

LEGISLATIVE HISTORY CHECKLIST
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(Producercontrolled insurers)

NJSA: 17:22D-3

LAWS OF: 1995 CHAPTER: 337

BILL NO: S2317

SPONSOR(S): Cardinale

DATE INTRODUCED: October 19, 1995

COMMITTEE: ASSEMBLY ---
SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: December 11, 1995
SENATE: December 11, 1995

DATE OF APPROVAL: January 5, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

RECEIVED
JAN 11 1996
STATE OF NEW JERSEY

P.L.1995, CHAPTER 337, approved January 5, 1996
1995 Senate No. 2317

1 AN ACT concerning certain producer-controlled insurers and
2 amending P.L.1993, c.239.

3

4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. Section 3 of P.L.1993, c.239 (C.17:22D-3) is amended to
7 read as follows:

8 3. a. The provisions of this section shall apply if, in any
9 calendar year, the aggregate amount of gross written premium on
10 business placed with a controlled insurer by a controlling
11 producer is equal to or greater than five percent of the admitted
12 assets of the controlled insurer, as reported in the controlled
13 insurer's quarterly statement filed as of September 30 of the
14 prior year.

15 b. Notwithstanding subsection a. of this section to the
16 contrary, the provisions of this section shall not apply if the
17 controlling producer:

18 (1) Places insurance only with the controlled insurer, or only
19 with the controlled insurer and a member or members of the
20 controlled insurer's holding company system, or the controlled
21 insurer's parent, affiliate or subsidiary and receives no
22 compensation based upon the amount of premiums written in
23 connection with such insurance;

24 (2) Accepts insurance placements only from non-affiliated
25 subproducers, and not directly from insureds; and

26 (3) The controlled insurer, except for insurance business
27 written through a residual market plan such as a plan established
28 pursuant to P.L.1970, c.215 (C.17:29D-1) or a plan established
29 pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.), accepts
30 insurance business only from a controlling producer, a producer
31 controlled by the controlled insurer, or a producer that is a
32 subsidiary of the controlled insurer.

33 c. A controlled insurer shall not accept business from a
34 controlling producer and a controlling producer shall not place
35 business with a controlled insurer unless there is a written
36 contract between the controlling producer and the controlled
37 insurer specifying the responsibilities of each party, which
38 contract has been approved by the board of directors of the
39 controlled insurer and contains the following minimum provisions:

40 (1) The controlled insurer may terminate the contract for
41 cause upon written notice to the controlling producer. The
42 controlled insurer shall suspend the authority of the controlling

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 producer to write business during the pendency of any dispute
2 regarding the cause for termination;

3 (2) The controlling producer shall render accounts to the
4 controlled insurer detailing all material transactions, including
5 information necessary to support all commissions, charges and
6 other fees received by, or owing to, the controlling producer;

7 (3) The controlling producer shall remit all funds due under the
8 terms of the contract to the controlled insurer no less often than
9 monthly. The due date shall be fixed so that premiums or
10 installments thereof collected shall be remitted no later than 90
11 days after the effective date of any policy placed with the
12 controlled insurer under this contract;

13 (4) All funds collected for the controlled insurer's account
14 shall be held by the controlling producer in a fiduciary capacity in
15 one or more appropriately identified bank accounts in banks that
16 are members of the Federal Reserve System, in accordance with
17 the laws of this State governing the statutory deposits of insurers
18 doing business in this State. Funds of a controlling producer not
19 required to be licensed in this State shall be maintained in
20 compliance with the requirements of the controlling producer's
21 domiciliary jurisdiction;

22 (5) The controlling producer shall maintain separately
23 identifiable records of business written for the controlled insurer;

24 (6) The contract shall not be assigned in whole or in part by
25 the controlling producer;

26 (7) The controlled insurer shall provide the controlling
27 producer with its underwriting standards, rules and procedures,
28 manuals setting forth the rates to be charged, and the conditions
29 for the acceptance or rejection of risks. The controlling producer
30 shall adhere to these standards, rules, procedures, rates and
31 conditions which shall be the same as those applicable to
32 comparable business placed with the controlled insurer by a
33 producer other than the controlling producer;

34 (8) The rates and terms of the controlling producer's
35 commissions, charges or other fees and the purposes for those
36 charges or fees. The rates of commissions, charges and other
37 fees shall be no greater than those applicable to comparable
38 business placed with the controlled insurer by producers other
39 than controlling producers. For purposes of this paragraph and
40 paragraph (7) of this subsection, comparable business includes,
41 but is not limited to: the same lines of insurance, same kinds of
42 insurance, same kinds of risks, similar policy limits, and similar
43 quality of business;

44 (9) If the contract provides that the controlling producer, on
45 insurance business placed with the controlled insurer, is to be
46 compensated contingent upon the controlled insurer's profits on
47 that business, then such compensation shall not be determined
48 and paid until at least five years after the premiums on liability
49 insurance are earned and at least one year after the premiums
50 are earned on any other insurance. In no event shall the
51 commissions be paid until the adequacy of the controlled
52 insurer's reserves on remaining claims has been independently
53 verified pursuant to subsection [d.] e. of this section;

54 (10) There shall be a limit on the controlling producer's

1 writings in relation to the controlled insurer's surplus and total
2 writings. The controlled insurer may establish a different limit
3 for each line or sub-line of business. The controlled insurer shall
4 notify the controlling producer when the applicable limit is
5 approached and shall not accept business from the controlling
6 producer if the limit is reached. The controlling producer shall
7 not place business with the controlled insurer if it had been
8 notified by the controlled insurer that the limit has been reached;

9 and

10 (11) The controlling producer may negotiate but shall not bind
11 reinsurance on behalf of the controlled insurer on business the
12 controlling producer places with the controlled insurer, except
13 that the controlling producer may bind facultative reinsurance
14 contracts pursuant to obligatory facultative agreements if the
15 contract with the controlled insurer contains underwriting
16 guidelines including, for both reinsurance assumed and ceded, a
17 list of reinsurers with which such automatic agreements are in
18 effect, the coverages and amounts or percentages that may be
19 reinsured and commission schedules.

20 d. Every board of directors of a controlled insurer shall
21 establish an audit committee composed of independent directors.
22 The audit committee shall meet annually with management, the
23 controlled insurer's independent certified public accountants, and
24 an independent casualty actuary who shall be qualified, pursuant
25 to the requirements established by the commissioner for loss
26 reserve opinions required to be submitted by licensed property
27 and casualty insurers in this State, to review the adequacy of the
28 insurer's loss reserves.

29 e. In addition to any other required loss reserve certification,
30 the controlled insurer shall annually, on April 1 of each year, file
31 with the commissioner an opinion of an independent casualty
32 actuary reporting loss ratios for each line of business written and
33 attesting to the adequacy of loss reserves established for losses
34 incurred and outstanding as of year-end, which shall include
35 losses incurred but not yet reported, on business placed by the
36 controlling producer. The loss reserve opinion shall satisfy all
37 requirements established by the commissioner for loss reserve
38 opinions required to be submitted by licensed property and
39 casualty insurers in this State.

40 f. The controlled insurer shall annually report to the
41 commissioner on April 1 of each year the amount of commissions
42 paid to the controlling producer, the percentage this amount
43 represents of the net premiums written, and comparable amounts
44 and percentages paid to noncontrolling producers for placements
45 of the same kinds of insurance.

46 (cf: P.L.1993, c.239, s.3)

47 2. This act shall take effect immediately.

48
49
50 **STATEMENT**

51
52 This bill clarifies that the law governing producer-controlled
53 property and casualty insurers applies if the aggregate gross
54 premium written on business placed with a controlled insurer by a

1 controlling producer is equal to or greater than five percent of
2 the admitted assets of the controlled insurer, as reported in the
3 controlled insurer's quarterly statement filed as of September 30
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Concerns certain producer-controlled insurers.

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Concerns certain producer-controlled insurers.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2317

STATE OF NEW JERSEY

DATED: NOVEMBER 27, 1995

The Senate Commerce Committee reports favorably Senate, No. 2317.

This bill amends the law governing producer-controlled property and casualty insurers. The bill clarifies that the law governing producer-controlled property and casualty insurers applies if the aggregate gross premium written on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

The bill also corrects an internal citation reference error.