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Am. S. B. No. 273

Senator Bacon

**Cosponsors: Senators Hottinger, Hackett, Coley, Eklund, Hughes, Jones, Obhof,
Oelslager, Patton, Sawyer Representatives Blessing, Leland, Sweeney**

A BILL

To enact sections 3901.072, 3901.073, 3901.074, 1
3901.075, 3901.076, 3901.077, and 3901.078 of 2
the Revised Code to enact the Corporate 3
Governance Annual Disclosure Act. 4

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

Section 1. That sections 3901.072, 3901.073, 3901.074, 5
3901.075, 3901.076, 3901.077, and 3901.078 of the Revised Code 6
be enacted to read as follows: 7

Sec. 3901.072. (A) (1) Sections 3901.072 to 3901.078 of the 8
Revised Code shall be known as the corporate governance annual 9
disclosure act. 10

(2) Sections 3901.072 to 3901.078 of the Revised Code 11
shall apply to all insurers domiciled in this state. 12

(3) Nothing in sections 3901.072 to 3901.078 of the 13
Revised Code shall be construed to prescribe or impose corporate 14
governance standards and internal procedures beyond those 15
required under the corporate laws of this state. Notwithstanding 16
the foregoing, nothing in those sections shall be construed to 17

limit the superintendent's authority, or the rights or 18
obligations of third parties, under section 3901.07 of the 19
Revised Code. 20

(B) As used in this section and sections 3901.073 to 21
3901.078 of the Revised Code: 22

(1) "Corporate governance annual disclosure" or "CGAD" 23
means a confidential report filed by an insurer or insurance 24
group in accordance with the requirements of sections 3901.072 25
to 3901.078 of the Revised Code. 26

(2) "Insurance group" means those insurers and affiliates 27
included within an insurance holding company system as defined 28
in section 3901.32 of the Revised Code. 29

(3) "Insurer" has the same meaning as in section 3901.32 30
of the Revised Code. 31

(4) "NAIC" means the national association of insurance 32
commissioners. 33

(5) "Superintendent" means the superintendent of 34
insurance. 35

Sec. 3901.073. (A) (1) (a) Not later than June 1, 2017, an 36
insurer domiciled in this state, or the insurance group of which 37
the insurer is a member, that, as of December 31, 2015, has an 38
annual, direct written and unaffiliated assumed premium totaling 39
more than five billion dollars, shall submit to the 40
superintendent a corporate governance annual disclosure that 41
contains the information described in section 3901.074 of the 42
Revised Code. 43

(b) Not later than June 1, 2018, and on or before the 44
first day of June each year thereafter, an insurer domiciled in 45

this state, or the insurance group to which the insurer is a 46
member, shall submit to the superintendent a corporate 47
governance annual disclosure that contains the information 48
described in section 3901.074 of the Revised Code. 49

(2) Notwithstanding any request from the superintendent, 50
if the insurer is a member of an insurance group, the insurer 51
shall submit the report required by division (A) (1) of this 52
section if the superintendent is the lead state commissioner of 53
the insurance group as determined by the procedures outlined 54
within the most recent financial analysis handbook adopted by 55
the NAIC. The review of the CGAD and any additional requests for 56
information shall be made by the lead state as determined by the 57
procedures within the most recent financial analysis handbook 58
adopted by the NAIC. 59

(B) An insurer not required to submit a CGAD under 60
division (A) of this section shall do so upon request of the 61
superintendent. 62

(C) The CGAD shall include a signature of the insurer or 63
insurance group's chief executive officer or corporate secretary 64
attesting to the best of that individual's belief and knowledge 65
that the insurer has implemented the corporate governance 66
practices and that a copy of the disclosure has been provided to 67
the insurer's board of directors or the appropriate committee 68
thereof. 69

(D) (1) For purposes of completing the CGAD, the insurer or 70
insurance group may provide information regarding corporate 71
governance at one or all of the following levels depending on 72
how the insurer or insurance group has structured its system of 73
corporate governance: 74

<u>(a) The ultimate controlling parent level;</u>	75
<u>(b) An intermediate holding company level;</u>	76
<u>(c) The individual legal entity level.</u>	77
<u>(2) The insurer or insurance group is encouraged to make</u> <u>the CGAD disclosures at one of the following levels:</u>	78 79
<u>(a) At the level at which the insurer's or insurance</u> <u>group's risk appetite is determined;</u>	80 81
<u>(b) At the level at which the insurer's earnings, capital,</u> <u>liquidity, operations, and reputation are overseen collectively</u> <u>and at which the supervision of those factors is coordinated and</u> <u>exercised;</u>	82 83 84 85
<u>(c) At the level at which legal liability for failure of</u> <u>general corporate governance duties would be placed.</u>	86 87
<u>(3) If the insurer or insurance group determines the level</u> <u>of reporting based on the criteria listed in division (D) (2) of</u> <u>this section, it shall indicate which of the three criteria was</u> <u>used to determine the level of reporting and explain any</u> <u>subsequent changes in the level of reporting.</u>	88 89 90 91 92
<u>(E) If an insurer provides information substantially</u> <u>similar to the information required under sections 3901.072 to</u> <u>3901.078 of the Revised Code in other documents provided to the</u> <u>superintendent, including proxy statements filed in conjunction</u> <u>with insurance holding company registration or other state or</u> <u>federal filings provided to the department, the insurer shall</u> <u>not be required to duplicate the information and may comply with</u> <u>division (A) of this section by referencing within the CGAD the</u> <u>relevant document.</u>	93 94 95 96 97 98 99 100 101
<u>Sec. 3901.074. (A) (1) An insurer or insurance group shall</u>	102

have discretion regarding the format of its corporate governance 103
annual disclosure. 104

(2) The CGAD shall be prepared consistent with the rules 105
adopted by the superintendent pursuant to section 3901.077 of 106
the Revised Code regarding the required content of the CGAD and 107
shall contain the material information necessary for the 108
superintendent to gain an understanding of the insurer's or 109
group's corporate governance structure, policies, and practices. 110

(3) All documentation and supporting information shall be 111
maintained and made available for examination upon request of 112
the superintendent. 113

(B) The superintendent may request additional information 114
the superintendent considers material and necessary to provide a 115
clear understanding of the insurer's or insurance group's 116
corporate governance policies and the reporting or information 117
system or controls implementing those policies. 118

Sec. 3901.075. (A) Documents, materials, or other 119
information, including the corporate governance annual 120
disclosure, in the possession or control of the department of 121
insurance that are obtained by, created by, or disclosed to the 122
superintendent or any other person under sections 3901.072 to 123
3901.078 of the Revised Code are recognized by this state as 124
being proprietary and to contain trade secrets. 125

(B) The documents, materials, or other information 126
described in division (A) of this section shall be confidential 127
by law and privileged and shall not be admissible into evidence 128
in any private civil action or subject to section 149.43 of the 129
Revised Code, subpoena, or discovery. 130

(C) (1) Notwithstanding division (B) of this section, the 131

superintendent may use the documents, materials, or other 132
information described in division (A) of this section in 133
furtherance of any regulatory or legal action brought as part of 134
the superintendent's official duties. 135

(2) The superintendent shall not otherwise make the 136
documents, materials, or other information public without the 137
prior written consent of the insurer. 138

(3) Nothing in division (B) or (C) of this section shall 139
be construed to require the written consent of the insurer 140
before the superintendent shares or receives confidential 141
documents, materials, or other CGAD-related information pursuant 142
to division (E) of this section to assist in the performance of 143
the superintendent's regulatory duties. 144

(D) Neither the superintendent nor any person who receives 145
documents, materials, or other CGAD-related information, through 146
examination or otherwise, while acting under the authority of 147
the superintendent or with whom such documents, materials, or 148
other information are shared pursuant to sections 3901.072 to 149
3901.078 of the Revised Code shall be permitted or required to 150
testify in any private civil action concerning any confidential 151
documents, materials, or information described in division (A) 152
of this section. 153

(E) (1) In order to assist in the performance of the 154
superintendent's regulatory duties, the superintendent may do 155
either of the following: 156

(a) Upon request, share documents, materials, or other 157
CGAD-related information, including confidential and privileged 158
documents, materials, or information subject to division (A) of 159
this section, and proprietary and trade secret documents, with 160

other state, federal, and international financial regulatory agencies, members of any supervisory college as described in section 3901.351 of the Revised Code, the NAIC, or any third-party consultant pursuant to section 3901.076 of the Revised Code; 161
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(b) Receive documents, materials, or other CGAD-related information, including confidential and privileged documents, materials, or information subject to division (A) of this section, and proprietary and trade secret documents, from regulatory officials or other foreign or domestic jurisdictions, including members of any supervisory college as described in section 3901.351 of the Revised Code, and from the NAIC. 166
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(2) The recipient of any information pursuant to division (E) (1) (a) of this section shall 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 information pursuant to division (E) (1) (b) of this section, the superintendent shall 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. 173
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(F) The sharing of information, materials, and documents by the superintendent pursuant to sections 3901.072 to 3901.078 of the Revised Code shall not constitute a delegation of regulatory or rule-making authority, and the superintendent is solely responsible for the administration, execution, and enforcement of sections 3901.072 to 3901.078 of the Revised Code. 184
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(G) No waiver of any applicable privilege or claim of confidentiality in the document, proprietary and trade-secret materials, or other CGAD-related information shall occur as a result of disclosure of such CGAD-related information, materials, or documents to the superintendent as a result of sharing authorized in sections 3901.072 to 3901.078 of the Revised Code. 191
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Sec. 3901.076. (A) The superintendent may retain a third-party consultant, including attorneys, actuaries, accountants, and other experts not otherwise part of the superintendent's staff, as is reasonably necessary to assist the superintendent in reviewing a corporate governance annual disclosure and related information or an insurer's compliance with sections 3901.072 to 3901.078 of the Revised Code. The superintendent shall retain a third-party consultant under this division at the expense of the applicable insurer. 198
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(B) Each third-party consultant retained under division (A) of this section shall do all of the following: 207
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(1) Serve under the direction and control of the superintendent in a purely advisory capacity; 209
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(2) Comply with the confidentiality requirements applicable to the superintendent under sections 3901.072 to 3901.078 of the Revised Code; 211
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(3) Verify to the superintendent, with notice to the insurer, that the consultant is free of a conflict of interest and has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality requirements of sections 3901.072 to 3901.078 of the Revised Code. 214
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(C) If the superintendent enters into a written agreement 219

with the NAIC, a third-party consultant, or both, regarding the 220
sharing and use of information provided pursuant to sections 221
3901.072 to 3901.078 of the Revised Code, the written agreement 222
shall do all of the following: 223

(1) Specify procedures and protocols for maintaining the 224
confidentiality and security of CGAD-related information shared 225
with the NAIC or a third-party consultant pursuant to sections 226
3901.072 to 3901.078 of the Revised Code, including procedures 227
and protocols for sharing by the NAIC only with other state 228
regulators from states in which the insurance group has 229
domiciled insurers; 230

(2) Provide that the recipient of information agrees in 231
writing to maintain the confidentiality and privileged status of 232
the CGAD-related documents, materials, or other information 233
obtained pursuant to sections 3901.072 to 3901.078 of the 234
Revised Code and has verified in writing the legal authority to 235
maintain confidentiality; 236

(3) Specify that ownership of information shared with the 237
NAIC or a third-party consultant pursuant to sections 3901.072 238
to 3901.078 of the Revised Code remains with the department of 239
insurance and the NAIC's or third-party consultant's use of the 240
information is subject to the direction of the superintendent; 241

(4) Prohibit the NAIC or a third-party consultant from 242
storing the information obtained pursuant to sections 3901.072 243
to 3901.078 of the Revised Code in a permanent database after 244
the underlying analysis is completed; 245

(5) Require the NAIC or a third-party consultant to 246
provide prompt notice to the superintendent and to the insurer 247
or insurance group regarding any request or subpoena for 248

<u>disclosure or production of the insurer's CGAD-related</u>	249
<u>information;</u>	250
<u>(6) Require the NAIC or a third-party consultant to</u>	251
<u>consent to intervention by an insurer in any judicial or</u>	252
<u>administrative action in which the NAIC or third-party</u>	253
<u>consultant may be required to disclose confidential information</u>	254
<u>about the insurer that was obtained pursuant to sections</u>	255
<u>3901.072 to 3901.078 of the Revised Code;</u>	256
<u>(7) Require the insurer's written consent prior to making</u>	257
<u>public information that was obtained pursuant to sections</u>	258
<u>3901.072 to 3901.078 of the Revised Code.</u>	259
<u>Sec. 3901.077. The superintendent shall adopt rules in</u>	260
<u>accordance with Chapter 119. of the Revised Code as are</u>	261
<u>reasonably necessary to implement sections 3901.072 to 3901.078</u>	262
<u>of the Revised Code.</u>	263
<u>Sec. 3901.078. (A) If the superintendent finds, after</u>	264
<u>notice and an opportunity for a hearing conducted in accordance</u>	265
<u>with Chapter 119. of the Revised Code, that an insurer has</u>	266
<u>failed to file a corporate governance annual disclosure as</u>	267
<u>required by division (A) of section 3901.073 of the Revised</u>	268
<u>Code, the superintendent shall assess a civil penalty against</u>	269
<u>the insurer.</u>	270
<u>(1) The amount of the civil penalty imposed by division</u>	271
<u>(A) of this section shall be one hundred dollars for each day</u>	272
<u>the CGAD is past due, provided that the total penalty shall not</u>	273
<u>exceed the sum of ten thousand dollars.</u>	274
<u>(2) All sums collected from such penalties shall be</u>	275
<u>deposited in the general revenue fund.</u>	276
<u>(B) The superintendent may reduce the amount of the civil</u>	277

penalty if the insurer demonstrates to the superintendent that 278
the imposition of the penalty would constitute a financial 279
hardship to the insurer. 280

Section 2. Section 1 of this act shall take effect on 281
January 1, 2017, with the first corporate governance annual 282
disclosure required under section 3901.073 of the Revised Code 283
due not later than June 1, 2017. 284

Section 3. The purpose of this act is to do all of the 285
following: 286

(A) Provide the Superintendent of Insurance a summary of 287
an insurer's or insurance group's corporate governance 288
structure, policies, and practices to permit the Superintendent 289
to gain and maintain an understanding of the insurer's corporate 290
governance framework; 291

(B) Outline the requirements for completing a corporate 292
governance annual disclosure with the Superintendent; 293

(C) Provide for the confidential treatment of the 294
corporate governance annual disclosure and related information 295
that will contain confidential and sensitive information related 296
to an insurer or insurance group's internal operations and 297
proprietary and trade secret information that, if made public, 298
could potentially cause the insurer or insurance group 299
competitive harm or disadvantage. 300