Ohio Legislative Service Commission

Bill Analysis

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BILL SUMMARY

Alternative Investment Law

- Enacts an Alternative Investment Law that enables certain insurers to make investments according to a set of requirements different to those set out specifically for each insurer under continuing law.
- Requires insurers to apply to the Superintendent of Insurance (Superintendent) to be allowed to invest under the Alternative Investment Law and specifies the criteria the Superintendent must consider when considering such applications.
- Imposes restrictions on insurers investing under the Alternative Investment Law, including financial security benchmarks, minimum asset requirements, and investment allocation limitations.
- Prohibits insurers investing under the Alternative Investment Law from investing in a partnership as a general partner.
- Enables insurers to invest in derivative investments and prescribes the criteria for doing so.
- Authorizes the Superintendent to take certain discretionary actions to regulate insurers investing under the Alternative Investment Law.
- Authorizes the Superintendent to adopt rules related to the Alternative Investment Law.

Holding Company Systems Law

- Defines the terms "enterprise risk" and "security holder" for the purposes of the Holding Company Systems Law.

- Provides certain filing requirements for any controlling person of a domestic insurer seeking to divest its controlling interest in a domestic insurer.

- Adds to the list of registration statement requirements that if requested by the Superintendent of Insurance, the insurer must provide financial statements of an insurance holding company system, including all affiliates, statements that the insurer continues to maintain and monitor corporate governance and internal control procedures, and any other information required by the Superintendent by rule or regulation.

- Requires the ultimate controlling person of every insurer subject to registration to also file an annual enterprise risk report.

- Makes certain changes to the requirements for a registered insurer entering into certain transactions with any person in its insurance holding company system.

- Authorizes the Superintendent to examine any registered insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk.

- Makes other changes to the authorization of the Superintendent to order the production of records, books, or other information papers.

- Provides for the regulation of the Superintendent's participation in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations.

- Requires the Superintendent to enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of confidential and privileged information.

- Makes certain other changes to the law regarding confidential and privileged treatment of documents, materials, or the information.

Own Risk and Solvency Assessments Law

- Provides the requirements for maintaining a risk management framework and completing an own risk and solvency assessment.

- Requires insurers to maintain a risk management framework.

- Requires an insurer to submit to the Superintendent an own risk and solvency assessment summary report upon request.

- Prescribes report requirements.

- Makes exemptions to the Own Risk and Solvency Assessment Law.

- Prescribes requirements for the use of proprietary information.

Automated transactions in the business of insurance

- Provides generally for the regulation and use of automated transactions in the business of insurance.

- Applies the Uniform Electronics Transactions Act to the provisions relating to the use of automated transactions in the business of insurance.

- Requires an insurer to meet certain requirements in order to conduct the business of insurance via an automated transaction.

- Requires the details of an automated transaction to include certain statements and notices to the insured.

- Requires an insurer to allow an insured who agrees to participate in an automated transaction the option to transact business with the insurer in a nonautomated transaction.

- Requires notices of cancellation, nonrenewal, termination, or changes in the terms or conditions of a policy, certificate, or contract of insurance to be sent to the last known contact point supplied by the insured, and if the contact point is unknown, via regular mail to the last known address of the insured.

- Authorizes an insurer to post any policy, certificate, or contract of insurance, including any endorsements or amendments, to the insurer's web site in lieu of any other method of delivery as long as they do not contain personally identifiable information and meet certain requirements.

- Authorizes the Superintendent to adopt rules relating to the use of automated transactions in the business of insurance.

Reinsurance Law

- Imposes additional regulation on insurers looking to cede certain risks via reinsurance and on the reinsurers assuming those risks.

- Expands the types of assuming reinsurers that enable a ceding insurer to take credit (as an asset or reduction in liability) for reinsurance ceded to include a reinsurer who is accredited by the Superintendent and a reinsurer that is certified by the Superintendent and secures its obligations.

- Provides for the suspension of an accredited reinsurer's accreditation and a certified insurer's certification.

- Modifies the requirements related to assets held in trust under a reinsurance contract.

- Adds provisions relating to the management of reinsurance recoverables.

- Imposes additional requirements for reinsurance contracts.

Repeal of insurance company merger process

- Repeals the process enabling a domestic mutual insurance company to merge or consolidate with any other company.

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CONTENT AND OPERATION

Alternative Investment Law

The bill proposes an Alternative Investment Law that enables insurers to seek permission from the Superintendent of Insurance (Superintendent) to make investments according to a set of requirements different to those set out specifically for each insurer

under continuing law, unchanged by the bill. The bill applies to the following types of insurers:

- Small employer health care alliances;
- Health insuring corporations;
- Domestic legal reserve life insurance companies;
- Mutual protective associations;
- Mutual insurance companies;
- Fraternal benefit societies;
- Non-life, domestic insurance companies;
- Title insurance companies.

The bill also applies to reciprocal or interinsurance contracts.[1]

In determining whether to permit an entity to invest pursuant to provisions of the bill, the Superintendent is required to consider all of the following:

- The character, reputation, and financial standing of the officers of the entity;
- The character, reputation, and financial condition of the entity;
- The adequacy of the expertise, experience, character, and reputation of the person or persons who will manage the investments on behalf of the entity;
- The quality of the enterprise risk management program implemented by the entity to identify, assess, monitor, manage, and report on its key investment and related risks;
- Any other factor the Superintendent considers relevant.[2]

[1] R.C. 3906.02(A) and (B) and R.C. 1751.25(B), 3907.14(T), 3921.21(B), 3925.08(J), 3939.01(D), and 3953.15(B).

[2] R.C. 3906.02(C).

The bill specifies that domestic life insurers allocating into separate accounts funds that are to be applied to provide contracted life insurance benefits and contractual payments under continuing law must continue to invest the amounts contained in such accounts under the existing requirements.[3]

Financial security benchmarks

The bill establishes minimum financial security benchmarks for insurers seeking to invest under the Alternative Investment Law established under the bill.

Unless the Superintendent establishes alternative benchmarks (discussed below), the amount of the minimum financial security benchmark for each respective insurer is to be the greater of all of the following:

- Three hundred per cent of the authorized control level risk-based capital applicable to the insurer, less the asset valuation reserve as defined in the risk-based capital instructions;
- The minimum capital or minimum surplus required by statute or rule for maintenance of an insurer's certificate of authority in Ohio;
- All invested assets of an entity organized under Ohio Mutual Protective Insurance Law;
- For title insurers, the quotient of annualized net earned premiums divided by eight;
- For multiple employer welfare arrangements, the greater of 300% of the risk-based capital amount reported in the annual statement or the quotient of annualized net earned premiums divided by 12.[4]

Alternative benchmarks established by Superintendent

The bill authorizes the Superintendent to establish by order an alternative minimum financial security benchmark for a specific insurer that exceeds the amount arrived at under the guidelines discussed above.[5]

Additionally, the Superintendent is authorized by the bill to adopt rules changing the minimum financial security benchmark that is a multiple of authorized

[3] R.C. 3906.02(D).

[4] R.C. 3906.03(A)(1).

[5] R.C. 3906.03(A)(2).

control level risk-based capital, or equivalent risk-based capital calculation and apply that new standard to any class of insurers. However, any new amount so established cannot be less than the amount arrived at under the standards described above.[6]

Benchmark calculations

The bill requires the Superintendent to determine the amount of minimum capital or minimum surplus for use in determining minimum financial security benchmarks. The amount must be sufficient to provide reasonable security against contingencies affecting an insurer's financial position that are not fully covered by reserves or by reinsurance. In determining this amount, the Superintendent must consider all of the following:

- Increases in the frequency or severity of losses beyond the levels contemplated by the premium rates charged by an insurer;
- Increases in expenses beyond those contemplated by the premium rates charged by an insurer;
- Decreases in the value of assets, or the return on invested assets below those planned on by an insurer;
- Changes in economic conditions that would make liquidity more important than contemplated and would force untimely sale of assets or prevent timely investments;
- Currency devaluation to which an insurer may be subject;
- Any other contingencies the Superintendent identifies that may affect an insurer's operations.

In determining the minimum financial security benchmark (see **COMMENT** 1), the Superintendent must take into account the following additional factors:

- The most reliable information available as to the magnitude of the various risks that the Superintendent considers when determining the minimum capital or minimum surplus;
- The extent to which the risks that the Superintendent considers when determining the minimum capital or minimum surplus are independent

[6] R.C. 3906.03(A)(3).

of each other or are related, and whether any dependency is direct or inverse;

- The insurer's recent history of profits or losses;

- The extent to which the insurer has provided protection against adverse contingencies in ways other than the establishment of surplus, including redundancy of premiums, adjustability of contracts under their terms, investment valuation reserves, whether voluntary or mandatory, appropriate reinsurance, the use of conservative actuarial assumptions to provide a margin of security, reserve adjustments in recognition of previous rate inadequacies, contingency or catastrophe reserves, diversification of assets, and underwriting risks;

- Independent judgments on the soundness of the insurer's operations, as evidenced by the ratings of reliable professional financial reporting services;

- Any other factor the Superintendent considers relevant.[7]

Rights

The bill specifies that an insurer making investments under the Alternative Investment Law may, subject to the limitations of the law, loan or invest its funds, and may buy, sell, hold title to, possess, occupy, pledge, convey, manage, protect, insure, and deal with its investments, property, and other assets to the same extent as any other person or corporation under the laws of Ohio and of the United States.[8]

General guidelines

With respect to all of the insurer's investments, the bill requires the board of directors of an insurer making investments under the Alternative Investment Law to exercise the judgment and care, under the circumstances then prevailing, that persons of reasonable prudence, discretion, and intelligence would exercise in the management of a like enterprise. The bill requires investments to be of sufficient value, liquidity, and diversity to assure the insurer's ability to meet its outstanding obligations based on reasonable assumptions as to new business production for current lines of business. As part of its exercise of judgment and care, the board of directors are to take into account

[7] R.C. 3906.03(B)(2).

[8] R.C. 3906.04(A).

the prudence evaluation criteria outlined in the Alternative Investment Law, which are discussed in greater detail in "**Prudent investment policy**," below.[9]

Internal controls

An insurer making investments under the Alternative Investment Law is required by the bill to establish and implement internal controls and procedures to assure compliance with investment policies and procedures to assure that all of the following are met:

- The insurer's investment staff and any consultants used are reputable and capable;
- A periodic evaluation and monitoring process occurs for assessing the effectiveness of investment policy and strategies;
- The performance of the managing staff of the insurer is assessed in meeting the stated objectives within the investment policy through periodic presentations to the board of directors;
- Appropriate analyses are undertaken on the degree to which asset cash flows are adequate to meet liability cash flows under different economic environments. These analyses are required to be conducted at least annually and make specific reference to the economic conditions considered.[10]

Prudent investment policy

The bill requires an insurer making investments under the Alternative Investment Law to consider certain factors along with its business in determining whether an investment portfolio or investment policy is prudent. Likewise, the Superintendent is to consider these factors prior to making a determination that an insurer's investment portfolio or investment policy is not prudent. Insurers and the Superintendent are required to consider the following factors:

- General economic conditions;
- The possible effect of inflation or deflation;
- The expected tax consequences of investment decisions or strategies;

[9] R.C. 3906.04(B).

[10] R.C. 3906.04(C).

- The fairness and reasonableness of the terms of an investment considering its probable risk and reward characteristics and relationship to the investment portfolio as a whole;

- The extent of the diversification of the insurer's investments among all of the following:

    - Individual investments;

    - Classes of investments;

    - Industry concentrations;

    - Dates of maturity;

    - Geographic areas.

- The quality and liquidity of investments in affiliates;

- The investment exposure to all of the following risks, quantified in a manner consistent with the insurer's acceptable risk level as described in the insurer's written investment policy:

    - Liquidity;

    - Credit and default;

    - Systemic or market;

    - Interest rate;

    - Call, prepayment, and extension;

    - Currency;

    - Foreign sovereign.

- The amount of the insurer's assets, capital and surplus, premium writings, insurance in force, and other appropriate characteristics;

- The amount and adequacy of the insurer's reported liabilities;

- The relationship of the expected cash flows of the insurer's assets and liabilities, and the risk of adverse changes in the insurer's assets and liabilities;

- The adequacy of the insurer's capital and surplus to secure the risks and liabilities of the insurer;

- Any other factors relevant to whether an investment is prudent.[11]

Written investment policy

The bill requires those insurers acquiring, investing, exchanging, holding, selling, and managing investments under the Alternative Investment Law to establish and follow a written investment policy. Such a policy is to be reviewed and approved by the insurer's board of directors on at least an annual basis. The content and format of an insurer's investment policy are at the insurer's discretion, but are required to include written guidelines appropriate to the insurer's business with regard to all of the following:

- The general investment policy of the insurer, containing policies, procedures, and controls covering all aspects of the investing function;

- Quantified goals and objectives regarding the composition of classes of investments, including maximum internal limits;

- Periodic evaluations of the investment portfolio as to its risk and reward characteristics;

- Professional standards for the individuals making day-to-day investment decisions to assure that investments are managed in an ethical, prudent, and capable manner;

- The types of investments that are allowed and that are prohibited, based on their risk and reward characteristics and the insurer's level of experience with the investments;

- The relationship of classes of investments to the insurer's insurance products and liabilities;

- The manner in which the insurer intends to implement guidelines for determining a prudent investment portfolio or investment policy;

- The level of risk, based on quantitative measures, appropriate for the insurer given the level of capitalization and expertise available to the insurer.[12]

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[11] R.C. 3906.05.

Minimum assets

The bill requires an insurer investing under the Alternative Investment Law to maintain assets in an amount equivalent to the sum of its liabilities and its minimum financial security benchmark at all times, referred to as the "minimum asset requirement." The bill enables assets invested under the Alternative Investment Law to be counted toward satisfaction of the minimum asset requirement only so far as they are invested in compliance with the Alternative Investment Law and any applicable rules adopted, or orders issued, by the Superintendent under that law.

The bill requires the amount of admitted assets used to calculate the minimum asset requirement (see **COMMENT** 2) be reduced by the amount of the liability recorded on an insurer's statutory balance sheet for all of the following:

- The return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;
- Cash received in a dollar roll transaction;
- Other amounts reported as borrowed money.[13]

Alternative assets

The bill allows for assets other than invested assets to be counted toward satisfaction of the minimum asset requirement at admitted annual financial statement value. However, loans to officers or directors or their immediate families are not to be counted toward the satisfaction of the minimum asset requirement.

An investment held as an admitted asset by an insurer on the bill's effective date that qualified as such under the applicable Ohio insurance investment law is to remain qualified as an admitted asset under the Alternative Investment Law.

Regardless of any provision of the Alternative Investment Law to the contrary, the bill allows an asset acquired in the bona fide enforcement of creditors' rights or in bona fide workouts or settlements of disputed claims may be counted toward the minimum asset requirement for five years if the asset is real property and three years if the asset is not real property.[14]

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[12] R.C. 3906.06.

[13] R.C. 3906.11(A) to (C).

[14] R.C. 3906.11(D) to (F).

The bill authorizes the Superintendent to determine an insurer to be financially hazardous under the Reserve Valuation; Rehabilitation and Liquidation Law if either of the following apply:

- The insurer does not own the amount of assets needed to meet its minimum asset requirement.

- The insurer is unable to apply the amount of assets needed to meet its minimum asset requirement toward compliance with the Alternative Investment Law.[15]

Counted assets

All of the following classes of investments may be counted for the purposes of meeting the minimum asset requirement, whether they are made directly or as a participant in a partnership, joint venture, or limited liability company:

- Cash, and cash equivalents, in the direct possession of the insurer or on deposit with a financial institution regulated by any federal or state agency of the United States;

- Bonds, debt-like preferred stock, and other evidences of indebtedness of governmental units in the United States or Canada, or the instrumentalities of the governmental units, or private business entities domiciled in the United States or Canada, including asset-backed securities, Securities Valuation Office listed mutual funds, and Securities Valuation Office listed exchange traded funds;

- Loans with a loan to value ratio of no greater than 80% that are secured by mortgages, trust deeds, or other security interests in real property located in the United States or Canada, or secured by insurance against default issued by a government insurance corporation of the United States or Canada or by an insurer authorized to do business in Ohio;

- Unaffiliated common stock, or equity-like preferred stock, or equity interests in any United States or Canadian business entity, or shares of Securities Valuation Office listed mutual funds registered with the United States Securities and Exchange Commission, other than mutual funds and exchange traded funds listed with the Securities Valuation Office;

[15] R.C. 3906.11(G).

- Real property necessary for the convenient transaction of the insurer's business;

- Real property, together with the fixtures, furniture, furnishings, and equipment pertaining thereto in the United States or Canada, which produces, or after suitable improvement can reasonably be expected to produce, substantial income;

- Loans, securities, or other investments of the types described above in countries other than the United States and Canada;

- Bonds or other evidences of indebtedness of international development organizations of which the United States is a member;

- Loans upon the security of the insurer's own policies in amounts that are adequately secured by the policies and that in no case exceed the surrender values of the policies;

- Subsidiary or affiliate equity investments, including common stock, equity-like preferred stock, limited liability partnerships, or limited liability membership interests, of entities that are engaged exclusively in insurance, finance, or investments, and investment management companies that are registered with the Securities and Exchange Commission;

- Investments not otherwise permitted, not specifically prohibited by statute, to which both of the following apply:

    - The assets do not exceed 5% of the first $500 million of the insurer's admitted assets plus 10% of the insurer's admitted assets exceeding $500 million;

    - The assets qualified to meet the minimum asset requirement at the time they were acquired.[16]

Admitted asset limitations

The bill imposes the following limitations on assets used to determine an insurer's satisfaction of the minimum asset requirement:

[16] R.C. 3906.07.

- For bonds, debt-like preferred stock, and other evidences of governmental units of the United States or Canada and such investments of entities in foreign countries:

    - The aggregate amount of medium- and lower-grade investments must be not more than 20% of an insurer's admitted assets.

    - The aggregate amount of lower-grade investments must be not more than 10% of an insurer's admitted assets.

    - The aggregate amount of investments rated 5 or 6 by the Securities Valuation Office are not to be more than 5% of the insurer's admitted assets.

    - The aggregate amount of investments rated 6 by the Securities Valuation Office are not to be more than 1% of an insurer's admitted assets.

    - The aggregate amount of medium- and lower-grade investments that receive as cash income less than the yield for Treasury issues with a comparative average life are not to be more than 1% of an insurer's admitted assets.

- Loans with a loan to value ratio of no greater than 80% may consist of not more than 45% of an insurer's admitted assets in the case of life insurers and not more than 25% of an insurer's admitted assets in the case of insurers that are not life insurers.

- Unaffiliated common stock or equity interests are not to be more than 20% of an insurer's admitted assets in the case of life insurers and not more than 25% of an insurer's admitted assets in the case of insurers that are not life insurers.

- Real property necessary for the convenient transaction of the insurer's business is not to be more than 10% of an insurer's admitted assets.

- Real property that is income producing may consist of not more than 10% of an insurer's admitted assets.

- Loans, securities, or other specified investments in foreign countries are not to be more than 20% of an insurer's admitted assets.

- Bonds or other evidences of indebtedness of international development organizations of which the United States is a member are not to be more than 2% of an insurer's admitted assets.

- Subsidiary or affiliate equity investments of entities that are engaged exclusively in insurance, finance, or investments, and investment management companies must not be more than 10% of an insurer's admitted assets in the case of life insurers and not more than 3% of an insurer's admitted assets in the case of insurers that are not life insurers.[17]

For purposes of determining compliance with the minimum asset requirement, securities issued by a single entity and its affiliates, other than the government of the United States, or agencies whose securities are backed by the full faith and credit of the United States, and certain subsidiaries are not to be more than 5% of an insurer's admitted assets in the case of life insurers and are not to be more than 5% of an insurer's admitted assets in the case of insurers that are non-life insurers. Regardless of this requirement, investments in the voting securities of a depository institution, or any company that controls a depository institution, must not exceed 5% of an insurer's admitted assets.[18]

For purposes of determining compliance with these asset limitations, the admitted portion of assets of subsidiaries of an insurer are to be deemed to be owned directly by the insurer and any other investors in proportion to the market value of their interest in the subsidiaries. If interest in the subsidiary has no market value, then the asset allocation proportion is to be determined by the reasonable value of interest in the subsidiary as determined under the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual.[19]

If the Superintendent considers it necessary to get a proper evaluation of the investment portfolio of an insurer, the Superintendent may require that investments in mutual funds, exchange traded funds, pooled investment vehicles, or other investment companies be treated for purposes of the Alternative Investment Law as if the investor owned directly its proportional share of the assets owned by the mutual fund, exchange traded fund, pooled investment vehicle, or investment company.[20]

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[17] R.C. 3906.08(A).

[18] R.C. 3906.08(B).

[19] R.C. 3906.08(C).

[20] R.C. 3906.08(D).

Unless otherwise specified in the Alternative Investment Law, an insurer's investment limitations must be computed using the insurer's general account admitted assets, capital, or surplus as reported in the insurer's most recent annual financial statement required to be filed with the Superintendent.[21]

Foreign currencies

An insurer investing under the Alternative Investment Law that is doing business that requires the insurer to make payment in different currencies must have investments in securities in each of these currencies in an amount that, independent of all other investments, meets the requirements of the Alternative Investment Law, as applied separately to the insurer's obligations in each currency. The bill authorizes the Superintendent to, by order, exempt an insurer, or, by rule, a class of insurers, from this requirement if the obligations in other currencies are small enough that no significant problem for financial solidity would be created by substantial fluctuations in relative currency values.[22]

Prohibitions

The bill prohibits an insurer investing under the Alternative Investment Law from making certain investments; insurers that maintain prohibited assets may be subject to a rehabilitation action filed by the Superintendent with a court of common pleas.

An insurer investing under the Alternative Investment Law is not to invest in a partnership as a general partner.[23]

Divestment of prohibited investments

For those insurers that have prohibited investments, the bill requires the Superintendent to set a reasonable amount of time, not to exceed five years, for disposal of a prohibited investment in hardship cases if the insurer demonstrates that the investment was legal when made or the result of a mistake made in good faith, or if the Superintendent determines that the sale of the asset would be contrary to the interests of insureds, creditors, or the general public.[24]

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[21] R.C. 3906.08(E).

[22] R.C. 3906.09.

[23] R.C. 3906.10(A), (B), and (D).

[24] R.C. 3906.10(C).

Derivative investments

Prior to an insurer entering into derivative transactions, the bill requires the board of directors of an insurer investing under the Alternative Investment Law to approve a derivative use plan. The derivative use plan must require the insurer, when entering into a derivative transaction that carries a risk of losing more than the amount invested in a derivative, to establish a liability in its financial statements for the full amount of that potential loss.

Prior to entering into derivative transactions, an insurer must file with the Superintendent a copy of its derivative use plan and internal controls, for informational purposes. The insurer must keep current the copy of its derivative use plan and internal controls filed with the Superintendent. The insurer is not to enter into derivative transactions until 30 calendar days after the date on which the Superintendent receives the derivative use plan and internal controls. The bill authorizes the Superintendent to adopt rules prescribing the form and content of derivative use plans, as well as any internal controls the Superintendent considers necessary.

The bill requires an insurer engaging in hedging transactions or replication transactions to do both of the following:

- Maintain its position in any outstanding derivative instrument used as part of a hedging transaction or replication transaction for as long as the hedging transaction or replication transaction remains in effect;

- Demonstrate to the Superintendent, upon request, that any derivative transaction entered into and involving hedging transaction or replication transaction is an effective hedging transaction or replication transaction. The insurer must be able to demonstrate this at the time the derivative transaction is entered into, and for as long as the transaction continues to be in place.[25]

Discretionary action by the Superintendent

The bill authorizes the Superintendent, if the Superintendent determines that an insurer's investment practices do not meet the requirements of the Alternative Investment Law, to, after notification to the insurer of the Superintendent's findings, order the insurer to make changes necessary to comply with the Alternative Investment Law.[26]

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[25] R.C. 3906.12.

[26] R.C. 3906.13(A).

The bill authorizes the Superintendent, if the Superintendent determines that the financial condition, current investment practice, or current investment plan of an insurer are or may endanger the interests of insureds, creditors, or the general public, to impose reasonable additional restrictions upon the admissibility or valuation of investments and may impose restrictions on the investment practices of the insurer, including prohibiting an investment or requiring the divestment of an investment.[27]

The bill authorizes the Superintendent to count toward satisfaction of the minimum asset requirement any assets that an insurer is required to invest under the laws of a country other than the United States as a condition for doing business in that country if the Superintendent finds that counting them does not endanger the interests of the insurer's insureds or creditors, or the general public.[28]

If the Superintendent is satisfied by evidence of the solidity of an insurer and the competence of management and its investment advisors, the bill authorizes the Superintendent, after a hearing, to, by order, adjust the investment class limitations for that insurer, to the extent that the Superintendent is satisfied that the interests of the insurer's insureds and creditors and the general public are sufficiently protected. Such adjustments, in aggregate, must be limited to an amount equal to 10% of the insurer's liabilities.[29]

Hearings

The bill enables an insurer subject to a discretionary action taken by the Superintendent to request a hearing within 30 days of the date of the order. The hearing is to be held in compliance with Administrative Procedure Act and must be held privately unless the insurer requests a public hearing.[30]

Rules

The bill authorizes the Superintendent to, in accordance with the Administrative Procedure Act to adopt rules interpreting and implementing the provisions of the Alternative Investment Law. The bill specifically authorizes the Superintendent to adopt one or more of the following restrictions on investments in rules:

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[27] R.C. 3906.13(B).

[28] R.C. 3906.13(C).

[29] R.C. 3906.13(D).

[30] R.C. 3906.14.

- For defined classes of insurers, special procedural requirements, including special reports and prior approval on investments, as well as disapproval of investments subsequent to either;

- Substantive restrictions on investments of defined classes of insurers, including all of the following:

    - Specification of classes of assets that may not be counted toward satisfaction of the minimum asset requirement even though the assets may be counted for unrestricted insurers;

    - Specification of maximum amounts of assets that an insurer may invest in a single investment, issue, or class or group of classes of investments that must be expressed as percentages of total assets, capital, surplus, legal reserves, or other variables;

    - Prescription of qualitative tests for investments and conditions under which investments may be made, including requirements of specified ratings from investment advisory services, listing on specified stock exchanges, collateral, marketability, currency matching, and the financial and legal status of the issuer and its earnings capacity.[31]

If the Superintendent is satisfied by evidence of the solidity of an insurer and the competence of management and its investment advisors, the bill authorizes the Superintendent, after a hearing, to, by order, grant an exemption to that insurer from any such restriction adopted in rules to the extent that the Superintendent is satisfied that the interests of the insurer's insureds and creditors, as well as the general public, are protected.[32]

Definitions

The bill defines the following terms for the purposes of the "**Alternative Investment Law**" portion of the bill:

- "Annual financial statement" means an insurer's statutorily required financial statement under the insurer's respective authorizing chapter of the Revised Code.

[31] R.C. 3906.16(A) and (B).

[32] R.C. 3906.16(C).

- "Cash equivalent" means a short-term, highly liquid investment that is both readily convertible to known amounts of cash and so near its maturity that it presents an insignificant risk of change in value because of changes in interest rates, and that has an original maturity date, to the entity holding the investment, of three months or less.

- "Derivative instrument" means an item appropriately reported in schedule DB, covering derivative instruments, insurance futures and insurance futures options, of an insurer's annual financial statement, or their successor schedules, pursuant to applicable annual statement instructions or statutory accounting guidelines.

- "Derivative transaction" means a transaction involving the use of one or more derivative instruments.

- "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce either of the following:

    - The risk of economic loss due to a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring;

    - The currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.

- "Lower-grade investment" means a rated credit instrument or debt-like preferred stock rated 4, 5, or 6 by the Securities Valuation Office.

- "Medium-grade investment" means a rated credit instrument or debt-like preferred stock rated 3 by the Securities Valuation Office.

- "Minimum asset requirement" is the requirement that an insurer maintain assets in an amount equal to the sum of the insurer's liabilities and its minimum financial security benchmark.

- "Replication" means a derivative transaction used to modify the cash flow characteristics of one or more investments held by an insurer in a manner so that the aggregate cash flows of the derivative instruments and investments reproduce the cash flows of another investment having a higher risk-based capital charge than the risk-based capital charge of the original instruments or investments.

- "Securities Valuation Office" means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office.

- "Securities Valuation Office listed mutual fund" means a money market mutual fund or short-term bond fund that is registered with the United States Securities and Exchange Commission under the "Investment Company Act of 1940" and that has been determined by the Securities Valuation Office to be eligible for special reserve and reporting treatment, rather than as common stock.

- "Securities Valuation Office exchange traded fund" means a bond or preferred stock exchange traded fund that is registered with the United States Securities and Exchange Commission under the "Investment Company Act of 1940" and that has been rated 1 or 2 by the Securities Valuation Office and determined by the Office to be eligible for special reserve and reporting treatment, rather than as common stock.[33]

Insurance holding company systems

Mergers and acquisitions of domestic insurers

Under the bill, any controlling person of a domestic insurer seeking to divest its controlling interest in a domestic insurer must file a confidential notice of its proposed divestiture with the Superintendent of Insurance at least 30 days prior to the cessation of control, and provide a copy of the confidential notice to the insurer. The bill authorizes the Superintendent to require the person seeking to divest the controlling interest to file for and obtain approval of the transaction. The bill also requires that the information remain confidential until the conclusion of the transaction unless the Superintendent, in the Superintendent's discretion, determines that the confidential treatment will interfere with enforcement of these requirements. However, under the bill, the above requirements do not apply if the person has filed a statement containing certain information with the Superintendent, sent the statement to the domestic insurer, and the offer, request, invitation, agreement or acquisition has been approved by the Superintendent as required by continuing law.[34]

The bill expands the information that must be included in this statement. Under continuing law, the statement described above must be made under oath or affirmation, and must contain all of the following information:

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[33] R.C. 3906.01.

[34] R.C. 3901.321 (B)(2) and (3).

(1) The name and address of each acquiring party;

(2) If the acquiring party is an individual, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years;

(3) If the acquiring party is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the acquiring party and any of its predecessors must have been in existence; an informative description of the business intended to be done by the acquiring party and the acquiring party's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the acquiring party, who perform or will perform functions appropriate to such positions (including the information required in (2) above);

(4) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including any pledge of the domestic insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration;

(5) Fully audited financial information as to the earnings and financial condition of each acquiring party for its preceding five fiscal years, or for such lesser period as the acquiring party and any of its predecessors must have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(6) Any plans or proposals which each acquiring party may have to liquidate such domestic insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(7) The number of shares of any security of such issuer or such controlling person that each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was determined;

(8) The amount of each class of any security of such issuer or such controlling person which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(9) A full description of any contracts, arrangements, or understandings with respect to any security of such issuer or such controlling person in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or

option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom such contracts, arrangements, or understandings have been made.

(10) A description of the purchase of any security of such issuer or such controlling person during the year preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(11) A description of any recommendations to purchase any security of such issuer or such controlling person made during the year preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(12) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities of such issuer or such controlling person, and, if distributed, of additional solicitation material relating thereto;

(13) The terms of any agreement, contract, or understanding made with or proposed to be made with any broker or dealer as to solicitation of securities of such issuer or such controlling person for tender, and the amount of any fees, commissions, or other compensation to be paid to brokers or dealers with regard thereto;

(14) With respect to proposed affiliations between depository institutions or any affiliate thereof, within the meaning of the Gramm-Leach-Bliley Act of 1999[35] and a domestic insurer, the proposed effective date of the acquisition or change of control;

(15) Such additional information as the Superintendent may by rule prescribe as necessary or appropriate for the protection of policyholders of the domestic insurer or in the public interest.

Under the bill, the statement must also include both of the following:

(1) An agreement by the person required to file the statement that the person will provide the annual registration required by the Insurance Holding Company System Law for so long as the person has control of the domestic insurer;

(2) An acknowledgment by the person required to file the statement that the person and all subsidiaries within the person's control in the insurance holding

[35] Pub. L. No. 106-102, 113 Stat. 1338.

company system will provide information to the Superintendent upon request as necessary to evaluate enterprise risk to the insurer.[36]

Under the bill, "enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole. "Enterprise risk" includes anything that would cause the insurer's risk-based capital to fall into company action level or would cause the insurer to be in a hazardous financial condition.[37]

Registration requirements

Under continuing law, every insurer that is authorized to do business in Ohio and that is a member of an insurance holding company system must register with the Superintendent of Insurance, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in Ohio law. Additionally, continuing law requires registration not later than 30 days after an insurer becomes subject to registration, unless for good cause shown the Superintendent extends the time for registration.[38]

Continuing law requires a registration statement to be filed on a form provided by the Superintendent. The bill adds that the registration statement must be filed with the Superintendent in a format provided by the Superintendent.

The bill expands what must be included in the registration statement. Under continuing law, the registration statement must contain current information and the bill requires the information to be about all of the following:

(1) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(2) The identity of every member of the insurance holding company system;

(3) Statutorily specified agreements in force, relationships subsisting, and transactions currently outstanding between the insurer and its affiliates;

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[36] R.C. 3901.321(C).

[37] R.C. 3901.32(C).

[38] R.C. 3901.33(A).

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Superintendent.

The bill adds the following to this list of requirements:

(1) If requested by the Superintendent, financial statements of an insurance holding company system, including all affiliates. Financial statements may include annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933,[39] or the Securities Exchange Act of 1934.[40] The insurer may satisfy the request by providing the Superintendent with the most recently filed parent corporation financial statements that have been filed with the Securities and Exchange Commission.

(2) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

(3) Any other information required by the Superintendent by rule or regulation.[41]

Additionally, the bill requires the ultimate controlling person of every insurer subject to registration to file an annual enterprise risk report. Under the bill, the report must, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The ultimate controlling person is required by the bill to file the report with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the National Association of Insurance Commissioners.[42]

Under continuing law, the failure to file any required registration statement or any amendment thereto may result in the suspension, revocation, or refusal to renew

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[39] 48 Stat. 74, 15 U.S.C. 77a.

[40] 48 Stat. 881, 15 U.S.C. 78a.

[41] R.C. 3901.33(B).

[42] R.C. 3901.33(K).

the insurer's license or authority to do business in Ohio for such period as the Superintendent finds is required for the protection of policyholders or the public. The bill adds that the failure to file a required enterprise report would result in the same potential penalties by the Superintendent.[43]

Transaction standards

Under the bill, transactions within an insurance holding company system to which an insurer subject to registration is a party, must be subject to certain standards under continuing law. Existing law requires material transactions by registered insurers with their affiliates to be subject to those standards. The continuing law standards include the following:

(1) The terms must be fair and reasonable.

(2) Charges or fees for services performed must be reasonable.

(3) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices that are consistently applied.

(4) The books, accounts, and records of each party must be so maintained as to clearly and accurately disclose the precise nature and details of the transactions. The bill adds that this includes such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(5) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(6) Agreements for cost-sharing services and management services must include such provisions as required by the Superintendent of Insurance in rule or regulation. This last provision is added by the bill.[44]

Prior review of proposed transactions

Under continuing law, an insurer that is subject to registration is prohibited from entering into certain transactions with any person in its insurance holding company system until 30 days after the Superintendent of Insurance has received written notice of the insurer's intention to enter into the transaction and if, during that period, the Superintendent has not disapproved the proposed transaction. The bill adds that this

[43] R.C. 3901.33(L) and 3901.37, not in the bill.

[44] R.C. 3901.34(A).

prohibition includes amendments or modifications of affiliate agreements previously filed that are subject to the materiality standards contained in the specific transactions listed below. Additionally, the bill requires that the notice for amendments or modifications must include the reasons for the change and the financial impact on the domestic insurer. Under the bill, informal notice must be reported to the Superintendent within 30 days after termination of a previously filed agreement.

The bill requires the above requirements to apply to the following continuing law transactions:

(1) Any sale, purchase, exchange of assets, loan, extension of credit, guarantee, or investment, if the transaction equals or exceeds, with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets as of the next preceding December 31 or 25% of the insurer's surplus as regards policyholders as of the next preceding December 31 or, with respect to life insurers, 3% of the insurer's admitted assets as of the next preceding December 31;

(2) Any loan or extension of credit to any person that is not an affiliate of the insurer, if certain circumstances apply;

(3) Reinsurance agreements or modifications. Including, under the bill, both of the following:

(a) All reinsurance pooling agreements (added by the bill);

(b) Agreements in which the reinsurance premium or the change in the insurer's liabilities (continuing law), or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years (added by the bill), equals or exceeds 5% of the insurer's surplus as regards policyholders as of the next preceding December 31.

(4) All management agreements, service contracts, and cost-sharing arrangements. The bill also adds tax allocation agreements and guarantees to this list.

(5) Any other material transaction that the Superintendent determines may render the insurer's surplus as regards policyholders unreasonable in relation to the insurer's outstanding liabilities and inadequate to its financial needs.[45]

[45] R.C. 3901.341(A).

Production of records

Under the bill, the Superintendent of Insurance is authorized to examine any registered insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis. The bill authorizes the Superintendent to order a registered insurer to produce, under continuing law, such records, books, or other information papers in the possession of the insurer and its affiliates. The bill authorizes this action by the Superintendent as may be reasonably necessary to determine compliance with the Holding Company Systems Law.

The bill removes from existing law the provision that authorizes this action for the purposes of ascertaining the financial condition or legality of conduct of such insurer, but only if the Superintendent finds that an examination of such insurer by other means would be inadequate or the interests of the policyholders of such insurer may be adversely affected. Additionally, the bill removes from existing law that in the event such insurer fails to comply with such order, the Superintendent has the power to examine such affiliates to obtain such information.

In order to determine compliance with the Holding Company Systems Law, the bill also authorizes the Superintendent to order any registered insurer to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to a contractual relationship, statutory obligation, or other method. Under the bill, if the insurer cannot obtain the information requested by the Superintendent, the insurer must provide the Superintendent a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. The bill authorizes the Superintendent to require, after notice and hearing, that an insurer pay a penalty of up to $10,000 per day whenever it appears to the Superintendent that the detailed explanation is without merit, or the Superintendent may suspend or revoke the insurer's license.

Finally, if the insurer fails to comply with an order of the Superintendent, the bill authorizes the Superintendent to issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with the record production provisions. Under the bill, upon the failure or refusal of any person to obey a subpoena, the Superintendent may petition the Court of Common Pleas of Franklin County for an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order, under the bill, must be punishable as contempt of court. The bill requires a person who receives a subpoena to appear as a witness at the place specified in the subpoena within Ohio. Under the bill, the person is entitled to the same fees and mileage as a witness in a civil action in the court of common pleas, and any

fees, mileage, or actual expenses necessarily incurred in securing the attendance of a witness and their testimony must be itemized and charged against the insurer being examined.[46]

Supervisory colleges for domestic insurers

Under the bill, the Superintendent of Insurance is authorized to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with the Holding Company Systems Law. In participating, the bill authorizes the Superintendent to do all of the following:

(1) Initiate the establishment of a supervisory college;

(2) Clarify the membership and participation of other supervisors in the supervisory college;

(3) Clarify the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

(4) Coordinate the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing;

(5) Establish a crisis management plan.

Under the bill, each registered insurer is liable for and must pay the reasonable expenses of the Superintendent's participation in a supervisory college including reasonable travel expenses. The bill authorizes the Superintendent to establish a regular assessment to the insurer for the payment of these expenses. A supervisory college may, under the bill, be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates.

In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers, the bill authorizes the Superintendent to participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. Under the bill, the Superintendent may enter into agreements in accordance with law regarding confidential and privileged treatment of documents and information that

[46] R.C. 3901.35.

provide the basis for cooperation between the Superintendent and the other regulatory agencies, and the activities of the supervisory college.

However, under the bill, none of the authorizations described above delegate to the supervisory college the authority of the Superintendent to regulate or supervise the insurer or its affiliates within its jurisdiction.[47]

Confidential and privileged treatment of documents, materials, or other information under the bill

Under the bill, documents, materials, or other information in the possession or control of the Department of Insurance are required, under continuing law, to be given confidential and privileged treatment and is not subject to subpoena. The bill requires that this information is not subject to the Public Records Law or discovery, and is not admissible in evidence in any private civil action. Under continuing law, this requirement applies to such information that is obtained by or disclosed to the Superintendent of Insurance or any other person in the course of an examination or investigation, and all information reported pursuant to the Holding Company Systems Registration Law.[48]

Authorized publication of documents, materials, or other information

Under the bill, the Superintendent must not make the documents, materials or other information public unless one of the following applies:

(1) The Superintendent uses the documents, materials, or other information in furtherance of any regulatory or legal action brought as a part of the Superintendent's official duties.

(2) The Superintendent has obtained the prior written consent of the insurer to which the documents, materials, or other information pertain to the disclosure (similar to existing law).

(3) The Superintendent, under continuing law, after giving the insurer and those affiliates that are the subject of the documents, materials, or the information notice and the opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the disclosure in which case, under the bill, the

[47] R.C. 3901.351.

[48] R.C. 3901.36(A).

Superintendent may make disclosures as the Superintendent considers appropriate (similar to existing law but expanded to include materials).[49]

Under the bill, neither the Superintendent nor any person who receives documents, materials, or other information while acting under the authority of the Superintendent or with whom such documents, materials, or other information are shared is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information.[50]

Authorized sharing of documents, materials, or other information

In order to assist in the performance of the Superintendent's duties, the bill authorizes the Superintendent to share documents, materials, or other information, including the confidential and privileged documents, materials, or other information. Continuing law authorizes this sharing with other local, state, federal, and international regulatory and law enforcement agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and the bill adds members of any supervisory college. Continuing law requires that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged documents, materials, or other information and has the authority to do so. The bill requires that this authority must be legal and verified in writing.

However, under the bill, the Superintendent may share confidential and privileged documents, materials, or other information reported pursuant to the Holding Company Systems Registration Law only with superintendents of states having statutes or regulations relating to confidentially that are substantially similar to Ohio's and who have agreed in writing not to disclose the information.

Additionally, the bill authorizes the Superintendent to receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The bill requires the Superintendent to maintain as confidential or privileged any such document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.[51]

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[49] R.C. 3901.36(A).

[50] R.C. 3901.36(B).

[51] R.C. 3901.36(C).

Under the bill, the sharing of information by the Superintendent pursuant to the Holding Company Systems Law does not constitute a delegation of regulatory or rule-making authority. The Superintendent is solely responsible for the administration, execution, and enforcement of the provisions of the bill. Additionally, under continuing law, no waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information must occur as a result of sharing or receiving documents and information from the Superintendent pursuant to the Holding Company Systems Law. [52]

Agreements with the National Association of Insurance Commissioners

The bill requires the Superintendent to enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information under the Holding Company Systems Law. Under the bill, the written requirements must do all of the following:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the Association and its affiliates and subsidiaries, including procedures and protocols for sharing by the Association with other state, federal, or international regulators;

(2) Specify that ownership of information shared with the Association and its affiliates and subsidiaries remains with the Superintendent and the Association use of the information is subject to the direction of the Superintendent;

(3) Require prompt notice to be given to an insurer whose confidential information is in the possession of the Association or its affiliates or subsidiaries and is subject to a request or subpoena for disclosure or production;

(4) Require the Association and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the Association and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the Association and its affiliates and subsidiaries.[53]

Documents, materials, or other information in the possession or control of the Association, under the bill, are required to be given confidential and privileged

[52] R.C. 3901.36(E) and (F).

[53] R.C. 3901.36(D).

treatment and must not be subject to the Public Records Law, subpoena, or discovery, and must not be admissible in evidence in any private civil action.[54]

Confidential and privileged treatment of documents and information under existing law

The bill removes the following provisions from existing law relating to the confidential and privileged treatment of documents and information:

(1) The Superintendent is authorized to share documents and information 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.

(2) The Superintendent is authorized to share documents and information with local, state, and federal prosecutors.

(3) The Superintendent is authorized to disclose documents and information 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) The Superintendent is authorized to enter into agreements with NAIC to share confidential or privileged documents or information with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided the recipient maintains the confidential or privileged status of the document or information and has authority to do so.

(5) The chief deputy rehabilitator, the chief deputy liquidator, and other chief deputy rehabilitators and liquidators are authorized to disclose documents and information in the furtherance of any regulator 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.

(6) The Superintendent is authorized to receive documents and information from local, state, federal, and international regulatory and law enforcement agencies, from local, state, and federal prosecutors, as well as 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 as long as the Superintendent maintains as confidential or privileged any document or information received with notice or the understanding that the document or information is

[54] R.C. 3901.36(G).

confidential or privileged under the laws of the jurisdiction that is the source of the document or information.

(7) Generally, the Superintendent is authorized to enter into agreements governing the sharing and use of documents and information.

(8) The disclosure of a document or other information in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination of the document or information to person not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under the laws of Ohio or the common law.[55]

Own risk and solvency assessments

The bill provides the requirements for maintaining a risk management framework and completing an own risk and solvency assessment, and to provide guidance and instructions for filing an own risk and solvency assessment summary report with the Superintendent. These requirements are to apply to all insurers domiciled in Ohio, unless otherwise exempt as described in further detail below.

Declaration of intent

The bill states that the General Assembly finds and declares that the own risk and solvency assessment summary report will contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. The bill states that it is the intent of the General Assembly that the own risk and solvency assessment summary report is to be a confidential document filed with the Superintendent, that the own risk and solvency assessment summary report will be shared only as stated the Own Risk and Solvency Assessment Law to assist the Superintendent in the performance of the Superintendent's duties, and that in no event is the own risk and solvency assessment summary report to be subject to public disclosure.[56]

[55] R.C. 3901.36.

[56] R.C. 3901.371.

Framework

The bill requires insurers to maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement can be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.[57]

Periodic assessment

Under the bill, an insurer, or the insurance group of which the insurer is a member, must regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual. The own risk and solvency assessment must be conducted not less than annually, but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.[58]

Submission requirements

The bill requires, upon the request of the Superintendent of Insurance, and not more than once annually, an insurer must submit to the Superintendent an own risk and solvency assessment summary report, or any combination of reports that together contain the information described in the Own Risk and Solvency Assessment Guidance Manual, applicable to the insurer or the insurance group of which it is a member. Notwithstanding any request from the Superintendent, if the insurer is a member of an insurance group, the insurer must submit this required report if the Superintendent is the lead state commissioner of the insurance group as determined by the procedures within the financial analysis handbook adopted by the National Association of Insurance Commissioners (NAIC).[59]

Report requirements

The bill requires the report to include a signature of the insurer or insurance group's chief risk officer, or other executive having responsibility for the oversight of the insurer's enterprise risk management process, attesting to the best of the officer's or executive's belief and knowledge that the insurer applies the enterprise risk management process described in the own risk and solvency assessment summary

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[57] R.C. 3901.373.

[58] R.C. 3901.374.

[59] R.C. 3901.375(A).

report, and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.[60]

An insurer may comply with the report requirement by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.[61]

Exemptions

The bill exempts insurers from the Own Risk and Solvency Assessment Law requirements if both of the following apply:

- The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, less than $500 million.

- The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, less than $1 billion.

The bill stipulates that the annual direct written and unaffiliated assumed premium does not include premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood program.[62]

If an insurer meets the individual insurer requirement for exemption, but the insurance group of which the insurer is a member does not qualify for an exemption, and if an own risk and solvency assessment summary report is required pursuant to the Self Risk and Solvency Assessment Law, then the bill requires the summary report to include every insurer within the insurance group. This requirement may be satisfied if the insurer submits more than one own risk and solvency assessment summary report for any combination of insurers provided the combination of reports includes every insurer within the insurance group.[63]

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[60] R.C. 3901.375(B).

[61] R.C. 3901.375(C).

[62] R.C. 3901.376(A).

[63] R.C. 3901.376(B).

If an insurer does not meet the individual insurer requirement for exemption, but the insurance group of which it is a member does qualify for the exemption, then the insurer must only file an own risk and solvency assessment summary report if required under the applicable provision of the Self Risk and Solvency Assessment Law.[64]

An insurer that does not qualify for exemption may apply to the Superintendent for a waiver from the requirements of Self Risk and Solvency Assessment Law based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the bill authorizes the Superintendent to consider any of the following:

- The type and volume of business written;
- The ownership and organizational structure of the insurer or insurance group of which the insurer is a member;
- Any other factor the Superintendent considers relevant to the insurer or insurance group of which the insurer is a member.

If the insurer is part of an insurance group with insurers domiciled in more than one state, the Superintendent is required to coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.[65]

If an insurer that qualifies for an exemption pursuant to division subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement, or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer is provided by the bill with one year, after the year the threshold is exceeded, to comply with the requirements of the Own Risk and Solvency Assessment Law.[66]

Self risk and solvency assessment

Notwithstanding the exemptions stated above, the Superintendent may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report in any of the following circumstances:

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[64] R.C. 3901.376(C).

[65] R.C. 3901.376(D).

[66] R.C. 3901.376(F).

- Based on unique circumstances, including the type and volume of business written and the ownership and organizational structure of the insurer or insurance group of which the insurer is a member;

- At the request of a federal agency;

- At the request of an international supervisor;

- If the insurer has risk-based capital for a company action level event as set forth in the Reserve Valuation; Rehabilitation and Liquidation Law, meets one or more of the standards set out in that law related to delinquency, hazardous business practices, and the suspension of an insurer to do business in Ohio under that same law, or otherwise exhibits qualities of a troubled insurer as determined by the Superintendent.[67]

Own risk and solvency assessment report requirements

The own risk and solvency assessment summary report is required to be prepared consistent with the Own Risk and Solvency Assessment Guidance Manual and all documentation and supporting information must be maintained and made available for examination upon request of the Superintendent.[68]

The bill requires that the Superintendent's review of the own risk and solvency assessment summary report, and any additional requests for information, are to be made using similar procedures used in the analysis and examination of multi-state or global insurers and insurance groups.[69]

Proprietary information

Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession or control of the Department of Insurance that are obtained by, created by, or disclosed to the Superintendent, or any other person under the Self Risk and Solvency Assessment Law, are recognized under the bill as being proprietary and to contain trade secrets.[70]

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[67] R.C. 3901.376(E).

[68] R.C. 3901.377(A).

[69] R.C. 3901.377(B).

[70] R.C. 3901.378(A).

Such documents are considered confidential by law and privileged, and are not admissible into evidence in any private civil action or subject to a public records request, subpoena, or discovery.[71]

Regulatory action

The bill enables the Superintendent to use such privileged documents, materials, or other information in furtherance of any regulatory or legal action brought as a part of the Superintendent's official duties.

However, the Superintendent is prohibited from otherwise making the documents, materials, or other information public without the prior written consent of the insurer.[72]

Neither the Superintendent nor any person who receives documents, materials, or other own risk and solvency assessment related information, through examination or otherwise, while acting under the authority of the Superintendent or with whom such documents, materials, or other information are shared pursuant to the Own Risk and Solvency Assessment Law are to be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information.[73]

Authorization in relation to regulatory duties

In order to assist in the performance of the Superintendent's regulatory duties, the bill authorizes the Superintendent to do either of the following:

- Upon request, share documents, materials, or other own risk and solvency assessment related information, including confidential and privileged documents, materials, or information and proprietary and trade secret documents, with other state, federal and international financial regulatory agencies, members of any supervisory college as described in the Superintendent of Insurance Law, the NAIC, or any third-party consultant designated by the Superintendent;

- Receive documents, materials, or other own risk and solvency assessment related information, including confidential and privileged documents, materials, or information, and proprietary and trade secret documents,

[71] R.C. 3901.378(B).

[72] R.C. 3901.378(C).

[73] R.C. 3901.378(D).

from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college and from the NAIC.[74]

The recipient of any such information is required to agree in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and verify in writing their legal authority to maintain confidentiality. If the Superintendent receives any such information, the Superintendent is required to maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.[75]

The bill requires the Superintendent to enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to the Own Risk and Solvency Assessment Law. The written agreement required to do all of the following:

- Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to the Own Risk and Solvency Assessment Law, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers;

- Provide that the recipient of information agrees in writing to maintain the confidentiality and privileged status of the own risk and solvency assessment related documents, materials, or other information obtained pursuant to the Own Risk and Solvency Assessment Law, and has verified in writing the legal authority to maintain confidentiality;

- Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to the Own Risk and Solvency Assessment Law remains with the Superintendent and the NAIC or a third-party consultant's use of the information is subject to the direction of the Superintendent;

- Prohibit the NAIC or a third-party consultant from storing the information obtained pursuant to the Own Risk and Solvency Assessment Law in a permanent database after the underlying analysis is completed;

[74] R.C. 3901.378(E)(1).

[75] R.C. 3901.378(E)(2).

- Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to the Own Risk and Solvency Assessment Law is subject to a request or subpoena for disclosure or production of the information;

- Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer that was obtained pursuant to the Own Risk and Solvency Assessment Law;

- Require the NAIC or a third-party consultant to use documents, materials, or other information, including the own risk solvency assessment summary report, for the specific purposes as directed by the Superintendent;

- Prohibit the NAIC or a third-party consultant from using, sharing, or disclosing any documents, materials, or other information, including the own risk and solvency assessment summary report, beyond the scope of the responsibilities outlined by the Superintendent;

- Provide for the insurer's written consent in the case of an agreement involving a third-party consultant.[76]

The sharing of information, materials, and documents by the Superintendent pursuant to the Own Risk and Solvency Assessment Law do not constitute a delegation of regulatory or rulemaking authority, and the Superintendent is solely responsible for the administration, execution, and enforcement of the Own Risk and Solvency Assessment Law.[77]

No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other own risk and solvency assessment related information is to occur as a result of disclosure of such own risk and solvency assessment related information, materials, or documents to the Superintendent as a result of sharing authorized in the Own Risk and Solvency Assessment Law.[78]

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[76] R.C. 3901.378(E)(3).

[77] R.C. 3901.378(F).

[78] R.C. 3901.378(G).

Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant pursuant to the Own Risk and Solvency Assessment Law is confidential by law and privileged, and is not to be subject to a public records request, subpoena, discovery, or admissible in evidence in any private civil action.[79]

For the purposes of sections the Own Risk and Solvency Assessment Law, the bill makes the following definitions:

- "Insurance group" means those insurers and affiliates included within an insurance holding company system.

- "Own risk and solvency assessment" means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

- "Own risk and solvency assessment guidance manual" means the current version of the own risk and solvency assessment guidance manual developed and adopted by the National Association of Insurance Commissioners and as amended from time to time. A change in the own risk and solvency assessment guidance manual will be effective on the first day of January following the calendar year in which the changes have been adopted by the National Association of Insurance Commissioners.

- "Own risk and solvency assessment summary report" means a confidential high-level summary of an insurer or insurance group's own risk and solvency assessment.[80]

Automated transactions in the business of insurance

In general, the bill provides for the regulation and use of automated transactions (see "**Definitions**," below) in the business of insurance. However, under the bill, the provisions relating to automated transactions in the business of insurance only apply to the method of delivery of notices or information to insureds and do not supersede any

[79] R.C. 3901.378(H).

[80] R.C. 3901.372.

time periods or content of notices otherwise required by Ohio laws relating to insurance.[81]

Uniform Electronics Transactions Act

Under the bill, notwithstanding any of Ohio's insurance laws, the Uniform Electronics Transactions Act (UETA)[82] applies to the business of insurance done by insurers in Ohio.[83]

General rules

Under continuing law, the UETA generally provides a statutory framework for the creation and use of information and records in electronic form, both in the private sector and within state government, and, with specified exceptions, gives legal effect to information, records, and signatures in electronic form. Continuing law specifies the following:

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.[84]

Scope and application

Under continuing law, UETA's provisions apply to electronic records and electronic signatures relating to a transaction. However, UETA *does not* apply to a transaction to the extent it is governed by (1) a law governing the creation and execution of wills, codicils, or testamentary trusts, or (2) the Ohio Uniform Commercial Code, except provisions of law pertaining to sales or leases, waivers or renunciations after a breach of contract, or the statute of frauds applicable to personal property.[85] In

[81] R.C. 3901.41(G).

[82] R.C. 1306.01 to 1306.23, not in the bill.

[83] R.C. 3901.41(B).

[84] R.C. 1306.06, not in the bill.

[85] R.C. 1306.02, not in the bill.

addition, UETA'S provisions apply to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after September 14, 2000.[86]

Also, continuing law does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.[87]

Automated transaction requirements

Under the bill, if an insured affirmatively agrees to conduct the business of insurance via an automated transaction, any information issued or delivered in writing is authorized to be issued or delivered electronically to a contact point (see "**Definitions**," below) provided by the insured, as long as all of the following apply:

(1) The transmission of information complies with UETA;[88]

(2) The details of the automated transaction are fully disclosed to the insured in the application, policy, certificate, contract of insurance, or by another method that ensures notice to the insured;

(3) The details of the automated transaction related to notices of cancellation, nonrenewal, termination, or changes in the terms or conditions in the policy, certificate, or contract of insurance are approved or accepted by the Superintendent of Insurance.

Additionally, the bill requires the details of the automated transaction to include all of the following, at minimum:

(1) A clear and conspicuous statement informing the insured of any right or option of the insured to receive a record on paper;

(2) The right of the insured to withdraw the insured's consent, and any consequences or fees if the insured withdraws consent;

(3) A description of the procedures the insured must use to withdraw consent and to update the insured's contact point.

Finally, the bill requires that an affirmative agreement to participate in a part of an automated transaction must not be used to confirm the insured's consent to transact

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[86] R.C. 1306.03, not in the bill.

[87] R.C. 1306.04(A), not in the bill.

[88] R.C. 1306.07 to 1306.14.

the entire business of insurance.[89] Under the bill, an insurer is required to allow an insured who agrees to participate in an automated transaction the option to transact business with the insurer in a nonautomated transaction as well.[90]

Notices of cancellation, nonrenewal, termination, or changes in the terms or conditions

Under the bill, an insurer must send all notices of cancellation, nonrenewal, termination, or changes in the terms or conditions in the policy, certificate, or contract of insurance to the last known contact point supplied by the insured. If the insurer has knowledge that the insured's contact point is no longer valid, the bill requires the insurer to send the information via regular mail to the last known address furnished to the insurer by the insured.[91]

The bill requires insurers to maintain all records of cancellation, nonrenewal, termination, and changes in the terms or conditions in the policy, certificate, or contract of insurance for a period of eight years.[92]

Information posted to an insurer's web site

Under the bill, any policy, certificate, or contract of insurance, including any endorsements or amendments, that does not contain personally identifiable information may be posted to the insurer's web site that is accessible by the general public in lieu of any other method of delivery. If the insurer elects to post any policy, certificate, or contract of insurance to the insurer's web site, the bill requires that all of the following apply:

(1) The policies, certificates, or contracts of insurance are readily accessible by the insured and, once the policies, certificates, or contracts of insurance are no longer used by the insurer in Ohio, they are stored in a readily accessible archive;

(2) The policies, certificates, or contracts of insurance are posted in such a manner that the insured can easily identify the insured's applicable policy, certificate, or contract and print or download the insured's documents without charge, and without the use of any special program or application that is not readily available to the public without charge;

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[89] R.C. 3901.41(C).

[90] R.C. 3901.41(E).

[91] R.C. 3901.41(D).

[92] R.C. 3901.41(F)(2).

(3) The insurer provides written notice at the time of issuance of the initial policy, certificate, contract, or any renewal forms of a method by which the insured may obtain upon request a paper or electronic copy of their policy, certificate, or contract without charge;

(4) The insurer clearly identifies the exact policies, certificates, or contracts of insurance purchased by the insured on any declaration page, summary of benefits, or other evidence of coverage issued to the insured;

(5) The insurer gives notice, in the manner it customarily communicates with an insured, of any changes to the policies or contracts of insurance, and of the insured's right to obtain upon request a paper or electronic copy of such forms or endorsements without charge.[93]

Adoption of rules

The bill authorizes the Superintendent of Insurance to adopt rules in accordance with the Administrative Procedure Act as the Superintendent considers necessary to carry out the purposes of the bill's provisions relating to automated transactions in the business of insurance.[94]

Definitions

The bill defines the following terms for the "**Automated transactions in the business of insurance**" portion of the bill:

- "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction. "Automated transaction" includes electronic transactions between two or more persons conducting business pursuant to the laws of Ohio relating to insurance.

- "Contact point" means any electronic identification to which messages can be sent, including any of the following:

    - An electronic mail address;

[93] R.C. 3901.41(F)(1).

[94] R.C. 3901.41(H).

- An instant message identity;
- A wireless telephone, or any other personal electronic communication device;
- A facsimile number.

- "Personally identifiable information" means any individually identifiable information gathered in connection with an insurance transaction, including an individual's name, address, Social Security number, and banking information.[95]

Reinsurance Law

Overview

The bill imposes additional regulation on insurers looking to cede certain risks via reinsurance and on the reinsurers assuming those risks.

Certification and accreditation of assuming insurers

Current law enables ceding insurers to take credit for any reinsurance ceded, as either an asset or a reduction of liability, if the reinsurance is ceded to a specified type of reinsurer. The bill adds to that list a reinsurer accredited as such by the Superintendent and a reinsurer certified as such by the Superintendent that secures its obligations in accordance with specified criteria, detailed below.[96]

Accreditation without secured obligations

In order to be eligible for reinsurance accreditation without secured obligations, the bill requires the assuming insurer to do all of the following:

- File with the Superintendent evidence of its submission to Ohio's jurisdiction;
- Submit to Ohio's authority to examine its books and records;
- Maintain a license to transact insurance or reinsurance in at least one state or, in the case of a United States branch of a foreign or alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

[95] R.C. 3901.41(A)(1), (2), and (6).

[96] R.C. 3901.62(A)(2) and (5).

- File annually with the Superintendent a copy of its annual statement filed with the insurance department of its state of domicile, and a copy of its most recent audited financial statement;

- Demonstrate to the satisfaction of the Superintendent that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

The bill specifies that an assuming insurer is considered to meet the requirement that the insurer demonstrate that it has adequate financial capacity to meet its obligations if it maintains a surplus with regard to policyholders in an amount not less than $20 million, and the Superintendent has not denied its accreditation within 90 days after submission of its application.[97]

Certification with secured obligations

In order to be eligible for reinsurance certification with secured obligations, the bill requires the assuming insurer to do all of the following:

- Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction as determined by the Superintendent;

- Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the Superintendent in rule or regulation;

- Maintain financial strength ratings from two or more rating agencies that meet criteria the Superintendent sets forth in rule or regulation;

- Agree to submit to the jurisdiction of Ohio, appoint the Superintendent as its agent for service of process in Ohio, and agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by ceding insurers in the United States if it resists enforcement of a final judgment from the United States;

- Agree to meet applicable information filing requirements as determined by the Superintendent with respect to an initial application for certification and on an ongoing basis;

[97] R.C. 3901.62(A)(2) and (B).

- Satisfy any other requirements for certification considered relevant by the Superintendent.[98]

The bill permits an association, including incorporated and individual unincorporated underwriters, to be a certified reinsurer. In order to be eligible for certification, an association, in addition to satisfying the requirements listed above, must also meet the following requirements:

- The association must satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, or the net liabilities, of the association and its members, which must include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Superintendent in order to provide adequate protection.

- The incorporated members of the association must not be engaged in any business other than underwriting as a member of the association, and must be subject to the same level of regulation and solvency control by the association's domiciliary regulator as the unincorporated members.

- The association must provide to the Superintendent an annual certification by the association's domiciliary regulator of the solvency of each underwriter member within 90 days after its financial statements are due to be filed with the association's domiciliary regulator. If a certification is unavailable, the association must provide the Superintendent with financial statements prepared by independent public accountants of each underwriter member of the association.[99]

The bill requires the Superintendent to create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered by the Superintendent for certification as a certified reinsurer. The bill requires the Superintendent to consider the list of qualified jurisdictions published through the National Association of Insurance Commissioner's committee process in determining qualified jurisdictions. If the Superintendent approves a jurisdiction as qualified that does not appear on the list, the Superintendent must provide justification in accordance with criteria to be developed by the Superintendent under rule or regulation. Jurisdictions within the United States that meet the requirement for accreditation under the National Association of Insurance

[98] R.C. 3901.62(A)(5) and (D)(1).

[99] R.C. 3901.62(D)(2).

Commissioner's financial standards and accreditation program must be recognized as qualified. To determine if a domiciliary jurisdiction not located within the United States is eligible to be recognized as a qualified jurisdiction, the Superintendent must evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States.

A qualified jurisdiction must agree to share information and cooperate with the Superintendent with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction is not to be recognized as a qualified jurisdiction if the Superintendent has determined that the jurisdiction does not adequately and promptly enforce final judgments and arbitration awards from the United States. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Superintendent may revoke the reinsurer's certification or suspend the reinsurer's certification indefinitely. The Superintendent may consider additional factors as the Superintendent considers appropriate. [100]

The bill requires the Superintendent to assign a rating to each certified reinsurer giving due consideration to the financial strength ratings assigned to the insurer by rating agencies. The Superintendent is required by the bill to publish a list of all certified reinsurers and their ratings.[101]

The bill requires a certified reinsurer to secure obligations assumed from a ceding insurer within the United States at a level consistent with its rating as specified by the Superintendent in rule or regulation. Except as otherwise provided below, the bill requires a certified reinsurer to maintain security in a form acceptable to the Superintendent and consistent with the Reinsurance Law, or in a multibeneficiary trust on behalf of the ceding insurer, in order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer.

If a certified reinsurer chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust for the benefit of the ceding insurer, the bill requires the certified reinsurer to maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by the bill or comparable laws of other jurisdictions within the United States, and for its trust-related obligations.

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[100] R.C. 3901.62(D)(3).

[101] R.C. 3901.62(D)(4).

Upon termination of any such trust account, the bill requires a certified reinsurer to be bound by the language of the trust and any agreement with the Superintendent that has principal regulatory oversight of each distinct trust account to fund any deficiency of any other trust account out of the remaining surplus of such trust as a condition to certification.

With respect to obligations incurred by a certified reinsurer, if the security is insufficient, the bill requires the Superintendent to reduce the allowable credit by an amount proportionate to the deficiency. Additionally, the bill enables the Superintendent to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

A reinsurer whose certification has been terminated for any reason is generally to be treated by the Superintendent as a certified reinsurer required to secure 100% of its obligations. However, the Superintendent may continue to assign a higher rating to the reinsurer if the reinsurer is in inactive status or the reinsurer's certification has been suspended. With regard to this provision, "terminated" means revocation, suspension, voluntary surrender, or inactive status.[102]

If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the bill authorizes the Superintendent to defer to that jurisdiction's certification and rating assignment and the assuming insurer will be considered to be a certified reinsurer in Ohio.[103]

A certified reinsurer that ceases to assume new business in Ohio may request the Superintendent to permit it to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer is required by the bill to continue to comply with all applicable requirements, and the Superintendent is required to assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.[104]

Suspension of accreditation or certification

If either a reinsurer certified by the Superintendent or a reinsurer certified by the Superintendent that secures it obligations ceases to meet the requirements for accreditation or certification, the Superintendent may suspend or revoke the reinsurer's

[102] R.C. 3901.62(D)(5)(a) to (c), (e), and (f).

[103] R.C. 3901.62(D)(6).

[104] R.C. 3901.62(D)(7).

accreditation or certification after a hearing held pursuant to the Administrative Procedure Act. The suspension or revocation is not to take effect until after the Superintendent's order or a hearing, unless one of the following applies:

- The reinsurer waives its right to a hearing;
- The Superintendent's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer;
- The Superintendent finds that an emergency requires immediate action, and a court of competent jurisdiction has not stayed the Superintendent's action.[105]

While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with the Reinsurance Law, as amended by the bill.[106]

If the Superintendent revokes a reinsurer's accreditation or certification, the bill specifies that no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with the Reinsurance Law, as amended by the bill.[107]

Trusts maintained by assuming insurers

Under current law, a domestic ceding insurer may take credit for any reinsurance ceded if the assuming insurer maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers.[108] The bill expands the requirements for maintaining such a trust fund.

Under current law, among other requirements, for a single assuming insurer the trust must consist of a trusteed account representing the assuming insurer's liabilities

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[105] R.C. 3901.621(A).

[106] R.C. 3901.621(B).

[107] R.C. 3901.621(C).

[108] R.C. 3901.62(A)(4).

attributable to business underwritten in the United States, with a trusteed surplus of not less than $20 million being maintained. The bill adds an exception to this requirement. Under the bill, at any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the Superintendent, with principal regulatory oversight of the trust, is authorized to make a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of ceding insurers within the United States, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and must consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. However, the bill specifies that the minimum required trusteed surplus is not to be reduced to an amount that is less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by ceding insurers within the United States covered by the trust.[109]

The bill prescribes that the minimum trusteed surplus requirements are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred as a reinsurer that is accredited with secured obligations, except that such trust is required by the bill to maintain a minimum trusteed surplus of $10 million.[110]

Additional options for reinsurance credit

Under continuing law, for those situations where an insurer purchases reinsurance through an insurer, the insurer may still take credit for the reinsurance if both of the following are met:

- The reinsurance or security agreement contains specified provisions relating to the payment of the reinsurance;
- Funds for the reinsured liabilities are held by the ceding insurer or in trust as security for the payment of obligations under the reinsurance contract.[111]

[109] R.C. 3901.62(C)(1)(a).

[110] R.C. 3901.62(D)(5)(d).

[111] R.C. 3901.63(A).

Current law enables the required funds to be in various forms, including securities. The bill specifies that securities considered exempt from filing, as defined by the Purposes and Procedures Manual of the Securities Valuation Office, are also to be considered an appropriate form for such funds.[112]

Reinsurance recoverables

The bill makes provision for the management of reinsurance recoverables. The bill requires a domestic ceding insurer to take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer is required to notify the Superintendent within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceed 50% of the domestic ceding insurer's last reported surplus to policyholders, or after it has determined that reinsurance recoverables are likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.[113]

The bill requires that a ceding insurer must take steps to diversify its reinsurance program. A domestic ceding insurer must notify the Superintendent within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. This required notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.[114]

Reinsurance contract requirements

Current law imposes requirements for reinsurance contracts. The bill adds to these requirements.

If the assuming insurer is not licensed, or accredited or certified to transact insurance or reinsurance in Ohio, the credit permitted, as described above under "**Trusts maintained by assuming insurers**" is not to be allowed unless the assuming insurer agrees to do both of the following in the reinsurance agreements:

- If the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, at the request of the ceding insurer, the

[112] R.C. 3901.63(C)(2).

[113] R.C. 3901.631(A).

[114] R.C. 3901.631(B).

assuming insurer must submit to the jurisdiction of any court of competent jurisdiction in any state within the United States, comply with all requirements necessary to give the court jurisdiction, and abide by the final decision of the court or of any appellate court in the event of an appeal.

- The assuming insurer must designate the Superintendent or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

The bill specifies that this requirement is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.[115]

If the assuming insurer has authorization to do any business of insurance or reinsurance in Ohio, is accredited as a reinsurer, or is not authorized to do business in Ohio but is a risk-sharing entity in which participation is required in the entity's jurisdiction, then the credit permitted as a result of maintaining a trust or being certified are not to be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

- Regardless of any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by R.C. 3901.64(D)(3) (see **COMMENT** 3) or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee must comply with an order of the superintendent (insurance commissioner) with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the superintendent (insurance commissioner) with regulatory oversight all of the assets of the trust fund.

- The assets must be distributed by, and claims must be filed with and valued by, the superintendent (insurance commissioner) with regulatory oversight in accordance with the laws of the state, in which the trust is domiciled, that are applicable to the liquidation of domestic insurance companies.

[115] R.C. 3901.64(C).

- If the superintendent (insurance commissioner) with regulatory oversight determines that the assets of the trust fund, or any part thereof, are not necessary to satisfy the claims of the ceding insurers within the United States or the grantor of the trust, the superintendent (insurance commissioner) with regulatory oversight is required to return the assets or part thereof to the trustee for distribution in accordance with the trust agreement.

- The grantor is required by the bill to waive any right otherwise available to it under the laws of the United States that are inconsistent with this provision.[116]

Repeal of insurance company merger process

Current law enables a domestic mutual company to merge or consolidate with any other company and provides associated procedures. Such a mutual insurance company is required to present a petition setting forth the terms of the proposed merger or consolidation to the Superintendent. The petition is then presented to a commission composed of the Governor, or the Governor's representative, the Attorney General, and the Superintendent, which are required to consider and judge the petition. If no reasonable objection exists to the merger, the commission is authorized to approve it with unanimous consent. Any costs related to this process are to be paid by the company bringing the petition.

The bill repeals this process.[117]

COMMENT

1. R.C. 3906.03(B)(2) requires the Superintendent to consider certain factors when determining the "minimum financial security benchmark." It is unclear as to exactly what this refers, as the minimum financial security benchmark for an insurer is determined independent of the Superintendent, as prescribed in R.C. 3906.03(A)(1). This could be referring to either the alternative minimum financial security benchmarks authorized under R.C. 3906.03(A)(2) and (3) or the minimum capital or minimum surplus under R.C. 3906.03(B)(1), both of which are determined by the Superintendent.

2. It is unclear whether R.C. 3906.11(C) refers to calculating the minimum asset requirement itself or *compliance* with the minimum asset requirement.

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[116] R.C. 3901.64(D).

[117] R.C. 3907.09, 3907.10, 3907.11, and 3907.13 (repealed).

3. This cross-reference appears to be incorrect. R.C. 3901.64(D)(1) references "the amount required by division (D)(3)" of that same section. However, division (D)(3) of that section does not appear to require any sort of amount, but rather enables the Superintendent to return assets held in trust according to the related trust agreement, should the Superintendent determine that such action would be prudent.

HISTORY

ACTION	DATE
Introduced	06-04-13

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