

**As Reported by the Senate Insurance, Commerce and Labor
Committee**

**125th General Assembly
Regular Session
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Sub. H. B. No. 137

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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**

A B I L L

To amend sections 1731.01, 1731.03, 3909.09, and 1
3909.15, to enact new sections 3909.05 and 3927.03 2
and section 3905.421, and to repeal sections 3
3909.05 and 3927.03 of the Revised Code relative 4
to the appointment of agents by foreign insurance 5
companies doing business in Ohio, vehicle 6
protection product warranties, and the sponsorship 7
of small employer health care alliances by 8
organizations comprised of health care providers 9
or insurance agents. 10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1731.01, 1731.03, 3909.09, and 11
3909.15 be amended and new sections 3909.05 and 3927.03 and 12
section 3905.421 of the Revised Code be enacted to read as 13
follows: 14

Sec. 1731.01. As used in this chapter: 15

(A) "Alliance" or "small employer health care alliance" means 16

an existing or newly created organization that has been granted a
certificate of authority by the superintendent of insurance under
section 1731.021 of the Revised Code and that is either of the
following:

(1) A chamber of commerce, trade association, professional
organization, or any other organization that has all of the
following characteristics:

(a) Is a nonprofit corporation or association;

(b) Has members that include or are exclusively small
employers;

(c) Sponsors or is part of a program to assist such small
employer members to obtain coverage for their employees under one
or more health benefit plans;

(d) ~~Is~~ Except as provided in division (A)(1)(e) of this
section, is not directly or indirectly controlled, through voting
membership, representation on its governing board, or otherwise,
by any insurance company, person, firm, or corporation that sells
insurance, any provider, or by persons who are officers, trustees,
or directors of such enterprises, or by any combination of such
enterprises or persons.

(e) Division (A)(1)(d) of this section does not apply to an
organization that is comprised of members who are either insurance
agents or providers, that is controlled by the organization's
members or by the organization itself, and that elects to offer
health insurance exclusively to any or all of the following:

(i) Employees and retirees of the organization;

(ii) Insurance agents and providers that are members of the
organization;

(iii) Employees and retirees of the agents or providers
specified in division (A)(1)(e)(ii) of this section;

(iv) Families and dependents of the employees, providers, agents, and retirees specified in divisions (A)(1)(e)(i), (A)(1)(e)(ii), and (A)(1)(e)(iii) of this section.

(2) A nonprofit corporation controlled by one or more organizations described in division (A)(1) of this section.

(B) "Alliance program" or "alliance health care program" means a program sponsored by a small employer health care alliance that assists small employer members of such small employer health care alliance or any other small employer health care alliance to obtain coverage for their employees under one or more health benefit plans, and that includes at least one agreement between a small employer health care alliance and an insurer that contains the insurer's agreement to offer and sell one or more health benefit plans to such small employers and contains all of the other features required under section 1731.04 of the Revised Code.

(C) "Eligible employees, retirees, their dependents, and members of their families," as used together or separately, means the active employees of a small employer, or retired former employees of a small employer or predecessor firm or organization, their dependents or members of their families, who are eligible for coverage under the terms of the applicable alliance program.

(D) "Enrolled small employer" or "enrolled employer" means a small employer that has obtained coverage for its eligible employees from an insurer under an alliance program.

(E) "Health benefit plan" means any hospital or medical expense policy of insurance or a health care plan provided by an insurer, including a health insuring corporation plan, provided by or through an insurer, or any combination thereof. "Health benefit plan" does not include any of the following:

(1) A policy covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare

supplement, specified disease, or vision care, except where any of 78
the foregoing is offered as an addition, indorsement, or rider to 79
a health benefit plan; 80

(2) Coverage issued as a supplement to liability insurance, 81
insurance arising out of a workers' compensation or similar law, 82
automobile medical-payment insurance, or insurance under which 83
benefits are payable with or without regard to fault and which is 84
statutorily required to be contained in any liability insurance 85
policy or equivalent self-insurance; 86

(3) Coverage issued by a health insuring corporation 87
authorized to offer supplemental health care services only. 88

(F) "Insurer" means an insurance company authorized to do the 89
business of sickness and accident insurance in this state or, for 90
the purposes of this chapter, a health insuring corporation 91
authorized to issue health care plans in this state. 92

(G) "Participants" or "beneficiaries" means those eligible 93
employees, retirees, their dependents, and members of their 94
families who are covered by health benefit plans provided by an 95
insurer to enrolled small employers under an alliance program. 96

(H) "Provider" means a hospital, urgent care facility, 97
nursing home, physician, podiatrist, dentist, pharmacist, 98
chiropractor, certified registered nurse anesthetist, dietitian, 99
or other health care provider licensed by this state, or group of 100
such health care providers. 101

(I) "Qualified alliance program" means an alliance program 102
under which health care benefits are provided to two thousand five 103
hundred or more participants. 104

(J) "Small employer," regardless of its definition in any 105
other chapter of the Revised Code, in this chapter means an 106
employer that employs no more than one hundred fifty full-time 107
employees, at least a majority of whom are employed at locations 108

within this state.	109
(1) For this purpose:	110
(a) Each entity that is controlled by, controls, or is under common control with, one or more other entities shall, together with such other entities, be considered to be a single employer.	111 112 113
(b) "Full-time employee" means a person who normally works at least twenty-five hours per week and at least forty weeks per year for the employer.	114 115 116
(c) An employer will be treated as having one hundred fifty or fewer full-time employees on any day if, during the prior calendar year or any twelve consecutive months during the twenty-four full months immediately preceding that day, the mean number of full-time employees employed by the employer does not exceed one hundred fifty.	117 118 119 120 121 122
(2) An employer that qualifies as a small employer for purposes of becoming an enrolled small employer continues to be treated as a small employer for purposes of this chapter until such time as it fails to meet the conditions described in division (J)(1) of this section for any period of thirty-six consecutive months after first becoming an enrolled small employer, unless earlier disqualified under the terms of the alliance program.	123 124 125 126 127 128 129
Sec. 1731.03. (A) A small employer health care alliance may do any of the following:	130 131
(1) Negotiate and enter into agreements with one or more insurers for the insurers to offer and provide one or more health benefit plans to small employers for their employees and retirees, and the dependents and members of the families of such employees and retirees, which coverage may be made available to enrolled small employers without regard to industrial, rating, or other classifications among the enrolled small employers under an	132 133 134 135 136 137 138

alliance program, except as otherwise provided under the alliance 139
program, and for the alliance to perform, or contract with others 140
for the performance of, functions under or with respect to the 141
alliance program; 142

(2) Contract with another alliance for the inclusion of the 143
small employer members of one in the alliance program of the 144
other; 145

(3) Provide or cause to be provided to small employers 146
information concerning the availability, coverage, benefits, 147
premiums, and other information regarding an alliance program and 148
promote the alliance program; 149

(4) Provide, or contract with others to provide, enrollment, 150
record keeping, information, premium billing, collection and 151
transmittal, and other services under an alliance program; 152

(5) Receive reports and information from the insurer and 153
negotiate and enter into agreements with respect to inspection and 154
audit of the books and records of the insurer; 155

(6) Provide services to and on behalf of an alliance program 156
sponsored by another alliance, including entering into an 157
agreement described in division (B) of section 1731.01 of the 158
Revised Code on behalf of the other alliance; 159

(7) If it is a nonprofit corporation created under Chapter 160
1702. of the Revised Code, exercise all powers and authority of 161
such corporations under the laws of the state, or, if otherwise 162
constituted, exercise such powers and authority as apply to it 163
under the applicable laws, and its articles, regulations, 164
constitution, bylaws, or other relevant governing instruments. 165

(B) A small employer health care alliance is not and shall 166
not be regarded for any purpose of law as an insurer, an offeror 167
or seller of any insurance, a partner of or joint venturer with 168
any insurer, an agent of, or solicitor for an agent of, or 169

representative of, an insurer or an offeror or seller of any 170
insurance, an adjuster of claims, or a third-party administrator, 171
and will not be liable under or by reason of any insurance 172
coverage or other health benefit plan provided or not provided by 173
any insurer or by reason of any conditions or restrictions on 174
eligibility or benefits under an alliance program or any insurance 175
or other health benefit plan provided under an alliance program or 176
by reason of the application of those conditions or restrictions. 177

(C) The promotion of an alliance program by an alliance or by 178
an insurer is not and shall not be regarded for any purpose of law 179
as the offer, solicitation, or sale of insurance. 180

(D)(1) No alliance shall adopt, impose, or enforce medical 181
underwriting rules for the purpose of determining whether an 182
alliance member is eligible to purchase a policy, contract, or 183
plan of health insurance or health benefits from any insurer in 184
connection with the alliance health care program. 185

(2) No alliance shall reject any applicant for membership in 186
the alliance based on the health status of the applicant's 187
employees or their dependents. 188

(3) A violation of division (D)(1) or (2) of this section is 189
deemed to be an unfair and deceptive act or practice in the 190
business of insurance under sections 3901.19 to 3901.26 of the 191
Revised Code. 192

(4) Nothing in division (D)(1) or (2) of this section shall 193
be construed as inhibiting or preventing an alliance from 194
adopting, imposing, and enforcing rules, conditions, limitations, 195
or restrictions that are based on factors other than the health 196
status of employees or their dependents for the purpose of 197
determining whether a small employer is eligible to become a 198
member of the alliance. Division (D)(1) of this section does not 199
apply to an insurer that sells health coverage to an alliance 200

member under an alliance health care program. 201

(E) Health benefit plans offered and sold to alliance members 202
that are small employers as defined in section 3924.01 of the 203
Revised Code are subject to sections 3924.01 to 3924.14 of the 204
Revised Code. 205

(F) Any person who represents an alliance in bargaining or 206
negotiating a health benefit plan with an insurer shall disclose 207
to the governing board of the alliance any direct or indirect 208
financial relationship the person has or had during the past two 209
years with the insurer. 210

Sec. 3905.421. (A) As used in this section: 211

(1) "Incidental costs" means the losses and expenses 212
specified by a vehicle protection product warranty related to the 213
failure of a vehicle protection product to deter the theft of a 214
vehicle or facilitate the recovery of the vehicle after it has 215
been stolen. "Incidental costs" may include, but are not limited 216
to, insurance policy deductibles, rental vehicle charges, the 217
difference between the actual value of the stolen vehicle at the 218
time of the theft and the cost of a replacement vehicle, sales 219
taxes, registration fees, transaction fees, and mechanical 220
inspection fees. 221

(2) "Vehicle protection product" means a vehicle protection 222
device, system, or service that is installed on or applied to a 223
vehicle and that is designed to deter the theft of a vehicle or 224
facilitate the recovery of the vehicle after it has been stolen. 225
"Vehicle protection product" includes, but is not limited to, 226
alarm systems, window etch products, body part marking products, 227
steering locks, pedal and ignition locks, fuel and ignition kill 228
switches, and electronic, radio, and satellite tracking devices. 229

(3) "Warrantor of a vehicle protection product" or 230

"warrantor" means the person that is contractually obligated to 231
the warranty holder under the terms of a vehicle protection 232
product warranty. "Warrantor" does not include an insurer 233
authorized or eligible to do business in this state. 234

(B) A vehicle protection product warranty issued by the 235
warrantor of a vehicle protection product does not constitute a 236
contract substantially amounting to insurance or its issuance the 237
business of insurance under section 3905.42 of the Revised Code, 238
if both of the following conditions are met: 239

(1) The warranty is limited to indemnifying the warranty 240
holder for incidental costs caused by the failure of the vehicle 241
protection product to deter the theft of the vehicle or facilitate 242
the recovery of the vehicle after it has been stolen. 243

(2) The vehicle protection product warranty contains both of 244
the following conspicuous, written disclosures: 245

(a) "This vehicle protection product warranty is not subject 246
to the insurance laws of this state, contained in Title XXXIX of 247
the Ohio Revised Code." 248

(b) "This warranty may not include all of the benefits or 249
protections of an insurance policy that includes theft coverage 250
issued by an insurer authorized to do business in Ohio." 251

Sec. 3909.05. (A) Any life insurance company organized by act 252
of congress or under the laws of another state of the United 253
States that transacts any business of insurance in this state 254
shall have and maintain an agent, sometimes referred to as the 255
"statutory agent," upon whom any process, notice, or demand 256
required or permitted by law to be served upon a company may be 257
served. The agent may be a natural person residing in this state 258
or may be a corporation holding a license under the laws of this 259
state that is authorized by its articles of incorporation to act 260

as an agent and that maintains a business address in this state. A 261
statutory agent need not be a licensed insurance agent. 262

(B) The written appointment of an agent shall be in the form 263
the superintendent of insurance prescribes, which may include a 264
consent to service of process. The appointment shall set forth the 265
name and complete address of the agent. The agent shall reside or 266
maintain a business address within this state. 267

The superintendent shall keep a record of the foreign life 268
insurance companies transacting business in this state and the 269
name and address of their respective agents. 270

(C) If any agent dies, moves out of the state, or resigns, 271
the company immediately shall appoint another agent and file with 272
the superintendent a written appointment as described in division 273
(B) of this section. 274

(D) If an agent changes the agent's address, the company or 275
agent immediately shall notify the superintendent of the change, 276
and shall set forth the agent's new address, on a form prescribed 277
by the superintendent. 278

(E) An agent may resign by filing with the superintendent a 279
written notice signed by the agent. The agent shall send a copy of 280
the notice to the company at the current or last known address of 281
the company's principal office prior to the date the notice is 282
filed with the superintendent. The notice shall set forth the 283
company's name, the current or last known address of the company, 284
the name and address of the agent, the resignation of the agent, 285
and a statement that a copy of the notice has been sent to the 286
company and the date the copy was sent. The agent's authority 287
shall terminate thirty days after the notice is filed with the 288
superintendent. 289

(F) A company may revoke the appointment of an agent by 290

filing with the superintendent a written appointment of another 291
agent and a statement that the appointment of the former agent is 292
revoked. The authority of the agent whose appointment has been 293
revoked shall terminate thirty days after the notice is filed with 294
the superintendent. 295

(G) Any process, notice, or demand required or permitted by 296
law to be served upon a company may be served by delivering a copy 297
of the process, notice, or demand to the agent of record at the 298
address appearing in the superintendent's records. If the agent 299
cannot be found, the agent no longer has that address, or the 300
company has failed to maintain an agent as required by this 301
section, the party desiring that the process, notice, or demand be 302
served, or its agent, may file with the superintendent an 303
affidavit stating that one of the foregoing conditions exists and 304
stating the most recent address of the company that the party, 305
after diligent search, has been able to ascertain. Upon the filing 306
of the affidavit, service of process, notice, or demand may be 307
initiated upon the superintendent as the company's agent by 308
delivering two copies of the process, notice, or demand to the 309
superintendent. The superintendent shall give notice to the 310
company at its principal office as shown in the superintendent's 311
records or at the address set forth in the affidavit. The 312
superintendent shall give notice by regular mail with a copy of 313
the process, notice, or demand enclosed. After the superintendent 314
has mailed the appropriate documents, service upon the company is 315
deemed complete. 316

(H) The superintendent shall keep a record of each process, 317
notice, and demand delivered to the superintendent under this 318
section or any other law of this state that authorizes service 319
upon the superintendent. 320

(I) This section does not limit or affect the right to serve 321
any process, notice, or demand upon a company in any other manner 322

permitted by law.

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(J) A company shall include a fee of five dollars with any
change of agent appointment or change of address. This division
does not apply to an agent appointment filed with an original
application for a certificate of authority.

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(K) If a company fails to appoint or maintain an agent or to
notify the superintendent of an agent's change of address, the
superintendent shall fine the company not less than twenty-five
nor more than two hundred dollars per violation, after the
superintendent has provided notice by certified mail and upon the
expiration of thirty days from the date of mailing or such further
time as the superintendent allows. The superintendent may also
charge a company a fifty-dollar fee for each time the
superintendent is required to give notice to the company in
accordance with division (G) of this section.

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(L) The superintendent shall pay all moneys collected by the
superintendent in accordance with this section into the state
treasury to the credit of the department of insurance operating
fund.

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Sec. 3909.09. No person shall act in this state as agent, or
otherwise, in receiving or procuring applications for life
insurance, nor in any manner aid in transacting the business of
any company, partnership, or association incorporated by or
organized under the laws of any foreign government, until such
company, partnership, or association completes the following acts:

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(A) Deposits with the superintendent of insurance, for the
benefit of policyholders of the company, partnership, or
association, who are citizens or residents of the United States,
securities to the amount of one hundred thousand dollars, of the
kind required for similar companies of this state;

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~~(B) Executes a waiver as provided in Appoints a statutory agent in accordance with section 3909.05 of the Revised Code;~~ 353
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~~(C) Appoints an agent or attorney in each county in this state in which the company established an agency, on whom process of law can be served;~~ 355
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~~(D) Files with the superintendent a certified copy of its charter, or deed of settlement, and a duplicate original copy of the letter or power of attorney of the company, partnership, or association, appointing the attorney thereof, which appointment shall continue until another attorney is substituted.~~ 358
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Sec. 3909.15. ~~If a company, partnership, or association, organized under the laws of any other state or government, ceases to ~~do~~ transact the business of life insurance in this state according to law, ~~it shall appoint, in the manner provided in sections 3909.01 to 3909.17, inclusive, of the Revised Code, in every county in which an agency existed at the date of such discontinuance, one or more agents for the purpose of receiving service of process in all actions upon policies of insurance issued to the citizens of this state while it was lawfully transacting the business of insurance in this state. Service of process upon such agents, in such actions, is as valid as actual service upon the company, partnership, or association.~~~~ 363
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~~In every case in which no such agent is appointed, the agent last designated and acting for the company, partnership, or association shall be deemed authorized by it to receive service of process. The officer who serves such process shall also send a copy of the process served on the agent, by mail, to the address of such company, partnership, or association at the place of its principal or home office at the time it ceased to do business in this state, and his return must distinctly show that at least thirty days have elapsed since the mailing of such copy before any~~ 375
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~~judgment is rendered in such action.~~

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~~If any such company, partnership, or association ceases to~~
~~transact business in this state according to law, the agents~~
statutory agent last designated by or acting for it ~~are~~ is deemed
to continue as ~~agents~~ agent for it, unless a new statutory agent
is appointed, for the purpose of serving process, and for
commencing actions upon any policy or liability issued or
contracted while it transacted business in this state, and service
of process upon any such agent, for such causes, is a valid
service upon the company, partnership, or association.

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This section does not limit or affect the right to serve any
process, notice, or demand upon a company, partnership, or
association in any other manner permitted by law.

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Sec. 3927.03. (A) Any foreign insurance company that
transacts any business in this state shall have and maintain an
agent, sometimes referred to as the "statutory 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 this state 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. A statutory agent need not be a
licensed insurance agent.

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(B) The written appointment of an agent shall be in the form
the superintendent of insurance prescribes, which may include a
consent to service of process. The appointment shall set forth the
name and complete address of the agent. The agent shall reside or
maintain a business address within this state.

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The superintendent shall keep a record of the foreign
insurance companies transacting business in this state and the

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name and address of their respective agents.

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(C) If any agent dies, moves out of the state, or resigns,
the company immediately shall appoint another agent and file with
the superintendent a written appointment as described in division
(B) of this section.

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(D) If an agent changes the agent's address, the company or
agent immediately shall notify the superintendent of the change,
and shall set forth the agent's new address, on a form prescribed
by the superintendent.

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(E) An agent may resign by filing with the superintendent a
written notice signed by the agent. The agent shall send a copy of
the notice to the company at the current or last known address of
the company's principal office prior to the date the notice is
filed with the superintendent. The notice shall set forth the
company's name, the current or last known address of the company,
the name and address of the agent, the resignation of the agent,
and a statement that a copy of the notice has been sent to the
company and the date the copy was sent. The agent's authority
shall terminate thirty days after the notice is filed with the
superintendent.

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(F) A company may revoke the appointment of an agent by
filing with the superintendent a written appointment of another
agent and a statement that the appointment of the former agent is
revoked. The authority of the agent whose appointment has been
revoked shall terminate thirty days after the notice is filed with
the superintendent.

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(G) Any process, notice, or demand required or permitted by
law to be served upon a company 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, the agent no longer has that address, or the

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company has failed to maintain an agent as required by this
section, the party desiring that the process, notice, or demand be
served, or its agent, may file with the superintendent an
affidavit stating that one of the foregoing conditions exists and
stating the most recent address of the company that the party,
after diligent search, has been able to ascertain. Upon the filing
of the affidavit, service of process, notice, or demand may be
initiated upon the superintendent as the company's agent by
delivering two copies of the process, notice, or demand to the
superintendent. The superintendent shall give notice to the
company at its principal office as shown in the superintendent's
records or at the address set forth in the affidavit. The
superintendent shall give notice by regular mail with a copy of
the process, notice, or demand enclosed. After the superintendent
has mailed the appropriate documents, service upon the company is
deemed complete.

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(H) The superintendent shall keep a record of each process,
notice, and demand delivered to the superintendent under this
section or any other law of this state that authorizes service
upon the superintendent.

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(I) This section does not limit or affect the right to serve
any process, notice, or demand upon a company in any other manner
permitted by law.

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(J) A company shall include a fee of five dollars with any
change of agent appointment or change of address. This division
does not apply to an agent appointment filed with an original
application for a certificate of authority.

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(K) If a company fails to appoint or maintain an agent or to
notify the superintendent of an agent's change of address, the
superintendent shall fine the company not less than twenty-five
nor more than two hundred dollars per violation, after the

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superintendent has provided notice by certified mail and upon the 476
expiration of thirty days from the date of mailing or such further 477
time as the superintendent allows. The superintendent may also 478
charge a company a fifty-dollar fee for each time the 479
superintendent is required to give notice to the company in 480
accordance with division (G) of this section. 481

(L) The superintendent shall pay all moneys collected by the 482
superintendent in accordance with this section into the state 483
treasury to the credit of the department of insurance operating 484
fund. 485

(M) Any foreign insurance company transacting business in 486
this state by an agent consents that suit may be brought against 487
it in the county where the property insured was situated, or was 488
insured, or the application for insurance taken. 489

(N) If a foreign insurance company ceases to do business in 490
this state according to law, the statutory agent last designated 491
by or acting for it is deemed to continue as agent for it, unless 492
a new statutory agent is appointed, for the purpose of serving 493
process, and for commencing actions upon any policy or liability 494
issued or contracted while it transacted business in this state, 495
and service of process upon any such agent, for such causes, is a 496
valid service upon the company. 497

Section 2. That existing sections 1731.01, 1731.03, 3909.09, 498
and 3909.15 and sections 3909.05 and 3927.03 of the Revised Code 499
are hereby repealed. 500

Section 3. An insurance company organized under the laws of 501
any other state that was authorized to transact any business of 502
insurance in this state prior to the effective date of this 503
section shall appoint a "statutory agent," as required by this 504
act, no later than the later of the effective date of this section 505

or sixty days after the Superintendent of Insurance issues a 506
bulletin specifying the method by which the insurance company is 507
to appoint a statutory agent. 508

Section 4. Section 3905.421 of the Revised Code, as enacted 509
by this act, shall apply only in connection with vehicle 510
protection products sold or offered for sale in this state on or 511
after the effective date of this act. The enactment of section 512
3905.421 of the Revised Code does not imply that vehicle 513
protection products or vehicle protection product warranties were 514
or should have been subject to regulation under Title XXXIX of the 515
Revised Code prior to the effective date of this act. 516