

**22 GCA BUSINESS REGULATIONS
CH. 12 ADMINISTRATION**

**DIVISION 2
INSURANCE LAW**

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**CHAPTER 12
ADMINISTRATION**

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§ 12101. Short Title.

This Title may be cited as the *Insurance Law*.

SOURCE: SOURCE: GC §43000.

§ 12102. Provisions Construed as Continuations.

The provisions of this Title insofar as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations thereof, and not as new enactments.

SOURCE: SOURCE: GC §43001.

§ 12103. Not Retroactive.

No action or proceedings commenced, and no right accrued, prior to the effective date hereof, is affected by the provisions of this Title, but all procedure hereafter taken shall conform to the provisions of this Title so far as possible.

SOURCE: GC §43002.

§ 12104. Definitions.

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

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

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

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

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

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

(f) *Admitted* in relation to a person, means entitled to transact insurance business in Guam under the laws of Guam; *nonadmitted*, in relation to a person, means not entitled to transact insurance business in Guam under the laws of Guam.

(g) *Advisory organization* means every person, other than an admitted insurer, who prepares policy forms or makes underwriting rules, or who collects and furnishes loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate

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making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed an advisory organization.

(h) *Agent* means both general agent and sub-agent, unless otherwise apparent from the context

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

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

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

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

(n) *Domestic* means organized under the laws of Guam, whether or not admitted.

(o) *Foreign* means not organized under the laws of Guam, but organized under the laws of the United States or any political subdivision thereof, whether or not admitted.

(p) *General Agent* means a person authorized by an insurer to countersign, issue and deliver new policies, to accept service of process on behalf of the insurer, and vested with full authority to consummate a contract of insurance and to transact all other necessary business of the insurer in Guam. [*Gordon Mailloux Enterprises, Inc. v. Fireman's Ins. Co.* (1966), 366 F.2d. 740.]

(q) *Insurance* is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from contingent or unknown events.

(r) *Insurer* means the person who undertakes to indemnify another by insurance; *insured* means the person so indemnified.

(s) *Issue* means to write, renew, execute, effect or other-wise enter into a contract of insurance.

(t) *Paid-in capital* or *Capital paid-in* means the lower of the following amounts:

(1) The value of an insurer's assets in excess of the sum of its

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liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law;

(2) The aggregate par value of an insurer's issued shares of stock, including treasury shares.

For the purpose of computing *paid in capital* or *capital, paid in*, shares of stock are not considered as liabilities.

(u) *Person* means any person, association, organization, partnership, business trust, or corporation.

(v) *Policy* means the written instrument in which a contract of insurance is set forth.

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

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

(y) *Reinsurance* means the insurance ceded and accepted between two insurers one of whom has effected the direct insurance.

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

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

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

(cc) *Transact* means, when applied to insurance, solicitation, negotiations preliminary to execution, execution or transaction subsequent to execution, or a contract of insurance or matters appertaining thereto.

(dd) *United States* means its entire system and group of political jurisdictions including the States, the District of Columbia, territories,

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possessions, or commonwealths.

(ee) *Writing* means any form of recorded message capable of comprehension by ordinary visual means.

(ff) *Board'* means the Banking and Insurance Board.

(gg) *Commissioner* means the Commissioner of Banking and Insurance.

(hh) *Office* means the office of the Commissioner of Banking and Insurance.

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

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

SOURCE: GC §43003. Subsection (l) amended and subsections (ff), (gg) and (hh) added by P.L. 27-88:7(a). Subsections (ii) and (jj) added by P.L. 29-113:VI:56(b-c) (Sept. 30, 2008).

§ 12105. Exercise of Power.

Whenever, by the provisions of this Title, a power is granted to a public officer or a duty imposed upon such officer, the power or duty may be performed by a deputy or assistant of such officer authorized to do so.

SOURCE: GC §43004.

§ 12106. Notice.

Whenever any notice is required by this Title, it shall be in writing unless expressly otherwise provided. Any required notice may be given by mailing such notice, postage prepaid, addressed to the person to be notified, at his last known residence or his principal place of business, unless expressly otherwise provided. An affidavit setting forth the facts of such mailing by the person doing so is prima facie evidence of such notice.

SOURCE: GC §43005.

§ 12107. Time.

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Any date or time mentioned in this Title, or in any policy of insurance issued under authority thereof, shall be conclusively presumed to refer to Guam time unless specifically and clearly otherwise stated.

SOURCE: GC §43006.

§ 12108. Scope of Title.

All insurance transacted in Guam is governed by the provisions of this Title.

SOURCE: GC §43007.

§ 12109. Penalty.

Any person violating any of the provisions of this Title, or of any regulation issued hereunder, or any lawful order of the Commissioner, for which a penalty is not otherwise specifically provided, shall be guilty of a misdemeanor.

SOURCE: GC §43008. Amended by P.L. 13-187:212.

§ 12110. False Swearing.

Any person who shall knowingly swear to, or verify, any false or fraudulent statement, or who, when testifying at any hearing, examination or inquiry pursuant to this Title shall make any false or fraudulent statement, shall be guilty of a felony.

SOURCE: GC §43009. Amended by P.L. 13-187:213.

§ 12111. Conflict of Interest Between Insured and Insurer.

(a) *If* the provisions of a policy of insurance impose a duty to defend upon an insurer and a conflict of interest arises which creates a duty on the part of the insurer to provide independent counsel to the insured, the insurer shall provide independent counsel to represent the insured, *unless*, at the time the insured is informed that a possible conflict may arise or does exist, the insured *expressly* waives, in writing, the right to independent counsel. An insurance contract may contain a provision which sets forth the method of selecting independent counsel consistent with this Section.

(b) For purposes of this Section, a conflict of interest does *not* exist as to all allegations or facts in the litigation for which the insurer denies coverage; *however*, when an insurer reserves its rights on a given issue and the outcome of that coverage issue can be controlled by counsel first retained by the insurer for the defense of the claim, a conflict of interest may exist. No conflict of interest shall be deemed to exist as to allegations

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of punitive damages or be deemed to exist solely because an insured is sued for an amount in *excess* of the insurance policy limits.

(c) When the insured has selected independent counsel to represent the insured, the insurer may exercise its right to require that the counsel selected by the insured possess certain *minimum* qualifications, which may include that the selected counsel have: (i) at least five (5) years in civil litigation practice, which includes substantial defense experience in the subject at issue in the litigation; *and* (ii) errors and omissions coverage.

The insurer's obligation to pay fees to the independent counsel selected by the insured is *limited* to the rates which are actually paid by the insurer to attorneys retained by it in the ordinary course of business in the defense of similar actions in the community where the claim arose or is being defended. This Article does *not* invalidate other different or additional policy provisions pertaining to attorney's fees or providing methods of settlement of disputes concerning those fees.

Any dispute concerning attorney's fees *not* resolved by these methods shall be resolved by final and binding arbitration by a single neutral arbitrator selected by the parties to the dispute. In the event that the parties cannot agree upon the selection of a neutral arbitrator, then upon petition of any party to the dispute, the Superior Court of Guam shall designate a neutral arbitrator.

(d) When independent counsel has been selected by the insured, it shall be the duty of that counsel and the insured to disclose to the insurer all information concerning the action, *except* privileged materials relevant to coverage disputes, and to timely inform and consult with the insurer on all matters relating to the action. Any claim of privilege asserted is *subject to in camera* review by the Superior Court of Guam. Any information disclosed by the insured or by independent counsel is *not* a waiver of the privilege as to any other party, person or legal entity.

(e) The insured may waive its rights to select independent counsel by signing the following statement: *'I have been advised and informed of my right to select independent counsel to represent me in this lawsuit. I have considered this matter fully and freely waive my right to select independent counsel at this time. I authorize my insurer to select a defense attorney to represent me in this lawsuit.'*

(f) Where the insured selects independent counsel pursuant to the provisions of this Section, both the counsel provided by the insurer and

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independent counsel selected by the insured shall be allowed to participate in all aspects of the litigation. Counsel shall cooperate fully in the exchange of information that is consistent with each counsel's ethical and legal obligation to the insured.

Nothing in this Section shall relieve the insured of the insured's duty to cooperate with the insurer under the provisions of the insurance contract.

SOURCE: Added by P.L. 26-39:2.

NOTE: The Compiler has changed "Subdivision" to Article in (c) para. 2 to reflect the fact that this Chapter of the GCA does not contain subdivisions, but does contain Articles.

§ 12111.1. Misrepresentations and False Advertising Prohibited.

(a) No person shall:

(1) make, issue, circulate, or cause to be made, issued or circulated, any estimate, circular or statement misrepresenting the terms of any policy issued, or to be issued, or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon;

(2) make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(3) make any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve upon which any life insurer operates; or

(4) use any name or title of any policy or class of policies misrepresenting the true nature thereof.

(b) Only the words in the carrier's actual policy are actionable, and falsely written advertisements by the carrier about its actual policy shall not give rise to a cause of action against the carrier; provided, the carrier, or its licensed representative, is not in violation of Subsection (a) herein.

SOURCE: Added as § 12111 by P.L. 26-56:1. Number changed by Compiler because § 12111 was already used on another subject.

§ 12112. Twisting Prohibited.

No person shall make or issue, nor cause to be made or issued, any written statement misrepresenting or making incomplete comparisons as to the terms, conditions or benefits contained in any policy for the purpose of inducing, or attempting to induce, the policyholder to lapse, forfeit,

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surrender, retain, exchange or convert any insurance policy.

SOURCE: Added by P.L. 26-56:2. Renumbered by Compiler.

§ 12113. Air Ambulance Services Membership Plan Exempted.

The provisions of this Chapter shall not prohibit or apply to Air Ambulance Services Membership Plans.

SOURCE: Added by P.L. 29-113:VI:56(d) (Sept. 30, 2008).

**ARTICLE 2
INSURANCE COMMISSIONER**

NOTE: This Article (§§ 12202 - 12213) was repealed by P.L. 27-88:8. It was replaced by a merger with the Banking Board which became the Banking & Insurance Board. See 11 GCA § 100103.
