

**As Passed by the Senate**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 273**

**Senator Bacon**

**Cosponsors: Senators Hottinger, Hackett, Coley, Eklund, Hughes, Jones, Obhof,  
Oelslager, Patton, Sawyer**

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**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) Not later than the first day of June 36  
each calendar year, an insurer domiciled in this state, or the 37  
insurance group to which the insurer is a member, shall submit 38  
to the superintendent a corporate governance annual disclosure 39  
that contains the information described in section 3901.074 of 40  
the Revised Code. 41

(2) Notwithstanding any request from the superintendent, 42  
if the insurer is a member of an insurance group, the insurer 43  
shall submit the report required by division (A) (1) of this 44  
section if the superintendent is the lead state commissioner of 45

the insurance group as determined by the procedures outlined 46  
within the most recent financial analysis handbook adopted by 47  
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, liquidity, operations, and reputation are overseen collectively and at which the supervision of those factors is coordinated and exercised; 74  
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(c) At the level at which legal liability for failure of general corporate governance duties would be placed. 78  
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(3) If the insurer or insurance group determines the level of reporting based on the criteria listed in division (D) (2) of this section, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting. 80  
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(E) If an insurer provides information substantially similar to the information required under sections 3901.072 to 3901.078 of the Revised Code in other documents provided to the superintendent, including proxy statements filed in conjunction with insurance holding company registration or other state or federal filings provided to the department, the insurer shall not be required to duplicate the information and may comply with division (A) of this section by referencing within the CGAD the relevant document. 85  
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**Sec. 3901.074.** (A) (1) An insurer or insurance group shall have discretion regarding the format of its corporate governance annual disclosure. 94  
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(2) The CGAD shall be prepared consistent with the rules adopted by the superintendent pursuant to section 3901.077 of the Revised Code regarding the required content of the CGAD and shall contain the material information necessary for the superintendent to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices. 97  
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(3) All documentation and supporting information shall be maintained and made available for examination upon request of the superintendent. 103  
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(B) The superintendent may request additional information the superintendent considers material and necessary to provide a clear understanding of the insurer's or insurance group's corporate governance policies and the reporting or information system or controls implementing those policies. 106  
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**Sec. 3901.075.** (A) Documents, materials, or other information, including the corporate governance annual disclosure, 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 sections 3901.072 to 3901.078 of the Revised Code are recognized by this state as being proprietary and to contain trade secrets. 111  
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(B) The documents, materials, or other information described in division (A) of this section shall be confidential by law and privileged and shall not be admissible into evidence in any private civil action or subject to section 149.43 of the Revised Code, subpoena, or discovery. 118  
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(C) (1) Notwithstanding division (B) of this section, the superintendent may use the documents, materials, or other information described in division (A) of this section in furtherance of any regulatory or legal action brought as part of the superintendent's official duties. 123  
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(2) The superintendent shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. 128  
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(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 223  
writing to maintain the confidentiality and privileged status of 224  
the CGAD-related documents, materials, or other information 225  
obtained pursuant to sections 3901.072 to 3901.078 of the 226  
Revised Code and has verified in writing the legal authority to 227  
maintain confidentiality; 228

(3) Specify that ownership of information shared with the 229  
NAIC or a third-party consultant pursuant to sections 3901.072 230  
to 3901.078 of the Revised Code remains with the department of 231  
insurance and the NAIC's or third-party consultant's use of the 232  
information is subject to the direction of the superintendent; 233

(4) Prohibit the NAIC or a third-party consultant from 234  
storing the information obtained pursuant to sections 3901.072 235  
to 3901.078 of the Revised Code in a permanent database after 236  
the underlying analysis is completed; 237

(5) Require the NAIC or a third-party consultant to 238  
provide prompt notice to the superintendent and to the insurer 239  
or insurance group regarding any request or subpoena for 240  
disclosure or production of the insurer's CGAD-related 241  
information; 242

(6) Require the NAIC or a third-party consultant to 243  
consent to intervention by an insurer in any judicial or 244  
administrative action in which the NAIC or third-party 245  
consultant may be required to disclose confidential information 246  
about the insurer that was obtained pursuant to sections 247  
3901.072 to 3901.078 of the Revised Code; 248

(7) Require the insurer's written consent prior to making 249

public information that was obtained pursuant to sections 250  
3901.072 to 3901.078 of the Revised Code. 251

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