

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.1455 Applicability of section; contract between controlling producer and insurer required for doing business; minimum provisions; audit committee; reports; applicability of section 60 days after effective date of chapter.

Sec. 1455. (1) Except as provided in subsection (2), this section applies 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 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly financial statement filed as of September 30 of the prior year.

(2) This section does not apply if the controlling producer places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance and accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and 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 controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(3) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling 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 the following minimum provisions:

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

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

(c) That the controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that the premiums or installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract.

(d) That all funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in 1 or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the applicable insurance law.

(e) That the controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

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

(g) That the controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the 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 controlled insurer by a producer other than the controlling producer.

(h) That the rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees shall be specified. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subdivision and subdivision (g), examples of comparable business include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) That if the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least 5 years after the premiums on policies that include liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified as required by subsection (5).

(j) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings shall be set. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not

accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

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

(4) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall meet annually with management, the insurer's independent public accountants as defined in section 1001, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(5) Every controlled insurer shall file the following reports:

(a) In addition to any other required loss reserve certification, the controlled insurer shall file with the commissioner on April 1 of each year an opinion of an independent casualty actuary or such other independent loss reserve specialist acceptable to the commissioner reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including provisions for incurred but not reported losses, on business placed by the controlling producer.

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the controlling producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

(6) A foreign controlled insurer is not required to file the reports with the commissioner required by subsection (5) if the insurer is subject to reporting requirements adopted by statute or regulation in its state of domicile that the commissioner has determined are substantially similar to those required under this chapter.

(7) This section applies 60 days after the effective date of this chapter.

History: Add. 1994, Act 227, Imd. Eff. June 27, 1994.

Compiler's note: Former MCL 500.1455, which was compiled in Chapter 14 of this act and pertained to insurance agents, accounts, and records, was repealed by Act 133 of 1972, Eff. Mar. 30, 1973.

Popular name: Act 218