

3905.30 Surplus line broker's license.

The superintendent of insurance may issue a surplus line broker's license to any natural person who is a resident of this or any other state or to a business entity that is organized under the laws of this or any other state. To be eligible for a surplus line broker's license, a person must have both a property license and a casualty license. A surplus line broker's license permits the person named in the license to negotiate for and obtain insurance, other than life insurance, on property or persons in this state from insurers not authorized to transact business in this state. Each such license expires on the thirty-first day of January next after the year in which it is issued, and may be then renewed.

Effective Date: 09-01-2002

3905.31 Prohibitions.

No person not licensed under section 3905.30 of the Revised Code shall take or receive any application for such insurance upon property or persons in this state, or receive or collect a premium or any part thereof for any unauthorized insurance company, or attempt or assist in any such act, or perform any act in this state concerning any policy or contract of insurance of any unauthorized insurance company provided that any duly licensed property and casualty agent may place business with an agent licensed under section 3905.30 of the Revised Code and may accept compensation therefor, if such insurance is written in conformity with the insurance laws of this state. This section does not apply to those engaged in the act of adjusting claims or losses in connection with any policy of insurance written under the provisions of sections 3905.30 to 3905.35 of the Revised Code.

Effective Date: 09-01-2002

3905.32 License fees.

For each initial license issued under section 3905.30 of the Revised Code the superintendent of insurance shall collect one hundred dollars. The renewal fee shall be paid to the treasurer of state.

Effective Date: 06-11-1968

3905.33 Unauthorized insurers.

(A) No person licensed under section 3905.30 of the Revised Code shall solicit, procure an application for, bind, issue, renew, or deliver a policy with any insurer that is not eligible to write insurance on a surplus line basis in this state.

To establish the eligibility of an unauthorized insurer, the superintendent of insurance may request copies of the insurer's most recent financial statements; instruments such as domestic trust agreements, powers of attorney, and investment management contracts; biographies of the owners and managers of the insurer; and any other information the superintendent believes may be helpful in determining an insurer's suitability. The suitability of each unauthorized insurer is subject to the continuous scrutiny and discretion of the superintendent.

(B)(1) No insurance agent or surplus line broker shall solicit, procure, place, or renew any insurance with an unauthorized insurer unless the agent or surplus line broker has complied with the due diligence requirements of this section and is unable to procure the requested insurance from an authorized insurer.

Due diligence requires the agent or surplus line broker to contact at least five of the authorized insurers the agent or surplus line broker represents, or as many insurers as the agent or surplus line broker represents, that customarily write the kind of insurance required by the insured. Due diligence is presumed if declinations are received from each authorized insurer contacted. If any authorized insurer fails to respond within ten days after the initial contact, the agent or surplus line broker may assume the insurer has declined to accept the risk.

(2) An insurance agent or surplus line broker is exempt from the due diligence requirements of this section if the agent or surplus line broker is procuring insurance from a risk purchasing group or risk retention group as provided in Chapter 3960. of the Revised Code.

(C) An insurance agent who procures or places insurance through a surplus line broker shall obtain an affidavit from the insured acknowledging that the insurance policy is to be placed with a company or insurer not authorized to do business in this state and acknowledging that, in the event of the insolvency of the insurer, the insured is not entitled to any benefits or proceeds from the Ohio insurance guaranty association. The affidavit must be on a form prescribed by the superintendent. The agent shall submit the original affidavit to the surplus line broker within thirty days after the effective date of the policy. If no other agent is involved, the surplus line broker shall obtain the affidavit from the insured.

The surplus line broker shall keep the original affidavit, and the originating agent shall keep a copy of the affidavit, for at least five years after the effective date of the policy to which the affidavit pertains. A copy of the affidavit shall be given to the insured at the time the insurance is bound or a policy is delivered.

(D) The superintendent may adopt rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of sections 3905.30 to 3905.38 of the Revised Code.

Effective Date: 06-30-1997

3905.34 Separate accounts.

Each person licensed under section 3905.30 of the Revised Code shall keep a separate account of the business done under the person's license. On or before the thirty-first day of January, each surplus line broker shall file with the superintendent of insurance the portion of that account that details business done during the preceding calendar year. The account must show the amount of such insurance, the name of the insured, a brief description of the type of insurance, the location of the property, the gross premium charged, the name of the insurer, the date of the policy and term thereof, and a report in the same detail of all such policies canceled and the gross return premiums thereon.

Effective Date: 06-28-2002

3905.35 Bond.

Before receiving a license under section 3905.30 of the Revised Code, the person named in the license shall execute and deliver to the superintendent of insurance a bond in the sum of twenty-five thousand dollars, payable to the state and conditioned that the person will faithfully comply with sections 3905.30 to 3905.35 of the Revised Code. The bond required by this section shall be issued by an insurance company authorized to transact surety business in this state, be on a form prescribed by the superintendent, and be deposited with the superintendent and kept in the superintendent's office.

Effective Date: 10-30-1997

3905.36 Taxing firms dealing with unauthorized foreign insurers.

(A) Except as provided in divisions (B) and (C) of this section, every insured association, company, corporation, or other person that enters, directly or indirectly, into any agreements with any insurance company, association, individual, firm, underwriter, or Lloyd's, not authorized to do business in this state, whereby the insured shall procure, continue, or renew contracts of insurance covering subjects of insurance resident, located, or to be performed within this state, with such unauthorized insurance company, association, individual, firm, underwriter, or Lloyd's, for which insurance there is a gross premium, membership fee, assessment, dues, or other consideration charged or collected, shall annually, on or before the thirty-first day of January, return to the superintendent of insurance a statement under oath showing the name and address of the insured, name and address of the insurer, subject of the insurance, general description of the coverage, and amount of gross premium, fee, assessment, dues, or other consideration for such insurance for the preceding twelve-month period and shall at the same time pay to the treasurer of state a tax of five per cent of such gross premium, fee, assessment, dues, or other consideration, after a deduction for return premium, if any, as calculated on a form prescribed by the treasurer of state. All taxes collected under this section by the treasurer of state shall be paid into the general revenue fund. If the tax is not paid when due, the tax shall be increased by a penalty of twenty-five per cent. An interest charge computed as set forth in section 5725.221 of the Revised Code shall be made on the entire sum of the tax plus penalty, which interest shall be computed from the date the tax is due until it is paid. For purposes of this section, payment is considered made when it is received by the treasurer of state, irrespective of any United States postal service marking or other stamp or mark indicating the date on which the payment may have been mailed.

(B) This section does not apply to:

(1) Transactions in this state involving a policy solicited, written, and delivered outside this state covering only subjects of insurance not resident, located, or to be performed in this state at the time of issuance, provided such transactions are subsequent to the issuance of the policy;

(2) Attorneys-at-law acting on behalf of their clients in the adjustment of claims or losses;

(3) Transactions involving policies issued by a captive insurer. For this purpose, a "captive insurer" means any of the following:

(a) An insurer owned by one or more individuals or organizations, whose exclusive purpose is to insure risks of one or more of the parent organizations or individual owners and risks of one or more affiliates of the parent organizations or individual owners;

(b) In the case of groups and associations, insurers owned by the group or association whose exclusive purpose is to insure risks of members of the group or association and affiliates of the members;

(c) Other types of insurers, licensed and operated in accordance with the captive insurance laws of their jurisdictions of domicile and operated in a manner so as to self-insure risks of their owners and insureds.

(4) Professional or medical liability insurance procured by a hospital organized under Chapter 3701. of the Revised Code;

(5) Insurance with an initial policy period of more than three years and that is procured to cover known events related to environmental remediation that occurred prior to the effective date of that insurance;

(6) Insurance procured on behalf of an entity that manufactures, packages, and sells, as more than fifty per cent of the entity's business, pharmaceutical products for human use where the production, packaging, and sale of such products are subject to regulation by an agency of the United States.

(C) In transactions that are subject to sections 3905.30 to 3905.35 of the Revised Code, each person licensed under section 3905.30 of the Revised Code shall pay to the treasurer of state, on or before the thirty-first day of January of each year, five per cent of the balance of the gross premiums charged for insurance placed or procured under the license after a deduction for return premiums, as reported on a form prescribed by the treasurer of state. The tax shall be collected from the insured by the surplus line broker who placed or procured the policy of insurance at the time the policy is delivered to the insured. No license issued under section 3905.30 of the Revised Code shall be renewed until payment is made. If the tax is not paid when due, the tax shall be increased by a penalty of twenty-five per cent. An interest charge computed as set forth in section 5725.221 of the Revised Code shall be made on the entire sum of the tax plus penalty, which interest shall be computed from the date the tax is due until it is paid. For purposes of this section, payment is considered made when it is received by the treasurer of state, irrespective of any United States postal service marking or other stamp or mark indicating the date on which the payment may have been mailed.

Effective Date: 06-28-2002; 06-30-2005; 2006 HB699 03-29-2007; 2007 HB119 09-29-2007

3905.37 Prohibited acts.

No person, company, association, or corporation shall fail to make the report required in section 3905.36 of the Revised Code and to furnish all the information that is required by the treasurer of state to determine the amount due under that section.

Effective Date: 06-30-1997