



Ohio Legislative Service Commission

Ruhaiza Ridzwan

Fiscal Note & Local Impact Statement

Bill: [H.B. 313 of the 130th G.A.](#)

Date: November 12, 2013

Status: As Introduced

Sponsor: Reps. Hackett and Kunze

Local Impact Statement Procedure Required: No

Contents: To enact the Insurance Regulatory Modernization Act to revise the insurance laws regarding alternative investments, holding company systems, risk management, reserves kept for life insurance policies, automated transactions, reinsurance, and mergers and consolidations

State Fiscal Highlights

- The bill may increase the Department of Insurance's financial examination expenses to regulate and enforce the proposed alternative investment law. If there is any increase in such costs, it is likely to be minimal. Any such costs would be paid from the Superintendent's Examination Fund (Fund 5550). Any expenses from conducting such examination are paid by the company to the Superintendent and deposited into Fund 5550.
- The bill may also increase the Department of Insurance's administrative expenses related to the regulation and enforcement of the business of insurance in Ohio. If there is any increase in such costs, it is likely to be minimal. Any such costs would be paid from the Department of Insurance Operating Fund (Fund 5540).
- The bill allows the Superintendent of Insurance to impose certain penalties. This fiscal note assumes all revenue from penalties would be deposited into Fund 5540. The amount of revenue collected would depend on the compliance of insurers with the bill's requirements.

Local Fiscal Highlights

- The provision allowing the Superintendent to petition the Court of Common Pleas of Franklin County to compel persons to testify or produce documentary evidence related to the Holding Company Systems Law may increase the court costs. If there is any increase in such costs, it is likely to be minimal.

Detailed Fiscal Analysis

The bill proposes an alternative investment law and revises the insurance laws regarding holding company systems. The bill also provides the requirements for maintaining a risk management framework and completing an own risk and solvency assessment, and provides guidance and instructions for filing an own risk and solvency assessment summary report with the Superintendent of Insurance. Most of the provisions have no fiscal effect on the state and local governments. The LSC bill analysis provides a detailed description of the bill. The following are provisions that may have a fiscal effect on the Department of Insurance Operating Fund (Fund 5540) and the Superintendent's Examination Fund (Fund 5550).

Alternative investment law

Under the bill, the proposed alternative investment law would apply 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, nonlife domestic insurance companies, and title insurance companies. The bill also applies to reciprocal or interinsurance contracts. The bill provides that such insurers may apply to the Superintendent of Insurance for permission to make investments based on the requirements under the proposed law, in lieu of making investments as specified under current law. The bill requires the Superintendent to consider certain criteria in determining whether to permit an entity to invest pursuant to the proposed alternative investment law.

The bill specifies minimum financial security benchmarks for insurers seeking to invest under the proposed alternative investment law. The bill gives the Superintendent some discretion, providing that the Superintendent may establish, by order, a minimum financial security benchmark that exceeds the benchmarks under this bill, in specified circumstances. The bill also requires the Superintendent to determine the amount of minimum capital or minimum surplus for determining an insurer's minimum financial security benchmark.

Under H.B. 313, insurers must not invest in certain investments by statute or rules of the state. The bill also requires an insurer to file with the Superintendent a copy of its derivative use plan and internal controls, for informational purposes, prior to entering into derivative transactions. The bill specifies that any insurer who invests in prohibited assets may be subject to a rehabilitation action filed by the Superintendent with a court of common pleas. The bill also authorizes the Superintendent to adopt rules interpreting and implementing the provisions of the alternative investment law.

Insurance holding company systems

The bill provides that any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer must file a confidential notice of its proposed divestiture with the Superintendent at least 30 days prior to the cessation of control, and provide a copy of the confidential notice to the insurer. The bill also requires the ultimate controlling person of every insurer subject to registration to file an annual enterprise risk report. Under current law, the failure to file certain documents may result in the suspension, revocation, or refusal to renew 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 specifies that the failure to file a required enterprise report would result in the same potential penalties by the Superintendent, as specified under current law.

The bill 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, in order to determine compliance with the Holding Company Systems Law. 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 allows the Superintendent, after notice and hearing, to require that the insurer pay a penalty of up to \$10,000 per day whenever it appears to the Superintendent that the detailed explanation is without merit. The bill does not specify the use of any resulting revenue from the penalties, and LSC assumes those revenues will be deposited in the Department of Insurance Operating Fund (Fund 5540). The Superintendent may also suspend or revoke the insurer's license. In addition, 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. The bill provides that 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. Under the bill, a failure to obey the court order is punishable as contempt of court.

The bill authorizes the Superintendent 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. A supervisory college may 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. The bill specifies that each registered insurer is liable for and must pay the reasonable expenses of the Superintendent's participation in such supervisory college, including reasonable travel expenses. In addition, the bill makes changes to confidential and privileged treatment of

documents, materials, or other information under the bill. The bill also requires the Superintendent to enter into written agreements with the National Association of Insurance Commissioners (NAIC) governing sharing and use of information under the Holding Company Systems Law.

Own Risk and Solvency Assessment Law

The bill requires an insurer, beginning in 2015, upon the request of the Superintendent, and not more than once annually, to submit to the Superintendent an own risk and solvency assessment summary report, including the information described in the NAIC Own Risk and Solvency Assessment Guidance Manual, applicable to the insurer or the insurance group of which it is a member. The bill specifies that certain insurers that meet certain criteria are exempted from the requirements of the Own Risk and Solvency Assessment Law. In addition, an insurer that does not qualify for such exemption may apply to the Superintendent for a waiver.

Reinsurance law

The bill revises regulations related to reinsurance law. Under current law, insurance companies may take credit for any reinsurance ceded, either as an asset or as a reduction in liability, if the reinsurance is ceded to a specified type of reinsurer. The bill adds to the list of such reinsurers those approved by the Superintendent that meet specified requirements. In this context, the bill requires the Superintendent to create and publish a list of "qualified jurisdictions"; an assuming insurer licensed and domiciled in such jurisdictions would be eligible to be considered by the Superintendent for certification as a certified reinsurer. In determining the list, the Superintendent is required to consider the list of qualified jurisdictions published through the NAIC's committee process. The bill specifies that the Superintendent may revoke the reinsurer's certification or suspend the reinsurer's certification indefinitely if a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction. The bill also requires the Superintendent to assign a rating to each certified reinsurer and publish a list of all certified reinsurers and their ratings.

Other provisions

The bill makes changes related to automated transactions in the business of insurance. The bill authorizes the Superintendent of Insurance to adopt rules as the Superintendent considers necessary to carry out the purposes of the bill's provisions relating to automated transactions in the business of insurance. The bill also revises regulations related to life insurers and eliminates the process for a domestic mutual insurance company to merge or consolidate with any other company.

Fiscal effect

The bill may increase the Department of Insurance's financial examination expenses to regulate and enforce the proposed alternative investment law. Any such costs would be paid from the Superintendent's Examination Fund (Fund 5550). Currently, any expenses from conducting such examination are paid by the company to the Superintendent and deposited into Fund 5550. The bill may also increase the Department of Insurance's administrative costs to regulate and enforce the requirements related to the insurance laws regarding holding company systems, risk management, reserves kept for life insurance policies, automated transactions, and reinsurance. Any increase in administrative costs would be paid from the Department of Insurance Operating Fund (Fund 5540).

Provisions related to the liquidation of an insurer that is considered financially hazardous under the Reserve Valuation, Rehabilitation, and Liquidation Law would have no fiscal effect. Currently, when an Ohio domestic insurance company becomes insolvent and requires liquidation the Superintendent of Insurance would initiate a court action to place the company in liquidation. The Office of the Ohio Insurance Liquidator is technically a private trustee's office, overseen by the Franklin County Court of Common Pleas, and it would liquidate all assets and resolve all claims against the insolvent insurance company. The Office is funded by a share of the estate left by a liquidated insurance company. Thus, the cost of liquidating such insurer would be recovered from the insurer's assets.

The bill may also increase the Franklin County Court of Common Pleas' court costs due to provisions related to the Holding Company Systems Law. The bill allows the Superintendent to petition to the Court of Common Pleas of Franklin County for an order compelling the witness to appear and testify or produce documentary evidence related to the Holding Company Systems Law.