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# OHIO LEGISLATIVE SERVICE COMMISSION

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**S.B. 256**  
**134<sup>th</sup> General Assembly**

## Final Analysis

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**Primary Sponsor:** Sen. Wilson

**Effective Date:** July 21, 2022; travel insurance provisions effective October 19, 2022

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### SUMMARY

#### Travel insurance

- Adds additional regulations and procedures relating to the premium tax that travel insurers must pay tax on travel insurance premiums.
- Subjects all persons authorized to sell travel insurance to the Unfair and Deceptive Practices Insurance Law.
- Imposes new requirements on the materials that must be provided to consumers when purchasing travel insurance.
- Specifies when a travel insurance policy may be canceled without penalty, allowing 15 days for cancellation if fulfillment materials are delivered by postal mail and ten days for all other methods of delivery.
- Adds oversight of travel administrators to the Limited Lines Travel Insurance Agents Law.
- Designates travel insurance as inland marine insurance for purposes of rates and forms.

#### Electronic signatures

- Allows insurers to comply with any signature requirement via an electronic signature.

#### Unfair and deceptive practices

- Designates offering “free” insurance as an inducement to purchasing another policy of insurance as an unfair and deceptive practice.
- Authorizes insurers to offer free “value-added” products that meet specified requirements as an incentive to purchase insurance.
- Authorizes insurers to offer noncash items, such as meals or charitable donations made on behalf of the consumer, as an incentive to purchase insurance.
- Allows insurers to conduct raffles or drawings to the extent permitted by state law.

## Insurance holding companies

- Provides for a group capital calculation requirement to be imposed on insurance holding companies as a way of assessing the ratio of assets to liabilities across the entire holding company.
- Imposes a liquidity stress test requirement as a way of predicting how insurers would fare under various stresses, given the insurer’s current allocation of assets.
- Adds to the standards imposed on transactions to which insurance holding companies are a party relating to bonds, information held by affiliates, proprietary documents, confidential information, and information sharing.

## Nonforfeiture amount

- Reduces the minimum interest rate used to calculate the nonforfeiture amount on annuities that have yet to payout any amounts, from 1% to 0.15%.

## Title insurance joint ventures

- Revises the law stipulating that, if a title agency that is a joint venture is set to dissolve or terminate on a specified date, all members of the joint venture must be allowed to join any successor joint ventures, to provide that the percentage of ownership in the successor must not be based on the percentage of title insurance business referred to the original joint venture.

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## DETAILED ANALYSIS

### Travel insurance

The act amends the Limited Lines Travel Insurance Agents Law (LLTIAL). Note that though the act appears to repeal a substantial portion of prior law and enact almost entirely new law, the majority of the provisions contained in the act are simply moved from existing sections. This reorganization was done to better accommodate the changes made by the act. This analysis details which provisions are removed and newly created. It does not indicate which provisions were reorganized.

### Travel retailers

Currently, the LLTIAL allows nonlicensed travel retailers to sell travel insurance in conjunction with a licensed agent if certain requirements are met. One of those requirements is that a licensed agent must create a register of the travel retailers selling insurance on the agent's behalf. The act requires the travel insurance agent to update the register as often as necessary to maintain its accuracy. Furthermore, it requires the register to include the name, address, and contact information of the travel retailer and of an officer or person who directs or controls the travel retailer's operations, and the federal tax ID number of the travel retailer.

The act explicitly authorizes the Superintendent of Insurance to apply the grounds for license suspension, license revocation, and the imposition of penalties that pertain to resident insurance agents to limited lines travel insurance agents and travel retailers.<sup>1</sup>

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<sup>1</sup> R.C. 3905.065(C).

The act removes a requirement that a travel retailer to sell travel insurance only in conjunction with the making, arranging, or offering of travel services.<sup>2</sup>

Continuing law requires that travel retailers offering or selling travel insurance provide materials to consumers containing the material terms of the policy, a description of how to file a claim or cancel the policy, and the contact information of the insurer and licensed agent issuing the policy. The act specifies that these materials are to be approved by the licensed agent under which the travel retailer is selling travel insurance and must be provided to a policyholder or certificate holder as soon as practicable after the purchase of a travel protection plan.<sup>3</sup>

### **Single price for multiple features**

The act allows individuals authorized to sell travel protection plans to offer and sell a travel protection plan that includes several features for one price if all of the following are met:

- At or prior to the time of purchase, the travel protection plan both:
  - Clearly discloses to the consumer that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable; and
  - Provides information and an opportunity for the consumer to obtain additional information regarding the features and pricing of each of the combined features.
- The fulfillment materials provided to the consumer include the following, as applicable:
  - A description and delineation of the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan;
  - The travel insurance disclosures; and
  - The contact information for persons providing travel assistance services and cancellation fee waivers, as applicable.<sup>4</sup>

Accordingly, the act repeals the requirement that all costs paid or charged to a customer for the purchase of insurance be separately itemized on the customer's bill.<sup>5</sup>

### **Materials**

The act requires all documents provided to consumers prior to purchasing travel insurance, including sales, advertising, and marketing materials, to be consistent with the travel insurance policy itself, including forms, endorsements, policies, rate filings, and certificates of insurance.

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<sup>2</sup> R.C. 3905.064(E)(5) and (G)(2)(d).

<sup>3</sup> R.C. 3905.065(H)(3) and 3905.066(A)(1) and (B).

<sup>4</sup> R.C. 3905.065(F).

<sup>5</sup> R.C. 3905.064(G)(3)(b).

For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions must be provided to consumers any time prior to the time of purchase and also in the coverage's fulfillment materials.

Finally, a travel insurer is required to disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.<sup>6</sup>

## **Cancellation**

Unless the insured has either started a covered trip or filed a claim under the travel insurance coverage, a policyholder or certificate holder may cancel a travel insurance policy or certificate for a full refund of the travel protection plan price as follows:

- If the plan's fulfillment materials are delivered by postal mail, the policyholder or certificate holder may cancel within 15 days following the date of delivery.
- If the plan's fulfillment materials are delivered by other means, the policyholder or certificate holder may cancel within ten days following the date of delivery.

For this purpose, "delivery" includes handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.<sup>7</sup>

## **Unfair and deceptive practices**

The act specifies that all persons offering or selling travel insurance are subject to the Unfair and Deceptive Acts or Practices in the Business of Insurance Law. Possible sanctions for violating these provisions include suspending or revoking the insurer's license (or, for travel retailers, the authorization to sell travel insurance), being required to make restitution, or a civil penalty.<sup>8</sup>

The act explicitly designates two practices as being unfair and deceptive practices:

- Offering or selling a travel insurance policy that could never result in payment of any claims; and
- Marketing blanket travel insurance as free.

Beyond the penalties for engaging in an unfair or deceptive practice, violations of these prohibitions are subject to the penalties imposed on individual insurance agents, which includes: suspension, revocation, or refusal to issue or renew a license, a civil fine, or the

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<sup>6</sup> R.C. 3905.065(H).

<sup>7</sup> R.C. 3905.065(I).

<sup>8</sup> R.C. 3905.067(A) and 3901.21; R.C. 3901.22, not in the act.

imposition of any other sanction or sanctions authorized under the Insurance Producers Licensing Act.<sup>9</sup>

The act explicitly designates certain actions as *not* being unfair or deceptive. The act of marketing travel insurance directly to a consumer through a travel insurer's website or through an aggregator site is not an unfair and deceptive act or practice if both of the following conditions are met:

- An accurate summary or short description of coverage is provided on the website; and
- The consumer has access to the full provisions of the policy through electronic means.

Furthermore, where a consumer's destination jurisdiction requires insurance coverage, it is not a deceptive practice to require the consumer to choose between the following options as a condition of purchasing a trip or travel package:

- Purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance agent supplying the trip or travel package; or
- Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.<sup>10</sup>

### **Premium tax**

R.C. Chapter 5725 requires domestic insurance companies to pay a franchise tax computed on the basis of premiums received from policies covering risks within Ohio, subject to certain exemptions and deductions. R.C. Chapter 5729 similarly requires foreign insurance companies to pay taxes computed on the basis of premiums received from policies covering risks within Ohio.

Although the act does not create a new tax, it includes in the Insurance Law language explicitly stating which premiums are subject to the tax. It states that travel insurers must pay these taxes on premiums it collects from any of the following:

- An individual primary policyholder who is an Ohio resident;
- A primary certificate holder who is an Ohio resident who elects coverage under a group travel insurance policy;
- A blanket travel insurance policyholder, when the policy covers eligible blanket group members, that is a resident of, or has its principal place of business in, Ohio, including when the policy covers an affiliate or subsidiary, regardless of the location of the affiliate or subsidiary. Such payments are to be subject to any apportionment rules that apply to the insurer across multiple taxing jurisdictions or that permit the insurer to

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<sup>9</sup> R.C. 3905.067(C); R.C. 3905.14, not in the act.

<sup>10</sup> R.C. 3905.067(D) and (E).

allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

In order to accommodate the collection of taxes, a travel insurer must do the following:

- Document the state of residence or principal place of business of the policyholder or certificate holder;
- Report as a premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

For purposes of taxation, neither of the following are considered to be insurance:

- A cancellation fee waiver;
- Travel assistance services.

Travel assistance services are noninsurance services in which the consumer is not indemnified based on a fortuitous event, and where providing the service does not result in transfer or shifting of risk that would constitute the business of insurance. Travel assistance services include the following:

- Security advisories;
- Destination information;
- Vaccination and immunization information services;
- Travel reservation services;
- Entertainment;
- Activity and event planning;
- Translation assistance;
- Emergency messaging;
- International legal and medical referrals;
- Medical case monitoring;
- Coordination of transportation arrangements;
- Emergency cash transfer assistance;
- Medical prescription replacement assistance;
- Passport and travel document replacement assistance;
- Lost luggage assistance;
- Concierge services; and
- Any other service that is furnished in connection with planned travel.

The one exception to this taxation requirement is surplus brokers. Surplus insurance brokers provide insurance for risks that are otherwise uninsurable in this state. Under the act, surplus lines brokers selling travel insurance pay taxes as they normally would and not in accordance with the act's requirements.

With regard to an automobile or truck rental or leasing company obtaining travel insurance coverage for a group of individuals who may become renters, lessees, or passengers, the common carrier, operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company, is designated as being the policyholder. In other words, insurers pay tax in accordance with the location of the rental or leasing company and not in accordance with the location of the group of individuals who are renters, passengers, etc.<sup>11</sup>

### **Travel administrators**

The act adds oversight for travel administrators, which Ohio law was previously silent on. The act prohibits any person from acting or portraying themselves as a travel administrator for travel insurance unless that person holds one of the following licenses in good standing in this state:

- Property and casualty license;
- Managing general agent license; or
- Third-party administrator license.

A travel insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the travel insurer and is responsible for ensuring that the travel administrator maintains all books and records relevant to the travel insurer. The travel administrator must make the books and records available to the Superintendent of Insurance upon request.<sup>12</sup>

### **Inland marine**

Except as follows, travel insurance is to be classified and filed, for purposes of rates and forms, under an inland marine line of insurance. However, travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be filed under either an accident and health line of insurance or an inland marine line of insurance.

Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or

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<sup>11</sup> R.C. 3905.064(L) and 3905.068.

<sup>12</sup> R.C. 3905.069.



distribution channels, provided those standards also meet the state's underwriting standards for inland marine.<sup>13</sup>

## Miscellaneous

The act adds the following miscellaneous provisions to the LLTIAL:

- Expands the existing definition of *travel insurance* to include covering the following types of risk:
  - Emergency evacuation;
  - Repatriation of remains; and
  - Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the Superintendent of Insurance.<sup>14</sup>
- Excludes the following from the definition of travel insurance:
  - Any other product that requires a specific insurance agent license;
  - Travel assistance services; and
  - Cancellation fee waivers.<sup>15</sup>
- Specifies that in the event of a conflict between the amended LLTIAL and another provision of insurance law regarding the sale and marketing of travel insurance and travel protection plans, the LLTIAL is to control.<sup>16</sup>
- Prohibits any person offering, selling, or negotiating travel insurance or travel protection from doing so by using a negative option or opt out when the consumer purchases a trip, including requiring a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form.<sup>17</sup>
- Authorizes the Superintendent to adopt rules as necessary to implement the LLTIAL.<sup>18</sup>

The act also amends the LLTIAL in the following ways:

- Continuing law allows travel insurance to be provided under an individual or group insurance policy. The act authorizes travel insurance to also be provided under a blanket policy.<sup>19</sup>

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<sup>13</sup> R.C. 3905.0610.

<sup>14</sup> R.C. 3905.064(M)(1).

<sup>15</sup> R.C. 3905.064(M)(2).

<sup>16</sup> R.C. 3905.065(G).

<sup>17</sup> R.C. 3905.065(J).

<sup>18</sup> R.C. 3905.0611.

- Continuing law requires a travel insurance agent to designate an agent employee to be responsible for the agent's compliance with the LLTIAL. This responsible agent must submit fingerprints for a background check. The act expands this requirement to include a president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance agent's insurance operations.<sup>20</sup>

## Travel insurance definitions

The act defines the following terms:

*Aggregator site* means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

*Blanket travel insurance* means a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual group members.

*Cancellation fee waiver* means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract, with or without regard to the reason for the cancellation or form of reimbursement.

*Eligible group* means, solely for the purposes of travel insurance, two or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship. "Eligible group" includes any of the following:

- Any entity engaged in the business of providing travel or travel services, including the following:
  - Tour operators;
  - Lodging providers;
  - Vacation property owners;
  - Hotels and resorts;
  - Travel clubs;
  - Travel agencies;
  - Property managers;
  - Cultural exchange programs; and
  - Common carriers or the operator, owner, or lessor of a means of transportation of passengers that, with regard to any particular travel or type of travel or travelers,

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<sup>19</sup> R.C. 3905.065(E).

<sup>20</sup> R.C. 3905.051(A)(1) and 3905.066(A)(2)(b).

- subjects all members or customers of the group to a common exposure to risk attendant to the travel;
- Any college, school, or other institution of learning, obtaining travel insurance covering students, teachers, employees, or volunteers;
  - Any employer obtaining travel insurance coverage for any group of employees, volunteers, contractors, board of directors, dependents, or guests;
  - Any sports team, camp, or sponsor thereof, obtaining travel insurance coverage for participants, members, campers, employees, officials, supervisors, or volunteers;
  - Any religious, charitable, recreational, educational, or civic organization, or branch thereof, obtaining travel insurance coverage for any group of members, participants, or volunteers;
  - Any financial institution or financial institution vendor, or parent holding company, trustee, or agent of, or designated by, one or more financial institutions or financial institution vendors, including account holders, credit card holders, debtors, guarantors, or purchasers;
  - Any incorporated or unincorporated associations, including labor unions, that have a common interest, constitution, and bylaws, and that are organized and maintained in good faith for purposes other than obtaining insurance for its members or participants;
  - Any trust or the trustees of a fund established, created, or maintained for the benefit of and covering members, employees, or customers of one or more associations meeting the requirements in the immediately preceding bullet point, subject to the Superintendent's permitting the use of a trust and the state's premium tax provisions;
  - Any entertainment production company obtaining travel insurance coverage for any group of participants, volunteers, audience members, contestants, or workers;
  - Any volunteer fire department, ambulance, rescue, police, or court, or any first aid, civil defense, or other such volunteer group;
  - Preschools, day-care institutions for children or adults, and senior citizen clubs;
  - Any automobile or truck rental or leasing company obtaining travel insurance coverage for a group of individuals who may become renters, lessees, or passengers, defined by their travel status, on the rented or leased vehicles;
  - Any other group whose members the Superintendent has determined are engaged in a common enterprise, or that have an economic, educational, or social affinity or relationship, if the Superintendent also determines that issuance of the travel insurance policy would not be contrary to the public interest.

*Fulfillment materials* means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details.

*Group travel insurance* means travel insurance issued to any eligible group.

*Limited lines travel insurance agent* means, under continuing law, an individual or business entity licensed to sell, solicit, or negotiate travel insurance under the LLTIAL. Under the act, the term also includes a licensed insurance agent and a travel administrator.

*Offer and sell* means providing general information, including a description of the coverage and price, as well as processing the application and collecting premiums.

*Primary certificate holder* means an individual person who elects and purchases travel insurance under a group policy.

*Primary policyholder* means an individual person who elects and purchases individual travel insurance.

*Travel administrator* means a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on Ohio residents, in connection with travel insurance. The following persons are not to be considered a travel administrator if they engage in no other activities that would cause them to be considered a travel administrator:

- A person working for a travel administrator to the extent that the person's activities are subject to the travel administrator's supervision and control;
- An insurance agent selling insurance or engaged in administrative and claims-related activities within the scope of the agent's license;
- A travel retailer offering and selling travel insurance and registered under the license of a limited-lines travel insurance;
- An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney at law and who does not collect charges or premiums in connection with insurance coverage;
- A business entity affiliated with a licensed insurer while that insurer is acting as a travel administrator for the direct and assumed insurance business of a separate affiliated insurer.

*Travel insurer* means an insurer that provides travel insurance.

*Travel protection plan* means a plan that provides one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.<sup>21</sup>

## **Electronic signatures**

The act amends the law related to the use of electronic signatures by insurers. Under the act, an insurer may use an electronic signature to comply with any signature requirement

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<sup>21</sup> R.C. 3905.064.

placed upon insurers by the Ohio Insurance Law, including any requirement that a document submitted by an insurer to the Department of Insurance be signed. “Electronic signature” is defined as being an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. A signature that is secured through blockchain technology is considered to be in an electronic form and to be an electronic signature.<sup>22</sup>

## **Unfair and deceptive practices**

The act amends the law related to unfair and deceptive practices in the use of incentives to purchase insurance. Continuing law makes two prohibitions related to incentives. First, insurers are prohibited from discriminating among individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity. Second, insurers are prohibited from paying an inducement or incentive to a person for purchasing insurance other than that which is expressly prescribed in the contract of insurance. In other words, insurers cannot offer consumers “discounted” rates or bonuses that are not offered to every similarly situated consumer or that are not included in the terms of the contract.

The act expands these prohibitions to include offering or providing insurance as an inducement to the purchase of another policy of insurance. Furthermore, insurers are prohibited from using “free,” “no cost,” or similar words in an advertisement. So, for example, an insurer cannot advertise “free” car insurance with the purchase of a homeowner’s insurance policy.

Continuing law expressly states that certain practices are not prohibited, including:

- Paying bonuses or abating premiums of life insurance policy holders;
- Reimbursing administrative savings accrued due to life insurance policy holders on the industrial debit plan making payments directly to an office of the insurer; and
- Adjusting the premium for a group insurance policy based on the losses of that group.<sup>23</sup>

The act expands the categories of exempt activities and applies the exemptions to the prohibitions contained in the law relating to prohibitions against rebates and advantages in policies, R.C. Chapter 3933.

## **Value-added products**

Under the act, insurers or producers, by or through their employees, affiliates, or third party representatives, may offer or provide value-added products or services at no or reduced cost when the products or services are not specified in the policy of insurance. However, the products or services must meet all of the following criteria:

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<sup>22</sup> R.C. 3901.046; R.C. 1306.01(H), not in the act.

<sup>23</sup> R.C. 3901.21(F) and (G) and 3901.213(A) to (C).

- The cost to the insurer or producer offering the product or service to any given consumer is reasonable in comparison to that consumer's premiums or insurance coverage for the policy class;
- It relates to the insurance coverage;
- It is primarily designed to do one or more of the following:
  - Provide loss mitigation or loss control;
  - Reduce claim costs or claim settlement costs;
  - Provide education about liability risks or risk of loss to persons or property;
  - Monitor or assess risk, identify risks, or identify risk of loss to persons or property;
  - Enhance health;
  - Enhance financial wellness through items such as education or financial planning services;
  - Provide post-loss services;
  - Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a consumer;
  - Assist in the administration of the employee or retiree benefit insurance coverage.
- The product or service is provided along with contact information for the purpose of ensuring the consumer is assisted with questions regarding the product or service, if the insurer or producer is providing the product or service offered.

An example of a product falling into this category would be fitness trackers. Many insurance companies have begun offering free fitness trackers as a way of inducing the sale of insurance, but also as a way to improve consumer health *and* reduce claims.

These value-added products or services must not be offered in a manner that is unfairly discriminatory. The availability of value-added products or services must be based on documented, objective criteria. The documented criteria must be maintained by the insurer or producer and provided to the Superintendent upon request.

If an insurer or producer does not have sufficient evidence, but has a good-faith belief that a product or service it wishes to offer meets the criteria prescribed, the insurer or producer is allowed to provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for no more than one year. An insurer or producer must notify the Superintendent of a pilot or testing program offered to Ohio consumers prior to launching it, and may proceed with the pilot or testing program unless the Superintendent objects in writing within 21 days of receiving notice.<sup>24</sup>

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<sup>24</sup> R.C. 3901.213(D).

## **Noncash gifts**

Insurers may also offer or provide noncash gifts, items, or services, including providing meals to or making charitable donations on behalf of a consumer, in connection with the marketing, sale, purchase, or retention of contracts of insurance, so long as the cost does not exceed an amount determined by the Superintendent per policy year per term or calendar year. The offer must be made in a manner that is not unfairly discriminatory, and a consumer cannot be required to purchase, continue to purchase, or renew a policy in exchange for the gift, item, or service. The same is true for commercial or institutional consumers, but the cost of the gift or services must be reasonable in comparison to the premium and cannot be included in any amounts charged to another person or entity.<sup>25</sup>

## **Raffles and drawings**

Insurers may also conduct raffles or drawings to the extent permitted by Ohio law, so long as the raffle or drawing meets all of the following:

- There is no financial cost to entrants to participate;
- The drawing or raffle does not obligate participants to purchase insurance;
- The drawing or raffle is open to the public; and
- The raffle or drawing is offered in a manner that is not unfairly discriminatory.<sup>26</sup>

## **Rules and miscellaneous provisions**

The act authorizes the Superintendent to adopt rules as needed to implement the above practices to ensure consumer protection. The regulations, consistent with applicable law, may address:

- Consumer data protections and privacy;
- Consumer disclosure;
- Unfair discrimination; and
- Any other matter the Superintendent considers pertinent.

As used with regard to these unfair and deceptive practices, “consumer” means a policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured, or applicant.<sup>27</sup>

The provisions that prohibit a producer or insurer from giving rebates, discounts, gifts, or other valuable consideration as an inducement to insurance do not apply to commercial

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<sup>25</sup> R.C. 3901.213(E) and (F).

<sup>26</sup> R.C. 3901.213(G).

<sup>27</sup> R.C. 3901.212.

property and casualty insurance, but do apply to producer commission reductions not included in insurance company rate filings.<sup>28</sup>

The act includes language stating that the General Assembly’s intent in allowing these practices is to promote innovation in connection with the offering of value-added services while maintaining strong consumer protections.<sup>29</sup>

## **Insurance holding companies**

### **Group capital calculation**

The act amends the Insurance Holding Company Act, requiring insurance holding company systems, commonly referred to as insurance holding companies, to complete a group capital calculation. A holding company is a company that owns a controlling interest in another business or businesses. As such, an insurance holding company can own many insurance companies, spread across many states or even across international borders. Put simply, the group capital calculation compares the total assets, for all of the insurance companies within the holding company, to the required capital (the amount of capital required to be held on hand to cover a company’s liabilities) for those same companies.<sup>30</sup>

Note: because an insurance holding company can have a presence in multiple states and countries, the National Association of Insurance Commissioners (NAIC) has developed a regulation scheme that utilizes a “lead state” methodology. Under this form of regulation, there is a lead state that is ultimately responsible for overseeing a particular insurance holding company. Which state is determined to be the lead state varies depending upon each company, but is chosen based on a number of factors, including how much premium is collected in each state, the physical location of the holding company’s headquarters, and the physical location of the largest insurers in the holding company.<sup>31</sup>

Under the act, the ultimate controlling person of every insurer operating in Ohio that is a member of an insurance holding company system is required to annually file a group capital calculation as directed by the lead state insurance commissioner. This filing is required not later than June 1, 2023, and by June 1 each year thereafter. The Ohio Superintendent of Insurance is prohibited from requiring a filing prior to June 1, 2023. However, the Superintendent may permit filing prior to that date.

The report must be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person of the insurer to file the group capital calculation.

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<sup>28</sup> R.C. 3901.214.

<sup>29</sup> R.C. 3901.215.

<sup>30</sup> NAIC, [NAIC Group Capital Calculation \(PDF\)](#), which can be accessed at [NAIC.org](#).

<sup>31</sup> NAIC, [Public Lead State Report](#), which can be accessed by conducting a keyword “lead state report” search at [NAIC.org](#).



The report must be filed with the lead state commissioner of the insurance holding company as determined by the Ohio Superintendent of Insurance in accordance with the procedures within the Financial Analysis Handbook adopted by NAIC.

The following insurance holding companies are exempt from filing the group capital calculation:

- An insurance holding company system that has only one insurer within its holding company structure, that only writes business, and is only licensed, in its domestic state, and assumes no business from any other insurer;
- An insurance holding company system that is required to perform a group capital calculation specified by the Federal Reserve Board. When an insurance holding company is required to perform the calculation, the lead state commissioner must request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing.
- An insurance holding company system whose non-U.S., group-wide supervisor is located within a reciprocal jurisdiction (essentially a jurisdiction that shares a regulatory scheme substantially similar to that of Ohio<sup>32</sup>) that recognizes the U.S. state regulatory approach to group supervision and group capital;
- An insurance holding company system that meets both of the following:
  - The insurance holding company provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined the information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook.
  - The insurance holding company has a non-U.S., group-wide supervisor that is not in a reciprocal jurisdiction that recognizes and accepts, as specified by the Superintendent in rule, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

A lead state commissioner must require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system, after any necessary consultation with other supervisors or officials, if the commissioner deems it appropriate for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

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<sup>32</sup> R.C. 3901.62(E)(8)(b), not in the act.

The lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the Superintendent in rule.

If the lead state commissioner determines that an insurance holding company no longer meets one or more of the requirements for an exemption from filing the group capital calculation, the insurance holding company system must file the group capital calculation at the next annual filing date, unless given an extension by the lead state commissioner based on reasonable grounds shown.

Until June 1, 2025, an insurance holding company system that writes business only within the U.S. is not required to file a group capital calculation.<sup>33</sup>

For purposes of the information reported and provided to the Superintendent pursuant to the act's group capital calculation requirements, the Superintendent must maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group-wide supervisor.<sup>34</sup>

### **Liquidity stress test**

The NAIC liquidity stress test is essentially a series of simulations that attempt to predict the consequences of certain stresses acting on an insurer, given the insurer's current portfolio of assets. In developing these stress tests, NAIC developed criteria for determining which insurance companies would be subject to the test. These criteria are referred to as "scope criteria." Thus, references below to a company being "scoped" into the NAIC liquidity stress test framework are simply referring to an insurer being considered to have met the criteria.<sup>35</sup>

The ultimate controlling person of an insurer that is a member of an insurance holding company system and that is scoped into the NAIC liquidity stress test framework must file the results of a specific year's liquidity stress test. The filing must be made to the lead state insurance commissioner of the insurance holding company as determined by the procedures within the NAIC Financial Analysis Handbook.

The liquidity stress test framework includes scope criteria applicable to a specific data year. These criteria are reviewed at least annually by the NAIC Financial Stability Task Force or its successor. Any change to the stress test framework or to the data year for which the scope criteria are to be measured is to be effective on January 1 of the year following the calendar year when the changes are adopted.

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<sup>33</sup> R.C. 3901.32(D) and 3901.33(L).

<sup>34</sup> R.C. 3901.36(A)(2).

<sup>35</sup> NAIC, [NAIC 2020 Liquidity Stress Test Framework \(PDF\)](#), which can be accessed by conducting a keyword "liquidity stress test framework" search on the NAIC website: [NAIC.org](http://NAIC.org).

Insurers meeting at least one threshold of the scope criteria are considered scoped into the stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the framework for that data year.

Insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the framework for that data year.

The act includes intent language stating that NAIC wishes to avoid having insurers scoped in and out of the stress test framework on a frequent basis. The lead state insurance commissioner, in consultation with the Financial Stability Task Force or its successor, will assess this concern as part of the determination as to whether or not an insurer is subject to the framework.

The performance of, and filing of the results from, a specific year's liquidity stress test must comply with the liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the Financial Stability Task Force or its successor, provided within the framework.<sup>36</sup>

For purposes of the information reported and provided to the Superintendent pursuant to the act's liquidity stress test requirements, the Superintendent must maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group-wide supervisors.<sup>37</sup>

### **Material information**

Continuing law specifies that an insurer need not disclose, in its registration with the Superintendent, any information that is not material. Nonmaterial information is designated as being sales, purchases, exchanges, loans or extensions of credit, or investments involving 0.5% or less of an insurer's admitted assets as of the next preceding December 31. The act specifies that this definition of nonmateriality does *not* apply for purposes of the group capital calculation or the liquidity stress test.<sup>38</sup>

### **Holding company transaction standards**

Continuing law imposes standards on transactions to which insurance companies operating in Ohio are a party. The act adds the following standards.

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<sup>36</sup> R.C. 3901.32(I) and (K) and 3901.33(M).

<sup>37</sup> R.C. 3902.36(A)(3).

<sup>38</sup> R.C. 3901.33(D).

## **Deposit or bond**

If an insurance holding company operating in Ohio is determined by the Superintendent to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then under the act the Superintendent may require the insurer to secure and maintain either a deposit, held by the Superintendent, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contract or agreement, or the existence of the condition for which the Superintendent required the deposit or the bond.

In determining whether a deposit or a bond is required, the Superintendent may consider whether concerns exist with respect to the affiliated person's ability to fulfill the contract or agreement if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the Superintendent has discretion to determine the amount of the deposit or bond, not to exceed the value of the contract or agreement in any one year, and whether the deposit or bond is to be required for a single contract, multiple contracts, or a contract only with a specific person or persons.<sup>39</sup>

## **Information held by affiliates**

The act specifies that all records and data of the insurer held by an affiliate are and remain:

- The property of the insurer;
- Subject to control of the insurer;
- Identifiable; and
- Segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data.

This provision applies to all records and data that are otherwise the property of the insurer, in whatever form maintained, including:

- Claims and claim files;
- Policyholder lists;
- Application files;
- Litigation files;
- Premium records;
- Rate books;

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<sup>39</sup> R.C. 3901.34(A)(7) and (8).

- Underwriting manuals;
- Personnel records;
- Financial records or similar records within the possession, custody, or control of the affiliate.

At the request of the insurer, the affiliate must provide that the receiver can:

- Obtain a complete set of all records of any type that pertain to the insurer's business;
- Obtain access to the operating systems on which the data is maintained;
- Obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and
- Restrict the use of the data by the affiliate if it is not operating the insurer's business.

The affiliate must provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement.

Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the insurer's control. Any right of offset in the event an insurer is placed into receivership is subject to the Ohio Insurer Rehabilitation and Liquidation Law.<sup>40</sup>

Any affiliate that is party to a management agreement, service contract, tax allocation agreement, or cost-sharing agreement with a domestic insurer is subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to Ohio Insurer Rehabilitation and Liquidation Law for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that are either of the following:

- An integral part of the insurer's operations, including management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions;
- Essential to the insurer's ability to fulfill its obligations under insurance policies.<sup>41</sup>

### **Proprietary documents**

Continuing law states that documents, materials, or other information obtained by or disclosed to the Superintendent or any other person in the course of an examination or investigation made by the Superintendent, and all information reported pursuant to

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<sup>40</sup> R.C. 3901.34(A)(9) and (10).

<sup>41</sup> R.C. 3901.341(G).

registration requirements, are confidential and privileged and not subject to public records laws, subpoena, discovery, and not admissible as evidence in a private civil action. The act adds that the documents are recognized as being proprietary and to contain trade secrets.

For purposes of the information reported and provided to the Superintendent pursuant to the group capital calculation requirements and the liquidity stress test requirements, the Superintendent must maintain the confidentiality of all relevant results and information received from an insurance holding company supervised by the following:

- For group capital calculation requirements, the Federal Reserve Board or any U.S. group-wide supervisor;
- For liquidity stress test requirements, the Federal Reserve Board and non-U.S. group-wide supervisors.<sup>42</sup>

### **Sharing of confidential information**

In order to assist in the performance of the Superintendent's duties, continuing law authorizes the Superintendent to share confidential information with, and receive it from, law enforcement or other regulatory bodies. The act adds proprietary information and trade secrets to the type of information that may be shared.<sup>43</sup>

### **Agreements governing sharing information with third parties**

When sharing information with NAIC, the Superintendent is required by continuing law to enter into an agreement governing how that information is to be maintained and used. And that agreement must meet certain standards. The act extends this requirement to apply to information shared with third-party consultants designated by the Superintendent, as opposed to "affiliates and subsidiaries" of NAIC.<sup>44</sup>

The act also adds to those standards. First, it requires that the agreement must provide that the recipient of the information agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

Furthermore, the act requires the agreement to prohibit NAIC or third-party consultants designated by the Superintendent from storing the information shared in a permanent database after the underlying analysis is completed. However, this requirement does not apply to documents, material, or information reported pursuant to the liquidity stress test requirements.

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<sup>42</sup> R.C. 3901.36(A).

<sup>43</sup> R.C. 3901.36(C).

<sup>44</sup> R.C. 3901.36(C), (D), and (G).

For documents, material, or information reporting pursuant to the liquidity stress test requirements, in the case of an agreement involving a third-party consultant, the written agreement must provide for notification of the consultant's identity to the applicable insurers.<sup>45</sup>

The act specifies that the group capital calculation and resulting group capital ratio and the liquidity stress test along with its results and supporting disclosures are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Accordingly, making any such information public is prohibited. The exception to this is that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication, and the insurer can demonstrate to the Superintendent with substantial proof the falsity of the statement or the inappropriateness, the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.<sup>46</sup>

## **Nonforfeiture amount**

The act amends the law related to the calculation of nonforfeiture amounts for annuities. A nonforfeiture clause is a clause in a policy of insurance that stipulates how much the policy owner will be paid if the owner stops paying the associated premiums. In other words, it is the amount the policy owner will be paid if the owner "cashes out" the policy. Nonforfeiture payments can be linked to premiums paid, the cash value of the policy, or a reduced benefit.<sup>47</sup> Ohio law imposes certain minimum nonforfeiture payments for certain insurance products. The act amends the law that determines the nonforfeiture payment for an annuity prior to the commencement of any payments from the annuity.

Generally speaking, the nonforfeiture amount for this type of annuity is calculated by taking the amount paid by the policy owner to the insurer, adding interest accumulated to the amount paid, and then subtracting things like administrative fees or taxes paid. The act amends how the interest accumulated on amounts paid is to be calculated.

Under prior law, it was to be the lesser of 3% or a rate based on the five-year constant maturity treasury rate, which could be no less than 1%. Under the act, the minimum rate for the five-year constant maturity rate is 0.15%. In other words, the act lowers the minimum

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<sup>45</sup> R.C. 3901.36(D).

<sup>46</sup> R.C. 3901.36(H).

<sup>47</sup> [Nonforfeiture clause](#), which may be accessed by conducting a keyword "nonforfeiture clause" search on the Investopedia website: [Investopedia.com](https://www.investopedia.com).

interest rate used to calculate the nonforfeiture amount for certain annuities from 1% to 0.15%.<sup>48</sup>

## Title insurance joint ventures

The act amends the law related to title company joint ventures. Under continuing law, for a title company (called a title agency in the act) that is a joint venture that is set to dissolve or terminate on a specified date, all members of that joint venture must be allowed or invited to join any successor joint ventures formed upon dissolution or termination of the original joint venture. The act adds the proviso that the percentage of ownership in any successor joint venture must not be based on the percentage of title insurance business referred to the original joint venture.<sup>49</sup> The act defines “joint venture” as being an arrangement undertaken jointly by two or more parties in regard to ownership of a business entity title insurance agent.<sup>50</sup>

## HISTORY

Action	Date
Introduced	10-19-21
Reported, S. Insurance	12-15-21
Passed Senate (33-0)	01-26-22
Reported, H. Insurance	03-23-22
Passed House (91-0)	03-30-22
Senate concurred in House amendments (32-0)	04-06-22

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<sup>48</sup> R.C. 3915.073(D)(2)(a)(iii).

<sup>49</sup> R.C. 3953.01, 3953.331, and 3953.36.

<sup>50</sup> R.C. 3953.01(0).