

As Introduced

**131st General Assembly
Regular Session
2015-2016**

S. B. No. 273

Senator Bacon

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

<u>Revised Code.</u>	20
<u>(B) As used in this section and sections 3901.073 to 3901.078 of the Revised Code:</u>	21
<u>(1) "Corporate governance annual disclosure" or "CGAD" means a confidential report filed by an insurer or insurance group in accordance with the requirements of sections 3901.072 to 3901.078 of the Revised Code.</u>	22
<u>(2) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in section 3901.32 of the Revised Code.</u>	23
<u>(3) "Insurer" has the same meaning as in section 3901.32 of the Revised Code.</u>	24
<u>(4) "NAIC" means the national association of insurance commissioners.</u>	25
<u>(5) "Superintendent" means the superintendent of insurance.</u>	26
<u>Sec. 3901.073. (A) (1) Not later than the first day of June each calendar year, an insurer domiciled in this state, or the insurance group to which the insurer is a member, shall submit to the superintendent a corporate governance annual disclosure that contains the information described in section 3901.074 of the Revised Code.</u>	27
<u>(2) Notwithstanding any request from the superintendent, if the insurer is a member of an insurance group, the insurer shall submit the report required by division (A)(1) of this section if the superintendent is the lead state commissioner of the insurance group as determined by the procedures outlined within the most recent financial analysis handbook adopted by</u>	28
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the NAIC. The review of the CGAD and any additional requests for 48
information shall be made by the lead state as determined by the 49
procedures within the most recent financial analysis handbook 50
adopted by the NAIC. 51

(B) An insurer not required to submit a CGAD under 52
division (A) of this section shall do so upon request of the 53
superintendent. 54

(C) The CGAD shall include a signature of the insurer or 55
insurance group's chief executive officer or corporate secretary 56
attesting to the best of that individual's belief and knowledge 57
that the insurer has implemented the corporate governance 58
practices and that a copy of the disclosure has been provided to 59
the insurer's board of directors or the appropriate committee 60
thereof. 61

(D) (1) For purposes of completing the CGAD, the insurer or 62
insurance group may provide information regarding corporate 63
governance at one or all of the following levels depending on 64
how the insurer or insurance group has structured its system of 65
corporate governance: 66

(a) The ultimate controlling parent level; 67

(b) An intermediate holding company level; 68

(c) The individual legal entity level. 69

(2) The insurer or insurance group is encouraged to make 70
the CGAD disclosures at one of the following levels: 71

(a) At the level at which the insurer's or insurance 72
group's risk appetite is determined; 73

(b) At the level at which the insurer's earnings, capital, 74
liquidity, operations, and reputation are overseen collectively 75

and at which the supervision of those factors is coordinated and 76
exercised; 77

(c) At the level at which legal liability for failure of 78
general corporate governance duties would be placed. 79

(3) If the insurer or insurance group determines the level 80
of reporting based on the criteria listed in division (D) (2) of 81
this section, it shall indicate which of the three criteria was 82
used to determine the level of reporting and explain any 83
subsequent changes in the level of reporting. 84

(E) If an insurer provides information substantially 85
similar to the information required under sections 3901.072 to 86
3901.078 of the Revised Code in other documents provided to the 87
superintendent, including proxy statements filed in conjunction 88
with insurance holding company registration or other state or 89
federal filings provided to the department, the insurer shall 90
not be required to duplicate the information and may comply with 91
division (A) of this section by referencing within the CGAD the 92
relevant document. 93

Sec. 3901.074. (A) (1) An insurer or insurance group shall 94
have discretion regarding the format of its corporate governance 95
annual disclosure. 96

(2) The CGAD shall be prepared consistent with the rules 97
adopted by the superintendent pursuant to section 3901.077 of 98
the Revised Code regarding the required content of the CGAD and 99
shall contain the material information necessary for the 100
superintendent to gain an understanding of the insurer's or 101
group's corporate governance structure, policies, and practices. 102

(3) All documentation and supporting information shall be 103
maintained and made available for examination upon request of 104

the superintendent. 105

(B) The superintendent may request additional information 106
the superintendent considers material and necessary to provide a 107
clear understanding of the insurer's or insurance group's 108
corporate governance policies and the reporting or information 109
system or controls implementing those policies. 110

Sec. 3901.075. (A) Documents, materials, or other 111
information, including the corporate governance annual 112
disclosure, in the possession or control of the department of 113
insurance that are obtained by, created by, or disclosed to the 114
superintendent or any other person under sections 3901.072 to 115
3901.078 of the Revised Code are recognized by this state as 116
being proprietary and to contain trade secrets. 117

(B) The documents, materials, or other information 118
described in division (A) of this section shall be confidential 119
by law and privileged and shall not be admissible into evidence 120
in any private civil action or subject to section 149.43 of the 121
Revised Code, subpoena, or discovery. 122

(C) (1) Notwithstanding division (B) of this section, the 123
superintendent may use the documents, materials, or other 124
information described in division (A) of this section in 125
furtherance of any regulatory or legal action brought as part of 126
the superintendent's official duties. 127

(2) The superintendent shall not otherwise make the 128
documents, materials, or other information public without the 129
prior written consent of the insurer. 130

(3) Nothing in division (B) or (C) of this section shall 131
be construed to require the written consent of the insurer 132
before the superintendent shares or receives confidential 133

documents, materials, or other CGAD-related information pursuant 134
to division (E) of this section to assist in the performance of 135
the superintendent's regulatory duties. 136

(D) Neither the superintendent nor any person who receives 137
documents, materials, or other CGAD-related information, through 138
examination or otherwise, while acting under the authority of 139
the superintendent or with whom such documents, materials, or 140
other information are shared pursuant to sections 3901.072 to 141
3901.078 of the Revised Code shall be permitted or required to 142
testify in any private civil action concerning any confidential 143
documents, materials, or information described in division (A) 144
of this section. 145

(E) (1) In order to assist in the performance of the 146
superintendent's regulatory duties, the superintendent may do 147
either of the following: 148

(a) Upon request, share documents, materials, or other 149
CGAD-related information, including confidential and privileged 150
documents, materials, or information subject to division (A) of 151
this section, and proprietary and trade secret documents, with 152
other state, federal, and international financial regulatory 153
agencies, members of any supervisory college as described in 154
section 3901.351 of the Revised Code, the NAIC, or any third- 155
party consultant pursuant to section 3901.076 of the Revised 156
Code; 157

(b) Receive documents, materials, or other CGAD-related 158
information, including confidential and privileged documents, 159
materials, or information subject to division (A) of this 160
section, and proprietary and trade secret documents, from 161
regulatory officials or other foreign or domestic jurisdictions, 162
including members of any supervisory college as described in 163

section 3901.351 of the Revised Code, and from the NAIC. 164

(2) The recipient of any information pursuant to division 165
(E)(1)(a) of this section shall agree in writing to maintain the 166
confidentiality and privileged status of the documents, 167
materials, or other information and verify in writing their 168
legal authority to maintain confidentiality. If the 169
superintendent receives any information pursuant to division (E) 170
(1)(b) of this section, the superintendent shall maintain as 171
confidential or privileged any documents, materials, or 172
information received with notice or the understanding that it is 173
confidential or privileged under the laws of the jurisdiction 174
that is the source of the document, material, or information. 175

(F) The sharing of information, materials, and documents 176
by the superintendent pursuant to sections 3901.072 to 3901.078 177
of the Revised Code shall not constitute a delegation of 178
regulatory or rule-making authority, and the superintendent is 179
solely responsible for the administration, execution, and 180
enforcement of sections 3901.072 to 3901.078 of the Revised 181
Code. 182

(G) No waiver of any applicable privilege or claim of 183
confidentiality in the document, proprietary and trade-secret 184
materials, or other CGAD-related information shall occur as a 185
result of disclosure of such CGAD-related information, 186
materials, or documents to the superintendent as a result of 187
sharing authorized in sections 3901.072 to 3901.078 of the 188
Revised Code. 189

Sec. 3901.076. (A) The superintendent may retain a third- 190
party consultant, including attorneys, actuaries, accountants, 191
and other experts not otherwise part of the superintendent's 192
staff, as is reasonably necessary to assist the superintendent 193

in reviewing a corporate governance annual disclosure and 194
related information or an insurer's compliance with sections 195
3901.072 to 3901.078 of the Revised Code. The superintendent 196
shall retain a third-party consultant under this division at the 197
expense of the applicable insurer. 198

(B) Each third-party consultant retained under division 199
(A) of this section shall do all of the following: 200

(1) Serve under the direction and control of the 201
superintendent in a purely advisory capacity; 202

(2) Comply with the confidentiality requirements 203
applicable to the superintendent under sections 3901.072 to 204
3901.078 of the Revised Code; 205

(3) Verify to the superintendent, with notice to the 206
insurer, that the consultant is free of a conflict of interest 207
and has internal procedures in place to monitor compliance with 208
a conflict and to comply with the confidentiality requirements 209
of sections 3901.072 to 3901.078 of the Revised Code. 210

(C) If the superintendent enters into a written agreement 211
with the NAIC, a third-party consultant, or both, regarding the 212
sharing and use of information provided pursuant to sections 213
3901.072 to 3901.078 of the Revised Code, the written agreement 214
shall do all of the following: 215

(1) Specify procedures and protocols for maintaining the 216
confidentiality and security of CGAD-related information shared 217
with the NAIC or a third-party consultant pursuant to sections 218
3901.072 to 3901.078 of the Revised Code, including procedures 219
and protocols for sharing by the NAIC only with other state 220
regulators from states in which the insurance group has 221
domiciled insurers; 222

(2) Provide that the recipient of information agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information obtained pursuant to sections 3901.072 to 3901.078 of the Revised Code and has verified in writing the legal authority to maintain confidentiality; 223
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(3) Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to sections 3901.072 to 3901.078 of the Revised Code remains with the department of insurance and the NAIC's or third-party consultant's use of the information is subject to the direction of the superintendent; 229
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(4) Prohibit the NAIC or a third-party consultant from storing the information obtained pursuant to sections 3901.072 to 3901.078 of the Revised Code in a permanent database after the underlying analysis is completed; 234
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(5) Require the NAIC or a third-party consultant to provide prompt notice to the superintendent and to the insurer or insurance group regarding any request or subpoena for disclosure or production of the insurer's CGAD-related information; 238
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(6) 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 third-party consultant may be required to disclose confidential information about the insurer that was obtained pursuant to sections 3901.072 to 3901.078 of the Revised Code; 243
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(7) Require the insurer's written consent prior to making public information that was obtained pursuant to sections 3901.072 to 3901.078 of the Revised Code. 249
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Sec. 3901.077. The superintendent shall adopt rules in 252
accordance with Chapter 119. of the Revised Code as are 253
reasonably necessary to implement sections 3901.072 to 3901.078 254
of the Revised Code. 255

Sec. 3901.078. (A) If the superintendent finds, after 256
notice and an opportunity for a hearing conducted in accordance 257
with Chapter 119. of the Revised Code, that an insurer has 258
failed to file a corporate governance annual disclosure as 259
required by division (A) of section 3901.073 of the Revised 260
Code, the superintendent shall assess a civil penalty against 261
the insurer. 262

(1) The amount of the civil penalty imposed by division 263
(A) of this section shall be one hundred dollars for each day 264
the CGAD is past due, provided that the total penalty shall not 265
exceed the sum of ten thousand dollars. 266

(2) All sums collected from such penalties shall be 267
deposited in the general revenue fund. 268

(B) The superintendent may reduce the amount of the civil 269
penalty if the insurer demonstrates to the superintendent that 270
the imposition of the penalty would constitute a financial 271
hardship to the insurer. 272

Section 2. Section 1 of this act shall take effect on 273
January 1, 2017, with the first corporate governance annual 274
disclosure required under section 3901.073 of the Revised Code 275
due not later than June 1, 2017. 276

Section 3. The purpose of this act is to do all of the 277
following: 278

(A) Provide the Superintendent of Insurance a summary of 279
an insurer's or insurance group's corporate governance 280

structure, policies, and practices to permit the Superintendent	281
to gain and maintain an understanding of the insurer's corporate	282
governance framework;	283
(B) Outline the requirements for completing a corporate	284
governance annual disclosure with the Superintendent;	285
(C) Provide for the confidential treatment of the	286
corporate governance annual disclosure and related information	287
that will contain confidential and sensitive information related	288
to an insurer or insurance group's internal operations and	289
proprietary and trade secret information that, if made public,	290
could potentially cause the insurer or insurance group	291
competitive harm or disadvantage.	292