

# AN ACT

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

*Be it enacted by the General Assembly of the State of Ohio:*

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

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

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

(3) Nothing in sections 3901.072 to 3901.078 of the Revised Code shall be construed to prescribe or impose corporate governance standards and internal procedures beyond those required under the corporate laws of this state. Notwithstanding the foregoing, nothing in those sections shall be construed to limit the superintendent's authority, or the rights or obligations of third parties, under section 3901.07 of the Revised Code.

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

(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.

(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.

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

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

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

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

(b) Not later than June 1, 2018, and on or before the first day of June each year thereafter, 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.

(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 the NAIC. The review of the CGAD and any additional requests for information shall be made by the lead state as determined by the procedures within the most recent financial analysis handbook adopted by the NAIC.

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

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

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

- (a) The ultimate controlling parent level;
- (b) An intermediate holding company level;
- (c) The individual legal entity level.

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

- (a) At the level at which the insurer's or insurance group's risk appetite is determined;
- (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;
- (c) At the level at which legal liability for failure of general corporate governance duties would be placed.

(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.

(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.

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

(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.

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

(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.

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.

(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.

(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.

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

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

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

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

(a) Upon request, share 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, with 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;

(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.

(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.

(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.

(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.

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.

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

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

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

(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.

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

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

(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;

(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;

(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;

(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;

(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;

(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.

Sec. 3901.077. The superintendent shall adopt rules in accordance with Chapter 119. of the Revised Code as are reasonably necessary to implement sections 3901.072 to 3901.078 of the Revised Code.

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

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

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

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

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

SECTION 3. The purpose of this act is to do all of the following:

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

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

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

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Am. S. B. No. 273

131st G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_