(132nd General Assembly)
(Substitute Senate Bill Number 273)

AN ACT

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

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

SECTION 1. That sections 3905.30, 3905.33, 3905.423, 3905.426, 3937.25, 3937.28, 3955.05, 3960.11, and 3963.02 be amended and sections 1.65, 3901.91, 3905.332, 3937.47, 3965.01, 3965.02, 3965.03, 3965.04, 3965.05, 3965.06, 3965.07, 3965.08, 3965.09, 3965.10, and 3965.11 of the Revised Code be enacted to read as follows:

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

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

(2) Record retention requirements;

(3) Financial reporting requirements;

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

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

(6) Prohibited acts and practices;

(7) Disclosure requirements;

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

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

(B) Any reference in the Revised Code to an entity named in division (A) of this section shall be construed as a reference to any insurance rating agency as defined in division (A) of this section. Any reference in the Revised Code to a specific entity not named in division (A) of this section but otherwise meeting the definition of "insurance rating agency" in division (A) of this section shall be construed as a reference to an insurance rating agency as defined by division (A) of this section.

Sec. 3901.91. When the superintendent of insurance adopts or amends a rule, including a rule

related to the superintendent's duties and powers under Chapters 1751. and 1753. and Title XXXIX of the Revised Code or a rule related to an "insurance rating agency" as defined by section 1.65 of the Revised Code, the superintendent shall give consideration to the inclusion in the rule of the definition of "insurance rating agency" found in section 1.65 of the Revised Code.

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

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

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

(b) If more than one insured from an affiliated group are named insureds on a single unauthorized insurance contract, "home state" means the state in which the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

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

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

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

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

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

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

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

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

(1) The insurer meets the requirements and criteria in sections 5A(2) and 5C(2)(a) of the

nonadmitted insurance model act adopted by the national association of insurance commissioners, or alternative nationwide uniform eligibility requirements adopted by this state through participation in a compact or other nationwide system pursuant to 15 U.S.C. 8201 et seq., 124 Stat. 1589.

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

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

(B)(1) No surplus lines broker shall solicit, procure, place, or renew any insurance with an unauthorized insurer unless an agent or the surplus lines broker has complied with the due diligence requirements of this section and is unable to procure the requested insurance from an authorized insurer.

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

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

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

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

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

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

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

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

(D) For the purpose of carrying out the "Nonadmitted and Reinsurance Reform Act of 2010," 124 Stat. 1589, 15 U.S.C. 8201 et seq., or any successor or replacement law, the superintendent shall conduct a fiscal analysis of the impact of entering into a multistate agreement or compact for determining eligibility for placement of unauthorized insurance and for payment, reporting, collection, and allocation of the tax on unauthorized insurance. If the fiscal analysis indicates that entering into a multistate agreement or compact is advantageous to this state, the superintendent may enter into the surplus lines insurance multistate compliance compact adopted by the national conference of insurance legislators and known as "SLIMPACT," as amended on December 21, 2010, and including any subsequent amendment; or, if it is in this state's financial best interest, the superintendent shall request that the general assembly authorize the superintendent to enter into a different multistate agreement or compact.

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

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

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

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

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

(3) The superintendent of insurance has authorized the designation of the insurer as a domestic surplus lines insurer in writing.

(C) A domestic surplus lines insurer shall be considered an unauthorized insurer for the purposes of writing surplus lines insurance coverage pursuant to the requirements of this chapter.

(D)(1) A domestic surplus lines insurer shall only write surplus lines insurance in this state in accordance with the requirements of this chapter.

(2) A domestic surplus lines insurer may write surplus lines insurance in any other jurisdiction in which the insurer is eligible to write surplus lines insurance, provided that the domestic surplus lines insurer complies with any requirements of that jurisdiction.

(E) A domestic surplus lines insurer shall not engage in the business of insurance in this state on an admitted basis.

(F) Surplus lines insurance written by a domestic surplus lines insurer is subject to the tax on premiums as required in section 3905.36 of the Revised Code and is exempt from the tax on premiums required in section 5725.18 of the Revised Code.

(G) A domestic surplus lines insurer shall be considered a nonadmitted insurer as defined in 15 U.S.C. 8206 with respect to surplus lines insurance issued in this state.

(H) Surplus lines insurance policies issued in this state by a domestic surplus lines insurer are

not subject to the provisions of Chapter 3955. of the Revised Code nor are they subject to the protection of either Ohio insurance guaranty association account established pursuant to section 3955.06 of the Revised Code.

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

(1) Insurance rating and rating plans;

(2) Policy forms;

(3) Policy cancellation and renewal.

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

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

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

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

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

(a) A motor vehicle service contract ~~or agreement to perform or pay for the repair, replacement, or maintenance of a motor vehicle or utility vehicle,~~ as defined in section ~~4501.01~~ 3905.426 of the Revised Code~~, due to a defect in materials or workmanship, normal wear and tear, mechanical or electrical breakdown, or failure of parts or equipment of a motor vehicle that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle or utility vehicle~~;

(b) A vehicle protection product as defined in section 3905.421 of the Revised Code;

(c) A home service contract as defined in section 3905.422 of the Revised Code;

(d) ~~A motor vehicle tire or wheel road hazard contract as defined in section 3905.425 of the Revised Code;~~

~~(e)~~ A motor vehicle ancillary product protection contract as defined in section 3905.426 of the Revised Code;

(e) A contract for prepaid routine, scheduled maintenance only.

(4) "Consumer transaction" has the same meaning as in section 1345.01 of the Revised Code.

(5) "Contract holder" means the consumer who purchased goods covered by a consumer goods service contract, any authorized transferee or assignee of the consumer, or any other person assuming the consumer's rights under the consumer goods service contract.

(6) "Provider" means a person who is contractually obligated to a contract holder under the terms of a consumer goods service contract.

(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 be issued under this section shall contain:

(1) A statement that if a provider fails to perform or make payment due under the terms of the consumer goods service 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;

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

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

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

(G) 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.

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

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

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

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

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

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

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

(iv) Repair or replacement of tires or wheels damaged because of a road hazard;

(v) Replacement of a lost, stolen, or inoperable key or key fob.

(b) A motor vehicle ancillary product protection contract may, but is not required to, provide for incidental payment of indemnity under limited circumstances, including, without limitation, towing, rental, and emergency road services.

(c) "Motor vehicle ancillary product protection contract" does not include any of the following:

(i) A motor vehicle service contract ~~or agreement to perform or pay for the repair, replacement, or maintenance of a motor vehicle due to defect in materials or workmanship, normal wear and tear, mechanical or electrical breakdown, or failure of parts or equipment of a motor vehicle that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle~~;

(ii) A vehicle protection product warranty as defined in section 3905.421 of the Revised Code;

(iii) A home service contract as defined in section 3905.422 of the Revised Code;

(iv) A consumer goods service contract as defined in section 3905.423 of the Revised Code;

(v) A ~~motor vehicle tire or wheel road hazard~~ contract ~~as defined in section 3905.425 of the Revised Code~~ for prepaid routine, scheduled maintenance only.

(4) "Motor vehicle service contract" means a contract or agreement to perform or pay for the repair, replacement, or maintenance of a motor vehicle due to defect in materials or workmanship, normal wear and tear, mechanical or electrical breakdown, or failure of parts or equipment of a motor vehicle, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, without limitation, towing, rental, and emergency road services, that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle.

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

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

(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 motor vehicle ancillary product protection contract.

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

(B) All motor vehicle ancillary product protection contracts issued in this state shall be covered by a reimbursement insurance policy.

(C) A motor vehicle ancillary product protection 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) "This contract is not insurance and is not subject to the insurance laws of this state."

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

(3) 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 any obligation in the contract by which the provider must refund the contract holder upon cancellation of a contract;

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

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

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

(1) A statement that if a provider fails to perform or make payment due under the terms of the motor vehicle ancillary product protection 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 any obligation in the contract by which the provider must refund the contract holder upon cancellation of a contract.

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

(F) The sale or issuance of a motor vehicle ancillary product protection contract is a consumer transaction for purposes of sections 1345.01 to 1345.13 of the Revised Code. The provider

is the supplier and the contract holder is the consumer for purposes of those sections.

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

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

(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 for loss, damage, or expense arising from a medical, optometric, or chiropractic claim, as those claims are defined in section 2305.113 of the Revised Code.

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

(1) Nonpayment of premium;

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

(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;

(4) The occurrence of a change in the individual risk which 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;

(5) Loss of applicable reinsurance or a substantial decrease in applicable reinsurance, if the superintendent 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;

(6) Failure of an insured to correct material violations of safety codes or to comply with reasonable written loss control recommendations;

(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.

(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:

(1) The policy number;

(2) The date of the notice;

(3) The effective date of the cancellation;

(4) An explanation of the reason for cancellation.

Such notice of cancellation also shall be mailed to the insured's agent.

(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.

(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.

(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.

(E) Nothing in division (B) of this section shall be construed to prevent an insurer from writing a policy of commercial property insurance, commercial fire insurance, or commercial casualty insurance other than medical malpractice insurance and automobile insurance as defined in section 3937.30 of the Revised Code for a period greater than one year and providing in such policy that the insurer may issue a notice of cancellation of such policy at least thirty days prior to an anniversary of such policy, with the effective date of cancellation being that anniversary.

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

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

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

(1) Nonpayment of premium;

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

(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;

(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;

(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;

(6) Failure of an insured to correct material violations of safety codes or to comply with reasonable written loss control recommendations;

(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.

(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:

(1) The policy number;

(2) The date of the notice;

(3) The effective date of the cancellation;

(4) An explanation of the grounds for cancellation.

(C) Except when cancellation is for nonpayment of premium, the effective date of cancellation shall be not less than sixty days from the date of mailing the notice. When cancellation is for nonpayment of premium, the effective date of cancellation shall be not less than ten days from the date of mailing the notice. The insurer may include the notice described in division (D)(2) of section 3937.25 of the Revised Code.

(D) Nothing in division (A) of this section shall be construed to prevent an insurer from writing a policy of medical malpractice insurance for a period greater than one year and providing in such policy that the insurer may issue a notice of cancellation of such policy at least sixty days prior to an anniversary of such policy, with the effective date of cancellation being that anniversary.

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

(E) There is no liability on the part of, and no cause of action of any nature arises against, the superintendent, any insurer, or any person furnishing information requested by the superintendent or an insurer, or the agent, employee, attorney or other authorized representative of any such persons, for any oral or written statement made to supply information relevant to a determination on cancellation of any policy of medical malpractice insurance, or in connection with advising an insured or the insured's attorney of the grounds for a cancellation of such insurance, or in connection with any administrative or judicial proceeding arising out of or related to such cancellation.

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

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

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

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

(A) Title insurance;

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

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

(D) Mortgage guaranty, financial guaranty, residual value, or other forms of insurance offering protection against investment risks;

(E) Ocean marine insurance;

(F) Any insurance provided by or guaranteed by government, including, but not limited to, any department, board, office, commission, agency, institution, or other instrumentality or entity of any branch of state government, any political subdivision of this state, the United States or any agency of the United States, or any separate or joint governmental self-insurance or risk-pooling program, plan, or pool;

(G) Contracts of any corporation by which health services are to be provided to its subscribers;

(H) Life, annuity, health, or disability insurance, including sickness and accident insurance written pursuant to Chapter 3923. of the Revised Code;

(I) Fraternal benefit insurance;

(J) Mutual protective insurance of persons or property;

(K) Reciprocal or interinsurance contracts written pursuant to Chapter 3931. of the Revised Code for medical malpractice insurance if the reciprocal exchange or interinsurance exchange is not subject to the risk-based capital requirements in effect in the state of domicile of the reciprocal exchange or interinsurance exchange. As used in this division, "medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death, disease, or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed physician, podiatrist, or hospital, as those terms are defined in section 2305.113 of the Revised Code.

(L) Any political subdivision self-insurance program or joint political subdivision self-insurance pool established under Chapter 2744. of the Revised Code;

(M) Warranty or service contracts, or the insurance of those contracts;

(N) Any state university or college self-insurance program established under section

3345.202 of the Revised Code;

(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;

(P) Credit union share guaranty insurance issued pursuant to Chapter 1761. of the Revised Code;

(Q) Insurance issued by risk retention groups as defined in Chapter 3960. of the Revised Code;

(R) Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees.

(S) Surplus lines insurance issued under section 3905.332 of the Revised Code.

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.

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

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

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

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

(a) The third party accessing the participating provider's services under the health care contract is an employer or other entity providing coverage for health care services to its employees or members, and that employer or entity has a contract with the contracting entity or its affiliate for the administration or processing of claims for payment for services provided pursuant to the health care contract with the participating provider.

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

(c) The health care contract specifically provides that it applies to network rental arrangements and states that one purpose of the contract is selling, renting, or giving the contracting entity's rights to the services of the participating provider, including other preferred provider

organizations, and the third party accessing the participating provider's services is any of the following:

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

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

(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.

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

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

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

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

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

(b) Prohibit any contracting entity from offering any financial incentive or other form of

consideration specified in the health care contract for a participating provider to provide health care services under all of the contracting entity's products;

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

(3)(a) Notwithstanding division (B)(2) of this section, no contracting entity shall require, as a condition of contracting with the contracting entity, that the participating provider accept any future product offering that the contracting entity makes.

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

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

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

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

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

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

(3) Preclude its use or disclosure for the purpose of enforcing this chapter or other state or federal law, except that a health care contract may require that appropriate measures be taken to preserve the confidentiality of any proprietary or trade-secret information.

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

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

(3) Nothing in divisions (E)(1) and (2) of this section shall be construed as prohibiting any health insuring corporation from terminating a participating provider's contract for any of the causes

described in divisions (A), (D), and (F)(1) and (2) of section 1753.09 of the Revised Code. Notwithstanding any provision in a health care contract pursuant to division (E)(2) of this section, section 1753.09 of the Revised Code applies to the termination of a participating provider's contract for any of the causes described in divisions (A), (D), and (F)(1) and (2) of section 1753.09 of the Revised Code.

(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 insurance notifies an insurer or a health insuring corporation in writing that the superintendent has initiated a market conduct examination into the specific subject matter of the arbitration proceeding pending against that insurer or health insuring corporation, the arbitration proceeding shall be stayed at the request of the insurer or health insuring corporation pending the outcome of the market conduct investigation by the superintendent.

Sec. 3965.01. As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

(K) "Information system" means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of electronic nonpublic information, as well as any specialized system such as industrial and process controls systems, telephone switching and private branch exchange systems, and environmental control systems.

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

(M) "Licensee" means any person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of this state. "Licensee" includes an insurer. "Licensee" does not include a purchasing group or a risk retention group chartered and licensed in another state or a licensee that is acting as an assuming insurer that is domiciled in another state or jurisdiction.

(N) "Multifactor authentication" means authentication through verification of at least two of the following types of authentication factors:

(1) Knowledge factors, such as a password;

(2) Possession factors, such as a token or text message on a mobile phone;

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

(O) "Nonpublic information" means information that is not publicly available information and is one of the following:

(1) Business-related information of a licensee the tampering with, unauthorized disclosure of, access to, or use of which, would cause a material adverse impact to the business, operation, or security of the licensee;

(2) Information concerning a consumer that because of the name, number, personal mark, or other identifier contained in the information can be used to identify that consumer in combination with any one or more of the following data elements:

(a) Social security number;

(b) Driver's license, commercial driver's license, or state identification card number;

(c) Account, credit card, or debit card number;

(d) Any security code, access code, or password that would permit access to the consumer's financial account;

(e) Biometric records.

(3) Any information or data, except age or gender, that is in any form or medium created by or derived from a health care provider or a consumer, that can be used to identify a particular consumer, and that relates to any of the following:

(a) The past, present, or future physical, mental, or behavioral health or condition of the consumer or a member of the consumer's family;

(b) The provision of health care to the consumer;

(c) Payment for the provision of health care to the consumer.

(P) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records; widely distributed media; or disclosures to the general public that are required to be made by federal, state, or local law.

For the purposes of this chapter, a licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine both of the following:

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

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

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

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

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

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

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

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

(1) Protect the security and confidentiality of nonpublic information and the security of the information system;

(2) Protect against any threats or hazards to the security or integrity of nonpublic information and the information system;

(3) Protect against unauthorized access to or use of nonpublic information and minimize the likelihood of harm to any consumer;

(4) Define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when no longer needed.

(C) The licensee shall do all of the following:

(1) Designate one or more persons or entities to act on behalf of the licensee and be responsible for the information security program;

(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;

(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;

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

(a) Employee training and management;

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

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

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

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

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

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

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

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

(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;

(c) Restrict access at physical locations containing nonpublic information to authorized individuals;

(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;

(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;

(f) Modify the information system in accordance with the licensee's information security program;

(g) Utilize effective controls, which may include multifactor authentication procedures for accessing nonpublic information;

(h) Regularly test and monitor systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems;

(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;

(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;

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

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

(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;

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

(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:

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

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

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

(b) Material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, third-party service provider arrangements, results of testing, cybersecurity events or violations and management's responses thereto, and recommendations for changes in the information security program.

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

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

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

(G) The licensee shall monitor, evaluate, and adjust, as appropriate, the information security

program consistent with all of the following:

(1) Any relevant changes in technology;

(2) The sensitivity of its nonpublic information;

(3) Internal or external threats to information;

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

(H)(1) As part of its information security program, each licensee shall establish a written incident response plan designed to promptly respond to, and recover from, any cybersecurity event that compromises the confidentiality, integrity, or availability of nonpublic information in its possession, the licensee's information systems, or the continuing functionality of any aspect of the licensee's business or operations.

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

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

(b) The goals of the incident response plan;

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

(d) External and internal communications and information sharing;

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

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

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

(I)(1) By the fifteenth day of February of each year, unless otherwise permitted to file on the first day of June in division (I)(2) of this section, each insurer domiciled in this state shall submit to the superintendent of insurance a written statement certifying that the insurer is in compliance with the requirements set forth in this section. Each insurer shall maintain for examination by the department of insurance all records, schedules, and data supporting this certificate 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 must be available for inspection by the superintendent.

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

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

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

conduct a prompt investigation.

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

(1) Determine whether a cybersecurity event has occurred;

(2) Assess the nature and scope of the cybersecurity event;

(3) Identify any nonpublic information that may have been involved in the cybersecurity event;

(4) Perform or oversee reasonable measures to restore the security of the information systems compromised in the cybersecurity event in order to prevent further unauthorized acquisition, release, or use of nonpublic information in the licensee's possession, custody, or control.

(C) If the licensee learns that a cybersecurity event has or may have occurred in a system maintained by a third-party service provider, the licensee shall take the actions described in division (B) of this section or make reasonable efforts to confirm and document that the third-party service provider has taken those actions.

(D) The licensee shall maintain records concerning all cybersecurity events for a period of at least five years from the date of the cybersecurity event and shall produce those records upon demand of the superintendent of insurance.

Sec. 3965.04. (A) Each licensee shall notify the superintendent of insurance as promptly as possible after a determination that a cybersecurity event involving nonpublic information in the possession of the licensee has occurred, but in no event later than three business days after that determination, when either of the following criteria has been met:

(1) Both of the following apply:

(a) This state is the licensee's state of domicile, in the case of an insurer, or this state is the licensee's home state, in the case of an independent insurance agent.

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

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

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

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

(i) Any consumer residing in this state;

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

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

(a) The date of the cybersecurity event;

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

(c) How the cybersecurity event was discovered;

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

(e) The identity of the source of the cybersecurity event;

(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;

(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.

(h) The period during which the information system was compromised by the cybersecurity event;

(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.

(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;

(k) A description of efforts being undertaken to remediate the situation that permitted the cybersecurity event to occur;

(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;

(m) The name of a contact person who is both familiar with the cybersecurity event and authorized to act for the licensee.

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

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

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

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

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

(E)(1) In the case of a cybersecurity event involving nonpublic information that is used by or in the possession, custody, or control of a licensee that is acting as an assuming insurer, including an assuming insurer that is domiciled in another state or jurisdiction, and that does not have a direct

contractual relationship with the affected consumers, both of the following apply:

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

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

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

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

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

(3) Any licensee acting as an assuming insurer shall have no other notice obligations relating to a cybersecurity event or other data breach under division (A) of this section.

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

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

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

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

Sec. 3965.06. (A)(1) Any documents, materials, or other information in the control or possession of the department of insurance that are furnished pursuant to divisions (H)(1) and (I) of section 3965.02 and divisions (B)(1)(b), (c), (d), (e), (h), (j), and (k) of section 3965.04 of the Revised Code, or that are obtained by, created by, or disclosed to the superintendent of insurance in an investigation or examination pursuant to section 3965.05 of the Revised Code:

(a) Shall be confidential by law and privileged;

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

(c) Shall not be subject to subpoena;

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

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

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

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

(1) Notwithstanding division (A) of this section, share documents, materials, or other information, including those subject to division (A) of this section, with all of the following if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information:

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

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

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

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

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

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

(D) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in division (C) of this section.

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

(F) Any documents, materials, or other information described in division (A) of this section that are in the possession or control of the national association of insurance commissioners, or any

vendor, third-party consultant to the national association of insurance commissioners, or a third-party service provider:

(1) Shall be confidential by law and privileged;

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

(3) Shall not be subject to subpoena;

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

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

(1) The licensee has fewer than twenty employees.

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

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

(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.

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.

(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.

(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 other licensee.

(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.

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.

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

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.

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.

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.

SECTION 2. That existing sections 3905.30, 3905.33, 3905.423, 3905.426, 3937.25, 3937.28, 3955.05, 3960.11, and 3963.02 and section 3905.425 of the Revised Code are hereby repealed.

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

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

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Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

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

_____

Director, Legislative Service Commission.

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

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Secretary of State.

File No. _____ Effective Date _____