

**§6404. Minimum standards**

**1. Applicability.** This section applies as follows.

A. This section applies if, in any calendar year, the aggregated 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 of September 30th of the preceding year, as reported in the controlled insurer's quarterly statement. [PL 2017, c. 169, Pt. E, §9 (AMD).]

B. Notwithstanding paragraph A, this section does not apply if:

(1) The controlling producer:

(a) Places insurance only with the controlled insurer, only with the controlled insurer and a member or members of the controlled insurer's holding company system or only with 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

(b) Accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(2) The controlled insurer, except for insurance business written through a residual market facility such as the workers' compensation residual market mechanism or the State's automobile assigned risk plan, 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. [PL 2017, c. 169, Pt. E, §9 (AMD).]

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**2. Required contract provisions.** A controlled insurer may not accept business from a controlling producer and a controlling producer may not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party. The contract must be approved by the board of directors of the insurer and must contain the following minimum provisions.

A. 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. [PL 2017, c. 169, Pt. E, §9 (AMD).]

B. The controlling producer shall render timely accounts to the controlled insurer detailing all material transactions including information necessary to support all commissions, charges and other fees received by or owed to the controlling producer. [PL 2017, c. 169, Pt. E, §9 (AMD).]

C. 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 must be fixed so that premiums or installments of premiums collected are remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract. [PL 2017, c. 169, Pt. E, §9 (AMD).]

D. All funds collected for the controlled insurer's account must be held in trust by the controlling 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 applicable insurance laws. Funds of a controlling producer not licensed in this State must be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction. [PL 2017, c. 169, Pt. E, §9 (AMD).]

E. The controlling producer shall maintain separately identifiable records of business written for the controlled insurer. The controlled insurer must have access and may copy all accounts and

records related to its business in a form usable by the insurer. The records must be retained according to section 3408. [PL 2017, c. 169, Pt. E, §9 (AMD).]

F. The contract may not be assigned in whole or in part by the controlling producer. [PL 2017, c. 169, Pt. E, §9 (AMD).]

G. The controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, rates and conditions, including manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risks. The controlling producer shall comply with those standards, rules, procedures, rates and conditions, which must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer. [PL 2017, c. 169, Pt. E, §9 (AMD).]

H. The rates of the controlling producer's commissions, charges and other fees may not be greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph G, examples of "comparable business" include the same lines of insurance, the same kinds of insurance, the same kinds of risks, similar policy limits and similar quality of business. [PL 2017, c. 169, Pt. E, §9 (AMD).]

I. If the contract provides that the controlling producer, on insurance business placed with the insurer, must be compensated contingent upon the insurer's profits on that business, then that compensation may not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims are independently verified pursuant to subsection 3. [PL 2017, c. 169, Pt. E, §9 (AMD).]

J. The controlled insurer shall place a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. 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 may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if notified by the controlled insurer that the limit has been reached. [PL 2017, c. 169, Pt. E, §9 (AMD).]

K. The controlling producer may negotiate but may 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. All such contracts with the controlled insurer must contain underwriting guidelines including, for reinsurance both assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and schedules of the commissions allowed. [PL 2017, c. 169, Pt. E, §9 (AMD).]

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**3. Audit committee.** Every controlled insurer must 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 acceptable to the superintendent to review the adequacy of the insurer's loss reserves. [PL 1991, c. 828, §33 (NEW).]

**4. Reporting requirements.** A controlled insurer shall make the following reports.

A. In addition to any other required loss reserve certification, by April 1st of each year, the controlled insurer shall file with the superintendent an opinion of an independent casualty actuary acceptable to the superintendent reporting loss ratios for each line of business written and attesting

to the adequacy of loss reserves established for losses incurred and outstanding at the preceding year end, including incurred but not reported losses, on business placed by the controlled producer. [PL 2017, c. 169, Pt. E, §9 (AMD).]

B. The controlled insurer shall report annually to the superintendent the amount of commissions paid to the controlling producer, the percentage that amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placement of the same kinds of insurance. [PL 2017, c. 169, Pt. E, §9 (AMD).]

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#### SECTION HISTORY

PL 1991, c. 828, §33 (NEW). PL 2017, c. 169, Pt. E, §9 (AMD).

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