



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code: Section:

[Up^](#) [Add To My Favorites](#)

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 2. Incorporated Insurers [1140 - 1260] (*Chapter 2 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 4.8. Business Transacted with Producer Controlled Insurer [1216 - 1216.6] (*Article 4.8 added by Stats. 1992, Ch. 614, Sec. 7.*)

1216. This article may be cited as the Business Transacted with Producer Controlled Insurer Act.

(*Added by Stats. 1992, Ch. 614, Sec. 7. Effective January 1, 1993.*)

1216.1. As used in this article, the following terms have the following meanings:

(a) "Accredited state" means a state in which the insurance department or regulatory agency having jurisdiction over the business of insurance has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners' (NAIC) Financial Regulation Standards and Accreditation Program.

(b) "Control" or "controlled" has the meaning ascribed in Section 1215.

(c) "Controlled insurer" means an admitted insurer which is controlled, directly or indirectly, by a producer.

(d) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(e) "Admitted insurer" or "insurer" means any person, firm, association, or corporation admitted to transact any property or casualty insurance business in this state. The following are not insurers for the purposes of this article:

(1) All residual market pools and joint underwriting authorities or associations.

(2) All captive insurers, other than risk retention groups as defined in the federal Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sec. 9671), the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.), and the California Risk Retention Act of 1991 (Chapter 1.5 (commencing with Section 125) of Part 1). For the purposes of this article, captive insurers are either insurance companies which are owned by another organization and whose exclusive purpose is to insure risks of the parent organization and affiliated companies, or in the case of groups and associations, insurance organizations which are owned by the insureds and whose exclusive purpose is to insure risks of member organizations and group or association members and their affiliates.

(f) "Producer" means a fire and casualty licensee or licensees or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

(*Amended by Stats. 2014, Ch. 71, Sec. 99. (SB 1304) Effective January 1, 2015.*)

1216.2. This article shall apply to insurers as defined in subdivision (e) of Section 1216.1, either domiciled in this state or domiciled in a state that is not an accredited state which has in effect a substantially similar law. All provisions of Article 4.7 (commencing with Section 1215) of Chapter 2 of Part 2 of Division 1, to the extent that this article does not confer greater authority upon the commissioner or impose more restrictive requirements upon any person, shall continue to apply to all parties within insurance holding company systems which are subject both to Article 4.7 and to this article.

(*Added by Stats. 1992, Ch. 614, Sec. 7. Effective January 1, 1993.*)

1216.3. (a) (1) The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium of business placed with a controlled insurer by a controlling producer is equal to or greater than 5 percent of the admitted assets of the

controlled insurer, as reported in the controlled insurers' quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding paragraph (1) of subdivision (a), the provisions of this section shall not apply if:

(A) The controlling producer both (i) places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with that insurance; and (ii) accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds.

(B) The controlled insurer, except for insurance business written through a residual market facility such as the California Automobile Assigned Risk Plan, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

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

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

(2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

(3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract.

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract shall not be assigned in whole or in part by the controlling producer.

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(8) The rates and terms of the controlling producer's commissions, charges or other fees, and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph (7), examples of "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then this compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to paragraph (1) of subdivision (d).

(10) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(11) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines

including, for both reinsurance assumed and ceded, a list of reinsurers with which those automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

(c) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary, or other independent loss reserve specialist acceptable to the commissioner, to review the adequacy of the insurer's loss reserves.

(d) (1) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or other independent loss reserve specialist, acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of yearend, including incurred but not reported losses, on business placed by the producer.

(2) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage the amount represents of the net premiums written and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

(Added by Stats. 1992, Ch. 614, Sec. 7. Effective January 1, 1993.)

1216.4. The controlling producer shall, prior to the effective date of the policy, deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in its records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured of the relationship between the controlling producer and the controlled insurer.

(Added by Stats. 1992, Ch. 614, Sec. 7. Effective January 1, 1993.)

1216.5. (a) (1) If the commissioner believes that the controlling producer or any other person has not materially complied with this article, or any regulation or order issued or promulgated pursuant to this article, and after notice and an opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer.

(2) If the commissioner finds that because of any material noncompliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may bring a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(3) Nothing in paragraph (1) shall be construed to limit any authority granted to the commissioner by any other provision of law to issue orders or take actions prior to the holding of a hearing.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this article, or any regulation or order issued or promulgated pursuant to this article, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties authorized by any other provision of law.

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

(Added by Stats. 1992, Ch. 614, Sec. 7. Effective January 1, 1993.)

1216.6. Controlled insurers and controlling producers who are not in compliance with Section 1216.3 of this act on its effective date shall have 60 days to do so and shall comply with Section 1216.4 beginning with all policies written or renewed on or after March 1, 1993.

(Added by Stats. 1992, Ch. 614, Sec. 7. Effective January 1, 1993.)