



Ohio Revised Code

Section 3905.63 Limits on business placed with controlled insurer by controlling producer.

Effective: October 7, 1991

Legislation: Senate Bill 137 - 119th General Assembly

(A) 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 per cent of the admitted assets of the insurer, as reported in the insurer's quarterly statement filed as of the thirtieth day of September of the immediately preceding year, all of the following apply:

(1) The controlled insurer shall not accept business from the controlling producer and the controlling producer shall not place business with the controlled insurer, unless there is a written contract between the 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 at least the following provisions:

(a) The insurer may terminate the contract for cause, upon written notice to the producer. The insurer shall suspend the authority of the producer to write business during the pendency of any dispute regarding the cause of the termination.

(b) The producer shall render accounts to the insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the producer.

(c) The producer shall remit all funds due under the terms of the contract to the insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety days after the effective date of any policy placed with the insurer under the contract.

(d) All funds collected for the insurer's account shall be held by the 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 any applicable provisions of Title XXIX of the Revised Code. Funds of a controlling producer that is not required to be licensed in this state shall be maintained in



compliance with the requirements of the producer's domiciliary jurisdiction.

(e) The producer shall maintain separate, identifiable records of business written for the insurer.

(f) The contract shall not be assigned in whole or in part by the producer.

(g) The insurer shall provide the producer with copies of its underwriting standards, rules, and procedures and manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risks. The producer shall adhere to these 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 insurer by a producer that is not a controlling producer. For purposes of divisions (A)(1)(g) and (h) of this section, "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(h) The rates and terms of the producer's commissions, charges, or other fees and the purposes for the charges or fees. The rates of the commissions, charges, or other fees shall not be greater than those applicable to comparable business placed with the insurer by producers that are not controlling producers.

(i) If the contract provides that the producer's compensation on insurance business placed with the insurer is contingent upon the insurer's profits on that business, the compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums on any other insurance are earned. In no event shall the commissions be paid until the adequacy of the insurer's reserves on remaining claims has been independently verified pursuant to division (A)(3) of this section.

(j) A limit on the producer's writings in relation to the insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The insurer shall notify the producer when the applicable limit is approached and shall not accept business from the producer if the limit is reached. The producer shall not place business with the insurer if it has been notified by the insurer that the limit has been reached.



(k) The producer may negotiate, but shall not bind, reinsurance on behalf of the insurer on business the producer places with the insurer, except that the producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the 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.

(2) Each 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 reserves specialist acceptable to the superintendent of insurance, to review the adequacy of the insurer's loss reserves.

(3) On or before the first day of April, the controlled insurer shall annually file with the superintendent, in addition to any other required loss reserve certification, the opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the superintendent, that reports the loss ratios for each line of business written by the insurer and that, with respect to all business placed with the insurer by the producer, attests to the adequacy of loss reserves established for losses incurred and outstanding, including incurred but not reported, as of the previous thirty-first day of December.

(4) On or before the first day of April, the insurer shall annually report to the superintendent the amount of commissions paid by the insurer to the producer, the percentage that such amount represents of the net premiums written by the insurer, the amount of commissions paid by the insurer to each producer that is not in control of the insurer for the placement of the same kind of insurance, and the percentage that such amount represents of the net premiums written by the insurer.

(B) Division (A) of this section does not apply if both of the following conditions are met:

(1) The controlling producer places insurance only with the controlled insurer, with the insurer and a member or members of the insurer's holding company system, or with the insurer's parent, affiliate, or subsidiary; receives no compensation that is based on the amount of premiums written in connection with the insurance; and accepts insurance placed by nonaffiliated subproducers and not



directly from insureds.

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the insurer, or a producer that is a subsidiary of the insurer.