

LEGISLATIVE HISTORY CHECKLIST
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(Controlled insurers--regulate and
 monitor their controlling producers)

NJSA: 17:22D-1

LAWS OF: 1993 **CHAPTER:** 239

BILL NO: A80

SPONSOR(S) Weber and others

DATE INTRODUCED: February 1, 1993

COMMITTEE: **ASSEMBLY:** Insurance
SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** May 13, 1993
SENATE: June 28, 1993

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Attached:

Model law promulgated by National Association of Insurance Commissioners.

See newspaper clippings--attached:

"Governor signs stricter scrutiny for insurance companies in state," 8-10-93,
Star Ledger."

KBG:pp

P.L.1993, CHAPTER 239, approved August 9, 1993
1993 Assembly No. 80

1 AN ACT concerning business transacted with certain
2 producer-controlled insurers.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. For purposes of this act:

7 "Accredited state" means a state in which the insurance
8 department or other regulatory agency has qualified as meeting
9 the minimum financial regulatory standards promulgated and
10 established from time to time by the National Association of
11 Insurance Commissioners.

12 "Captive insurer" means an insurance company owned by
13 another organization whose exclusive purpose is to insure risks of
14 the parent organization and affiliated companies or, in the case
15 of groups and associations, insurance organizations owned by the
16 insureds whose exclusive purpose is to insure risks to member
17 organizations or group members and their affiliates.

18 "Commissioner" means the Commissioner of Insurance.

19 "Control" or "controlled" has the same meaning as defined in
20 section 1 of P.L. 1970, c.22 (C.17:27A-1).

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

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

25 "Licensed insurer" or "insurer" means any corporation,
26 association, partnership, reciprocal exchange, interinsurer,
27 Lloyd's insurer, or other person engaged in the business of
28 insurance pursuant to Subtitle 3 of Title 17 of the Revised
29 Statutes.

30 "Producer" means any person engaged in the business of an
31 insurance agent, insurance broker or insurance consultant as
32 defined in section 2 of P.L.1987, c.293 (C.17:22A-2).

33 2. a. This act shall apply to licensed insurers which are
34 domiciled in this State or domiciled in a state that is not an
35 accredited state having in effect a substantially similar law.

36 b. The provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), to
37 the extent they are not superseded by this act, shall continue to
38 apply to all parties within holding company systems subject to
39 this act. This act shall not apply to captive insurers.

40 3. a. The provisions of this section shall apply if, in any
41 calendar year, the aggregate amount of gross written premium on
42 business placed with a controlled insurer by a controlling
43 producer is equal to or greater than five percent of the admitted
44 assets of the controlled insurer's quarterly statement filed as of
45 September 30 of the prior year.

1 b. Notwithstanding subsection a. of this section to the
2 contrary, the provisions of this section shall not apply if the
3 controlling producer:

4 (1) Places insurance only with the controlled insurer, or only
5 with the controlled insurer and a member or members of the
6 controlled insurer's holding company system, or the controlled
7 insurer's parent, affiliate or subsidiary and receives no
8 compensation based upon the amount of premiums written in
9 connection with such insurance;

10 (2) Accepts insurance placements only from non-affiliated
11 subproducers, and not directly from insureds; and

12 (3) The controlled insurer, except for insurance business
13 written through a residual market plan such as a plan established
14 pursuant to P.L.1970, c.215 (C.17:29D-1) or a plan established
15 pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.), accepts
16 insurance business only from a controlling producer, a producer
17 controlled by the controlled insurer, or a producer that is a
18 subsidiary of the controlled insurer.

19 c. A controlled insurer shall not accept business from a
20 controlling producer and a controlling producer shall not place
21 business with a controlled insurer unless there is a written
22 contract between the controlling producer and the controlled
23 insurer specifying the responsibilities of each party, which
24 contract has been approved by the board of directors of the
25 controlled insurer and contains the following minimum provisions:

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

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

35 (3) The controlling producer shall remit all funds due under the
36 terms of the contract to the controlled insurer no less often than
37 monthly. The due date shall be fixed so that premiums or
38 installments thereof collected shall be remitted no later than 90
39 days after the effective date of any policy placed with the
40 controlled insurer under this contract;

41 (4) All funds collected for the controlled insurer's account
42 shall be held by the controlling producer in a fiduciary capacity in
43 one or more appropriately identified bank accounts in banks that
44 are members of the Federal Reserve System, in accordance with
45 the laws of this State governing the statutory deposits of insurers
46 doing business in this State. Funds of a controlling producer not
47 required to be licensed in this State shall be maintained in
48 compliance with the requirements of the controlling producer's
49 domiciliary jurisdiction;

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

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

54 (7) The controlled insurer shall provide the controlling

1 producer with its underwriting standards, rules and procedures,
2 manuals setting forth the rates to be charged, and the conditions
3 for the acceptance or rejection of risks. The controlling producer
4 shall adhere to these standards, rules, procedures, rates and
5 conditions which shall be the same as those applicable to
6 comparable business placed with the controlled insurer by a
7 producer other than the controlling producer;

8 (8) The rates and terms of the controlling producer's
9 commissions, charges or other fees and the purposes for those
10 charges or fees. The rates of commissions, charges and other
11 fees shall be no greater than those applicable to comparable
12 business placed with the controlled insurer by producers other
13 than controlling producers. For purposes of this paragraph and
14 paragraph (7) of this subsection, comparable business includes,
15 but is not limited to: the same lines of insurance, same kinds of
16 insurance, same kinds of risks, similar policy limits, and similar
17 quality of business;

18 (9) If the contract provides that the controlling producer, on
19 insurance business placed with the controlled insurer, is to be
20 compensated contingent upon the controlled insurer's profits on
21 that business, then such compensation shall not be determined
22 and paid until at least five years after the premiums on liability
23 insurance are earned and at least one year after the premiums
24 are earned on any other insurance. In no event shall the
25 commissions be paid until the adequacy of the controlled
26 insurer's reserves on remaining claims has been independently
27 verified pursuant to subsection d. of this section;

28 (10) There shall be a limit on the controlling producer's
29 writings in relation to the controlled insurer's surplus and total
30 writings. The controlled insurer may establish a different limit
31 for each line or sub-line of business. The controlled insurer shall
32 notify the controlling producer when the applicable limit is
33 approached and shall not accept business from the controlling
34 producer if the limit is reached. The controlling producer shall
35 not place business with the controlled insurer if it had been
36 notified by the controlled insurer that the limit has been reached;
37 and

38 (11) The controlling producer may negotiate but shall not bind
39 reinsurance on behalf of the controlled insurer on business the
40 controlling producer places with the controlled insurer, except
41 that the controlling producer may bind facultative reinsurance
42 contracts pursuant to obligatory facultative agreements if the
43 contract with the controlled insurer contains underwriting
44 guidelines including, for both reinsurance assumed and ceded, a
45 list of reinsurers with which such automatic agreements are in
46 effect, the coverages and amounts or percentages that may be
47 reinsured and commission schedules.

48 d. Every board of directors of a controlled insurer shall
49 establish an audit committee composed of independent directors.
50 The audit committee shall meet annually with management, the
51 controlled insurer's independent certified public accountants, and
52 an independent casualty actuary who shall be qualified, pursuant
53 to the requirements established by the commissioner for loss
54 reserve opinions required to be submitted by licensed property

1 and casualty insurers in this State, to review the adequacy of the
2 insurer's loss reserves.

3 e. In addition to any other required loss reserve certification,
4 the controlled insurer shall annually, on April 1 of each year, file
5 with the commissioner an opinion of an independent casualty
6 actuary reporting loss ratios for each line of business written and
7 attesting to the adequacy of loss reserves established for losses
8 incurred and outstanding as of year-end, which shall include
9 losses incurred but not yet reported, on business placed by the
10 controlling producer. The loss reserve opinion shall satisfy all
11 requirements established by the commissioner for loss reserve
12 opinions required to be submitted by licensed property and
13 casualty insurers in this State.

14 f. The controlled insurer shall annually report to the
15 commissioner on April 1 of each year the amount of commissions
16 paid to the controlling producer, the percentage this amount
17 represents of the net premiums written, and comparable amounts
18 and percentages paid to noncontrolling producers for placements
19 of the same kinds of insurance.

20 4. The controlling producer, prior to the effective date of the
21 policy, shall deliver written notice to the prospective insured
22 disclosing the relationship between the controlling producer and
23 the controlled insurer, except that, if the business is placed
24 through a subproducer who is not a controlling producer, the
25 controlling producer shall retain in his records a signed
26 commitment from the subproducer that the subproducer is aware
27 of the relationship between the controlled insurer and the
28 controlling producer and that the subproducer has or will notify
29 the insured.

30 5. a. (1) Upon a finding that the controlling producer or any
31 other person has not complied with this act, or any regulation or
32 order promulgated hereunder, the commissioner, after notice and
33 opportunity to be heard, may order the controlling producer to
34 cease placing business with the controlled insurer.

35 (2) Upon a finding that the controlled insurer or any
36 policyholder thereof has suffered any loss or damage as the result
37 of any noncompliance with the provisions of this act, the
38 commissioner may maintain a civil action or intervene in an
39 action brought by or on behalf of the insurer or policyholder for
40 recovery of compensatory damages for the benefit of the insurer
41 or policyholder or other appropriate relief.

42 b. If an order for rehabilitation or liquidation of the controlled
43 insurer has been entered pursuant to the laws of this state
44 governing the rehabilitation and liquidation of insurers, and the
45 receiver appointed under that order believes that the controlling
46 producer or any other person has not complied with this act, or
47 any regulation or order promulgated hereunder, and the
48 controlled insurer suffered any loss or damage therefrom, the
49 receiver may maintain a civil action for recovery of damages or
50 other appropriate sanctions for the benefit of the controlled
51 insurer.

52 c. Upon a finding, after notice and opportunity for a hearing,
53 that any person has violated any provision of this act, the
54 commissioner may refuse to issue or renew the producer's

1 license, or may revoke or suspend the producer's license.

2 d. In addition, or as an alternative to any other penalty, the
3 commissioner may impose a fine of up to \$5,000.00 for the first
4 violation, and not exceeding \$10,000.00 for each subsequent
5 violation, and in appropriate circumstances order restitution of
6 moneys owed to any person and reimbursement of the costs of
7 investigation and prosecution.

8 e. Upon a finding that the interests of the public require that
9 immediate action be taken prior to completion of the hearing, the
10 making of a determination and the entry of a final order, the
11 commissioner may enter an appropriate order to be effective
12 pending completion of the hearing and entry of a final order.
13 These orders may be entered on ex parte proofs if the proofs
14 indicate that the commissioner's withholding of any action until
15 completion of a full hearing will be harmful to the public
16 interest. Orders issued pursuant to this section shall be subject
17 to an application to vacate upon 10 days' notice, and a
18 preliminary hearing on the ex parte order shall be held in any
19 event within 20 days after it is entered. In the alternative, or in
20 addition, the commissioner may institute a proceeding in the
21 Superior Court, to be conducted in a summary manner, for an
22 injunction against specified acts or conduct in aid of the
23 proceedings pending before him, including temporary injunctions
24 and interim restraints.

25 f. Nothing contained in this section shall affect the right of
26 the commissioner to impose any other penalties provided for by
27 the laws of this State.

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

31 6. The commissioner may, pursuant to the provisions of the
32 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
33 seq.), promulgate rules and regulations as are necessary to
34 effectuate the purposes of this act.

35 7. This act shall take effect on the first day of the month
36 following the date of enactment. Controlled insurers and
37 controlling producers who are not in compliance with section 3 of
38 this act on its effective date shall have 60 days to come into
39 compliance and shall comply with section 4 beginning with all
40 policies written or renewed on or after 60 days after the
41 effective date of this act.

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44 STATEMENT

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46 This bill, which is based on a model law by the National
47 Association of Insurance Commissioners, provides a framework by
48 which the Department of Insurance may regulate transactions
49 involving insurers which are controlled by insurance producers.
50 This bill would reduce the likelihood that insolvencies resulting
51 from the activities of insurance producers who control an insurer
52 will occur by providing the department with monitoring authority
53 over these transactions and by imposing duties on both controlling
54 producers and their controlled insurers.

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3 Provides for regulation of controlling insurance producers.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 80

STATE OF NEW JERSEY

DATED: MARCH 29, 1993

The Assembly Insurance Committee reports favorably Assembly Bill No. 80.

This bill, which is based on a model law by the National Association of Insurance Commissioners, provides a framework by which the Department of Insurance may regulate transactions involving insurers which are controlled by insurance producers. This bill would reduce the likelihood that insolvencies resulting from the activities of insurance producers who control an insurer will occur by providing the department with monitoring authority over these transactions and by imposing duties on both controlling producers and their controlled insurers.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 80

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly Bill No. 80.

This bill, which is based on a model law by the National Association of Insurance Commissioners, provides a framework by which the Department of Insurance may regulate transactions involving insurers which are controlled by insurance producers. This bill would reduce the likelihood that insolvencies resulting from the activities of insurance producers who control an insurer will occur by providing the department with monitoring authority over these transactions and by imposing duties on both controlling producers and their controlled insurers.

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OFFICE OF THE GOVERNOR NEWS RELEASE

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TRENTON, N.J. 08625

FOR RELEASE: August 9, 1993

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GOVERNOR FLORIO SIGNS FINANCIAL SOLVENCY LEGISLATION

Governor Jim Florio today signed legislation that will increase the New Jersey Insurance Department's effectiveness in monitoring the industry's financial activities.

The 12-bill package adopts the insurer solvency standards recommended by the National Association of Insurance Commissioners (NAIC).

Under the NAIC Accreditation Program, state insurance departments must be accredited by January 1, 1994. Accredited states will not be permitted to accept financial examinations of domestic insurance companies by non-accredited states. An independent audit team will review New Jersey's standards to ensure their compliance with the program.

"This legislation will strengthen the Insurance Department's ability to regulate the industry and to take preventive measures if companies experience financial difficulties," Governor Florio said. "The citizens of New Jersey can rest assured that the NAIC Accreditation Program will enhance the capabilities of a department which already is one of the most proactive consumer protection agencies in the country."

Insurance Commissioner Samuel F. Fortunato praised the efforts of Governor Florio and several members of the State Legislature in adopting the legislation.

"We are grateful to the Governor and members of the Legislature for acting quickly on these bills," Fortunato stated. "Their support and sponsorship of vital elements of this package have shown that great things may be accomplished through a true team effort."

Failure to receive accreditation could have affected New Jersey's 27 domestic property and casualty companies and 12 life and health insurers. These companies would be subject to accredited state insurance departments' audits at the companies' expense. These additional costs ultimately would be passed on to policyholders.

The NAIC accreditation audit team is tentatively scheduled to review the state's financial solvency standards in October.

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**BUSINESS TRANSACTED WITH PRODUCER CONTROLLED
PROPERTY/CASUALTY INSURER ACT**

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Section 1. Short Title

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

Section 2. Definitions

As used in this Act:

- A. "Accredited State" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners (NAIC).
- B. "Control" or "Controlled" has the meaning ascribed in [cite insurance law section incorporating NAIC Model Insurance Holding Company Act];
- C. "Controlled Insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.
- D. "Controlling Producer" means a producer who, directly or indirectly, controls an insurer.
- E. "Licensed Insurer" or "Insurer" means any person, firm, association or corporation duly licensed to transact a property/casualty insurance business in this state. The following, inter alia, are not licensed insurers for the purposes of this 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 [insert citation to state risk retention group statute];
 - (2) All residual market pools and joint underwriting authorities or associations; and
 - (3) All captive insurers (for the purposes of this Act, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations and/or group members and their affiliates).
- F. "Producer" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such 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.

Drafting Note: The term "producer" as used in this Act is not intended to include an exclusive agent or any independent agent acting on behalf of the controlled insurer and any subagent or representative of the agent, who acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting in the capacity of an insurance broker in the transaction in question. States which define both insurance agent and insurance broker should substitute the term "insurance broker" and appropriate definition therefor for "producer," and rename the Act accordingly.

Section 3. Applicability

This Act shall apply to licensed insurers as defined in Section 2 of this Act, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the Insurance Holding Company Act, to the extent they are not superseded by this Act, shall continue to apply to all parties within holding company systems subject to this Act.

Section 4. Minimum Standards

A. Applicability of section.

- (1) The provisions of this Section 4 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 (5%) 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 this subsection, the provisions of this section shall not apply if:
 - (a) 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 non-affiliated subproducers, and not directly from insureds; and
 - (b) The controlled insurer, except for insurance business written through a residual market facility such as [cite example], 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. Required contract provisions. 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, 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 (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) of this subsection, 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 such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) 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 Subsection D(1) of this section;
 - (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 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.
- C. Audit Committee. 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.

Drafting Note: Insert the appropriate title for the chief insurance regulatory official wherever the term Commissioner appears.

D. Reporting requirements.

- (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 such 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 year-end (including incurred but not reported) on business placed by the producer; and
- (2) The controlled insurer shall annually report to the Commissioner the amount of commissions paid to the producer, 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.

Section 5. 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; except that, 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.

Section 6. Penalties

- A. (1) If the Commissioner believes that the controlling producer or any other person has not materially complied with this Act, or any regulation or order promulgated hereunder, after notice and opportunity to be heard, the Commissioner may order the controlling producer to cease placing business with the controlled insurer; and
- (2) If it was found that because of such material non-compliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the Commissioner may maintain 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.
- B. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to [insert state's rehabilitation and liquidation statute], and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this Act, or any regulation or order promulgated hereunder, 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 provided for in the Insurance Law.
- 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.

Section 7. Effective Date

This Act shall take effect on [insert date]. Controlled insurers and controlling producers who are not in compliance with Section 4 of this Act on its effective date shall have sixty (60) days to come into compliance and shall comply with Section 5 beginning with all policies written or renewed on or after [insert a date sixty (60) days after the effective date of this Act].

Legislative History (all references are to the Proceedings of the NAIC).

*1989 Proc. I 14, 913-915, 915-918 (adopted at special plenary session September 1988).
1991 Proc. II 25, 58, 1091, 1096-1099 (amended and reprinted).*