



# Ohio Legislative Service Commission

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## Bill Analysis

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### **S.B. 273**

131st General Assembly  
(As Introduced)

Sen. Bacon

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## **BILL SUMMARY**

- Requires insurers to make an annual disclosure to the Superintendent of Insurance on the company's corporate governance policies and practices (CGAD).
- Prescribes what information is to be included in a CGAD.
- Specifies that a CGAD and all related information is confidential.
- Authorizes the Superintendent to share confidential information as needed to fulfill the Superintendent's regulatory and legal responsibilities.
- Authorizes the Superintendent to hire consultants as necessary to review a CGAD.
- Authorizes the Superintendent to levy a fine against an insurer that does not submit its CGAD by June 1 of each year.
- Makes the effective date of the bill January 1, 2017.

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## **CONTENT AND OPERATION**

### **Overview**

The bill enacts the Corporate Governance Annual Disclosure Act, which requires insurance companies domiciled in Ohio to make a corporate governance annual disclosure (CGAD) to the Superintendent of Insurance on an annual basis. This report is to include all information necessary for the Superintendent to gain an understanding of an insurer's corporate governance structure policies, and practices and is to be filed by

the first day of June of each year.<sup>1</sup> The report is also to include a signature of the insurer's chief executive officer or corporate secretary attesting that the insurer has implemented the corporate governance practices described therein and that a copy of the CGAD has been provided to the insurer's board of directors or appropriate governing body.<sup>2</sup> The bill applies to individual, distinct insurers as well as groups of insurers bound together under a holding company.

## **Holding companies**

For multiple companies associated under a holding company, the company is supposed to determine a "lead state," which is the dominant state in which the company does business according to criteria prescribed by the National Association of Insurance Companies (NAIC). Such a company's CGAD is supposed to be submitted and reviewed by the insurance commissioner in its lead state, even if one or more of the insurance companies of which the holding company is composed is domiciled in Ohio. Note, however, that such a company is required to provide its CGAD to the Superintendent upon request.<sup>3</sup>

## **Relevant level of governance**

The bill authorizes an insurer or holding company to provide information at one or all of the following levels, as is most relevant:

- The ultimate controlling parent level;
- An intermediate holding company level;
- The individual legal entity level.

The insurer or holding company is also encouraged to make the CGAD at one of the following levels:

- The level at which the insurer's risk appetite is determined;
- The level at which the insurer's earnings, capital, liquidity, operations, and reputation are overseen collectively and at which the supervision of those factors is coordinated and exercised;

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<sup>1</sup> R.C. 3901.072(A), 3901.073(A)(1), and 3901.074(A)(2).

<sup>2</sup> R.C. 3901.073(C).

<sup>3</sup> R.C. 3901.073(A)(2) and (B).

- The level at which legal liability for failure of general corporate governance duties would be placed.

If a company uses any of these criteria in compiling its CGAD, then the company is required to indicate which of the criteria it used and the reasoning for any subsequent changes in the level of reporting.<sup>4</sup>

If an insurer already provides the information that it would provide in its CGAD in another document provided to the Superintendent, then the insurer may reference those documents in its CGAD and is not required to provide them again. This includes proxy statements filed in conjunction with an insurance holding company registration or other state or federal filings provided to the Department of Insurance.<sup>5</sup>

An insurer or holding company has discretion under the bill to provide its CGAD in a format of its choosing. Note, however, that the CGAD must be consistent with any relevant rules adopted by the Superintendent. All CGAD documentation and supporting information is to be maintained and made available for examination upon request of the Superintendent. Additionally, the Superintendent may request other information as necessary to provide a clear understanding of the insurer's corporate governance policies and the reporting or information system or controls implementing those policies.<sup>6</sup>

### **Confidential documents**

Documents, materials, or other information related to the CGAD in the possession of the Superintendent are designated as being confidential. As such, they are not admissible into evidence in any private civil action or subject to a public records request, subpoena, or discovery. However, the bill authorizes the Superintendent to use such documents in association with any regulatory or legal action brought as part of the Superintendent's official duties. The Superintendent must obtain the written authorization of an insurer before distributing CGAD information for any other purpose.<sup>7</sup> A person who receives such confidential information from the Superintendent cannot be permitted or compelled to testify in any private civil action concerning any such confidential information.<sup>8</sup>

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<sup>4</sup> R.C. 3901.073(D).

<sup>5</sup> R.C. 3901.073(E).

<sup>6</sup> R.C. 3901.074.

<sup>7</sup> R.C. 3901.075(C).

<sup>8</sup> R.C. 3901.075(D).

## Sharing confidential documents

The bill enables the Superintendent to share and receive confidential CGAD information in the course of performing the Superintendent's regulatory duties. The Superintendent may share or receive such confidential information from any of the following:

- Other financial regulatory bodies;
- Members of any supervisory college;<sup>9</sup>
- The NAIC;
- A third-party consultant providing services in relation to the CGAD.<sup>10</sup>

The recipient of any such information provided by the Superintendent must, in writing, agree to maintain the confidential status of the information and verify the recipient's authority to maintain the confidentiality. If the Superintendent receives such confidential information from another party, the Superintendent must maintain the confidentiality of the information, but is not required to provide any statement in writing to this effect.<sup>11</sup> The bill specifies that any sharing of confidential information on the part of the Superintendent is not a delegation of regulatory or rule-making authority and that the Superintendent is the sole entity responsible for enforcing the provisions of the bill.<sup>12</sup> The bill also specifies that the confidential status of CGAD documents and information is not waived or undone as a result of the Superintendent sharing such information.<sup>13</sup>

## Third-party consultants

The bill authorizes the Superintendent to retain third parties as necessary to review a CGAD at the expense of the applicable insurer.<sup>14</sup> Such a third-party consultant is to serve under the direction of the Superintendent in an advisory capacity and to

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<sup>9</sup> A supervisory college facilitates (1) the effectiveness of supervision of entities that belong to an insurance group, (2) the supervision of the group as a whole on a group-wide basis, and (3) improving the legal entity supervision of the entities within the group (R.C. 3901.351).

<sup>10</sup> R.C. 3901.075(E)(1).

<sup>11</sup> R.C. 3901.075(E)(2).

<sup>12</sup> R.C. 3901.075(F).

<sup>13</sup> R.C. 3901.075(G).

<sup>14</sup> R.C. 3901.076(A).



comply with the confidentiality requirements described above. The consultant must also verify that the consultant is free of any conflict of interest in relation to the applicable insurer. Finally, the consultant must verify that the consultant has procedures in place to ensure that the consultant remains free of conflict and that the consultant complies with the applicable confidentiality requirements.<sup>15</sup>

If the Superintendent enters into a written agreement with the NAIC or a third-party consultant, then the agreement must do all of the following:

- Specify procedures and protocols for maintaining the confidentiality of CGAD information shared between parties, including those procedures or protocols for the NAIC's sharing of such information related to a holding company operating in multiple states with only other state regulators;
- Provide that the recipient of information agrees in writing to maintain the confidential status of the CGAD information and that the recipient has the authority to maintain this status;
- Specify that ownership of such information remains with the Superintendent and that the NAIC's or third-party consultant's use of such information is subject to the direction of the Superintendent;
- Prohibit the NAIC or third-party consultant from storing such information in a permanent database after the underlying analysis is complete;
- Require the NAIC or third-party consultant to provide prompt notice to the Superintendent and to the insurer regarding any request or subpoena for disclosure of the insurer's CGAD information;
- Require the NAIC or third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or third-party consultant may be required to disclose confidential information about the insurer that was obtained;
- Require the insurer's written consent prior to making any CGAD information public.<sup>16</sup>

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<sup>15</sup> R.C. 3901.076(B).

<sup>16</sup> R.C. 3901.076(C).



## Rules

The bill requires the Superintendent to adopt rules as necessary to carry out the requirements of the bill.<sup>17</sup>

## Penalty for failure to timely file a CGAD

The Superintendent may assess a civil fine to insurers that do not submit the CGAD by the first of June of each year. Such a fine may not be assessed until the Superintendent has provided written notice to the insurer in question and given the insurer the option of holding a public hearing on the matter. If the Superintendent finds that the insurer has not submitted the CGAD in a timely manner, the Superintendent may assess a civil penalty of \$100 for each day that the CGAD is past due, with a maximum penalty of \$10,000. All such penalties are to be deposited into the General Revenue Fund. The Superintendent may reduce the amount of the penalty if the insurer is able to demonstrate that paying such a penalty would constitute a financial hardship to the insurer.<sup>18</sup>

## Effective date

The requirements of the bill take effect on January 1, 2017, with the first CGAD being due on June 1, 2017.<sup>19</sup>

## Intent clause

The bill contains language declaring the intent of the General Assembly in enacting the provisions of the bill. The bill is intended to accomplish all of the following:

- Provide the Superintendent with a summary of an insurer's corporate governance structure, policies, and practices so that the Superintendent can gain an understanding of the insurer's corporate governance framework;
- Outline the requirements for completing a CGAD;
- Provide for the confidential treatment of CGAD information.<sup>20</sup>

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<sup>17</sup> R.C. 3901.077.

<sup>18</sup> R.C. 3901.078.

<sup>19</sup> Section 2.

<sup>20</sup> Section 3.



## Definitions

The bill makes the following definitions:

- "Corporate governance annual disclosure" or "CGAD" means a confidential report filed by an insurer or insurance group in accordance with the bill's requirements.
- "Insurance group" means those insurers and affiliates included within an insurance holding company system. The analysis uses the term "holding company" instead.
- "Insurer" means any person engaged in the business of insurance, guaranty, or membership, an inter-insurance exchange, a mutual or fraternal benefit society, or a health insuring corporation. "Insurer" does not include any agency, authority, or instrumentality of the U.S., its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of Ohio.
- "NAIC" means the National Association of Insurance Commissioners.
- "Superintendent" means the Superintendent of Insurance.<sup>21</sup>

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## HISTORY

ACTION	DATE
Introduced	02-08-16

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<sup>21</sup> R.C. 3901.072(B).

