

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**S. B. No. 346**

**Senator Bacon**

**Cosponsors: Senators Jones, Beagle**

—

**A B I L L**

To amend section 3905.14 of the Revised Code to 1  
regulate certificates of insurance prepared or 2  
issued as evidence of property or casualty 3  
insurance coverage. 4

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

**Section 1.** That section 3905.14 of the Revised Code be 5  
amended to read as follows: 6

**Sec. 3905.14.** (A) As used in sections 3905.14 to 3905.16 of 7  
the Revised Code: 8

(1) "Insurance agent" includes a limited lines insurance 9  
agent, surety bail bond agent, and surplus line broker. 10

(2) "Refusal to issue or renew" means the decision of the 11  
superintendent of insurance not to process either the initial 12  
application for a license as an agent or the renewal of such a 13  
license. 14

(3) "Revocation" means the permanent termination of all 15  
authority to hold any license as an agent in this state. 16

(4) "Surrender for cause" means the voluntary termination of 17  
all authority to hold any license as an agent in this state, in 18

lieu of a revocation or suspension order. 19

(5) "Suspension" means the termination of all authority to 20  
hold any license as an agent in this state, for either a specified 21  
period of time or an indefinite period of time and under any terms 22  
or conditions determined by the superintendent. 23

(B) The superintendent may suspend, revoke, or refuse to 24  
issue or renew any license of an insurance agent, assess a civil 25  
penalty, or impose any other sanction or sanctions authorized 26  
under this chapter, for one or more of the following reasons: 27

(1) Providing incorrect, misleading, incomplete, or 28  
materially untrue information in a license or appointment 29  
application; 30

(2) Violating or failing to comply with any insurance law, 31  
rule, subpoena, consent agreement, or order of the superintendent 32  
or of the insurance authority of another state; 33

(3) Obtaining, maintaining, or attempting to obtain or 34  
maintain a license through misrepresentation or fraud; 35

(4) Improperly withholding, misappropriating, or converting 36  
any money or property received in the course of doing insurance 37  
business; 38

(5) Intentionally misrepresenting the terms, benefits, value, 39  
cost, or effective dates of any actual or proposed insurance 40  
contract or application for insurance; 41

(6) Having been convicted of or pleaded guilty or no contest 42  
to a felony regardless of whether a judgment of conviction has 43  
been entered by the court; 44

(7) Having been convicted of or pleaded guilty or no contest 45  
to a misdemeanor that involves the misuse or theft of money or 46  
property belonging to another, fraud, forgery, dishonest acts, or 47  
breach of a fiduciary duty, that is based on any act or omission 48

relating to the business of insurance, securities, or financial services, or that involves moral turpitude regardless of whether a judgment has been entered by the court;

(8) Having admitted to committing, or having been found to have committed, any insurance unfair trade act or practice or insurance fraud;

(9) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of business in this state or elsewhere;

(10) Having an insurance agent license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(11) Forging or causing the forgery of an application for insurance or any document related to or used in an insurance transaction;

(12) Improperly using notes, any other reference material, equipment, or devices of any kind to complete an examination for an insurance agent license;

(13) Knowingly accepting insurance business from an individual who is not licensed;

(14) Failing to comply with any official invoice, notice, assessment, or order directing payment of federal, state, or local income tax, state or local sales tax, or workers' compensation premiums;

(15) Failing to timely submit an application for insurance. For purposes of division (B)(15) of this section, a submission is considered timely if it occurs within the time period expressly provided for by the insurer, or within seven days after the insurance agent accepts a premium or an order to bind coverage

from a policyholder or applicant for insurance, whichever is 79  
later. 80

(16) Failing to disclose to an applicant for insurance or 81  
policyholder upon accepting a premium or an order to bind coverage 82  
from the applicant or policyholder, that the person has not been 83  
appointed by the insurer; 84

(17) Having any professional license or financial industry 85  
regulatory authority registration suspended or revoked or having 86  
been barred from participation in any industry; 87

(18) Having been subject to a cease and desist order or 88  
permanent injunction related to mishandling of funds or breach of 89  
fiduciary responsibilities or for unlicensed or unregistered 90  
activities; 91

(19) Causing or permitting a policyholder or applicant for 92  
insurance to designate the insurance agent or the insurance 93  
agent's spouse, parent, child, or sibling as the beneficiary of a 94  
policy or annuity sold by the insurance agent or of a policy or 95  
annuity for which the agent, at any time, was designated as the 96  
agent of record, unless the insurance agent or a relative of the 97  
insurance agent is the insured or applicant; 98

(20) Causing or permitting a policyholder or applicant for 99  
insurance to designate the insurance agent or the insurance 100  
agent's spouse, parent, child, or sibling as the owner or 101  
beneficiary of a trust funded, in whole or in part, by a policy or 102  
annuity sold by the insurance agent or by a policy or annuity for 103  
which the agent, at any time, was designated as the agent of 104  
record, unless the insurance agent or a relative of the insurance 105  
agent is the insured or applicant; 106

(21) Failing to provide a written response to the department 107  
of insurance within twenty-one calendar days after receipt of any 108  
written inquiry from the department, unless a reasonable extension 109

of time has been requested of, and granted by, the superintendent 110  
or the superintendent's designee; 111

(22) Failing to appear to answer questions before the 112  
superintendent after being notified in writing by the 113  
superintendent of a scheduled interview, unless a reasonable 114  
extension of time has been requested of, and granted by, the 115  
superintendent or the superintendent's designee; 116

(23) Transferring or placing insurance with an insurer other 117  
than the insurer expressly chosen by the applicant for insurance 118  
or policyholder without the consent of the applicant or 119  
policyholder or absent extenuating circumstances; 120

(24) Failing to inform a policyholder or applicant for 121  
insurance of the identity of the insurer or insurers, or the 122  
identity of any other insurance agent or licensee known to be 123  
involved in procuring, placing, or continuing the insurance for 124  
the policyholder or applicant, upon the binding of the coverage; 125

(25) In the case of an agent that is a business entity, 126  
failing to report an individual licensee's violation to the 127  
department when the violation was known or should have been known 128  
by one or more of the partners, officers, managers, or members of 129  
the business entity; 130

(26) Submitting or using a document in the conduct of the 131  
business of insurance when the person knew or should have known 132  
that the document contained a writing that was forged as defined 133  
in section 2913.01 of the Revised Code; 134

(27) Misrepresenting the person's qualifications, status or 135  
relationship to another person, agency, or entity, or using in any 136  
way a professional designation that has not been conferred upon 137  
the person by the appropriate accrediting organization; 138

(28) Obtaining a premium loan or policy surrender or causing 139  
a premium loan or policy surrender to be made to or in the name of 140

an insured or policyholder without that person's knowledge and 141  
written authorization; 142

(29) Using paper, software, or any other materials of or 143  
provided by an insurer after the insurer has terminated the 144  
authority of the licensee, if the use of such materials would 145  
cause a reasonable person to believe that the licensee was acting 146  
on behalf of or otherwise representing the insurer; 147

(30) Soliciting, procuring an application for, or placing, 148  
either directly or indirectly, any insurance policy when the 149  
person is not authorized under this chapter to engage in such 150  
activity; 151

(31) Soliciting, selling, or negotiating any product or 152  
service that offers benefits similar to insurance but is not 153  
regulated by the superintendent, without fully disclosing, orally 154  
and in writing, to the prospective purchaser that the product or 155  
service is not insurance and is not regulated by the 156  
superintendent; 157

(32) Failing to fulfill a refund obligation to a policyholder 158  
or applicant in a timely manner. For purposes of division (B)(32) 159  
of this section, a rebuttable presumption exists that a refund 160  
obligation is not fulfilled in a timely manner unless it is 161  
fulfilled within one of the following time periods: 162

(a) Thirty days after the date the policyholder, applicant, 163  
or insurer takes or requests action resulting in a refund; 164

(b) Thirty days after the date of the insurer's refund check, 165  
if the agent is expected to issue a portion of the total refund; 166

(c) Forty-five days after the date of the agent's statement 167  
of account on which the refund first appears. 168

The presumption may be rebutted by proof that the 169  
policyholder or applicant consented to the delay or agreed to 170

permit the agent to apply the refund to amounts due for other coverages. 171  
172

(33) With respect to a surety bail bond agent license, 173  
rebating or offering to rebate, or unlawfully dividing or offering 174  
to divide, any commission, premium, or fee; 175

(34) Using a license for the principal purpose of procuring, 176  
receiving, or forwarding applications for insurance of any kind, 177  
other than life, or soliciting, placing, or effecting such 178  
insurance directly or indirectly upon or in connection with the 179  
property of the licensee or that of relatives, employers, 180  
employees, or that for which they or the licensee is an agent, 181  
custodian, vendor, bailee, trustee, or payee; 182

(35) In the case of an insurance agent that is a business 183  
entity, using a life license for the principal purpose of 184  
soliciting or placing insurance on the lives of the business 185  
entity's officers, employees, or shareholders, or on the lives of 186  
relatives of such officers, employees, or shareholders, or on the 187  
lives of persons for whom they, their relatives, or the business 188  
entity is agent, custodian, vendor, bailee, trustee, or payee; 189

(36) Offering, selling, soliciting, or negotiating policies, 190  
contracts, agreements, or applications for insurance, or annuities 191  
providing fixed, variable, or fixed and variable benefits, or 192  
contractual payments, for or on behalf of any insurer or multiple 193  
employer welfare arrangement not authorized to transact business 194  
in this state, or for or on behalf of any spurious, fictitious, 195  
nonexistent, dissolved, inactive, liquidated or liquidating, or 196  
bankrupt insurer or multiple employer welfare arrangement; 197

(37) In the case of a resident business entity, failing to be 198  
qualified to do business in this state under Title XVII of the 199  
Revised Code, failing to be in good standing with the secretary of 200  
state, or failing to maintain a valid appointment of statutory 201

agent with the secretary of state; 202

(38) In the case of a nonresident agent, failing to maintain 203  
licensure as an insurance agent in the agent's home state for the 204  
lines of authority held in this state; 205

(39) Knowingly aiding and abetting another person or entity 206  
in the violation of any insurance law of this state or the rules 207  
adopted under it. 208

(40)(a) Providing, issuing, modifying, altering, or signing a 209  
certificate of insurance that is on a form other than a standard 210  
certificate of insurance form promulgated by the association for 211  
cooperative operations research and development, the American 212  
association of insurance services, the insurance services office, 213  
or a nationally recognized insurance advisory organization that 214  
has been designated or approved by the department of insurance, or 215  
a form promulgated by the insurance company that has underwritten 216  
the policy referenced in the certificate of insurance. 217

(b) A certificate of insurance is not a policy of insurance 218  
and does not affirmatively or negatively amend, extend, or alter 219  
the coverage afforded by the policy of which the certificate of 220  
insurance provides evidence. A certificate of insurance shall not 221  
confer to a certificate holder new or additional rights beyond 222  
what the referenced policy of insurance expressly provides. 223

(c) No certificate of insurance shall contain references to 224  
contracts, including construction or service contracts, other than 225  
the referenced contract of insurance of which the certificate 226  
provides evidence. Notwithstanding any requirement, term, or 227  
condition of any contract or other document that a certificate of 228  
insurance may be issued for or pertain to, the insurance afforded 229  
by the policy of insurance referenced in the certificate is 230  
subject only to all the terms, exclusions, and conditions of that 231  
policy. 232



(d) A certificate holder shall have a legal right to notice of cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of insurance only if the certificate holder is named within the policy or any endorsement to the policy and the policy or endorsement requires notice to be provided to the certificate holder. The terms and conditions of the notice, including the required timing of the notice, are governed by the policy of insurance and cannot be altered by a certificate of insurance. 233  
234  
235  
236  
237  
238  
239  
240  
241

(e) As used in division (B)(40) of this section: 242

(i) "Certificate of insurance" means a document or instrument, regardless of how titled or described, that is prepared or issued by an insurer or insurance agent licensed under this chapter as evidence of property or casualty insurance coverage. "Certificate insurance" includes a document issued to an individual as evidence of purchasing coverage under a master policy. "Certificate of insurance" does not include a policy of insurance, insurance binder, policy endorsement, automobile identification card, or any document used to provide proof of financial responsibility for purposes of Chapter 4509. of the Revised Code. 243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253

(ii) "Certificate holder" means any person, other than a policyholder, that requests, obtains, or possesses a certificate of insurance. 254  
255  
256

(C) Before denying, revoking, suspending, or refusing to issue any license or imposing any penalty under this section, the superintendent shall provide the licensee or applicant with notice and an opportunity for hearing as provided in Chapter 119. of the Revised Code, except as follows: 257  
258  
259  
260  
261

(1)(a) Any notice of opportunity for hearing, the hearing officer's findings and recommendations, or the superintendent's 262  
263

order shall be served by certified mail at the last known address 264  
of the licensee or applicant. Service shall be evidenced by return 265  
receipt signed by any person. 266

For purposes of this section, the "last known address" is the 267  
residential address of a licensee or applicant, or the 268  
principal-place-of-business address of a business entity, that is 269  
contained in the licensing records of the department. 270

(b) If the certified mail envelope is returned with an 271  
endorsement showing that service was refused, or that the envelope 272  
was unclaimed, the notice and all subsequent notices required by 273  
Chapter 119. of the Revised Code may be served by ordinary mail to 274  
the last known address of the licensee or applicant. The mailing 275  
shall be evidenced by a certificate of mailing. Service is deemed 276  
complete as of the date of such certificate provided that the 277  
ordinary mail envelope is not returned by the postal authorities 278  
with an endorsement showing failure of delivery. The time period 279  
in which to request a hearing, as provided in Chapter 119. of the 280  
Revised Code, begins to run on the date of mailing. 281

(c) If service by ordinary mail fails, the superintendent may 282  
cause a summary of the substantive provisions of the notice to be 283  
published once a week for three consecutive weeks in a newspaper 284  
of general circulation in the county where the last known place of 285  
residence or business of the party is located. The notice is 286  
considered served on the date of the third publication. 287

(d) Any notice required to be served under Chapter 119. of 288  
the Revised Code shall also be served upon the party's attorney by 289  
ordinary mail if the attorney has entered an appearance in the 290  
matter. 291

(e) The superintendent may, at any time, perfect service on a 292  
party by personal delivery of the notice by an employee of the 293  
department. 294

(f) Notices regarding the scheduling of hearings and all 295  
other matters not described in division (C)(1)(a) of this section 296  
shall be sent by ordinary mail to the party and to the party's 297  
attorney. 298

(2) Any subpoena for the appearance of a witness or the 299  
production of documents or other evidence at a hearing, or for the 300  
purpose of taking testimony for use at a hearing, shall be served 301  
by certified mail, return receipt requested, by an attorney or by 302  
an employee of the department designated by the superintendent. 303  
Such subpoenas shall be enforced in the manner provided in section 304  
119.09 of the Revised Code. Nothing in this section shall be 305  
construed as limiting the superintendent's other statutory powers 306  
to issue subpoenas. 307

(D) If the superintendent determines that a violation 308  
described in this section has occurred, the superintendent may 309  
take one or more of the following actions: 310

(1) Assess a civil penalty in an amount not exceeding 311  
twenty-five thousand dollars per violation; 312

(2) Assess administrative costs to cover the expenses 313  
incurred by the department in the administrative action, including 314  
costs incurred in the investigation and hearing processes. Any 315  
costs collected shall be paid into the state treasury to the 316  
credit of the department of insurance operating fund created in 317  
section 3901.021 of the Revised Code. 318

(3) Suspend all of the person's licenses for all lines of 319  
insurance for either a specified period of time or an indefinite 320  
period of time and under such terms and conditions as the 321  
superintendent may determine; 322

(4) Permanently revoke all of the person's licenses for all 323  
lines of insurance; 324

(5) Refuse to issue a license; 325

(6) Refuse to renew a license;	326
(7) Prohibit the person from being employed in any capacity in the business of insurance and from having any financial interest in any insurance agency, company, surety bail bond business, or third-party administrator in this state. The superintendent may, in the superintendent's discretion, determine the nature, conditions, and duration of such restrictions.	327 328 329 330 331 332
(8) Order corrective actions in lieu of or in addition to the other penalties listed in division (D) of this section. Such an order may provide for the suspension of civil penalties, license revocation, license suspension, or refusal to issue or renew a license if the licensee complies with the terms and conditions of the corrective action order.	333 334 335 336 337 338
(9) Accept a surrender for cause offered by the licensee, which shall be for at least five years and shall prohibit the licensee from seeking any license authorized under this chapter during that time period. A surrender for cause shall be in lieu of revocation or suspension and may include a corrective action order as provided in division (D)(8) of this section.	339 340 341 342 343 344
(E) The superintendent may consider the following factors in denying a license, imposing suspensions, revocations, fines, or other penalties, and issuing orders under this section:	345 346 347
(1) Whether the person acted in good faith;	348
(2) Whether the person made restitution for any pecuniary losses suffered by other persons as a result of the person's actions;	349 350 351
(3) The actual harm or potential for harm to others;	352
(4) The degree of trust placed in the person by, and the vulnerability of, persons who were or could have been adversely affected by the person's actions;	353 354 355

(5) Whether the person was the subject of any previous administrative actions by the superintendent;	356 357
(6) The number of individuals adversely affected by the person's acts or omissions;	358 359
(7) Whether the person voluntarily reported the violation, and the extent of the person's cooperation and acceptance of responsibility;	360 361 362
(8) Whether the person obstructed or impeded, or attempted to obstruct or impede, the superintendent's investigation;	363 364
(9) The person's efforts to conceal the misconduct;	365
(10) Remedial efforts to prevent future violations;	366
(11) If the person was convicted of a criminal offense, the nature of the offense, whether the conviction was based on acts or omissions taken under any professional license, whether the offense involved the breach of a fiduciary duty, the amount of time that has passed, and the person's activities subsequent to the conviction;	367 368 369 370 371 372
(12) Such other factors as the superintendent determines to be appropriate under the circumstances.	373 374
(F)(1) A violation described in division (B)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (16), (17), (18), (19), (20), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), and (36) of this section is a class A offense for which the superintendent may impose any penalty set forth in division (D) of this section.	375 376 377 378 379 380
(2) A violation described in division (B)(15) or (21) of this section, or a failure to comply with section 3905.061, 3905.071, or 3905.22 of the Revised Code, is a class B offense for which the superintendent may impose any penalty set forth in division (D)(1), (2), (8), or (9) of this section.	381 382 383 384 385

(3) If the superintendent determines that a violation 386  
described in division (B)(36) of this section has occurred, the 387  
superintendent shall impose a minimum of a two-year suspension on 388  
all of the person's licenses for all lines of insurance. 389

(G) If a violation described in this section has caused, is 390  
causing, or is about to cause substantial and material harm, the 391  
superintendent may issue an order requiring that person to cease 392  
and desist from engaging in the violation. Notice of the order 393  
shall be mailed by certified mail, return receipt requested, or 394  
served in any other manner provided for in this section, 395  
immediately after its issuance to the person subject to the order 396  
and to all persons known to be involved in the violation. The 397  
superintendent may thereafter publicize or otherwise make known to 398  
all interested parties that the order has been issued. 399

The notice shall specify the particular act, omission, 400  
practice, or transaction that is subject to the cease-and-desist 401  
order and shall set a date, not more than fifteen days after the 402  
date of the order, for a hearing on the continuation or revocation 403  
of the order. The person shall comply with the order immediately 404  
upon receipt of notice of the order. 405

The superintendent may, upon the application of a party and 406  
for good cause shown, continue the hearing. Chapter 119. of the 407  
Revised Code applies to such hearings to the extent that that 408  
chapter does not conflict with the procedures set forth in this 409  
section. The superintendent shall, within fifteen days after 410  
objections are submitted to the hearing officer's report and 411  
recommendation, issue a final order either confirming or revoking 412  
the cease-and-desist order. The final order may be appealed as 413  
provided under section 119.12 of the Revised Code. 414

The remedy under this division is cumulative and concurrent 415  
with the other remedies available under this section. 416

(H) If the superintendent has reasonable cause to believe 417  
that an order issued under this section has been violated in whole 418  
or in part, the superintendent may request the attorney general to 419  
commence and prosecute any appropriate action or proceeding in the 420  
name of the state against such person. 421

The court may, in an action brought pursuant to this 422  
division, impose any of the following: 423

(1) For each violation, a civil penalty of not more than 424  
twenty-five thousand dollars; 425

(2) Injunctive relief; 426

(3) Restitution; 427

(4) Any other appropriate relief. 428

(I) With respect to a surety bail bond agent license: 429

(1) Upon the suspension or revocation of a license, or the 430  
eligibility of a surety bail bond agent to hold a license, the 431  
superintendent likewise may suspend or revoke the license or 432  
eligibility of any surety bail bond agent who is employed by or 433  
associated with that agent and who knowingly was a party to the 434  
act that resulted in the suspension or revocation. 435

(2) The superintendent may revoke a license as a surety bail 436  
bond agent if the licensee is adjudged bankrupt. 437

(J) Nothing in this section shall be construed to create or 438  
imply a private cause of action against an agent or insurer. 439

**Section 2.** That existing section 3905.14 of the Revised Code 440  
is hereby repealed. 441