



**Sub. H.B. 137\***

125th General Assembly

(As Reported by S. Insurance, Commerce, & Labor)

**Reps. G. Smith, Book, Hughes, Setzer, Gibbs, Olman, Wolpert, D. Evans, T. Patton, Fessler, Brown, Callender, Calvert, Carano, Daniels, C. Evans, Faber, Flowers, Hartnett, Jolivette, Kearns, McGregor, Redfern, Reidelbach, Schmidt, Schneider, Skindell, J. Stewart, Willamowski**

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**BILL SUMMARY**

- Regulates the appointment of statutory agents by foreign insurance companies doing business in Ohio.
- Permits nonprofit organizations comprised of health care providers or insurance agents to sponsor small employer health care alliance programs for the benefit of members, employees, and their families.
- Requires a bargaining representative for a health care alliance to disclose any current or past financial relationship with the party selling health care coverage.
- Provides that the business of insurance does not encompass the sale of vehicle protection product warranties.

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**CONTENT AND OPERATION**

**Foreign insurer required to appoint statutory agent for service of process**

(secs. 3909.05(A) and 3927.03(A))

The bill requires any "life insurance company organized by act of Congress or under the laws of another state" and any "foreign insurance company" other

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\* *This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

than a life insurance company, which company transacts any business in Ohio, [hereinafter, "foreign insurer"] to have and maintain an 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 Ohio, 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. This agent, also known as a "statutory agent," need not be a licensed insurance agent.

The bill repeals existing sections 3909.05 and 3927.03 of the Revised Code. Currently, these sections require foreign insurers to file a signed consent with the Superintendent of Insurance that authorizes any of the insurers' agents in Ohio to acknowledge service of process for the insurer.

### **Appointment of agent**

(secs. 3909.05(B) to (F) and (J) and 3927.03(B) to (F) and (J))

The bill requires foreign insurers to file a written appointment of an agent with the Superintendent of Insurance. The form of the written appointment is to be prescribed by the Superintendent, and may include a consent to service of process.

Foreign insurers are required to set forth the name and complete address of its agent in the written appointment. The agent must reside or maintain a business address in Ohio. If a foreign insurer's agent dies, moves out of state, or resigns, the foreign insurer must immediately appoint a new agent and file a written appointment with the Superintendent. If its agent's address changes, a foreign insurer must immediately notify the Superintendent of the agent's new address on a form prescribed by the Superintendent.

The bill requires a foreign insurer to include a fee of \$5 with any change of agent appointment or change of address.

The bill permits an agent to resign by filing a signed notice with the Superintendent. The agent must send a copy of the notice to the foreign insurer that appointed the agent, prior to filing the notice with the Superintendent, at the current or last known address of the insurer's principal office. The notice must include the foreign insurer's name, the insurer's current or last known address, the agent's name and address, the agent's resignation statement, a statement that a copy of the notice was sent to the insurer, and the date that the copy of the notice was sent. The agent's authority would terminate 30 days after the notice is filed.

The bill permits a foreign insurer to revoke the appointment of an agent by filing a written appointment of a new agent with the Superintendent, along with a statement that revokes the current agent's appointment. The agent's authority would terminate 30 days after the notice is filed.

The bill requires the Superintendent to keep a record of any foreign insurer transacting business in Ohio, including the name and address of its agent.

### **Service of process**

(secs. 3909.05(G) to (I) and 3927.03(G) to (I))

The bill provides that any process, notice, or demand required or permitted by law to be served upon a foreign insurer 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, has moved, or the foreign insurer has failed to maintain an agent, the party desiring to serve process, notice, or demand, or its agent, may file an affidavit with the Superintendent stating that one of these conditions exists and stating the most recent address of the foreign insurer that the party, after diligent search, has been able to ascertain. Upon the filing of this affidavit, the service of process, notice, or demand may be initiated upon the Superintendent as the foreign insurer's agent by delivering two copies of the process, notice, or demand to the Superintendent. The Superintendent would then be required to give notice to the foreign insurer at its principal office as shown in the Superintendent's records or at the address set forth in the affidavit. Notice would be given by regular mail, with a copy of the process, notice, or demand enclosed. After the Superintendent has mailed these documents, service would be deemed to be complete. These provisions would not limit or affect the right to serve any process, notice, or demand upon a foreign insurer in any other manner permitted by law. Current law provides for a county sheriff to serve process on foreign insurers by mail.

The bill requires the Superintendent to keep a record of each process, notice, or demand delivered to the Superintendent under the law of this or any other state that authorizes service upon the Superintendent.

### **Violations**

(secs. 3909.05(K) and (L) and 3927.03(K) and (L))

If a foreign insurer fails to appoint or maintain an agent, or to notify the Superintendent of an agent's change of address, the bill requires the Superintendent to fine the insurer not less than \$25 nor more than \$200 per violation, after the Superintendent has provided notice of the violation by certified



mail and upon the expiration of 30 days from the date of mailing or such further time as the Superintendent allows. If the Superintendent is required to serve process, notice, or demand upon a foreign insurer for a party unable to find the insurer's agent, whether due to the agent's unreported change of address or the insurer's failure to maintain an agent, the bill permits the Superintendent to charge the insurer a \$50 fee. All moneys collected, in fees or fines, are to be paid into the state treasury to the credit of the Department of Insurance operating fund.

**Property and casualty insurers, service of process**

(sec. 3927.03(M) and (N))

The bill provides that any foreign insurer, other than a life insurer, 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. If the insurer ceases to do business in Ohio, the statutory agent last designated by or acting for the insurer continues as its agent, unless a new agent is appointed, for the purpose of serving process and for commencing actions upon any policy or liability issued or contracted while the insurer transacted business in Ohio. Service of process upon an agent, for any of these purposes, would constitute a valid service upon the foreign insurer.

**Conforming changes**

(secs. 3909.09 and 3909.15)

Current law requires a foreign life insurer to appoint an agent or attorney in each county in this state in which the insurer has established an agency. This provision is repealed; foreign life insurers would be required to appoint only one statutory agent pursuant to this bill's requirements. Current law also requires foreign life insurers that cease to do business in Ohio to appoint agents for service of process in every county in which an agency existed at that time. This provision is also repealed, in conformity with this bill.

**Application to foreign insurers currently operating in Ohio**

(Section 3)

The bill requires an insurance company, organized under the laws of another state, that was authorized to transact any business of insurance in Ohio prior to the bill's effective date to appoint a statutory agent as required by the bill, no later than the later of the effective date or 60 days after the Superintendent of Insurance issues a bulletin specifying the method by which the insurance company is to appoint a statutory agent.

**Small employer health care alliance programs for health care providers and insurance agents**

(sec. 1731.01)

Current law permits organizations that have been granted a certificate of authority by the Superintendent of Insurance to sponsor a program that assists the organization's members in obtaining health care coverage for their employees. These organizations are known as "small employer health care alliances." A small employer health care alliance may be either: (1) a nonprofit corporation that is controlled by a chamber of commerce, trade association, professional organization, or a combination thereof, or (2) a chamber of commerce, trade association, professional organization, or any other nonprofit corporation or association, with members that include or are exclusively small employers. A small employer health care alliance currently *may not* be directly or indirectly controlled by insurance agents or health care providers.

This bill adds to the definition of "small employer health care alliance" nonprofit organizations that are comprised of members who are either insurance agents or providers, which organizations are controlled by the organization's members or by the organization itself, and which elect to offer health insurance exclusively to any or all of the following:

- (1) Employees and retirees of the organization;
- (2) Insurance agents and providers that are members of the organization;
- (3) Employees and retirees of agents or providers that are members of the organization;
- (4) Families and dependents of any of the employees, providers, agents, and retirees listed above.

This change allows insurance agents or health care providers to join together in the form of a small employer health care alliance in order to find health care coverage.

Under the bill, this section of the Small Employer Health Care Alliance Law, Chapter 1731. of the Revised Code, will continue unchanged the existing definition of "provider" that includes hospitals, urgent care facilities, nursing homes, physicians, podiatrists, dentists, pharmacists, chiropractors, and other health care providers, or groups thereof, licensed by this state. Insurance agents are licensed under Chapter 3905. of the Revised Code.



### **Disclosure**

(sec. 1731.03)

The bill requires any person representing a small employer health care alliance in bargaining for or negotiating a health benefit plan with a sickness and accident insurer or health insuring corporation to 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 or health insuring corporation.

### **Vehicle protection product warranties**

(sec. 3905.421)

The bill provides that a vehicle protection product warranty does not constitute a contract substantially amounting to insurance or its issuance the business of insurance. These exceptions are subject to two conditions: (1) the warranty must be 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, and (2) the warranty must contain two conspicuous, written disclosures, as follows:

(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."

The bill defines a "vehicle protection product" as 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. These products include, but are not limited to, alarm systems, window etch products, body part marking products, steering locks, pedal and ignition locks, fuel and ignition kill switches, and tracking devices. The "warrantor" of a vehicle protection product is that person contractually obligated to the warranty holder under the terms of the warranty, but does not include an insurer authorized or eligible to do business in Ohio.

The "incidental costs" that may be covered by a vehicle protection product warranty under the bill means the losses and expenses specified by the warranty relating to the failure of the vehicle protection product to deter the theft of a vehicle or to facilitate the recovery of the vehicle after it has been stolen. These incidental costs include, but are not limited to, insurance policy deductibles, rental

vehicle charges, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

(Section 4)

The bill provides that the provisions affecting vehicle protection product warranties does not imply that vehicle protection products or vehicle protection product warranties were or should have been subject to the Insurance Law prior to the bill's effective date.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-25-03	p. 277
Reported, H. Insurance	05-28-03	pp. 516-517
Passed House (97-0)	06-03-03	pp. 533-534
Reported, S. Insurance, Commerce, & Labor	---	---

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