

Delaware Tribe of Indians Tribal Statutes
TITLE 27
Insurance Company Act

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TITLE 27

Insurance Company Act

PART 1. GENERAL PROVISIONS

100. Title and Purpose.

This title is known as the "Insurance Company Act." This Act rescinds and replaces Title 27 of the Tribal Statutes that was adopted August 27, 2012.

105. Definitions.

As used in this title:

1. "Allied Business Entity":
 - a. Means
 - i. two business entities are allied if both businesses are owned, controlled, or held by any of the following parties or by a successor or assign to any of the following parties:
 - (a) owner(s), or
 - (b) immediate family member of an owner, or
 - (c) an individual having a contractual or employment relationship with one of the business entities.
 - ii. two business entities are allied if one business entity is owned, controlled, or held by a parent corporation.
 - b. May be interpreted broadly by the Commissioner.
2. "ARC" or "Allied Reinsurance Company" means a reinsurer that:
 - a. is incorporated or domesticated pursuant to the Business Corporation Act, and
 - b. holds a valid certificate of authority from the Commissioner to transact the business of reinsurance from the Tribal jurisdiction with a FIC or any insurer or reinsurer authorized under this Act.
3. "AIC" or "Allied Insurance Company" means an insurer that:
 - a. is incorporated or domesticated pursuant to the Business Corporation Act, and
 - b. holds a valid certificate of authority from the Commissioner to transact the business of:
 - i. insurance for authorized risks of Allied Business Entities that are located outside the Tribal jurisdiction, and
 - ii. reinsurance from the Tribal jurisdiction with a FIC or any insurer or reinsurer authorized under this Act.
4. "FIC" or "Foreign Insurance Company" means an insurer that:
 - a. is incorporated pursuant to the corporate laws of a jurisdiction outside the Tribal jurisdiction, and
 - b. holds a valid certificate of authority to transact the business of insurance or reinsurance in at least one jurisdiction that imposes statutory or regulatory standards acceptable to the Commissioner.
5. "TIC" or "Tribal Insurance Company" means an insurer that:
 - a. is incorporated or domesticated pursuant to the Business Corporation Act, and
 - b. holds a valid certificate of authority from the Commissioner to transact the business of:
 - i. insurance from the Tribal jurisdiction for authorized risks that are located outside the Tribal jurisdiction, and
 - ii. reinsurance from the Tribal jurisdiction with a FIC or any insurer or reinsurer authorized under this Act.
6. "Authorized Risks" means any risk accepted anywhere in the world as a commercial insurance risk, all consumer credit-related insurance risks and other insurance risk as approved by the insurance commissioner.
7. "Commissioner" means the Insurance Commissioner, the Commissioner's designee, or such individual as the Tribal Council of the Tribe may designate.

8. "Insurance" means any risk transfer contract recognized as insurance in any state within the United States or recognized as insurance under the United States Internal Revenue Code or as otherwise determined by the insurance commissioner.
9. "Registrar" means the Registrar of Companies.
10. "Tribe" or "Tribal" means of or belonging to the Delaware Tribe of Indians.

110. Powers of Insurers and Reinsurers Formed in the Tribal Jurisdiction In Addition to the Powers Granted by the Business Corporation Act

1. An ARC has the power to
 - a. assume reinsurance of authorized risks located outside the Tribal Lands of Allied Business Entities, and
 - b. assume reinsurance of authorized risks produced by Allied Business Entities from a FIC or any insurer or reinsurer that holds a certificate of authority in the Tribal jurisdiction, and
 - c. cede reinsurance of authorized risks of Allied Business Entities to a FIC or any insurer or reinsurer that holds a certificate of authority in the Tribal jurisdiction.
2. An AIC has the power to
 - a. insure authorized risks located outside the Tribal Lands of Allied Business Entities, and
 - b. assume reinsurance of authorized risks of Allied Business Entities or produced by Allied Business Entities from a FIC or any insurer or reinsurer that holds a certificate of authority in the Tribal jurisdiction, and
 - c. cede reinsurance of authorized risks of Allied Business Entities or produced by Allied Business Entities to a FIC or any insurer or reinsurer that holds a certificate of authority in the Tribal jurisdiction.
3. A TIC has the power to:
 - a. insure any authorized risks located outside the Tribal Lands of any business entity, and
 - b. assume reinsurance of any authorized risks from a FIC or any insurer or reinsurer that holds a certificate of authority in the Tribal jurisdiction, and
 - c. cede reinsurance of any authorized risks to a FIC or any insurer or reinsurer that holds a certificate of authority in the Tribal jurisdiction.

115. Authority to make rules—Authority to issue orders.

1. The Commissioner may adopt rules to:
 - a. require a statement, document, or information that an insurer or reinsurer shall provide to the Commissioner to obtain a certificate of authority;
 - b. prescribe one or more capital requirements for an insurer or reinsurer in addition to those required under Section 210 based on the type, volume, and nature of insurance business transacted by the insurer or reinsurer;
 - c. establish:
 - i. the amount of capital or surplus required to be retained under Subsection 215-3 at the payment of a dividend or other distribution by an insurer or reinsurer; or
 - ii. a formula to determine the amount described in Subsection 215-3;
 - d. waive or modify a requirement for public notice and hearing for the following by an insurer or reinsurer:
 - i. merger;
 - ii. consolidation;
 - iii. conversion; or
 - iv. redomestication;
 - e. determine the financial reports an insurer or reinsurer shall annually file with the Commissioner; and
 - f. prescribe the required forms and reports under Section 400.
2. The Commissioner may issue prohibitory, mandatory, and other orders relating to an insurer or reinsurer as necessary to enable the Commissioner to secure compliance with this title.

PART 2. AUTHORIZED INSURANCE

200. Certificate of authority.

The Commissioner may issue a certificate of authority to act as an insurer or reinsurer from this jurisdiction to an insurer or reinsurer that meets the requirements of this title.

205. Permissive areas of insurance.

1. Authorized Insurance
 - a. When permitted by its articles of incorporation or charter, an insurer or reinsurer may apply to the Commissioner for a certificate of authority to do all insurance authorized by this title.
 - b. Notwithstanding Subsection 1-a, an insurer formed in the Tribal jurisdiction may not issue:
 - i. Insurance on any risk located in the Tribal Lands, or
 - ii. Insurance other than authorized insurance.
2. To conduct insurance business from this jurisdiction, an insurer or reinsurer shall obtain from the Commissioner a certificate of authority authorizing it to conduct insurance or reinsurance business from this jurisdiction; and
 - a. appoint the Commissioner as the agent of the insurer or reinsurer upon whom process, notice, or demand may be served, or
 - b. appoint a Resident Agent to accept service of process or to otherwise act on behalf of the insurer or reinsurer in this jurisdiction. If the Resident Agent cannot with reasonable diligence be found at the Resident Agent's office, the Commissioner is the agent of the insurer or reinsurer upon whom process, notice, or demand may be served.
3. Before receiving a certificate of authority, an insurer or reinsurer formed as a corporation in this jurisdiction shall file with the Commissioner:
 - a. the articles of incorporation, and
 - b. a statement regarding the financial condition of the corporation; and
 - c. any other statement or document required by the Commissioner under Section 115;
4. In addition to the information required by Subsection 3, an applicant insurer or reinsurer shall file with the Commissioner evidence of:
 - a. the amount and liquidity of the assets of the applicant insurer or reinsurer relative to the risks to be assumed by the applicant insurer or reinsurer;
 - b. the adequacy of the expertise, experience, and character of the person who will manage the applicant insurer or reinsurer;
 - c. the overall soundness of the plan of operation of the applicant insurer or reinsurer; and
 - d. any other factor the Commissioner:
 - i. adopts by rule under Section 115; or
 - ii. considers relevant in ascertaining whether the applicant insurer or reinsurer will be able to meet the policy obligations of the applicant insurer or reinsurer.
5. Protected Information
 - a. Information submitted pursuant to Subsections 3, 4, and 5 shall be protected information not subject to public disclosure.
 - b. The Commissioner may disclose information submitted pursuant to Subsection 3, 4, and 5 to a public official having jurisdiction over the regulation of insurance in another jurisdiction if:
 - i. the public official receiving the information agrees in writing to maintain the confidentiality of the information; and
 - ii. the laws of the jurisdiction in which the public official serves require the information to be confidential.
6. An insurer or reinsurer shall pay the following nonrefundable fees as established by the Commissioner:
 - a. a fee for examining, investigating, and processing of an application for a certificate of authority made by an insurer or reinsurer;
 - b. a fee for obtaining a certificate of authority for the year the insurer or reinsurer is first issued a certificate of authority; and
 - c. a fee for the renewal of a certificate of authority.
7. The Commissioner may:
 - a. assign a department employee or retain legal, financial, and examination services from outside the department to perform the services described in:
 - i. Subsection 7; and
 - ii. Section 405;
 - b. charge the reasonable cost of services described in Subsection 6-b-i to the applicant insurer or reinsurer.

8. If the Commissioner is satisfied that the documents and statements filed by the applicant insurer or reinsurer comply with this title, the Commissioner may grant a certificate of authority authorizing the company to conduct insurance or reinsurance business in this jurisdiction and may renew the certificate on an annual basis.
9. A certificate of authority granted under this section expires annually and shall be renewed by April 1 of each year.

210. Paid-in capital.

1. The Commissioner may not issue a certificate of authority to an insurer or reinsurer unless the insurer or reinsurer possesses and thereafter maintains paid-in capital of an amount determined by the Commissioner after giving due consideration to:
 - a. the insurer or reinsurer's business plan, feasibility study, and proformas, and
 - b. the nature of the risks to be insured or reinsured.
2. The paid-in capital required under Subsection 1-a may be in the form of:
 - a. cash; or
 - b. cash equivalent; or
 - c. an irrevocable letter of credit issued by a member bank of the Federal Reserve System or a bank approved by the Commissioner, or
 - d. any other investment permitted by the Commissioner.
3. The Commissioner may at any time prescribe additional capital that must be paid in based on the type, volume, and nature of insurance business actually being transacted.
4. Dividends and Distributions
 - a. An insurer or reinsurer may not pay the following without the prior approval of the Commissioner:
 - i. a dividend out of capital in excess of the limits under Section 602 Distributions to Stockholders of the Business Corporation Act, as amended, of the Delaware Tribe of Indians; or
 - ii. a distribution with respect to capital in excess of the limits under Section 602 Distributions to Stockholders of the Business Corporation Act, as amended, of the Delaware Tribe of Indians.
 - b. The Commissioner may condition approval of an ongoing plan for the payment of dividends or other distributions on the retention, at the time of each payment, of capital in excess of:
 - i. amounts specified by the Commissioner under Section 115; or
 - ii. determined in accordance with formulas approved by the Commissioner under Section 115.

215. Paid-in or Earned Surplus "Surplus".

1. The Commissioner may not issue a certificate of authority to an insurer or reinsurer unless the insurer or reinsurer possesses and thereafter maintains surplus of an amount determined by the Commissioner.
2. The surplus required under Subsection 1 may be in the form of:
 - a. cash; or
 - b. cash equivalent; or
 - c. an irrevocable letter of credit issued by a member bank of the Federal Reserve System or a bank approved by the Commissioner, or
 - d. any other investment permitted by the Commissioner.
3. The Commissioner may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted.
4. Dividends and Distributions
 - a. Without the prior approval of the Commissioner, an insurer or reinsurer may not pay:
 - i. a dividend out of surplus in excess of the limits under Section 602 Distributions to Stockholders of the Business Corporation Act, as amended, of the Delaware Tribe of Indians; or
 - ii. a distribution with respect to surplus in excess of the limits under Section 602 Distributions to Stockholders of the Business Corporation Act, as amended, of the Delaware Tribe of Indians.
 - b. The Commissioner may condition approval of an ongoing plan for the payment of dividends or other distribution on the retention, at the time of each payment, of surplus in excess of amounts:
 - i. specified by the Commissioner; or
 - ii. determined in accordance with formulas approved by the Commissioner.

PART 3. FORMATION AND AUTHORIZATION

300. Incorporation.

1. Certificate of Good Standing
 - a. Before a proposed insurer or reinsurer files its articles of incorporation with the Registrar, the incorporator shall obtain from the Commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the Delaware Tribe of Indians.
 - b. In considering a request for a certificate under Subsection 1-a, the Commissioner shall consider:
 - i. the character, reputation, financial standing, and purposes of the incorporators;
 - ii. the character, reputation, financial responsibility, insurance experience, business qualifications of the officers and directors;
 - iii. any information in:
 - (a) the application for a certificate of authority; or
 - (b) the department's files; and
 - iv. other aspects the Commissioner considers advisable.
2. Required Filing
 - a. An insurer or reinsurer formed shall:
 - i. file with the Registrar the insurer's or reinsurer's articles of incorporation; and
 - ii. pay the Registrar the fees required.
 - b. The Registrar shall file the articles of incorporation described in Subsection 2-b for an insurer or reinsurer that complies with this section.
3. The capital stock of an insurer or reinsurer may not be issued at less than par value.
4. Application of Laws
 - a. An insurer or reinsurer authorized under this title has the privileges and is subject to the provisions of the Tribal laws that govern business entities as well as the applicable provisions contained in this title.
 - b. If a conflict exists between a provision of the Tribal laws that govern business entities and a provision of this title, this title shall control.
 - c. Except as provided in Subsection 4-d, the provisions of this title pertaining to a merger, consolidation, conversion, and redomestication apply in determining the procedures to be followed by an insurer or reinsurer in carrying out any of the transactions described in those provisions.
 - d. Notwithstanding Subsection 4-c, the Commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 115.
 - e. If a notice of public hearing is required, but no one requests a hearing, the Commissioner may cancel the public hearing.
 - f. Upon issuance of a certificate of authority ("Issuance") as provided in Section 200, an insurer or reinsurer shall be bound by, and rely upon, the provisions and requirements of the Insurance Company Act then codified on the date of such Issuance for a period of twenty (20) years, without regard to subsequent changes in the Insurance Company Act; and thereafter, such insurer or reinsurer shall be bound by, and rely upon, the provisions and requirements of the Insurance Company Act then codified on the first day of the twenty-first year subsequent to such Issuance (collectively "Acquired Rights"¹). Provided however, that if during the term of such Acquired Rights, an insurer or reinsurer has its certificate of authority suspended or revoked pursuant to Section 500, captioned "Suspension or revocation", then such Acquired Rights shall immediately terminate upon the final issuance of such suspension or revocation. Notwithstanding the foregoing, an insurer or reinsurer having Acquired Rights, may revoke such rights at any time upon written notice provided to, and received by, the Insurance Commissioner; provided however, any such revocation, shall upon the effective date of such notice, be final, binding, and irrevocable.

¹ *Legislative Intent.* Consistent with and akin to the doctrine of acquired rights, whereby the principle that once a right has vested, it may not be reduced by later legislation.

305. Reinsurance.

An insurer or reinsurer authorized in the Tribal jurisdiction may take credit for reserves on risks, or portions of risks, ceded by the insurer or reinsurer if the assuming reinsurer is authorized in the Tribal jurisdiction, is a FIC, or is authorized by the Commissioner.

310. Rating organization.

An insurer or reinsurer is not required to join a rating organization.

315. Resident agent.

1. If designated by any insurer or reinsurer authorized under this Act, the Commissioner shall serve as the Resident Agent for service of process in the Tribal jurisdiction for the authorized insurer or reinsurer.
2. Any resident of Tribal land may apply to the Commissioner to serve as a Resident Agent for insurers or reinsurers authorized under this Act on forms adopted by the Commissioner.
3. The Commissioner may require an applicant to demonstrate sufficient knowledge of insurance to serve as a Resident Agent for insurers or reinsurers authorized under this Act.
4. The Commissioner shall maintain and publish a list of Resident Agents approved to serve as a Resident Agent for insurers or reinsurers authorized under this Act.

320. Insurance manager.

1. Any resident of Tribal land or non-resident may apply to the Commissioner to serve as an Insurance Manager for insurers or reinsurers authorized under this Act on forms adopted by the Commissioner.
2. The Commissioner shall require an applicant to demonstrate sufficient knowledge of insurance to serve as the Insurance Manager for insurers or reinsurers authorized under this Act.
3. The Commissioner shall maintain and publish a list of Insurance Managers approved to serve as the Insurance Manager for insurers or reinsurers authorized under this Act.
4. A designated Insurance Manager may represent the insurer or reinsurer in any or all matters coming before the Commissioner or other Tribal governmental regulators.
5. No person shall hold himself or herself out as an Insurance Manager or act as an Insurance Manager of an insurer or reinsurer authorized under this Act without the authorization of the Commissioner.

325. Conversion or merger.

1. A plan for a merger under this section:
 - a. shall be fair and equitable to the stockholders of the stock insurer or reinsurer; and
 - b. shall provide for the purchase of the shares of any nonconsenting stockholder of a stock insurer or reinsurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting stockholder.
2. If the Commissioner approves the articles of merger under this section:
 - a. the Commissioner shall endorse the Commissioner's approval on the articles; and
 - b. the surviving insurer or reinsurer shall present the name to the Registrar.

PART 4. REPORTS AND EXAMINATIONS**400. Reports to Commissioner.**

1. An insurer or reinsurer is not required to make a report except those provided in this title.
2. Report of Financial Condition by Insurers
 - a. Before June 30 of each year, an insurer shall submit to the Commissioner a report of the financial condition of the insurer, verified by oath of two of the executive officers of the insurer.
 - b. The report of the financial condition may be presented:
 - i. using generally accepted accounting principles, except to the extent that the Commissioner requires, approves, or accepts the use of a statutory accounting principles;
 - ii. using a useful or necessary modification or adaptation to an accounting principle that is required, approved, or accepted by the Commissioner for the type of insurance and kind of insurer to be reported upon; and
 - iii. including supplemental or additional information required by the Commissioner.

405. Examination of Insurers.

1. Examination Schedule
 - a. The Commissioner is authorized to call for an examination of the financial condition of any insurer authorized in the jurisdiction whenever the Commissioner determines it to be prudent, but not more often than every three years.
 - b. The Commissioner, or a person appointed by the Commissioner, shall conduct the examination.
 - c. The examination is to be made as of December 31 of the full three-year period.
2. During an examination under this section the Commissioner, or a person appointed by the Commissioner, shall thoroughly inspect and examine the affairs of the insurer to ascertain:
 - a. the financial condition of the insurer;
 - b. the ability of the insurer to fulfill the obligations of the insurer; and
 - c. whether the insurer has complied with this title.
3. The Commissioner may accept a comprehensive annual independent audit in lieu of an examination:
 - a. of a scope satisfactory to the Commissioner; and
 - b. performed by an independent auditor approved by the Commissioner.
4. An insurer that is inspected and examined under this section shall pay, as provided in Subsection 205-7-a, the expenses and charges of an inspection and examination.

410. Classification and use of records.

1. The following records shall be protected from public disclosure:
 - a. examination reports under this section;
 - b. preliminary examination reports or results under this section;
 - c. working papers for an examination conducted under this section;
 - d. recorded information for an examination conducted under this section; and
 - e. documents and copies of documents produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an examination conducted under this section.
2. This section does not prevent the Commissioner from using the information provided under this section in furtherance of the Commissioner's regulatory authority under this title.
3. Notwithstanding other provisions of this section, the Commissioner may grant access to the information provided under this section to:
 - a. public officers having jurisdiction over the regulation of insurance in any state or country; or
 - b. law enforcement officers of this jurisdiction or any state or an agency of the government of any country, if the officers receiving the information agree in writing to hold the information in a manner consistent with this section.

PART 5. SUSPENSION OR REVOCATION

500. Suspension or revocation—Grounds.

1. The Commissioner may suspend or revoke the certificate of authority of an insurer or reinsurer to conduct insurance or reinsurance from this jurisdiction for:
 - a. insolvency or impairment of capital or surplus;
 - b. failure to meet the requirements of Section 210 or 215;
 - c. refusal or failure to submit:
 - i. an annual report required by Section 400; or
 - ii. any other report or statement required by law or by lawful order of the Commissioner;
 - d. failure to comply with the charter, bylaws, or other organizational document of the insurer or reinsurer;
 - e. failure to submit to:
 - i. an examination authorized under Section 405; or
 - ii. any legal obligation relative to an examination authorized under Section 405;
 - f. refusal or failure to pay the cost of examination authorized under Section 405;
 - g. failure otherwise to comply with laws of this jurisdiction.
2. Notwithstanding any other provision of this title, if the Commissioner finds, upon examination, hearing, or other evidence, that an insurer or reinsurer has committed any of the acts specified in Subsection 1, the Commissioner

may suspend or revoke the certificate of authority of the insurer or reinsurer if the Commissioner considers it in the best interest of the public or the policyholders of the insurer or reinsurer to revoke the certificate of authority.