

As Reported by the House Rules and Reference Committee

132nd General Assembly

Regular Session

2017-2018

Sub. S. B. No. 273

Senator Hackett

Cosponsors: Senators Hottinger, Brown, Burke

A BILL

To amend sections 3905.30, 3905.33, 3905.423, 1
3905.426, 3937.25, 3937.28, 3955.05, 3960.11, 2
and 3963.02, to enact sections 1.65, 3901.91, 3
3905.332, 3937.47, 3965.01, 3965.02, 3965.03, 4
3965.04, 3965.05, 3965.06, 3965.07, 3965.08, 5
3965.09, 3965.10, and 3965.11, and to repeal 6
section 3905.425 of the Revised Code to enact 7
for the Revised Code a definition of the term 8
"insurance rating agency"; to establish 9
standards for data security and for the 10
investigation of and notification to the 11
Superintendent of Insurance of a cybersecurity 12
event; regarding motor vehicle ancillary product 13
protection contracts and motor vehicle service 14
contracts; to authorize domestic surplus lines 15
insurers; regarding cancellation of certain 16
insurance policies; and regarding the regulatory 17
authority of the Superintendent of Insurance. 18

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

Section 1. That sections 3905.30, 3905.33, 3905.423, 19

3905.426, 3937.25, 3937.28, 3955.05, 3960.11, and 3963.02 be 20
amended and sections 1.65, 3901.91, 3905.332, 3937.47, 3965.01, 21
3965.02, 3965.03, 3965.04, 3965.05, 3965.06, 3965.07, 3965.08, 22
3965.09, 3965.10, and 3965.11 of the Revised Code be enacted to 23
read as follows: 24

Sec. 1.65. (A) As used in the Revised Code, "insurance 25
rating agency" means A.M. Best Rating Services, Inc., Demotech, 26
Inc., or a rating agency certified or approved by a national 27
entity that engages in an approval process that includes all of 28
the following: 29

(1) A requirement for the rating agency to register and 30
provide an annual updated filing; 31

(2) Record retention requirements; 32

(3) Financial reporting requirements; 33

(4) Policies for the prevention of misuse of material, 34
nonpublic information; 35

(5) Management of conflicts of interest, including 36
prohibited conflicts; 37

(6) Prohibited acts and practices; 38

(7) Disclosure requirements; 39

(8) Required policies, practices, and internal controls; 40

(9) Standards of training, experience, and competence for 41
credit analysts. 42

(B) Any reference in the Revised Code to an entity named 43
in division (A) of this section shall be construed as a 44
reference to any insurance rating agency as defined in division 45
(A) of this section. Any reference in the Revised Code to a 46

specific entity not named in division (A) of this section but 47
otherwise meeting the definition of "insurance rating agency" in 48
division (A) of this section shall be construed as a reference 49
to an insurance rating agency as defined by division (A) of this 50
section. 51

Sec. 3901.91. When the superintendent of insurance adopts 52
or amends a rule, including a rule related to the 53
superintendent's duties and powers under Chapters 1751. and 54
1753. and Title XXXIX of the Revised Code or a rule related to 55
an "insurance rating agency" as defined by section 1.65 of the 56
Revised Code, the superintendent shall give consideration to the 57
inclusion in the rule of the definition of "insurance rating 58
agency" found in section 1.65 of the Revised Code. 59

Sec. 3905.30. (A) As used in sections 3905.30 to 3905.38 60
of the Revised Code: 61

(1) Notwithstanding section 3905.01 of the Revised Code, 62
"home state" means the state in which an insured maintains its 63
principal place of business or, in the case of an individual, 64
the individual's principal residence except in the case of 65
either of the following: 66

(a) If one hundred percent of the insured risk is located 67
out of the state in which an insured maintains its principal 68
place of business or principal residence as described in 69
division (A)(1)(a) of this section, "home state" means the state 70
to which the greatest percentage of the insured's taxable 71
premium for that insurance contract is allocated. 72

(b) If more than one insured from an affiliated group are 73
named insureds on a single unauthorized insurance contract, 74
"home state" means the state in which the member of the 75

affiliated group that has the largest percentage of premium 76
attributed to it under such insurance contract. 77

(2) "Principal place of business" means the state where 78
the insured maintains the insured's headquarters and where the 79
insured's high-level officers direct, control, and coordinate 80
the business activities of the insured. 81

(B) The superintendent of insurance may issue a surplus 82
lines broker's license to any natural person who is a resident 83
of this or any other state or to a business entity that is 84
organized under the laws of this or any other state. To be 85
eligible for a resident surplus lines broker's license, a person 86
must have both a property license and a casualty license. To be 87
eligible for a nonresident surplus lines broker's license, a 88
person must hold an active surplus lines broker license in the 89
person's home state. A nonresident surplus lines broker shall 90
obtain a nonresident license with a property and casualty line 91
of authority in this state if the broker is or will be 92
personally performing the due diligence requirements under 93
section 3905.33 of the Revised Code. 94

(C) (1) A surplus lines broker's license permits the person 95
named in the license to negotiate for and obtain insurance, 96
other than life insurance, on property or persons in this state 97
from ~~insurers~~ both of the following: 98

(a) Insurers not authorized to transact business in this 99
state; 100

(b) An insurer designated as a domestic surplus lines 101
insurer pursuant to section 3905.332 of the Revised Code. 102

(2) Each such license expires on the thirty-first day of 103
January next after the year in which it is issued, and may be 104

then renewed. 105

Sec. 3905.33. (A) No person licensed under section 3905.30 106
of the Revised Code shall solicit, procure an application for, 107
bind, issue, renew, or deliver a policy with any insurer that is 108
not eligible to write insurance on an unauthorized basis in this 109
state. 110

Pursuant to the "Nonadmitted and Reinsurance Reform Act of 111
2010," 15 U.S.C. 8201 et seq., 124 Stat. 1589, or any successor 112
or replacement law, where this state is the home state of the 113
insured, an insurer shall be considered eligible to write 114
insurance on an unauthorized basis in this state if ~~either~~any 115
of the following are true: 116

(1) The insurer meets the requirements and criteria in 117
sections 5A(2) and 5C(2)(a) of the nonadmitted insurance model 118
act adopted by the national association of insurance 119
commissioners, or alternative nationwide uniform eligibility 120
requirements adopted by this state through participation in a 121
compact or other nationwide system pursuant to 15 U.S.C. 8201 et 122
seq., 124 Stat. 1589. 123

(2) For unauthorized insurance placed with, or procured 124
from an unauthorized insurer domiciled outside the United 125
States, the insurer is listed on the quarterly listing of alien 126
insurers maintained by the international insurers department of 127
the national association of insurance commissioners. 128

(3) The insurer has been designated as a domestic surplus 129
lines insurer pursuant to section 3905.332 of the Revised Code. 130

(B) (1) No surplus lines broker shall solicit, procure, 131
place, or renew any insurance with an unauthorized insurer 132
unless an agent or the surplus lines broker has complied with 133

the due diligence requirements of this section and is unable to 134
procure the requested insurance from an authorized insurer. 135

Due diligence requires an agent to contact at least five 136
of the authorized insurers the agent represents, or as many 137
insurers as the agent represents, that customarily write the 138
kind of insurance required by the insured. Due diligence is 139
presumed if declinations are received from each authorized 140
insurer contacted. If any authorized insurer fails to respond 141
within ten days after the initial contact, the agent may assume 142
the insurer has declined to accept the risk. 143

(2) Due diligence shall only be performed by an agent 144
licensed in this state that holds an active property and 145
casualty insurance agent license. 146

(3) An insurance agent or surplus lines broker is exempt 147
from the due diligence requirements of this section if the agent 148
or surplus lines broker is procuring insurance from a risk 149
purchasing group or risk retention group as provided in Chapter 150
3960. of the Revised Code. 151

(4) An insurance agent or surplus lines broker is exempt 152
from the due diligence requirements of this section if the agent 153
or surplus lines broker is seeking to procure or place 154
unauthorized insurance for a person that qualifies as an exempt 155
commercial purchaser under section 3905.331 of the Revised Code 156
and both of the following are true: 157

(a) The surplus lines broker procuring or placing the 158
surplus lines insurance has disclosed to the exempt commercial 159
purchaser that the insurance may or may not be available from 160
the authorized market that may provide greater protection with 161
more regulatory oversight. 162

(b) After receipt of the disclosure required under 163
division (B) (4) (a) of this section, the exempt commercial 164
purchaser has requested in writing that the insurance agent or 165
broker procure or place the insurance from an unauthorized 166
insurer. 167

(C) Except when exempt from due diligence requirements 168
under division (B) of this section, an insurance agent who 169
procures or places insurance through a surplus lines broker 170
shall obtain a signed statement from the insured acknowledging 171
that the insurance policy is to be placed with a company or 172
insurer not authorized to do business in this state and 173
acknowledging that, in the event of the insolvency of the 174
insurer, the insured is not entitled to any benefits or proceeds 175
from the Ohio insurance guaranty association. The statement must 176
be on a form prescribed by the superintendent and need not be 177
notarized. The agent shall submit the original signed statement 178
to the surplus lines broker within thirty days after the 179
effective date of the policy. If no other agent is involved, the 180
surplus lines broker shall obtain the statement from the 181
insured. 182

The surplus lines broker shall maintain the original 183
signed statement or a copy of the statement, and the originating 184
agent shall keep a copy of the statement, for at least five 185
years after the effective date of the policy to which the 186
statement pertains. A copy of the signed statement shall be 187
given to the insured at the time the insurance is bound or a 188
policy is delivered. 189

(D) For the purpose of carrying out the "Nonadmitted and 190
Reinsurance Reform Act of 2010," 124 Stat. 1589, 15 U.S.C. 8201 191
et seq., or any successor or replacement law, the superintendent 192

shall conduct a fiscal analysis of the impact of entering into a 193
multistate agreement or compact for determining eligibility for 194
placement of unauthorized insurance and for payment, reporting, 195
collection, and allocation of the tax on unauthorized insurance. 196
If the fiscal analysis indicates that entering into a multistate 197
agreement or compact is advantageous to this state, the 198
superintendent may enter into the surplus lines insurance 199
multistate compliance compact adopted by the national conference 200
of insurance legislators and known as "SLIMPACT," as amended on 201
December 21, 2010, and including any subsequent amendment; or, 202
if it is in this state's financial best interest, the 203
superintendent shall request that the general assembly authorize 204
the superintendent to enter into a different multistate 205
agreement or compact. 206

(E) The superintendent may adopt rules in accordance with 207
Chapter 119. of the Revised Code to carry out the purposes of 208
sections 3905.30 to 3905.38 of the Revised Code. 209

Sec. 3905.332. (A) Notwithstanding any other provision of 210
the Revised Code, a domestic insurer may be designated a 211
domestic surplus lines insurer pursuant to this section. 212

(B) A domestic insurer shall not be designated a domestic 213
surplus lines insurer unless all of the following are met: 214

(1) The domestic insurer possesses minimum capital and 215
surplus of at least fifteen million dollars. 216

(2) The domestic insurer is seeking to become a domestic 217
surplus lines insurer pursuant to a resolution adopted by its 218
board of directors. 219

(3) The superintendent of insurance has authorized the 220
designation of the insurer as a domestic surplus lines insurer 221

<u>in writing.</u>	222
<u>(C) A domestic surplus lines insurer shall be considered</u>	223
<u>an unauthorized insurer for the purposes of writing surplus</u>	224
<u>lines insurance coverage pursuant to the requirements of this</u>	225
<u>chapter.</u>	226
<u>(D) (1) A domestic surplus lines insurer shall only write</u>	227
<u>surplus lines insurance in this state in accordance with the</u>	228
<u>requirements of this chapter.</u>	229
<u>(2) A domestic surplus lines insurer may write surplus</u>	230
<u>lines insurance in any other jurisdiction in which the insurer</u>	231
<u>is eligible to write surplus lines insurance, provided that the</u>	232
<u>domestic surplus lines insurer complies with any requirements of</u>	233
<u>that jurisdiction.</u>	234
<u>(E) A domestic surplus lines insurer shall not engage in</u>	235
<u>the business of insurance in this state on an admitted basis.</u>	236
<u>(F) Surplus lines insurance written by a domestic surplus</u>	237
<u>lines insurer is subject to the tax on premiums as required in</u>	238
<u>section 3905.36 of the Revised Code and is exempt from the tax</u>	239
<u>on premiums required in section 5725.18 of the Revised Code.</u>	240
<u>(G) A domestic surplus lines insurer shall be considered a</u>	241
<u>nonadmitted insurer as defined in 15 U.S.C. 8206 with respect to</u>	242
<u>surplus lines insurance issued in this state.</u>	243
<u>(H) Surplus lines insurance policies issued in this state</u>	244
<u>by a domestic surplus lines insurer are not subject to the</u>	245
<u>provisions of Chapter 3955. of the Revised Code nor are they</u>	246
<u>subject to the protection of either Ohio insurance guaranty</u>	247
<u>association account established pursuant to section 3955.06 of</u>	248
<u>the Revised Code.</u>	249

(I) Surplus lines insurance policies issued in this state 250
by a domestic surplus lines insurer are not subject to and are 251
exempt, in the same manner and to the same extent as surplus 252
lines insurance policies issued by an insurer domiciled in 253
another state, from all statutory requirements relating to all 254
of the following: 255

(1) Insurance rating and rating plans; 256

(2) Policy forms; 257

(3) Policy cancellation and renewal. 258

(J) Unless otherwise specified in this section or 259
specifically exempted under this chapter, a domestic surplus 260
lines insurer shall be subject to all financial, reserve, and 261
solvency requirements under this title that are imposed on 262
domestic admitted insurers, as applicable. 263

Sec. 3905.423. (A) As used in this section: 264

(1) "Consumer" has the same meaning as in section 1345.01 265
of the Revised Code. 266

(2) "Consumer goods" means goods sold, leased, assigned, 267
awarded by chance, or transferred to a consumer in a consumer 268
transaction. 269

(3) "Consumer goods service contract" means a contract or 270
agreement to perform or pay for repairs, replacement, or 271
maintenance of consumer goods due to a defect in materials or 272
workmanship, normal wear and tear, power surges, or accidental 273
damage from handling, that is effective for a specified duration 274
and paid for by means other than the purchase of the consumer 275
goods. "Consumer goods service contract" does not include any of 276
the following: 277

(a) A <u>motor vehicle service contract</u> or agreement to	278
perform or pay for the repair, replacement, or maintenance of a	279
motor vehicle or utility vehicle, as defined in section 4501.01-	280
3905.426 of the Revised Code, due to a defect in materials or	281
workmanship, normal wear and tear, mechanical or electrical	282
breakdown, or failure of parts or equipment of a motor vehicle	283
that is effective for a specified duration and paid for by means	284
other than the purchase of a motor vehicle or utility vehicle;	285
(b) A vehicle protection product as defined in section	286
3905.421 of the Revised Code;	287
(c) A home service contract as defined in section 3905.422	288
of the Revised Code;	289
(d) A motor vehicle tire or wheel road hazard contract as	290
defined in section 3905.425 of the Revised Code;	291
(e) A motor vehicle ancillary product protection contract	292
as defined in section 3905.426 of the Revised Code;	293
<u>(e) A contract for prepaid routine, scheduled maintenance</u>	294
<u>only.</u>	295
(4) "Consumer transaction" has the same meaning as in	296
section 1345.01 of the Revised Code.	297
(5) "Contract holder" means the consumer who purchased	298
goods covered by a consumer goods service contract, any	299
authorized transferee or assignee of the consumer, or any other	300
person assuming the consumer's rights under the consumer goods	301
service contract.	302
(6) "Provider" means a person who is contractually	303
obligated to a contract holder under the terms of a consumer	304
goods service contract.	305

(7) "Reimbursement insurance policy" means a policy of insurance issued by an insurer authorized or eligible to do business in this state to a provider to pay, on behalf of the provider in the event of the provider's nonperformance, all covered contractual obligations incurred by the provider under the terms and conditions of the consumer goods service contract.

(8) "Supplier" has the same meaning as in section 1345.01 of the Revised Code.

(B) All consumer goods service contracts issued in this state that provide for the performance of or payment for repairs, replacement, or maintenance of consumer goods due to power surges or accidental damage from handling shall be covered by a reimbursement insurance policy.

(C) A consumer goods service contract issued by a provider that is required to be covered by a reimbursement insurance policy under division (B) of this section shall conspicuously state all of the following:

(1) That the obligations of the provider are guaranteed under a reimbursement insurance policy;

(2) That if a provider fails to perform or make payment due under the terms of the contract within sixty days after the contract holder requests performance or payment pursuant to the terms of the contract, the contract holder may request performance or payment directly from the provider's reimbursement insurance policy insurer, including, but not limited to, any obligation in the contract by which the provider must refund the contract holder upon cancellation of a contract;

(3) The name, address, and telephone number of the provider's reimbursement insurance policy insurer.

(D) A reimbursement insurance policy that is required to 335
be issued under this section shall contain: 336

(1) A statement that if a provider fails to perform or 337
make payment due under the terms of the consumer goods service 338
contract within sixty days after the contract holder requests 339
performance or payment pursuant to the terms of the contract, 340
the contract holder may request performance or payment directly 341
from the provider's reimbursement insurance policy insurer, 342
including, but not limited to, any obligation in the contract by 343
which the provider must refund the contract holder upon 344
cancellation of a contract; 345

(2) A statement that in the event of cancellation of the 346
provider's reimbursement insurance policy, insurance coverage 347
will continue for all contract holders whose consumer goods 348
service contracts were issued by the provider and reported to 349
the insurer for coverage during the term of the reimbursement 350
insurance policy. 351

(E) The sale or issuance of a consumer goods service 352
contract is a consumer transaction for purposes of sections 353
1345.01 to 1345.13 of the Revised Code. The provider is the 354
supplier and the contract holder is the consumer for purposes of 355
those sections. 356

(F) Unless issued by an insurer authorized or eligible to 357
do business in this state, a consumer goods service contract 358
does not constitute a contract substantially amounting to 359
insurance, or the contract's issuance the business of insurance, 360
under section 3905.42 of the Revised Code. 361

(G) The rights of a contract holder against a provider's 362
reimbursement insurance policy insurer as provided in this 363

section apply only in regard to a reimbursement insurance policy 364
issued under this section. This section does not create any 365
contractual rights in favor of a person that does not qualify as 366
an insured under any other type of insurance policy described in 367
Title XXXIX of the Revised Code. 368

Sec. 3905.426. (A) As used in this section: 369

(1) "Contract holder" means the person who purchased a 370
motor vehicle ancillary product protection contract, any 371
authorized transferee or assignee of the purchaser, or any other 372
person assuming the purchaser's rights under the motor vehicle 373
ancillary product protection contract. 374

(2) "Motor vehicle" has the same meaning as in section 375
4501.01 of the Revised Code and also includes utility vehicles 376
as defined in that section. 377

(3) (a) "Motor vehicle ancillary product protection 378
contract" means a contract or agreement that is effective for a 379
specified duration and paid for by means other than the purchase 380
of a motor vehicle, or its parts or equipment, to perform any 381
one or more of the following services: 382

(i) Repair or replacement of glass on a motor vehicle 383
necessitated by wear and tear or damage caused by a road hazard; 384

(ii) Removal of a dent, ding, or crease without affecting 385
the existing paint finish using paintless dent removal 386
techniques but which expressly excludes replacement of vehicle 387
body panels, sanding, bonding, or painting; 388

(iii) Repair to the interior components of a motor vehicle 389
necessitated by wear and tear but which expressly excludes 390
replacement of any part or component of a motor vehicle's 391
interior; 392

<u>(iv) Repair or replacement of tires or wheels damaged</u>	393
<u>because of a road hazard;</u>	394
<u>(v) Replacement of a lost, stolen, or inoperable key or</u>	395
<u>key fob.</u>	396
<u>(b) A motor vehicle ancillary product protection contract</u>	397
<u>may, but is not required to, provide for incidental payment of</u>	398
<u>indemnity under limited circumstances, including, without</u>	399
<u>limitation, towing, rental, and emergency road services.</u>	400
<u>(c) "Motor vehicle ancillary product protection contract"</u>	401
does not include any of the following:	402
<u>(i) A motor vehicle service contract or agreement to</u>	403
<u>perform or pay for the repair, replacement, or maintenance of a</u>	404
<u>motor vehicle due to defect in materials or workmanship, normal</u>	405
<u>wear and tear, mechanical or electrical breakdown, or failure of</u>	406
<u>parts or equipment of a motor vehicle that is effective for a</u>	407
<u>specified duration and paid for by means other than the purchase</u>	408
<u>of a motor vehicle;</u>	409
(ii) A vehicle protection product warranty as defined in	410
section 3905.421 of the Revised Code;	411
(iii) A home service contract as defined in section	412
3905.422 of the Revised Code;	413
(iv) A consumer goods service contract as defined in	414
section 3905.423 of the Revised Code;	415
<u>(v) A motor vehicle tire or wheel road hazard contract as</u>	416
<u>defined in section 3905.425 of the Revised Code for prepaid</u>	417
<u>routine, scheduled maintenance only.</u>	418
<u>(4) "Motor vehicle service contract" means a contract or</u>	419
<u>agreement to perform or pay for the repair, replacement, or</u>	420

maintenance of a motor vehicle due to defect in materials or 421
workmanship, normal wear and tear, mechanical or electrical 422
breakdown, or failure of parts or equipment of a motor vehicle, 423
with or without additional provisions for incidental payment of 424
indemnity under limited circumstances, including, without 425
limitation, towing, rental, and emergency road services, that is 426
effective for a specified duration and paid for by means other 427
than the purchase of a motor vehicle. 428

(5) "Provider" means a person who is contractually 429
obligated to a contract holder under the terms of a motor 430
vehicle ancillary product protection contract. 431

~~(5)~~(6) "Road hazard" means a condition that may cause 432
damage or wear and tear to a tire or wheel on a public or 433
private roadway, roadside, driveway, or parking lot or garage, 434
including potholes, nails, glass, road debris, and curbs. "Road 435
hazard" does not include fire, theft, vandalism or malicious 436
mischief, or other perils normally covered by automobile 437
physical damage insurance. 438

(7) "Reimbursement insurance policy" means a policy of 439
insurance issued by an insurer authorized or eligible to do 440
business in this state to a provider to pay, on behalf of the 441
provider in the event of the provider's nonperformance, all 442
covered contractual obligations incurred by the provider under 443
the terms and conditions of the motor vehicle ancillary product 444
protection contract. 445

~~(6)~~(8) "Supplier" has the same meaning as in section 446
1345.01 of the Revised Code. 447

(B) All motor vehicle ancillary product protection 448
contracts issued in this state shall be covered by a 449

reimbursement insurance policy. 450

(C) A motor vehicle ancillary product protection contract 451
issued by a provider that is required to be covered by a 452
reimbursement insurance policy under division (B) of this 453
section shall conspicuously state all of the following: 454

(1) "This contract is not insurance and is not subject to 455
the insurance laws of this state." 456

(2) That the obligations of the provider are guaranteed 457
under a reimbursement insurance policy; 458

(3) That if a provider fails to perform or make payment 459
due under the terms of the contract within sixty days after the 460
contract holder requests performance or payment pursuant to the 461
terms of the contract, the contract holder may request 462
performance or payment directly from the provider's 463
reimbursement insurance policy insurer, including any obligation 464
in the contract by which the provider must refund the contract 465
holder upon cancellation of a contract; 466

(4) The name, address, and telephone number of the 467
provider's reimbursement insurance policy insurer. 468

(D) A motor vehicle ancillary product protection contract 469
that includes repair or replacement of glass on a motor vehicle 470
as provided in division (A) (3) (a) (i) of this section, shall 471
conspicuously state: "This contract may provide a duplication of 472
coverage already provided by your automobile physical damage 473
insurance policy." 474

(E) A reimbursement insurance policy that is required to 475
be issued under this section shall contain: 476

(1) A statement that if a provider fails to perform or 477

make payment due under the terms of the motor vehicle ancillary 478
product protection contract within sixty days after the contract 479
holder requests performance or payment pursuant to the terms of 480
the contract, the contract holder may request performance or 481
payment directly from the provider's reimbursement insurance 482
policy insurer, including any obligation in the contract by 483
which the provider must refund the contract holder upon 484
cancellation of a contract. 485

(2) A statement that in the event of cancellation of the 486
provider's reimbursement insurance policy, insurance coverage 487
will continue for all contract holders whose motor vehicle 488
ancillary product protection contracts were issued by the 489
provider and reported to the insurer for coverage during the 490
term of the reimbursement insurance policy. 491

(F) The sale or issuance of a motor vehicle ancillary 492
product protection contract is a consumer transaction for 493
purposes of sections 1345.01 to 1345.13 of the Revised Code. The 494
provider is the supplier and the contract holder is the consumer 495
for purposes of those sections. 496

(G) Unless issued by an insurer authorized or eligible to 497
do business in this state, a motor vehicle ancillary product 498
protection contract does not constitute a contract substantially 499
amounting to insurance, or the contract's issuance the business 500
of insurance, under section 3905.42 of the Revised Code. 501

(H) Unless issued by an insurer authorized or eligible to 502
do business in this state, a contract identified in division (A) 503
(3)(c)(i) or (v) of this section does not constitute a contract 504
substantially amounting to insurance, or the contract's issuance 505
the business of insurance, under section 3905.42 of the Revised 506
Code. 507

(I) The rights of a contract holder against a provider's reimbursement insurance policy insurer as provided in this section apply only in regard to a reimbursement insurance policy issued under this section. This section does not create any contractual rights in favor of a person that does not qualify as an insured under any other type of insurance policy described in Title XXXIX of the Revised Code. This section does not prohibit the insurer of a provider's reimbursement insurance policy from assuming liability for contracts issued prior to the effective date of the policy or ~~this statute~~ July 1, 2009.

(J) A contract or agreement described in division (A) (3) (a) (iv) of this section in which the provider is a tire manufacturer shall be exempt from the requirements of division (B) of this section if the contract or agreement conspicuously states all of the following:

(1) That the contract or agreement is not an insurance contract;

(2) That any covered obligations or claims under the contract or agreement are the responsibility of the provider;

(3) The name, address, and telephone number of any administrator responsible for the administration of the contract or agreement, the provider obligated to perform under the contract or agreement, and the contract seller;

(4) The procedure for making a claim under the contract or agreement, including a toll-free telephone number for claims service and a procedure for obtaining emergency repairs or replacements performed outside normal business hours.

Sec. 3937.25. (A) As used in sections 3937.25 to 3937.29 of the Revised Code, "medical malpractice insurance" means

insurance coverage against the legal liability of the insured 537
for loss, damage, or expense arising from a medical, optometric, 538
or chiropractic claim, as those claims are defined in section 539
2305.113 of the Revised Code. 540

(B) After a policy of commercial property insurance, 541
commercial fire insurance, or commercial casualty insurance 542
other than fidelity or surety bonds, medical malpractice 543
insurance, and automobile insurance as defined in section 544
3937.30 of the Revised Code, has been in effect for more than 545
ninety days, a notice of cancellation for such policy shall not 546
be issued by any licensed insurer unless it is based on one of 547
the following grounds: 548

(1) Nonpayment of premium; 549

(2) Discovery of fraud or material misrepresentation in 550
the procurement of the insurance or with respect to any claims 551
submitted thereunder; 552

(3) Discovery of a moral hazard or willful or reckless 553
acts or omissions on the part of the named insured that increase 554
any hazard insured against; 555

(4) The occurrence of a change in the individual risk 556
which substantially increases any hazard insured against after 557
insurance coverage has been issued or renewed, except to the 558
extent the insurer reasonably should have foreseen the change or 559
contemplated the risk in writing the contract; 560

(5) Loss of applicable reinsurance or a substantial 561
decrease in applicable reinsurance, if the superintendent has 562
determined that reasonable efforts have been made to prevent the 563
loss of, or substantial decrease in, the applicable reinsurance, 564
or to obtain replacement coverage; 565

(6) Failure of an insured to correct material violations of safety codes or to comply with reasonable written loss control recommendations;	566
	567
	568
(7) A determination by the superintendent of insurance that the continuation of the policy would create a condition that would be hazardous to the policyholders or the public.	569
	570
	571
(C) The notice of cancellation required by this section must be in writing, be mailed to the insured at the insured's last known address, and contain all of the following:	572
	573
	574
(1) The policy number;	575
(2) The date of the notice;	576
(3) The effective date of the cancellation;	577
(4) An explanation of the reason for cancellation.	578
Such notice of cancellation also shall be mailed to the insured's agent.	579
	580
(D) (1) Except for nonpayment of premium, the effective date of cancellation must be no less than thirty days from the date of mailing the notice.	581
	582
	583
(2) (a) When cancellation is for nonpayment of premium, the effective date of cancellation must be no less than ten days from the date of mailing the notice.	584
	585
	586
(b) An insurer may include a notice of cancellation of a policy of automobile insurance for nonpayment of premium with a billing notice. Subject to division (D) (2) (a) of this section, such a cancellation is effective on or after the due date of the bill.	587
	588
	589
	590
	591
(E) Nothing in division (B) of this section shall be	592

construed to prevent an insurer from writing a policy of 593
commercial property insurance, commercial fire insurance, or 594
commercial casualty insurance other than medical malpractice 595
insurance and automobile insurance as defined in section 3937.30 596
of the Revised Code for a period greater than one year and 597
providing in such policy that the insurer may issue a notice of 598
cancellation of such policy at least thirty days prior to an 599
anniversary of such policy, with the effective date of 600
cancellation being that anniversary. 601

The superintendent may prescribe that adequate disclosure 602
be made to the insured when a policy is issued for a term of 603
more than one year. 604

(F) There is no liability on the part of, and no cause of 605
action of any nature arises against, the superintendent of 606
insurance, any insurer, or any person furnishing information 607
requested by the superintendent, an insurer, the agent, 608
employee, attorney, or other authorized representative of any 609
such persons, for any oral or written statement made to supply 610
information relevant to a determination on cancellation of any 611
policy of commercial property insurance, commercial fire 612
insurance, or commercial casualty insurance other than fidelity 613
or surety bonds, medical malpractice insurance, and automobile 614
insurance as defined in section 3937.30 of the Revised Code, or 615
in connection with advising an insured or an insured's attorney 616
of the reasons for a cancellation of such insurance, or in 617
connection with any administrative or judicial proceeding 618
arising out of or related to such cancellation. 619

Sec. 3937.28. (A) A notice of cancellation of a policy of 620
medical malpractice insurance shall not be issued by any 621
licensed insurer unless it is based on one of the following 622

grounds:	623
(1) Nonpayment of premium;	624
(2) Discovery of fraud or material misrepresentation in the procurement of the insurance or with respect to any claims submitted thereunder;	625 626 627
(3) Discovery of a moral hazard or willful or reckless acts or omissions on the part of the named insured that increase any hazard insured against;	628 629 630
(4) The occurrence of a change in the individual risk that substantially increases any hazard insured against after insurance coverage has been issued or renewed, except to the extent the insurer reasonably should have foreseen the change or contemplated the risk in writing the contract;	631 632 633 634 635
(5) Loss of applicable reinsurance or a substantial decrease in applicable reinsurance, if the superintendent of insurance has determined that reasonable efforts have been made to prevent the loss of, or substantial decrease in, the applicable reinsurance, or to obtain replacement coverage;	636 637 638 639 640
(6) Failure of an insured to correct material violations of safety codes or to comply with reasonable written loss control recommendations;	641 642 643
(7) A determination by the superintendent that the continuation of the policy would create a condition that would be hazardous to the policyholders or the public.	644 645 646
(B) The notice of cancellation required by this section shall be in writing, be mailed both to the insured at the insured's last known address and to the insured's agent, and contain all of the following:	647 648 649 650

(1) The policy number;	651
(2) The date of the notice;	652
(3) The effective date of the cancellation;	653
(4) An explanation of the grounds for cancellation.	654
(C) Except when cancellation is for nonpayment of premium,	655
the effective date of cancellation shall be not less than sixty	656
days from the date of mailing the notice. When cancellation is	657
for nonpayment of premium, the effective date of cancellation	658
shall be not less than ten days from the date of mailing the	659
notice. <u>The insurer may include the notice described in division</u>	660
<u>(D) (2) of section 3937.25 of the Revised Code.</u>	661
(D) Nothing in division (A) of this section shall be	662
construed to prevent an insurer from writing a policy of medical	663
malpractice insurance for a period greater than one year and	664
providing in such policy that the insurer may issue a notice of	665
cancellation of such policy at least sixty days prior to an	666
anniversary of such policy, with the effective date of	667
cancellation being that anniversary.	668
The superintendent may prescribe that adequate disclosure	669
be made to the insured when a policy is issued for a term of	670
more than one year.	671
(E) There is no liability on the part of, and no cause of	672
action of any nature arises against, the superintendent, any	673
insurer, or any person furnishing information requested by the	674
superintendent or an insurer, or the agent, employee, attorney	675
or other authorized representative of any such persons, for any	676
oral or written statement made to supply information relevant to	677
a determination on cancellation of any policy of medical	678
malpractice insurance, or in connection with advising an insured	679

or the insured's attorney of the grounds for a cancellation of 680
such insurance, or in connection with any administrative or 681
judicial proceeding arising out of or related to such 682
cancellation. 683

Sec. 3937.47. (A) As used in this section, "personal lines 684
insurance" means any policy of insurance issued to a natural 685
person for personal or family protection, including basic 686
property, dwelling fire, homeowner's, tenant's, inland marine, 687
personal liability, and personal umbrella liability coverage. 688

(B) When the reason for cancellation of a personal lines 689
insurance policy is nonpayment of premium, the effective date of 690
cancellation shall be not less than ten days from the date the 691
notice was mailed. 692

(C) An insurer may include a notice of cancellation of a 693
personal lines insurance policy for nonpayment of premium with a 694
billing statement. Subject to division (B) of this section, such 695
a cancellation is effective on or after the due date of the 696
bill. 697

Sec. 3955.05. Sections 3955.01 to 3955.19 of the Revised 698
Code apply to all kinds of direct insurance, except: 699

(A) Title insurance; 700

(B) Fidelity or surety bonds, or any other bonding 701
obligations; 702

(C) Credit insurance, vendors' single interest insurance, 703
collateral protection insurance, or any similar insurance 704
protecting the interests of a creditor arising out of a 705
creditor-debtor transaction; 706

(D) Mortgage guaranty, financial guaranty, residual value, 707

or other forms of insurance offering protection against	708
investment risks;	709
(E) Ocean marine insurance;	710
(F) Any insurance provided by or guaranteed by government,	711
including, but not limited to, any department, board, office,	712
commission, agency, institution, or other instrumentality or	713
entity of any branch of state government, any political	714
subdivision of this state, the United States or any agency of	715
the United States, or any separate or joint governmental self-	716
insurance or risk-pooling program, plan, or pool;	717
(G) Contracts of any corporation by which health services	718
are to be provided to its subscribers;	719
(H) Life, annuity, health, or disability insurance,	720
including sickness and accident insurance written pursuant to	721
Chapter 3923. of the Revised Code;	722
(I) Fraternal benefit insurance;	723
(J) Mutual protective insurance of persons or property;	724
(K) Reciprocal or interinsurance contracts written	725
pursuant to Chapter 3931. of the Revised Code for medical	726
malpractice insurance if the reciprocal exchange or	727
interinsurance exchange is not subject to the risk-based capital	728
requirements in effect in the state of domicile of the	729
reciprocal exchange or interinsurance exchange. As used in this	730
division, "medical malpractice insurance" means insurance	731
coverage against the legal liability of the insured and against	732
loss, damage, or expense incident to a claim arising out of the	733
death, disease, or injury of any person as the result of	734
negligence or malpractice in rendering professional service by	735
any licensed physician, podiatrist, or hospital, as those terms	736

are defined in section 2305.113 of the Revised Code.	737
(L) Any political subdivision self-insurance program or joint political subdivision self-insurance pool established under Chapter 2744. of the Revised Code;	738 739 740
(M) Warranty or service contracts, or the insurance of those contracts;	741 742
(N) Any state university or college self-insurance program established under section 3345.202 of the Revised Code;	743 744
(O) Any transaction, or combination of transactions, between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, that involves the transfer of investment or credit risk unaccompanied by a transfer of insurance risk;	745 746 747 748 749
(P) Credit union share guaranty insurance issued pursuant to Chapter 1761. of the Revised Code;	750 751
(Q) Insurance issued by risk retention groups as defined in Chapter 3960. of the Revised Code;	752 753
(R) Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees.	754 755 756
<u>(S) Surplus lines insurance issued under section 3905.332 of the Revised Code.</u>	757 758
Sec. 3960.11. (A) No person shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person is licensed as an insurance agent or broker in accordance with Chapter 3905. of the Revised Code.	759 760 761 762 763

(B) No person shall act or aid in any manner in 764
soliciting, negotiating, or procuring liability insurance in 765
this state for a purchasing group from an authorized insurer or 766
a risk retention group chartered in a state unless the person is 767
licensed as an insurance agent or broker in accordance with 768
Chapter 3905. of the Revised Code. 769

(C) No person shall act or aid in any manner in 770
soliciting, negotiating, or procuring liability insurance 771
coverage in this state for any member of a purchasing group 772
under a purchasing group's policy unless the person is licensed 773
as an insurance agent or broker in accordance with Chapter 3905. 774
of the Revised Code. 775

(D) No person shall act or aid in any manner in 776
soliciting, negotiating, or procuring liability insurance from 777
an insurer not authorized to do business in this state, or from 778
a domestic insurer designated as a domestic surplus lines 779
insurer pursuant to section 3905.332 of the Revised Code, on 780
behalf of a purchasing group located in this state unless the 781
person is licensed as a surplus line broker in accordance with 782
section 3905.30 of the Revised Code. 783

Sec. 3963.02. (A) (1) No contracting entity shall sell, 784
rent, or give a third party the contracting entity's rights to a 785
participating provider's services pursuant to the contracting 786
entity's health care contract with the participating provider 787
unless one of the following applies: 788

(a) The third party accessing the participating provider's 789
services under the health care contract is an employer or other 790
entity providing coverage for health care services to its 791
employees or members, and that employer or entity has a contract 792
with the contracting entity or its affiliate for the 793

administration or processing of claims for payment for services 794
provided pursuant to the health care contract with the 795
participating provider. 796

(b) The third party accessing the participating provider's 797
services under the health care contract either is an affiliate 798
or subsidiary of the contracting entity or is providing 799
administrative services to, or receiving administrative services 800
from, the contracting entity or an affiliate or subsidiary of 801
the contracting entity. 802

(c) The health care contract specifically provides that it 803
applies to network rental arrangements and states that one 804
purpose of the contract is selling, renting, or giving the 805
contracting entity's rights to the services of the participating 806
provider, including other preferred provider organizations, and 807
the third party accessing the participating provider's services 808
is any of the following: 809

(i) A payer or a third-party administrator or other entity 810
responsible for administering claims on behalf of the payer; 811

(ii) A preferred provider organization or preferred 812
provider network that receives access to the participating 813
provider's services pursuant to an arrangement with the 814
preferred provider organization or preferred provider network in 815
a contract with the participating provider that is in compliance 816
with division (A)(1)(c) of this section, and is required to 817
comply with all of the terms, conditions, and affirmative 818
obligations to which the originally contracted primary 819
participating provider network is bound under its contract with 820
the participating provider, including, but not limited to, 821
obligations concerning patient steerage and the timeliness and 822
manner of reimbursement. 823

(iii) An entity that is engaged in the business of providing electronic claims transport between the contracting entity and the payer or third-party administrator and complies with all of the applicable terms, conditions, and affirmative obligations of the contracting entity's contract with the participating provider including, but not limited to, obligations concerning patient steerage and the timeliness and manner of reimbursement.

(2) The contracting entity that sells, rents, or gives the contracting entity's rights to the participating provider's services pursuant to the contracting entity's health care contract with the participating provider as provided in division (A) (1) of this section shall do both of the following:

(a) Maintain a web page that contains a listing of third parties described in divisions (A) (1) (b) and (c) of this section with whom a contracting entity contracts for the purpose of selling, renting, or giving the contracting entity's rights to the services of participating providers that is updated at least every six months and is accessible to all participating providers, or maintain a toll-free telephone number accessible to all participating providers by means of which participating providers may access the same listing of third parties;

(b) Require that the third party accessing the participating provider's services through the participating provider's health care contract is obligated to comply with all of the applicable terms and conditions of the contract, including, but not limited to, the products for which the participating provider has agreed to provide services, except that a payer receiving administrative services from the contracting entity or its affiliate shall be solely responsible

for payment to the participating provider. 854

(3) Any information disclosed to a participating provider 855
under this section shall be considered proprietary and shall not 856
be distributed by the participating provider. 857

(4) Except as provided in division (A) (1) of this section, 858
no entity shall sell, rent, or give a contracting entity's 859
rights to the participating provider's services pursuant to a 860
health care contract. 861

(B) (1) No contracting entity shall require, as a condition 862
of contracting with the contracting entity, that a participating 863
provider provide services for all of the products offered by the 864
contracting entity. 865

(2) Division (B) (1) of this section shall not be construed 866
to do any of the following: 867

(a) Prohibit any participating provider from voluntarily 868
accepting an offer by a contracting entity to provide health 869
care services under all of the contracting entity's products; 870

(b) Prohibit any contracting entity from offering any 871
financial incentive or other form of consideration specified in 872
the health care contract for a participating provider to provide 873
health care services under all of the contracting entity's 874
products; 875

(c) Require any contracting entity to contract with a 876
participating provider to provide health care services for less 877
than all of the contracting entity's products if the contracting 878
entity does not wish to do so. 879

(3) (a) Notwithstanding division (B) (2) of this section, no 880
contracting entity shall require, as a condition of contracting 881

with the contracting entity, that the participating provider 882
accept any future product offering that the contracting entity 883
makes. 884

(b) If a participating provider refuses to accept any 885
future product offering that the contracting entity makes, the 886
contracting entity may terminate the health care contract based 887
on the participating provider's refusal upon written notice to 888
the participating provider no sooner than one hundred eighty 889
days after the refusal. 890

(4) Once the contracting entity and the participating 891
provider have signed the health care contract, it is presumed 892
that the financial incentive or other form of consideration that 893
is specified in the health care contract pursuant to division 894
(B) (2) (b) of this section is the financial incentive or other 895
form of consideration that was offered by the contracting entity 896
to induce the participating provider to enter into the contract. 897

(C) No contracting entity shall require, as a condition of 898
contracting with the contracting entity, that a participating 899
provider waive or ~~forego~~ forgo any right or benefit expressly 900
conferred upon a participating provider by state or federal law. 901
However, this division does not prohibit a contracting entity 902
from restricting a participating provider's scope of practice 903
for the services to be provided under the contract. 904

(D) No health care contract shall do any of the following: 905

(1) Prohibit any participating provider from entering into 906
a health care contract with any other contracting entity; 907

(2) Prohibit any contracting entity from entering into a 908
health care contract with any other provider; 909

(3) Preclude its use or disclosure for the purpose of 910

enforcing this chapter or other state or federal law, except 911
that a health care contract may require that appropriate 912
measures be taken to preserve the confidentiality of any 913
proprietary or trade-secret information. 914

(E) (1) In addition to any other lawful reasons for 915
terminating a health care contract, a health care contract may 916
only be terminated under the circumstances described in division 917
(A) (3) of section 3963.04 of the Revised Code. 918

(2) If the health care contract provides for termination 919
for cause by either party, the health care contract shall state 920
the reasons that may be used for termination for cause, which 921
terms shall be reasonable. Once the contracting entity and the 922
participating provider have signed the health care contract, it 923
is presumed that the reasons stated in the health care contract 924
for termination for cause by either party are reasonable. 925
Subject to division (E) (3) of this section, the health care 926
contract shall state the time by which the parties must provide 927
notice of termination for cause and to whom the parties shall 928
give the notice. 929

(3) Nothing in divisions (E) (1) and (2) of this section 930
shall be construed as prohibiting any health insuring 931
corporation from terminating a participating provider's contract 932
for any of the causes described in divisions (A), (D), and (F) 933
(1) and (2) of section 1753.09 of the Revised Code. 934
Notwithstanding any provision in a health care contract pursuant 935
to division (E) (2) of this section, section 1753.09 of the 936
Revised Code applies to the termination of a participating 937
provider's contract for any of the causes described in divisions 938
(A), (D), and (F) (1) and (2) of section 1753.09 of the Revised 939
Code. 940

(4) Subject to sections 3963.01 to 3963.11 of the Revised Code, nothing in this section prohibits the termination of a health care contract without cause if the health care contract otherwise provides for termination without cause.

(5) Nothing in division (E) of this section shall be construed to expand the regulatory authority of the superintendent to vision care providers.

(F)(1) Disputes among parties to a health care contract that only concern the enforcement of the contract rights conferred by section 3963.02, divisions (A) and (D) of section 3963.03, and section 3963.04 of the Revised Code are subject to a mutually agreed upon arbitration mechanism that is binding on all parties. The arbitrator may award reasonable attorney's fees and costs for arbitration relating to the enforcement of this section to the prevailing party.

(2) The arbitrator shall make the arbitrator's decision in an arbitration proceeding having due regard for any applicable rules, bulletins, rulings, or decisions issued by the department of insurance or any court concerning the enforcement of the contract rights conferred by section 3963.02, divisions (A) and (D) of section 3963.03, and section 3963.04 of the Revised Code.

(3) A party shall not simultaneously maintain an arbitration proceeding as described in division (F)(1) of this section and pursue a complaint with the superintendent of insurance to investigate the subject matter of the arbitration proceeding. However, if a complaint is filed with the department of insurance, the superintendent may choose to investigate the complaint or, after reviewing the complaint, advise the complainant to proceed with arbitration to resolve the complaint. The superintendent may request to receive a copy of

the results of the arbitration. If the superintendent of 971
insurance notifies an insurer or a health insuring corporation 972
in writing that the superintendent has initiated a market 973
conduct examination into the specific subject matter of the 974
arbitration proceeding pending against that insurer or health 975
insuring corporation, the arbitration proceeding shall be stayed 976
at the request of the insurer or health insuring corporation 977
pending the outcome of the market conduct investigation by the 978
superintendent. 979

Sec. 3965.01. As used in this chapter: 980

(A) "Assuming insurer" has the same meaning as in section 981
3901.61 of the Revised Code. 982

(B) "Authorized individual" means an individual authorized 983
by the licensee to access nonpublic information held by the 984
licensee and its information systems. 985

(C) "Ceding insurer" has the same meaning as in section 986
3901.61 of the Revised Code. 987

(D) "Consumer" means an individual who is a resident of 988
this state and whose nonpublic information is in a licensee's 989
possession, custody, or control. "Consumer" includes an 990
applicant, policyholder, insured, beneficiary, claimant, and 991
certificate holder. 992

(E) "Cybersecurity event" means an event resulting in 993
unauthorized access to, disruption of, or misuse of an 994
information system or nonpublic information stored on an 995
information system that has a reasonable likelihood of 996
materially harming any consumer residing in this state or any 997
material part of the normal operations of the licensee. 998
"Cybersecurity event" does not include the unauthorized 999

acquisition of encrypted nonpublic information if the 1000
encryption, process, or key is not also acquired, released, or 1001
used without authorization. "Cybersecurity event" does not 1002
include an event with regard to which the licensee has 1003
determined that the nonpublic information accessed by an 1004
unauthorized person has not been used or released and has been 1005
returned or destroyed. 1006

(F) "Encrypted" means the transformation of data into a 1007
form that results in a low probability of assigning meaning 1008
without the use of a protective process or key. 1009

(G) "Family" means an individual's spouse, child, 1010
stepchild, foster child, parent, stepparent, foster parent, 1011
grandparent, grandchild, sibling, half sibling, stepsibling, 1012
parent-in-law, brother-in-law, or sister-in-law. 1013

(H) "HIPAA" means the "Health Insurance Portability and 1014
Accountability Act of 1996," Pub. L. No. 104-191, 110 Stat. 1015
1936, as amended. 1016

(I) "Independent insurance agent" has the same meaning as 1017
in section 3905.49 of the Revised Code. 1018

(J) "Information security program" means the 1019
administrative, technical, and physical safeguards that a 1020
licensee uses to access, collect, distribute, process, protect, 1021
store, use, transmit, dispose of, or otherwise handle nonpublic 1022
information. 1023

(K) "Information system" means a discrete set of 1024
electronic information resources organized for the collection, 1025
processing, maintenance, use, sharing, dissemination, or 1026
disposition of electronic nonpublic information, as well as any 1027
specialized system such as industrial and process controls 1028

systems, telephone switching and private branch exchange 1029

systems, and environmental control systems. 1030

(L) "Insurer" has the same meaning as in section 3901.32 1031

of the Revised Code. 1032

(M) "Licensee" means any person licensed, authorized to 1033

operate, or registered, or required to be licensed, authorized, 1034

or registered pursuant to the insurance laws of this state. 1035

"Licensee" includes an insurer. "Licensee" does not include a 1036

purchasing group or a risk retention group chartered and 1037

licensed in another state or a licensee that is acting as an 1038

assuming insurer that is domiciled in another state or 1039

jurisdiction. 1040

(N) "Multifactor authentication" means authentication 1041

through verification of at least two of the following types of 1042

authentication factors: 1043

(1) Knowledge factors, such as a password; 1044

(2) Possession factors, such as a token or text message on 1045

a mobile phone; 1046

(3) Inherence factors, such as a biometric characteristic. 1047

(O) "Nonpublic information" means information that is not 1048

publicly available information and is one of the following: 1049

(1) Business-related information of a licensee the 1050

tampering with, unauthorized disclosure of, access to, or use of 1051

which, would cause a material adverse impact to the business, 1052

operation, or security of the licensee; 1053

(2) Information concerning a consumer that because of the 1054

name, number, personal mark, or other identifier contained in 1055

the information can be used to identify that consumer in 1056

<u>combination with any one or more of the following data elements:</u>	1057
<u>(a) Social security number;</u>	1058
<u>(b) Driver's license, commercial driver's license, or</u> <u>state identification card number;</u>	1059 1060
<u>(c) Account, credit card, or debit card number;</u>	1061
<u>(d) Any security code, access code, or password that would</u> <u>permit access to the consumer's financial account;</u>	1062 1063
<u>(e) Biometric records.</u>	1064
<u>(3) Any information or data, except age or gender, that is</u> <u>in any form or medium created by or derived from a health care</u> <u>provider or a consumer, that can be used to identify a</u> <u>particular consumer, and that relates to any of the following:</u>	1065 1066 1067 1068
<u>(a) The past, present, or future physical, mental, or</u> <u>behavioral health or condition of the consumer or a member of</u> <u>the consumer's family;</u>	1069 1070 1071
<u>(b) The provision of health care to the consumer;</u>	1072
<u>(c) Payment for the provision of health care to the</u> <u>consumer.</u>	1073 1074
<u>(P) "Publicly available information" means any information</u> <u>that a licensee has a reasonable basis to believe is lawfully</u> <u>made available to the general public from federal, state, or</u> <u>local government records; widely distributed media; or</u> <u>disclosures to the general public that are required to be made</u> <u>by federal, state, or local law.</u>	1075 1076 1077 1078 1079 1080
<u>For the purposes of this chapter, a licensee has a</u> <u>reasonable basis to believe that information is lawfully made</u> <u>available to the general public if the licensee has taken steps</u>	1081 1082 1083

to determine both of the following: 1084

(1) That the information is of the type that is available 1085
to the general public; 1086

(2) Whether a consumer can direct that the information not 1087
be made available to the general public and, if so, that the 1088
consumer has not done so. 1089

(Q) "Risk assessment" means the risk assessment that each 1090
licensee is required to conduct under division (C) of section 1091
3965.02 of the Revised Code. 1092

(R) "Third-party service provider" means a person other 1093
than a licensee that: 1094

(1) Contracts with a licensee to maintain, process, or 1095
store nonpublic information through its provision of services to 1096
the licensee; 1097

(2) Otherwise is permitted access to nonpublic information 1098
through its provision of services to the licensee. 1099

Sec. 3965.02. (A) Each licensee shall develop, implement, 1100
and maintain a comprehensive written information security 1101
program based on the licensee's risk assessment. The program 1102
shall be commensurate with the size and complexity of the 1103
licensee, the nature and scope of the licensee's activities 1104
including its use of third-party service providers, and the 1105
sensitivity of the nonpublic information used by the licensee or 1106
in the licensee's possession, custody, or control. 1107

(B) The information security program shall contain 1108
administrative, technical, and physical safeguards for the 1109
protection of nonpublic information and the licensee's 1110
information system and shall be designed to do all of the 1111

<u>following:</u>	1112
<u>(1) Protect the security and confidentiality of nonpublic information and the security of the information system;</u>	1113
	1114
<u>(2) Protect against any threats or hazards to the security or integrity of nonpublic information and the information system;</u>	1115
	1116
	1117
<u>(3) Protect against unauthorized access to or use of nonpublic information and minimize the likelihood of harm to any consumer;</u>	1118
	1119
	1120
<u>(4) Define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when no longer needed.</u>	1121
	1122
	1123
<u>(C) The licensee shall do all of the following:</u>	1124
<u>(1) Designate one or more persons or entities to act on behalf of the licensee and be responsible for the information security program;</u>	1125
	1126
	1127
<u>(2) Identify reasonably foreseeable internal or external threats that could result in unauthorized access, transmission, disclosure, misuse, alteration, or destruction of nonpublic information, including threats to the security of information systems and nonpublic information that are accessible to, or held by, third-party service providers;</u>	1128
	1129
	1130
	1131
	1132
	1133
<u>(3) Assess the likelihood and potential damage of the threats described in division (C) (2) of this section, taking into consideration the sensitivity of the nonpublic information;</u>	1134
	1135
	1136
<u>(4) Assess the sufficiency of policies, procedures, information systems, and other safeguards in place to manage the threats described in division (C) (2) of this section, including</u>	1137
	1138
	1139

consideration of such threats in each relevant area of the 1140
licensee's operations, including all of the following: 1141

(a) Employee training and management; 1142

(b) Information systems, including network and software 1143
design, as well as information classification, governance, 1144
processing, storage, transmission, and disposal; 1145

(c) Detecting, preventing, and responding to attacks, 1146
intrusions, or other systems failures. 1147

(5) Implement information safeguards to manage the threats 1148
identified in its ongoing assessment; 1149

(6) Not less than annually, assess the effectiveness of 1150
the safeguards' key controls, systems, and procedures. 1151

(D) Based on its risk assessment, the licensee shall do 1152
all of the following: 1153

(1) Design its information security program to mitigate 1154
the identified risks in a way that is commensurate with the size 1155
and complexity of the licensee, the nature and scope of the 1156
licensee's activities including its use of third-party service 1157
providers, and the sensitivity of the nonpublic information used 1158
by the licensee or in the licensee's possession, custody, or 1159
control; 1160

(2) Determine which of the following security measures are 1161
appropriate and implement such security measures: 1162

(a) Place access controls on information systems, 1163
including controls to authenticate and permit access only to 1164
authorized individuals, to protect against the unauthorized 1165
acquisition of nonpublic information; 1166

- (b) Identify and manage the data, personnel, devices, systems, and facilities that enable the organization to achieve business purposes in accordance with their relative importance to business objectives and the organization's risk strategy; 1167
1168
1169
1170
- (c) Restrict access at physical locations containing nonpublic information to authorized individuals; 1171
1172
- (d) Protect by encryption or other appropriate means all nonpublic information while such information is being transmitted over an external network and all nonpublic information stored on a laptop computer or other portable computing or storage device or media; 1173
1174
1175
1176
1177
- (e) Adopt secure development practices for in-house developed applications utilized by the licensee and procedures for evaluating, assessing, or testing the security of externally developed applications utilized by the licensee; 1178
1179
1180
1181
- (f) Modify the information system in accordance with the licensee's information security program; 1182
1183
- (g) Utilize effective controls, which may include multifactor authentication procedures for accessing nonpublic information; 1184
1185
1186
- (h) Regularly test and monitor systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems; 1187
1188
1189
- (i) Include audit trails within the information security program designed to detect and respond to cybersecurity events and designed to reconstruct material financial transactions sufficient to support normal operations and obligations of the licensee; 1190
1191
1192
1193
1194

(j) Implement measures to protect against destruction, loss, or damage of nonpublic information due to environmental hazards, such as fire and water damage or other catastrophes or technological failures; 1195
1196
1197
1198

(k) Develop, implement, and maintain procedures for the secure disposal of nonpublic information in any format. 1199
1200

(3) Include cybersecurity risks in the licensee's enterprise risk management process; 1201
1202

(4) Stay informed regarding emerging threats or vulnerabilities and utilize reasonable security measures when sharing information relative to the character of the sharing and the type of information shared; 1203
1204
1205
1206

(5) Provide its personnel with cybersecurity awareness training that is updated as necessary to reflect risks identified by the licensee in the risk assessment. 1207
1208
1209

(E) If the licensee has a board of directors, the board or an appropriate committee of the board shall, at a minimum, do all of the following: 1210
1211
1212

(1) Require the licensee's executive management or its delegates to develop, implement, and maintain the licensee's information security program; 1213
1214
1215

(2) Require the licensee's executive management or its delegates to report in writing at least annually, all of the following information: 1216
1217
1218

(a) The overall status of the information security program and the licensee's compliance with this chapter; 1219
1220

(b) Material matters related to the information security program, addressing issues such as risk assessment, risk 1221
1222

management and control decisions, third-party service provider 1223
arrangements, results of testing, cybersecurity events or 1224
violations and management's responses thereto, and 1225
recommendations for changes in the information security program. 1226

(3) If executive management delegates any of its 1227
responsibilities under this section, it shall oversee the 1228
development, implementation, and maintenance of the licensee's 1229
information security program prepared by the delegates and shall 1230
require the delegates to submit a report that complies with the 1231
requirements of division (E)(2) of this section. 1232

(F)(1) A licensee shall exercise due diligence in 1233
selecting its third-party service provider. 1234

(2) A licensee shall require a third-party service 1235
provider to implement appropriate administrative, technical, and 1236
physical measures to protect and secure the information systems 1237
and nonpublic information that are accessible to, or held by, 1238
the third-party service provider. 1239

(G) The licensee shall monitor, evaluate, and adjust, as 1240
appropriate, the information security program consistent with 1241
all of the following: 1242

(1) Any relevant changes in technology; 1243

(2) The sensitivity of its nonpublic information; 1244

(3) Internal or external threats to information; 1245

(4) The licensee's own changing business arrangements, 1246
such as mergers and acquisitions, alliances and joint ventures, 1247
outsourcing arrangements, and changes to information systems. 1248

(H)(1) As part of its information security program, each 1249
licensee shall establish a written incident response plan 1250

designed to promptly respond to, and recover from, any 1251
cybersecurity event that compromises the confidentiality, 1252
integrity, or availability of nonpublic information in its 1253
possession, the licensee's information systems, or the 1254
continuing functionality of any aspect of the licensee's 1255
business or operations. 1256

(2) The incident response plan described in division (H) 1257
(1) of this section shall address all of the following areas: 1258

(a) The internal process for responding to a cybersecurity 1259
event; 1260

(b) The goals of the incident response plan; 1261

(c) The definition of clear roles, responsibilities, and 1262
levels of decision-making authority; 1263

(d) External and internal communications and information 1264
sharing; 1265

(e) Identification of requirements for the remediation of 1266
any identified weaknesses in information systems and associated 1267
controls; 1268

(f) Documentation and reporting regarding cybersecurity 1269
events and related incident response activities; 1270

(g) The evaluation and revision as necessary of the 1271
incident response plan following a cybersecurity event. 1272

(I)(1) By the fifteenth day of February of each year, 1273
unless otherwise permitted to file on the first day of June in 1274
division (I)(2) of this section, each insurer domiciled in this 1275
state shall submit to the superintendent of insurance a written 1276
statement certifying that the insurer is in compliance with the 1277
requirements set forth in this section. Each insurer shall 1278

maintain for examination by the department of insurance all 1279
records, schedules, and data supporting this certificate for a 1280
period of five years. To the extent an insurer has identified 1281
areas, systems, or processes that require material improvement, 1282
updating, or redesign, the insurer shall document the 1283
identification and the remedial efforts planned and underway to 1284
address such areas, systems, or processes. Such documentation 1285
must be available for inspection by the superintendent. 1286

(2) Notwithstanding division (I) (1) of this section, an 1287
insurer domiciled in this state and licensed exclusively to 1288
conduct business in this state and no other state shall be 1289
permitted to submit to the superintendent of insurance a written 1290
statement certifying that the insurer is in compliance with the 1291
requirements set forth in this section as part of the insurer's 1292
corporate governance annual disclosure required by section 1293
3901.073 of the Revised Code. 1294

(J) A licensee that meets the requirements of this chapter 1295
shall be deemed to have implemented a cybersecurity program that 1296
reasonably conforms to an industry-recognized cybersecurity 1297
framework for the purposes of Chapter 1354. of the Revised Code. 1298

Sec. 3965.03. (A) If a licensee learns that a 1299
cybersecurity event has or may have occurred, the licensee or an 1300
outside vendor or service provider designated to act on behalf 1301
of the licensee shall conduct a prompt investigation. 1302

(B) During the investigation, the licensee or an outside 1303
vendor or service provider designated to act on behalf of the 1304
licensee shall, at a minimum, do as much of the following as 1305
possible: 1306

(1) Determine whether a cybersecurity event has occurred; 1307

<u>(2) Assess the nature and scope of the cybersecurity</u>	1308
<u>event;</u>	1309
<u>(3) Identify any nonpublic information that may have been</u>	1310
<u>involved in the cybersecurity event;</u>	1311
<u>(4) Perform or oversee reasonable measures to restore the</u>	1312
<u>security of the information systems compromised in the</u>	1313
<u>cybersecurity event in order to prevent further unauthorized</u>	1314
<u>acquisition, release, or use of nonpublic information in the</u>	1315
<u>licensee's possession, custody, or control.</u>	1316
<u>(C) If the licensee learns that a cybersecurity event has</u>	1317
<u>or may have occurred in a system maintained by a third-party</u>	1318
<u>service provider, the licensee shall take the actions described</u>	1319
<u>in division (B) of this section or make reasonable efforts to</u>	1320
<u>confirm and document that the third-party service provider has</u>	1321
<u>taken those actions.</u>	1322
<u>(D) The licensee shall maintain records concerning all</u>	1323
<u>cybersecurity events for a period of at least five years from</u>	1324
<u>the date of the cybersecurity event and shall produce those</u>	1325
<u>records upon demand of the superintendent of insurance.</u>	1326
Sec. 3965.04. <u>(A) Each licensee shall notify the</u>	1327
<u>superintendent of insurance as promptly as possible after a</u>	1328
<u>determination that a cybersecurity event involving nonpublic</u>	1329
<u>information in the possession of the licensee has occurred, but</u>	1330
<u>in no event later than three business days after that</u>	1331
<u>determination, when either of the following criteria has been</u>	1332
<u>met:</u>	1333
<u>(1) Both of the following apply:</u>	1334
<u>(a) This state is the licensee's state of domicile, in the</u>	1335
<u>case of an insurer, or this state is the licensee's home state,</u>	1336

in the case of an independent insurance agent. 1337

(b) The cybersecurity event has a reasonable likelihood of 1338
materially harming a consumer or a material part of the normal 1339
operations of the licensee. 1340

(2) The licensee reasonably believes that the nonpublic 1341
information involved relates to two hundred fifty or more 1342
consumers residing in this state and the cybersecurity event is 1343
either of the following: 1344

(a) A cybersecurity event impacting the licensee of which 1345
notice is required to be provided to any government body, self- 1346
regulatory agency, or any other supervisory body pursuant to any 1347
state or federal law; 1348

(b) A cybersecurity event that has a reasonable likelihood 1349
of materially harming either of the following: 1350

(i) Any consumer residing in this state; 1351

(ii) Any material part of the normal operations of the 1352
licensee. 1353

(B) (1) In providing the notification described in division 1354
(A) of this section, the licensee shall provide as much of the 1355
following information as possible: 1356

(a) The date of the cybersecurity event; 1357

(b) A description of how the information was exposed, 1358
lost, stolen, or breached, including the specific roles and 1359
responsibilities of any third-party service providers; 1360

(c) How the cybersecurity event was discovered; 1361

(d) Whether any lost, stolen, or breached information has 1362
been recovered and if so, how this was done; 1363

- (e) The identity of the source of the cybersecurity event; 1364
- (f) Whether the licensee has filed a police report or has notified any regulatory, government, or law enforcement agencies and, if so, when such notification was provided; 1365
1366
1367
- (g) A description of the specific types of information acquired without authorization. "Specific types of information" means particular data elements, including types of medical information, types of financial information, or types of information allowing identification of the consumer. 1368
1369
1370
1371
1372
- (h) The period during which the information system was compromised by the cybersecurity event; 1373
1374
- (i) The number of total consumers in this state affected by the cybersecurity event. The licensee shall provide the best estimate in the initial report to the superintendent and update this estimate with each subsequent report to the superintendent pursuant to this section. 1375
1376
1377
1378
1379
- (j) The results of any internal review identifying a lapse in either automated controls or internal procedures, or confirming that all automated controls or internal procedures were followed; 1380
1381
1382
1383
- (k) A description of efforts being undertaken to remediate the situation that permitted the cybersecurity event to occur; 1384
1385
- (l) A copy of the licensee's privacy policy and a statement outlining the steps the licensee will take to investigate and notify consumers affected by the cybersecurity event; 1386
1387
1388
1389
- (m) The name of a contact person who is both familiar with the cybersecurity event and authorized to act for the licensee. 1390
1391

(2) The licensee shall provide the information in 1392
electronic form as directed by the superintendent. The licensee 1393
shall have a continuing obligation to update and supplement 1394
initial and subsequent notifications to the superintendent 1395
regarding material developments relating to the cybersecurity 1396
event. 1397

(C) A licensee shall comply with section 1349.19 of the 1398
Revised Code as applicable and provide a copy of the notice sent 1399
to consumers under that section to the superintendent, when the 1400
licensee is required to notify the superintendent under division 1401
(A) of this section. 1402

(D) (1) If a licensee becomes aware of a cybersecurity 1403
event in a system maintained by a third-party service provider, 1404
the licensee shall treat the event as it would under division 1405
(A) of this section. 1406

(2) The computation of the licensee's deadlines specified 1407
in this section shall begin on the day after the third-party 1408
service provider notifies the licensee of the cybersecurity 1409
event or the licensee otherwise has actual knowledge of the 1410
cybersecurity event, whichever is sooner. 1411

(3) Nothing in this chapter shall prevent or abrogate an 1412
agreement between a licensee and another licensee, a third-party 1413
service provider, or any other party to fulfill any of the 1414
investigation requirements imposed under section 3965.03 of the 1415
Revised Code or notice requirements imposed under this section. 1416

(E) (1) In the case of a cybersecurity event involving 1417
nonpublic information that is used by or in the possession, 1418
custody, or control of a licensee that is acting as an assuming 1419
insurer, including an assuming insurer that is domiciled in 1420

another state or jurisdiction, and that does not have a direct 1421
contractual relationship with the affected consumers, both of 1422
the following apply: 1423

(a) The assuming insurer shall notify its affected ceding 1424
insurers and the insurance commissioner of its state or 1425
jurisdiction of domicile within three business days of making 1426
the determination that a cybersecurity event has occurred. 1427

(b) The ceding insurers that have a direct contractual 1428
relationship with affected consumers shall fulfill the consumer 1429
notification requirements imposed under section 1349.19 of the 1430
Revised Code and any other notification requirements relating to 1431
a cybersecurity event imposed under this section. 1432

(2) In the case of a cybersecurity event involving 1433
nonpublic information that is in the possession, custody, or 1434
control of a licensee's third-party service provider, when the 1435
licensee is acting as an assuming insurer, including an assuming 1436
insurer that is domiciled in another state or jurisdiction, both 1437
of the following apply: 1438

(a) The assuming insurer shall notify its affected ceding 1439
insurers and the insurance commissioner of its state or 1440
jurisdiction of domicile within three business days of receiving 1441
notice from its third-party service provider that a 1442
cybersecurity event has occurred. 1443

(b) The ceding insurers that have a direct contractual 1444
relationship with affected consumers shall fulfill the consumer 1445
notification requirements imposed under section 1349.19 of the 1446
Revised Code and any other notification requirements relating to 1447
a cybersecurity event imposed under this section. 1448

(3) Any licensee acting as an assuming insurer shall have 1449

no other notice obligations relating to a cybersecurity event or 1450
other data breach under division (A) of this section. 1451

(F) In the case of a cybersecurity event involving 1452
nonpublic information that is in the possession, custody, or 1453
control of a licensee that is an insurer or its third-party 1454
service provider, that was obtained by the insurer from a 1455
consumer accessing the insurer's services through an independent 1456
insurance agent, and for which disclosure or notice is required 1457
under section 1349.19 of the Revised Code, the insurer shall 1458
notify the independent insurance agents of record of all 1459
affected consumers. 1460

The insurer is excused from this obligation for any 1461
independent insurance agents who are not authorized by law or 1462
contract to sell, solicit, or negotiate on behalf of the 1463
insurer, and for those instances in which the insurer does not 1464
have the current independent insurance agent of record 1465
information for an individual consumer. 1466

Sec. 3965.05. (A) The superintendent of insurance shall 1467
have power to examine and investigate into the affairs of any 1468
licensee to determine whether the licensee has been or is 1469
engaged in any conduct in violation of this chapter. This power 1470
is in addition to the powers that the superintendent has under 1471
Title XXXIX and Chapters 1739. and 1751. of the Revised Code. 1472

(B) Whenever the superintendent has reason to believe that 1473
a licensee has been or is engaged in conduct in this state that 1474
violates this chapter, the superintendent may take any necessary 1475
or appropriate action to enforce the provisions of this chapter. 1476

Sec. 3965.06. (A) (1) Any documents, materials, or other 1477
information in the control or possession of the department of 1478

insurance that are furnished pursuant to divisions (H) (1) and 1479
(I) of section 3965.02 and divisions (B) (1) (b), (c), (d), (e), 1480
(h), (j), and (k) of section 3965.04 of the Revised Code, or 1481
that are obtained by, created by, or disclosed to the 1482
superintendent of insurance in an investigation or examination 1483
pursuant to section 3965.05 of the Revised Code: 1484

(a) Shall be confidential by law and privileged; 1485

(b) Are not public records for the purposes of section 1486
149.43 of the Revised Code and shall not be released; 1487

(c) Shall not be subject to subpoena; 1488

(d) Shall not be subject to discovery or admissible in 1489
evidence in any private civil action. 1490

(2) Notwithstanding division (A) (1) of this section, the 1491
superintendent may use the documents, materials, or other 1492
information described in division (A) of this section in 1493
furtherance of any regulatory or legal action brought as a part 1494
of the superintendent's duties. 1495

(B) Neither the superintendent nor any person who received 1496
documents, materials, or other information described in division 1497
(A) of this section while acting under the authority of the 1498
superintendent shall be permitted or required to testify in any 1499
private civil action concerning any documents, materials, or 1500
information subject to division (A) of this section. 1501

(C) In order to assist in the performance of the 1502
superintendent's duties under this chapter, the superintendent 1503
may do any of the following: 1504

(1) Notwithstanding division (A) of this section, share 1505
documents, materials, or other information, including those 1506

subject to division (A) of this section, with all of the 1507
following if the recipient agrees in writing to maintain the 1508
confidentiality and privileged status of the document, material, 1509
or other information: 1510

(a) Other state, federal, and international regulatory 1511
agencies; 1512

(b) The national association of insurance commissioners 1513
and its affiliates and subsidiaries; 1514

(c) State, federal, and international law enforcement 1515
authorities. 1516

(2) Receive documents, materials, or information, 1517
including otherwise confidential and privileged documents, 1518
materials, or information, from the national association of 1519
insurance commissioners and its affiliates and subsidiaries, and 1520
from regulatory and law enforcement officials of other foreign 1521
or domestic jurisdictions. The superintendent shall maintain as 1522
confidential or privileged any document, material, or 1523
information received with notice or the understanding that it is 1524
confidential or privileged under the laws of the jurisdiction 1525
that is the source of the document, material, or information. 1526

(3) Share documents, materials, or other information 1527
subject to division (A) of this section with a third-party 1528
consultant or vendor if the consultant or vendor agrees in 1529
writing to maintain the confidentiality and privileged status of 1530
the document, material, or other information; 1531

(4) Enter into agreements governing sharing and use of 1532
information consistent with this section. 1533

(D) No waiver of any applicable privilege or claim of 1534
confidentiality in the documents, materials, or information 1535

shall occur as a result of disclosure to the superintendent 1536
under this section or as a result of sharing as authorized in 1537
division (C) of this section. 1538

(E) Nothing in this chapter shall prohibit the 1539
superintendent from releasing decisions related to final, 1540
adjudicated actions that are open to public inspection pursuant 1541
to section 149.43 of the Revised Code to a database or other 1542
clearinghouse service maintained by the national association of 1543
insurance commissioners or its affiliates or subsidiaries. 1544

(F) Any documents, materials, or other information 1545
described in division (A) of this section that are in the 1546
possession or control of the national association of insurance 1547
commissioners, or any vendor, third-party consultant to the 1548
national association of insurance commissioners, or a third- 1549
party service provider: 1550

(1) Shall be confidential by law and privileged; 1551

(2) Are not public records for the purposes of section 1552
149.43 of the Revised Code and shall not be released; 1553

(3) Shall not be subject to subpoena; 1554

(4) Shall not be subject to discovery or admissible in 1555
evidence in any private civil action. 1556

Sec. 3965.07. (A) A licensee is exempt from the 1557
requirements of section 3965.02 of the Revised Code if it meets 1558
any of the following criteria: 1559

(1) The licensee has fewer than twenty employees. 1560

(2) The licensee has less than five million dollars in 1561
gross annual revenue. 1562

(3) The licensee has less than ten million dollars in assets, measured at the end of the licensee's fiscal year. 1563
1564

(B)(1) A licensee subject to and in compliance with the privacy and security rules of 45 C.F.R. Parts 160 and 164 shall be deemed to meet the requirements of this chapter, except those pertaining to notification under section 3965.04 of the Revised Code. The licensee shall submit a written statement to the superintendent certifying its compliance with 45 C.F.R. Parts 160 and 164. The information furnished by a licensee pursuant to section 3965.04 of the Revised Code shall be confidential in accordance with section 3965.06 of the Revised Code. 1565
1566
1567
1568
1569
1570
1571
1572
1573

Each licensee shall maintain for examination by the superintendent all records, schedules, and data supporting the certificate of compliance for a period of five years. To the extent an insurer has identified areas, systems, or processes that require material improvement, updating, or redesign, the insurer shall document the identification and the remedial efforts planned and underway to address such areas, systems, or processes. Such documentation shall be available for inspection by the department. 1574
1575
1576
1577
1578
1579
1580
1581
1582

(2) Notwithstanding any other provision of this chapter, a licensee subject to HIPAA shall comply with the requirements of any subsequent amendments to HIPAA in the timeframe established in the applicable amendments to HIPAA. 1583
1584
1585
1586

(C) An employee, agent, representative, independent contractor, or designee of a licensee, who is also a licensee, is exempt from section 3965.02 of the Revised Code and need not develop its own information security program to the extent that the employee, agent, representative, independent contractor, or designee is covered by the information security program of the 1587
1588
1589
1590
1591
1592

other licensee. 1593

(D) If a licensee ceases to qualify for an exemption, the licensee shall have one hundred eighty days after the date it ceases to qualify to comply with this chapter. 1594
1595
1596

Sec. 3965.08. (A) A licensee that satisfies the provisions of this chapter shall be entitled to an affirmative defense to any cause of action sounding in tort that is brought under the laws of this state or in the courts of this state and that alleges that the failure to implement reasonable information security controls resulted in a data breach concerning nonpublic information. 1597
1598
1599
1600
1601
1602
1603

(B) The affirmative defenses permitted under this section shall not limit any other affirmative defenses available to a licensee. 1604
1605
1606

Sec. 3965.09. Notwithstanding any other provision of law, the provisions of this chapter and any rules adopted pursuant to this chapter constitute the exclusive state standards and requirements applicable to licensees regarding cybersecurity events, the security of nonpublic information, data security, investigation of cybersecurity events, and notification to the superintendent of cybersecurity events. 1607
1608
1609
1610
1611
1612
1613

Sec. 3965.10. The superintendent of insurance, pursuant to Chapter 119. of the Revised Code, may adopt rules as necessary to carry out the provisions of this chapter. 1614
1615
1616

Sec. 3965.11. The superintendent of insurance shall consider the nature, scale, and complexity of licensees in administering this chapter and adopting rules pursuant to this chapter. 1617
1618
1619
1620

Section 2. That existing sections 3905.30, 3905.33, 1621

3905.423, 3905.426, 3937.25, 3937.28, 3955.05, 3960.11, and 1622
3963.02 and section 3905.425 of the Revised Code are hereby 1623
repealed. 1624

Section 3. Licensees, as defined in section 3965.01 of the 1625
Revised Code as enacted in this act, shall have two years from 1626
the effective date of this act to implement division (F) of 1627
section 3965.02 of the Revised Code and one year from the 1628
effective date of this act to implement all other divisions of 1629
that section. 1630

Section 4. Chapter 3965. of the Revised Code is intended 1631
to enact an industry-recognized cybersecurity framework for the 1632
purposes of Chapter 1354. of the Revised Code. 1633