

AN ACT

To amend sections 1731.01, 1731.03, 3909.09, and 3909.15, to enact new sections 3909.05 and 3927.03 and section 3905.421, and to repeal sections 3909.05 and 3927.03 of the Revised Code relative to the appointment of agents by foreign insurance companies doing business in Ohio, vehicle protection product warranties, and the sponsorship of small employer health care alliances by organizations comprised of health care providers or insurance agents.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1731.01, 1731.03, 3909.09, and 3909.15 be amended and new sections 3909.05 and 3927.03 and section 3905.421 of the Revised Code be enacted to read as follows:

Sec. 1731.01. As used in this chapter:

(A) "Alliance" or "small employer health care alliance" means an existing or newly created organization that has been granted a certificate of authority by the superintendent of insurance under section 1731.021 of the Revised Code and that is either of the following:

(1) A chamber of commerce, trade association, professional organization, or any other organization that has all of the following characteristics:

(a) Is a nonprofit corporation or association;

(b) Has members that include or are exclusively small employers;

(c) Sponsors or is part of a program to assist such small employer members to obtain coverage for their employees under one or more health benefit plans;

(d) ~~Is~~ Except as provided in division (A)(1)(e) of this section, is not directly or indirectly controlled, through voting membership, representation on its governing board, or otherwise, by any insurance company, person, firm, or corporation that sells insurance, any provider, or by persons who are officers, trustees, or directors of such enterprises, or by any combination of

such enterprises or persons.

(e) Division (A)(1)(d) of this section does not apply to an organization that is comprised of members who are either insurance agents or providers, that is controlled by the organization's members or by the organization itself, and that elects to offer health insurance exclusively to any or all of the following:

(i) Employees and retirees of the organization;

(ii) Insurance agents and providers that are members of the organization;

(iii) Employees and retirees of the agents or providers specified in division (A)(1)(e)(ii) of this section;

(iv) Families and dependents of the employees, providers, agents, and retirees specified in divisions (A)(1)(e)(i), (A)(1)(e)(ii), and (A)(1)(e)(iii) of this section.

(2) A nonprofit corporation controlled by one or more organizations described in division (A)(1) of this section.

(B) "Alliance program" or "alliance health care program" means a program sponsored by a small employer health care alliance that assists small employer members of such small employer health care alliance or any other small employer health care alliance to obtain coverage for their employees under one or more health benefit plans, and that includes at least one agreement between a small employer health care alliance and an insurer that contains the insurer's agreement to offer and sell one or more health benefit plans to such small employers and contains all of the other features required under section 1731.04 of the Revised Code.

(C) "Eligible employees, retirees, their dependents, and members of their families," as used together or separately, means the active employees of a small employer, or retired former employees of a small employer or predecessor firm or organization, their dependents or members of their families, who are eligible for coverage under the terms of the applicable alliance program.

(D) "Enrolled small employer" or "enrolled employer" means a small employer that has obtained coverage for its eligible employees from an insurer under an alliance program.

(E) "Health benefit plan" means any hospital or medical expense policy of insurance or a health care plan provided by an insurer, including a health insuring corporation plan, provided by or through an insurer, or any combination thereof. "Health benefit plan" does not include any of the following:

(1) A policy covering only accident, credit, dental, disability income,

long-term care, hospital indemnity, medicare supplement, specified disease, or vision care, except where any of the foregoing is offered as an addition, indorsement, or rider to a health benefit plan;

(2) Coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance;

(3) Coverage issued by a health insuring corporation authorized to offer supplemental health care services only.

(F) "Insurer" means an insurance company authorized to do the business of sickness and accident insurance in this state or, for the purposes of this chapter, a health insuring corporation authorized to issue health care plans in this state.

(G) "Participants" or "beneficiaries" means those eligible employees, retirees, their dependents, and members of their families who are covered by health benefit plans provided by an insurer to enrolled small employers under an alliance program.

(H) "Provider" means a hospital, urgent care facility, nursing home, physician, podiatrist, dentist, pharmacist, chiropractor, certified registered nurse anesthetist, dietitian, or other health care provider licensed by this state, or group of such health care providers.

(I) "Qualified alliance program" means an alliance program under which health care benefits are provided to two thousand five hundred or more participants.

(J) "Small employer," regardless of its definition in any other chapter of the Revised Code, in this chapter means an employer that employs no more than one hundred fifty full-time employees, at least a majority of whom are employed at locations within this state.

(1) For this purpose:

(a) Each entity that is controlled by, controls, or is under common control with, one or more other entities shall, together with such other entities, be considered to be a single employer.

(b) "Full-time employee" means a person who normally works at least twenty-five hours per week and at least forty weeks per year for the employer.

(c) An employer will be treated as having one hundred fifty or fewer full-time employees on any day if, during the prior calendar year or any twelve consecutive months during the twenty-four full months immediately preceding that day, the mean number of full-time employees employed by

the employer does not exceed one hundred fifty.

(2) An employer that qualifies as a small employer for purposes of becoming an enrolled small employer continues to be treated as a small employer for purposes of this chapter until such time as it fails to meet the conditions described in division (J)(1) of this section for any period of thirty-six consecutive months after first becoming an enrolled small employer, unless earlier disqualified under the terms of the alliance program.

Sec. 1731.03. (A) A small employer health care alliance may do any of the following:

(1) Negotiate and enter into agreements with one or more insurers for the insurers to offer and provide one or more health benefit plans to small employers for their employees and retirees, and the dependents and members of the families of such employees and retirees, which coverage may be made available to enrolled small employers without regard to industrial, rating, or other classifications among the enrolled small employers under an alliance program, except as otherwise provided under the alliance program, and for the alliance to perform, or contract with others for the performance of, functions under or with respect to the alliance program;

(2) Contract with another alliance for the inclusion of the small employer members of one in the alliance program of the other;

(3) Provide or cause to be provided to small employers information concerning the availability, coverage, benefits, premiums, and other information regarding an alliance program and promote the alliance program;

(4) Provide, or contract with others to provide, enrollment, record keeping, information, premium billing, collection and transmittal, and other services under an alliance program;

(5) Receive reports and information from the insurer and negotiate and enter into agreements with respect to inspection and audit of the books and records of the insurer;

(6) Provide services to and on behalf of an alliance program sponsored by another alliance, including entering into an agreement described in division (B) of section 1731.01 of the Revised Code on behalf of the other alliance;

(7) If it is a nonprofit corporation created under Chapter 1702. of the Revised Code, exercise all powers and authority of such corporations under the laws of the state, or, if otherwise constituted, exercise such powers and authority as apply to it under the applicable laws, and its articles,

regulations, constitution, bylaws, or other relevant governing instruments.

(B) A small employer health care alliance is not and shall not be regarded for any purpose of law as an insurer, an offeror or seller of any insurance, a partner of or joint venturer with any insurer, an agent of, or solicitor for an agent of, or representative of, an insurer or an offeror or seller of any insurance, an adjuster of claims, or a third-party administrator, and will not be liable under or by reason of any insurance coverage or other health benefit plan provided or not provided by any insurer or by reason of any conditions or restrictions on eligibility or benefits under an alliance program or any insurance or other health benefit plan provided under an alliance program or by reason of the application of those conditions or restrictions.

(C) The promotion of an alliance program by an alliance or by an insurer is not and shall not be regarded for any purpose of law as the offer, solicitation, or sale of insurance.

(D)(1) No alliance shall adopt, impose, or enforce medical underwriting rules for the purpose of determining whether an alliance member is eligible to purchase a policy, contract, or plan of health insurance or health benefits from any insurer in connection with the alliance health care program.

(2) No alliance shall reject any applicant for membership in the alliance based on the health status of the applicant's employees or their dependents.

(3) A violation of division (D)(1) or (2) of this section is deemed to be an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code.

(4) Nothing in division (D)(1) or (2) of this section shall be construed as inhibiting or preventing an alliance from adopting, imposing, and enforcing rules, conditions, limitations, or restrictions that are based on factors other than the health status of employees or their dependents for the purpose of determining whether a small employer is eligible to become a member of the alliance. Division (D)(1) of this section does not apply to an insurer that sells health coverage to an alliance member under an alliance health care program.

(E) Health benefit plans offered and sold to alliance members that are small employers as defined in section 3924.01 of the Revised Code are subject to sections 3924.01 to 3924.14 of the Revised Code.

(F) Any person who represents an alliance in bargaining or negotiating a health benefit plan with an insurer shall disclose to the governing board of the alliance any direct or indirect financial relationship the person has or had during the past two years with the insurer.

Sec. 3905.421. (A) As used in this section:

(1) "Incidental costs" means the losses and expenses specified by a vehicle protection product warranty related to the failure of a vehicle protection product to deter the theft of a vehicle or facilitate the recovery of the vehicle after it has been stolen. "Incidental costs" may include, but are not limited to, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of the theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

(2) "Vehicle protection product" means a vehicle protection device, system, or service that is installed on or applied to a vehicle and that is designed to deter the theft of a vehicle or facilitate the recovery of the vehicle after it has been stolen. "Vehicle protection product" includes, but is not limited to, alarm systems, window etch products, body part marking products, steering locks, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

(3) "Warrantor of a vehicle protection product" or "warrantor" means the person that is contractually obligated to the warranty holder under the terms of a vehicle protection product warranty. "Warrantor" does not include an insurer authorized or eligible to do business in this state.

(B) A vehicle protection product warranty issued by the warrantor of a vehicle protection product does not constitute a contract substantially amounting to insurance or its issuance the business of insurance under section 3905.42 of the Revised Code, if both of the following conditions are met:

(1) The warranty is limited to indemnifying the warranty holder for incidental costs caused by the failure of the vehicle protection product to deter the theft of the vehicle or facilitate the recovery of the vehicle after it has been stolen.

(2) The vehicle protection product warranty contains both of the following conspicuous, written disclosures:

(a) "This vehicle protection product warranty is not subject to the insurance laws of this state, contained in Title XXXIX of the Ohio Revised Code."

(b) "This warranty may not include all of the benefits or protections of an insurance policy that includes theft coverage issued by an insurer authorized to do business in Ohio."

Sec. 3909.05. (A) Any life insurance company organized by act of congress or under the laws of another state of the United States that transacts any business of insurance in this state shall have and maintain an agent, sometimes referred to as the "statutory agent," upon whom any process,

notice, or demand required or permitted by law to be served upon a company may be served. The agent may be a natural person residing in this state or may be a corporation holding a license under the laws of this state that is authorized by its articles of incorporation to act as an agent and that maintains a business address in this state. A statutory agent need not be a licensed insurance agent.

(B) The written appointment of an agent shall be in the form the superintendent of insurance prescribes, which may include a consent to service of process. The appointment shall set forth the name and complete address of the agent. The agent shall reside or maintain a business address within this state.

The superintendent shall keep a record of the foreign life insurance companies transacting business in this state and the name and address of their respective agents.

(C) If any agent dies, moves out of the state, or resigns, the company immediately shall appoint another agent and file with the superintendent a written appointment as described in division (B) of this section.

(D) If an agent changes the agent's address, the company or agent immediately shall notify the superintendent of the change, and shall set forth the agent's new address, on a form prescribed by the superintendent.

(E) An agent may resign by filing with the superintendent a written notice signed by the agent. The agent shall send a copy of the notice to the company at the current or last known address of the company's principal office prior to the date the notice is filed with the superintendent. The notice shall set forth the company's name, the current or last known address of the company, the name and address of the agent, the resignation of the agent, and a statement that a copy of the notice has been sent to the company and the date the copy was sent. The agent's authority shall terminate thirty days after the notice is filed with the superintendent.

(F) A company may revoke the appointment of an agent by filing with the superintendent a written appointment of another agent and a statement that the appointment of the former agent is revoked. The authority of the agent whose appointment has been revoked shall terminate thirty days after the notice is filed with the superintendent.

(G) Any process, notice, or demand required or permitted by law to be served upon a company may be served by delivering a copy of the process, notice, or demand to the agent of record at the address appearing in the superintendent's records. If the agent cannot be found, the agent no longer has that address, or the company has failed to maintain an agent as required by this section, the party desiring that the process, notice, or demand be

served, or its agent, may file with the superintendent an affidavit stating that one of the foregoing conditions exists and stating the most recent address of the company that the party, after diligent search, has been able to ascertain. Upon the filing of the affidavit, service of process, notice, or demand may be initiated upon the superintendent as the company's agent by delivering two copies of the process, notice, or demand to the superintendent. The superintendent shall give notice to the company at its principal office as shown in the superintendent's records or at the address set forth in the affidavit. The superintendent shall give notice by regular mail with a copy of the process, notice, or demand enclosed. After the superintendent has mailed the appropriate documents, service upon the company is deemed complete.

(H) The superintendent shall keep a record of each process, notice, and demand delivered to the superintendent under this section or any other law of this state that authorizes service upon the superintendent.

(I) This section does not limit or affect the right to serve any process, notice, or demand upon a company in any other manner permitted by law.

(J) A company shall include a fee of five dollars with any change of agent appointment or change of address. This division does not apply to an agent appointment filed with an original application for a certificate of authority.

(K) If a company fails to appoint or maintain an agent or to notify the superintendent of an agent's change of address, the superintendent shall fine the company not less than twenty-five nor more than two hundred dollars per violation, after the superintendent has provided notice by certified mail and upon the expiration of thirty days from the date of mailing or such further time as the superintendent allows. The superintendent may also charge a company a fifty-dollar fee for each time the superintendent is required to give notice to the company in accordance with division (G) of this section.

(L) The superintendent shall pay all moneys collected by the superintendent in accordance with this section into the state treasury to the credit of the department of insurance operating fund.

Sec. 3909.09. No person shall act in this state as agent, or otherwise, in receiving or procuring applications for life insurance, nor in any manner aid in transacting the business of any company, partnership, or association incorporated by or organized under the laws of any foreign government, until such company, partnership, or association completes the following acts:

(A) Deposits with the superintendent of insurance, for the benefit of policyholders of the company, partnership, or association, who are citizens

or residents of the United States, securities to the amount of one hundred thousand dollars, of the kind required for similar companies of this state;

(B) ~~Executes a waiver as provided in~~ Appoints a statutory agent in accordance with section 3909.05 of the Revised Code;

(C) ~~Appoints an agent or attorney in each county in this state in which the company established an agency, on whom process of law can be served;~~

(D) Files with the superintendent a certified copy of its charter, or deed of settlement, and a duplicate original copy of the letter or power of attorney of the company, partnership, or association, appointing the attorney thereof, which appointment shall continue until another attorney is substituted.

Sec. 3909.15. If a company, partnership, or association, organized under the laws of any other state or government, ceases to ~~do~~ transact the business of life insurance in this state according to law, ~~it shall appoint, in the manner provided in sections 3909.01 to 3909.17, inclusive, of the Revised Code, in every county in which an agency existed at the date of such discontinuance, one or more agents for the purpose of receiving service of process in all actions upon policies of insurance issued to the citizens of this state while it was lawfully transacting the business of insurance in this state. Service of process upon such agents, in such actions, is as valid as actual service upon the company, partnership, or association.~~

~~In every case in which no such agent is appointed, the agent last designated and acting for the company, partnership, or association shall be deemed authorized by it to receive service of process. The officer who serves such process shall also send a copy of the process served on the agent, by mail, to the address of such company, partnership, or association at the place of its principal or home office at the time it ceased to do business in this state, and his return must distinctly show that at least thirty days have elapsed since the mailing of such copy before any judgment is rendered in such action.~~

~~If any such company, partnership, or association ceases to transact business in this state according to law, the agents~~ statutory agent last designated by or acting for it ~~are~~ is deemed to continue as ~~agents~~ agent for it, unless a new statutory agent is appointed, for the purpose of serving process, and for commencing actions upon any policy or liability issued or contracted while it transacted business in this state, and service of process upon any such agent, for such causes, is a valid service upon the company, partnership, or association.

This section does not limit or affect the right to serve any process, notice, or demand upon a company, partnership, or association in any other manner permitted by law.

Sec. 3927.03. (A) Any foreign insurance company that transacts any business in this state shall have and maintain an agent, sometimes referred to as the "statutory agent," upon whom any process, notice, or demand required or permitted by law to be served upon a company may be served. The agent may be a natural person residing in this state or may be a corporation holding a license under the laws of this state that is authorized by its articles of incorporation to act as an agent and that maintains a business address in this state. A statutory agent need not be a licensed insurance agent.

(B) The written appointment of an agent shall be in the form the superintendent of insurance prescribes, which may include a consent to service of process. The appointment shall set forth the name and complete address of the agent. The agent shall reside or maintain a business address within this state.

The superintendent shall keep a record of the foreign insurance companies transacting business in this state and the name and address of their respective agents.

(C) If any agent dies, moves out of the state, or resigns, the company immediately shall appoint another agent and file with the superintendent a written appointment as described in division (B) of this section.

(D) If an agent changes the agent's address, the company or agent immediately shall notify the superintendent of the change, and shall set forth the agent's new address, on a form prescribed by the superintendent.

(E) An agent may resign by filing with the superintendent a written notice signed by the agent. The agent shall send a copy of the notice to the company at the current or last known address of the company's principal office prior to the date the notice is filed with the superintendent. The notice shall set forth the company's name, the current or last known address of the company, the name and address of the agent, the resignation of the agent, and a statement that a copy of the notice has been sent to the company and the date the copy was sent. The agent's authority shall terminate thirty days after the notice is filed with the superintendent.

(F) A company may revoke the appointment of an agent by filing with the superintendent a written appointment of another agent and a statement that the appointment of the former agent is revoked. The authority of the agent whose appointment has been revoked shall terminate thirty days after the notice is filed with the superintendent.

(G) Any process, notice, or demand required or permitted by law to be served upon a company may be served by delivering a copy of the process, notice, or demand to the agent of record at the address appearing in the

superintendent's records. If the agent cannot be found, the agent no longer has that address, or the company has failed to maintain an agent as required by this section, the party desiring that the process, notice, or demand be served, or its agent, may file with the superintendent an affidavit stating that one of the foregoing conditions exists and stating the most recent address of the company that the party, after diligent search, has been able to ascertain. Upon the filing of the affidavit, service of process, notice, or demand may be initiated upon the superintendent as the company's agent by delivering two copies of the process, notice, or demand to the superintendent. The superintendent shall give notice to the company at its principal office as shown in the superintendent's records or at the address set forth in the affidavit. The superintendent shall give notice by regular mail with a copy of the process, notice, or demand enclosed. After the superintendent has mailed the appropriate documents, service upon the company is deemed complete.

(H) The superintendent shall keep a record of each process, notice, and demand delivered to the superintendent under this section or any other law of this state that authorizes service upon the superintendent.

(I) This section does not limit or affect the right to serve any process, notice, or demand upon a company in any other manner permitted by law.

(J) A company shall include a fee of five dollars with any change of agent appointment or change of address. This division does not apply to an agent appointment filed with an original application for a certificate of authority.

(K) If a company fails to appoint or maintain an agent or to notify the superintendent of an agent's change of address, the superintendent shall fine the company not less than twenty-five nor more than two hundred dollars per violation, after the superintendent has provided notice by certified mail and upon the expiration of thirty days from the date of mailing or such further time as the superintendent allows. The superintendent may also charge a company a fifty-dollar fee for each time the superintendent is required to give notice to the company in accordance with division (G) of this section.

(L) The superintendent shall pay all moneys collected by the superintendent in accordance with this section into the state treasury to the credit of the department of insurance operating fund.

(M) Any foreign insurance company transacting business in this state by an agent consents that suit may be brought against it in the county where the property insured was situated, or was insured, or the application for insurance taken.

(N) If a foreign insurance company ceases to do business in this state

according to law, the statutory agent last designated by or acting for it is deemed to continue as agent for it, unless a new statutory agent is appointed, for the purpose of serving process, and for commencing actions upon any policy or liability issued or contracted while it transacted business in this state, and service of process upon any such agent, for such causes, is a valid service upon the company.

SECTION 2. That existing sections 1731.01, 1731.03, 3909.09, and 3909.15 and sections 3909.05 and 3927.03 of the Revised Code are hereby repealed.

SECTION 3. An insurance company organized under the laws of any other state that was authorized to transact any business of insurance in this state prior to the effective date of this section shall appoint a "statutory agent," as required by this act, no later than the later of the effective date of this section or sixty days after the Superintendent of Insurance issues a bulletin specifying the method by which the insurance company is to appoint a statutory agent.

SECTION 4. Section 3905.421 of the Revised Code, as enacted by this act, shall apply only in connection with vehicle protection products sold or offered for sale in this state on or after the effective date of this act. The enactment of section 3905.421 of the Revised Code does not imply that vehicle protection products or vehicle protection product warranties were or should have been subject to regulation under Title XXXIX of the Revised Code prior to the effective date of this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 137

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____