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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.)*

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.)*

CHAPTER 1. General Regulations [680 - 1113] (*Chapter 1 enacted by Stats. 1935, Ch. 145.)*

ARTICLE 13.3. Obligations of Automobile Insurers and Their Agents Under Contingent and Retrospective Compensation Arrangements [995 - 995.7] (*Article 13.3 added by Stats. 1965, Ch. 1818.)*

995. (a) As used in this article, "contingent compensation arrangement" means an arrangement having as its purpose the payment of a variable commission by the insurer, depending on the overall operating profit on the insurance business produced and handled by the payee, with other provisions of the arrangement auxiliary or incidental to such purpose.

(b) As used in this article, "retrospective commission arrangement" means an arrangement having as its purpose the retention by the insurer of a fixed proportion of the gross premiums, or gross premiums plus policy fees with the balance of the premiums, or premiums plus policy fees, retained by the producer of the business, who assumes to pay therefrom all losses, all subordinate commissions, loss adjustment expenses and his profit, if any, with other provisions of the arrangement auxiliary or incidental to such purpose.

(c) The phrases defined in subdivisions (a) and (b) of this section shall not be deemed to include a contingent commission arrangement of a producer, managing general agent, surplus line broker, or general agent based wholly or partly on underwriting results, unless the arrangement guarantees an agreed return to the insurer which may exceed the underwriting profit actually earned by the insurer on business written through the producer, managing general agent, surplus line broker, or general agent.

(d) As used in this article, "policy fee" means any sum specified in the policy as paid, or payable, in addition to the specified premium, as a consideration for the policy; and does not include expenses customarily charged to the insured which are not recited in the policy.

(e) This article shall apply only to automobile and automobile liability insurance.

(*Added by Stats. 1965, Ch. 1818.*)

995.1. An agent, broker, surplus line broker, general agent or other person operating under a contingent or retrospective compensation arrangement with any insurer shall promptly notify the insurer of every policy claim against the insurer of which he has knowledge with sufficient particulars to enable the insurer to establish an adequate claim reserve. Every insurer so notified of a policy claim or receiving independent knowledge of any policy claim shall promptly make a record thereof and establish a claim reserve for the same.

If the commissioner has reason to believe such agent, broker, general agent or other person is not so notifying the insurer, he shall give the insurer seven days written notice of such belief and if the insurer does not correct the situation within seven days thereafter he may examine such agent, broker, general agent or other person at the expense of the insurer.

In the case of any arrangement whereby the producer receives from the insurer an initial percentage commission to be augmented if loss ratios or profits are more favorable than a stated standard, the insurer shall establish a contingent commission reserve for the amount, if any, which will become due to the producer because of such favorable loss ratios or profits.

Notwithstanding any provision of the contingent or retrospective arrangement, such claims and contingent commission reserves shall be a liability of the insurer.

Nothing contained in this section is intended to prohibit reasonable arrangements between a managing general agent, surplus line broker or general agent and an insurer which provide (a) for the amount of claim reserve to be recommended by the managing general agent, surplus line broker or general agent to the insurer, without particulars other than those needed by the insurer to establish the claim reserve on its books, or (b) for the handling of claim reserves on smaller claims of not more than two thousand dollars (\$2,000) each on a bulk or group basis, upon recommendation of the amount by the managing general agent, surplus line broker or general agent, or (c) for the handling of losses not exceeding five hundred dollars (\$500) each by the managing general

agent, surplus line broker or general agent without establishment of claim reserves, or (d) for the reporting of losses and recommended reserves by the managing general agent, surplus line broker, or general agent on a monthly basis.

(Added by Stats. 1965, Ch. 1818.)

995.2. An insurer shall not claim as an asset by reason of any provision of a contingent or retrospective compensation arrangement, any account due from the other party pursuant to such an arrangement in an amount in excess of the money actually held by such party in a trusteed bank account for such insurer, unless such party is solvent without giving effect to any contingent or retrospective compensation not specifically acknowledged in writing by the insurer as settled in amount and payable in cash, or usable as an absolute offset against the insurer, within 90 days.

If the commissioner has reason to doubt the solvency of any person dealing with an insurer under a contingent or retrospective commission arrangement, he may examine him at the expense of the insurer.

Nothing contained in this section is intended to modify any provision contained in Section 1735 of this code.

(Added by Stats. 1965, Ch. 1818.)

995.3. Every person operating under a retrospective or contingent compensation arrangement with any insurer shall report to the insurer within a reasonable time, and policy by policy, the full premium charge including any policy fee made to the insured and the amount of premium and policy fee, if any, collected from the insured in respect to each such policy. Such reporting need not be policy by policy in a case where such arrangement covers only policies which are all uniform in coverage, uniform as to premium and such premium is not over ten dollars (\$10) annually.

If the commissioner has reason to believe any such person is not complying with this section, he shall give the insurer seven days written notice of such belief and if the insurer does not correct the situation within seven days thereafter, he may examine such person at the expense of the insurer.

Nothing contained in this section is intended to prohibit or invalidate use of the bordereau method of accounting or accounting by transmission of computer data by a managing general agent, surplus line broker, or general agent, nor to require him to report premium collections to an insurer where the managing general agent, surplus line broker, or general agent is liable to pay the insurer bordereau or accounting balances in full whether collected or not.

(Added by Stats. 1965, Ch. 1818.)

995.4. An insurer, notwithstanding the provisions of any contingent or retrospective compensation arrangement with any person, shall maintain as a liability, as part of its unearned premium reserve the unearned portion of all premium charges made to insureds without deduction for uncollected charges.

(Added by Stats. 1965, Ch. 1818.)

995.5. An insurer, notwithstanding the provisions of any contingent or retrospective compensation arrangement with any person, shall report and pay the premium tax liability set forth in the Revenue and Taxation Code on the basis that it has received the full premium charge including policy fees made to the insureds under policies less return premiums as permitted by law.

(Added by Stats. 1965, Ch. 1818.)

995.6. The provisions of Sections 995.1, 995.2, and 995.3 permitting the commissioner, in certain situations, to examine a person operating under a contingent or retrospective commission arrangement with an insurer at the expense of the insurer, and the other provisions of this article, shall not prevent the insurer from making a contract in advance with such person that in such event the person will reimburse the insurer for such expense. If in the course of examining such person the commissioner finds such person also operates under such contingent or retrospective commission arrangements with other insurers, he may prorate the expense of examination on an equitable basis among all the insurers so dealing with the person.

(Added by Stats. 1965, Ch. 1818.)

995.7. The purposes of Section 816 and the provisions of this article are to promote the solvency of insurers and the producers dealing with them under contracts, arrangements and practices therein described; to protect the public from unjustifiable claims practices and the inconvenience, hardship and possible loss attendant upon the insolvency of any of the insurers or persons described therein; and to prevent any frauds or mistakes which may arise from any of the contracts, arrangements or practices described therein. In furtherance of these purposes the commissioner shall at least 90 days prior to charging any person with a violation of Section 816 or the provisions of this article make reasonable rules and regulations clarifying or defining any word, term or phrase used in Section 816 or in this article, including establishment of detailed standards to determine solvency as that word is used in Section 995.2. Such rules and regulations shall be adopted, amended or repealed in accordance with the procedures provided in Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

