

AN ACT

To amend sections 111.15, 119.01, 1121.01, 1121.11, 1121.18, 1155.01, 1155.091, 1155.16, 1163.01, 1163.121, 1163.20, 1321.09, 1321.55, 1321.76, 1322.06, 1322.061, 1707.092, 1707.11, 1707.12, 1707.141, 1707.15, 1707.151, 1707.161, 1707.17, 1707.20, 1707.40, 1707.44, 1733.01, 1733.32, 1733.327, 1751.19, 3901.36, 3901.44, 3901.48, 3901.70, 3901.83, 3903.11, 3903.72, 3903.83, 3903.88, 3905.492, 3905.50, 3999.36, and 4727.18, to enact sections 1181.25, 1707.201, and 3901.045 of the Revised Code, and to repeal section 1322.06 of the Revised Code, as amended by this act, on May 2, 2002, relative to the circumstances under which the Department of Insurance and the Divisions of Financial Institutions and Securities may share confidential documents and information with, and receive such documents and information from, other specified regulators and officials, or otherwise disclose these documents and information, and to modifications of the Securities Law with respect to investment advisers, application for a securities dealer's license, license renewals and fees, parity rules, notice filings, and consent to service of process.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 111.15, 119.01, 1121.01, 1121.11, 1121.18, 1155.01, 1155.091, 1155.16, 1163.01, 1163.121, 1163.20, 1321.09, 1321.55, 1321.76, 1322.06, 1322.061, 1707.092, 1707.11, 1707.12, 1707.141, 1707.15, 1707.151, 1707.161, 1707.17, 1707.20, 1707.40, 1707.44, 1733.01, 1733.32, 1733.327, 1751.19, 3901.36, 3901.44, 3901.48, 3901.70, 3901.83,

3903.11, 3903.72, 3903.83, 3903.88, 3905.492, 3905.50, 3999.36, and 4727.18 be amended and sections 1181.25, 1707.201, and 3901.045 of the Revised Code be enacted to read as follows:

Sec. 111.15. (A) As used in this section:

(1) "Rule" includes any rule, regulation, bylaw, or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency; any appendix to a rule; and any internal management rule. "Rule" does not include any guideline adopted pursuant to section 3301.0714 of the Revised Code, any order respecting the duties of employees, any finding, any determination of a question of law or fact in a matter presented to an agency, or any rule promulgated pursuant to Chapter 119., section 4141.14, division (C)(1) or (2) of section 5117.02, or section 5703.14 of the Revised Code. "Rule" includes any amendment or rescission of a rule.

(2) "Agency" means any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.

(3) "Internal management rule" means any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

(4) "Substantive revision" has the same meaning as in division (J) of section 119.01 of the Revised Code.

(B)(1) Any rule, other than a rule of an emergency nature, adopted by any agency pursuant to this section shall be effective on the tenth day after the day on which the rule in final form and in compliance with division (B)(3) of this section is filed as follows:

(a) The rule shall be filed in electronic form with both the secretary of state and the director of the legislative service commission;

(b) The rule shall be filed in electronic form with the joint committee on agency rule review. Division (B)(1)(b) of this section does not apply to any rule to which division (D) of this section does not apply.

An agency that adopts or amends a rule that is subject to division (D) of this section shall assign a review date to the rule that is not later than five years after its effective date. If no review date is assigned to a rule, or if a review date assigned to a rule exceeds the five-year maximum, the review date for the rule is five years after its effective date. A rule with a review date is subject to review under section 119.032 of the Revised Code. This

paragraph does not apply to a rule of a state college or university, community college district, technical college district, or state community college.

If all filings are not completed on the same day, the rule shall be effective on the tenth day after the day on which the latest filing is completed. If an agency in adopting a rule designates an effective date that is later than the effective date provided for by division (B)(1) of this section, the rule if filed as required by such division shall become effective on the later date designated by the agency.

Any rule that is required to be filed under division (B)(1) of this section is also subject to division (D) of this section if not exempted by division (D)(1), (2), (3), (4), (5), (6), (7), or (8) of this section.

(2) A rule of an emergency nature necessary for the immediate preservation of the public peace, health, or safety shall state the reasons for the necessity. The emergency rule, in final form and in compliance with division (B)(3) of this section, shall be filed in electronic form with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review. The emergency rule is effective immediately upon completion of the latest filing, except that if the agency in adopting the emergency rule designates an effective date, or date and time of day, that is later than the effective date and time provided for by division (B)(2) of this section, the emergency rule if filed as required by such division shall become effective at the later date, or later date and time of day, designated by the agency.

An emergency rule becomes invalid at the end of the ninetieth day it is in effect. Prior to that date, the agency may file the emergency rule as a nonemergency rule in compliance with division (B)(1) of this section. The agency may not refile the emergency rule in compliance with division (B)(2) of this section so that, upon the emergency rule becoming invalid under such division, the emergency rule will continue in effect without interruption for another ninety-day period.

(3) An agency shall file a rule under division (B)(1) or (2) of this section in compliance with the following standards and procedures:

(a) The rule shall be numbered in accordance with the numbering system devised by the director for the Ohio administrative code.

(b) The rule shall be prepared and submitted in compliance with the rules of the legislative service commission.

(c) The rule shall clearly state the date on which it is to be effective and the date on which it will expire, if known.

(d) Each rule that amends or rescinds another rule shall clearly refer to

the rule that is amended or rescinded. Each amendment shall fully restate the rule as amended.

If the director of the legislative service commission or the director's designee gives an agency notice pursuant to section 103.05 of the Revised Code that a rule filed by the agency is not in compliance with the rules of the legislative service commission, the agency shall within thirty days after receipt of the notice conform the rule to the rules of the commission as directed in the notice.

(C) All rules filed pursuant to divisions (B)(1)(a) and (2) of this section shall be recorded by the secretary of state and the director under the title of the agency adopting the rule and shall be numbered according to the numbering system devised by the director. The secretary of state and the director shall preserve the rules in an accessible manner. Each such rule shall be a public record open to public inspection and may be transmitted to any law publishing company that wishes to reproduce it.

(D) At least sixty-five days before a board, commission, department, division, or bureau of the government of the state files a rule under division (B)(1) of this section, it shall file the full text of the proposed rule in electronic form with the joint committee on agency rule review, and the proposed rule is subject to legislative review and invalidation under division (I) of section 119.03 of the Revised Code. If a state board, commission, department, division, or bureau makes a substantive revision in a proposed rule after it is filed with the joint committee, the state board, commission, department, division, or bureau shall promptly file the full text of the proposed rule in its revised form in electronic form with the joint committee. The latest version of a proposed rule as filed with the joint committee supersedes each earlier version of the text of the same proposed rule. Except as provided in division (F) of this section, a state board, commission, department, division, or bureau shall also file the rule summary and fiscal analysis prepared under section 121.24 or 127.18 of the Revised Code, or both, in electronic form along with a proposed rule, and along with a proposed rule in revised form, that is filed under this division.

As used in this division, "commission" includes the public utilities commission when adopting rules under a federal or state statute.

This division does not apply to any of the following:

- (1) A proposed rule of an emergency nature;
- (2) A rule proposed under section 1121.05, 1121.06, 1155.18, 1707.201, 1733.412, 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, or 4123.442 of the Revised Code;
- (3) A rule proposed by an agency other than a board, commission,

department, division, or bureau of the government of the state;

(4) A proposed internal management rule of a board, commission, department, division, or bureau of the government of the state;

(5) Any proposed rule that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains both of the following:

(a) A statement that it is proposed for the purpose of complying with a federal law or rule;

(b) A citation to the federal law or rule that requires verbatim compliance.

(6) An initial rule proposed by the director of health to impose safety standards, quality-of-care standards, and quality-of-care data reporting requirements with respect to a health service specified in section 3702.11 of the Revised Code, or an initial rule proposed by the director to impose quality standards on a facility listed in division (A)(4) of section 3702.30 of the Revised Code, if section 3702.12 of the Revised Code requires that the rule be adopted under this section;

(7) A rule of the state lottery commission pertaining to instant game rules.

If a rule is exempt from legislative review under division (D)(5) of this section, and if the federal law or rule pursuant to which the rule was adopted expires, is repealed or rescinded, or otherwise terminates, the rule is thereafter subject to legislative review under division (D) of this section.

(E) Whenever a state board, commission, department, division, or bureau files a proposed rule or a proposed rule in revised form under division (D) of this section, it shall also file the full text of the same proposed rule or proposed rule in revised form in electronic form with the secretary of state and the director of the legislative service commission. Except as provided in division (F) of this section, a state board, commission, department, division, or bureau shall file the rule summary and fiscal analysis prepared under section 121.24 or 127.18 of the Revised Code, or both, in electronic form along with a proposed rule or proposed rule in revised form that is filed with the secretary of state or the director of the legislative service commission.

(F) Except as otherwise provided in this division, the auditor of state or the auditor of state's designee is not required to file a rule summary and fiscal analysis along with a proposed rule, or proposed rule in revised form, that the auditor of state proposes under section 117.12, 117.19, 117.38, or

117.43 of the Revised Code and files under division (D) or (E) of this section. If, however, the auditor of state or the designee prepares a rule summary and fiscal analysis of the original version of such a proposed rule for purposes of complying with section 121.24 of the Revised Code, the auditor of state or designee shall file the rule summary and fiscal analysis in electronic form along with the original version of the proposed rule filed under division (D) or (E) of this section.

Sec. 119.01. As used in sections 119.01 to 119.13 of the Revised Code:

(A)(1) "Agency" means, except as limited by this division, any official, board, or commission having authority to promulgate rules or make adjudications in the civil service commission, the division of liquor control, the department of taxation, the industrial commission, the bureau of workers' compensation, the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to sections 119.01 to 119.13 of the Revised Code, and the licensing functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses.

Except as otherwise provided in division (I) of this section, sections 119.01 to 119.13 of the Revised Code do not apply to the public utilities commission. Sections 119.01 to 119.13 of the Revised Code do not apply to the utility radiological safety board; to the controlling board; to actions of the superintendent of financial institutions and the superintendent of insurance in the taking possession of, and rehabilitation or liquidation of, the business and property of banks, savings and loan associations, savings banks, credit unions, insurance companies, associations, reciprocal fraternal benefit societies, and bond investment companies; to any taken by the division of securities under section 1707.201 of the Revised Code; or to any action that may be taken by the superintendent of financial institutions under section 1113.03, 1121.05, 1121.06, 1121.10, 1125.09, 1125.12, 1125.18, 1155.18, 1157.01, 1157.02, 1157.10, 1163.22, 1165.01, 1165.02, 1165.10, 1733.35, 1733.361, 1733.37, 1733.412, or 1761.03 of the Revised Code.

Sections 119.01 to 119.13 of the Revised Code do not apply to actions of the industrial commission or the bureau of workers' compensation under sections 4123.01 to 4123.94 of the Revised Code with respect to all matters of adjudication, and to the actions of the industrial commission and bureau of workers' compensation under division (D) of section 4121.32 and sections 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, 4123.442, and divisions (B), (C), and (E) of section 4131.14 of the

Revised Code.

(2) "Agency" also means any official or work unit having authority to promulgate rules or make adjudications in the department of job and family services, but only with respect to both of the following:

(a) The adoption, amendment, or rescission of rules that section 5101.09 of the Revised Code requires be adopted in accordance with this chapter;

(b) The issuance, suspension, revocation, or cancellation of licenses.

(B) "License" means any license, permit, certificate, commission, or charter issued by any agency. "License" does not include any arrangement whereby a person, institution, or entity furnishes medicaid services under a provider agreement with the department of job and family services pursuant to Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended.

(C) "Rule" means any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, and includes any appendix to a rule. "Rule" does not include any internal management rule of an agency unless the internal management rule affects private rights and does not include any guideline adopted pursuant to section 3301.0714 of the Revised Code.

(D) "Adjudication" means the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature.

(E) "Hearing" means a public hearing by any agency in compliance with procedural safeguards afforded by sections 119.01 to 119.13 of the Revised Code.

(F) "Person" means a person, firm, corporation, association, or partnership.

(G) "Party" means the person whose interests are the subject of an adjudication by an agency.

(H) "Appeal" means the procedure by which a person, aggrieved by a finding, decision, order, or adjudication of any agency, invokes the jurisdiction of a court.

(I) "Rule-making agency" means any board, commission, department, division, or bureau of the government of the state that is required to file proposed rules, amendments, or rescissions under division (D) of section 111.15 of the Revised Code and any agency that is required to file proposed rules, amendments, or rescissions under divisions (B) and (H) of section

119.03 of the Revised Code. "Rule-making agency" includes the public utilities commission. "Rule-making agency" does not include any state-supported college or university.

(J) "Substantive revision" means any addition to, elimination from, or other change in a rule, an amendment of a rule, or a rescission of a rule, whether of a substantive or procedural nature, that changes any of the following:

(1) That which the rule, amendment, or rescission permits, authorizes, regulates, requires, prohibits, penalizes, rewards, or otherwise affects;

(2) The scope or application of the rule, amendment, or rescission.

(K) "Internal management rule" means any rule, regulation, or standard governing the day-to-day staff procedures and operations within an agency.

Sec. 1121.01. As used in this chapter:

(A) "Financial institution regulatory authority" includes a regulator of a business activity in which a bank or trust company is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a bank or trust company engaged in that business activity. A bank or trust company is engaged in a business activity, and a regulator of that business activity has jurisdiction over the bank or trust company, whether the bank or trust company conducts the activity directly or a subsidiary or affiliate of the bank or trust company conducts the activity.

~~(B)~~ (C) "Regulated person" means any of the following:

(1) A director, officer, or employee of or agent for a bank or trust company or a controlling shareholder of a state bank, foreign bank, or trust company;

(2) A person who is required to obtain, but has not yet obtained, the consent of the superintendent of financial institutions to acquire control of a bank pursuant to section 1115.06 of the Revised Code;

(3) A person participating in the conduct of the affairs of a bank or trust company.

~~(B)~~(C) "Participating in the conduct of the affairs of a bank or trust company" means either making decisions or, directly or indirectly, taking actions that are management or policymaking in nature and generally within the scope of authority of the bank's or trust company's board of directors or executive officers. Whether a person is or was participating in the conduct of the affairs of a bank or trust company is an issue of fact, and not to be determined solely on the basis of the person's title, contract, or indicia of employment or independent contractor status.

Sec. 1121.11. (A) In administering Chapters 1101. to 1127. of the Revised Code and fulfilling the duties imposed by those chapters, including

the duty imposed by section 1121.10 of the Revised Code, the superintendent of financial institutions may do any of the following:

(1) Participate with financial institution regulatory authorities of this and other states, the United States, and other countries in any of the following:

(a) Programs for alternate examinations of the records and affairs of banks and trust companies over which they have concurrent jurisdiction;

(b) Joint or concurrent examinations of the records and affairs of banks and trust companies over which they have concurrent jurisdiction;

(c) Coordinated examinations of the records and affairs of banks and trust companies over which they have collective jurisdiction.

(2) Conduct, participate in, or coordinate independent, concurrent, joint, or coordinated examinations of the records and affairs of banks and trust companies and otherwise act on behalf of financial institution regulatory authorities of this and other states, the United States, and other countries having jurisdiction over the banks and trust companies;

(3) Rely on information leading to, arising from, or obtained in the course of examinations conducted by financial institution regulatory authorities of this and other states, the United States, and other countries when both of the following apply:

(a) Pursuant to agreement and applicable law, the superintendent may receive and use the information leading to, arising from, or obtained in the course of the other regulatory authorities' examinations in administering Chapters 1101. to 1127. of the Revised Code and acting under the authority of those chapters;

(b) In the superintendent's judgment the other regulatory authorities' personnel, practices, and authority warrant the superintendent's reliance.

(4) Authorize financial institution regulatory authorities of this and other states, the United States, and other countries to receive and use information leading to, arising from, or obtained in the course of examinations conducted by the division of financial institutions in the same manner and for the purposes they could use information leading to, arising from, or obtained in the course of their own examinations when both of the following apply:

(a) Pursuant to applicable law, information leading to, arising from, or obtained in the course of examinations the other regulatory authorities conduct is protected from general disclosure and may only be disclosed for purposes similar to those provided in section 1121.18 of the Revised Code, which are principally regulatory in nature, for disclosure of information leading to, arising from, or obtained in the course of examinations conducted by the division;

(b) Pursuant to agreement and applicable law, information leading to, arising from, or obtained in the course of examinations conducted by the division will, in the other regulatory authorities' possession or the possession of any persons to whom the other regulatory authorities disclosed the information as a part of examinations of those persons, be protected from disclosure to the same extent as information leading to, arising from, or obtained in the course of those regulatory authorities' examinations.

(5) Rely on the actions of financial institution regulatory authorities of this and other states, the United States, or other countries, or participate with them jointly, in responding to violations of law, unsafe or unsound practices, breaches of fiduciary duty, or other regulatory concerns affecting banks and trust companies over which they have concurrent jurisdiction when the other regulatory authorities have adequate personnel, practices, and authority to warrant the reliance;

(6) Implement other cooperative arrangements with financial institution regulatory authorities of this and other states, the United States, and other countries consistent with safety and soundness.

(B) No person shall use any reliance by the superintendent, in whole or in part, on financial institution regulatory authorities of this or other states, the United States, or other countries in accordance with division (A) of this section to support any assertion of either of the following:

(1) Failure of the superintendent or division to properly administer Chapters 1101. to 1127. of the Revised Code or fulfill the duties imposed by those chapters;

(2) Disagreement by the superintendent or division with any action taken by financial institution regulatory authorities of this or other states, the United States, or other countries.

(C) In conducting, participating in, or coordinating independent, concurrent, joint, or coordinated examinations of the records and affairs of banks and trust companies, the superintendent may purchase services from financial institution regulatory authorities of this and other states, the United States, and other countries, including services provided by employees of other financial institution regulatory authorities in their capacities as employees of other financial institution regulatory authorities. The purchase of services from one or more financial institution regulatory authorities of this and other states, the United States, or other countries is the purchase of services from a sole source provider and is not the employment of any financial institution regulatory authority or any of its employees.

The authority to purchase services pursuant to this division does not impair the superintendent's authority to purchase services from any other

source.

Sec. 1121.18. (A) Information leading to, arising from, or obtained in the course of the examination of a bank or any examination conducted pursuant to the authority of section 1121.10 or 1121.11 of the Revised Code is privileged and confidential. No person, including any person to whom the information is disclosed under the authority of this section, shall disclose information leading to, arising from, or obtained in the course of an examination, except as specifically provided in this section.

(B) The superintendent of financial institutions and the superintendent's agents and employees may disclose information leading to, arising from, or obtained in the course of an examination conducted pursuant to section 1121.10 or 1121.11 of the Revised Code as follows:

(1) To the governor, director of commerce, or deputy director of commerce to enable them to act in the interests of the public;

(2) To the banking commission to enable the commission to effectively advise the superintendent and take action on any matter the superintendent presents to the commission;

(3) To financial institution regulatory authorities of this and other states, the United States, and other countries to assist them in their regulatory duties;

(4) To the directors, officers, agents, and parent company of the bank or other person examined to assist them in conducting the business of the bank or other person examined in a safe and sound manner and in compliance with law;

(5) To law enforcement authorities conducting criminal investigations.

(C)(1) Information leading to, arising from, or obtained in the course of an examination of a bank or other person pursuant to section 1121.10 or 1121.11 of the Revised Code shall not be discoverable from any source, and shall not be introduced into evidence, except in the following circumstances:

(a) In connection with criminal proceedings;

(b) When, in the opinion of the superintendent, it is appropriate with regard to enforcement actions taken and decisions made by the superintendent under the authority of Chapters 1101. to 1127. of the Revised Code regarding a bank, trust company, or other person;

(c) When litigation has been initiated by the superintendent in furtherance of the powers, duties, and obligations imposed upon the superintendent by Chapters 1101. to 1127. of the Revised Code;

(d) When authorized by agreements between the superintendent and financial institution regulatory authorities of this and other states, the United States, and other countries authorized by section 1121.11 of the Revised

Code:

(e) When and in the manner authorized in section 1181.25 of the Revised Code.

(2) The discovery of information leading to, arising from, or obtained in the course of an examination pursuant to division (C)(1)(b), (c), or (d) of this section shall be limited to information that directly relates to the bank, trust company, regulated person, or other person who is the subject of the enforcement action, decision, or litigation.

(D) A report of an examination conducted pursuant to section 1121.10 or 1121.11 of the Revised Code is the property of the division of financial institutions. Under no circumstances may the bank or other person examined, its directors, officers, employees, agents, regulated persons, or contractors, or any person having knowledge or possession of a report of examination, or any of its contents, disclose or make public in any manner the report of examination or its contents. The authority provided in division (B)(4) of this section for use of examination information to assist in conducting the business of the bank or other person examined in a safe and sound manner and in compliance with law shall not be construed to authorize disclosure of a report of examination or any of its contents in conducting business with the examined bank's or person's customers, creditors, or shareholders, or with other persons.

(E) Whoever violates this section shall be removed from office, shall be liable, with the violator's bond in damages to the person injured by the disclosure of information, and is guilty of a felony of the fourth degree.

Sec. 1155.01. As used in sections 1155.01 to 1155.20 of the Revised Code:

(A) "Controlling person" means any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing, fifteen per cent or more of the voting shares or rights of a savings and loan association, or controls in any manner the election or appointment of a majority of the directors of an association. However, a director of an association will not be deemed to be a controlling person of such association based upon ~~his~~ the director's voting, or acting in concert with other directors in voting, proxies obtained in connection with an annual solicitation of proxies or obtained from savings account holders and borrowers if such proxies are voted as directed by a majority of the entire board of directors of the association, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

(B) "Independent auditor" means an accountant who is licensed to practice as a certified public accountant or public accountant by this state, and who is employed or otherwise retained by a savings and loan association to audit its accounts. An independent auditor may not be an employee of the association, its subsidiaries, or holding company affiliates.

(C) "Outside director" means a director of a savings and loan association who is not an officer or employee of the association, an independent auditor of the association, an attorney of the association, or any other person having a fiduciary relationship, other than that of being a director, with the association.

(D) "Holding company affiliate" means a savings and loan holding company of which the savings and loan association is a subsidiary and any other subsidiary of such holding company other than a subsidiary of such association.

(E) "Financial institution regulatory authority" includes a regulator of a business activity in which a savings and loan association is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a savings and loan association engaged in that business activity. A savings and loan association is engaged in a business activity, and a regulator of that business activity has jurisdiction over the savings and loan association, whether the savings and loan association conducts the activity directly or a subsidiary or affiliate of the savings and loan association conducts the activity.

Sec. 1155.091. (A) In administering Chapters 1151. to 1157. of the Revised Code and fulfilling the duties imposed by those chapters, including the duty imposed by section 1151.09 of the Revised Code, the superintendent of financial institutions may do any of the following:

(1) Participate with financial institution regulatory authorities of this and other states, the United States, and other countries in any of the following:

(a) Programs for alternate examinations of the records and affairs of savings and loan associations over which they have concurrent jurisdiction;

(b) Joint or concurrent examinations of the records and affairs of savings and loan associations over which they have concurrent jurisdiction;

(c) Coordinated examinations of the records and affairs of savings and loan associations over which they have collective jurisdiction.

(2) Conduct, participate in, or coordinate independent, concurrent, joint, or coordinated examinations of the records and affairs of savings and loan associations and otherwise act on behalf of financial institution regulatory authorities of this and other states, the United States, and other countries having jurisdiction over the savings and loan associations;

(3) Rely on information leading to, arising from, or obtained in the course of examinations conducted by financial institution regulatory authorities of this and other states, the United States, and other countries when both of the following apply:

(a) Pursuant to agreement and applicable law, the superintendent may receive and use the information leading to, arising from, or obtained in the course of the other regulatory authorities' examinations in administering Chapters 1151. to 1157. of the Revised Code and acting under the authority of those chapters;

(b) In the superintendent's judgment the other regulatory authorities' personnel, practices, and authority warrant the superintendent's reliance.

(4) Authorize financial institution regulatory authorities of this and other states, the United States, and other countries to receive and use information leading to, arising from, or obtained in the course of examinations conducted by the division of financial institutions in the same manner and for the purposes they could use information leading to, arising from, or obtained in the course of their own examinations when both of the following apply:

(a) Pursuant to applicable law, information leading to, arising from, or obtained in the course of examinations the other regulatory authorities conduct is protected from general disclosure and may only be disclosed for purposes similar to those provided in section 1155.16 of the Revised Code, which are principally regulatory in nature, for disclosure of information leading to, arising from, or obtained in the course of examinations conducted by the division;

(b) Pursuant to agreement and applicable law, information leading to, arising from, or obtained in the course of examinations conducted by the division will, in the other regulatory authorities' possession or the possession of any persons to whom the other regulatory authorities disclosed the information as a part of examinations of those persons, be protected from disclosure to the same extent as information leading to, arising from, or obtained in the course of those regulatory authorities' examinations.

(5) Rely on the actions of financial institution regulatory authorities of this and other states, the United States, or other countries, or participate with them jointly, in responding to violations of law, unsafe or unsound practices, breaches of fiduciary duty, or other regulatory concerns affecting savings and loan associations over which they have concurrent jurisdiction when the other regulatory authorities have adequate personnel, practices, and authority to warrant the reliance;

(6) Implement other cooperative arrangements with financial institution

regulatory authorities of this and other states, the United States, and other countries consistent with safety and soundness.

(B) No person shall use any reliance by the superintendent, in whole or in part, on financial institution regulatory authorities of this or other states, the United States, or other countries in accordance with division (A) of this section to support any assertion of either of the following:

(1) Failure of the superintendent or division to properly administer Chapters 1151. to 1157. of the Revised Code or fulfill the duties imposed by those chapters;

(2) Disagreement by the superintendent or division with any action taken by financial institution regulatory authorities of this or other states, the United States, or other countries.

(C) In conducting, participating in, or coordinating independent, concurrent, joint, or coordinated examinations of the records and affairs of savings and loan associations, the superintendent may purchase services from financial institution regulatory authorities of this and other states, the United States, and other countries, including services provided by employees of other financial institution regulatory authorities. The purchase of services from one or more financial institution regulatory authorities of this and other states, the United States, and other countries is the purchase of services from a sole source provider and is not the employment of any financial institution regulatory authority or any of its employees.

The authority to purchase services pursuant to this division does not impair the superintendent's authority to purchase services from any other source.

Sec. 1155.16. (A)~~(1)~~ Except as provided in division (B) of this section, the superintendent of ~~savings and loan associations~~ financial institutions, the superintendent's agents, and employees shall keep privileged and confidential the examination reports, information obtained in an examination, or any other information obtained by reason of their official position. This section does not prevent the superintendent from properly releasing to or exchanging information relating to a savings and loan association, or its affairs, with the governor, the director of commerce, the deputy director of commerce, or representatives of state or federal financial institution regulatory ~~agencies or governmental~~ authorities, or prevent such release by the association or its officers or directors, in the conduct of the business of the association.

~~(1)~~ Any person who receives privileged and confidential examination reports or other information under the authority of this section is also subject to the requirements of this section and such person, knowing that such

examination reports or information are privileged and confidential, shall not purposely divulge such reports or information in any manner.

(3) If the superintendent, an agent of the superintendent, or an employee of the superintendent purposely makes, or causes to be made, any false statements or reports regarding the affairs or condition of a savings and loan association, the act constitutes falsification under section 2921.13 of the Revised Code.

(B) Examination reports, information obtained in an examination, and any other information obtained by reason of the official position of the division of ~~savings and loan associations~~ financial institutions shall not be discoverable from any source, and shall not be introduced into evidence, except in the following situations:

(1) In connection with criminal proceedings;

(2) When, in the opinion of the superintendent, it is necessary for the superintendent or for the agents or employees of the superintendent to take enforcement action under Chapter 1151., 1153., 1155., or 1157. of the Revised Code regarding the affairs of the savings and loan association examined;

(3) When litigation has been initiated by the superintendent in furtherance of the powers, duties, and obligations imposed upon the superintendent by Chapter 1151., 1153., 1155., or 1157. of the Revised Code;

(4) When authorized by agreements between the superintendent and financial institution regulatory authorities of this and other states, the United States, and other countries authorized by section 1155.091 of the Revised Code;

(5) When and in the manner authorized in section 1181.25 of the Revised Code.

(C) The discovery of examination reports and other related material pursuant to divisions (B)(2) and (3) of this section shall be limited to information that directly relates to the association that is the subject of the enforcement action or the litigation.

(D)(1) No person shall fail to comply with division (A)(1), (2), or (3) of this section.

(2) Whoever violates division (D)(1) of this section is guilty of a felony of the fourth degree.

Sec. 1163.01. As used in this chapter:

(A) "Controlling person" means any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies

representing, fifteen per cent or more of the voting shares or rights of a savings bank, or controls in any manner the election or appointment of a majority of the directors of a savings bank. However, a director of a savings bank is not deemed to be a controlling person of the savings bank based upon ~~his~~ the director's voting, or acting in concert with other directors in voting, proxies obtained in connection with an annual solicitation of proxies or obtained from savings account holders and borrowers if the proxies are voted as directed by a majority of the entire board of directors of the savings bank, or of a committee of the directors if the committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

(B) "Independent auditor" means an accountant who is licensed to practice as a certified public accountant or public accountant by this state, and who is employed or otherwise retained by a savings bank to audit its accounts. An independent auditor may not be an employee of the savings bank, its subsidiaries, or holding company affiliates.

(C) "Outside director" means a director of a savings bank who is not an officer or employee of the savings bank, an independent auditor of the savings bank, an attorney of the savings bank, or any other person having a fiduciary relationship, other than that of being a director, with the savings bank.

(D) "Holding company affiliate" means a bank holding company or a savings and loan holding company of which the savings bank is a subsidiary and any other subsidiary of the holding company other than a subsidiary of the savings bank.

(E) "Financial institution regulatory authority" includes a regulator of a business activity in which a savings bank is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a savings bank engaged in that business activity. A savings bank is engaged in a business activity, and a regulator of that business activity has jurisdiction over the savings bank, whether the savings bank conducts the activity directly or a subsidiary or affiliate of the savings bank conducts the activity.

Sec. 1163.121. (A) In administering Chapters 1161. to 1165. of the Revised Code and fulfilling the duties imposed by those chapters, including the duty imposed by section 1163.12 of the Revised Code, the superintendent of financial institutions may do any of the following:

(1) Participate with financial institution regulatory authorities of this and other states, the United States, and other countries in any of the following:

(a) Programs for alternate examinations of the records and affairs of savings banks over which they have concurrent jurisdiction;

(b) Joint or concurrent examinations of the records and affairs of savings banks over which they have concurrent jurisdiction;

(c) Coordinated examinations of the records and affairs of savings banks over which they have collective jurisdiction.

(2) Conduct, participate in, or coordinate independent, concurrent, joint, or coordinated examinations of the records and affairs of savings banks and otherwise act on behalf of financial institution regulatory authorities of this and other states, the United States, and other countries having jurisdiction over the savings banks;

(3) Rely on information leading to, arising from, or obtained in the course of examinations conducted by financial institution regulatory authorities of this and other states, the United States, and other countries when both of the following apply:

(a) Pursuant to agreement and applicable law, the superintendent may receive and use the information leading to, arising from, or obtained in the course of the other regulatory authorities' examinations in administering Chapters 1161. to 1165. of the Revised Code and acting under the authority of those chapters;

(b) In the superintendent's judgment the other regulatory authorities' personnel, practices, and authority warrant the superintendent's reliance.

(4) Authorize financial institution regulatory authorities of this and other states, the United States, and other countries to receive and use information leading to, arising from, or obtained in the course of examinations conducted by the division of financial institutions in the same manner and for the purposes they could use information leading to, arising from, or obtained in the course of their own examinations when both of the following apply:

(a) Pursuant to applicable law, information leading to, arising from, or obtained in the course of examinations the other regulatory authorities conduct is protected from general disclosure and may only be disclosed for purposes similar to those provided in section 1163.20 of the Revised Code, which are principally regulatory in nature, for disclosure of information leading to, arising from, or obtained in the course of examinations conducted by the division;

(b) Pursuant to agreement and applicable law, information leading to, arising from, or obtained in the course of examinations conducted by the division will, in the other regulatory authorities' possession or the possession of any persons to whom the other regulatory authorities disclosed the information as a part of examinations of those persons, be protected from disclosure to the same extent as information leading to, arising from, or

obtained in the course of those regulatory authorities' examinations.

(5) Rely on the actions of financial institution regulatory authorities of this and other states, the United States, or other countries, or participate with them jointly, in responding to violations of law, unsafe or unsound practices, breaches of fiduciary duty, or other regulatory concerns affecting savings banks over which they have concurrent jurisdiction when the other regulatory authorities have adequate personnel, practices, and authority to warrant the reliance;

(6) Implement other cooperative arrangements with financial institution regulatory authorities of this and other states, the United States, and other countries consistent with safety and soundness.

(B) No person shall use any reliance by the superintendent, in whole or in part, on financial institution regulatory authorities of this or other states, the United States, or other countries in accordance with division (A) of this section to support any assertion of either of the following:

(1) Failure of the superintendent or division to properly administer Chapters 1161. to 1165. of the Revised Code or fulfill the duties imposed by those chapters;

(2) Disagreement by the superintendent or division with any action taken by financial institution regulatory authorities of this or other states, the United States, or other countries.

(C) In conducting, participating in, or coordinating independent, concurrent, joint, or coordinated examinations of the records and affairs of savings banks, the superintendent may purchase services from financial institution regulatory authorities of this and other states, the United States, and other countries, including services provided by employees of other financial institution regulatory authorities. The purchase of services from one or more financial institution regulatory authorities of this and other states, the United States, and other countries is the purchase of services from a sole source provider and is not the employment of any financial institution regulatory authority or any of its employees.

The authority to purchase services pursuant to this division does not impair the superintendent's authority to purchase services from any other source.

Sec. 1163.20. (A)(1) Except as provided in division (B) of this section, the superintendent of ~~savings banks~~ financial institutions, his agents, and employees shall keep privileged and confidential the examination reports, information obtained in an examination, or any other information obtained by reason of their official position. This section does not prevent the superintendent from properly releasing to or exchanging information

ing to a savings bank, or its affairs, with the governor, the director of commerce, the deputy director of commerce, or representatives of state or federal financial institution regulatory ~~agencies or governmental~~ authorities, or prevent such release by the savings bank or its officers or directors, in the conduct of the business of the savings bank.

(2) Any person who receives privileged and confidential examination reports or other information under the authority of this section also is subject to the requirements of this section. No person, knowing that the examination reports or information are privileged and confidential, shall purposely divulge the reports or information in any manner.

(3) Neither the superintendent, nor any agent or employee of the superintendent, shall purposely make, or cause to be made, any false statements or reports regarding the affairs or condition of a savings bank.

(B) Examination reports, information obtained in an examination, and any other information obtained by reason of the official position of the division of ~~savings banks~~ financial institutions shall not be discoverable from any source, and shall not be introduced into evidence, except in the following situations:

(1) In connection with criminal proceedings;

(2) When, in the opinion of the superintendent, it is necessary for the superintendent, his agents, or employees to take enforcement action under this chapter or Chapter 1161. or 1165. of the Revised Code regarding the affairs of the savings bank examined;

(3) When litigation has been initiated by the superintendent in furtherance of the powers, duties, and obligations imposed upon the superintendent by this chapter or Chapter 1161. or 1165. of the Revised Code;

(4) When authorized by agreements between the superintendent and financial institution regulatory authorities of this and other states, the United States, and other countries authorized by section 1163.121 of the Revised Code;

(5) When and in the manner authorized in section 1181.25 of the Revised Code.

(C) The discovery of examination reports and other related material pursuant to divisions (B)(2) and (3) of this section shall be limited to information that directly relates to the savings bank which is the subject of the enforcement action or the litigation.

(D)(1) No person shall fail to comply with division (A)(1), (2), or (3) of this section.

(2) Whoever violates division (D)(1) of this section is guilty of a felony

of the fourth degree.

Sec. 1181.25. The superintendent of financial institutions may introduce into evidence or disclose, or authorize to be introduced into evidence or disclosed, information that, under sections 1121.18, 1155.16, 1163.20, 1321.09, 1321.55, 1321.76, 1322.06, 1322.061, 1733.32, 1733.327, and 4727.18 of the Revised Code, is privileged, confidential, or otherwise not public information or a public record, provided that the superintendent acts only as provided in those sections or in the following circumstances:

(A) When in the opinion of the superintendent, it is appropriate with regard to any enforcement actions taken and decisions made by the superintendent under Chapters 1315., 1321., 1322., 1733., 4712., 4727., and 4728. of the Revised Code or Title XI of the Revised Code:

(B) When litigation has been initiated by the superintendent in furtherance of the powers, duties, and obligations imposed upon the superintendent by Chapters 1315., 1321., 1322., 1733., 4712., 4727., and 4728. of the Revised Code or Title XI of the Revised Code:

(C) When in the opinion of the superintendent, it is appropriate with regard to enforcement actions taken or decisions made by other financial institution regulatory authorities to whom the superintendent has provided the information pursuant to authority in Chapters 1315., 1321., 1322., 1733., 4712., 4727., and 4728. of the Revised Code or Title XI of the Revised Code.

Sec. 1321.09. (A) Every licensee shall keep and use in the licensee's business such books, accounts, and records as will enable the division of financial institutions to determine whether the licensee is complying with sections 1321.01 to 1321.19 of the Revised Code and with the orders and rules made by the division under those sections. Every licensee shall preserve such books, accounts, and records for at least two years after making the final entry on any loan recorded therein. Accounting systems maintained in whole or in part by mechanical or electronic data processing methods that provide information equivalent to that otherwise required are acceptable for this purpose.

As required by the superintendent of financial institutions, every licensee each year shall file a report with the division giving such relevant information concerning the business and operations, during the preceding calendar year, of each licensed place of business conducted by the licensee within the state. If a licensee has more than one place of business within this state it is optional with the licensee to furnish the report for each location, or a composite report for all locations. Such report shall be made under oath in the form prescribed by the division, which shall make and publish annually

an analysis and recapitulation of such reports. Such licensee reports are not public records and shall only be used by the division for the purpose of enforcing sections 1321.01 to 1321.19 of the Revised Code or any rules or orders made in compliance with those sections. Such licensee reports may be introduced into evidence or disclosed when and in the manner authorized in section 1181.25 of the Revised Code, or in connection with criminal proceedings.

This section does not prevent the division from releasing to or exchanging with other financial institution regulatory authorities information relating to licensees.

(B) For purposes of this section, "financial institution regulatory authority" includes a regulator of a business activity in which a licensee is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a licensee engaged in that business activity. A licensee is engaged in a business activity, and a regulator of that business activity has jurisdiction over the licensee, whether the licensee conducts the activity directly or a subsidiary or affiliate of the licensee conducts the activity.

Sec. 1321.55. (A) Every registrant shall keep records pertaining to loans made under sections 1321.51 to 1321.60 of the Revised Code. Such records shall be segregated from records pertaining to transactions that are not subject to these sections of the Revised Code. Every registrant shall preserve records pertaining to loans made under sections 1321.51 to 1321.60 of the Revised Code for at least two years after making the final entry on such records. Accounting systems maintained in whole or in part by mechanical or electronic data processing methods that provide information equivalent to that otherwise required are acceptable for this purpose. At least once each eighteen-month cycle, the division of financial institutions shall make or cause to be made an examination of records pertaining to loans made under sections 1321.51 to 1321.60 of the Revised Code, for the purpose of determining whether the registrant is complying with these sections and of verifying the registrant's annual report.

(B)(1) As required by the superintendent of financial institutions, each registrant shall file with the division each year a report under oath or affirmation, on forms supplied by the division, concerning the business and operations for the preceding calendar year. Whenever a registrant operates two or more registered offices or whenever two or more affiliated registrants operate registered offices, then a composite report of the group of registered offices may be filed in lieu of individual reports.

(2) The division shall publish annually an analysis of the information required under division (B)(1) of this section, but the individual reports shall

not be public records and shall not be open to public inspection.

(C) All information obtained by the superintendent or the superintendent's deputies, examiners, assistants, agents, or clerks by reason of their official position, including information obtained by such persons from the annual report of a registrant or in the course of examining a registrant or investigating an applicant for a certificate, is privileged and confidential. All such information shall remain privileged and confidential for all purposes except when it is necessary for the superintendent and the superintendent's deputies, examiners, assistants, agents, or clerks to take official action regarding the affairs of the registrant or in connection with criminal proceedings. Such information may also be introduced into evidence or disclosed when and in the manner authorized in section 1181.25 of the Revised Code.

(D) No person is in violation of sections 1321.51 to 1321.60 of the Revised Code for any act taken or omission made in reliance on a written notice, interpretation, or examination report from the superintendent.

(E) This section does not prevent the division from releasing to or exchanging with other financial institution regulatory authorities information relating to registrants.

(F) For purposes of this section, "financial institution regulatory authority" includes a regulator of a business activity in which a registrant is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a registrant engaged in that business activity. A registrant is engaged in a business activity, and a regulator of that business activity has jurisdiction over the registrant, whether the registrant conducts the activity directly or a subsidiary or affiliate of the registrant conducts the activity.

Sec. 1321.76. (A) Each licensee shall keep records of its insurance premium finance transactions conducted under sections 1321.71 to 1321.83 of the Revised Code. Such records shall be maintained separately from any records pertaining to transactions that are not subject to those sections. Each licensee shall preserve its records pertaining to insurance premium finance transactions conducted under sections 1321.71 to 1321.83 of the Revised Code for at least two years after the final entry on such records. Preservation of records by means of accounting systems maintained in whole or in part by mechanical or electronic data processing methods constitutes compliance with this division.

The division of financial institutions for purposes of determining whether a licensee is complying with sections 1321.71 to 1321.83 of the Revised Code, may make or cause to be made an examination of records pertaining to insurance premium finance transactions conducted under those

sections.

(B) If a licensee's books, records, data, and other documents are located outside this state, the licensee shall, upon the request of the superintendent of financial institutions, deposit with the division an amount equal to the estimated costs, as determined by the superintendent, of an examination of the licensee conducted outside this state. After the actual costs of the examination have been determined and itemized by the division, the division shall return to the licensee any amount it had deposited in excess of the actual costs.

(C) All information obtained by the superintendent or the superintendent's deputies, examiners, assistants, agents, or clerks by reason of their official position, including information obtained by such persons in the course of examining a licensee or investigating an applicant for a license, is privileged and confidential. All such information shall remain privileged and confidential for all purposes except when, in the opinion of the superintendent, it is necessary for the superintendent and the superintendent's deputies, examiners, assistants, agents, or clerks to take official action in administering and enforcing sections 1321.71 to 1321.83 of the Revised Code or in connection with criminal proceedings. Such information may also be introduced into evidence or disclosed when and in the manner authorized in section 1181.25 of the Revised Code.

(D) This section does not prevent the division from releasing to or exchanging with other financial institution regulatory authorities information relating to licensees.

(E) For purposes of this section, "financial institution regulatory authority" includes a regulator of a business activity in which a licensee is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a licensee engaged in that business activity. A licensee is engaged in a business activity, and a regulator of that business activity has jurisdiction over the licensee, whether the licensee conducts the activity directly or a subsidiary or affiliate of the licensee conducts the activity.

Sec. 1322.06. (A) As often as the superintendent of financial institutions considers it necessary, the superintendent may examine the registrant's records pertaining to business transacted pursuant to sections 1322.01 to 1322.12 of the Revised Code.

(B) A registrant shall maintain records pertaining to business transacted pursuant to sections 1322.01 to 1322.12 of the Revised Code for two years or more after the final entry on such records. No registrant shall fail to comply with this division.

(C)(1) All information obtained by the superintendent or the

superintendent's deputies, examiners, assistants, agents, or clerks by reason of their official position, including information obtained by such persons in the course of examining a registrant or investigating an applicant for a certificate of registration, is privileged and confidential. All such information shall remain privileged and confidential for all purposes except when it is necessary for the superintendent ~~and the superintendent's deputies, examiners, assistants, agents, or clerks~~ to take official action regarding the affairs of the registrant or in connection with criminal proceedings. This information may also be introduced into evidence or disclosed when and in the manner authorized by section 1181.25 of the Revised Code.

(2) All application information, except social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information, is a public record as defined in section 149.43 of the Revised Code.

(3) This section does not prevent the division of financial institutions from releasing to or exchanging with other financial institution regulatory authorities information relating to registrants. For this purpose, a "financial institution regulatory authority" includes a regulator of a business activity in which a registrant is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a registrant engaged in that business activity. A registrant is engaged in a business activity, and a regulator of that business activity has jurisdiction over the registrant, whether the registrant conducts the activity directly or a subsidiary or affiliate of the registrant conducts the activity.

(4) This section does not prevent the division from releasing information relating to registrants to the attorney general for purposes relating to the attorney general's administration of Chapter 1345. of the Revised Code. Information the division releases to the attorney general pursuant to this section remains privileged and confidential, and the attorney general may not disclose the information or introduce the information into evidence unless the superintendent authorizes the disclosure or introduction into evidence in connection with the attorney general's administration of Chapter 1345. of the Revised Code.

Sec. 1322.061. (A)(1) The following information is privileged and confidential:

(a) Examination information, and any information leading to or arising from an examination;

(b) Investigation information, and any information arising from or leading to an investigation.

(2) The information described in division (A)(1) of this section shall remain privileged and confidential for all purposes except when it is necessary for the superintendent of financial institutions to take official action regarding the affairs of a registrant or licensee, or in connection with ~~civil or criminal investigations or proceedings conducted by the attorney general or a county prosecutor. The superintendent may share examination and investigation information with any law enforcement agency or any other state or federal regulatory agency. Any information shared with the attorney general, a county prosecutor, or a law enforcement agency or other state or federal regulatory agency shall remain privileged and confidential and shall only be used in connection with an official investigation, proceeding, or action.~~ This information may also be introduced into evidence or disclosed when and in the manner authorized by section 1181.25 of the Revised Code.

(B) All application information, except social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information, is a public record as defined in section 149.43 of the Revised Code.

(C) This section does not prevent the division of financial institutions from releasing to or exchanging with other financial institution regulatory authorities information relating to registrants and licensees. For this purpose, a "financial institution regulatory authority" includes a regulator of a business activity in which a registrant or licensee is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a registrant or licensee engaged in that business activity. A registrant or licensee is engaged in a business activity, and a regulator of that business activity has jurisdiction over the registrant or licensee, whether the registrant or licensee conducts the activity directly or a subsidiary or affiliate of the registrant or licensee conducts the activity.

eral's administration of Chapter 1345. of the Revised Code.

Sec. 1707.092. (A) For the purposes of selling securities in this state, except securities that are the subject matter of transactions enumerated in section 1707.03 of the Revised Code, an investment company, as defined by the Investment Company Act of 1940, that is registered or has filed a registration statement with the securities and exchange commission under the Investment Company Act of 1940, shall file the following with the division of securities:

~~(1) For the purposes of the sale of securities by a managed investment company, as defined in the Investment Company Act of 1940:~~

~~(a) A notice filing consisting of either of the following:~~

~~(i)(a) A copy of the investment company's federal registration statement as filed with the securities and exchange commission;~~

~~(ii)(b) A form U-1 or form NF of the North American securities administrators association and a copy of the investment company's prospectus and statement of additional information.~~

~~(b)(2) Appropriate filing fees consisting of both of the following:~~

~~(i)(a) A flat fee of one hundred dollars;~~

~~(ii)(b) A fee calculated at one-tenth of one per cent of the aggregate price at which the securities are to be sold to the public in this state, which calculated fee, however, shall in no case be less than one hundred or more than one thousand dollars.~~

~~(c) Upon the registration of the securities with the securities and exchange commission, a managed investment company with an initial notice filing on file with the division shall submit to the division a copy of its final prospectus.~~

~~(2) For the purposes of the sale of securities by a non-managed investment company, as defined in the Investment Company Act of 1940:~~

~~(a) A notice filing consisting of either a copy of the investment company's federal registration statement as filed with the securities and exchange commission or a form U-1 or form NF of the North American securities administrators association;~~

~~(b) Appropriate filing fees, as provided in division (A)(1)(b) of this section;~~

~~(c) Upon the effectiveness of the registration of the securities with the securities and exchange commission, a non-managed investment company shall submit to the division a copy of its final prospectus.~~

(B)(1) Upon payment of the maximum filing fees as provided in division ~~(A)(1)(b) or (2)(b)~~ (A)(2) of this section, ~~a managed or non-managed~~ an investment company may sell an indefinite amount of

urities in this state.

(2) ~~A managed or non-managed~~ An investment company making a notice filing as provided in this section shall comply with section 1707.11 of the Revised Code. An investment company that previously filed with the division a valid consent to service of process pursuant to section 1707.11 of the Revised Code may incorporate that consent by reference.

(C)(1) For offerings involving covered securities, as defined in section 18 of the "Securities Act of 1933," 15 U.S.C. 77r, that are not subject to section 1707.02, 1707.03, 1707.04, 1707.06, 1707.08, 1707.09, or 1707.091 of the Revised Code, or division (A) of this section, a notice filing shall be submitted to the division together with a consent to service of process pursuant to section 1707.11 of the Revised Code and a filing fee as provided in division ~~(A)(1)(b)~~ (A)(2) of this section.

(2) The notice filing described in division (C)(1) of this section shall consist of any document filed with the securities and exchange commission pursuant to the Securities Act of 1933, together with annual or periodic reports of the value of the securities sold or offered to be sold to persons located in this state.

(D) A notice filing submitted under this section shall be effective for thirteen months.

Sec. 1707.11. (A) Each person that is not organized under the laws of this state, that is not licensed under section 1703.03 of the Revised Code, or that does not have its principal place of business in this state, shall submit to the division of securities an irrevocable consent to service of process, as described in division (B) of this section, in connection with any of the following:

(1) Filings to claim any of the exemptions enumerated in division (Q), (W), (X), or (Y) of section 1707.03 of the Revised Code;

(2) Applications for registration by description, qualification, or coordination;

(3) Notice filings pursuant to section 1707.092 ~~or 1707.141~~ of the Revised Code;

~~(4) Applications for licensure as a securities dealer under section 1707.15 of the Revised Code;~~

~~(5) Applications for licensure as an investment adviser under section 1707.151 of the Revised Code.~~

(B) The irrevocable written consent shall be executed and acknowledged by an individual duly authorized to give the consent and shall do all of the following:

(1) Designate the secretary of state as agent for service of process or

pleadings;

(2) State that actions growing out of the sale of such securities, the giving of investment advice, or fraud committed by a person on whose behalf the consent is submitted may be commenced against the person, in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff in the action may reside, by serving on the secretary of state any proper process or pleading authorized by the laws of this state;

(3) Stipulate that service of process or pleading on the secretary of state shall be taken in all courts to be as valid and binding as if service had been made upon the person on whose behalf the consent is submitted.

(C) Service of any process or pleadings may be made on the secretary of state by duplicate copies, of which one shall be filed in the office of the secretary of state, and the other immediately forwarded by the secretary of state by certified mail to the principal place of business of the person on whose behalf the consent is submitted or to the last known address as shown on the filing made with the division. However, failure to mail such copy does not invalidate the service.

(D) Notwithstanding any provision of this chapter, or of any rule adopted by the division of securities under this chapter, that requires the submission of a consent to service of process, the division may provide by rule for the electronic filing or submission of a consent to service of process.

Sec. 1707.12. (A) ~~All~~ Except for offering materials filed with the division of securities in connection with exempt transactions under divisions (Q) and (W) of section 1707.03 of the Revised Code, all applications and other papers filed with the division of securities shall be open to inspection at all reasonable times, except for unreasonable or improper purposes.

(B) Information obtained by the division through any offering materials filed with the division in connection with exempt transactions under divisions (Q) and (W) of section 1707.03 of the Revised Code or through any investigation shall be retained by the division and shall not be available to inspection by persons other than those having a direct economic interest in the information or the transaction under investigation, or by a law enforcement officer pursuant to the duties of his office law enforcement agencies, state agencies, federal agencies, and other entities as set forth by rules adopted by the division.

(C) Confidential law enforcement investigatory records and trial preparation records of the division of securities or any other law enforcement or administrative agency which are in the possession of the division of securities shall in no event be available to inspection by other

than law enforcement agencies, state agencies, federal agencies, and other entities as set forth by rules adopted by the division.

(D) All public records shall be prepared and made available promptly to any member of the general public at all reasonable times for inspection. Upon request, the custodian of public records shall make copies of the records available at cost, within a reasonable period of time. To facilitate public access, the division shall maintain public records in such a manner that they can be made available pursuant to this section.

(E) No employee or representative of the division or the department of commerce shall be required to testify concerning any document or record subject to division (B) or (C) of this section, except as set forth by rules adopted by the division.

(F) As used in this section:

(1) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, provided that release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality reasonably has been promised;

(b) Information provided by an information source or witness to whom confidentiality reasonably has been promised, which information reasonably would tend to disclose ~~his~~ the identity of the information source or witness;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product.

(2) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a criminal, quasi-criminal, civil, or administrative action or proceeding, including, but not limited to, the independent thought processes and personal trial preparation of an attorney and division personnel, their notes, diaries, and memoranda.

Sec. 1707.141. (A) No person shall act as an investment adviser, unless one of the following applies:

(1) The person is licensed as an investment adviser by the division of securities; however, nothing in this section shall be construed to prohibit a person from being licensed by the division as both an investment adviser and a dealer or salesperson.

(2) The person is registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, as an investment adviser and is in compliance with the notice filing requirements of division (B) of this

section.

(3) The person has no place of business in this state, and the person's only clients in this state are any of the following:

(a) Investment companies as defined in the Investment Company Act of 1940;

(b) Other investment advisers;

(c) Licensed dealers;

(d) Banks;

(e) Insurance companies subject to regulation under Title XXXIX of the Revised Code and health insuring corporations regulated under Chapter 1751. of the Revised Code;

(f) Employee benefit plans with assets of not less than one million dollars;

(g) Government agencies or instrumentalities, whether acting for themselves or trustees with investment control;

(h) Other institutional investors as the division may designate by rule.

(4) The person has no place of business in this state, and during the preceding twelve-month period, the person has had not more than five clients, other than those described in division (A)(3) of this section, that are residents of this state.

(5) The person is a charitable organization, as defined in section 3(c)(10) of the "Investment Company Act of 1940," 54 Stat. 797, 15 U.S.C. 80a-3(c)(10), as amended, or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of the person's employment or duties with such an organization, whose advice, analysis, or reports are provided only to one or more of the following:

(a) Any such charitable organization;

(b) A fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the "Investment Company Act of 1940," 54 Stat. 797, 15 U.S.C. 80a-3(c)(10)(B), as amended;

(c) A trust or other donative instrument described in section 3(c)(10)(B) of the "Investment Company Act of 1940," 54 Stat. 797, 15 U.S.C. 80a-3(c)(10)(B), as amended, or the trustees, administrators, settlors and potential settlors, or beneficiaries of any such trust or other instrument.

(6) The person is a plan described in subsection 414(e) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 414, as amended, any person or entity eligible to establish and maintain such a plan under Title 26 of the United States Code, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any

plan, person, or entity, or any company, account, or fund that is excluded from the definition of an investment company under section 3(c)(14) of the "Investment Company Act of 1940," 54 Stat. 797, 15 U.S.C. 80a-3(c)(14), as amended.

(B)(1) No person who is registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, as an investment adviser shall act as an investment adviser, unless the person has done both of the following:

(a) ~~Filed with the division a consent to service of process pursuant to section 1707.11 of the Revised Code, together with either a notice filing form as specified in rules adopted by the division or a copy of those documents that have been filed by the investment adviser with the securities and exchange commission as specified in rules adopted by the division;~~

(b) Paid the notice filing fee specified in division (B) of section 1707.17 of the Revised Code.

(2) Upon compliance with division (B)(1) of this section, the division shall issue to the person an acknowledgment of notice filing.

(3) The notice filing and fee requirements of division (B)(1) of this section do not apply to a person described in division (A)(3) ~~or~~, (4), (5), or (6) of this section.

Sec. 1707.15. (A) Application for a dealer's license shall be made in accordance with this section and by filing with the division of securities the information, materials, and forms specified in rules adopted by the division, along with all of the following information:

(1) The name and address of the applicant;

~~(2) A description of the applicant, including, if the applicant is a partnership, unincorporated association, or any similar form of business organization, the names and the residence and business addresses of all partners, officers, directors, trustees, or managers of the organization, and the limitation of the liability of any partner or member; if the applicant is a corporation, a list of its executive officers and directors, and the residence and business addresses of each; and if it is a foreign corporation, a copy of its articles of incorporation in addition thereto;~~

~~(3)~~ (3) The location and addresses of the principal office and all other offices of the applicant;

~~(4)~~(3) A general description of the business of the applicant done prior to the application, including a list of states in which the applicant is a licensed dealer.

~~(B) Each applicant shall file an irrevocable consent to service of process as provided in section 1707.11 of the Revised Code.~~

~~(C)~~(1) The division may investigate any applicant for a license, and may

require such additional information as it deems necessary to determine the applicant's business repute and qualifications to act as a dealer in securities.

(2) If the application for any license involves investigation outside of this state, the applicant may be required by the division to advance sufficient funds to pay any of the actual expenses of such examination. An itemized statement of any such expenses which the applicant is required to pay shall be furnished the applicant by the division.

~~(D)~~(C) The division shall by rule require one natural person who is a principal, officer, director, general partner, manager, or employee of a dealer to pass an examination designated by the division. Each dealer that is not a natural person shall notify the division of the name and relationship to the dealer of the natural person who has passed the examination on behalf of the dealer and who will serve as the designated principal on behalf of the dealer.

~~(E)~~(D) Dealers shall employ as salespersons only those salespersons who are licensed under this chapter. If at any time a salesperson resigns or is discharged or a new salesperson is added, the dealer shall promptly notify the division.

~~(F)~~(E) If the division finds that the applicant is of good business repute, appears qualified to act as a dealer in securities, and has fully complied with this chapter and rules adopted under this chapter by the division, the division, upon payment of the fees prescribed by division (B) of section 1707.17 of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as a dealer.

Sec. 1707.151. (A) Application for an investment adviser's license shall be made in accordance with this section and by filing with the division of securities the information, materials, and forms specified in rules adopted by the division.

(B) ~~Each applicant shall file an irrevocable consent to service of process as provided in section 1707.11 of the Revised Code.~~

~~(C)~~(1) The division may investigate any applicant for a license and may require any additional information as it considers necessary to determine the applicant's business repute and qualifications to act as an investment adviser.

(2) If the application for any license involves investigation outside of this state, the applicant may be required by the division to advance sufficient funds to pay any of the actual expenses of the examination. The division shall furnish the applicant with an itemized statement of such expenses that the applicant is required to pay.

~~(D)~~(C) The division shall by rule require ~~one a~~ natural person who is a principal, officer, director, general partner, manager, or employee of an

~~applicant for an investment adviser~~ adviser's license to pass an examination designated by the division or achieve a specified professional designation. ~~Each investment adviser that is not a natural person shall notify the division of the name and relationship to the investment adviser of the natural person who has passed the examination or achieved the specified professional designation on behalf of the investment adviser and who will serve as the designated principal on behalf of the investment adviser.~~

~~(E)~~(D) An investment adviser licensed under section 1707.141 of the Revised Code shall employ only investment adviser representatives licensed, or exempted from licensure, under section 1707.161 of the Revised Code.

~~(F)~~(E) If the division finds that the applicant is of good business repute, appears to be qualified to act as an investment adviser, and has complied with this chapter and rules adopted under this chapter by the division, the division, upon payment of the fees prescribed by division (B) of section 1707.17 of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as an investment adviser.

Sec. 1707.161. (A) No person shall act as an investment adviser representative, unless one of the following applies:

(1) The person is licensed as an investment adviser representative by the division of securities.

(2) The person is a natural person who is licensed as an investment adviser by the division, and does not act as an investment adviser representative for another investment adviser; however, a natural person who is licensed as an investment adviser by the division may act as an investment adviser representative for another investment adviser if the natural person also is licensed by the division, or is properly excepted from licensure, as an investment adviser representative of the other investment adviser.

(3) The person is employed by or associated with an investment adviser registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, and does not have a place of business in this state.

(4) The person is employed by or associated with an investment adviser that is excepted from licensure pursuant to division (A)(3) ~~or~~, (4), (5), or (6) of section 1707.141 of the Revised Code or excepted from notice filing pursuant to division (B)(3) of section 1707.141 of the Revised Code.

(B)(1) No investment adviser representative required to be licensed under this section shall act as an investment adviser representative for more than two investment advisers. An investment adviser representative that acts as an investment adviser representative for two investment advisers shall do

so only after the occurrence of both of the following:

(a) Being properly licensed, or properly excepted from licensure under this section, as an investment adviser representative for both investment advisers;

(b) Complying with the requirements set forth in rules adopted by the division regarding consent of both investment advisers and notice.

(2) Nothing in this section shall be construed to prohibit a natural person from being licensed by the division as both an investment adviser and an investment adviser representative.

(3) Nothing in this section shall be construed to prohibit a natural person from being licensed by the division as both a salesperson and an investment adviser representative.

(4) Nothing in this section shall be construed to prohibit a natural person from being licensed by the division as both a dealer and an investment adviser representative.

(C) An investment adviser representative's license issued under this section shall not be effective during any period when the investment adviser representative is not employed by or associated with an investment adviser that is licensed by the division or that is in compliance with the notice filing requirements of division (B) of section 1707.141 of the Revised Code. Notice of the commencement and termination of the employment or association of an investment adviser representative licensed under this section shall be given to the division within thirty days after the commencement or termination by either of the following:

(1) The investment adviser, in the case of an investment adviser representative licensed under this section and employed by or associated with, or formerly employed by or associated with, an investment adviser licensed under section 1707.141 of the Revised Code;

(2) The investment adviser representative, in the case of an investment adviser representative licensed under this section and employed by or associated with, or formerly employed by or associated with, an investment adviser that is subject to the notice filings requirements of division (B) of section 1707.141 of the Revised Code.

(D)(1) Application for an investment adviser representative license shall be made in accordance with this section and by filing with the division the information, materials, and forms specified in rules adopted by the division.

(2) The division shall by rule require an applicant to pass an examination designated by the division or achieve a specified professional designation.

(3) Prior to issuing the investment adviser representative license, the

division may require the applicant to reimburse the division for the actual expenses incurred in investigating the applicant. An itemized statement of any such expenses that the applicant is required to pay shall be furnished to the applicant by the division.

(E) If the division finds that the applicant is of good business repute, appears to be qualified to act as an investment adviser representative, and has complied with sections 1707.01 to 1707.45 of the Revised Code and the rules adopted under those sections by the division, the division, upon payment of the fees prescribed by division (B) of section 1707.17 of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as an investment adviser representative for the investment adviser, or investment advisers that are under common ownership or control, named in the application.

Sec. 1707.17. (A)(1) The license of every dealer in and salesperson of securities shall expire on the thirty-first day of December of each year, and may be renewed upon the filing with the division of securities of an application for renewal, and the payment of the fee prescribed in this section, ~~between the first day of November and the fifteenth day of December of each year. The division may accept an application for renewal filed between the fifteenth and the thirty first day of December of each year. The division also may accept an application for renewal received by the division not later than the tenth day of January of the subsequent calendar year, provided that the application for renewal is accompanied by the license renewal fee and the additional fee prescribed in division (B) of this section.~~ The division shall give notice, without unreasonable delay, of its action on any application for renewal of a dealer's or salesperson's license.

(2) The license of every investment adviser and investment adviser representative licensed under section 1707.141 or 1707.161 of the Revised Code shall expire on the thirty-first day of December of each year. The licenses may be renewed upon the filing with the division of an application for renewal, and the payment of the fee prescribed in division (B) of this section, ~~between the fifteenth day of October and the thirtieth day of November of each year. The division may accept an application for renewal filed between the first and thirty first day of December of each year. The division also may accept an application for renewal received by the division not later than the tenth day of January of the subsequent calendar year, provided that the application for renewal is accompanied by the license renewal fee and the additional fee prescribed in division (B) of this section.~~ The division shall give notice, without unreasonable delay, of its action on any application for renewal.

(3) An investment adviser required to make a notice filing under division (B) of section 1707.141 of the Revised Code annually shall file with the division the notice filing and the fee prescribed in division (B) of this section, no later than the thirty-first day of December of each year. ~~The division may accept a notice filing received by the division not later than the tenth day of January of the subsequent calendar year, provided that the notice filing is accompanied by the notice filing fee and the additional fee prescribed in division (B) of this section.~~

(B)(1) ~~The fee for each dealer's license, and for each annual renewal thereof that is received by the division not later than the thirty-first day of December of each year, shall be one hundred dollars. Upon payment of an additional fee of one half of the license renewal fee, the division may accept an application for renewal received by the division between the first and tenth day of January of the subsequent calendar year. The fee for the examination of applicant dealers, when administered by the division, shall be seventy-five dollars.~~

(2) The fee for each salesperson's license, and for each annual renewal thereof, shall be fifty dollars. The fee for the examination of an applicant salesperson, when administered by the division, shall be fifty dollars.

(3) The fee for each investment adviser's license, and for each annual renewal thereof ~~that is received by the division not later than the thirty-first day of December of each year, shall be fifty dollars. Upon the payment of an additional fee of one half of the license fee, the division may accept a license renewal application received by the division between the first and tenth day of January of the subsequent calendar year.~~

(4) The fee for each investment adviser notice filing required by division (B) of section 1707.141 of the Revised Code ~~and received by the division not later than the thirty-first day of December of each year shall be fifty dollars. Upon the payment of an additional fee of one half of the notice filing fee, the division may accept a notice filing received by the division between the first and tenth day of January of the subsequent calendar year. A notice filing may be made at any time during the calendar year. In that event, the notice filing fee shall not be reduced.~~

(5) The fee for each investment adviser representative's license, and for each annual renewal thereof ~~that is received by the division not later than the thirty-first day of December of each year, shall be thirty-five dollars; however, the fee shall be waived for the investment adviser representative designated the principal of the investment adviser pursuant to division (D) of section 1707.151 of the Revised Code. Upon the payment of an additional fee of one half of the license fee, the division may accept a license renewal~~

~~application received by the division between the first and tenth day of January of the subsequent calendar year.~~

(C) A dealer's, salesperson's, investment adviser's, or investment adviser representative's license may be issued at any time for the remainder of the calendar year. In that event, the annual fee shall not be reduced.

Sec. 1707.20. (A) The division of securities may adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out sections 1707.01 to 1707.45 of the Revised Code, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in sections 1707.01 to 1707.45 of the Revised Code, insofar as the definitions are not inconsistent with these sections. For the purpose of rules and forms, the division may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

(B) No rule, form, or order may be made, amended, or rescinded unless the division finds that the action is necessary or appropriate in the public interest or for the protection of investors, clients, or prospective clients and consistent with the purposes fairly intended by the policy and provisions of sections 1707.01 to 1707.45 of the Revised Code. In prescribing rules and forms and in otherwise administering sections 1707.01 to 1707.45 of the Revised Code, the division may cooperate with the securities administrators of the other states and the securities and exchange commission with a view of effectuating the policy of this section to achieve maximum uniformity in the form and content of registration statements, applications, reports, and overall securities regulation wherever practicable.

(C) The division may by rule or order prescribe:

(1) The form and content of financial statements required under sections 1707.01 to 1707.45 of the Revised Code;

(2) The circumstances under which consolidated financial statements shall be filed;

(3) Whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(D) All rules and forms of the division shall be published; and in addition to fulfilling the requirements of Chapter 119. of the Revised Code, the division shall prescribe, and shall publish and make available its rules regarding the sale of securities, the administration of sections 1707.01 to 1707.45 of the Revised Code, and the procedure and practice before the division.

(E) No provision of sections 1707.01 to 1707.45 of the Revised Code

imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the division of securities, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason, except that the issuance of an order granting effectiveness to a registration under section 1707.09 or 1707.091 of the Revised Code for the purposes of this division shall not be deemed an order other than as the establishment of the fact of registration.

~~(F) Notwithstanding any provision of Revised Code, if the "securities act of 1933," the "Securities Exchange Act of 1934," the "Investment Company Act of 1940," the "Investment Advisers Act of 1940," and any amendments to any of those federal acts, if any rule, regulation, release, statement, or position promulgated or adopted under the authority of any of those federal acts, and any amendments to those federal acts, or if any rule, regulation, or guideline of a self-regulatory organization registered under the "Securities and Exchange Act of 1934," and any amendments to that act, contains a provision that is not contained in this chapter or the rules adopted under this chapter and that affects any matter within the scope of this chapter, the division by rule may promulgate a similar provision.~~

~~A rule adopted under the authority granted in this division may delete, modify, or replace an existing rule of the division. A rule adopted under the authority granted in this division becomes effective on the later of the date on which the division issues the rule or the date on which the federal statute or the rule, regulation, release, statement, or position on which the division's rule is based becomes effective. The division, upon thirty days written notice, may revoke any rule adopted under the authority granted in this division. A rule adopted under the authority granted in this division, and not revoked by the commissioner, lapses and has no further force and effect thirty months after the rule's effective date.~~

Sec. 1707.201. Notwithstanding any provision of the Revised Code, if the "Securities Act of 1933," the "Securities Exchange Act of 1934," the "Investment Company Act of 1940," the "Investment Advisers Act of 1940," and any amendments to any of those federal acts, if any rule, regulation, release, statement, or position promulgated or adopted under the authority of any of those federal acts, and any amendments to those federal acts, or if any rule, regulation, or guideline of a self-regulatory organization registered under the "Securities Exchange Act of 1934," and any amendments to that act, contains a provision that is not contained in this chapter or the rules adopted under this chapter and that affects any matter within the scope of this chapter, the division of securities by rule may promulgate a similar

provision.

A rule adopted under the authority granted in this section becomes effective on the later of the date on which the division issues the rule or the date on which the federal statute or the rule, regulation, release, statement, or position on which the division's rule is based becomes effective. The division, upon thirty days' written notice, may revoke any rule adopted under the authority granted in this section. A rule adopted under the authority granted in this section, and not revoked by the commissioner of securities, lapses and has no further force and effect eighteen months after the rule's effective date.

Sec. 1707.40. Sections 1707.01 to 1707.45 of the Revised Code create no new civil liabilities, and do not limit or restrict common law liabilities for deception or fraud other than as specified in sections 1707.042, 1707.043, 1707.41, 1707.42, and 1707.43 of the Revised Code, and there is no civil liability for noncompliance with orders, requirements, rules, or regulations made by the division of securities under sections 1707.19, 1707.20, 1707.201, and 1707.23 of the Revised Code.

Sec. 1707.44. (A)(1) No person shall engage in any act or practice that violates division (A), (B), or (C) of section 1707.14 of the Revised Code, and no salesperson shall sell securities in this state without being licensed pursuant to section 1707.16 of the Revised Code.

(2) No person shall engage in any act or practice that violates division (A) of section 1707.141 or section 1707.161 of the Revised Code.

(B) No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes:

(1) Registering securities or transactions, or exempting securities or transactions from registration, under this chapter;

(2) Securing the qualification of any securities under this chapter;

(3) Procuring the licensing of any dealer, salesperson, investment adviser, or investment adviser representative under this chapter;

(4) Selling any securities in this state;

(5) Advising for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities;

(6) Submitting a notice filing to the division under section 1707.092 or 1707.141 of the Revised Code.

(C) No person shall knowingly ~~and intentionally~~ sell, cause to be sold, offer for sale, or cause to be offered for sale, any security which comes under any of the following descriptions:

(1) Is not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in section 1707.03, 1707.04, or 1707.34 of the Revised Code, has not been registered by coordination or qualification, and is not the subject matter of a transaction that has been registered by description;

(2) The prescribed fees for registering by description, by coordination, or by qualification have not been paid in respect to such security;

(3) Such person has been notified by the division, or has knowledge of the notice, that the right to buy, sell, or deal in such security has been suspended or revoked, or that the registration by description, by coordination, or by qualification under which it may be sold has been suspended or revoked;

(4) The offer or sale is accompanied by a statement that the security offered or sold has been or is to be in any manner indorsed by the division.

(D) No person who is an officer, director, or trustee of, or a dealer for, any issuer, and who knows such issuer to be insolvent in that the liabilities of the issuer exceed its assets, shall sell any securities of or for any such issuer, without disclosing the fact of the insolvency to the purchaser.

(E) No person with intent to aid in the sale of any securities on behalf of the issuer, shall knowingly make any representation not authorized by such issuer or at material variance with statements and documents filed with the division by such issuer.

(F) No person, with intent to deceive, shall sell, cause to be sold, offer for sale, or cause to be offered for sale, any securities of an insolvent issuer, with knowledge that such issuer is insolvent in that the liabilities of the issuer exceed its assets, taken at their fair market value.

(G) No person in purchasing or selling securities shall knowingly engage in any act or practice that is, in this chapter, declared illegal, defined as fraudulent, or prohibited.

(H) No licensed dealer shall refuse to buy from, sell to, or trade with any person because the person appears on a blacklist issued by, or is being boycotted by, any foreign corporate or governmental entity, nor sell any securities of or for any issuer who is known in relation to the issuance or sale of such securities to have engaged in such practices.

(I) No dealer in securities, knowing that the dealer's liabilities exceed the reasonable value of the dealer's assets, shall accept money or securities, except in payment of or as security for an existing debt, from a customer who is ignorant of the dealer's insolvency, and thereby cause the customer to lose any part of the customer's securities or the value of those securities, by doing either of the following without the customer's consent:

(1) Pledging, selling, or otherwise disposing of such securities, when the dealer has no lien on or any special property in such securities;

(2) Pledging such securities for more than the amount due, or otherwise disposing of such securities for the dealer's own benefit, when the dealer has a lien or indebtedness on such securities.

It is an affirmative defense to a charge under this division that, at the time the securities involved were pledged, sold, or disposed of, the dealer had in the dealer's possession or control, and available for delivery, securities of the same kinds and in amounts sufficient to satisfy all customers entitled to the securities, upon demand and tender of any amount due on the securities.

(J) No person, with purpose to deceive, shall make, issue, publish, or cause to be made, issued, or published any statement or advertisement as to the value of securities, or as to alleged facts affecting the value of securities, or as to the financial condition of any issuer of securities, when the person knows that such statement or advertisement is false in any material respect.

(K) No person, with purpose to deceive, shall make, record, or publish or cause to be made, recorded, or published, a report of any transaction in securities which is false in any material respect.

(L) No dealer shall engage in any act that violates the provisions of section 15(c) or 15(g) of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C.A. 78o(c) or (g), or any rule or regulation promulgated by the securities and exchange commission thereunder. If, subsequent to October 11, 1994, additional amendments to section 15(c) or 15(g) are adopted, or additional rules or regulations are promulgated pursuant to such sections, the division of securities shall, by rule, adopt the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(M)(1) No investment adviser or investment adviser representative shall do any of the following:

(a) Employ any device, scheme, or artifice to defraud any person;

(b) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(c) In acting as principal for the investment adviser's or investment adviser representative's own account, knowingly sell any security to or purchase any security from a client, or in acting as salesperson for a person other than such client, knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the

ment adviser or investment adviser representative is acting and obtaining the consent of the client to the transaction. Division (M)(1)(c) of this section does not apply to any investment adviser registered with the securities and exchange commission under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, or to any transaction with a customer of a licensed dealer or salesperson if the licensed dealer or salesperson is not acting as an investment adviser or investment adviser representative in relation to the transaction.

(d) Engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. The division of securities may adopt rules reasonably designed to prevent such acts, practices, or courses of business as are fraudulent, deceptive, or manipulative.

(2) No investment adviser or investment adviser representative licensed or required to be licensed under this chapter shall take or have custody of any securities or funds of any person, except as provided in rules adopted by the division.

(3) In the solicitation of clients or prospective clients, no person shall make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which the statements were made.

Sec. 1733.01. As used in this chapter, unless the context otherwise requires:

(A) "Credit union" means a corporation organized and qualified as such under this chapter. In addition to the powers enumerated in this chapter and unless restricted in this chapter, every credit union has the general powers conferred upon corporations by Chapter 1701. of the Revised Code. A credit union is a nonprofit cooperative financial institution and as such is organized and operates for the mutual benefit and general welfare of its members with the earnings, savings, benefits, or services of the credit union being distributed to its members as patron savers and borrowers and not to its members as individuals.

(B) "Corporate credit union" means a credit union, eligibility for membership in which is being a credit union qualified to do business in this state. Such credit union shall use the term "corporate" in its official name.

(C) "Foreign credit union" means a credit union formed under the laws of another state which are substantially similar to this chapter.

(D) "Member" means a person who is a member of a credit union.

(E) "Association member" means any member of a credit union other than a credit union or an individual member.

(F) "Voting member" means an association member or an individual

member who is qualified to vote as provided by law, the articles, or the regulations.

(G) "Person" includes, without limitation, an individual, a corporation, an unincorporated society or association, or any other organization of individuals.

(H) "Articles" includes original articles of incorporation, agreements of merger, amended articles, and amendments to any of these.

(I) "Regulations" includes the code of regulations of a credit union and any amendments thereto or an amended code of regulations and any amendments thereto.

(J) Persons having a "common bond of association" include those persons and their families.

(K) "Membership share" means a share of the credit union, the subscription to which shall be a prerequisite for membership in the credit union.

(L) "Share account" means an account established for a member for which no share certificates are issued but which are included in the registry of shares, which includes all transactions of the credit union pertaining to such shares.

(M) "Undivided earnings" consist of all accumulated net earnings and reserves required under division (B) of section 1733.31 of the Revised Code.

(N) "State" means the United States, any state, territory, insular possession, or other political subdivision of the United States, including the District of Columbia.

(O) An "emergency" exists when an emergency exists for other corporations as the same is defined and described in section 1701.01 of the Revised Code.

(P) "Superintendent of credit unions" means the "division of financial institutions" or the "superintendent of the division of financial institutions of this state"; and whenever the context requires it, may be read as "director of commerce" or as "chief of the division of financial institutions." Whenever the division or superintendent of credit unions is referred to or designated in any statute, rule, contract, or other document, the reference or designation shall be deemed to refer to the division or superintendent of financial institutions, as the case may be.

(Q) "Outside auditor" means an accountant who is licensed to practice as a certified public accountant or public accountant by this state, and who is retained by a credit union to audit its accounts, but who is not otherwise employed by the credit union.

(R) "Regulated individual" means a director, committee member,

officer, or employee of a credit union.

(S) "Financial institution regulatory authority" includes a regulator of business activity in which a credit union is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a credit union engaged in that business activity. A credit union is engaged in a business activity, and a regulator of that business activity has jurisdiction over the credit union, whether the credit union conducts the activity directly or a subsidiary or affiliate of the credit union conducts the activity.

Sec. 1733.32. (A)(1) The superintendent of financial institutions shall see that the laws relating to credit unions are executed and enforced.

(2) The deputy superintendent for credit unions shall be the principal supervisor of credit unions. In that position the deputy superintendent for credit unions shall, notwithstanding division (A)(3) of this section, be responsible for conducting examinations and preparing examination reports under that division. In addition, the deputy superintendent for credit unions shall, notwithstanding sections 1733.191, 1733.41, 1733.411, and 1733.412 of the Revised Code, have the authority to adopt rules in accordance with those sections, and, notwithstanding section 1733.05 of the Revised Code, shall have the authority to approve issues and matters pertaining to fields of membership. In performing or exercising any of the examination, rule-making, or other regulatory functions, powers, or duties vested by division (A)(2) of this section in the deputy superintendent for credit unions, the deputy superintendent for credit unions shall be subject to the control of the superintendent of financial institutions.

(3) The superintendent shall develop and implement a system for evaluating the safety and soundness of credit unions and for determining when examinations and supervisory actions are necessary. Credit unions shall be subject to periodic examinations, as specified in rules adopted by the superintendent, and their books, records, and accounts shall be open to the inspection of the superintendent at all times. For the purpose of such examination or inspection, the superintendent may subpoena witnesses, administer oaths, receive testimony, and order the submission of documents.

(B) Every credit union shall prepare and submit, on forms provided by the superintendent, a financial report to the superintendent showing its assets and liabilities whenever requested to do so by the superintendent. Every financial report shall be verified by the oaths of the two principal officers in charge of the affairs of the credit union at the time of such verification and shall be submitted to the superintendent within thirty days after the superintendent requests the financial report.

(C) An annual financial report of the affairs and business of the credit

union, showing its condition as of the thirty-first day of December unless otherwise authorized by the superintendent, shall be filed with the superintendent not later than the date authorized in the rules adopted by the superintendent.

(D) If a financial report or an annual financial report is not filed with the superintendent in accordance with division (B) or (C) of this section, the superintendent may do both of the following:

(1) Assess a fine, determined by rule adopted by the superintendent, for each day the report is in arrears;

(2) If the superintendent gives written notice to the president of the credit union of the superintendent's intention to do so, issue an order revoking the credit union's articles of incorporation and appointing a liquidating agent to liquidate the credit union in accordance with section 1733.37 of the Revised Code.

(E)(1) Except as provided in division (E)(2) of this section, each credit union doing business in this state shall remit, semiannually and within fifteen days after billing, to the treasurer of state, a supervisory fee in an amount determined by the superintendent and confirmed by the credit union council. The supervisory fee described in division (E)(1) of this section shall be based on a percentage of the gross assets of the credit union as shown by its last annual financial report filed with the superintendent in accordance with division (C) of this section. The minimum supervisory fee shall be determined by the superintendent and confirmed by the credit union council.

(2) Each corporate credit union doing business in this state shall remit, semiannually and within fifteen days after billing, to the treasurer of state, a supervisory fee determined by rule adopted by the superintendent and confirmed by the credit union council. The aggregate annual amount of the fee shall not exceed the annual operating fee that the national credit union administration charges a federally chartered credit union pursuant to the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C.A. 1751.

(3) The superintendent annually shall present to the credit union council for confirmation the supervisory fees to be billed credit unions and corporate credit unions pursuant to division (E) of this section.

(4) If any supervisory fee is not remitted in accordance with division (E)(1) or (2) of this section, the superintendent may assess a fine, determined by rule adopted by the superintendent, for each day that each fee is in arrears.

(5)(a) Subject to division (E)(5)(b) of this section, the total amount of each semiannual billing to all credit unions and corporate credit unions combined shall equal one-half of the appropriation made by the main

operating appropriation act, including any modifications made by the controlling board, to the division of financial institutions for the regulation of credit unions for the fiscal year in which the billings occur, except that the superintendent, in determining the supervisory fees, may take into consideration any funds lapsed from the appropriation made in the previous fiscal year.

(b) If during the period between the credit union council's confirmation of supervisory fees and when supervisory fees described in this section are collected, the credit union council determines additional money is required to adequately fund the operations of the division of financial institutions for that fiscal year, the credit union council may, by the affirmative vote of five of its members, increase the supervisory fees billed. The superintendent promptly shall notify each credit union and corporate credit union of the increased supervisory fees, and each credit union or corporate credit union shall pay the increased supervisory fees billed by the superintendent.

(6) The fees or fines collected pursuant to this section shall be credited to the credit unions fund created in section 1733.321 of the Revised Code.

(F) A report of such examination shall be forwarded to the president of each credit union after the completion of the examination. Such report may contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within thirty days of the receipt of such report, a meeting of the directors shall be called to consider matters contained in the report, and the president shall notify the superintendent of any action taken at such meeting.

(G)(1) The superintendent shall furnish reports of examinations or other appropriate information to any organization referred to in section 1733.041 of the Revised Code when requested by such organization and authorized by the credit union. The superintendent may charge a fee for such reports and other information as may be established by rules adopted by the superintendent.

(2) A report of examination furnished pursuant to division (G)(1) of this section is the property of the division of credit unions and may be used by the examined credit union only in the conduct of its business. Under no circumstances may the credit union, its current or former directors, officers, employees, agents, shareholders, participants in the conduct of its affairs, or their agents disclose or make public, in any manner, a report of examination or its contents.

(H) Except as provided in this division, information obtained by the superintendent of ~~credit unions~~ financial institutions and the superintendent's employees as a result of or arising out of the examination or independent

audit of a credit union, from required reports, or because of their official position, shall be confidential. Such information may be disclosed only in connection with criminal proceedings or, subject to section 1733.327 of the Revised Code, when it is necessary for the superintendent to take official action pursuant to Chapter 1733. of the Revised Code and the rules adopted thereunder regarding the affairs of the credit union examined. Such information may also be introduced into evidence or disclosed when and in the manner authorized in section 1181.25 of the Revised Code. This division does not prevent the superintendent from properly exchanging information relating to an examined credit union pursuant to division (F) or (G) of this section or with officials of properly authorized state or federal ~~supervisory~~ financial institution regulatory authorities or with any insurer recognized under section 1733.041 or any surety recognized under section 1733.23 of the Revised Code. This division also does not prevent the superintendent from disclosing information contained in the financial reports or annual financial reports described in division (B) or (C) of this section to recognized credit union trade associations.

Sec. 1733.327. (A) All conferences and administrative proceedings under sections 1733.324 and 1733.325 of the Revised Code, the fact of their actual or anticipated occurrence, and all notices, agreements, hearings, orders, records, evidence, transcripts, and other writings, happenings, or things pertaining to those conferences or proceedings, shall be kept confidential as among the superintendent of ~~credit unions~~ financial institutions, the director of commerce, the deputy director of financial institutions, the governor, the credit union or regulated individual who is party to the conference or proceedings, witnesses in the conference or proceedings, and other persons specifically designated by the superintendent or director. In designating specific persons who may be present or acquire knowledge of matters made confidential by this division, the superintendent and director shall not exclude attorneys or other suitable representatives of the credit union, or of any regulated individual, who is party to the conference or proceedings. If the conference or proceedings apply to a regulated individual, the superintendent and director shall not exclude suitable representatives of the credit union of which such regulated individual is an officer, director, or employee.

(B) Division (A) of this section ceases to apply upon the occurrence of any of the following:

(1) An action is brought to recover a forfeiture for the violation of an agreement concluded, or a final or summary cease-and-desist order issued, under section 1733.324 or 1733.325 of the Revised Code. A forfeiture, in

the absence of such an action for recovery, does not waive division (A) of this section except insofar as the forfeiture must be reflected or reported in the financial records or reports of the credit union or regulated individual.

(2) Information made confidential by division (A) of this section is needed as evidence in a criminal proceeding; in proceedings under section 1733.37 of the Revised Code; or in the work of a committee of the general assembly;

(3) The superintendent furnishes information made confidential by division (A) of this section to the applicable insurer recognized under section 1733.041 of the Revised Code.

(4) The superintendent furnishes information made confidential by division (A) of this section to financial institution regulatory authorities as authorized in section 1733.32 of the Revised Code.

(5) Information made confidential by division (A) of this section is disclosed when and in the manner authorized in section 1181.25 of the Revised Code.

(C) No officer or employee of the division of credit unions, of the department of commerce or any of its other divisions, or of the governor's office shall violate division (A) of this section.

Sec. 1751.19. (A) A health insuring corporation shall establish and maintain a complaint system that has been approved by the superintendent of insurance to provide adequate and reasonable procedures for the expeditious resolution of written complaints initiated by subscribers or enrollees concerning any matter relating to services provided, directly or indirectly, by the health insuring corporation, including, but not limited to, complaints regarding cancellations or nonrenewals of coverage. Complaints regarding a health insuring corporation's decision to deny, reduce, or terminate coverage for health care services are subject to section 1751.83 of the Revised Code.

(B) A health insuring corporation shall provide a timely written response to each written complaint it receives.

(C)(1) Copies of complaints and responses, including medical records related to those complaints, shall be available to the superintendent and the director of health for inspection for three years. Any document or information provided to the superintendent pursuant to this division that contains a medical record is confidential, and is not a public record subject to section 149.43 of the Revised Code.

(2) Notwithstanding division (C)(1) of this section, the superintendent may share documents and information that contain a medical record in connection with the investigation or prosecution of any illegal or criminal

activity with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged document or information and has authority to do so.

(3) Nothing in this section shall prohibit the superintendent from receiving documents and information in accordance with section 3901.045 of the Revised Code.

(4) The superintendent may enter into agreements governing the sharing and use of documents and information consistent with the requirements of this section.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents and information described in division (C)(1) of this section occurs as a result of sharing or receiving documents and information as authorized in divisions (C)(2) and (3) of this section.

(D) A health insuring corporation shall establish and maintain a procedure to accept complaints over the telephone or in person. These complaints are not subject to the reporting requirement under division (C) of section 1751.32 of the Revised Code.

(E) A health insuring corporation may comply with this section and section 1751.83 of the Revised Code by establishing one system for receiving and reviewing complaints and requests for internal review from enrollees and subscribers if the system meets the requirements of both sections.

Sec. 3901.045. (A) The superintendent of insurance may receive documents and information, including otherwise confidential or privileged documents and information, from local, state, federal, and international regulatory and law enforcement agencies, from local, state, and federal prosecutors, and from the national association of insurance commissioners and its affiliates and subsidiaries, provided that the superintendent maintains as confidential or privileged any document or information received with notice or the understanding that the document or information is confidential or privileged under the laws of the jurisdiction that is the source of the document or information.

(B) The superintendent may also receive documents and information, including otherwise confidential or privileged documents and information,

from the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and from any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, provided that the superintendent maintains as confidential or privileged any document or information received with the notice or understanding that the document or information is confidential or privileged, except that the superintendent may share and disclose such a document or information when authorized by other sections of the Revised Code.

(C) The superintendent has the authority to maintain as confidential or privileged the documents and information received pursuant to this section.

(D) The superintendent's authority to receive documents and information under this section, from the persons and subject to the conditions listed in this section, is not limited in any way by section 1751.19, 3901.36, 3901.44, 3901.48, 3901.70, 3901.83, 3903.11, 3903.72, 3903.88, 3905.492, 3905.50, or 3999.36 of the Revised Code.

Sec. 3901.36. (A) All information, documents, and copies thereof obtained by or disclosed to the superintendent of insurance or any other person in the course of an examination or investigation made pursuant to section 3901.35 of the Revised Code and all information reported pursuant to section 3901.33 of the Revised Code shall be given confidential and privileged treatment and shall not be subject to subpoena or be made public by the superintendent or any other person, except to insurance regulatory authorities of other states, without the prior written consent of the insurer to which it pertains, unless the superintendent, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he considers appropriate.

(B) Notwithstanding division (A) of this section, the superintendent may do any of the following:

(1) Disclose documents and information that are the subject of this section upon obtaining prior written consent from the insurer to which the documents and information pertain;

(2) Disclose documents and information that are the subject of this section in such a manner as the superintendent considers appropriate, after giving the insurer and those affiliates that are the subject of the documents and information notice and an opportunity to be heard in accordance with Chapter 119. of the Revised Code, if the superintendent determines that the interests of policyholders, shareholders, or the public will be served by the disclosure;

(3) Share documents and information that are the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged document or information and has authority to do so;

(4) Disclose documents and information that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(C) Notwithstanding divisions (A) and (B) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged documents or information received pursuant to division (B)(3) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged document or information and has authority to do so.

(D) Notwithstanding divisions (A) and (B) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose documents and information that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(E) Nothing in this section shall prohibit the superintendent from receiving documents and information in accordance with section 3901.045 of the Revised Code.

(F) The superintendent may enter into agreements governing the sharing and use of documents and information consistent with the requirements of this section.

(G)(1) No waiver of any applicable privilege or claim of confidentiality in the documents and information described in this section shall occur as a result of sharing or receiving documents and information as authorized in divisions (B)(3), (C), and (E) of this section.

(2) The disclosure of a document or information in connection with a regulatory or legal action pursuant to divisions (B)(4) and (D) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the document or information to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Sec. 3901.44. (A) As used in this section, "insurance fraud investigation" means any investigation conducted by the superintendent of insurance or a designee of the superintendent that relates to a fraudulent insurance act as defined in section 3999.31 of the Revised Code.

(B) All ~~papers~~, documents, reports, and evidence in the possession of the superintendent or the superintendent's designee that pertain to an insurance fraud investigation are confidential law enforcement investigatory records under section 149.43 of the Revised Code. Notwithstanding such section, the superintendent shall not prohibit public inspection of such records that pertain to an insurance fraud investigation after the expiration of all federal and state statutes of limitations applicable to the particular offense to which the papers, documents, reports, and evidence relate.

(C) All ~~papers~~, documents, reports, and evidence in the possession of the superintendent that do not pertain to such an insurance fraud investigation are public records under section 149.43 of the Revised Code, and are not by such possession alone confidential law enforcement investigatory records.

(D) All ~~papers~~, documents, reports, and evidence in the possession of the superintendent or the superintendent's designee that pertain to such an insurance fraud investigation are not subject to subpoena in civil actions by any court of this state until opened for public inspection by the superintendent in accordance with division (B) of this section or with section 149.43 of the Revised Code, unless the superintendent or the superintendent's designee consents, or until after reasonable notice to the superintendent and opportunity for hearing, the court determines the superintendent would not be hindered unnecessarily by such subpoena.

(E) Notwithstanding divisions (B), (C), and (D) of this section, the superintendent may do either of the following:

ry and law enforcement agencies, with local, state, and federal prosecutors, with the national association of insurance commissioners and its affiliates and subsidiaries, with insurers, and with investigators hired by insurers, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged document, report, or evidence and has authority to do so:

(2) Disclose documents, reports, and evidence that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(F) Notwithstanding divisions (B), (C), (D), and (E) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged documents, reports, and evidence received pursuant to division (E)(1) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged document, report, or evidence and has authority to do so.

(G) Notwithstanding divisions (B), (C), (D), and (E) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose documents, reports, and evidence that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(H) Nothing in this section shall prohibit the superintendent from receiving documents, reports, and evidence in accordance with section 3901.045 of the Revised Code.

(I) The superintendent may enter into agreements governing the sharing and use of documents, reports, and evidence consistent with the requirements of this section.

(J)(1) No waiver of any applicable privilege or claim of confidentiality in the documents, reports, and evidence described in this section shall occur as a result of sharing or receiving documents, reports, and evidence as authorized in divisions (E)(1), (F), and (H) of this section.

involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

(K) The superintendent and the superintendent's designee are not subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the superintendent.

Sec. 3901.48. (A) The original work papers of a certified public accountant performing an audit of an insurance company or health insuring corporation doing business in this state that is required by rule or by any section of the Revised Code to file an audited financial report with the superintendent of insurance shall remain the property of the certified public accountant. Any copies of these work papers voluntarily given to the superintendent shall be the property of the superintendent. The original work papers or any copies of them, whether in possession of the certified public accountant or the department of insurance, are confidential and privileged and are not a public record as defined in section 149.43 of the Revised Code. The original work papers and any copies of them are not subject to subpoena and shall not be made public by the superintendent or any other person. ~~However, the original work papers and any copies of them may be released by the superintendent to the insurance regulatory authority of any other state if that authority agrees to maintain the confidentiality of the work papers or copies and if the work papers and copies are not public records under the laws of that state.~~

(B) The work papers of the superintendent or of the person appointed by the superintendent, resulting from the conduct of an examination made pursuant to section 3901.07 of the Revised Code or from the conduct of a financial analysis of any entity subject to examination by the superintendent, including but not limited to any insurance company, health insuring corporation, fraternal benefit society, or multiple employer welfare arrangement, are confidential and privileged and are not a public record as defined in section 149.43 of the Revised Code. The original work papers and any copies of them are not subject to subpoena and shall not be made public by the superintendent or any other person. ~~However, the original work papers and any copies of them may be released by the superintendent to the insurance regulatory authority of any other state if that authority agrees to maintain the confidentiality of the work papers or copies and if the work papers and copies are not public records under the laws of that state.~~

(C) The work papers of the superintendent or of any person appointed by the superintendent, resulting from the conduct of a performance

gulation examination made pursuant to authority granted under section 3901.011 of the Revised Code, are confidential and privileged and are not a public record as defined in section 149.43 of the Revised Code. The original work papers and any copies of them are not subject to subpoena and shall not be made public by the superintendent or any other person. ~~However, the original work papers and any copies of them may be released by the superintendent to the insurance regulatory authority of any other state if that authority agrees to maintain the confidentiality of the work papers or copies and if the work papers and copies are not public records under the laws of that state.~~

(D) Notwithstanding divisions (A), (B), and (C) of this section, the superintendent may do either of the following:

(1) Share work papers that are the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged work paper and has authority to do so;

(2) Disclose work papers that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(E) Notwithstanding divisions (A), (B), (C), and (D) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged work papers received pursuant to division (D)(1) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged work paper and has authority to do so.

(F) Notwithstanding divisions (A), (B), (C), and (D) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose work papers that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the

state resulting from the exercise of the superintendent's official duties in any capacity.

(G) Nothing in this section shall prohibit the superintendent from receiving work papers in accordance with section 3901.045 of the Revised Code.

(H) The superintendent may enter into agreements governing the sharing and use of work papers consistent with the requirements of this section.

(I)(1) No waiver of any applicable privilege or claim of confidentiality in the work papers, or copies thereof, that are the subject of this section shall occur as a result of sharing or receiving work papers as authorized in divisions (D)(1), (E), and (G) of this section.

(2) The disclosure of work papers in connection with a regulatory or legal action pursuant to divisions (D)(2) and (F) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the work papers to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Sec. 3901.70. (A) Each report obtained by or disclosed to the superintendent of insurance pursuant to sections 3901.67 to 3901.70 of the Revised Code is confidential and privileged and is not subject to subpoena. Except as provided in ~~divisions~~ division (B) ~~and (C)~~ of this section, the report shall not be made public by the superintendent, ~~the national association of insurance commissioners,~~ or any other persons.

~~(B) A report may be provided by the superintendent to the insurance regulatory authority of another state or to the national association of insurance commissioners without first obtaining the written consent of the insurer to which it pertains.~~

~~(C) The superintendent, after conducting a hearing in accordance with Chapter 119. of the Revised Code, may determine that the interest of policyholders, shareholders, or the public will be served by the publication of the report and may publish all or any part of the report in such manner as the superintendent may consider appropriate. Notwithstanding division (A) of this section, the superintendent may do any of the following:~~

~~(1) Disclose a report that is the subject of this section upon obtaining a prior written consent from the insurer to which the report pertains;~~

ith other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged report and has authority to do so:

(3) Disclose a report that is the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties;

(4) Disclose or publish all or any part of a report that is the subject of this section in such a manner as the superintendent considers appropriate after conducting a hearing in accordance with Chapter 119. of the Revised Code and determining that the interests of policyholders, shareholders, or the public will be served by the disclosure or publication of the report.

(C) Notwithstanding divisions (A) and (B) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged reports received pursuant to division (B)(2) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged report and has authority to do so.

(D) Notwithstanding divisions (A) and (B) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose a report that is the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(E) Nothing in this section shall prohibit the superintendent from receiving reports in accordance with section 3901.045 of the Revised Code.

(F) The superintendent may enter into agreements governing the sharing, use, and disclosure of reports consistent with the requirements of this section.

(G)(1) No waiver of any applicable privilege or claim of confidentiality in the reports that are the subject of this section shall occur as a result of sharing or receiving reports as authorized in divisions (B)(2), (C), and (E) of this section.

(2) The disclosure of a report in connection with a regulatory or legal

action pursuant to divisions (B)(3) and (D) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the report to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Sec. 3901.83. (A) When a record containing information pertaining to the medical history, diagnosis, prognosis, or medical condition of an enrollee of a health insuring corporation, insured of an insurer, or plan member of a public employee benefit plan is provided to the superintendent of insurance for any reason under sections 1751.77 to 1751.88, 3923.66 to 3923.70, or 3923.75 to 3923.79 of the Revised Code, regardless of the source, the superintendent shall maintain the confidentiality of the record. The record in the superintendent's possession is not a public record under section 149.43 of the Revised Code, except to the extent that information from the record is used in preparing reports under section 3901.82 of the Revised Code.

(B) Notwithstanding division (A) of this section, the superintendent may share a record that is the subject of this section in connection with the investigation or prosecution of any illegal or criminal activity with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged record and has authority to do so.

(C) Nothing in this section shall prohibit the superintendent from receiving records in accordance with section 3901.045 of the Revised Code.

(D) The superintendent may enter into agreements governing the sharing and use of records consistent with the requirements of this section.

(E) No waiver of any applicable privilege or claim of confidentiality in the records that are the subject of this section shall occur as a result of sharing or receiving records as authorized in divisions (B) and (C) of this section.

Sec. 3903.11. (A) In all proceedings and judicial reviews thereof under sections 3903.09 and 3903.10 of the Revised Code, all records of the insurer, other documents, and all department of insurance files and court records and papers, so far as they pertain to or are a part of the record of the

proceedings, shall be and remain confidential and privileged except as is necessary to enforce compliance with those sections, unless and until the court of common pleas, after hearing arguments from the parties in chambers, shall order otherwise, or unless the insurer requests in writing that the matter be made public. Until such court order or such request from the insurer, all papers filed with the clerk of the court shall be held by the clerk in a confidential file.

(B) Notwithstanding division (A) of this section, the superintendent may do either of the following:

(1) Share the documents and information that are the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged document or information and has authority to do so;

(2) Disclose documents and information that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(C) Notwithstanding divisions (A) and (B) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged documents or information received pursuant to division (B)(1) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged document or information and has authority to do so.

(D) Notwithstanding divisions (A) and (B) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose documents and information that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

ng documents or information in accordance with section 3901.045 of the Revised Code.

(F) The superintendent may enter into agreements governing the sharing and use of documents and information consistent with the requirements of this section.

(G)(1) No waiver of any applicable privilege or claim of confidentiality in the documents and information described in this section shall occur as a result of sharing or receiving documents and information as authorized in divisions (B)(1), (C), and (E) of this section.

(2) The disclosure of documents or information in connection with a regulatory or legal action pursuant to divisions (B)(2) and (D) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the document or information to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Sec. 3903.72. (A) The superintendent of insurance shall annually value, or cause to be valued, the reserve liabilities, referred to in this section as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state. The superintendent may certify the amount of such reserves, specifying the mortality tables, rates of interest, and net level premium method and other methods used to calculate reserves. In calculating reserves, the superintendent may use group methods and approximate averages for fractions of a year or otherwise. The valuation of the reserves of a company organized under the laws of a foreign government shall be limited to its United States business.

In lieu of a valuation of the reserves of a foreign company, the superintendent may accept the valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standards required by this section, provided such official accepts the certificate of valuation of the superintendent when such certificate states that the valuation was made in a specified manner and when such valuation complies with the minimum standards required by the law of that state or jurisdiction.

A company, which adopts a standard of valuation producing aggregate reserves greater than those required by this section, may adopt a lower standard of valuation with the approval of the superintendent, but not lower than the minimum provided by this section. However, the holding of additional reserves previously determined by a qualified actuary to be

necessary for the actuary to render the opinions required by divisions (B)(1) and (2) of this section shall not be deemed to be the adoption of a higher standard of valuation.

(B)(1) Every life insurance company doing business in this state shall annually submit to the superintendent the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by rule by the superintendent are computed appropriately, are based on assumptions that satisfy contractual provisions, and are consistent with prior reported amounts. The opinion shall be submitted no later than March 1, 1996, and no later than the first day of March of each year thereafter. The superintendent shall adopt rules establishing the form and content of this opinion, and may require the life insurance company to supply information in addition to that contained in the actuarial opinion.

As used in this section, a "qualified actuary" means a person who is a member in good standing of the American academy of actuaries and who meets the requirements set by rule by the superintendent.

(2)(a) Every life insurance company, except as exempted by rule adopted by the superintendent, shall also include in the annual opinion required by division (B)(1) of this section an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by rule by the superintendent, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and the expenses associated with the policies and contracts.

(b) The superintendent may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may consider necessary to render the opinion required by division (B) of this section.

(c) Each opinion required by division (B) of this section shall be supported by a memorandum prepared in form and content as specified by rule by the superintendent.

(d) If a life insurance company fails to provide a supporting memorandum within the period of time specified by rule by the superintendent, or if the superintendent determines that a supporting memorandum fails to meet the standards set out in the rule, or is otherwise unacceptable to the superintendent, the superintendent may employ, at the

expense of the insurance company, a qualified actuary to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the superintendent.

(3) Every opinion required by division (B) of this section is governed by the following:

(a) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities.

(b) The opinion shall apply to all business in force including individual and group health insurance plans.

(c) The opinion shall be based on standards adopted from time to time by the actuarial standards board of the American academy of actuaries and on such additional standards as the superintendent may prescribe by rule.

(d) In the case of an opinion required to be submitted by a foreign or alien life insurance company, the superintendent may accept the opinion filed by that company with the insurance regulatory authority of another state if the superintendent determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(e) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages in any civil action to any person, other than the insurance company and the superintendent, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(f) The superintendent shall establish by rule penalties for an insurance company's or qualified actuary's failure to comply with this section.

(g) The superintendent shall keep as confidential and privileged any memorandum received in support of a qualified actuary's opinion and also any other material provided by the insurance company to the superintendent in connection with the opinion. The memorandum and other materials shall not be made public, and shall not be subject to subpoena other than for the purpose of defending an action required by this section or rules adopted under this section. However, ~~the memorandum and other materials may be released by the superintendent with the written consent of the company, and may be released to the American academy of actuaries upon the superintendent's receipt of a request from the academy stating that the memorandum and other materials are required for the purpose of professional disciplinary proceedings. A request from the American academy of actuaries shall set forth the procedures to be used by the academy for preserving the confidentiality of the memorandum and other materials, which procedures shall be satisfactory to the superintendent prior to the superintendent's release of the memorandum and other materials. If~~ any portion of a confidential and privileged memorandum is cited by the

company in its marketing, is cited before any governmental agency other than a state insurance regulatory authority, or is released by the company to the news media, the entire memorandum shall no longer be confidential and privileged.

(h) Notwithstanding division (B)(3)(g) of this section, the superintendent may do any of the following:

(i) Disclose memoranda and other materials described in this section upon obtaining prior written consent from the insurer to which the memorandum or other materials pertain;

(ii) Disclose memoranda and other materials described in this section to the American academy of actuaries upon receipt of a written request from the academy stating that a memorandum or other material is required for the purpose of professional disciplinary proceedings. A request from the American academy of actuaries shall set forth the procedures to be used by the academy for preserving the confidential and privileged status of the memorandum or other material. If the procedures set forth are not satisfactory to the superintendent, the superintendent shall not release the memorandum or other material to the academy.

(iii) Share memoranda and other materials described in this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of any confidential or privileged memorandum or other material and has authority to do so;

(iv) Disclose memoranda and other materials described in this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(i) Notwithstanding divisions (B)(3)(g) and (h) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged memoranda and other material received pursuant to division (B)(3)(h)(iii) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged

memorandum or other material and has authority to do so.

(j) Notwithstanding divisions (B)(3)(g) and (h) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose memoranda and other material described in this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(k) Nothing in this section shall prohibit the superintendent from receiving memoranda and other material in accordance with section 3901.045 of the Revised Code.

(l) The superintendent may enter into agreements governing the sharing and use of memoranda and materials consistent with the requirements of this section.

(m)(i) No waiver of any applicable privilege or claim of confidentiality in the memoranda and materials described in this section shall occur as a result of sharing or receiving memoranda and material as authorized in divisions (B)(3)(h)(ii) and (iii), (B)(3)(i), and (B)(3)(k) of this section.

(ii) The disclosure of any memorandum or material in connection with a regulatory or legal action pursuant to divisions (B)(3)(h)(iv) and (B)(3)(j) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the memorandum or material to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

(C) Except in the case of policies and contracts to which division (D) of this section applies, the minimum standard for the valuation of reserves shall be the method set forth in section 3915.04 of the Revised Code, using four per cent interest and the American experience table of mortality; provided that in no event shall a company's aggregate reserves for policies and contracts which guarantee nonforfeiture benefits be less than the aggregate reserves calculated in accordance with the standard used in calculating nonforfeiture benefits for such policies and contracts.

Reserves for such policies and contracts may be calculated according to standards which produce aggregate reserves greater than the minimum reserves required by this division.

(D) This division applies to all life insurance policies and annuity and pure endowment contracts issued on and after November 5, 1959, or each earlier date not before July 17, 1947, elected by the company for one or more of such policies or contracts as the date on which it would comply

with the provisions of the nonforfeiture law for life insurance provided in section 3915.07 of the Revised Code or with the provisions of this division. The minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation method defined in division (E), (F), (H), or (K) of this section and the following tables and interest rates:

(1) For ordinary life insurance policies, excluding disability and accidental death benefits, issued on the standard basis:

(a) On and after November 5, 1959, or an earlier date, not before July 17, 1947, specified in a written notice by the company to the superintendent of its election to use this table and before division (D)(1)(b) of this section became operative for subsequent policy issues, the commissioners 1941 standard ordinary mortality table and three and one-half per cent interest;

(b) On and after January 1, 1966, or an earlier date, not before November 5, 1959, specified in a written notice by the company to the superintendent of its election to use this table and before division (D)(1)(c) of this section becomes operative for subsequent policy issues, the commissioners 1958 standard ordinary mortality table and three and one-half per cent interest before January 1, 1975; four per cent interest on and after January 1, 1975 and before January 1, 1979; and four and one-half per cent interest on and after January 1, 1979; provided that modified premiums and present values for female risks may be calculated at an age three years younger than the actual age of the insured for policies issued before January 1, 1979, and at an age six years younger for policies issued on and after January 1, 1979.

(c) On and after January 1, 1989, or an earlier date, not before January 1, 1983, specified in a written notice by the company to the superintendent of its election to use this table, the commissioners 1980 standard ordinary mortality table and the applicable valuation interest rate as defined in section 3903.721 of the Revised Code. The company may elect to use the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors for any specified plan of life insurance. The superintendent may approve the use of any ordinary mortality table adopted after 1980 by the national association of insurance commissioners for determining the minimum standard for the valuation of such policies.

(2) For industrial life insurance policies, excluding disability and accidental death benefits, issued on the standard basis:

(a) On and after November 5, 1959, or an earlier date, not before July 17, 1947, specified in a written notice by the company to the superintendent of its election to use this table and before division (D)(2)(b) of this section became operative for subsequent policy issues, the 1941 standard industrial

mortality table and three and one-half per cent interest;

(b) On and after January 1, 1968, or an earlier date, not before September 2, 1963, specified in a written notice by the company to the superintendent of its election to use this table, the commissioners 1961 standard industrial mortality table and three and one-half per cent interest before January 1, 1975; four per cent interest on and after January 1, 1975 and before January 1, 1979; four and one-half per cent interest on and after January 1, 1979 and before January 1, 1989, or before an earlier date, not before January 1, 1983, specified in a written notice by the company to the superintendent of its election to issue such policies pursuant to the provisions of the nonforfeiture law for life insurance provided in section 3915.071 of the Revised Code. On and after January 1, 1989, or such earlier date, the interest rate to be used in calculating the minimum reserve for such policies is the applicable valuation interest rate as defined in section 3903.721 of the Revised Code. The superintendent may approve the use of any industrial mortality table adopted after 1980 by the national association of insurance commissioners for determining the minimum standard for the valuation of such policies.

(3) For all individual annuity and pure endowment contracts, excluding disability and accidental death benefits, issued:

(a) On and after November 5, 1959, or an earlier date, not before July 17, 1947, as of which the company elected to comply with this division (D)(3)(a) and before division (D)(3)(b) of this section became operative for subsequent contract issues, the 1937 standard annuity mortality table, or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either table approved by the superintendent and three and one-half per cent interest;

(b) On and after January 1, 1979, or an earlier date, not before January 1, 1975, specified by the company in a written notice to the superintendent of its election to use this table, the 1971 individual annuity mortality table or any modification of that table approved by the superintendent and four per cent interest on and after January 1, 1975 and before January 1, 1979; four and one-half per cent interest on and after January 1, 1979, and before January 1, 1983; and the valuation interest rate as defined in section 3903.721 of the Revised Code on and after January 1, 1983, except that on and after January 1, 1975, and before January 1, 1979, the interest rate is six per cent for single premium immediate contracts and on and after January 1, 1979, and before January 1, 1983, the interest rate is five and one-half per cent for single premium deferred contracts and seven and one-half per cent for single premium immediate contracts. The superintendent may approve

the use of any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners, either as adopted or as modified by the superintendent, for determining the minimum standard for the valuation of such contracts.

(4) For all annuity and pure endowment contracts, excluding disability and accidental death benefits, purchased under group annuity and pure endowment contracts:

(a) On and after November 5, 1959, or an earlier date, not before July 17, 1947, as of which the company elected to comply with this division (D)(4)(a) and before division (D)(4)(b) of this section became operative for subsequent contract purchases, the group annuity mortality table for 1951, any modification of this table approved by the superintendent, or either of the tables, or modification of either of them, specified in division (D)(3)(a) of this section for individual annuity and pure endowment contracts and three and one-half per cent interest;

(b) On and after January 1, 1979, or an earlier date, not before January 1, 1975, specified by the company in a written notice to the superintendent of its election to use this table, the 1971 group annuity mortality table, or any modification of that table approved by the superintendent, and six per cent interest on and after January 1, 1975, and before January 1, 1979; seven and one-half per cent interest on and after January 1, 1979, and before January 1, 1983, and the valuation interest rate as defined in section 3903.721 of the Revised Code on and after January 1, 1983. The superintendent may approve the use of any group annuity mortality table adopted after 1980 by the national association of insurance commissioners, either as adopted or as modified by the superintendent, for determining the minimum standard for the valuation of such contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies and contracts issued:

(a) On and after July 17, 1947, and before January 1, 1961, the class (3) disability table (1926) and three and one-half per cent interest. This table, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(b) On and after January 1, 1961, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard for the type of benefit; except that a company may, at its option, use the class (3) disability table (1926) for policies and contracts issued on and after January 1, 1961, and before January 1, 1966. Any such table, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance

policies. The interest rate to be used in calculating minimum reserves for such benefits may not exceed the applicable rate specified in division (D)(1) of this section for ordinary life insurance policies. The superintendent may approve the use of any table of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners for determining the minimum standard for the valuation of such total and permanent benefits.

(6) For accidental death benefits in or supplementary to policies issued:

(a) On and after July 17, 1947, and before January 1, 1961, the inter-company double indemnity mortality table and three and one-half per cent interest. This table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(b) On and after January 1, 1961, the 1959 accidental death benefits table; except that a company may, at its option, use the inter-company double indemnity mortality table for policies issued on and after January 1, 1961, and before January 1, 1966. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies. The interest rate to be used in calculating the minimum reserves for such benefits may not exceed the applicable rate specified in division (D)(1) of this section for ordinary life insurance policies. The superintendent may approve the use of any accidental death benefits table adopted after 1980 by the national association of insurance commissioners for determining the minimum standard for the valuation of such accidental death benefits.

(7) For group life insurance, life insurance issued on the substandard basis and all other special benefits, such tables as may be approved by the superintendent and interest not to exceed the applicable rate used in division (D)(1) of this section for ordinary life insurance policies.

(E) This division defines the commissioners reserve valuation method for all policies, riders, and supplemental policy provisions, with life insurance or endowment benefits, or both, providing for uniform amounts of life insurance and requiring uniform premiums. Reserves for such policies, riders, and provisions, except as otherwise provided in divisions (F) and (K) of this section, shall be the excess, if any, of the present value on the valuation date of the future guaranteed benefits over the present value on that date of the future modified net premiums. The modified net premium is a uniform percentage of each contract premium specified for the guaranteed benefits such that the present value, at the date of issue, of all modified net premiums shall be equal to the present value, on the date of issue, of the future guaranteed benefits plus the excess of division (E)(1) over division (E)(2) of this section, as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due; provided that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of the policy.

(2) A net one-year term premium for such benefits provided for in the first policy year.

(F) This division defines the commissioners reserve valuation method for all life insurance policies issued on or after January 1, 1989, that have a first year premium in excess of the premium for the second policy year and for which excess no comparable benefit is provided in the first year and that provide either an endowment benefit or cash surrender value, or both, in an amount greater than the excess. Reserves for such policies before the assumed ending date shall be the greater of the amount calculated in accordance with division (E) of this section and the reserve calculated in accordance with that division but with the following changes:

(1) The value defined in division (E)(1) of this section shall be reduced by fifteen per cent of the amount of such excess first-year premium;

(2) All present values of benefits and premiums shall be determined without reference to premiums and benefits provided for by the policy after the assumed ending date;

(3) The policy shall be assumed to mature on the assumed ending date in the amount of its endowment benefits and cash surrender value. The assumed ending date is the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess first-year premium.

On and after the assumed ending date, the reserve for such policies shall be calculated in accordance with division (E) of this section.

(G) Reserves according to the commissioners reserve valuation method for:

(1) All policies, riders, and supplemental policy provisions providing varying amounts of life insurance or requiring payment of varying premiums;

(2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual

retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code of 1954, as amended;

(3) Disability and accidental death benefits in all policies and contracts; and

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of division (E) of this section.

Extra premiums charged because of impairments or special hazards shall be disregarded in determining modified net premiums.

(H) This division defines the commissioner's annuity reserve valuation method for all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code of 1954, as amended.

Reserves for benefits under such contracts, excluding disability and accidental death benefits, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contract at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations required by the terms of the contract that become payable prior to the end of each such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(I) In no event shall a company's aggregate reserves for all life insurance policies, to which division (D) of this section applies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in divisions (E), (F), (G), (K), and (L) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by division (B) of this

section.

(J) Reserves for any category of policies, contracts, or benefits as established by the superintendent may be calculated, at the option of the company, according to any standards which produce aggregate reserves for such category greater than those calculated according to the minimum standards provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for in such standards.

(K) If in any contract year the valuation net premium calculated by the method used in calculating the reserve for a policy or contract but using the minimum valuation standards of mortality and rate of interest is more than the gross premium for such policy or contract, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by such method but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this division are those required by division (D) of this section.

For the purposes of this division, the minimum reserve for any policy to which the provisions of division (F) of this section apply shall be calculated as if the method used in calculating the reserve for such policy were the method defined in division (E) of this section. The minimum reserve for such policy shall be the greater of the reserve calculated in accordance with division (F) of this section and in accordance with this division.

(L) Methods for determining the reserves for plans of life insurance or annuity which are of such a nature that minimum reserves cannot be determined by the methods described in this section shall be promulgated by rule adopted by the superintendent. The reserves to be held under such plans must be appropriate in relation to the benefits and the pattern of premiums for each plan and must be computed by methods which are consistent with the principles of this section. This division applies to any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the company on the basis of an estimate of future experience made at the time of any such determination.

(M) The superintendent shall adopt rules specifying minimum reserve standards for the valuation of individual and group health plans.

Sec. 3903.83. (A) For purposes of sections 3903.81 to 3903.93 of the Revised Code, a "company action level event" is any of the following events:

(1) A domestic or foreign insurer's filing of an RBC report that indicates that the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(2) A life or health insurer's filing of an RBC report that indicates that the insurer's total adjusted capital is greater than or equal to its company action level RBC but less than the product of 2.5 and its authorized control level RBC, and that indicates a negative trend;

(3) The notification by the superintendent of insurance to an insurer of an adjustment to the insurer's RBC report, which adjusted RBC report shows the insurer's total adjusted capital within the range described in either division (A)(1) or (2) of this section, provided that the insurer does not challenge the adjusted RBC report under section 3903.87 of the Revised Code;

(4) The superintendent's notification to an insurer, following the hearing required under section 3903.87 of the Revised Code, that the superintendent has rejected the insurer's challenge to an adjusted RBC report showing the insurer's total adjusted capital within the range described in either division (A)(1) or (2) of this section.

(B) In the case of a company action level event, the insurer shall prepare and submit to the superintendent an RBC plan that shall:

(1) Identify the conditions that contributed to the company action level event;

(2) Contain proposals of corrective actions that the insurer intends to take to eliminate the conditions leading to the company action level event;

(3) Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of the proposed corrective actions and giving effect to the proposed corrective actions. The projections shall include projections of statutory operating income, net income, capital, and surplus. Projections for both new and renewal business may include separate projections for each major line of business, and may separately identify each significant income, expense, and benefit component of the projection.

(4) Identify the key assumptions impacting the insurer's projections made pursuant to division (B)(3) of this section, and describe the sensitivity of the projections to the assumptions;

(5) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth

and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance.

(C) The RBC plan shall be submitted within forty-five days after a company action level event. However, if an insurer has challenged an adjusted RBC report pursuant to section 3903.87 of the Revised Code, the RBC plan need not be submitted until after the hearing required under section 3903.87 of the Revised Code. If the superintendent rejects the insurer's challenge, the RBC plan shall be submitted within forty-five days after the superintendent's notification to the insurer of the rejection of the challenge.

(D)(1) Within sixty days after an insurer submits an RBC plan to the superintendent, the superintendent shall either require the insurer to implement the RBC plan or shall notify the insurer that the RBC plan is unsatisfactory in the judgment of the superintendent. If the superintendent has determined that the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory in the judgment of the superintendent. Upon such notification from the superintendent, the insurer shall prepare and submit a revised RBC plan, which may incorporate by reference any revisions proposed by the superintendent.

(2) If an insurer challenges, under section 3903.87 of the Revised Code, a notification from the Superintendent that the insurer's RBC plan or a revised RBC plan is unsatisfactory, submission of a revised RBC plan need not be made unless the superintendent rejects the insurer's challenge following the hearing required by section 3903.87 of the Revised Code and then notifies the insurer of this rejection.

(3) An insurer shall submit a revised RBC plan to the superintendent within forty-five days after receiving notification from the superintendent that its RBC plan is unsatisfactory, or, that its challenge to a notification made under division (D)(1) of this section has been rejected, as applicable.

(E) Notwithstanding division (D) of this section, if the superintendent notifies an insurer that its RBC plan or revised RBC plan is unsatisfactory, the superintendent may, at the superintendent's discretion, but subject to the insurer's right to a hearing under section 3903.87 of the Revised Code, specify in the notification that the notification constitutes a regulatory action level event.

(F) Every domestic insurer that submits an RBC plan or revised RBC plan to the superintendent shall file a copy of the RBC plan or revised RBC plan with the insurance regulatory authority of every state in which the

insurer is authorized to do business upon receiving the insurance regulatory authority's written request for a copy of the plan, if the state has a confidentiality law with provisions substantially similar to those set forth in divisions (A) and (B) of section 3903.88 of the Revised Code. The insurer shall file the copy in that state no later than the later of:

- (1) Fifteen days after receiving the request for a copy of the plan;
- (2) The date on which the RBC plan or revised RBC plan is filed pursuant to division (C) or (D) of this section.

Sec. 3903.88. (A) The superintendent of insurance shall keep all of the following confidential:

- (1) An RBC report, to the extent that information contained in the report is not required to be included in an annual statement available to the public;
- (2) An RBC plan;
- (3) The results of, or a report on, an examination or analysis conducted pursuant to division (B)(2) of section 3903.84 of the Revised Code, and a corrective order issued pursuant to division (B)(3) of section 3903.84 of the Revised Code.

(B) The plans, reports, information, and orders described in division (A) of this section ~~shall be confidential and privileged and not be subject to subpoena, except for use by the superintendent in accordance with the insurance laws of this state.~~

(C) Notwithstanding divisions (A) and (B) of this section, the superintendent may do any of the following:

(1) Use the plans, reports, information, and orders that are the subject of this section in accordance with the insurance laws of this state;

(2) Share the plans, reports, information, and orders that are the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged plan, report, information, or order and has authority to do so;

(3) Disclose plans, reports, information, and orders that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(D) Notwithstanding divisions (A), (B), and (C) of this section, the

superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged plans, reports, information, and orders received pursuant to division (C)(2) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged plan, report, information, or order and has authority to do so.

(E) Notwithstanding divisions (A), (B), and (C) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose plans, reports, information, and orders that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(F) Nothing in this section shall prohibit the superintendent from receiving plans, reports, information, and orders in accordance with section 3901.045 of the Revised Code.

(G) The superintendent may enter into agreements governing the sharing and use of plans, reports, information, and orders consistent with the requirements of this section.

(H)(1) No waiver of any applicable privilege or claim of confidentiality in the plans, reports, information, and orders that are the subject of this section shall occur as a result of sharing or receiving plans, reports, information, and orders as authorized in divisions (C)(2), (D), and (F) of this section.

(2) The disclosure of a plan, report, information, or order in connection with a regulatory or legal action pursuant to divisions (C)(3) and (E) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the plan, report, information, or order to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

(I) The comparison of an insurer's total adjusted capital to any of its RBC levels shall not be used to rank insurers.

~~(D)~~(J) RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans, shall not be used by the superintendent for ratemaking, considered or introduced as evidence in any rate proceeding, or used by the superintendent to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an

insurer or any affiliate is authorized to write.

~~(E)~~(K) Except as otherwise required under Title XXXIX of the Revised Code, it is an unfair and deceptive act or practice in the business of insurance for any person, as defined in division (A) of section 3901.19 of the Revised Code, to make, publish, disseminate, circulate, or place before the public, or to cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other manner, an advertisement, announcement, or statement, written or oral, that contains an assertion, representation, or statement, regarding the RBC levels of any insurer or any component derived in the calculation of the RBC levels.

~~(F)~~(L) If any materially false statement is published comparing an insurer's total adjusted capital to its RBC levels, or any inappropriate comparison of any other amount to any of the insurers' RBC levels is published, and the insurer is able to demonstrate to the superintendent with substantial proof the falsity of the statement or the inappropriateness of the comparison, then the insurer may publish with the superintendent's approval an announcement in a written publication to rebut the materially false statement or inappropriate comparison.

Sec. 3905.492. (A)(1) All records and other information obtained by the superintendent of insurance or the superintendent's deputies, examiners, assistants, or other employees, or agents relating to an investigation of an applicant for licensure under this chapter, or of an agent, solicitor, broker, or other person licensed under this chapter or Chapter 3951., 3957., or 3959. of the Revised Code, are confidential and are not public records as defined in section 149.43 of the Revised Code until the applicant or licensee is provided notice and opportunity for hearing pursuant to Chapter 119. of the Revised Code with respect to such records or information. If no administrative action is initiated with respect to a particular matter about which the superintendent obtained records or other information as part of an investigation, all such records and information relating to that matter shall remain confidential for three years after the file on the matter is closed.

(2) Division (A)(1) of this section applies only to investigations that could result in administrative action under Title XVII or XXXIX or Chapter 119. of the Revised Code.

(B) The records and other information described in division (A) of this section shall remain confidential for all purposes except when it is appropriate for the superintendent and the superintendent's deputies,

examiners, assistants, or other employees, or agents to take official action regarding the affairs of the applicant or licensee or in connection with actual or potential criminal proceedings.

~~(C) Employees or agents of the department of insurance shall not be required by any court in this state to testify in a civil action, if such testimony concerns any matter related to records or any other information considered confidential under this section of which they have knowledge.~~

~~(D) This section does not apply to any complaint or action under section 3905.04 of the Revised Code. Notwithstanding divisions (A) and (B) of this section, the superintendent may do either of the following:~~

~~(1) Share records and other information that are the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential status of the confidential record or other information and has authority to do so;~~

~~(2) Disclose records and other information that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.~~

~~(D) Notwithstanding divisions (A), (B), and (C) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential records and other information received pursuant to division (C)(1) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential status of the confidential record or other information and has authority to do so.~~

~~(E) Notwithstanding divisions (A), (B), and (C) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose records and other information that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.~~

~~(F) Nothing in this section shall prohibit the superintendent from~~

receiving records and other information in accordance with section 3901.045 of the Revised Code.

(G)(1) No waiver of any applicable privilege or claim of confidentiality in the records and other information that are the subject of this section shall occur as a result of sharing or receiving records or other information as authorized in divisions (C)(1), (D), and (F) of this section.

(2) The disclosure of records or other information in connection with a regulatory or legal action pursuant to divisions (C)(2) and (E) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the record or other information to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

(H) Employees or agents of the department of insurance shall not be required by any court in this state to testify in a civil action, if the testimony concerns any matter related to records or other information considered confidential under this section of which they have knowledge.

Sec. 3905.50. (A)(1) Except as provided in division (A)(2) or (3) of this section, this section applies to every contract of agency between a property and casualty insurance company and an independent insurance agent, as defined in division (A) of section 3905.47 of the Revised Code, which has been in effect for not less than two years.

(2) This section does not apply to a contract of exclusive employment by, or an exclusive agency contract with, a single insurer or group of insurers under common ownership or control.

(3) This section does not apply to an agent whose license has been suspended or revoked by the superintendent of insurance, an agent who has demonstrated gross incompetence, or an agent whose contract has been terminated for insolvency, abandonment, gross or willful misconduct, or failure to pay to the insurer, in accordance with the agency contract, moneys due to the insurer upon written demand of the insurer.

(B) No insurer shall terminate an independent insurance agent contract of agency except by mutual agreement of the parties or upon one hundred eighty days' written notice to the independent insurance agent.

(1) Such notice shall include specific reasons for the termination of the agent.

(2) Such notice shall be sent by certified mail, return receipt requested, to the last known address of the agency.

(C) During the one hundred eighty day notice period, an independent insurance agent shall not write or bind any new policies on behalf of an

insurer without written approval from the insurer. However, during such period, an independent insurance agent, subject to the current underwriting rules, guidelines, commission rates, and practices of the insurer, may renew or effect any necessary changes or endorsements of outstanding policies of insurance that are in force prior to the date of receipt of the notice of termination.

(D) None of the following constitutes an acceptable reason for the termination of a contract of agency:

- (1) Claims experience of the agent in a single year;
- (2) Claims experience due to ~~catastrophies~~ catastrophes of nature covered by a policy;
- (3) Claims experience under uninsured and underinsured motorist coverages.

(E) An agent aggrieved by the conduct of an insurer in its breach or termination of a contract of agency may file with the superintendent a request that the superintendent review the action to determine whether it is in accord with this section and the lawful provisions of the contract of agency and send a copy of the request to the insurer at the address of the office issuing the notice of termination. Upon receipt of such a request, an insurer shall promptly provide the independent insurance agent and superintendent with documentation in support of the insurer's stated reason for termination.

(F) The superintendent shall promptly investigate the allegation. If the superintendent has reasonable cause to believe that this section or the lawful provisions of the contract of agency have been violated, ~~he~~ the superintendent shall, within thirty days of receipt of a request for review, conduct an adjudication hearing subject to Chapter 119. of the Revised Code, held upon not less than ten days' written notice to the agent and the insurer. Pending a final order in the adjudication hearing, the superintendent may take such interim action as necessary to protect the parties or the public. During the pendency of the proceeding before the superintendent, the contract of agency subject to the proceeding continues in force and division (C) of this section applies. The superintendent shall, within thirty days following such hearing, issue an order approving or disapproving the action of the insurer. All final orders and decisions of the superintendent are subject to judicial review as provided in Chapter 119. of the Revised Code.

(G) An insurer shall not cancel or nonrenew any policy of insurance written through an agent upon the sole ground of the termination of the agency until the expiration of the policy term or the twelve-month period following the effective date of the termination of the contract of agency,

whichever is earlier. However, during such period, an independent insurance agent may, subject to the current underwriting rules, guidelines, commission rates, and practices of the insurer, effect any necessary changes or endorsements to outstanding policies of insurance that are in force prior to the date of termination.

This section does not abridge, restrict, or supersede the rights of an agent to the ownership of expirations provided for in any contract with an insurer.

(H) Any information or documentation provided to an agent or the superintendent by an insurer under this section is confidential and shall be used by the superintendent only in the exercise of the proper functions authorized by this section. No insurer is liable for furnishing information or documentation in compliance with this section if the insurer acts without malice and in the reasonable belief that such information or documentation is warranted by this section.

(I) Notwithstanding division (H) of this section, the superintendent may do either of the following:

(1) Share the information or documentation that is the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential status of the confidential information or documentation and has authority to do so;

(2) Disclose any information or documentation that is the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(J) Notwithstanding divisions (H) and (I) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential information and documentation received pursuant to division (I)(1) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential status of the confidential information or documentation and has authority to do so.

puty rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose information and documentation that is the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(L) Nothing in this section shall prohibit the superintendent from receiving information and documentation in accordance with section 3901.045 of the Revised Code.

(M) The superintendent may enter into agreements governing the sharing and use of information and documentation consistent with the requirements of this section.

(N)(1) No waiver of any applicable privilege or claim of confidentiality in the information and documentation that is the subject of this section shall occur as a result of sharing or receiving information and documentation as authorized in divisions (I)(1), (J), and (L) of this section.

(2) The disclosure of information or documentation in connection with a regulatory or legal action pursuant to divisions (I)(2) and (K) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the information or documentation to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Sec. 3999.36. (A) As used in this section and sections 3999.37 and 3999.38 of the Revised Code:

(1) "Insurer" means any person that is authorized to engage in the business of insurance in this state under Title XXXIX of the Revised Code, any health insuring corporation, or any other person engaging either directly or indirectly in this state in the business of insurance or entering into contracts substantially amounting to insurance under section 3905.42 of the Revised Code.

(2) "Impaired" or "impairment" means a financial situation in which the insurer's assets are less than the sum of the insurer's minimum required capital, minimum required surplus, and all liabilities, as determined in accordance with the requirements for the preparation and filing of the insurer's annual financial statement.

(3) "Chief executive officer" means the person, irrespective of the person's title, designated by the board of directors or trustees of an insurer as the person charged with the responsibility of administering and implementing the insurer's policies and procedures.

(B) Whenever a chief executive officer of an insurer knows or has reason to know that the insurer is impaired, the chief executive officer shall provide written notice of the impairment to the superintendent of insurance and to each member of the board of directors or trustees of the insurer. The chief executive officer shall provide the notice as soon as reasonably possible, but no later than thirty days after the chief executive officer knows or has reason to know of the impairment. No chief executive officer shall fail to provide notice in compliance with this division.

(C) The notice received by the superintendent under division (B) of this section is confidential and is not a public record under section 149.43 of the Revised Code.

(D) Notwithstanding division (C) of this section, the superintendent may do any of the following:

(1) Disclose the notice upon obtaining prior written consent from the insurer to which the notice pertains;

(2) Share the notice that is the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential status of the notice and has authority to do so;

(3) Disclose the notice in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(E) Notwithstanding divisions (C) and (D) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential notices received pursuant to division (D)(2) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential status of the notice and has authority to do so.

(F) Notwithstanding divisions (C) and (D) of this section, the chief deputy rehabilitator, the chief deputy liquidator and other deputy rehabilitators and liquidators may disclose notices in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the

superintendent's official duties in any capacity.

(G) Nothing in this section shall prohibit the superintendent from receiving notices in accordance with section 3901.045 of the Revised Code.

(H) The superintendent may enter into agreements governing the sharing and use of notices consistent with the requirements of this section.

(I)(1) No waiver of any applicable privilege or claim of confidentiality in the notices that are the subject of this section shall occur as a result of sharing or receiving notices as authorized in divisions (D)(2), (E), and (G) of this section.

(2) The disclosure of a notice in connection with a regulatory or legal action pursuant to divisions (D)(3) and (F) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the notice to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Sec. 4727.18. (A) Except as ~~otherwise~~ provided in ~~this~~ division (C) of this section, any information arising from, obtained by, or contained in an investigation of a person licensed as a pawnbroker under this chapter performed by the superintendent of financial institutions is confidential information and is not a public record under section 149.43 of the Revised Code. ~~The superintendent, however, may share investigation information with a law enforcement agency.~~

(B) Except as ~~otherwise~~ provided in ~~this~~ division (C) of this section, any information arising from, obtained by, or contained in an investigation by the superintendent of any person the superintendent reasonably suspects has violated or is violating this chapter is confidential information and not a public record under section 149.43 of the Revised Code. ~~The superintendent, however, may share investigation information with a law enforcement agency.~~

(C) Information made confidential by division (A) or (B) of this section may only be disclosed, discovered, or introduced into evidence as follows:

(1) To a law enforcement agency;

(2) In connection with criminal proceedings;

(3) In any action taken or litigation by or against the superintendent in connection with the powers, duties, and obligations imposed upon the superintendent by this chapter;

(4) When and in the manner authorized in section 1181.25 of the Revised Code.

SECTION 2. That existing sections 111.15, 119.01, 1121.01, 1121.11,

1121.18, 1155.01, 1155.091, 1155.16, 1163.01, 1163.121, 1163.20, 1321.09, 1321.55, 1321.76, 1322.06, 1322.061, 1707.092, 1707.11, 1707.12, 1707.141, 1707.15, 1707.151, 1707.161, 1707.17, 1707.20, 1707.40, 1707.44, 1733.01, 1733.32, 1733.327, 1751.19, 3901.36, 3901.44, 3901.48, 3901.70, 3901.83, 3903.11, 3903.72, 3903.83, 3903.88, 3905.492, 3905.50, 3999.36, and 4727.18 of the Revised Code are hereby repealed.

SECTION 3. Section 1322.061 of the Revised Code, as enacted by Am. Sub. S.B. 76 of the 124th General Assembly (effective May 2, 2002), and as amended by this act, shall take effect May 2, 2002.

SECTION 4. Section 1322.06 of the Revised Code, as amended by this act, is repealed, effective May 2, 2002. The section is superseded by section 1322.06 of the Revised Code as it results from Am. Sub. S.B. 76 of the 124th General Assembly, which is scheduled to take effect May 2, 2002.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____