



# Ohio Legislative Service Commission

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## Final Analysis

Nick Thomas

### **Sub. H.B. 259**

131st General Assembly  
(As Passed by the General Assembly)

**Reps.** Ryan and Sears, Henne, Blessing, Hill, Duffey, Bishoff, Brenner, K. Smith, Hackett, Kuhns, Retherford, Stinziano, Anielski, Buchy, Burkley, Green, Kraus, Kunze, McColley, Rogers, Sprague, Sweeney, Young

**Sens.** Beagle, Eklund, Hughes, Patton, Seitz, Thomas

**Effective date:** March 23, 2016

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## **ACT SUMMARY**

- Provides for regulation of certificates of insurance (COI), which are certain types of documents that verify the existence of property and casualty insurance.
- Stipulates that if there is a conflict between a COI and the related policy, the policy controls.
- Prohibits unfair or deceptive language, or language that is in violation of rule or law, from being included in a COI.
- Prohibits certain actions in relation to a COI.
- Authorizes the Superintendent of Insurance to issue cease and desist orders and assess civil penalties to enforce the act.
- Prescribes when notification of cancellation or nonrenewal of a policy must be given to a holder of a COI.
- Repeals and reenacts a provision of law related to subrogation.
- Updates a reference in the Ohio Prompt Payment Law related to the coding of insurance claims.

- Requires the Administrator of Workers' Compensation to adopt rules to establish conditions under which negative workers' compensation experience that would otherwise be transferred to a successor employer may be reduced or waived.

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## **CONTENT AND OPERATION**

### **Overview**

The act makes changes to several areas of insurance law: certificates of insurance, the prompt payment of health care practitioners, subrogation, and workers' compensation.

### **Certificates of insurance**

The act provides for certificates of insurance (COI), which essentially are documents verifying the existence of property and casualty insurance. The act applies to all COIs issued in relation to property and casualty risks located in Ohio, regardless of where the policy holder, insurer, insurance agent, or person requesting the COI is located.<sup>1</sup> Also, any COI issued in violation of the act's requirements is void.<sup>2</sup>

### **COI versus policy of insurance**

The act draws a distinction between a COI and a policy of insurance, stating that a COI is not a policy, does not affirmatively or negatively alter the coverage to which the COI refers, and cannot confer any new rights to a covered individual beyond what is provided in the policy. In essence, the act states that if there is a conflict between a COI and its respective policy, the policy is what ultimately prescribes the coverage provided.<sup>3</sup>

### **Prohibited content**

The act prohibits certain content from being included in a COI. Language in a COI is prohibited from being either:

- Unfair, misleading, deceptive, or in violation of public policy;
- In violation of any law or Department of Insurance rule.

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<sup>1</sup> R.C. 3938.06.

<sup>2</sup> R.C. 3938.07.

<sup>3</sup> R.C. 3938.02.



A COI cannot guarantee that the related policy of insurance complies with the requirements for a policy of property or casualty insurance, and the inclusion of a contract number or policy description in a COI is not proof of such a guarantee.<sup>4</sup>

### **Prohibited actions**

The act prohibits a person from doing any of the following in relation to a COI:

- Preparing, issuing, requesting, or requiring a COI that contains any false or misleading information concerning the related policy of insurance;
- Preparing, issuing, requesting, or requiring a COI that affirmatively or negatively alters the coverage provided by the policy of insurance referenced in the COI.<sup>5</sup>

### **Enforcement**

The act prohibits a person from failing to comply with COI Law and authorizes the Superintendent of Insurance to investigate the activities of any person the Superintendent reasonably believes has engaged in or is engaging in an act or practice prohibited by it. If the Superintendent determines that any person has violated that Law, the Superintendent may take one or both of the following actions:

- Issue an order requiring the person to cease and desist from the actions constituting the violation;
- Assess a civil penalty not to exceed \$1,000 per violation.

Before imposing the penalty, the Superintendent must give the person notice and opportunity for a hearing under the Administrative Procedure Act. The Superintendent must deposit any civil penalties assessed into the state treasury to the credit of the Department of Insurance Operating Fund.<sup>6</sup>

### **Notification of cancellation or nonrenewal**

The act specifies that a COI holder is entitled to notification of cancellation or nonrenewal of a policy, or any similar notice concerning the policy, only if the COI is named in the policy and the policy requires such notification to be given. Furthermore,

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<sup>4</sup> R.C. 3938.03.

<sup>5</sup> R.C. 3938.04.

<sup>6</sup> R.C. 3938.08.



the act states that any such notice is to be provided according to the policy, regardless of the contents of the COI.<sup>7</sup>

## **Rules**

The Superintendent of Insurance may adopt rules in accordance with the Administrative Procedure Act as necessary to implement the act.<sup>8</sup>

## **Definitions**

The act defines the following terms with regard to certificates of insurance:

"Certificate of insurance" means a document or instrument, regardless of how titled or described, that is prepared or issued by an insurer or licensed insurance agent to verify the existence of property or casualty insurance coverage. "Certificate of insurance" includes a document issued to a person as verification of the existence of coverage under a master policy. "Certificate of insurance" does not include a policy of insurance, insurance binder, policy endorsement, or automobile identification card, or any document used to provide proof of financial responsibility with regard to automobile insurance.

"Certificate holder" means any person, other than a policyholder, that requests, obtains, or possesses a certificate of insurance.

"Person" means an individual, corporation, business trust, estate, trust, partnership, and association. It also includes a limited liability company, the state, and all political subdivisions, authorities, agencies, boards, and commissions of the state.<sup>9</sup>

## **Subrogation**

The act repeals and re-enacts in substantially the same form R.C. 2323.44, related to subrogation. Subrogation is a situation in which an insurer or other party makes payment to an injured party, expecting reimbursement from the responsible party via tort claim. R.C. 2323.44 provides that, if an injured party's claim is reduced for any reason, then the subrogee's claim is also reduced proportionally.<sup>10</sup> S.B. 223 of the 131st General Assembly, which passed the General Assembly the same day as H.B. 259, enacted a temporary exemption from R.C. 2323.44 for certain health insurance policies.

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<sup>7</sup> R.C. 3938.05.

<sup>8</sup> R.C. 3938.09.

<sup>9</sup> R.C. 3938.01.

<sup>10</sup> R.C. 2323.44.



## Prompt payment

Ohio's Prompt Pay Law generally imposes a series of requirements and penalties on health insurers and third-party payers to ensure that health care professionals are paid in a timely fashion. The act updates the list of claim codes used by a third-party payer in processing a health insurance claim under the Prompt Pay Law to include the most current International Classification of Diseases (ICD) 10 code. Prior law required the most current ICD-9 code.<sup>11</sup>

## Workers' compensation – successor rates

The act requires the Administrator of Workers' Compensation, for the purpose of encouraging economic development, to adopt rules to establish conditions under which any negative worker's compensation experience that would otherwise be transferred to the account of an employer who takes over the business of another employer may be reduced or waived.

In adopting these rules, the Administrator may not permit a waiver or reduction in experience transfer if the succession transaction is for the purpose of escaping obligations under the Workers' Compensation Law.<sup>12</sup>

Under continuing law, the Administrator must adopt any special rules as the Administrator considers necessary to safeguard the State Insurance Fund and that are just in the circumstances. The rules must cover the rates to be applied where one employer takes over the occupation or industry of another. And the Administrator may require that if an employer transfers a business, the successor in interest must assume the employer's account in proportion to the extent of the transfer, as determined by the Administrator.<sup>13</sup>

The rules adopted under continuing law require the transfer of the predecessor's experience to the successor in various instances, including where a succession transaction is entered into for the purpose of escaping obligations under the Workers' Compensation Law.<sup>14</sup>

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<sup>11</sup> R.C. 3901.381(B)(2)(d).

<sup>12</sup> R.C. 4123.324.

<sup>13</sup> R.C. 4123.32, not in the act.

<sup>14</sup> Ohio Administrative Code 4123-17-02.



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## HISTORY

ACTION	DATE
Introduced	06-16-15
Reported, H. Insurance	06-24-15
Passed House (91-1)	06-30-15
Reported, S. Insurance	12-09-15
Passed Senate (33-0)	12-09-15
House concurred in Senate amendments (92-0)	12-09-15

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