

# COMMONWEALTH OF VIRGINIA

STEVEN T. FOSTER  
COMMISSIONER OF INSURANCE



BOX 1157  
RICHMOND, VIRGINIA 23209  
TELEPHONE: (804) 371-9741  
TDD/VOICE: (804) 371-9375

## STATE CORPORATION COMMISSION BUREAU OF INSURANCE

August 4, 1993

### Administrative Letter 1993-16

**TO: ALL COMPANIES WRITING ANY FORM OF PROPERTY OR CASUALTY INSURANCE AS DEFINED IN SECTIONS 38.2-110 THROUGH 38.2-134**

**RE: BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURER ACT**

On July 1, 1993, Chapter 13 of Title 38.2 of the Code of Virginia was amended to include Article 7 (§ 38.2-1341 et seq.). This new law is sometimes referred to as the Business Transacted with Producer-Controlled Property and Casualty Insurer Act (the Act). Effective July 1, 1993, the Act imposes on all property and casualty carriers subject to licensure in Virginia certain contractual, audit, reporting and disclosure requirements relating to business placed with such insurers by a controlling producer. The purpose of this administrative letter is to assist the Bureau of Insurance in ensuring compliance with the new law by apprising insurers of the Act's applicability and by surveying insurers in regard to business placed with controlling producers.

#### DEFINITIONS

"Control," including the terms "controlling," controlled by" and "under common control with," means direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, through (i) the ownership of voting securities, (ii) by contract other than a commercial contract for goods or nonmanagement services, or (iii) otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing collectively ten percent or more of the voting securities of any other person.

"Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

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

"Foreign insurer" means any foreign or alien insurer licensed to transact the business of insurance in this Commonwealth pursuant to § 38.2-1024.

"Licensed insurer," "insurer" or "property and casualty insurer" means any person, firm, association or corporation duly licensed under Title 38.2 of the Virginia Code to write policies or agreements providing any form of insurance as defined in §§ 38.2-110 through 38.2-134 of the Code. The following, inter alia, are not licensed insurers for the purposes of the Act:

1. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and § 38.2-5101 of Title 38.2;
2. All residual market pools and joint underwriting authorities or associations; and
3. Any insurer licensed as a captive insurer under Chapter 11 (§ 38.2-1100 et seq.) and any foreign insurer which is either (i) an association captive or (ii) a pure captive. An "association captive" is an insurer whose exclusive purpose is transacting the business of insurance and reinsurance only on risks, hazards and liabilities of the members of an insurance association comprised of any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote, all of the outstanding voting securities of the association insurer. A "pure captive" is an insurer whose exclusive purpose is transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Producer" means:

1. Any insurance agent, managing general agent or reinsurance intermediary subject to licensure pursuant to the provisions of Chapter 18 (§ 38.2-1800 et seq.); or
2. Any person subject to substantially similar licensure provisions of another state when, for any compensation, commission or other thing of value, such agent, intermediary or person acts on behalf of an insured other than the agent, intermediary or person, or aids in any manner, in soliciting, negotiating, procuring or effecting the making of any contract of insurance in which the insured, owner and beneficiary are other than the agent, intermediary or person.

APPLICABILITY EFFECTIVE JULY 1, 1993, FOR ALL CARRIERS

Property and casualty insurers domiciled in Virginia must comply with all provisions of the Act. Foreign and alien insurers are subject to all the provisions of the Act unless they can demonstrate substantial compliance in a manner satisfactory to the Bureau. To demonstrate substantial compliance, foreign and alien insurers must be able to show compliance with the provisions of a substantially similar law enacted by an "accredited state" in which the insurer is licensed. An "accredited state" means a state in which the insurance department or regulatory agency responsible for administering the insurance laws of that state 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.

Subsection 38.2-1342.B of the Act expressly requires foreign and alien insurers not domiciled in an accredited state to confirm, after January 1, 1994, substantial compliance at least once every five years as a condition to licensing. However, the requirement that all foreign and alien carriers comply substantially with the provisions of the Act, as set forth above, is effective July 1, 1993. Therefore, the Bureau intends to verify compliance at least annually, and more often where appropriate, effective July 1, 1993.

MINIMUM STANDARDS FOR CONTRACTS, AUDIT COMMITTEE AND REPORTING

The minimum standards set forth by Virginia Code § 38.2-1342 for producer-controlled insurers and controlling producers shall apply only if, in any calendar year, the aggregate amount of gross premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer. These standards prescribe the existence of a written contract between the producer and the insurer, certain provisions in the contract, audit committee requirements for the insurer, and data and reporting requirements.

The requirements of § 38.2-1342, however, shall not apply if:

1. The controlling producer (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 such insurance and (ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and
2. The controlled insurer, except for insurance business written through a residual market facility such as the Virginia Automobile Insurance Plan, as set forth in § 38.2-2015, or the Virginia Property Insurance Association, as set forth in Chapter 27 (§ 38.2-2700 et seq.), 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.

DISCLOSURE

Virginia Code § 38.2-1344 requires that a controlling producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. However, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his 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.

ATTACHED SURVEY

To enable the Bureau to ensure compliance with the Act, all insurers licensed in Virginia under Title 38.2 to write policies or agreements providing any form of insurance as defined in §§ 38.2-110 through 38.2-134 must complete the attached survey and return it to the Bureau at the following address:

SCC/Bureau of Insurance  
Financial Regulation Division  
P. O. Box 1157  
Richmond, VA 23209  
Attention: Victoria I. Savoy, Chief Financial Auditor

Surveys must be returned not later than September 30, 1993. These surveys are being requested as an additional report in accordance with Virginia Code § 38.2-1301.1. If you have any questions concerning the Act, please contact Edward Buyalos (domestic companies) or Gregory Walker (foreign and alien companies) at (804) 371-9637.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven T. Foster", with a long horizontal line extending to the right.

Steven T. Foster  
Commissioner of Insurance

STF:fah

Attachments: §§ 38.2-1341 - 38.2-1346 and survey (SCCBOI.23)

**Article 7.**  
**Business Transacted with Producer-Controlled**  
**Property and Casualty Insurer Act.**

§ 38.2-1341. *Definitions.—As used in this article:*

"Accredited state" means a state in which the insurance department or regulatory agency responsible for administering the insurance laws of said state 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.

"Control" or "controlled" has the meaning ascribed in § 38.2-1322.

"Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

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

"Foreign insurer" means any foreign or alien insurer licensed to transact the business of insurance in this Commonwealth pursuant to § 38.2-1024.

"Licensed insurer," "insurer" or "property and casualty insurer" means any person, firm, association or corporation duly licensed under this title to write policies or agreements providing any form of insurance as defined in §§ 38.2-110 through 38.2-134. The following, *inter alia*, are not licensed insurers for the purposes of this article:

1. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. Section 3901 *et seq.* (1982 & Supp. 1986) and § 38.2-5101 of this title;

2. All residual market pools and joint underwriting authorities or associations; and

3. Any insurer licensed as a captive insurer under Chapter 11 (§ 38.2-1100 *et seq.*) and any foreign insurer which is either (i) an association captive or (ii) a pure captive. An "association captive" is an insurer whose exclusive purpose is transacting the business of insurance and reinsurance only on risks, hazards and liabilities of the members of an insurance association comprised of any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote, all of the outstanding voting securities of the association insurer. A "pure captive" is an insurer whose exclusive purpose is transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Producer" means:

1. Any insurance agent, managing general agent or reinsurance intermediary subject to licensure pursuant to the provisions of Chapter 18 (§ 38.2-1800 *et seq.*); or

2. Any person subject to substantially similar licensure provisions of another state when, for any compensation, commission or other thing of value, such agent, intermediary or person acts on behalf of an insured other than the agent, intermediary or person, or aids in any manner, in soliciting, negotiating, procuring or effecting the making of any contract of insurance in which the insured, owner and beneficiary are other than the agent, intermediary or person.

§ 38.2-1342. *Applicability.—A.* All provisions of this article shall apply to domestic insurers.

*B.* Effective January 1, 1994, any foreign insurer not domiciled and licensed in an accredited state shall confirm, at least once every five years, as a condition of licensing and licensing renewal, its compliance with the provisions of this article or those of a substantially similar law enacted by an accredited state in which the insurer is licensed. The method of confirmation shall be determined by the Commission and may include examination of such foreign insurer and its controlling producer pursuant to Article 4 (§ 38.2-1317 *et seq.*) of Chapter 13. Any foreign insurer that is unable to confirm substantial compliance in a manner satisfactory to the Commission shall be subject to all of the provisions of this title.

C. All provisions of Article 5 (§ 38.2-1322 et seq.) of this chapter and Article 2 (§ 38.2-4230 et seq.) of Chapter 42, to the extent they are not superseded by the provisions of this article, shall continue to apply to all parties within holding company systems subject to this article.

§ 38.2-1343. Minimum standards.—A. The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

B. Notwithstanding the provisions of subsection A of this section, the provisions of subsections A, C, D and E of this section shall not apply if:

1. The controlling producer (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 such insurance and (ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

2. The controlled insurer, except for insurance business written through a residual market facility such as the Virginia Automobile Insurance Plan, as set forth in § 38.2-2015, or the Virginia Property Insurance Association, as set forth in Chapter 27 (§ 38.2-2700 et seq.), 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.

C. 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 them specifying the responsibilities of each party, which 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 thereof collected shall be remitted no later than ninety 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 Commonwealth 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 shall be specified. 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 subdivision and subdivision 7 of this subsection, examples of "comparable business" include 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 such 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 subdivision 1 of subsection E of this section;

10. The contract shall place 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 sub-line 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; and

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 such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

D. 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 Commission to review the adequacy of the insurer's loss reserves.

E. The controlled insurer shall obtain annually prior to March 1 of each year the following data and reports:

1. In addition to any other required loss reserve certification, an opinion of an independent casualty actuary 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 year's end (including incurred but not reported) on business placed by the producer; and

2. The controlled insurer shall annually report to the Commission the amount of commissions paid to the producer during the preceding calendar year, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

The data and reports required by this subsection shall be retained by the insurer for a period of not less than five years and shall be filed with the Commission upon request.



§ 38.2-1344. *Disclosure.*—The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. However, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his 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.

§ 38.2-1345. *Penalties.*—A. If the Commission finds, after providing an opportunity to be heard, that the controlling producer or any other person has not materially complied with the provisions of this article, or any regulation or order promulgated hereunder, the Commission may order the controlling producer to cease placing business with the controlled insurer.

B. If it is found that because of such material noncompliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the Commission may order the controlling producer or any other party licensed under this title to make restitution to the controlled insurer or its statutory successor, including any rehabilitator, liquidator or receiver of the insurer, for the net losses or damages incurred by the insurer or its policyholders.

C. Nothing contained in this section shall affect the right of the Commission to impose any other penalties provided for in this title.

D. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

§ 38.2-1346. *Licensure.*—A. No person shall act in this Commonwealth as a producer, and no resident of this Commonwealth shall act as a producer, unless such person or resident is licensed as an insurance agent, reinsurance intermediary or managing general agent pursuant to the provisions of Chapter 18 (§ 38.2-1800 et seq.) of this title.

B. As used in this section, the terms "resident" and "insurance agent" have the meanings prescribed in § 38.2-1800, and the terms "managing general agent," and "reinsurance intermediary" have the meanings set forth in §§ 38.2-1846 and 38.2-1858.

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION BUREAU OF INSURANCE

SECTION 38.2-1342 REPORT

**Business Transacted with Producer-Controlled Property and Casualty Insurer Act**  
(Virginia Code Sections 38.2-1341 through 38.2-1346) (the Act)

*INSTRUCTIONS: Each "insurer" licensed to write any form of property or casualty insurance in the Commonwealth of Virginia is required to file this form. All such insurers, as defined by the Act,<sup>1</sup> shall complete Section I and the Certification. Any insurer which is "controlled" by a "producer" shall complete Section II. All other insurers shall complete Section III indicating that the requirements of Virginia Code §§ 38.2-1341 through 38.2-1346 have been reviewed and there is no controlling producer information to be reported. This form is to be filed before September 30, 1993 with the Financial Regulation Division of the Virginia State Corporation Commission, Bureau of Insurance, P. O. Box 1157, Richmond, VA 23209.*

=====

**SECTION I**

**To be Completed by Each Licensed Property and/or Casualty Insurer**

Reporting Insurer's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Insurer's NAIC No.: \_\_\_\_\_ State of Domicile: \_\_\_\_\_

This form was completed by: \_\_\_\_\_

Telephone: \_\_\_\_\_

-----

1. The Act defines key terms, including "insurer," "producer" and "control." Generally, "insurer" means any insurer licensed in Virginia to write any form of property or casualty insurance. As defined by the Act, the term "insurer" does not include risk retention groups (as defined by Virginia Code § 38.2-5101), residual market and joint underwriting authorities and associations, and certain captive insurers. As used in the Act, a "producer" is any person subject to licensure in Virginia as an insurance agent, managing general agent or reinsurance intermediary; and, as such, the term includes also surplus lines brokers. Persons subject to substantially similar licensure provisions of another state also qualify as "producers" subject to the Act when acting on behalf of an insurer. "Control" has the meaning ascribed in Virginia Code § 38.2-1322, a section in Virginia's Insurance Company Holding Company Act.

**SECTION II**  
**To Be Completed by Any Insurer That Is A Producer Controlled Insurer**

*NOTE: Insurers completing Section II shall prepare and attach as Exhibit A a listing identifying each Controlling Producer. For each producer the listing shall show: (i) name, (ii) complete mailing address, (iii) the aggregate amount of gross written premium on business placed by the producer with Insurer during the most recent calendar year, (iv) the percentage such amount represents of Insurer's total admitted assets as reported in the quarterly financial statement filed as September 30, and (v) the Insurer's projection as to the aggregate amount of gross written premium on business to be placed with the Insurer by the producer during the current calendar year.*

\_\_\_\_\_ is a "Controlled Insurer" (Insurer), as  
 (Name of Insurer)  
 defined by the provisions of the Virginia Business Transacted with Producer-Controlled Property and Casualty Insurer Act at Virginia Code §§ 38.2-1341 through 38.2-1347 (the Act), and responds as follows:

*To each question, respond Yes, No or N/A (not applicable), whichever is most appropriate.*

	YES	NO	N/A
1. Has the Insurer attached an Exhibit A, as prescribed by the instructions to this form, fully disclosing the identity of each Controlling Producer with whom it transacts business?	_____	_____	_____
2. Has the Insurer notified all such Controlling Producers of the requirements of the Act?	_____	_____	_____
3. If the Insurer is domiciled in Virginia, has it complied with all of the provisions of the Act?	_____	_____	_____
4. If the Insurer is not domiciled in Virginia, can it demonstrate substantial compliance with the provisions of the Act?	_____	_____	_____
5. Is the Insurer domiciled and licensed in an accredited state other than Virginia?	_____	_____	_____
6. Has the Insurer complied with the provisions of a substantially similar law enacted by an accredited state?	_____	_____	_____

**SECTION III**  
**To Be Completed by Insurers that are NOT Producer Controlled**

\_\_\_\_\_ is not issuing any property or casualty  
 (Name of Insurer)  
 insurance coverages that are or may be reportable in accordance with the provisions of the Virginia Business Transacted with Producer-Controlled Property and Casualty Insurer Act at Virginia Code §§ 38.2-1341 through 38.2-1346.

**CERTIFICATION**

I hereby certify under penalty of perjury that the foregoing statements and information appearing in Sections I and \_\_\_\_\_ (*enter II or III, whichever is appropriate*) are true and correct to the best of my knowledge and belief.

Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Insurer's Authorized Signature)

\_\_\_\_\_  
(Title)

State of \_\_\_\_\_

County of \_\_\_\_\_

Personally appeared before me the above named \_\_\_\_\_ personally known to me, who, being duly sworn, deposes and says that he/she executed the above instrument and that the statements and answers contained therein are true and correct to the best of his/her knowledge and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]