by them.

(2) The action results in the cancellation or nonrenewal of substantially all of the agency's or agencies' business.

(j) This section shall apply to written agency contracts becoming effective on or after January 1, 1987. The amendments to this section by the act adding this sentence also apply to any written agency contract amended after January 1, 1988.

(k) The amendments to this section made by the act adding this subdivision shall apply to any written brokerage contract becoming effective, or amended, on or after January 1, 1996.

*(Amended by Stats. 1999, Ch. 753, Sec. 1. Effective January 1, 2000.)*

**769.1.** A commission payable to a broker-agent shall be at the rate and in accordance with the terms agreed to in writing between the insurer and the broker-agent. There is a rebuttable presumption that a commission is lawful if it complies with the requirements of subdivisions (c) and (d) of Section 769 and subdivision (a) of Section 1861.16 and if it is paid in accordance with the written agreement. The written agreement shall be consistent with Part 2 (commencing with Section 1549) of Division 3 of the Civil Code. The presumption established by this section is a presumption affecting the burden of producing evidence. This section applies to a written agreement entered into or modified on or after January 1, 2019.

*(Added by Stats. 2018, Ch. 879, Sec. 1. (AB 2844) Effective January 1, 2019.)*

**769.2.** (a) In determining the amount of an insurer's rollback obligation pursuant to Section 1861.01 or any regulations promulgated to implement this section, each insurer shall be given full credit for all premium taxes, commissions, and brokerage expenses that the insurer actually paid during the rollback period. No insurer shall be required or permitted to seek, directly or indirectly, reimbursement from the state of any premium taxes paid on premiums earned during the rollback period or reimbursement from any employee or third-party contractor of an insurer of any compensation paid to them for services rendered during the rollback period.

(b) The provisions of this section and the findings and declarations in support thereof take effect immediately upon enactment and apply to any order, settlement agreement, consent decree, or any other resolution of an insurer's rollback obligation pursuant to Section 1861.01 that occurs after the effective date of this section.

(c) Nothing in this section shall be deemed in any regulatory or judicial proceeding or for any other purpose to constitute legislative intent to endorse or approve any regulations on the issue of Proposition 103 rollback refunds.

*(Repealed and added by Stats. 1993, Ch. 1248, Sec. 3. Effective October 11, 1993.)*

**769.55.** (a) Notwithstanding any other provision of this code, for the purposes of Chapter 6 (commencing with Section 520) through Chapter 11 (commencing with Section 675), inclusive of Part 1 of Division 1, the obligation of an insurer to furnish any notice to its insured required by law may be carried out by an insurer's general agent, provided, however, that an insurer's delegation of a notice obligation to a general agent shall not limit or negate the insurer's responsibility or liability if the general agent fails to provide the required notice.

(b) As used in this section, "general agent" means an individual licensed as a property broker-agent and licensed as a casualty broker-agent who, pursuant to a written contract with an admitted insurer, manages the transaction of one or more classes of insurance written by the insurer and has the power to (1) appoint, supervise, and terminate local agents, (2) accept or decline risks, and (3) collect premium moneys from producing broker-agents.

(c) Nothing in this section shall provide an exemption from Article 5.4 (commencing with Section 769.80) to any property broker-agent and casualty broker-agent who is otherwise subject to that article.

*(Amended by Stats. 2011, Ch. 411, Sec. 4. (AB 1416) Effective January 1, 2012.)*

**769.56.** (a) A material change made by a health insurer, as defined in subdivision (b) of Section 106, to the terms and conditions of a contract between the health insurer and a life and accident and health or sickness agent shall not become effective until the health insurer has delivered to the life and accident and health or sickness agent, at least 45 days prior to the effective date of the change, written or electronic notice indicating the change or changes to the contract. For purposes of this section, a "material change" is a change made to a provision of the contract affecting any of the following:

(1) Commissions, bonuses, and incentives paid to the life and accident and health or sickness agent.

(2) Right of survivorship.

(3) Indemnification of the life and accident and health or sickness agent by the health insurer.

(4) Errors and omissions coverage requirements for the life and accident and health or sickness agent.

(b) Subdivision (a) shall not apply under either of the following circumstances:

(1) The change to the contract is mutually agreed upon by the health insurer and the life and accident and health or sickness agent.

(2) The change to the contract is required by state or federal law.

