

SB0748



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0748

Introduced 2/8/2007, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

215 ILCS 5/141a

from Ch. 73, par. 753a

Amends the Illinois Insurance Code. Makes a technical change in a Section concerning managing general agents.

LRB095 10056 KBJ 30270 b

A BILL FOR

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 141a as follows:

6 (215 ILCS 5/141a) (from Ch. 73, par. 753a)

7 Sec. 141a. Managing general agents and retrospective
8 compensation agreements.

9 (a) As used in this ~~this~~ Section, the following terms have
10 the following meanings:

11 "Actuary" means a person who is a member in good standing
12 of the American Academy of Actuaries.

13 "Gross direct written premium" means direct premium
14 including policy and membership fees, net of returns and
15 cancellations, and prior to any cessions.

16 "Insurer" means any person duly licensed in this State as
17 an insurance company pursuant to Articles II, III, III 1/2, IV,
18 V, VI, and XVII of this Code.

19 "Managing general agent" means any person, firm,
20 association, or corporation, either separately or together
21 with affiliates, that:

22 (1) manages all or part of the insurance business of an
23 insurer (including the management of a separate division,

1 department, or underwriting office), and

2 (2) acts as an agent for the insurer whether known as a
3 managing general agent, manager, or other similar term, and

4 (3) with or without the authority produces, directly or
5 indirectly, and underwrites:

6 (A) within any one calendar quarter, an amount of
7 gross direct written premium equal to or more than 5%
8 of the policyholders' surplus as reported in the
9 insurer's last annual statement, or

10 (B) within any one calendar year, an amount of
11 gross direct written premium equal to or more than 8%
12 of the policyholders' surplus as reported in the
13 insurer's last annual statement, and either

14 (4) has the authority to bind the company in settlement
15 of individual claims in amounts in excess of \$500, or

16 (5) has the authority to negotiate reinsurance on
17 behalf of the insurer.

18 Notwithstanding the provisions of items (1) through (5),
19 the following persons shall not be considered to be managing
20 general agents for the purposes of this Code:

21 (1) An employee of the insurer;

22 (2) A U.S. manager of the United States branch of an
23 alien insurer;

24 (3) An underwriting manager who, pursuant to a contract
25 meeting the standards of Section 141.1 manages all or part
26 of the insurance operations of the insurer, is affiliated

1 with the insurer, subject to Article VIII 1/2, and whose
2 compensation is not based on the volume of premiums
3 written;

4 (4) The attorney or the attorney in fact authorized and
5 acting for or on behalf of the subscriber policyholders of
6 a reciprocal or inter-insurance exchange, under the terms
7 of the subscription agreement, power of attorney, or policy
8 of insurance or the attorney in fact for any Lloyds
9 organization licensed in this State.

10 "Retrospective compensation agreement" means any
11 arrangement, agreement, or contract having as its purpose the
12 actual or constructive retention by the insurer of a fixed
13 proportion of the gross premiums, with the balance of the
14 premiums, retained actually or constructively by the agent or
15 the producer of the business, who assumes to pay therefrom all
16 losses, all subordinate commission, loss adjustment expenses,
17 and his profit, if any, with other provisions of the
18 arrangement, agreement, or contract being auxiliary or
19 incidental to that purpose.

20 "Underwrite" means to accept or reject risk on behalf of
21 the insurer.

22 (b) Licensure of managing general agents.

23 (1) No person, firm, association, or corporation shall
24 act in the capacity of a managing general agent with
25 respect to risks located in this State for an insurer
26 licensed in this State unless the person is a licensed

1 producer or a registered firm in this State under Article
2 XXXI of this Code or a licensed third party administrator
3 in this State under Article XXXI 1/4 of this Code.

4 (2) No person, firm, association, or corporation shall
5 act in the capacity of a managing general agent with
6 respect to risks located outside this State for an insurer
7 domiciled in this State unless the person is a licensed
8 producer or a registered firm in this State under Article
9 XXXI of this Code or a licensed third party administrator
10 in this State under Article XXXI 1/4 of this Code.

11 (3) The managing general agent must provide a surety
12 bond for the benefit of the insurer in an amount equal to
13 the greater of \$100,000 or 5% of the gross direct written
14 premium underwritten by the managing general agent on
15 behalf of the insurer. The bond shall provide for a
16 discovery period and prior notification of cancellation in
17 accordance with the rules of the Department unless
18 otherwise approved in writing by the Director.

19 (4) The managing general agent must maintain an errors
20 and omissions policy for the benefit of the insurer with
21 coverage in an amount equal to the greater of \$1,000,000 or
22 5% of the gross direct written premium underwritten by the
23 managing general agent on behalf of the insurer.

24 (5) Evidence of the existence of the bond and the
25 errors and omissions policy must be made available to the
26 Director upon his request.

1 (c) No person, firm, association, or corporation acting in
2 the capacity of a managing general agent shall place business
3 with an insurer unless there is in force a written contract
4 between the parties that sets forth the responsibilities of
5 each party, that, if both parties share responsibility for a
6 particular function, specifies the division of responsibility,
7 and that contains the following minimum provisions:

8 (1) The insurer may terminate the contract for cause
9 upon written notice to the managing general agent. The
10 insurer may suspend the underwriting authority of the
11 managing general agent during the pendency of any dispute
12 regarding the cause for termination.

13 (2) The managing general agent shall render accounts to
14 the insurer detailing all transactions and remit all funds
15 due under the contract to the insurer on not less than a
16 monthly basis.

17 (3) All funds collected for the account of an insurer
18 shall be held by the managing general agent in a fiduciary
19 capacity in a bank that is a federally or State chartered
20 bank and that is a member of the Federal Deposit Insurance
21 Corporation. This account shall be used for all payments on
22 behalf of the insurer; however, the managing general agent
23 shall not have authority to draw on any other accounts of
24 the insurer. The managing general agent may retain no more
25 than 3 months estimated claims payments and allocated loss
26 adjustment expenses.

1 (4) Separate records of business written by the
2 managing general agent will be maintained. The insurer
3 shall have access to and the right to copy all accounts and
4 records related to its business in a form usable by the
5 insurer, and the Director shall have access to all books,
6 bank accounts, and records of the managing general agent in
7 a form usable to the Director.

8 (5) The contract may not be assigned in whole or part
9 by the managing general agent.

10 (6) The managing general agent shall provide to the
11 company audited financial statements required under
12 paragraph (1) of subsection (d).

13 (7) That appropriate underwriting guidelines be
14 followed, which guidelines shall stipulate the following:

- 15 (A) the maximum annual premium volume;
- 16 (B) the basis of the rates to be charged;
- 17 (C) the types of risks that may be written;
- 18 (D) maximum limits of liability;
- 19 (E) applicable exclusions;
- 20 (F) territorial limitations;
- 21 (G) policy cancellation provisions; and
- 22 (H) the maximum policy period.

23 (8) The insurer shall have the right to: (i) cancel or
24 nonrenew any policy of insurance subject to applicable laws
25 and regulations concerning those actions; and (ii) require
26 cancellation of any subproducer's contract after

1 appropriate notice.

2 (9) If the contract permits the managing general agent
3 to settle claims on behalf of the insurer:

4 (A) all claims must be reported to the company in a
5 timely manner.

6 (B) a copy of the claim file must be sent to the
7 insurer at its request or as soon as it becomes known
8 that the claim:

9 (i) has the potential to exceed an amount
10 determined by the company;

11 (ii) involves a coverage dispute;

12 (iii) may exceed the managing general agent's
13 claims settlement authority;

14 (iv) is open for more than 6 months; or

15 (v) is closed by payment of an amount set by
16 the company.

17 (C) all claim files will be the joint property of
18 the insurer and the managing general agent. However,
19 upon an order of liquidation of the insurer, the files
20 shall become the sole property of the insurer or its
21 estate; the managing general agent shall have
22 reasonable access to and the right to copy the files on
23 a timely basis.

24 (D) any settlement authority granted to the
25 managing general agent may be terminated for cause upon
26 the insurer's written notice to the managing general

1 agent or upon the termination of the contract. The
2 insurer may suspend the settlement authority during
3 the pendency of any dispute regarding the cause for
4 termination.

5 (10) Where electronic claims files are in existence,
6 the contract must address the timely transmission of the
7 data.

8 (11) If the contract provides for a sharing of interim
9 profits by the managing general agent and the managing
10 general agent has the authority to determine the amount of
11 the interim profits by establishing loss reserves,
12 controlling claim payments, or by any other manner, interim
13 profits will not be paid to the managing general agent
14 until one year after they are earned for property insurance
15 business and until 5 years after they are earned on
16 casualty business and in either case, not until the profits
17 have been verified.

18 (12) The managing general agent shall not:

19 (A) Bind reinsurance or retrocessions on behalf of
20 the insurer, except that the managing general agent may
21 bind facultative reinsurance contracts under
22 obligatory facultative agreements if the contract with
23 the insurer contains reinsurance underwriting
24 guidelines including, for both reinsurance assumed and
25 ceded, a list of reinsurers with which automatic
26 agreements are in effect, the coverages and amounts or

1 percentages that may be reinsured, and commission
2 schedules.

3 (B) Appoint any producer without assuring that the
4 producer is lawfully licensed to transact the type of
5 insurance for which he is appointed.

6 (C) Without prior approval of the insurer, pay or
7 commit the insurer to pay a claim over a specified
8 amount, net of reinsurance, that shall not exceed 1% of
9 the insurer's policyholders' surplus as of December 31
10 of the last completed calendar year.

11 (D) Collect any payment from a reinsurer or commit
12 the insurer to any claim settlement with a reinsurer
13 without prior approval of the insurer. If prior
14 approval is given, a report must be promptly forwarded
15 to the insurer.

16 (E) Permit its subproducer to serve on its board of
17 directors.

18 (F) Employ an individual who is also employed by
19 the insurer.

20 (13) The contract may not be written for a term of
21 greater than 5 years.

22 (d) Insurers shall have the following duties:

23 (1) The insurer shall have on file the managing general
24 agent's audited financial statements as of the end of the
25 most recent fiscal year prepared in accordance with
26 Generally Accepted Accounting Principles. The insurer

1 shall notify the Director if the auditor's opinion on those
2 statements is other than an unqualified opinion. That
3 notice shall be given to the Director within 10 days of
4 receiving the audited financial statements or becoming
5 aware that such opinion has been given.

6 (2) If a managing general agent establishes loss
7 reserves, the insurer shall annually obtain the opinion of
8 an actuary attesting to the adequacy of loss reserves
9 established for losses incurred and outstanding on
10 business produced by the managing general agent, in
11 addition to any other required loss reserve certification.

12 (3) The insurer shall periodically (at least
13 semiannually) conduct an on-site review of the
14 underwriting and claims processing operations of the
15 managing general agent.

16 (4) Binding authority for all reinsurance contracts or
17 participation in insurance or reinsurance syndicates shall
18 rest with an officer of the insurer, who shall not be
19 affiliated with the managing general agent.

20 (5) Within 30 days of entering into or terminating a
21 contract with a managing general agent, the insurer shall
22 provide written notification of the appointment or
23 termination to the Director. Notices of appointment of a
24 managing general agent shall include a statement of duties
25 that the applicant is expected to perform on behalf of the
26 insurer, the lines of insurance for which the applicant is

1 to be authorized to act, and any other information the
2 Director may request.

3 (6) An insurer shall review its books and records each
4 quarter to determine if any producer has become a managing
5 general agent. If the insurer determines that a producer
6 has become a managing general agent, the insurer shall
7 promptly notify the producer and the Director of that
8 determination, and the insurer and producer must fully
9 comply with the provisions of this Section within 30 days
10 of the notification.

11 (7) The insurer shall file any managing general agent
12 contract for the Director's approval within 45 days after
13 the contract becomes subject to this Section. Failure of
14 the Director to disapprove the contract within 45 days
15 shall constitute approval thereof. Upon expiration of the
16 contract, the insurer shall submit the replacement
17 contract for approval. Contracts filed under this Section
18 shall be exempt from filing under Sections 141, 141.1 and
19 131.20a.

20 (8) An insurer shall not appoint to its board of
21 directors an officer, director, employee, or controlling
22 shareholder of its managing general agents. This provision
23 shall not apply to relationships governed by Article VIII
24 1/2 of this Code.

25 (e) The acts of a managing general agent are considered to
26 be the acts of the insurer on whose behalf it is acting. A

1 managing general agent may be examined in the same manner as an
2 insurer.

3 (f) Retrospective compensation agreements for business
4 written under Section 4 of this Code in Illinois and outside of
5 Illinois by an insurer domiciled in this State must be filed
6 for approval. The standards for approval shall be as set forth
7 under Section 141 of this Code.

8 (g) Unless specifically required by the Director, the
9 provisions of this Section shall not apply to arrangements
10 between a managing general agent not underwriting any risks
11 located in Illinois and a foreign insurer domiciled in an NAIC
12 accredited state that has adopted legislation substantially
13 similar to the NAIC Managing General Agents Model Act. "NAIC
14 accredited state" means a state or territory of the United
15 States having an insurance regulatory agency that maintains an
16 accredited status granted by the National Association of
17 Insurance Commissioners.

18 (h) If the Director determines that a managing general
19 agent has not materially complied with this Section or any
20 regulation or order promulgated hereunder, after notice and
21 opportunity to be heard, the Director may order a penalty in an
22 amount not exceeding \$100,000 for each separate violation and
23 may order the revocation or suspension of the producer's
24 license. If it is found that because of the material
25 noncompliance the insurer has suffered any loss or damage, the
26 Director may maintain a civil action brought by or on behalf of

1 the insurer and its policyholders and creditors for recovery of
2 compensatory damages for the benefit of the insurer and its
3 policyholders and creditors or other appropriate relief. This
4 subsection (h) shall not be construed to prevent any other
5 person from taking civil action against a managing general
6 agent.

7 (i) If an Order of Rehabilitation or Liquidation is entered
8 under Article XIII and the receiver appointed under that Order
9 determines that the managing general agent or any other person
10 has not materially complied with this Section or any regulation
11 or Order promulgated hereunder and the insurer suffered any
12 loss or damage therefrom, the receiver may maintain a civil
13 action for recovery of damages or other appropriate sanctions
14 for the benefit of the insurer.

15 Any decision, determination, or order of the Director under
16 this subsection shall be subject to judicial review under the
17 Administrative Review Law.

18 Nothing contained in this subsection shall affect the right
19 of the Director to impose any other penalties provided for in
20 this Code.

21 Nothing contained in this subsection is intended to or
22 shall in any manner limit or restrict the rights of
23 policyholders, claimants, and auditors.

24 (j) A domestic company shall not during any calendar year
25 write, through a managing general agent or managing general
26 agents, premiums in an amount equal to or greater than its

1 capital and surplus as of the preceding December 31st unless
2 the domestic company requests in writing the Director's
3 permission to do so and the Director has either approved the
4 request or has not disapproved the request within 45 days after
5 the Director received the request.

6 No domestic company with less than \$5,000,000 of capital
7 and surplus may write any business through a managing general
8 agent unless the domestic company requests in writing the
9 Director's permission to do so and the Director has either
10 approved the request or has not disapproved the request within
11 45 days after the Director received the request.

12 (Source: P.A. 93-32, eff. 7-1-03.)