

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
364-36 (COR)	Sabina Flores Perez	AN ACT TO AMEND § 12104 OF CHAPTER 12, TITLE 22; AMEND §§ 15105.1, 15110 (b), 15113 (e) ALL OF ARTICLE 1; AMEND 15201 AND 15204 OF ARTICLE 2; AMEND 15301, 15310 (a), 15316 (c) and (f) ALL OF ARTICLE 3; AMEND 15402 (a) AND 15405 OF ARTICLE 4; AMEND 15502 (a) AND 15506 OF ARTICLE 5; AMEND 15603 (b) OF ARTICLE 6; AMEND 15701, 15702 (c), 15704 (b) and (c), 15704.2 (a) and (b), 15705 (d), 15705.1 (f), 15706 (a) and (d), AND 15707; ADD 15707 (f), (g), and (h); AMEND 15707.1 (a) and (c), 15708, 15710 (a), 15711 (b) ALL OF ARTICLE 7; AMEND §§ 15801, 15802, 15804, AND 15805 (a); ADD 15805 (b), AMEND § 15806 AND §15807 ALL OF ARTICLE 8, ALL OF CHAPTER 15, TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO UPDATING INSURANCE TERMS.	11/22/22 8:00 a.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 Second Regular Session

Bill No. 364-36 (COR)

Introduced by:

Sabina Flores Perez *SFP*

AN ACT TO *AMEND* § 12104 OF CHAPTER 12, TITLE 22; *AMEND* §§ 15105.1, 15110 (b), 15113 (e) ALL OF ARTICLE 1; *AMEND* 15201 AND 15204 OF ARTICLE 2; *AMEND* 15301, 15310 (a), 15316 (c) and (f) ALL OF ARTICLE 3; *AMEND* 15402 (a) AND 15405 OF ARTICLE 4; *AMEND* 15502 (a) AND 15506 OF ARTICLE 5; *AMEND* 15603 (b) OF ARTICLE 6; *AMEND* 15701, 15702 (c), 15704 (b) and (c), 15704.2 (a) and (b), 15705 (d), 15705.1 (f), 15706 (a) and (d), AND 15707; *ADD* 15707 (f), (g), and (h); *AMEND* 15707.1 (a) and (c), 15708, 15710 (a), 15711 (b) ALL OF ARTICLE 7; *AMEND* §§ 15801, 15802, 15804, AND 15805 (a); *ADD* 15805 (b), *AMEND* § 15806 AND §15807 ALL OF ARTICLE 8, ALL OF CHAPTER 15, TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO UPDATING INSURANCE TERMS.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.**

3 *I Liheslaturan Guåhan* finds that there is a need to update some of the Guam
4 Regulations regarding the practice of Insurance, to incorporate new terminology
5 [such as, but not limited to - eliminate the terms “Subagents” and “Solicitors” and
6 the replace them with the term “Insurance Producers”], and to incorporate some
7 forms and practices used by the National Association of Insurance Commissioners
8 (NAIC). For this reason, this legislation is to modernize the practice of insurance on
9 Guam and align it with the NAIC best practices.

1 *I Liheslaturan Guåhan* finds that modernizing the practice of insurance on
2 Guam and aligning it with the NAIC best practices will provide added assurances
3 and protection to consumers who purchase life insurance, by further ensuring that
4 licensed insurance producers keep current best practices in the rapidly changing and
5 evolving insurance industry.

6 It is therefore the intent of *I Liheslaturan Guåhan* to be unceasing, in the
7 constant process of improvement, to ensure that insurance producers apply updated
8 insurance practices that align with the industry standard NAIC best practices, to
9 protect the consumers who purchase insurance.

10 **Section 2.** § 12104, Chapter 12, Title 22, Guam Code Annotated, is hereby
11 *amended* to read:

12 “§ 12104. Definitions.

13 The rules and definitions contained in this section shall be used in
14 interpreting the provisions of this Title.

15 (a) The present tense includes the past and future tenses; and the
16 future, the present.

17 (b) The masculine gender includes the feminine and neuter.

18 (c) The singular number includes the plural, and the plural includes
19 the singular.

20 (d) The word shall is mandatory and the word may is permissive,
21 unless otherwise apparent from the context.

22 (e) Adjuster means any person who acts for or on behalf of an
23 insurer or an insured in determining and making settlement of the amount
24 payable to the insured for any loss or damage under a policy.

25 (f) Admitted in relation to a person, means entitled to transact
26 insurance business in Guam under the laws of Guam; non-admitted, in

1 relation to a person, means not entitled to transact insurance business in
2 Guam under the laws of Guam.

3 (g) Advisory organization means every person, other than an
4 admitted insurer, who prepares policy forms or makes underwriting rules,
5 or who collects and furnishes loss or expense statistics or other statistical
6 information and data and acts in an advisory, as distinguished from a rate
7 making, capacity. No duly authorized attorney-at-law acting in the usual
8 course of his profession shall be deemed an advisory organization.

9 (h) Agent means both general agent and sub-agent insurance
10 producer, unless otherwise apparent from the context.

11 (i) Alien means organized under the laws of any
12 government other than Guam or the United States or any
13 political subdivision thereof, whether or not admitted.

14 (j) Broker means a person who, for compensation and on behalf of
15 another person, transacts insurance business other than as insurer, general
16 agent, or sub-agent or solicitor insurance producer.

17 (k) Certificate means the Certificate of Authority required of an
18 insurer to transact insurance business in Guam.

19 (l) 'Department' means the Department of Revenue and
20 Taxation.

21 (~~mm~~) Domestic means organized under the laws of Guam, whether or
22 not admitted.

23 (~~nn~~) Foreign means not organized under the laws of
24 Guam, but organized under the laws of the United States or any
25 political subdivision thereof, whether or not admitted.

26 (~~oo~~) General Agent means a person authorized by an insurer to
27 countersign, issue and deliver new policies, to accept service of process on

1 behalf of the insurer, and vested with full authority to consummate a
2 contract of insurance and to transact all other necessary business of the
3 insurer in Guam. [Gordon Mailloux Enterprises, Inc. v. Fireman's Ins. Co.
4 (1966), 366 F.2d. 740.]

5 (~~pp~~) Insurance is a contract whereby one undertakes to indemnify
6 another against loss, damage, or liability arising from contingent or
7 unknown events.

8 (~~rq~~) Insurer means the person who undertakes to
9 indemnify another by insurance; insured means the person so
10 indemnified.

11 (~~sr~~) Issue means to write, renew, execute, effect or
12 other-wise enter into a contract of insurance.

13 (~~ts~~) Paid-in capital or Capital paid-in means the lower of the
14 following amounts:

15 (1) The value of an insurer's assets in excess of
16 the sum of its liabilities for losses reported, expenses,
17 taxes, and all other indebtedness and reinsurance of
18 outstanding risks as provided by law;

19 (2) The aggregate par value of an insurer's
20 issued shares of stock, including treasury shares. For the
21 purpose of computing paid in capital or capital, paid in,
22 shares of stock are not considered as liabilities.

23 (~~ut~~) Person means any person, association, organization,
24 partnership, business trust, or corporation.

25 (~~vu~~) Policy means the written instrument in which a contract of
26 insurance is set forth.

1 (wv) Political subdivision in reference to the United States, means
2 any State, the District of Columbia, any territory, possession, or
3 commonwealth belonging to or part of the United States.

4 (xw) Rating bureau means every person, other than an admitted
5 insurer, who has as his object or purpose the making of rates, rating plans
6 or rating systems.

7 (yx) Reinsurance means the insurance ceded and accepted between
8 two insurers one of whom has effected the direct insurance.

9 (zy) Signature includes a mark when the signer or
10 subscriber cannot write, provided his name is written near the
11 mark by a witness who also signs the instrument together with a
12 second witness.

13 ~~(aa) — Solicitor means a person authorized by either the insurer or its~~
14 ~~general agent or a sub-agent to act as its representative but whose duties~~
15 ~~and authority are confined merely to soliciting insurance and aiding in the~~
16 ~~preparation of applications for insurance.~~

17 ~~(bb) — Sub-agent means a person authorized by either the insurer or~~
18 ~~its general agent to solicit applications, receive proposals, receive~~
19 ~~premiums, deliver policies, and to make — contracts of insurance. The~~
20 ~~receipt by a sub-agent of any premiums shall bind the insurer on the~~
21 ~~contract of insurance for that period of time covered by the premium~~
22 ~~payment.~~

23 (eez) Transact means, when applied to insurance, solicitation,
24 negotiations preliminary to execution, execution or transaction subsequent
25 to execution, or a contract of insurance or matters appertaining thereto.

1 ~~(dd)~~(aa) United States means its entire system and group of
2 political jurisdictions including the States, the District of Columbia,
3 territories, possessions, or commonwealths.

4 ~~(ee)~~(bb) Writing means any form of recorded message capable of
5 comprehension by ordinary visual means.

6 ~~(ff)~~(cc) ‘Board’ means the Banking and Insurance Board.

7 ~~(gg)~~(dd) Commissioner means the Commissioner of Banking and
8 Insurance.

9 ~~(hh)~~(ee) Office means the office of the Commissioner of Banking
10 and Insurance.

11 ~~(ii)~~(ff) Air Ambulance Service means the emergency and non-
12 emergency transportation of a doctor-qualified patient-candidate for higher
13 level care from Guam to another location by a legally authorized air
14 ambulance in which health care services, including advanced life support
15 services, are provided to the patient for the duration of such transportation.

16 ~~(jj)~~(gg) Air Ambulance Services Membership Plan means a plan
17 contract between air ambulance services providers and members or
18 enrollees in which such providers provide air ambulance services for its
19 members or enrollees in exchange for an annual fee.

20 (hh) Insurance producer means a person required to be
21 licensed under the laws of Guam to sell, solicit or negotiate insurance. The
22 receipt by an Insurance Producer of any premiums shall bind the insurer on
23 the contract of insurance for that period of time covered by the premium
24 payment.”

25 **Section 3. A new Section 15105.1 of Chapter 15 of Title 22 Guam**
26 **Code Annotated is hereby *added* to read:**

27 “§ 15105.1. **Annual Renewal of Licenses: Application.**

1 (a) A renewal request for Broker, Surplus Lines Broker and Insurance
2 Producer and all its requirements.

3 (b) A renewal request for General Agent that represents the Insurer/(s) and all
4 its requirements including the Premium Fund Trust Account (PFTA) report for the
5 preceding year.”

6 **Section 4. Section 15110 (b) of Chapter 15 of Title 22 Guam Code**
7 **Annotated is *added* to read:**

8 “(b) All funds deriving from this Section shall be deposited in the ~~Treasury~~
9 ~~of Guam to the credit of the General Fund~~ Banking and Insurance Enforcement
10 Fund to be utilized by the Department to enforce the provisions of this Section.”

11 **Section 5. §15113 (e) of Chapter 15, Title 22 Guam Code Annotated is**
12 **hereby *amended* to read:**

13 “(e) If the insurer has complied with the provisions of this section and no
14 objection has been made, or if objection is made but without good and sufficient
15 cause, the Commissioner shall order permission to withdraw and the withdrawing
16 insurer shall deliver to the Commissioner for cancellation its certificate of authority
17 and current licenses of its general agents and ~~solicitors~~ insurance producers.”

18 **Section 6. § 15201 of Chapter 15 of Title 22 Guam Code Annotated is**
19 **hereby *amended* as follows:**

20 “No person, corporation, association or partnership shall, in this territory,
21 act as general agent or insurance producer for any insurer not authorized to
22 transact business in this territory, or negotiate for or place or aid in placing
23 insurance coverage in this territory for another with any such insurer.”

24 **Section 7. Section 15204 of Chapter 15 of Title 22 Guam Code**
25 **Annotated is hereby *amended* as follows:**

26 “The provisions of the foregoing sections do not apply to contracts of
27 reinsurance or to contracts of insurance covering risks of transportation and

1 navigation, or to contracts of insurance made through authorized surplus line
2 brokers, ~~or agents~~, nor do they apply to an insurer not authorized in this territory or
3 its representatives, in investigating, adjusting losses or otherwise complying in this
4 territory with the terms of its insurance contracts made in a state wherein the
5 insurer was authorized and in which the property or risk was located or residing at
6 time of the execution of the contract.”

7 **Section 8. Section 15301 of Chapter 15 of Title 22 Guam Code**
8 **Annotated is hereby *amended* to read:**

9 “The provisions of this article shall apply only to domestic insurers;
10 provided, that such domestic insurers are also subject to all other applicable
11 provisions of this Title from which they are not otherwise specifically excepted.
12 Domestic Insurer shall mean any person or entity licensed to transact insurance in
13 Guam, including but not limited to general agents, insurance producers, brokers,
14 surplus line brokers and adjusters.”

15 **Section 9. Subsection (a) of Section 15310 of Chapter 15 of Title 22**
16 **Guam Code Annotated is hereby *amended* as follows:**

17 “(a) Any admitted domestic insurer may increase or decrease the amount of
18 its capital after giving notice once a week for four (4) consecutive weeks in a
19 newspaper of general circulation in Guam of such intention, and by filing with the
20 Commissioner a copy of such advertisement together with a declaration under its
21 corporate seal, signed by stockholders representing three-fourths (3/4) of its
22 capital, and a cover letter addressed to the Commissioner of their desire so to do.”

23 **Section 10. Subsections (c) and (f) of Section 15316 of Chapter 15 of**
24 **Title 22 Guam Code Annotated is hereby *amended* to read:**

25 “(c) The Commissioner may make a detailed examination into the affairs
26 of any ~~domestic insurer~~ insurance, individual or entity, licensed to do business in
27 Guam as often as he deems it expedient for the protection of the people of Guam,

1 and shall make such detailed examination of every domestic insurer at least once in
2 every three (3) years. The cost of such examination shall be paid by the ~~insurer~~
3 insurance, individual, or entity being examined.”

4 “(f) Filing Fee for Annual Statement: Penalty. The filing fee for an
5 annual financial statement shall be Fifty Dollars (\$50.00). Any domestic insurer
6 that fails to file an annual financial statement on or before April 1st of each year as
7 required by subsection (a) hereof, shall pay a penalty of Five Hundred Dollars
8 (\$500.00). After May 15th, the domestic insurer shall pay an additional late filing
9 fee of One Hundred Dollars (\$100.00) per day. The failure of a domestic insurer
10 or company to file the required annual financial statement shall compel the
11 automatic suspension or revocation of the domestic insurer’s or company’s
12 Certificate of Authority.”

13 **Section 11. Section 15402 (a) of Chapter 15 of Title 22 Guam Code**
14 **Annotated is hereby *amended* to read:**

15 “(a) Duly appointed a licensed resident general agent who shall have a power
16 of attorney of the insurer which authorizes him to appoint ~~sub-agents and solicitors~~
17 insurance producers for the insurer;”

18 **Section 12. Section 15405 of Chapter 15 of Title 22 Guam Code**
19 **Annotated is hereby *amended* to read:**

20 “The filing fee for an annual financial statement shall be Fifty Dollars
21 (\$50.00). Any foreign insurer that fails to file an annual financial statement on or
22 before April 1st of each year as required in §15404 shall pay a penalty of Five
23 Hundred Dollars (\$500.00). After May 15th, the foreign insurer shall pay an
24 additional late filing fee of One Hundred Dollars (\$100.00) per day. The failure of
25 the foreign insurer or company to file the required annual financial statement shall
26 compel the foreign insurer’s or company’s Certificate of Authority to be suspended
27 or revoked.”

1 **Section 13. Subsection (a) of Section 15502 of Chapter 15 of Title 22**
2 **Guam Code Annotated is hereby *amended* to read:**

3 “(a) Duly appointed a licensed resident general agent who shall have the
4 power of attorney of the insurer which authorizes him to appoint ~~sub-agents and~~
5 ~~solicitors~~ insurance producers for the insurer;”

6 **Section 14. Section 15506 of Chapter 15 of Title 22 Guam Code**
7 **Annotated is hereby *amended* to read:**

8 “The filing fee for an annual financial statement shall be Fifty Dollars
9 (\$50.00).-Any alien insurer that fails to file a financial statement on or before April
10 1st of each year as required in §15504 shall pay a penalty of Five Hundred Dollars
11 (\$500.00). After May 15th, the alien insurer shall pay an additional late filing fee
12 of One Hundred Dollars (\$100.00) per day. The failure of the foreign insurer or
13 company to file the required annual financial statement shall automatically compel
14 the foreign insurer’s or company’s Certificate of Authority to be suspended or
15 revoked.”

16 **Section 15. Section 15603(b) of Chapter 15 of Title 22 Guam Code**
17 **Annotated is hereby *amended* to read:**

18 “(b) The domiciliary receiver of an insurer domiciled in a reciprocal state
19 shall be vested by operation of law with the title to all of the property, contracts,
20 and rights of action, and all of the books and records of the insurer located in this
21 territory, and he shall have the immediate right to recover balances due from local
22 general agents and insurance producers and to obtain possession of any books and
23 records of the insurer found in this territory. He shall also be entitled to recover the
24 other assets of the insurer located in this territory except that upon the appointment
25 of an ancillary receiver in this territory, the ancillary receiver shall, during the
26 ancillary receivership proceedings, have the **sole** right to recover such other assets.
27 The ancillary receiver shall, as soon as practicable, liquidate from their respective

1 securities those special deposit claims and secured claims which are proved and
2 allowed in the ancillary proceedings in this territory and shall pay the necessary
3 expenses of the proceedings. All remaining assets he shall promptly transfer to the
4 domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and
5 his deputies shall have the same powers and be subject to the same duties with
6 respect to the administration of such assets as a receiver of an insurer domiciled in
7 this territory.”

8 **Section 16.** The title of Chapter 15, Article 7, Title 22, Guam Code
9 Annotated, is hereby *amended* to read:

10 **“ARTICLE 7**
11 **BROKERS, GENERAL AGENTS, ~~SUB-AGENTS AND SOLICITORS~~**
12 **AND INSURANCE PRODUCERS”**

13 **Section 17.** §15701 of Chapter 15, Title 22, Guam Code Annotated, is hereby
14 *amended* to read:

15 **“§ 15701. License.**

16 It shall be unlawful for any person to do or perform any act in
17 Guam as an insurance broker, surplus lines broker, general agent, ~~sub-~~
18 ~~agent, or solicitor,~~ or insurance producer, or hold himself out as such,
19 for any kind of insurance without having first obtained a license
20 issued by the commissioner. Licenses and the renewals thereof shall
21 be for an annual term expiring the 1st day of July occurring after
22 issuance.

23 **(a) Fees.** The fee for each type of license and the renewal
24 thereof shall be as follows:

25 Broker Insurance Broker	\$ 100
26 <u>Surplus Lines Broker</u>	<u>\$ 100</u>
27 General Agent \$ 100.00	<u>\$ 100</u>

1	<u>Insurance Producer</u>	\$ 50
2	Sub-agent	\$ 25.00
3	Nonresident <u>Insurance</u> producer	\$ 25.00
4	Solicitor	\$ 25.00
5	<u>Insurance Adjuster</u>	\$ 50”

6 **Section 18.** Subsection (c) of §15702, Chapter 15, Title 22, Guam Code
7 Annotated, is hereby *amended* to read:

8 “(c) The previous insurance experience of the applicant, if
9 any, together with the names and addresses of all insurers, or general
10 agents whom he represented or was employed by;”

11 **Section 19.** Subsections (b) and (c) of §15704, Chapter 15, Title 22,
12 Guam Code Annotated, are hereby *amended* to read:

13 “(b) If the application is for an sub-agent's insurance
14 producer's license, the request of either an insurer or general agent
15 that such applicant be licensed to represent such insurer or general
16 agent as a ~~subagent~~ an insurance producer.

17 (c) If the application is for a ~~solicitor's license, the~~
18 ~~request of either an insurer, general agent or a sub-agent that~~
19 ~~such applicant be licensed to represent such insurer, general~~
20 ~~agent or sub-agent as a solicitor~~ broker's license, the applicant
21 must present proof that he/she has minimum of four (4)-year
22 experience being an insurance producer and has a passing score
23 of a broker.”

24 **Section 20.** §15704.2 (a) and (b) of Chapter 15, Title 22, Guam Code
25 Annotated, are hereby *amended* to read:

26 “§ 15704.2. Licensing of Agents General Agents and Insurance
27 Producers.”

1 (a)(1) No person, corporation or bank shall act as ~~an agent~~
2 general agent or insurance producer of any:

3 (A) local mutual aid association;

4 (B) local mutual burial association;

5 (C) statewide mutual assessment corporation;

6 (D) government mutual insurance company;

7 (E) casualty company writing accident and health
8 insurance;

9 (F) health maintenance organization; or

10 (G) any other type of insurance carrier licensed to do
11 business on Guam and which insurance carriers' general agents or
12 insurance producers are required to be licensed under the provisions
13 of this Article, ~~on the date that this Chapter shall become effective~~;
14 shall have first procured a license from the Department as in this
15 Article is provided, unless that individual or entity, and no such
16 insurance carrier shall appoint any person, corporation, or bank shall
17 have obtained a license under the provisions of this Article; and no
18 such person, corporation or bank who obtains a license shall engage
19 in business as ~~an~~ a general agent or insurance producer until that
20 individual or entity shall have been appointed to act as ~~an~~ a general
21 agent or insurance producer by some duly authorized insurance
22 carrier designated by the provisions of this Article, and authorized to
23 do business on Guam.

24 (2) Any person, corporation or bank desiring to act as
25 ~~an~~ a general agent or insurance producer of any insurance carrier
26 licensed to do business on Guam and writing health and accident
27 insurance may obtain a separate license as ~~an~~ a general agent or

1 insurance producer to write health and accident insurance; provided,
2 such person, corporation or bank complies with the provisions of this
3 Article, and has been appointed to act as ~~an~~ a general agent or
4 insurance producer by some duly authorized insurance carrier
5 authorized to do health and accident insurance business on Guam.

6 (b) No insurer, general agent, or insurance producer ~~or licensed~~
7 ~~insurance agent~~ doing business on Guam shall pay directly or indirectly any
8 commission, or other valuable consideration, to any person, corporation or
9 bank for services as an insurer, general agent, or insurance producer
10 ~~insurance agent~~ within Guam, unless such person, corporation or bank shall
11 hold a currently valid license to act as an insurance agent as required by the
12 laws of Guam; nor shall any person, corporation or bank, other than an
13 insurer, general agent, or insurance producer ~~a duly licensed agent~~, accept
14 any such commission or other valuable consideration.”

15 **Section 21.** §15705 (d) of Chapter 15, Title 22, Guam Code Annotated, is
16 hereby *amended* to read:

17 “(d) Notice of any refusal, suspension or revocation of a license
18 under this section shall be given to the insurer, general agent or ~~sub-agent~~
19 insurance producer requesting that such applicant be licensed.”

20 **Section 22.** §15705.1 (f) of Chapter 15, Title 22, Guam Code Annotated,
21 is hereby *added* to read:

22 “(f) Non-resident License renewal applications must be submitted
23 on or before June 1st. All requirements must be submitted to the
24 Commissioner’s Office before a license is issued. Non-resident applicants
25 who missed the deadline for renewal will be assessed late fee and penalty to
26 renew up to 30 days only after the due date of June 1st. Applicant who failed
27 to renew within the 30-day window after June 1st must wait for one year

1 from the date of renewal and can only apply as new applicant the following
2 year. Non-resident application for Broker’s license must submit proof of
3 license being an insurance producer from their domicile state no less than
4 four (4) years.”

5 **Section 23.** Subsections (a) and (d) of §15706 of Chapter 15, Title 22,
6 Guam Code Annotated, are hereby *amended* to read:

7 “(a) The paying or allowing of any commission or other valuable
8 consideration on insurance transacted in Guam by an insurer or its general
9 agent to other admitted insurers or to licensed brokers, surplus lines brokers
10 or insurance producers agents, or solicitors for solicitation of the business is
11 lawful.

12 (b) If at the time of the solicitation and issuance of a policy of
13 insurance which by its terms continues until cancelled, a licensed person
14 may lawfully receive commissions thereon, such person or his personal
15 representative may continue to receive commissions thereon during the
16 continuance in force or renewal of such policy without being licensed.

17 (c) It is unlawful for any insurance agent who is not also a licensed
18 insurance broker to receive commissions derived from insurance placed with
19 an insurer which has not appointed him to act as its agent in the transaction
20 of such insurance.

21 (d) It is unlawful for a general agent or insurance producer ~~an~~
22 ~~insurance agent~~ who is not also a licensed insurance broker to receive
23 commissions on insurance from any source other than an insurer for whom
24 he is licensed.”

25 **Section 24.** §15707 of Chapter 15, Title 22, Guam Code Annotated, is
26 hereby *amended*, and new Subsections (f), (g) and (h) are hereby *added*, to read:

27 **“§ 15707. Definitions.**

1 As used in this ~~Section~~Article, the following terms have the following
2 meanings:

3 (a) Co-payment is the partial payment of medical expenses,
4 emergency room services, or prescription drugs required by an individual
5 who is enrolled in a group health insurance plan. For example, a co-payment
6 for a visit to a doctor's office might be Ten Dollars (\$10). Co-payments are
7 in addition to the payment of premiums and deductible amounts.

8 (b) Deductible is the amount that must be paid by the insured out of
9 pocket before benefits will be paid by the insurer.

10 (c) Pre-funded deductible is a deductible paid in increments during
11 the plan year to the insurer by the insured from his or her post-tax dollars
12 and held by the insurer to pay provided claims on behalf of the insured under
13 the deductibles.

14 (d) Rebate or Refund is the amount of a payment that has been
15 made or funded that is paid back, credited or otherwise returnable to a health
16 insured that has completed a Wellness Program qualified under HIPAA.

17 (e) Premium is the payment, or one of the regular periodic
18 payments, that a group employer and/or individual make to a health insurer
19 to enroll in a health plan or to own an insurance policy.

20 (f) Financial Institution means a Federal or State chartered bank(s)
21 or savings and loan institution(s) which is a member of the Federal Deposit
22 Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance
23 Corporation (FSLIC).

24 (g) Premium means any amount of money charged to the insured or
25 to be returned to the insured by the insurer for the assumption of liability
26 through the issuance of policies or contracts
27 for insurance.

1 (h) Premium Fund Trust Account (hereafter referred to as PFTA)
2 means a special fiduciary account established and maintained by a licensee
3 into which all premiums collected are to be deposited.”

4 **Section 25.** Subsections (a) and (c) of §15707.1 of Chapter 15, Title 22,
5 Guam Code Annotated, are hereby *amended* to read:

6 “(a) It *shall not* be unlawful for an insurer to offer *or* sell, *or* for a
7 broker, surplus lines broker, general agent, or insurance producer ~~or solicitor~~
8 on behalf of an insurer to offer *or* sell, a health plan *or* health insurance
9 policy which provides for a refund *or* rebate of premium or deductible, a
10 discounted co-payment *or* other wellness incentive in a health plan *or* health
11 insurance policy, provided, that any such valuable consideration *or* reward is
12 specified in the plan *or* policy, and further provided, that the plan *or* policy
13 complies with the Final Rules for Nondiscrimination and Wellness Programs
14 promulgated under the Health Insurance Portability and Accountability Act
15 of 1996 (“HIPAA”), which provide an express *exception* to the general rule
16 prohibiting discrimination on a health factor *if* the reward is based on
17 participation in a wellness program of health promotion *or* disease
18 prevention.

19 (b) It shall not be unlawful for an insurer to pay a refund or rebate
20 of premium or refund a deductible to an insured or discount a co-payment
21 under a health plan or health insurance policy, provided, that the amount of
22 such payment complies with limitations and restrictions set forth in HIPAA
23 and the Final Rules for Nondiscrimination and Wellness Programs
24 promulgated under HIPAA.

25 (c) It is unlawful for any insurer *or* general agent to appoint an
26 insurance producer ~~agent~~ for the purpose of enabling such agent insurance

1 producer, or other person, to obtain at a cost *less than* that specified in the
2 policy any insurance from such insurer.

3 (d) The provisions of this Section and the requirement of a
4 wellness program under the exception to the HIPAA’s general rule against
5 discrimination shall not be applicable to any health plan or health insurance
6 policy which does not discriminate against any individual on any health
7 factor or otherwise violate the general rule. Refunds of premiums,
8 deductibles (including pre-funded deductibles) or co-payments which are
9 uniformly applied to all similarly situated insureds are not rewards based on
10 a health factor, and are therefore not in violation of the general rule.”

11 **Section 26.** §15708 of Chapter 15, Title 22, Guam Code Annotated, is
12 hereby *amended* to read:

13 “It is unlawful for an insurer, broker, general agent, surplus lines broker or
14 insurance producer ~~or solicitor~~ to cause or permit to be issued, circulated or used,
15 any misrepresentation of the following:

16 (a) The terms of a policy issued by the insurer or sought to be
17 negotiated by the person making or permitting the misrepresentation;

18 (b) The benefits or privileges promised thereunder;

19 (c) The future dividends payable thereunder.”

20 **Section 35.** Subsection (a) of §15710, Chapter 15, Title 22, Guam Code
21 Annotated, is hereby *amended* to read:

22 “(a) An insurance adjuster’s license may be issued by the
23 Commissioner to any person filing an application on a prescribed form, and
24 upon payment of a license fee of Fifty Dollars (\$50.00). Licenses and
25 renewals thereof shall be for a term expiring one (1) after date of issue.”

26 **Section 27.** §15711 (b)(1), (b)(2), (b)(3), (b)(4)(B) of Chapter 15, Title
27 22, Guam Code Annotated, are hereby *amended* to read:

1 “(b) Application for License; to Whom License May be Issued.

2 (1) Any person, corporation or bank that desires to become
3 ~~an~~ general agent or insurance producer for a local mutual aid
4 association, a local mutual burial association, a government mutual
5 assessment corporation, a government mutual insurance company, a
6 casualty company writing accident and health insurance company, or
7 any other type of insurance carrier licensed to do business on Guam,
8 the general agents or insurance producers of which are required to be
9 licensed under this Article, shall submit to the Department an
10 application for a license in the form required by the Department.”

11 (2) The application must bear a signed endorsement by an
12 officer, or properly authorized representative of the insurance carrier,
13 that the individual applicant or the responsible officer and employee
14 of the bank is qualified to hold that individual, the partnership or the
15 bank out in good faith to the general public as ~~an insurance~~ general
16 agent or insurance producer, and that the insurance carrier desires that
17 the applicant act as ~~an insurance~~ general agent or insurance producer
18 to represent it on Guam.”

19 (3) The Department shall issue a license to an individual or
20 to a general partnership or corporation engaging in the business of
21 insurance. Nothing contained herein shall be construed to permit any
22 unlicensed employee or general agent or insurance producer of any
23 corporation to perform any act of an general agent or insurance
24 producer under this Article without obtaining a license.

25 (4) The Department shall issue a license to a bank if the
26 Department finds that:

27 (A) the bank satisfies the definition of this Article;

1 (B) at least one (1) officer of the bank and each
2 individual who will be performing any acts as an a general
3 agent or insurance producer for the bank are individually
4 licensed under this Article;

5 (C) the bank shall pay gross receipt taxes on the
6 commission, fee income or income it receives; provided, that
7 should there be any law in conflict with this provision, that this
8 Section shall control in so far as it deals with income derived
9 from activities related to the business of insurance; and

10 (D) the bank will have the ability to pay any sums up
11 to Twenty-five Thousand Dollars (\$25,000.00) that it might
12 become legally obligated to pay on account of any claim made
13 against it by a customer and caused by a negligent act, error or
14 omission of the bank, or any person for whose acts the bank is
15 legally liable in the conduct of its business under this Article.”

16 **Section 28.** §§15711 (h) and (i) of Chapter 15, Title 22, Guam Code
17 Annotated, are hereby *amended* to read:

18 “(h) Securities so deposited may be exchanged from time to time for other
19 qualified securities. A binding commitment to issue such a policy or bond, or the
20 tender of applicable securities, is sufficient in connection with an application for
21 license. Nothing in this Subsection permits an unlicensed employee or general
22 agent or insurance producer of a bank to perform any act of an general agent or
23 insurance producer under this Article without obtaining a license, except that no
24 bank, partnership, corporation or any other legal business entity needs to procure
25 an insurance license to sell credit life, mortgage life or personal accident insurance.

26 (i) A bank licensed as an general agent or insurance producer under this
27 Article must maintain the insurance records of the bank, including all files relating

1 to customer complaints, separate from records relating to the banking transactions
2 of the bank. If at any time a bank that holds an general agent's or insurance
3 producer's license does not maintain the qualifications necessary to obtain a
4 license, the license of that bank to act as an general agent or insurance producer
5 shall be canceled or denied in accordance with this Article. Each bank licensed as
6 an general agent or insurance producer under this Article shall file under oath with
7 its application for license renewal a list of the name and address of each individual
8 who will be acting as an general agent or insurance producer on behalf of the
9 bank.”

10 **Section 29.** The title of Article 8 of Chapter 15, Title 22, Guam Code
11 Annotated, is hereby *amended* to read:

12 **“Article 8**

13 **SURPLUS LINE BROKER ~~OR AGENTS~~”**

14 **Section 30.** §15801 of Chapter 15, Title 22, Guam Code Annotated, is
15 hereby *amended* to read:

16 “The Commissioner of Banking and Insurance, upon receipt of an
17 application in proper form and a license fee of One_Hundred Dollars (\$100.00),
18 may issue a surplus line license to any duly qualified and licensed insurance
19 broker, ~~or general agent~~ named therein to act as surplus line broker or agent in
20 Guam for any foreign company or insurer (or alien company or insurer approved
21 by the Commissioner) not authorized to transact business in Guam in securing,
22 issuing or placing policies of insurance, contracts of indemnity and/or surety bonds
23 on property located in, or undertakings to be carried out in Guam for such
24 companies.”

25 **Section 31.** §15802 of Chapter 15, Title 22, Guam Code Annotated, is
26 hereby *amended* to read:

1 “Before receiving such license, such surplus line broker ~~or agent~~ shall
2 execute and deliver to the commission a bond in the penal sum of ~~€Two €Thousand~~
3 dollars (\$2,000-~~00~~) in such form and with such sureties as the Commissioner shall
4 approve, conditioned that he will fully comply with all requirements of this article.
5 Such license shall entitle such surplus line broker ~~or agent~~ to transact business for
6 any or all unauthorized insurance companies or insurers as provided in this article,
7 and shall expire on the first day of July next following the date of issue.”

8 **Section 32.** §15804 of Chapter 15, Title 22, Guam Code Annotated, is
9 hereby *amended* to read:

10 “Such surplus line insurance shall only be issued after the insured has
11 procured insurance in companies admitted to do business on Guam to the full
12 amount which such companies are willing to write on such property. Every policy
13 issued under this Section shall be endorsed “ISSUED IN AN UNAUTHORIZED
14 COMPANY, UNDER ~~AGENT’S (OR BROKER’S)~~ SURPLUS LINE BROKER’S
15 LICENSE NO. ____”, which endorsement shall be properly filled in and signed
16 by the ~~broker or agents~~ surplus line broker.”

17 Before registering and delivering any such policy for an unauthorized
18 insurance company or insurer, such surplus line broker ~~or agent~~ shall procure from
19 such company or insurer a power of attorney which shall empower him or her as its
20 attorney in fact to receive and accept on its behalf service of any and all writs,
21 processes and summonses requisite or necessary to give complete jurisdiction of
22 any such company or insurer to any of the courts of Guam, and shall be deemed to
23 constitute such attorney the authorized agent of such company or insurer upon
24 whom lawful service may be made of all writs, processes and summonses in any
25 case, suit or proceeding in any court mentioned herein. Such power of attorney
26 shall be valid so long as such company or insurer has any liability existing in
27 Guam on account of any outstanding policies or unpaid claims pending against it.

1 Such surplus line broker ~~or agent~~ shall file such power of attorney with the
2 Commissioner of Banking and Insurance promptly on receipt of same.”

3 **Section 33.** §15805(a) of Chapter 15, Title 22, Guam Code Annotated is
4 hereby *amended*, and a new Subsection (b) is hereby *added*, to read:

5 **“§ 15805. Record of Business: Filing of Annual and Quarterly**
6 **Statements: Contents.**

7 (a) Annual Statement. Every such surplus line broker ~~or agent~~ shall
8 keep a separate account of the business done under his surplus line license
9 and on or before the first day of July in each year, shall file with the
10 Commissioner an annual statement for the calendar year preceding, giving
11 the name of the insured to whom such policy or indemnity contract granting
12 such unauthorized insurance has been issued, the name and home office of
13 each company issuing any such policy or contract, the amount of such
14 insurance, the great premiums charged therein or therefor, the date and term
15 of the policy, and the amount of premium returned on each policy canceled
16 or not taken, with such other information and upon such form as required by
17 the Commissioner, and pay the Commissioner an amount equal to the taxes
18 imposed by law on the premiums of like authorized insurance companies.

19 (b) Quarterly Statement. Every such surplus line broker is required to
20 submit a quarterly statement for the preceding quarter. Information stated on each
21 quarter must be the same information that appears on the surplus lines annual
22 statement. The quarterly report is due thirty (30) days from end of quarter.”

23 **Section 34.** §15806 of Chapter 15, Title 22, Guam Code Annotated, is
24 hereby *amended* to read:

25 **“§ 15806. Status of Companies Issuing Insurance: Liability to Suit: Duty**
26 **of ~~Agent~~ Surplus Line Broker on Being Served with Process: Time for**
27 **Answer: When Jurisdiction Deemed Acquired.**

1 (a) Every company, insurer or insurers making insurance under the
2 provisions of this section shall be deemed and held to be doing business in
3 Guam as an unlicensed concern, and may be sued upon any cause of action
4 arising under any policy of insurance so issued and delivered by it.

5 (b) Any surplus line broker or agent being served with summons
6 and complaint in any such cause shall forthwith mail such summons and
7 complaint, or true and complete copies thereof, by registered letter with
8 proper postage affixed, properly addressed to the company sued, and such
9 company shall have forty (40) days from the date of the service of such
10 summons and complaint upon said broker or agent in which to plead, answer
11 or defend any such cause.

12 (c) Upon service of summons and complaint being had upon such
13 surplus line broker or agent for such company, the court in which such
14 action is begun shall be deemed to have duly acquired jurisdiction in
15 personam of the defendant company so served.”

16 **Section 35.** §15807 of Chapter 15, Title 22, Guam Code Annotated, is
17 hereby *amended* to read:

18 “(a) Penalty.

19 (1) Every such surplus line broker or agent who fails or
20 refuses to make and file said an annual statement pursuant to
21 §15805(a), and to pay the taxes required to be paid thereon prior to the
22 first day of July after such tax is due, shall be liable for a fine of
23 twenty-five dollars (\$25:00) for each day of said delinquency.

24 (2) Every such surplus line broker who fails or refuses to
25 make and file said a quarterly statement pursuant to § 15805(b), and to
26 pay the taxes required to be paid thereon prior to submission of said

1 quarterly report, shall be liable for a fine of fifty dollars (\$50) for each
2 day of delinquency.

3 (b) Such tax and fine may be recovered in an action to be instituted
4 by the Commissioner in the name of the territory, the attorney general
5 representing him, in any court of competent jurisdiction, and the fine,
6 when so collected, shall be paid to the credit of the ~~general fund.~~
7 Banking and Insurance Enforcement Fund.

8 (c) (1) If any such surplus line broker ~~or agent~~ shall fail to make
9 and file said annual and quarterly statements and pay the said taxes, or

10 (2) shall refuse to allow the Commissioner to inspect and
11 examine his records of the business transacted by him pursuant to this
12 section, or

13 (3) shall fail to keep such records in manner as required by
14 the Commissioner, or

15 (4) shall refuse or neglect to immediately notify the
16 insurance company for whom he has placed, registered or delivered a
17 policy, of the commencement of any action or proceeding in any court
18 against such company, the license of such surplus line broker ~~or agent~~
19 shall be immediately revoked by the Commissioner, and no license
20 shall be issued to such surplus line broker ~~or agent~~ within one (1) year
21 from the date of such revocation, nor until all such taxes and fines are
22 paid, and the Commissioner shall be satisfied that full compliance
23 with the provisions of this section will be had.”

24 **Section 36.** A new §18501 (e) of Article 5, Chapter 18, Title 22, Guam
25 Code Annotated, is hereby *added* to read:

26 “(e) All newly admitted insurance companies must file rates and
27 forms through System for Electronic Rate and Form Filing (SERFF) and

1 business cannot commence unless approval of forms and rates are received
2 from the Office of the Commissioner.”

3 **Section 37. Effective Date.** This Act shall be effective upon enactment.

4 **Section 38. Severability.** If any provision of this Act or its application to
5 any person or circumstance is found to be invalid or contrary to law, such invalidity
6 shall not affect other provisions or applications of this Act which can be given effect
7 without the invalid provisions or application, and to this end the provisions of this
8 Act are severable.

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